P.A.C. No. 624

PUBLIC ACCOUNTS COMMITTEE
(1977-78)

(SIXTH LOK SABHA)

EIGHTIETH REPORT

UNION EXCISE DUTIES

MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

[Paragraphs 48, 90 and 94 of the Report of the Comptroller and Auditor General of India for the year 1975-76, Union Government (Civil), Volume I, Indirect Taxes].

Presented in Lok Sabha on 28th April, 1978

Laid in Rajya Sabha on 28th April, 1978

LOK SABHA SECRETARIAT
NEW DELHI

April, 1978/Vaisakha, 1900 (S)

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31	1.67	31	that	than
40	2.28	2	therefore	therefor
48	2.56	3	Insert 'in' before duty	
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(1977-78)

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*Elected with effect from 23 November, 1977 *vice* Sarvashri Sheo Narain and Jagdambi Prasad Yadav ceased to be Members of the Committee on their appointment as Ministers of State.

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2. Shri H. G. Paranjpe—*Chief Financial Committee Officer.*
3. Shri T. R. Ghai—*Senior Financial Committee Officer.*

***Ceased to be Members of the Committee consequent on retirement from Rajya Sabha w.e.f. 9-4-1976.

INTRODUCTION

I, the Chairman of the Public Accounts Committee, as authorised by the Committee, do present on their behalf this Eightieth Report of the Public Accounts Committee (Sixth Lok Sabha) on paragraphs 48, 90 and 94 of the Report of the Comptroller and Auditor General of India for the year 1975-76, Union Government (Civil), Revenue Receipts, Volume I, Indirect Taxes relating to Union Excise Duties.

2. The Report of the Comptroller and Auditor General of India for the year 1975-76, Union Government (Civil), Revenue Receipts, Volume I, Indirect Taxes was laid on the Table of the House on 15th June 1977. The Public Accounts Committee (1977-78) examined these paragraphs at their sittings held on 19th December 1977 (AN), 20th December 1977 (AN) and 5th January (FN & AN). This Report was considered and finalised at their sitting held on 27th April 1978 (AN) based on the evidence taken and further written information furnished by the Ministry of Finance (Department of Revenue). The Minutes of the sittings form Part II* of the Report.

3. A statement containing main conclusions/recommendations of the Committee is appended to this Report. For facility of reference these have been printed in thick type in the body of the Report.

4. The Committee place on record their appreciation of the assistance rendered to them in the examination of the Audit Report by the Comptroller and Auditor General of India.

5. The Committee would also like to express their thanks to the officers of the Ministry of Finance (Department of Revenue) and Ministry of Industry (Department of Industrial Development) for the cooperation extended by them in giving information to the Committee.

NEW DELHI;
April 27, 1978.
Vaisakha 7, 1900 (S).

C. M. STEPHEN,
Chairman,
Public Accounts Committee.

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

REPORT

UNDER-ASSESSMENT DUE TO ADOPTION OF INCORRECT ASSESSABLE VALUE

Audit Paragraph

1.1. Cigarettes falling under tariff item No. 4-II(2) are assessable to central excise duty on *ad valorem* basis. Consequent upon revision of rates of central excise duty on cigarettes in the Finance Act 1974, a factory manufacturing cigarette revised the prices of its products with effect from 1st March, 1974. The revised price list was submitted by the factory on 10th March 1974 to the collectorate for approval, which was accorded on 12th March 1974. The factory, however, cleared some of its brands of cigarettes for the period 1st March 1974 to 12th March 1974, on payment of duty at the revised rate but the assessable value was calculated on the basis of price prevailing prior to 1st March 1974. The adoption of old price towards assessable value resulted in under-assessment of central excise duty to the extent of Rs. 1,22,473.

1.2. While confirming the facts, the Department of Revenue and Banking have stated that the differential duty has been recovered.

[Paragraph 48 of the Report of the Comptroller & Auditor General of India for the year 1975-76, Union Government (Civil), Revenue Receipts, Volume I, Indirect Taxes]

1.3. Excise duty on cigarettes was imposed from 27th February, 1948. Cigarettes were assessabe under Item 4—II(2) of the Tariff Schedule at specific rates of duty based on their value as defined in Section 4 of the Act till it was changed to *ad valorem*. The essential elements of such value are:

(i) It must be a wholesale price;

(ii) It must be a cash price;

(iii) It must be the price ruling at the place of manufacture and at the time of removal of goods from such place.

The manufacturer is required to furnish the appropriate officers with price lists for approval at the end of March, June, September and December each year. The manufacturer is also required to report changes in prices of each brand of cigarettes before such changes are made.

Approved changes must e duly carried out in the approved lists as and when they are notified by the appropriate officer, who happens to be Superintendent (Technical) of Central Excise in this case.

A. *Fixation of rate of duty on ad valorem basis*

1.4. In this case, the percentage rate of *ad valorem* of duty on cigarettes had been raised with effect from 1st March, 1974 as a result of Finance Act, 1974. Asked on what basis the overall rates had been fixed, the representative of the Central Board of Excise and Customs has stated:

> "In 1974 the structure was like this—it was based on the value of the cigarettes but it was a sort of ascending rate not strictly proportional to the value."

1.5. The Committee were informed during evidence that so far as cigarettes are concerned, the rate of duty had been basically *ad valorem*; but the actual rates had been changed quite frequently almost from year to year usually in an upward direction.

1.6. Asked to furnish a brief history of the levy of excise duty on cigarettes since 1971 indicating therein the hanges made from time to time, the Ministry in a note furnished to the Committee have stated:

> "Cigarettes are liable to basic excise duty (BED) under item 4—II(2) of the First Schedule to the Central Excises and Salt Act, 1944. The additional excise duty (AED) in lieu of sales tax is also leviale on cigarettes under the Additional Duties of Excise (Goods of Special Importance) Act, 1957. At the relevant time in 1971, special excise duty (SED) was leviable on cigarettes which continued up to 16th March, 1972. The Auxiliary duty as a percentage of the basis excise duty was imposed on cigarettes with effect from 1st March, 1973 which continued up to 17-6-1977.
>
> The tariff rates of basic, special, auxiliary and additional duties in force prior to the Budget of 1971 and thereafter are given below:—

Date	B.E.D.	S.E.D. as percentage of B.E.D.	A.E.D.	Aux/Ex duty	Reasons for change
1	2	3	4	5	6
1-3-70 . .	150%	20%	25%	..	To raise the ceiling rate of additional excise duty (in lieu of sales (tax).
29-5-71 . .	150%	20%	75%	..	

1	2	3	4	5	6
17-3-72 . .	200% AV	..	100%	..	To raise the ceiling rate of basic and additional excise duties.
1-3-73 . .	200% AV	..	100%	20% of BED	
1-8-74 . .	250% AV	..	100%	20% of BED	
18-6-77 . .	270% AV	..	100%	..	To raise the ceiling rate of BED as a consequence of merger of Auxiliary duty with BED.

The effective rates of duty as revised from time to time since 1971 are given in the Appendix -I "

1.7. Asked whether in 1974 the Excise Duty leviable under the Central Excise and Salt Act showed 250 per cent *ad valorem* plus an additional duty of 100 per cent *ad valorem* the Chairman, CBEC has explained:—

> "The effective rate of duty was different. They were lower.
>
> Under Rule 8(1) Central Excise Rules, rates of duty as in the schedule can be reduced by notification by the Central Government and this is done usually. In fact it is done. The notifications are placed before Parliament and in the case of Budget these notifications are issued at the time of the Bill itself."

1.8. Asked as to who made the notifications, the witness has added: "Central Government, normally with the approval and at the level of the Minister." In this context, the witness has clarified:—

> "If there are certain set pattern of exemptions, then Secretary might do it but if the exemptions involve new principle, if the revenue is much, then papers are to be put up to the Finance Minister and notifications after issue are placed on the table of the Houses of Parliament."

Elaborating the rates of duty payable, the witness deposed in evidence:—

> "In 1974, the effective rates of duty which were actually payable, they were not exactly the statutory rates but they were on a different pattern—

(1) of which value did not exceed Rs. 10 per thousand;

(2) of which value exceeds Rs. 10 per thousand.

In the case of those whose value per thousand did not exceed Rs. 10, the effective basic duty (under the Central Excises and Salt Act) was 75 per cent *ad volorem*. Subsequently, w.e.f. 1-8-1974, it was raised to 85 per cent *ad valorem*."

1.9. In reply to a question, Chairman, Central Board of Excise and Customs has stated that additional levy proceeds went to the State Government because it was in lieu of the Sales Tax. He has added:—

"Auxiliary duty was introduced on 1-3-74, and the proceeds were entirely to go to the Centre. The basic duty is shared by the Centre and the States according to the formula 80 per cent Centre and 20 per cent States. Additional duty went to the States. Auxiliary duty came to the Centre. It is not shareable.

75 per cent was basic duty. Additional duty was 25 per cent. Auxiliary duty was 10 per cent.

This 10 per cent question which is pertaining to this particular para, the net addition was 10 per cent of the auxiliary duty. Otherwise the rate was same as in the earlier year. This 10 per cent of basic duty was the addition which was to be made w.e.f. 1-3-74 when the new Finance Bill was introduced."

In this context, another representative of the Board has further explained thus:

"Where the value exceeded Rs. 10 there was an ascending scale. The incidence went upon the higher priced brands, where the basic duty was 75 per cent *ad valorem* plus 3 per cent *ad valorem* for every additional rupee or part thereof in excess of the value of Rs. 10 per thousand. In other words, if it was Rs. 11 per thousand, then the rate itself would go up to 78 per cent. If the value per thousand was Rs. 12, the rate would go up to 81 per cent, not only a pure *pro rata* increase but an increase in the rate itself."

Asked whether theoretically this increase for every segment at a subsequent higher level could not exceed 250 per cent, the Chairman, CBEC has stated:—

"No, Sir. That is the statutory rate fixed by the Parliament."

B. *Submission of revised priced lists and checks exercised thereon.*

1.10. The Audit para points out that consequent upon the revision of rates of Central excise duty on cigarettes in the Finance Act 1974, India Tobacco Company revised the prices of its products with effect from 1 March, 1974. The revised price list was submitted by the factory on 10 March, 1974 to the Collectorate for approval which was accorded on the 12 March, 1974.

1.11. Asked to explain the procedure involved in the assessees filing a revised price list to the collectorate for approval and the checks exercised by the Central Excise Department before giving its approval for the revision, the Minisry in a note, furnished to the Committee have stated:—

"The procedure involved in the filing of the revised price list and its approval is basically the same as that in regard to a fresh price list as it stood prior to 1 October, 1975.

The broad procedure has been laid down in Ministry's instructions M.F (DICCE) F. No. 509|1|72 dated 10 February, 1972 and a copy of the same is enclosed (Appendix II)."

1.12. Enquired whether the officers who exercised the check had the powers to go into the reasons for the revision and to satisfy themselves about the genuineness of the proposal by calling for records etc. from the assessees for inspection, the Ministry have stated:—

"The Central Excise Officers do have the power to look into the genuineness of the proposal for any revision of the prices declared by the assessee before approving the same. Sub Rule 2 of Rule 173C of the Central Excise Rules, 1944 states—"The proper Officers shall approve the price list after making such modifications as he may consider necessary so as to bring the value shown in the said list to the correct value, for the purpose of assessment as provided in Section—4 of the Act." For this purpose the proper officer has to satisfy himself about the geneuineness and,

while so doing, may also go into the reasons for the revisions though it is not incumbent under the existing Central Excise Rules for the officers to go into the reasons for the revision. To be satisfied regarding the genuineness of the price declared, checks laid down in Ministry's instructions (Appendix II) will have to be carried out with reference to the relevant documents like invices, sales journals, documentary proof of discounts allowed, revised contracts, the correspondence between the assessee and the customers, Cost Accountant's|Chartered Accountant's certificate etc."

1.13. Enquired at what level the price lists were approved and whether there was any system by which higher officers reviewed such approvals with a view to safeguarding revenue, the Ministry, in a note have stated:—

"The proper officer for approval of the price list is the Assistant Collector. However, in simple cases which do not involve disputed discounts or are easily verifiable with the wholesale prices, the Assistant Collector, after a preliminary study of the pattern of marketing of particular unit, may authorise the Supdt. for verification of the prices with the help of field staff and approval of the value. In all the other cases, the Assistant Collector himself should take up the work of according the approval. However, even in cases where the Assistant Collector authorises the Range Supdt., in the event of the assessable value as determined by the Supdt., the Supdt. should refrain from passing any appellate order and refer the cases to the Assistant Collector who should apply his mind to arrive at a decision.

It has further been clarified in the Board's letter F. No. 202/35/75-CX-6 dated 21-6-1976 (Appendix III) that in all cases where the price lists have been submitted by the assessees for the first time, the approval should be accorded by the Assistant Collectors themselves. Subsequent price lists in respect of that unit, so long as there is no change in the marketing and sales pattern, can be approved by the Range Supdts. if they have been authorised to do so by the Assistant Collector. In any case where there is a reduction in the price or where there is a change in sales and marketing pattern, the price list should be approved by the Assistant Collector even though after the preliminary study and initial approval of the price list by the Assistant Collector, the Range Supdt. has been

authorised to accord the approval. Copies of the approved price list are required to be sent to the Valuation Cell of the Collectorate where further necessary checks are made. In case there is no Valuation Cell in the Head Quarters Office, copies are to be sent to the Assistant Collector (Audit), who may conduct such checks as may be necessary. In cases of defects they are brought to the notice of the higher officers for taking remedial measures."

1.14. The Committee desired to know the special checks exercised by the Central Excise Department in granting approvals to the price lists specially in cases where there was a downward revision in the prices and how the Department satisfies itself that the downward revision in prices was as a result of cost deduction or otherwise. The Ministry in a note have informed the Committee thus:—

"There are no special guidelines or instructions in regard to checks to be exercised in the course of downward revision of prices. The checks to be exercised in case of any revision either upward or downward are uniform and would by and large be adequate to verify the genuineness of the revision, whether it be due to market fluctuations, competition in the prices between the manufacturers of the same class of goods, change in the relations of the supplier with his customerse, fluctuations in the cost of production or any other factors."

1.15. Explaining further that the checks by Inspection Groups and Internal audit party also provided the normal mechanism to detect incorrect values, the Ministry have added that "whole evasion of duty takes place as a result of declaration of incorrect values, information may also be received from competitors, informers or other sources."

1.16. The Committee enquired whether the Indian Tobacco Company sometime in 1975, reduced the prices of its two popular brands substantially by adjusting its price structure so as to avail of the consequential substantial relief in excise duty and if so, whether any checks were exercised by the officers before granting approval for the revised prices. In a note furnished to them, the Ministry have stated:—

"From the position reported by Collectorates of Central Excise, Patna, Bangalore, Calcutta and Bombay wherein M/s. I.T.C. have factories, it is seen that there were more than two brands in which price reductions took place. Since the Committee has enquired only regarding two

popular brands in which substantial reduction took place in 1975, it is presumed that the two such brands referred to would be Capstan (Medium) and Gold Flake plain."

"There are no special guidelines or instructions in regard to the checks to be exercised in the case of downward revision. The checks to be applied in the case of any revision in the prices either upward or downward are uniform and they would be, by and large, adequate to verify the genuineness of the revision. However, in the instructions issued under Board's letter F. No. 202/35/75-CX-6 dated 21-6-76 (i.e. after the relevant period), indicating the types of cases of price lists which should go to the Assistant Collector for approval, it has been stated that in any case where there is a decrease in price or where there is a change in sales and marketing pattern, the price list should be approved by the Assistant Collector even though after the preliminary check and initial approval of the price list by the Assistant Collector, the Range Supdt. has been authorised to accord approval. It has been reported by the Collector of Central Excise, Bangalore in whose jurisdiction both these brands were manufactured in the factory of M/s. I.T.C. where the price was reduced with effect from 14 April, 1975, that no enquiry was made before according approval to these assessable values since the approvals were given provisionally. However, investigation was made subsequently and invoice prices were also fied with the invoices raised by the manufacturers *i.e.* I.T.C. against the local distributors. The Collector of Central Excise, Patna has stated that on check with the invoices it has been found that the price of a popular brand (Capstan Medium) of cigarettes which was Rs. 162 per mille according to the price list of July, 1974 was reduced to Rs. 89.43 per mille on 14 April, 1975. Except that the quality of the brand denigrated (sic.), there could be no source at this end to ascertain the cause for such reduction as the price structure is framed at their head office at Calcutta. The Collector of Central Excise, Bombay has reported that while the brand Gold Flake had not at all been manufactured in the factory of M/s. I.T.C. at Bombay the brand 'Capstan' had also not been manufactured in Bombay factory after the price reduction and upto August, 1976. Therefore, there was, no occasion to exercise any checks before granting the approval for the revised reduced prices of those two brands.

The Collector of Central Excise, Calcutta has reported that the reduction in the price of Capstan (Medium) brand was made effective from 14-4-1975 and it is understood that such reduction in the price list was done with a view to boost the demand for that brand. It is further reported that in effect the demand was consderably increased in respect of Capstan (Medium) brand and the revenue realised from this brand increased to Rs. 7.04 crores during 1975-76 as compared to Rs. 1.41 crores during 1974-75, notwithstanding the reduction of the assessable value of the brand."

1.17. Asked to indicate the normal time taken by the Central Excise Officers in according approval to a price list, the Ministry in a note furnished to the Committee have stated:—

"It is difficult to quantify and indicate the normal time taken by the Central Excise Officers in according the approval to a price list. Instructions have, however, been issued that care should be taken to approve such values at the earliest, without any possible delay. In this context, a copy of the Department's instructions F. No. 3.14/2/75-CX-10 dated 13 December 1976 is enclosed (Appendix IV) which prescribes that in no case should more than 3 months be taken for the approval of the price list."

1.18. Enquired further whether such price lists and connected approvals were offered for scrutiny by Revenue Audit, the Ministry have stated:—

"It has been reported by the Collector of Central Excise, Patna, who is concerned with the unit referred to in the audit para, that the Accountant General's audit party checks the correctness of the approved price lists in the course of their visit to the factories.

The files dealing with the approval of the prices for the purpose of assessment are available for examination of Revenue Audit."

1.19. Asked whether it was the practice during the relevant period that the Department never entered into the manufacturers'

costing system, the Chairman, Central Board of Excise and Customs has replied in evidence:—

"Yes sir. That is true."

1.20. When pointed out that though in the instant case the amount involved was small, the valuation aspect was over-looked, the Chairman, CBEC has stated:—

"The valuation was applied all right, but it was not applied retrospectively. That was an omission on the part of the Inspector. One other thing which is relevant is that if the margin between the price given by the manufacturer to the wholesaler and the price given by the wholesaler to the retailer is very wide, it becomes suspect."

C. *Failure to pay differential duty on all clearances made from 1 March, 1974.*

1.21. As pointed out in the Audit Report the Monghyr factory had cleared some of the brands of cigarettes for the period 1 March 1974 to 12 March 1974 on payment of duty at the revised rate but the assessable value was calculated on the basis of price prevailing prior to 1 March 1974. The adoption of old price towards assessable value had resulted in under assessment of Central Excise duty to the extent of Rs. 1,22,473. The Committee have learnt from audit that the amount of under assessment i.e. Rs. 1,22,473 had since been recovered from the party on 6 August, 1975 by adjustment in the Personal Ledger Account. The Ministry had further stated that action had been initiated to fix responsibility for the lapses.

1.22. Asked to explain how this short levy went undetected, the CBEC have in a written note stated as Under:—

"The Collector of Central Excise, Patna has reported that on receipt of the objection regarding short assessment, all the connected papers were called for them the Assistant Collector, Patna Division, along with his comments on the issue. The Assistant Collector is reported to have intimated that while checking the RT-12 returns for the month of March, 1974, the assessing officer should have detected the short payment and that there was a lapse on the part of the said Inspector to this extent. The Inspector was thereupon asked to explain the lapse. The Inspector admitted the mistake which he explained occurred

due to his ignorance on account of inexperience in the Self Removal Procedure system. No explanation was reportedly called for from other officers as it was the Inspector who had made the assessment. Besides, while finally approving the price list on 12 July 1974, Superintendent, Monghyr had asked for realisation of the differential duty and the Superintendent (Tech.), Patna had only permitted provisional assessment. It is reported that as such no action was initiated against the two Superintendents."

1.23. Asked whether in this particular case anybody visited the factory, the representative of the CBEC has stated:

"In this particular case, there was a visit by an Inspection Group. But this particular discrepancy did not come to the notice."

1.24. The Committee desired to know when the factory was visited by the officers of the Department and what were their ranks and why the discrepancy could not be detected by them. In a note furnished by the Ministry, it has been stated:—

"The factory mentioned in the Audit para was visited by the Internal Audit party of the Collectorate from 15 April 1975 to 20 April, 1975. They could not, however detect the irregularity as the period covered by them was only from October, 1974 to December, 1974. It is also reported that the Assistant Collector of Central Excise, Patna, visited the unit on 6-8-1974 while the Deputy Collector of Central Excise, Patna, paid a surprise visit on 3-6-1975. Since the visit of the Deputy Collector was not a visit for regular inspection, this had not come to his notice. It has further been reported that the Assistant Collector and Deputy Collector who visited the factory have since retired."

1.25. Enquired as to why relatively low-ranking officers were being given the responsibility of assessing the values involving huge amount, the representative of CBEC has stated in evidence:—

"At that particular point of time, the instructions contemplate that there would be two levels of officers who would be legally responsible for assessment. One was the Supdt. and the other was the Assistant Collector who is a Class

I Officer and fairly a senior officer. In fact, some criteria have also been given. For instance, in 1970, instructions were issued that in respect of each type of assessees, the Assistant Collector should examine the principles of valuation particularly regarding the admissibility of discounts, packing charges and so on.. He would also see that market enquiries are made with the help of the Inspectors. Here again, some senior officer should be associated. In most cases, the basic decision, whether a particular type of relationship is accepted or not, is normally taken by the Assistant Collector.. Small details could be left to the Superintendent. In the later instructions also we were trying to stress that the Assistant Collector should come more in the picture. In one case, we have said where there is a change in the marketing pattern or reduction in the price, the Assistant Collector should pay attention to it. These are part of the frame work of control because the structure of the whole S.R.U. system contemplates compliance with the Valuation section. But in case of doubts, he can refer it upto the Collector and copies of the orders go to the different branches of the Collectorate which exercises a separate check with the help of the valuation branch or audit branch. There are also inspection staff who are required to go to the factories from time to time and satisfy themselves whatsoever values are made are correct. But there may be some stray cases which manage to escape the check."

D. *Assessment of the wholesale price by the Excise Department.*

1.26. The Committee learnt from Audit that in their price list issued from 1-3-1973 onwards, the India Tobacco Company had deducted from the wholesale price of cigarettes certain percentage thereof as per certification by the company's Auditors on account of post-manufacturing and selling expenses and duty was assessed on the net amount. As, however, this practice was not approved by the Central Excise authorities, the manufacturer filed writ petitions in the Patna High Court and obtained stay orders. Pending decision of the court, all price lists from 1-3-1973 onwards were approved by the Department on a provisional basis; the price list effective from 1-3-1974 was also approved provisionally for the same reason. The decision of the High Court in the matter of exclusion of post-manufacturing and selling expenses from the wholesale value

for the purpose of determining the assessable value of the products of M/s India Tobacco Company Ltd. was still pending in the court.

1.27. Asked how the assessable value was arrived at, the Member Excise replied in evidence:—

> "This was under the old Section of Central Excise and Salt Act. There is a legal definition in section 4 of the Central Excise and Salt Act. It is mentioned here about the wholesale cash price. It is basically the price between the assessee and a wholesale dealer who is independent of him. So, this is the open market price, the price at arms length between the assessee and the wholesale dealer to whom he sells."

1.28. Explaining the difference in the new Section of the Act, he has added:—

> "The difference in the new section is mainly a matter of defition. The amendment to the section is in effect the replacement of the old section by the new section which was necessitated by an adverse judgement in a particular case of M/s. Voltas who were selling air-conditioners. They went up to the Supreme Court. Two points were held against the Department-that is, the Department had been prone to take a price between a manufacturer and a sole distributor as a price not at arms length and therefore not to form the criterion for assessment of duty. But, here, in this case the Court held that sale to a distributor could also constitute transactions in the wholesale market and they could not be disregarded unless it was established that there was some relationship between them and the sales were not at arms length. The court held against the Department's view. They said that under the law, the valuation of the goods for excise duties would include only the manufacturing cost and the manufacturers' profits, because the excise duty is a tax of manufacture. Now this gave an opportunity to certain assessees to say that that part of the total expenses which was spent in maintaining a sales organisation and so on was in regard to the activities which according to them were post-manufacturing activities. But that portion of the price at which they sold their goods which could not be attributed to these so called post-manufacturing activities should be

included in the value for purposes of assessment and therefore it was not entitled to deduction. So, these two adverse points were held against the Department by the Supreme Court in the case of Voltas. To put the matter beyond doubt and also to stop any loophole for avoidance or evasion of duty, it was considered necessary to re-enact Section 4 and make it very specific to say in what circumstances prices could be accepted and to classify the various situations so that those defects could be got over."

1.29. The witness however admitted that in this particular case, "the Department had to be guided by the provisions of the old Section which talked of the wholesale cash price for which an article of the like kind and quality is sold or is capable of being sold in the whole-sale market."

1.30. Asked what action would be taken by the Department when the margin between the price given by the manufacturer to the wholesaler and the price given by the wholesaler to the retailer was very wide, the Chairman, CBEC has stated:

"We question the whole thing. In this sort of case, one way would be to search the premises and see which documentation is going on properly."

Subsequently in this connection, the Ministry have informed the Committee as under:—

"According to Section 4 of the Central Excises & Salt Act, 1944, duty is assessable on the wholesale price, at the time of the removal of the article chargeable with duty from the factory, provided the transactions are at arms length. In such cases the difference between the price of the manufacturer to the wholesaler and the price subsequently charged by the wholesaler to the retailer would not affect the acceptability of the price of the manufacturer to the wholesaler and there would, therefore, be no necessity normally to verify the same. It has been reported by two of the Collectorates of Central Excise namely Collectorates of Central Excise Patna, & Kanpur out of the five Collectorates of Central Excise wherein M/s I.T.C. have factories that no case of wide margin between the price charged by the manufacturer to the wholesaler and the price charged by the wholesaler to the retailer had

been noticed by them. However, if it comes to notice that there is a wide margin between the two prices this would justify a probe to determine whether there is any flowback of the wholesaler's profit to the manufacturer, so that the price of the manufacturer to wholesaler eases to be a price at arm's length. In that case the value for purposes of assessment would have to be determined in terms of the Central Excise and Salt Act and the valuation rules taking all relevant factors into account."

1.31. The Committee pointed out that so far as this particular case of assessment was concerned since the new Act had not come into being at the time of assessment the Excise Department was at liberty to go into the manufacturer's cost to determine the assessable value.

The representative of the Central Board of Excise & Customs stated in this connection:—

"There is some history to this. So far as this particular factory is concerned, there has been even prior to this i.e. 1 March, 1974—a dispute going on between the assessees and the department as to whether the price at which they sold their cigarettes to their dealers or distributors should be taken as the open market price or wholesale price acceptable for the purpose of assessment. The Department was inclined to the view that the price at which the cigarettes were sold by the dealers for further sale should from the basis for assessable value whereas the manufacturers' contention was that the price at which they themselves sold to their dealers or distributors should form the basis. The manufacturers had further claimed, basing themselves on the Voltas judgement, that even a portion of the price at which they sold to their dealers or distributors should be excluded from the value i.e. roughly about 3 per cent of what could be the value."

1.32. When asked whether the assessable value was taken as that value for which the assessee was selling to the distributor and whether the Department was not going into the manufacturing cost of the assessee at all, the Chairman, CBEC deposed:—

"That is true. The department, generally speaking, does not go into that and the yard-stick to assess the veracity or

the correctness of the price is the price at which they are finally sold. For instance, in the case of cigarettes, there is the price of the manufacturer i.e. the assessee to his distributor or dealer and I believe they also fix their consumer price, at which they are going to be finally sold and this is an all-India price. We are collecting all these. The entire thing will become unmanageable if we are to assess the value after computing the cost of the raw-material and things like that. Therefore, the Act itself provided for the determination of the wholesale cash price, and this is by and large, the determining factor."

1.33. Enquired what the Department would do in the case of an assessee who literally monopolised or dominated the market, the witness has stated in evidence:—

"One of the objects of the new section or the section as amended was to take care of the situation where the assessee arranges to sell the majority of his goods only through his own dealers."

1.34. Asked about the method by which assessment was made prior to coming into force the new Section 4, the Chairman, CBEC has stated:—

"There was a suspicion that the price was unduly suppressed by the manufacturer because he was selling to his related people. That is why, this trouble arose because the Department would not accept this price and then they went to the court. So, we had to revise this Section."

1.35. Pointing out that in a company producing a number of brands of cigarettes, the question of finding out the cost of production/assessable values for each brand involved not only determination of the extent of superior and inferior quality of tobacco but also correct allocation of various overhead expenses including post-manufacturing expenses, the Committee enquired how these aspects were studied and the Department satisfied itself about the correctness of the factor leading to the determination of assessable values for each brand of cigarettes. In a note furnished to them, the Ministry have stated:—

"The determination of the assessable value/cost of production, on the basis of the extent of superior and inferior quality of tobacco, correct allocation of various overhead expenses, etc., would arise only in case the goods manufactured by

an assessee are not sold due to which the department is not able to verify the sale price of the product."

In this context, the representative of the Central Board of Excise and Customs has stated during evidence:—

"If the assessing officer was satisfied that the price at which the assessee claimed to have sold the goods was in fact the price at which he was selling them and there was no other consideration passing, then he was not called upon to go into the breakup of the costs."

1.36. Asked whether the Ispection Group of the Department during its visit checked the price basis, the Ministry in a note furnished to the Committee, have stated that "the Inspection Group during its visit to the units is required to check up the price lists and verify the same against the invoices/bills of the party as well with the copies of such bills and invoices lying with the buyers, if necessary."

1.37. During evidence, the representative of the Central Board of Excise & Customs stated further:

"After all, the assessing officer is not the only officer but there are preventive intelligence officers also. They can find out the actual price in the market through the machinery of the Department."

1.38. Asked whether the assessing officer would not be suspicious if the assessee sells two different brands of cigarettes and the distributor buys both these items and in the lower duty value they show relatively higher cost and for the higher duty value relatively low cost, the witness deposed in the evidence:—

"That depends very much on the officer. If he thinks that there is something fishy, he is expected to pursue it."

Elaborating, the Chairman CBES has stated in this context:

"Our basic yardstick is, is he maintaining the usual percentage when he sells to the dealers and to the consumers? If *mala fide* comes to our notice, that is investigated. I am suggesting because of the higher rates of duty they might price certain things to a lower extent but all along the line they will be sold at that particular rate.

In other words, we cannot bind the manufacturer to sell at a particular price. The guiding principle will be the way

he values his products and prices them. It should benefit right down to the line as if they are in the ordinary course of business. If that is answered, in the affirmative, Department is not going to make any enquiry."

1.39. Stating that "if the margin given by the distributor to the dealer becomes abnormal compared to what the manufacturer had given to the distributor it becomes a suspect, the Chairman, C.B.E.C. added:—

"In the case of cigarettes it has not come to our notice in that form, but if it becomes necessary we might have to go into the question of costing."

1.40. Asked if there was any machinery to go into the cost, the witness has stated:—

"We have no expert Cost Accountants to go into it. We will have to have assistance. That is precisely the type of handicap from which this Department has been suffering. Excise has become so large that, by and large, our machinery is not adequately provided with technical talent, which on the Customs side we have because it is a very old Department, but not on the Excise side. We are therefore proposing to have direct entry to Class II of experts in different discipline such as sugar technology, metallurgy, textile technology, mineral technology and a few others. Hundred posts are going to be filled on that basis."

He has added:

"It has been decided to have cost accountants also. I must confess that the technical competence of our officers at the basic levels is not at present what it ought to be."

1.41. The Committee in this context desired to know what remedial steps were proposed to be taken to overcome this difficulty. In a note furnished to them, the Ministry have stated:—

"A Directorate of Training has already been set up comprising a Central Training Institute at New Delhi and Regional Training Institute at Bombay, Calcutta and Madras. The General Training imparts initial training to Group—'A' direct recruits, arranges for refresher courses for Assistant Collectors of Customs & Central Excise and provides for initial training and refresher courses for Group 'B' and

Group 'C' Executive Staff of the North Zone. The Regional Training Institutes at Bombay, Calcutta & Madras provide for initial training to Appraisers of Customs & Supdts. of Central Excise, Preventive Officers & Examiners of Customs and Inspectors of Central Excise and to arrange for refresher courses for Group 'B' & Group 'C' Executive Staff in the two Departments."

1.42. Pointing out that a company of the size of I.T.C. which dominated the market could easily compel its distributors to agree to manipulations which result in huge loss of revenue to the country, the Committee enquired about the steps taken by the Department to avoid such situations. The representative of the Board has stated in evidence:—

"There was a dispute going on between the Department and the Company as to the acceptability of the assessable values declared by them. A little while ago the question was put as to who approved this price list. This particular price list was approved by the Superintendent but the principles of valuation on the basis of which this was to be assessed had been in dispute for about a year. Finally on the 4th April, 1974 the Assistant Collector passed an order. He too a view on the two points—

On the basis of that certain demands were raised by the Department for past clearance. Thereafter the Company went to the Patna High Court. They filed three petitions and ultimately they got a judgement from the Patna High Court to the effect that the Department should base its assessment on the wholesale prices. That is, on the prices on which they were sold to the distributors but excluding what was claimed as post-manufacturing expenses."

He has added:—

Under the direction of the High Court they had to make assessment on a particular basis. It was a matter for appeal and it is being pursued. But this has not come to the final stage. At the moment they are precluded by the High Court order from revising the assessment in any other manner. ITC made their case for the assessable value on the basis of their price list. The writ petition was after the decision of the Assistant Collector. We have conceded that the Inspector should have not noticed the difference

between the approved price list and the prices which were actually shown for assessment."

1.43. Intimating the latest position to the Committee the Ministry in a subsequent note have stated:—

"The Collector of Central Excise, Patna has applied to the Patna High Court for leave to appeal to the Supreme Court. The orders of the High Court are still awaited."

1.44. Asked as to which collectorate of the Central Excise Department conducts a scrutiny of the assessable value of the cigarettes manufactured by the I.T.C. Ltd. and whether this Collectorate communicates its findings to the other Collectors in other parts of the country where the actual clearances and duty payment takes place, the Ministry in a written note furnished to the Committee have stated:—

"It is reported that a comprehensive price list prepared by the Head Office of M/s. ITC Ltd. at Calcutta is filed by their various branches to their respective Central Excise authorities for their approval. However, no single Collectorate takes up verification of the prices required before approval on behalf of all the other collectorates wherein the said factory has units. However, it is also reported that if anything adverse comes to notice which is of interest to other Collectorates necessary information is communicated. It may be mentioned that in terms of rule 173-C legal approval to the price list (with modifications if necessary) has to be given by the "proper officer", who, in terms of rule 2(xi) *ibid* is the officer in whose jurisdiction the premises of the producer of excisable goods are situated, although this would not preclude consultation at the executive level between the "proper officers" in respect of different factories."

1.45. During the visit of the Study Group I of the PAC to Bombay in January, 1978, they were informed by the Carona Sahu Company that although the Supreme Court had in the case of Voltas Ltd. upheld the view that the duties leviable on production and that post manufacturing expenses including trade discount have to be deducted in arriving at the assessable value, Department did not follow the same. In their Memorandum the Carona Company had stated as under:

"In the case of Bata Shoe Company, Calcutta, the Central Board of Revenue issued an order on the 16th October,

1957, (Appeal No. 12-A/3 A.M.P. of 1957—Order by Mr. B. M. Banerjee, Member C.B.R.) that the price at which duty is to be assessed is the ex-factory price and therefore, expenses incurred for distribution which are included in the wholesale price are to be deducted. In 1957 they allowed Bata Shoe Company a deduction of 15.93 per cent to 16.43 per cent from their wholesale price. The company had brought to the attention of the Bombay Collectorate of this decision and claimed similar allowance to the company. The department, however, did not agree with the company's request. Not only that even the trade discount allowed by the company to the wholesalers was also denied to the company from end of 1966. The company had, therefore, filed writ applications in the Bombay High Court. In the matter of trade discount the High Court decided that the company is entitled to the discount and that in the case of post manufacturing expenses the court directed that the department should hear the points of the company and decide the issue. Even though the department knew that Bata Shoe Company was receiving all the above benefits, still they did not allow the same benefits to the company and preferred appeals to the Division Bench of the High Court. The appeals have still not come up for hearing and the matter is pending for the last more than 10 years in the court. Whereas a big company like Batas are enjoying the benefits the same benefits were denied to a much smaller company like ours which affects the company's capacity to compete in the market.

On the basis of the decision in the Bata's matter as stated above, Voltas Limited and I.T.C. Ltd., went to Supreme Court and High Court respectively. Both the High Court (in the case of I.T.C. Ltd.) and the Supreme Court (in the case of Voltas Ltd.) upheld the view that the duty is leviable on production and that post manufacturing expenses including trade discount have to be deducted in arriving at the assessable value. In spite of these decisions, particularly that of the Supreme Court which is the highest Court of the land the assessees are oppressed so much so that the matters are kept hanging in courts for several years without getting any benefits of the decisions mentioned above because the departments do not follow the same."

1.46. The Parle Products Pvt. Ltd. and the Parle Bottling Co. Ltd. had also complained of the manner in which the wholesale price was determined for determining the excisable values. The Department held the view that the price charged to various wholesalers all over the country should be taken into account whereas the company felt that excisable value under Section 4 of the Acts should be the price which the company charge to the wholesalers in Bombay who were nearest to the place of removal of goods. The company had contended that if the interpretation of the Department was accepted it would tentamount to recovery of duty not only on the excisable value but also on the freight. The company is stated to have submitted a representation to the Central Excise Department on 23 July 1977 but till January 1978 no decision had been taken.

Loss of Revenue due to delay in the enforcement of amended Section 4

1.47. One more aspect of the assessable value which figured in this connection during the discussions with the representatives of the Ministry of Finance was the delay in the enforcement of amended Section 4. A reference to this has been made in the Audit Report (Indirect Taxes) in para 100. According to that para although the Central Excise and Salt Act 1944 was amended in May 1973 the notification was issued on 8 August, 1975 appointing 1st October 1975 as the date for bringing the new Section into force. There was thus a delay of more than 2½ years in enforcement of the revised provision.

1.48. The audit para has pointed out that this delay had caused a loss of about Rs. 17 crores as indicated below:—

Category	Amount of Revenue forgone (Rupees in crores)	Collectorates (Rs in crores)	
1		2	3
1. Under assessment due to interpretation on the lines of Voltas ' case.	4·19	Calcutta and West Bengal	3·97
		Cochin	0·22
2. Non-inclusion of packing charges in assessable value.	6·91	Chandigarh	0·76
		Orissa	2·34
		Nagpur	0·85
		Baroda	0·27
		Hyderabad	1·34
		Madras	0·75
		Jaipur	1·40

1		2		3
3. Non-inclusion of post manufacturing expenses. . .	5·49	Calcutta and West Bengal .		2·62
		Bombay		2·09
		Orissa		0·03
		Baroda		0·70
4. Other Reasons. . .	0·41	Chandigarh . . .		0·32
		Bombay		0·01
		Delhi		0·08
Total . . .	17·00			17·00

1.49. Asked about reasons for the delay of nearly two and a quarter years in bringing into force the provisions of Section 4, the Secretary, Finance has stated in evidence:

> "First of all, let me say, without hesitation that there was delay. When an Act provides that Government shall bring a particular clause into force from a particular date, it is assumed that certain period of time is required in the beginning. What would be a reasonable time? In some cases it may be a short time; sometimes, it may be 5-6 months to clear the rules. Therefore, *Prima facie* the period of about two years is unreasonably long in that context as it happened in this case."

Explaining the position elaborately, the Department of Revenue have in a note stated thus:

> "It may be observed that the amending Act itself provided for the provisions of the new section 4 to be brought into force from a subsequent date. The new provision involved substantial changes in the law and therefore a reasonable period of time was necessary for the rules and instructions to be drafted and notified and for the assessees to familiarise themselves with these provisions and take action to file revised price lists in advance. Some time gap between the amending Act being passed and the new provision being brought into force was, therefore, inevitable. It is, however, a fact that there was an un-anticipated delay in bringing the amended section into force. This resulted mainly from the efforts

made to ensure that the valuation rules framed under the amended secton were as comprehensive and clear as possible and adequately met the various situations likely to be met with. It was, therefore, necessary to draft clear and detailed instructions to guide the field formations. Apart from this certain doubts arose about the legal and practical implications of some of the provisions in the amended section. Extensive discussions both within the Ministry and with the Ministry of Law were found necessary before rules and instructions which were felt to be sufficiently complete and clear could be framed. This proved to be more difficult than had been anticipated before the section was amended. It might be obsered, however, that issuing rules and instructions which were not sufficiently clear or complete would in its turn have led to disputes and delays in clearance which would not have been in conformity with the objective of enacting the amended section."

1.50. The Committee pointed out that the judgement of the Supreme Court in the case of Voltas Ltd. came in December 1972 and the amending Bill was introduced in May 1973 after a period of about 6 months. They wanted to know if this period was not sufficient for the Department to give due consideration to all aspects before introduction of the Bill. The Finance Secretary has explained in evidence:

"As subsequent events show, as subsequent discussions with the Law Ministry and even in the Board show, there were considerable doubts about the interpretation of new Section 4. Possibility it might have been much better, if the Ministry had taken a longer time to dispose of all these matters before going to Parliament.

You will notice that, in the amending Bill, there were two major provisions; amendment of Section 4 and amendment of Section 40, and both arose out of court cases. Amendment of section 40 was required to be done immediately. I am not suggesting for a moment that section 4 was less important. Section 40 had created an important problem for Government and, therefore, the Bill could not be held up. If the matter about section 40 was not there, then this Bill would not have been taken to Parliament in such a great haste. Because this was there, a composite Bill was brought."

1.51. Asked if it was the contention of the witness that the notification was not issued immediately because the law passed by Parliament was wrong, the witness has clarified:

> "I do not say that the law was wrong. Immediately after it was passed, when discussions went on about framing rules and preparing instructions, questions were being raised by senior Members of the Board and others whether or not the new provisions of the law would in fact meet the situation which was sought to be met."

1.52. The Committee asked how the matter was ultimately resolved. The witness has stated:

> "Ultimately the Finance Secretary called on meeting and said that the matter had been delayed long enough and that we might take the risk. It might have gone on even longer, had he not intervened at that stage, called a meeting and insisted that it should be done."

1.53. The Committee wanted to know as to why in the notification issued on 8 August 1975, it was mentioned that the same would become effective from 1 October 1975. The Member (Excise) has stated:

> "The section contemplated a particular procedure whereby if the normal price of the goods is not ascertainable for the reason that such goods are not sold or for any other reason, the nearest ascertainable equivalent determined in such manner as may be prescribed. And Section 37 was amended to provide for the rule-making power for determining under Section 4 the nearest ascertainable equivalent. 4(1) gives the nature of the rules for determining the nearest ascertainable equivalent. And in order that Section 4 can be given effect to, the rules also had to accompany."

1.54. Explaining further as to why the amended Section 4 could not be given immediate effect from the date of notification, the Member (Excise) has stated:

> "Because the section could not have effect unless the rules are framed. The rules were promulgated on the same day but the time was given for the trade to consider their position in the light of the new rules and to file their price-lists and for the department also be provisionally approved those price lists. The scheme was that

the assessee should file them by 15th September 1975 so that the proper officer may, in the light of the principles enunciated, approve the values and the values so approved be made known to the assessees well in advance of 1st October 1975. If the whole thing has been brought into force on the 1st October, 1975 without previous warning and intimation, certainly there would have been a gap when the new provisions came into force, the assessees would not have aware, of this, the price lists would not have been filed and there would have been provisional assessments."

155. The Committee wanted to know if some manufacturers had utilised the intervening period of about 21/2 years to avail themselves of the beneficial provisions of old Section to the detriment of revenues. The Department of Revenue have in a note stated:—

"The provisions of the section before its amendments had the force of law until they were superseded. Hence they were applicable to all assessees and the question of some particular manufacturers having availed themselves of the old provisions to the detriment of revenue would not appear to arise."

1.56. Asked whether the delay in the issue of notification had resulted in a loss of revenue to the tune of Rs. 17 crores as pointed out by Audit. The Finance Secretary has explained in evidence:

"The use of this phrase 'loss of revenue' cannot be accepted. Loss of revenue arises only if there is a liability to pay taxes. Until the notifications were issued, there was no liability. Loss of revenue could arise only when there is a law and the law is not being enforced by us or is evaded by others."

1.57. Asked if more revenue could have been realised had the notification been issued earlier, the witness has stated:

"Yes, if the notification had been made earlier".

1.58. The Committee wanted to know the details of the specific claims for refund of Rs. 10 lakhs and above during the period from the date of Supreme Court judgement on 1-12-1972 till 1-10-1975 when amended Section 4 had the validity of law. The Department of Revenue have in a note stated as under:—

"The particulars giving the details of claims for refund of Rs. 10 lakhs and above (Rs. 10 lakhs & above not only in individual claim, but also all the claims preferred by a

single party put together) preferred consequent to the Supreme Court judgement on 1-12-72 in the case of M/s. A. K. Roy and another *Vs.* Voltas Ltd. till 1-10-1975 are furnished (Appendix V) (The figures are provisional subject to further verification with the Collectors)."

It will be seen from Appendix V that as many as 166 claims were filed by the various parties for the refund of Rs. 10 lakhs or more in each case consequent another judgement of the Supreme Court delivered in December, 1972.

1.59. The Committee find that the Monghyr factory of Indian Tobacco Company Ltd., Calcutta had cleared certain brands of cigarettes manufactured by it during 1st March 1974 to 12 March 1974 on payment of duty at the revised rates prevalent from 1-3-1974 but the assessable value was calculated on the basis of price prevalent before 1-3-1974. The adoption of old price towards assessable value had resulted in under-assessment to the extent of Rs. 122,473. The Central Board of Excise and Customs have conceded "while checking the RT-12 returns for the month of March, 1974, the assessing officer should have detected the short payment and that there was a lapse on the part of the said Inspector to this extent." What is more distressing is the fact that this discrepancy could not be detected by the Inspection Group which visited the factory subsequently. This goes to prove that the check exercised in this regard was perfunctory and not done in the right earnest. The plea that "the mistake in this case had occurred due to the ignorance of the Inspector on account of inexperience in the Self Removal Procedure system and that no explanation was called for from other officers as it was the Inspector who had made the assessment" is not convincing. A review of the whole procedure of selection of suitable personnel for the job and fixing the accountability of the supervisory officers is urgently called for. Since provisions already exist for the Inspection group and Internal Audit Party to check the assessment from time to time, it is rather strange that such costly lapses should occur and thereby deprive the Exchequer of the revenue which would otherwise have accrued to it. The Committee are also unable to understand why in this case the question of assessment was left merely at the discretion of an Inspector who was inexperienced. A counter-check should have been envisaged by his higher authority who was authorised to do it. According to the Committee, this was all the more necessary, especially when they were aware that a revision in the rate had taken place in the relevant period. The Committee would like the matter to be investigated thoroughly with a view to fixing responsibility and taking action against the derelict officers.

1.60. Another disquieting feature which has come to the notice of the Committee during evidence is that although under sub-Rule 2 of Rule 173 C the Central Excise officers have the power to look into the genuineness of the proposal for any revision of the prices declared by assessee, they lack expertise particularly where knowledge of costing is required. The Chairman, Central Board of Excise and Customs has conceded that "the technical competence of our officers at the basic levels is not at present what it ought to be". In such circumstances it is difficult to agree with the Department's view that had this case not been detected by Audit, this would have remained as one of the "stray cases which manage to escape the check". It is difficult to accept the observation of the Department that the question of suspicion of an assessment value "depends very much on the officer". The Chairman, Central Board of Excise and Customs, however, informed the Committee about the decision to have a Cost Accountant in the Department. The Committee have also seen that a Directorate of Training has been set up to impart training to direct recruits. While the Committee welcome these proposals they are at a loss to understand how in the existing situations, the authorities concerned managed to assess correctly for duty the different values of items from time to time without detriment to the interest of Government. In para 18 of Chapter 16 of their recommendation, the Self Removal Procedure Review Committee had recommended that services of suitable experts might also be obtained on deputation from other Government Departments. This was accepted in principle by the Government at the Group A level of officers. The Committee would like to know how far this decision has been implemented and what the present position is.

1.61. In the instant case the revised price list submitted by the Company was approved by a Superintendent of Central Excise. The Committee have, however, been informed that "the proper officer for approval of the price list is the Assistant Collector. However in simple cases which do not involve disputed discounts or are easily verifiable with the wholesale prices, the Asst. Collector after a preliminary study of the pattern of marketing of a particular unit may authorise the Superintendent for verification of the prices with the help of field staff and approval of the value". In this case dispute was going on even prior to 1 March 1974 between the assessee and the Department as to whether the price at which they sold their cigarettes to their dealers or distributors should be taken as the open market price of wholesale price. That inspite of this background the approval of the revised price list should have been left to the Superintendent is a serious lapse on the part of the Department. The Com-

mittee desire that the circumstances in which it was left to be approved by a Superintendent should be examined and responsibility fixed.

1.62. The Committee are concerned to note that the checks exercised by the Department in case of cigarettes do not make any distinction between upward revision of prices and downward revisions. They feel that in cases of downward revision of prices, greater check should be exercised so that it is ensured that the Public Exchequer is not put to a loss by unscrupulous activities of companies dominating a particular field. From the evidence it appears that large companies having a number of units and brands may manipulate by both raising or lowering the prices of different brands of cigarettes in a manner which can bring substantial loss to the public exchequer. The Committee would like the Department to examine how far the present tariff structure of manufactured tobacco has acted as an incentive or otherwise to such manipulations.

1.63. The Committee have also been informed that there is no regular system for communicating the assessable values determined by one Collectorate to other Collectorates unless occasion arises to do so. They feel that there should be regular coordination between the different Collectorates dealing with a particular company during a particular time. This would eliminate the wide fluctuations in the rates of assessment values quoted by the firm at their various units.

1.64. The Committee learnt from Audit that in their price list issued from 1-3-1973 onwards, a large tobacco Company had deducted from the wholesale price of cigarettes certain percentage thereof as per certification by the company's auditors on account of post-manufacturing and selling expenses and duty was assessed on the net amount. This practice was not approved by the Central Excise authorities because the "Department was inclined to the view that the price at which the cigarettes were sold by the dealers for further sale should form the basis for assessment value". On the other hand "manufacturers' contention was that the price at which they themselves sold to their dealers or distributors should form the basis. The manufacturers had further claimed basing themselves on the Voltas judgment* that even a portion of the price at which they sold to their dealers or distributors should be excluded from the value viz. roughly about 3 per cent of what could be the value." The manufacturer had filed writ petitions in the Patna High Court and obtained

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*The Supreme Court in its judgement in the case of A.K. Roy and others Vs. Voltas Ltd. held in December, 1972 that the sale to the distributor constituted transactions in the wholesale market and that the valuation for purposes of Excise Duty would include only, manufacturing cost plus the manufacturer's profit.

stay orders. Pending decision of the court, all price lists from 1-3-1973 onwards were approved by the Department on a provisional basis; the price list effective from 1-3-1974 was also approved provisionally for the same reason. The Committee have been further told during evidence that the Patna High Court has since decided that the Department should base their assessment on the wholesale price i.e. the price on which they were sold to the distributors but excluding what was claimed as post-manufacturing expenses. The Committee were also told that the Collector of Central Excise, Patna had applied to the Patna High Court for leave to appeal to the Supreme Court. The Committee would like this dispute to be settled expeditiously.

1.65. Section 4 of the Central Excise & Salt Act, 1944 was amended by Central Excise & Salt Act, 1973 with a view to overcome various difficulties experienced in valuation of excisable goods for purposes of Excise Duty-some of which got highlighted in the judgement of the Supreme Court in A. K. Roy and others vs. Voltas Ltd. The new Section 4 of the Act provides as far as practicable for assessment of duty on excisable goods on the basis of the normal price, that is to say, the price at which such goods are ordinarily sold by the assessee to a buyer in the course of wholesale trade for delivery at the time and place of removal, where the buyer is not related person and the price is the sole consideration for the sale. Further, it makes specific provisions with respect to certain situations which were not provided fo rearlier and which are frequently encountered in the sphere of valuation. It also contains enabling powers for Central Government to frame rules for situations where value cannot be determined in the manner laid down in clause (a) of sub-section (1) of the new section 4.

The Committee are distressed to note that despite the amendment of the Act, disputes continue to arise in the matter of determination of the assessable value.

In several cases, the matters have been taken to the Courts. The Committee desire that this problem should be studied in depth and a solution found so that while the manufacturers do not face harassment, the interests of the Exchequer are also protected.

1.66. The Government of India had brought forward a Bill to amend Section 4 of the Central Excise and Salt Act, 1944 in May, 1973 which was passed by the Parliament with the stipulation that the same shall come into force from such date as may be notified by Government. The Government issued a notification on 8 August, 1975 stating that the amended Section 4 shall become effective from 1 October 1975 i.e. about 2¼ years after the amending Act was passed by Parliament.

1.67. The Department of Revenue have intimated that when a new provision involves substantial changes in the law, a reasonable period of time is necessary for drafting the rules and instructions to familiarise the assessee with these provisions to enable them to file revised price lists in advance. The Finance Scretary has however conceded that prima facie the period of about two years was unreasonably long in that context as it happened in this case. The Committee find that the judgment of the Supreme Court came in Decem- 1972 and the amending Bill was introduced in May 1973 to overcome the difficulties which were encountered by the Department consequent on that judgement. This period of about 6 months was reasonbly sufficient for the Department to give full consideration to all operational aspects and it was not necessary to take long spell of about 2½ years to bring into effect the operation of the amended section. Audit has pointed out that the delay has caused a loss in revenue of about Rs. 17 crores. Even if it is not treated as a loss technically, it cannot be denied that if the notification had been issued earlier, as it ought to have been, more revenues could have been realized. From the information furnished by the Department the Committee find that there have been as many as 166 claims which were filed by the various parties for the refund of Rs. 10/- lakh or more in each case consequent on the judgement of the Supreme Court delivered in December, 1972. These claims had started pouring in from February 1973 onwards themselves and the Department should have alerted themselves and realised the urgency of the situation for the enforcement of the amended Section which remained inoperative till 1 October, 1975.

The Parliament had enacted the amendment to ensure that the exchequer will not suffer loss of revenue as a result of the judgement of the Supreme Court. All that had to be done was to issue the notification enforcing the amendment. The lapse of 2½ years for this notification resulting in loss of revenue to the tune of more that Rs. 17 is a circumstance for which the Committee can not find any justification. Whoever caused this delay had in effect defeated the purpose and intentment of the Parliament in enacting the amendment. That the delay was allowed even in face of the pouring claims for refund from a large number of assessees adds to the seriousness of the situation. Taking everything into consideration, the Committee feels that a greater probe with a view to fixing the responsibility for the delay is called for.

Non-levy of duty on footwear cleared for testing

Audit Paragraph

2.1. Footwear is chargeable to duty under tariff item 36 at the rate of 10 per cent ad valorem. Samples taken out in pairs are required

to be cleared on payment of duty. However, where the sample of left foot is sent out for examination and the right foot remains in the sample room, the departmental instructions require that the left foot of each pair should be punched with a hole in the sole. On return of the left foot, the pair, if approved, is shown as part of the daily production or destroyed if the pair is not approved.

2.2. A leading footwear factory manufactured one to two pairs of different brands of footwear for testing and sample purposes. Such pairs were known as odd pairs. The assessee usually sent samples of the left foot of each odd pair outside the factory for testing etc. The samples were not punched in sole as the departmental manual provided that the punching requirement need not be insisted upon in respect of this assessee as a special case. Nevertheless, the samples were rquired to be returned to the factory either for accountal in the dialy production or destruction. However, the samples were never received back in the factory. The remaining right foot of each odd pair was kept in the factory as specimen. The assessee did not pay any duty on such sample footwear. The matter was brought to the notice of the collectorate by Audit in December 1974 for investigation and remedial measures.

The Department of Revenue and Banking have confirmed the facts and stated that a show cause notice was issued for an amount of Rs. 1.01,548.

[Paragraph 90 of the Report of the Comptroller and Auditor General of India for the year 1975-76—*Union Government* (Civil) Vol. I Indirect Taxes].

2.3. M/s Bata India Ltd., Batanagar, the leading footwear factory' referred to in the Audit Para under Collectorate of Central Excise, Calcutta manufactured *inter-alia*, one or two pairs of different varieties of footwears for testing and sample purposes. Those pairs are known as odd pairs. The assessee usually removed, from the factory, the left-foot of each such odd pair and sent them to its sales office at Calcutta for the purpose of testing, examination and approval by the experts. The remaining right foot of such odd pairs was retained as specimen in the sample room of the factory. The assessee did not pay any duty on such sample footwear and the Department of Revenue also did not take any action to recover duty on such samples. In case where the footwear for left foot is sent out for examination, and the footwear for right foot remains in the sample room, the departmental instructions generally require that the footwear for left foot of each pair should be punched with a hole in the sole and on its return, the pair, if approved, is shown as part of the daily production or destroyed if the pair is not

approved. The departmental instructions specially provide that the aforesaid punching of the sole need not be insisted upon in the case of M/s. Bata India Ltd. Accordingly, the sole of the Footwear of the left foot of the sample turned out by M/s. Bata India Ltd. was not punched at the time of its removal from the factory for testing purposes. The footwear for left foot was nevertheless required to be returned to the factory. But this was never done. Non-payment of duty on these sample footwear was, therefore, held irregular by Audit.

2.4. This irregularity was originally pointed out by Audit to the Department of Revenue on 16-12-1974 and subsequently reported to them through the inspection report on 7-8-1975 with a suggestion to investigate the matter. The Department in their letter C. No. V(I) 194-OA/75/3547 dated 25-6-1976 replied to Audit as under:

> "A show cause notice for realisation of duty on the samples in odd pairs cleared without payment of duty to their sales office for the purpose of test etc. is under process. The total quantity of such odd pairs of shoes cleared alongwith their duty liability is furnished below:

No. of odd pairs cleared till	June, 75	Value (Rs.)	Duty (Rs.)
Leather	22,480	10,53,771·55	95,797·41
Rubber and Canvas . . .	3,135	1,13,302·65	10,300·42
TOTAL :	25,615	11,67,704·20	1,06,097·65

2.5. The Committee wanted to know the procedure prescribed for taking out of samples of footwear for testing purposes within factory or outside in the case of footwear manufactured for home consumption. The Department of Revenue have in a note furnished the following information:

> "The general procedure for taking out samples of footwear within factory as well as outside the factory has been prescribed in Section B "Removals of samples" in Paras 15 to 26 of "The Supplement to the Manual of departmental instructions on excisable manufactured products—Footwear" (extracts of the Paras 15 to 26 enclosed as Appendix VI. Some modifications in the procedure were made to the said instructions in the context of the Self-Removal

procedure Scheme under Board's letter F. No. 36/2/70-CX-8 dated 7-4-1971 (Appendix VII). These instructions do not appear to have undergone any change recently, particularly during the year 1977 except by the issue of the Notification No. 3/77-CE dated 22-1-1977 restricting the clearance of samples drawn for test purpose within the factory premises."

2.6. Asked why the Departmental Instructions regarding punching of the sole were waived in the case of Batas, the Member (Excise) has replied in evidence:

"It was on executive instruction. The procedure to be followed is set out in the Manual issued by the Central Board of Revenue. At that time (as it is even now) Bata happened to be the largest footwear manufacturer in the country and a supplement to the Footwear Manual was issued because of this reason. This supplement was issued in order that central excise controls can, as far as practicable, be fitted into the organised system of manufacture, storage, maintenance and clearance followed by this company at the three different places. To this end, it was found necessary to modify some of the existing Manual instructions, and one of the modifications made is that the punching of the sole is not being insisted upon in this case."

2.7. Later in a note, the Department of Revenue have furnished a copy of para 12 of the "Bata (Footwear) Supplement to the Manual Departmental Instructions on Excisable Manufactured Products" the contents of which are reproduced below:

"Samples taken out in pairs are cleared on payment of duty, and are accounted for in the ordinary course in the RG-1 and EB-4 accts. In addition to the above, however, new types of footwear are continually being designed in the Designs Section of the factory as samples. These samples are in complete pairs, but only the left foot is sent for examination canvasing, etc. The right foot of each pair remains in the sample room.

An account is maintained in the Designs Section of all sample pairs made, and the right of each pair is always present in the Sample Section. The left foot goes out under a special type of gate pass which must be duly checked and countersigned by our officer.

When the left foot is returned, if the article has been approved for manufacture, the pair is sent to the Supply Section and appears as part of the daily production. If manufacture is not approved, the pair is destroyed.

Manual instructions require that the left foot of each pair of each footwear going out as a sample should be punched with a hole in the sole. This is not done in this factory, and need not be insisted on."

2.8. The Committee wanted to know the position of punching of shoes in factories other than that of Bata. The Member (Excise) has stated in evidence:

"Certain factories manufacture a single shoe, instead of a pair, for the purposes of test examination or approval by their experts. The actual tests are carried out by these experts outside the factory. These single shoes have no commercial value. They may be cleared free from all duties provided they have been punched in the sole. The manufacture of such shoes is confined to one type of shoes, that is, the left foot or the right foot. This is a single piece of foot-wear manufactured and the sample would not figure in the production figures."

2.9. Since the other producers manufactured only one foot for sample, the Committee wanted to know the *raison d'etre* for the stipulation of punching of left shoe, the witness has explained:

"If it is taken out of the factory, for this purpose, it should be punched. This is what the provision in the General Manual says. It does not say whether it should be left or right foot. It so happened that the odd shoe left was cleared by the Bata."

2.10. Asked since when Batas were clearing samples without punching, the Department of Revenue have in a note stated:

"The practice of the clearance of one odd piece of footwear from the factory as sample without punching is in vogue in Bata factory, Batanagar, since its inception."

2.11. Enquired why Batas were given this particular advantage the Member (Excise) has replied:

"Actually when a new line of shoe was introduced Bata manufactured two right foot and one left foot of a particular design initially. One right foot is kept for the manufacturer of the general line. The other right foot is kept in the sample room—to be used if approved inside or outside the country. The left foot goes out. More numbers of left foot are prepared and sent out. Such left foot are taken out of factory either for soliciting business inside the country or for soliciting business abroad or for other purpose.

I may even venture to suggest that it is because of that....

Sometimes left foot goes and sometimes the right foot goes. In an organised factory like Bata second check may not be necessary."

2.12. Asked why this privilege was not enjoyed by the organised manufacturers like Carona and Flex, the Chairman; Central Board of Excise and Customs has replied:

"These are instructions issued by the Central Board of Revenue in 1959. It is possible that Batas might have made such a request to the Board or the Government at that stage."

2.13. The Committee wanted to know the reason for the grant of this special concession to Batas and whether this position was reviewed at any time. In a note, the Department of Revenue have stated as under:

"The file in which deliberations took place about the issue of Bata Supplement in the year 1959 is not available now. Hence it is difficult to list out the reasons which were taken into account for giving the special procedure to Bata factories. It however appears that the concession was granted due to their organised system of accounting and maintenance of different books of account. It is not known whether any review of these instructions was carried out in the sixties or subsequently. However, the position was reviewed in the year, 1977 and under Board's letter F. No. 261/36/3/77-CX-8 dated the 30th November, 1977 and 8th December, 1977 (Appendix VIII & IX), instructions were issued to all the Collectors that removal of samples of footwear from the factories should be gov-

erned by the relevant notification namely 171/70 dated 21-11-1970 when the clearance is for export and 336/77 dated 31-12-1977 when the clearance of samples of footwear is for soliciting business within the country. With the issue of these instructions, the instructions contained in the supplements have become otiose."

2.14. In regard to the total number of samples which were sent out of the country by Batas, the Department of Revenue have in a note stated:

"The total number of samples (odd pieces) sent out of the country for approval during November, 1970 to March, 1977 is 26327 pieces. These samples were not returned back."

2.15. Giving the percentage of the samples which went out of the country, the Member (Excise) has stated in evidence:

"November to March, 1971—54 per cent went out of the country.

1971-72	40·8%
1972-73	26·5%
1973-74	56·5%
1974-75	55·9%
1975-76	63·2%
1976-77	84·9%

The average comes to about 52 per cent from 1970 to 1977."

2.16. Asked about the source of this data, the witness has replied:

"I have had this compiled from a sample register which the company have been maintaining."

2.17. Enquired if it was physically verified with the register by anybody from the Department, the witness has replied:

"No, actually they are working under the self-removal procedure. We do not have any check on clearances as such, much less the export thereafter."

2.18. The Committee wanted to know the control exercised by the Department over the clearance of samples. The Department of Revenue in a note stated that:—

> "Prior to S.R.P., removal of footwear samples was under Excise Control. All Gate Passes (i.e. Commercial Gate Passes) issued for clearance of such samples were countersigned by the Excise Officer but no duty was charged on samples cleared but not returned. This procedure was dispensed with on the introduction of S.R.P. from June, 1968."

2.19. The Committee wanted to know the experience of the Department in respect of Batas *vis-a-vis* Caronas in the matter of maintenance of records of samples. The Department of Revenue have in a note given the following information:

> "M/s Bata India Ltd. are reported to have factories at Batanagar, West Bengal, falling under the Collectorate of Central Excise, Calcutta, Bataganj in Patna Central Excise Collectorate and Faridabad in Chandigarh Collectorate. In regard to M/s Bata India Ltd., Batanagar, the Collector of Central Excise, Calcutta, has reported that they are maintaining records of samples of foot wear with effect from 1-4-1973 and that the records maintained by them prior to that date are not available. With reference to the Bataganj unit of this assessee, the Collector of Central Excise, Patna has reported that they do not send any samples without payment of duty due thereon. Whatever samples are despatched are from duty paid premises and they, therefore, do not maintain any sample register in the statutory form. The Collector of Central Excise, Chandigarh has reported that M/s Bata India Ltd., Faridabad do not clear any samples and hence do not maintain any register for samples. As against this, the Collector of Central Excise, Bombay, in whose jurisdiction the factory of M/s Carona Sahu Co. falls, has reported that the assessee records the sample pieces and regular pairs in their R.G.I. account and that the samples are cleared on payment of duty only."

2.20. The Committee were informed by the Member (Excise) that according to Batas the left feet, taken out as samples were

destroyed in their local office without any supervision by Excise officers. Asked about the factual position according to the records, the Member (Excise) has added:

> "Their record does not seem to be there. That is what the assessee claims. These records relate to older periods."

2.21. Asked if the Department accepted, whatever Batas told them, the witness has stated:

> "The case is adjudicated and the demand is confirmed. In fact, we have not accepted the plea that they destroyed these things."

2.22. In the same context the Chairman, Central Board of Excise and Customs has stated:—

> "It is a question of whether they have actually destroyed it or not. Roughly more than 50 per cent of the shoes actually were sent out of the country for approval in connection with the exports programme. It is anybody's guess whether they came back from outside. But they have no commercial value."

2.23. Enquired whether it was assessed to duty if not destroyed, the Member (Excise) has stated:

> "There is a provision in this very Supplement."
>
> Please see page 12 of the Supplement—Special Instructions—
>
> "When the left foot is returned—if the article has been approved for manufacture, the pair is sent to the Supply Section and appears as part of the daily production. If the manufacture is not approved, the pair is destroyed."
>
> This existed in 1959 when the book was issued."

2.24. The Committee wanted to know the mechanism available with the Department to verify the statement of Batas in regard to the destruction of the shoes. The Department of Revenue have in a note stated thus:

> "It is reported by the Collector of Central Excise, Calcutta in whose jurisdiction the assessee's unit referred to the Audit Para is located that no record is kept by Bata for

such destruction; that no mechanism is available with the Department to verify the statement of the assessee in regard to such destructions of samples."

2.25. The Committee wanted to know when did the Department first come to know about the non-receipt of the footwear cleared as samples for test/examination. The Department of Revenue have in a note stated:—

"The Department first came to know about the non-receipt of footwear in the factory, cleared as sample for test/examination in June, 1973 when the factory at Batanagar was inspected by the Departmental Internal Audit of the Collectorate."

2.26. Asked about the action taken on the findings of the Internal Audit and whether these findings were brought to the notice of the Audit at the time of their visit to the factory, the Department of Revenue have intimated in a note as follows:—

"The issue was brought to the notice of the Deputy Collector (Headquarter) on 16-10-1973. The findings were however not communicated to the Audit at the time of their visit to the factory. The issue was followed up from the Collector's office and ultimately the Asstt. Collector concerned issued orders on 19-10-1974 for realisation of duty on samples so cleared from the factory. It was intimated to Audit under the Collectorate letter C. No. V(I) 194-OA 75 3574 dated 26-6-1976 that show cause notice in this connection was under process. Audit, however, did not contact the department on this issue."

2.27. Enquired if there was any laxity on the part of any officer in the follow-up action and if so, the action taken against him, the Department of Revenue have stated in a note:—

"The Collector of Central Excise, Calcutta has reported that there was no laxity on the part of any officer of the Department in the follow up action. Therefore, there was no cause to initiate action against any of the officers."

2.28. Asked whether the matter was brought to the notice of the Government/Board and if not, the reasons therefore, the Department of Revenue have informed in a note:—

"The matter was not brought to the notice of the Government/Board. There is nothing on record to show the

reasons for not making any reference to the higher authorities."

2.29. The Committee wanted to know the totality of the samples cleared by Batas every year since the time they were not required to punch the same. The Department of Revenue in a note have furnished the following information:—

"The account for clearance of samples maintained by Messrs Bata prior to 1-4-1973 is not available. An account of samples is available from 1-4-1973 onwards.

The total number of samples (odd units) cleared, from November, 1970 till 1976, is as below:—

Year	No. of Footwear
1970-71 (from Nov. 70)	6543
1971-72	8427
1972-73	11428
1973-74	10036
1974-75	4695
1975-76	6342
1976-77	7059
Total	54530

2.30. Asked about the estimated loss of revenue for the above period, the Department of Revenue have stated:—

"A total amount of Rs. 1,21,648.00 has been demanded from M/s Bata on the samples cleared during the period November, 1970 to June 1977. The details of the demands are as below:—

S.No.	Period	Amount of duty
1.	Nov. 70 to June 1975	1,01,547·96
2	1-7-75 to 30-6-1976	8,234·04
3.	1-7-76 to 30-6-1977	11,866.00

2.31. Later in a note, the Department have furnished the latest position in regard to the demand against Batas as under:—

"The show cause notice demanding Rs. 1,01,548.00 referring to the sub-para (iii) of the Audit Para relates to the samples cleared during the period November, 1970 to June, 1975. This demand was confirmed on 4-7-1977 and the assessee has filed an appeal to the Appellate Collector on 1-10-1977.

The demand for Rs. 8234.04 for the period 1-7-1975 to 30-6-1976 has been confirmed by Assistant Collector in 4-7-1977.

For the period 1-7-76 to 30-6-77 show cause notice has been issued on 31-10-1977; the demand has not yet been confirmed by the Assistant Collector."

2.32. The Committee referred to specific provisions under Section IV, Central Excise Checks in paragraph 9(vi) of Batas Footwear Supplement which read as under:—

"Checks in the Design and Sample Section—This section should be visited 3 or 4 times a month by surprise, and the stocks of complete pairs and right feet compared against the record of designs made, and Gate Passes issued. During that visit, accounts of unapproved footwear destroyed, and approved footwear brought to account, should also be verified with reference to the factory's accounts."

2.33. Enquired whether the checks detailed were being scrupulously made, the Member (Excise) has replied in evidence:—

"This refers to a situation when there was physical control on the clearances of goods from the factory. After 1968 the Self Removal Procedure came into vogue; under this scheme, this sort of thing would not apply. At the end of the month clearances made under the self-assessment procedure are catalogued and a statement filed with the Department. That statement is checked. The clearance itself is not checked physically, but the statement is checked."

2.34. Asked if any surprise checks were done, the witness has replied: "It should have been done."

2.35. Explaining the features of SRP, the witness has stated:—

"SRP scheme is statutory in the sense that it was introduced by means of rules made under the Central Excises and Salt Act and the new feature introduced was that it did away with the need for a number of physical controls that were done earlier."

2.36. Asked if there was no physical check at all after the introduction of Self Removal Procedure w.e.f. 1-6-1968, the Member (Excise) has replied:—

"Yes, under SRP there can be no physical check."

2.37. Supplementing further, the Finance Secretary has stated in evidence:

"The SRP procedure was devised as a result of a Committee headed by Shri Venkatappaiah. They said that in the case of certain factories which are maintaining accounts whose production figures are being reported to various authorities, that can be kept under check without physical contact. In the case of fertiliser factories or other organised factories the danger of such a thing happening was rare. It is of course immediately reflected in the production figures and their collections from that factory. These would of course be subjected to checks from time to time. I concede your point if no check as such is made at all, then the SRP procedure would not be valid at all."

2.38. Enquired about the action taken to provide for the checks, the witness has replied:

"Staff was given for this purpose. I concede that it may not be hundred percent check. They did not stay at the gate for the clearance check."

2.39. Enquried if the special provisions for surprise checks of at least 3-4 times a month in regard to Batas also got superseded after introduction of SRP with effect from 1st June, 1968, the Finance Secretary has replied:

"If you permit me to clarify, it is true that there are special rules made in respect of Bata. They were made at a time prior to the introduction of SRP. When the SRP was introduced which made rather massive changes in

the whole question of removal procedures, those instructions at that time, frankly speaking, should have been revised."

2.40. In the same context, he has added:

"Even under the SRP although there is no regular physical check of all clearances, the provision for surprise check also exists. It is not that the SRP has created a situation where there is no surprise check. Therefore, to that extent, even under the SRP procedure checks could be done. Now, the question is: how many physical checks were actually done during the period after the SRP was introduced. I assure the Committee that we will get you this information."

2.41. Later in a note, the Department of Revenue have intimated as under:

"In regard to Batanagar unit of M/s Bata India Ltd., the Collector of Central Excise, Calcutta, has reported that there is no mention of surprise visits in the available records. The Collector of Central Excise, Patna, in whose jurisdiction also another unit of M/s Bata India Ltd., comes, has reported that the surprise checks were conducted by the Inspection Group on 17th August, 1970, 6th September, 1971, 21st July, 1972 to 31st July, 1972, 15th February, 1973, 16th October, 1973 to 19th October, 1973, 23rd September, 1974 to 30th September, 1974. Details of instruction prior to 1970 are not available as reported by the Asstt. Collector. No major discrepancy had, however, come to notice during these checks except some mistakes of technical nature. Similar information in respect of M/s. Bata India Ltd., falling in the jurisdiction of the Chandigarh Collectorate is awaited."

2.42. The Committee wanted to know why the special Rules made for Batas did not undergo change consequent on the introduction of S.R.P. The Member (Excise) has replied:—

"Having no physical control, BATAs included, now we have made a distinction between what is strictly provided under the law and what are the executive instructions which are issued by the Board or by the government to carry out the intention of law but, of course, which did

not have exactly the force of law. Now SRP was introduced. There are certain rules which did away with the earlier legal provision that physical checks should be there. Along with that, certain instructions were issued which provided, *inter alia,* for one surprise visit by an inspection group once a year for all factories under SRP. Now BATAs were also included under the SRP scheme. So, in the normal course, these instructions would have been deemed to apply to BATAs also."

2.43. Asked if the checks made by the Collector were reported to the Board, the witness has replied:

"As per instructions one check once a year was obligatory on the Colletcor. Now, it is not obligatory on the part of the Collector to report to us, that is, to the Board, the result of every check carried out unless he finds some subject matter deserving the attention of the Board."

2.44. The Committee desired to know whether in the absence of physical check, any statement given by Batas was relied upon. The Finance Secretary has replied—

"There is a distinction made between the small scale units and highly organised companies. Highly organised companies are subjected to Government regulations and, therefore the possibility of leakage is less."

2.45. The Committee wanted to know the category of factories which were granted exemption from payment of excise duty. The Member (Excise) has replied in evidence:

"There is an exemption in respect of factories employing workers not exceeding 49 and using not more than 2 H.P....Both of these conditions.

Not more than 49 workers are working or were working on any date preceding 12 months and the total equivalent of power used in the manufacture of such footwear does not exceed two horse powers."

2.46. Asked if exemption was granted in any other case, the witness has replied—

"There is one other exemption—footwear of value not exceeding Rs. 5 per pair. There is a cheaper type of shoes."

2.47. The Committee were informed during evidence that there was no price control on footwear and that the retail prices which included the element of duty were fixed by the manufacturers themselves. Asked if there was any check by the Department to ensure that excise duty was paid on the footwear, the Finance Secretary has stated:

> "The shoes cannot leave the premises of the factory without payment of duty. Unless they are smuggled out of the factory, the question of their not paying the excise duty does not arise at all."

2.48. The Committee were given to understand that the Batas were having their products also manufactured by the Small Scale Units which came within the category of exemption from duty. Asked why they were allowed to do so, the Finance Secretary has stated:

> "It is true that BATA is sub-contracting and certain shoes are made by small sacle units in places like Agra, etc. Originally, it was our intention that these shoes which were made for and on behalf of BATA should be liable to excise duty. This was the intention last year and the notification was issued accordingly on 9th May, 1977. The reason why the small scale units were subsequently exempted from this duty was that even though they were supplying to BATA, our original intention last year was to make it leviable. Thereafter there was a considerable agitation and the small scale units made a strong representation to the Government, to the Finance Minister saying that they would be completely ruined if they were also liable to pay excise duty. To that extent, they were likely to lose their business. In fact, Batas withdrew the orders. At that point of time, we felt that in the interest of small scale units, some concession had to be made. They are having that concession. As a matter of fact, they have got these orders and are able to manufacture these items in their own factories."

2.49. Explaining the position further, the Member (Excise) has stated in evidence:—

> "I believe that there are two different sets of circumstances. One is where there is a contract between Bata and the

small factory to produce the shoe, to make the shoe, but with Bata's name. They supply them to Bata. It is a sale by the small factory. There is the other process. Bata itself supplies some parts of the shoes to the small factory. They assemble it and they give it back to Bata. In the latter case the shoes are regarded as having been manufactured on behalf of Bata, and as not eligible to the exemption given to small scale manufacturers. In the former case shoes are made completely by the small scale unit and marketed with Bata or any other brand name, because there are others also in the field. In that case it is regarded as a manufacture of the small unit and entitled to the exemption."

2.50. Asked about the legal aspect in this behalf, the witness has stated:—

"The notification is there. It applies where the footwear is being made by or on behalf of the manufacturer who is employing not more than 49 persons. The latest notification issued makes only one change. Even in such cases, for the purpose of the notification where the footwear is affixed with the brand or trade name of another manufacturer, it shall not, merely by reason of that fact, be deemed to have been made by or on behalf of such other manufacturer."

2.51. The Committee wanted to know whether the shoes manufactured by a bigger factory could be passed on to small units and declared as having been manufactured by small units. The Finance Secretary has replied:—

"If this were done, then it would have been an evasion."

2.52. Asked about the difference between the sale price of the shoes manufactured by Batas in their own factories and those manufactured in small scale units on behalf of Bata, the Finance Secretary has replied:—

"....whether a pair of shoes is produced in the original factory in the BATA or in the small scale units, the price for the consumer remains the same."

2.53. The Committee wanted to know the mechanism available with the Government to check that the small scale units were *bona fide* and were not subsidiaries of bigger ones. The representative of the Department of Industrial Development has stated in evidence:—

> "The small scale units are registered with the State Directorate of Industries. In the case of Agra, specifically, we have got the U.P. Leather Development Corporation. We have also got the Directorate of Small Scale Industries. We know most of these units. A large number of them are sub-contracted to STC. We do know them; they are not the offshoots of Bata; this much is certain."

2.54. Since registration itself was not a conclusive proof, the Committee wanted to know what checks the Government exercised to ensure that a registered small factory was not *benami*. The Finance Secretary has replied:—

> "The provisions of the exemption notification itself specify the conditions under which the exemption is available. If these conditions are not met or if there is an attempt to have a *benami* transaction, it would be offensive to the law. So far as the present case is concerned, we have no evidence or reason to believe that Bata are holding these as *benami* factories; there is no evidence of any sort."

2.55. Enquired if some registered firms could be *benami* of big concerns, the witness has said—

> "There is a possibility."

2.56. Asked if the Batas had small units within their factory premises at Batanagar who enjoyed the concession of exemption duty, the witness has stated:—

> "We are not quite aware of it."

He has added:

> "So far as we are aware, the sub-contracts are largely in U.P. But if there is an attempt, within the Bata factory premises, to do this, there would be *prima facie*, grounds to believe that there is something to be investigated."

2.57. Asked if there was any machinery to verify specifically whether the unit within the premises of Batanagar factory or

whether there were small units elsewhere which were enjoying the exemption, the Member (Excise) has stated:

> "This would be for the assessing officer or the inspecting officer on the spot to go and see that and to satisfy himself after the physical inspection."

2.58. Subsequently in a note, the Department of Revenue have intimated:

> "It has been reported by the Collector of Central Excise, Calcutta, that so far as it could be ascertained no small scale unit manufacturing footwear exists within the compound of the factory of M/s. Bata India at Batanagar and the question of taking advantage of the exemption provisions does not, therefore, arise."

2.59. The Committee desired to know whether it was not necessary to make investigations to ensure that the small units were not *benamis* of big manufacturer. The Finance Secretary has replied:—

> "Since the matter has been raised, specific checks could be done. Till now we have no reasons to believe so."

2.60. Later, the Department of Revenue, have in a note elaborated the position regarding the checks exercised on the small scale units which were exempted from payment of duty. The position stated is as under:—

> "According to Notification 191/73 dated 3rd November, 1973, fully exempted footwear and parts thereof are exempted under Rule 174A from the licensing control applicable under Rule 174 of the Central Excise Rules, 1944. Footwear produced by or on behalf of a manufacturer in one or more factories, including the precincts thereof, wherein not more than 49 workers are working or were working on any day of the preceeding 12 months and the total equivalent of power used in the manufacture of such footwear by or on behalf of a manufacturer in one or more factories does not exceed 2 Horse Power are exempted by Notification No. 88/77 dated 9-5-1977 as amended by Notification No. 269/77 dated 9-8-1977 from payment of the whole of the duty of excise leviable thereon and hence the units production such footwear would fall outside the licensing control *vide* Notification 191/73.

In case of the units which fall outside the licensing control the preventive parties attached to the Collectorate headquarters and Divisional Offices maintain surveillance on these units, collect information on the possibilities of *benami* transactions to evade the payment of excise duty and to exercise checks on the admissibility of exemption from excise duty."

2.61. The Committee wanted to know the total production of footwear by Bata during the last 5 years and the quantity got manuactured by them through the small scale units. The Department of Revenue have in a note stated as under:—

"The total number of footwear marketed by Messrs Bata during the last five calendar years i.e. 1972—1976, the quantity manufactured by Messrs Bata in their own factories, and the quantity got manufactured through small scale manufacturers and the percentage that it (the quantity got manufactured by them through small scale manufacturers) forms to the total quantity marketed by Messrs Bata are reported below:

Year	No. of Footwear markted by Batas in pairs (in 000)	No. of Footwear manufactured by Batas in pairs in their factories (in 000)	No. of Footwear got manufactured in pairs through small scale manufacturers (in 000)	Figures in Col. 4 as% of Col. 2
1	2	3	4	5
1972	53210	43679	9531	5·50
1973	52084	47439	10645	** 4·89
1974	46903	38459	8444	5·55
1975	50503	41739	8497	5·96
1976	52858	43342	9516	5·55

**N.B. The number indicated under this column also include P.V.C. Footwear 7301000, 8140000, 5929000, 6917000 & 7861000 for the years 1972, 1973, 1974, 1975 and 1976 respectively."

2.62. Asked if Government had made any independent study of the estimate of escapement of duty by big manufacturers, the Department of Revenue have, in a note, stated as under:—

"Yes. A study was got conducted by the Ministry through the Director of Inspection & Audit, Customs & Central Excise, New Delhi who reported that during 1975-76, the purchases of Leather Footwear by M/s. Batas and Carona-Sahu were valued at Rs. 3,94,58,000/- and Rs. 1,44,17,827/- respectively. At the rate of 10 per cent *ad valorem*, the duty on the above purchases would amount to Rs. 54 lakhs."

2.63. Asked whether it was evasion or avoidance, the Finance Secretary has stated:

"We have not conceded that this is either evasion or avoidance. If they were liable, it would amount to this sum."

2.64. When pointed out that if it was legal avoidance, what action was taken or proposed to be taken by Government, the representative of the Department of Industrial Development has replied in evidence:—

"What we are really concerned with is that there are a large number of small units which are being provided with marketing outlet by the larger units. It is unfortunate that on the small scale sector, they have no marketing outlet. Therefore, Batas, Carona and STC are providing that outlet. In May, 1977, the Ministry of Finance issued this notification and as a result of that notification within two or three months a large number of small units closed down. We got reports that large number of people became unemployed. The Ministry of Industry and others took up the matter with the Ministry of Finance and as a result of that finally this exemption was given w.e.f. August, 1977."

2.65. The Committee wanted to know as to how it could be ensured that benefit granted to small units was not reaped by bigger manufacurers. The witness has replied:—

"This could be done by checks."

2.66. Asked about the consequences which followed as a result of withdrawal of exemption notification, the witness has stated:—

"When the notification was issued in May, 1977, the intention was that Bata should pay the duty on the total chunk of sales. Unfortunately, the excise is levied at the point of

production and, therefore, it went down to the smaller units. That is by the very definition of "excise". The duty should have been paid by Bata. But it became liable to be paid by the smaller units."

2.67. Asked whether the smaller units could not pass on the duty to Batas, the witness has replied:—

"Because the smaller units are totally dependent on Bata, they had to close down and we were faced with a situation where so many people were rendered unemployed."

2.68. Since Batas were in a dictating and dominating position, the Committee enquired about the remedy which was available to counter such situation. The witness has stated:

"The answer to that is that the State should develop marketting of its own."

2.69. Asked if there was any proposal within the framework of the existing policy whereby it could be ensured that the benefit accrued only to the small scale units or to the consumers and not to Batas, the Finance Secretary has replied in the negative.

2.70. Enquired if any other arrangement was possible, the witness has replied:—

"If these small scale units sell their products directly."

2.71. Supplementing further, the representative of the Department of Industrial Development has stated:—

"The small scale sector is now being looked after by another Corporation which has been set up, namely, the Bharat Leather Corporation. One of the functions of the Bharat Leather Corporation is to provide marketing facilities solely for the small scale sector, internally as well as for exports. The BLC is embarking upon a detailed scheme for providing marketing facilities. In fact, we have provided in the Annual Plan this year large sums of money for building up a marketing network."

2.72. The Committee wanted to know whether the Government-owned big manufacturing unit of Kanpur the Tannery and Footwear Corporation of India, Ltd., got the footwear manufactured from smaller units. The representative of the Department of Industrial Development has replied:—

"In TAFCO, originally, they used to make shoes themselves. Then for some period of time, prior to 1975, they started procuring shoes from the small scale sector and putting

the brand name and then selling. Then we found that, while they were doing this and since the system had not been perfected, corruption had crept into the system. The Board of Directors then took the decision that there would no more procurements. For a very brief period of time, the TAFCO did embark upon that, but they had to abandon it because of the inherent deficiency in the system. Placing orders with parties asking them to supply directly to a third party without having any quality control and the third party rejecting them....

2.73. Asked why could not Government set up its own quality control like Batas/Carona, the witness has replied:—

"Frankly, Sir, it did not succeed because of rampant corruption."

2.74. Subsequently, the Department of Industrial Development have in a note intimated the practice followed by TAFCO *vis-a-vis* Bata in the matter of getting their supplies manufactured from factories exempted from duty. The contents of the note are reproduced below:—

"The Tannery and Footwear Corporation of India Limited, Kanpur (TAFCO) manufacture only Gents' shoes and sandals. In order to have a complete range of products, such as Ladies' and Children's shoes, chappals, etc. TAFCO was getting these products manufactured from units exempted from payment of Excise Duty.

The details of TAFCO's purchases from the units referred to above during the years 1974-75 to 1975-76 were as follows:—

	Purchases made		Percentage value of purchase in relation to value of TAFCO's own production
	Quantity (Pairs)	Value (Rs. in lakhs)	
1974-75	60,752	12·99	6·3
1975-76	1,45,940	29·89	10·8
1976-77	39,436	9·00	4·1

The amount of Excise Duty that would normally have been paid by TAFCO had th goods procured from outside been manufactured by TAFBCO themselves was as follows :e—

Year	Amount (Rs.)
1974-75	1,18,000
1975-76	2,72,000
1976-77	82,000

TAFCO have practically stopped procurement of shoes for the civilian market from the small scale units after 1976, as the procedure adopted did not ensure procurement of products of the required quality standard. TAFCO are, however, in the process of re-organising their Sales Department and might resume procurement of footwear from the small scale units if found necessary.

The practice generally followed by Batas in the matter of procurement of footwear from the small scale sector, and that adopted by TAFCO in the past, is a under:—

Practice followed by BATAS	Practice followed by TAFCO
1	2
(a) The small scale footwear manufacturing units are examined by Batas regarding their technical competance and advices are given to modify certain methods of production if they find it necessary for improving the quality of the products.	TAFCO had no rigid procedure of assessment of the technical competence of the small scale footwear manufacturing units. The normal practice followed is that of buyer-seller arrangement and the capability of the units to meet TAFCO's requirements was assessed by their Sales Department. No technical assistance was normally given by TAFCO to the small scale units unless such assistance was considered to be necessary for the development of the product.
(b) After being satisfied about the quality of the product and their capacity, the units are asked to produce a few samples according to the design supplied by Batas or according to the Units' own design.	Normally the small scale units develop samples of their own, or against TAFCO's samples, which is checked by TAFCO in order to determine the capability of the unit.
(c) When samples are approved, then the costing of the product is made and procurement price is negotiated and finalised. Orders are then placed with the units and the footwear is manufactured by the small units according to the designs, patterns and specifications supplied by Batas.	TAFCO normally assess the costing for the purpose of ascertaining the margin between the procurement price and the selling price. Reasonable margin is kept between the selling price and the procurement price to cover the commission of distributors and retailers and contribution towards the investment made.

1	2
(d) In certain cases the raw materials, such as leather, rubber, grinderies, adhesives, etc. are also supplied by Batas.	TAFCO does not normally supply raw material, components, etc. At times, however, TAFCO specifies that their raw material is to be used which is supplied at the list price.
(e) The footwear is manufactured and brand name and selling price affixed and despatched to different Bata shops according to the despatch note given by Batas.	TAFCO allow affixing brand name on their behalf and give desptach instructions for sending the finished material directly to their different depots in the country wherefrom the material is supplied to distributors/dealers. TAFCO normally depend on feed back informatioy from the depots about the qualityn etc. of material procured.

2.75. The Committee note that samples of footwear taken out in pairs are required to be cleared on payment of duty. However, where the sample of left foot is sent out for examination and the right foot remains in the sample room, the departmental instructions require that the left foot of each pair should be punched with a hole in the sole. The Committee are, however, surprised to learn that the requirement of punching the sole of left foot is not enforced in the case of shoes produced by M/s. Bata India Ltd. From the information furnished by the Department the explanation for this exemption is that "This is not being done in this factory and (therefore) need not be insisted upon." The Committee are amazed by this reasoning. What is distressing is the fact that the file pertaining to year 1959 leading to the issue of Bata Supplement which inter alia provides for this specific exemption, is not traceable in the Department who have expressed their inability to list out the reasons for giving this special concession to Bata factories. This concession was given some time in the year 1959 and since then it has not been subjected to any review so far. The Committee are unable to comprehend the rationale behind such discriminatory provisions which afford preferential treatment to M/s. Bata India vis-a-vis others in the line.

2.76. The Department's admission that "it is not known whether any review of these instructions was carried out in the sixties or subsequently" is all the more deplorable. It is obvious that only after the PAC decided to examine this matter, the Department had reviewed the matter and issued instructions on 30-11-77 and 8-12-77 stressing the instructions issued in 1970. The Committee would like the reasons for granting exemption to Batas to be fully investi-

gated and responsibility fixed for lapse if any. That such exemption should have not been reviewed earlier than 1977 is most reprehensible.

2.77. The Committee find that M/s. Bata India Ltd., Batanagar under the Collectorate of Calcutta manufactured inter alia one or two different varieties of footwear for testing and sample purposes. The assessee usually removed the left foot of such odd pair from the factory and sent them to its Sales Office both in India and abroad for the purpose of testing, examination and approval by the experts. The remaining right foot of such odd pairs was retained as specimen in the sample room of the factory. The Departmental instructions provide that these samples are required to be returned to the factory unused because they are issued without payment of duty in the first instance. The duty is, however, liable to be paid in case the samples are not returned to the factory within 3 months from the date of issue. When the factory at Batanagar was inspected by the Departmental Internal Audit in June, 1973, it was noticed that the footwear cleared as samples on test/examination purposes were neither received back in the factory nor duty was paid on them. The Committee have been informed that a total duty amount of Rs. 1,21,648.00 has been demanded from M/s. Bata on the samples cleared during the period from November, 1970 to June 1977 which is still pending recovery at various stages. The Committee would like to be apprised of the progress made in the realisation of the dues in the action taken notes. The Committee regret that information prior to the period of November 1970 is not available with the Department.

2.78. The Committee note that M/s. Bata India Ltd. have three factories at Batanagar falling under the Collectorate of Central Excise Calcutta, Bataganj in Patna Central Excise Collectorate and Faridabad in Chandigarh Collectorate. In regard to the factory at Batanagar, the Collector of Central Excise, Calcutta has reported that they are maintaining samples of footwear w.e.f. 1-4-1973 and the records of samples of footwear prior to that date are not available. With reference to the Bataganj unit of this assessee, the Collector of Central Excise, Patna has reported that they do not send any samples without payment of duty thereon. Whatever samples are despatched are from duty paid premises and they therefore do not maintain any sample register in the statutory form. In the case of Collector of Central Excise, Chandigarh it has been reported that M/s. Bata India Ltd. do not clear any samples and hence do not maintain any register for samples.

The Committee are at a loss to understand why the record of the samples cleared by M/s. Bata India Ltd. from their Batanagar factory should not be available to the Committee. A manufacturer is required to maintain a register of samples and this is required to be scrutinised by the Department periodically. The Committee apprehend that neither such a record was maintained by the firm nor was it insisted upon by the Department. They would therefore like the matter to be investigated thoroughly with a view to identify the persons responsible for the lapse, fix responsibility and start proceedings against them under the law.

2.79. The Committee understand that one of the pleas put forward by M/s. Bata India Ltd. in reply to the demand raised by the Department for the non-receipt back of the samples of footwear is that the same were destroyed. In the absence of the record of samples, it has not been possible for the Department to verify the authenticity of this statement even though they have not accepted the plea of the firm. The omission was first brought to the notice of the Department in July 1973 by the Internal Audit Department of the Calcutta Collectorate. But only after 1½ years the Asstt. Collector concerned had issued orders for realization of duty on samples so cleared from the factory. Even then such an important omission was not brought to the notice of the Board. What is worse is that the account of clearance of samples prior to 1-4-1973 is not available with the factory. The Committee desire that the manufacturer should be required to maintain all records of clearance in future and that systematic and continuous checking of such records should be undertaken by the Department. In order to avoid such situations in future, the Committee also desire that the samples from Batanagar factory may be allowed clearance only on payment of duty. This will ensure uniformity of procedure in both the factories at Batanagar and Bataganj and also plug the loophole existing at present for the avoidance of duty. According to the information furnished, the Collector of Central Excise Bombay in whose jurisdiction M/s. Carona Sahu Co. Bombay falls, had reported that the assessee recorded the sample pieces and regular pairs in their RGI account and samples were cleared on payment of duty only. If the procedure could be followed in respect of Carona Sahu Co. there is no reasons why it could not be followed in respect of Batas.

2.80. The Committee find that Batas Footwear Supplement provides that the Design and Sample Section should be visited 3 to 4 times a month by surprise and the stocks of complete pairs and right foot compared against the record of designs made and Gate Passes

issued. During that visit verification is to be made with reference to factory's accounts in regard to the unapproved footwear destroyed and approved footwear brought to account.

The Committee have been informed that there is no mention of surprise visits in the available records in regard to Batanagar Unit of M/s Bata India Ltd. although such surprise checks were conducted by the Inspection Group of the other Unit at Bataganj on 17-8-1970, 6-9-1971, 21-7-1972, to 31-7-1972, 15-2-1973, 16-10-1973 to 19-10-1973, 23-9-1974 to 30-9-1974.

2.81. The Committee are unable to understand the reasons for non-availability of the records of inspection made in respect of Batanagar Unit for 4 years from 1970 to 1974. When the procedure provided for one check in a year and the same was done in respect of one unit at Bataganj there is no valid reason for not conducting such a check in respect of Batanagar unit. The Member Central Excise had admitted that "this should have been done". This is a serious lapse. The Committee deprecate this lapse and desire that appropriate action should be taken against the officials for their failure to observe the Departmental instructions in letter and spirit.

2.82. The Committee find that footwear produced in any factory wherein not more than 49 workers are working or working on any day of the preceding 12 months or the total equivalent of power used in the process of manufacturing footwear does not exceed 2 H.P. are exempted from the whole of duty of excise leviable thereon. These are small scale units which are required to register themselves with the States' Directorates of Industries. This exemption is also available to those manufacturing units whose footwear are affixed with the brand or trade name (registered or not) of another manufacturer or trader. In other words, footwear manufactured by Small Scale Units and affixed with the brand name of Batas or any other big footwear manufacturer, will not be treated as the product of Batas or any other big footwear manufacturer and as such will not be liable to duty. The intention of this exemption is primarily to help the small scale manufacturers to market their production easily and efficiently. While the Committee appreciate and endorse the intention of the Government to help the small manufacturer, they at the same time want that the Government should be alert to ensure that the provisions of this exemption are not abused by big manufacturers by virtue of their dominant position. They suspect that with this exemption, the bigger units can set up small benami units which though actually owned by them

are not so shown on the records. The Committee would like the Department to exercise more effective vigilance and devise ways and means for maintaining complete surveillance on such units to satisfy that none of the units enjoying exemption from duty is benami of any big manufacturer. The Committee also desire that a thorough investigation may be made by the Department about Benami units of large manufacturers and a report submitted to them at an early date.

2.83. The Committee find that there are a large number of small units which are totally dependent on big manufacturers like Batas and Caronas etc. which provide them with marketing outlet. But the Small Scale Units can derive the real benefit of the exemption from duty granted to them if they have proper marketing outlets and are able to sell their products directly without the help of larger units. The Committee are given to understand that the Government have set up Bharat Leather Corporation whose function inter alia is to provide marketing facilities solely for the small scale sector internally as well as for exports. This Corporation is said to be embarking upon a detailed scheme for providing marketing facilities and the Government have provided a large sum of money in the Annual Plan for the building up of a marketing net-work. The Committee appreciate this step which is in the right direction and desire that the Government should make incessant efforts to ensure that the desired objectives are achieved in letter and spirit.

2.84. The Committee note that the Government have set up the Tannery and Footwear Corporation of India Ltd. Kanpur (TAFCO) who manufacture only Gent's Shoes and Sandals. In order to have a complete range of products, such as Ladies and Children's shoes, Chappals etc. they were getting for sometime these products manufactured from units which are exempted from payment of excise duty. However, they had to abandon this practice of procurement because of imperfect system of placement of orders with parties and asking them to supply directly to third party without having any quality control and the third party rejecting them. From the information furnished by the Government in regard to the comparative practice followed by M/s Bata India Ltd. vis-a-vis TAFCO, the Committee find that the imperfection was caused inter alia due to lack of adequate appraisal of the technical competence of the small scale footwear manufacturing concerns, absence of technical assistance by TAFCO to small scale units and non-supply of raw material, components etc. by TAFCO to these units invariably in all cases. The Committee fail to comprehend the reasons which have prevented TAFCO from perfecting all the pre-requisites necessary

for the marketing of the products of small scale units when a private concern like Bata has been able to do it successfully. The Committee are convinced that with a closer watch and periodic reviews of functioning TAFCO can show better results.

LOSS OF REVENUE

Audit Paragraph

A manufacturer of cosmetics produced 'mini' talcum powder tins of 30 grams capacity and initially cleared them all to a single party adopting a nominal assessable value of Rs. 4.62 per dozen tins. The powder tins were issued free of cost by the latter to the consumers of the latter's products as a sales promotion device.

3.2. A review of the value of these 'mini' tins adopted for assessment disclosed that the assessable value adopted was understated for the reasons set out below:—

(i) The cost of the container in which 30 grams of powder was packed was itself more than 43 paise per tin while the assessable value adopted for tins with powder was only 39 paise per tin.

(ii) The licensee had a proposal to export the 'mini' tins abroad and had filed a separate price list of them in 1973 where in the ex-factory cost was indicated as Rs. 15.93 per dozen which was nearly thrice the rate adopted for assessment.

3.3. The undervaluation of the product resulted in a loss of revenue estimated at Rs. 1,02,532 on a quantity of 29,179 dozen tins cleared during the period August 1973 to March 1974.

3.4. The Department of Revenue and Banking have stated that the sale price did not fully cover the cost of manufacture of mini-packs. They have added that the supplier having incurred a loss on the sale of mini-packs, was paid an *ex gratia* amount of Rs. 84,201 out of the profits earned by the latter company. An amount of Rs. 26,131 being the duty involved on this additional-*cum*-duty value has been recovered by the Assistant Collector.

[Paragraph 94 of the Report of the Comptroller & Auditor General of India for the 1975-76—Union Government (Civil) Vol. I—Indirect Taxes]

3.5. M/s. Chesebrough Ponds (Inc.) Madras who are not an Indian Company but come under FERA produced Pond's Dream Flower Talcum powder in mini tins each containing 30 grams of powder for clearance to M/s. Brooke Bond India Ltd., Calcutta, who

in turn, distributed them free of cost alongwith their own product 'Bru'. The tins bore the inscription 'Free with Bru'.

3.6. During the local audit of the unit (May, 1974), it was noticed that the assessable value of the mini tins of 30 grams each sold to M/s. Brooke Bond (I) Ltd. in pursuance of an arrangement was worked out at Rs. 4.62 per dozen *i.e.* 38.5 paise per tin. The cost of the container in which 30 gms of powder was packed was itself more than 43 paise per tin while the assessable value adopted for tins with powder was only 39 paise per tin. It was also observed that some of these mini packs were proposed to be exported and the ex-factory price declared by the manufacturer in 1973 for these 30 grams tins and approved by the department was Rs. 15.93 per dozen. Based on the value approved by the Department for export purposes, the loss of revenue due to undervaluation in respect of clearances of 29,179 dozens of mini tins to M/s. Brooke Bond India during the period August 1973 to March 1974 was estimated at Rs. 1,02,532. In reply to an objection initially raised in audit, the Assistant Collector of Central Excise Madras II, Division in his letter dated 20-12-74 stated:

> "This price of mini Dream Flower Talcum (30 gms, net) was agreed to by M/s. Chesebrough Ponds in the wake of their 'tie up proposal' materialising with M/s. Brooke Bond India Ltd..... I am satisfied that this rate contract price was based on trade considerations alone and does not involve any special relationship between the buyer and the seller..... In view of this, there is no necessity to go into the 'cost construction' for arriving at the assessable value."

3.7. According to Audit Paragraph, the nominal assessable value was adopted at Rs. 4.62 per dozen. When asked how this value was adopted, the Member (Excise) has replied:—

> "It is not really 4.62. It was Rs. 3.93 per dozen tins. It was even less than Rs. 4.62. I will give the details. It was actually Rs. 3.93 for a part of the consignment and Rs. 3.23 for the other part. This actually arose consequent to a change in the duty. To begin with, they had a price list where they showed the ex-factory price inclusive of excise duty as Rs. 6 per dozen tins. On that there is 30 per cent discount which amount to Rs. 1.80. That comes to Rs. 4.20. This was the price inclusive of duty *i.e.* after payment of duty. Therefore taking the duty element which comes to Rs. 0.97, it comes to Rs. 3.23 per dozen."

3.8. Enquired about the reasons for the different prices of Rs. 3.93 and Rs. 3.23, the witness has explained:—

> "Subsequently, after some sales had taken place they filed a fresh price list in which they had allowed a discount of 5 per cent only and shown the duty applicable from 1-3-1974 when an auxiliary duty which is equal to 50 per cent of the basic duty was levied. And they still kept their list price at Rs. 6 per dozen. Then they reduced their discount to 5 per cent. By making the same type of calculation, the assessable value came to Rs. 3.93. Part of it was at that price, and the other at Rs. 3.23. The total quantity cleared was 29,170 dozens. It was 23,647 dozens at the assessable value of Rs. 3.23 per dozen, and the balance at Rs. 3.93 per dozen."

3.9. At the instance of the Committee, the Department of Revenue have in a note furnished copies of letters dated 19-4-1973 and 4-4-1974 under which the price list No. 2/73 and 10/74 were submitted to them by M/s. Chesebrough Ponds' (Appendices X and XI).

3.10. Asked if the goods were also sold by them in the market at that price, the witness has stated:—

> "So far as this was concerned, it was a special consignment.....of "free with Bru". It was specially ordered brooke Bond giving it as an added attraction *i.e.* as a gift along with their jars of Bru Coffee. These were not meant for sale in the market."

3.11. Enquired if they themselves sold similar products directly to consumers, the witness has replied:—

> "Earlier, they cleared about 5,000 tins in the market. But they were not marked 'free with Bru'. Otherwise they were the same. It was again given as a free sample. But in an earlier price list, the price was declared as Rs. 6/- per dozen, with a discount, *i.e.* at Rs. 3.23 per dozen. At that time, the facts were not known to the Collectorate. They then knew that they had filed a price list and a letter. The letter is dated 19-4-1973."

3.12. Elucidating the position in this connection, the Finance Secretary has added:—

> "In fact, the Audit paragraph refers to the Brooke Bond case. The Brooke Bond case started in Septembr 1973. In April

1973 *i.e.* about 5 months earlier, they had established price in respect of certain samples identical to this. In this earlier case, they declared to the Excise authorities that this was intended to given free, by their dealers; but that they would be invoicinng their dealers at this price. So, the transaction value of Rs. 6/- per dozen was accepted at that stage, and the price was established, because at this stage, the Excise authorities were given the impression that it was being sold to the Chesebrough Pond dealers, at Rs. 6/- a dozen. It was accepted by the Excise authorities. And, therefore, when the September transaction came on the basis of the earlier transaction, the same price list was accepted. A question may be raised in respect of the first transaction, rather than in respect of the second transaction."

3.13. The Committee further desired to know the special consideration which led the assessee company to supply mini tins to Brooke Bond. In a written note, the Department of Revenue have stated:—

"M/s Chesebrough Pond's had brought out the mini tins of Dream Flower Talc for supplying it free with their own products to selected potential consumers as samples (especially of the Dream Flower Talcum Powder family size). On being approached, they agreed to sell these mini tins of Dream Flower Talc to M/s Brooke Bond India Ltd. manufacturer of Bru Instant Coffee, who wanted to give one mini tin of talcum powder as a free 'premium' with one of their quality tea lines or with their 'Instant' coffee."

3.14. In regard to the contract price agreed to between the two, the Department of Revenue have in a written note stated:—

"The price of Rs. 6/- per dozen less 30 per cent discount was agreed to between M/s Chesebrough Pond and M/s. Brooke Bond India Ltd. for supply of two lakhs tins of minipack containing 30 grams of talcum powder."

3.15. Asked whether there was some common interest between the two, the Department of Revenue have in a note stated:—

"One reason for the low price could be what has been advanced by M/s Chesebrough Pond's Inc. themselves, namely that the scheme also helped to promote sales of their

own product, *viz.*, Dream Flower Talc. Therefore it would not appear to be correct to draw the conclusion, based only on the fact of the low price at which the tins were sold, that there was some other common interest between the two firms."

3.16. The Committee asked about the procedure for determination of the assessable value and the checks exercised by the Department before approval of such values. The Department of Revenue have in a note furnished the following details:—

"The broad procedure for determining the assessable value under section 4 of the Central Excises & Salt Act, 1944 as it stood prior to 1-10-1975, *i.e.* the period involved in the present audit para and the checks to be exercised by the Department while approving such values has been laid down in the Ministry's instruction, Ministry of Finance (Directorate of Inspection, Customs & Central Excise) F. No. 509/1/727 dated 10-2-1972 (Appendix II)."

3.17. The Committee wanted to know the instructions of the Board on the subject of furnishing break-up of the cost of a product. In a written note, the Department of Revenue have intimated as under:—

"The Ministry's Board's instructions in this connection are contained in the Ministry's letter F. No. 36/45/68-CX-I dated 14-11-1968 (Appendix XII). As seen from these instructions the break-up of the cost etc. would become relevant only when there was no sale of an article."

3.18. The Committee wanted to now whether break-up of the assessable value of the products manufactured by Chesebrough Pond's such as cost of container, cost of the main product *i.e.* Talcum Powder, cost of packing and post-manufacturing expenses, was available with the Department. The Department of Revenue have in a note stated as follows:—

"It is reported by the Collector concerned that the break-up of the assessable value is not available with the Department. It is, however, reported that while filing the price list No. 3/73, the assessee in their letter dated 23rd November, 1973 (Appendix XIII) had furnished a statement indicating the break-up of the post-manufacturing expenses, duly certified by the auditors. According to the same, the

post-manufacturing expenses worked out to 30.34 per cent. But the abatement towards these cost manufacturing charges was not finally allowed."

3.19. Enquired whether any proforma had been devised to indicate the details of cost structre etc. to avoid omissions in the determination of assessable value, the Department of Revenue have in a note stated:—

"According to section 4 of the Central Excises and Salt Act, 1944 as it stood at the material time, the assessable value for the purpose of Central Excise levy should be determined with reference to the ex-factory wholesale cash price, if any, if the wholesale cash price is available, it would constitute the assessable value, and it would not be necessary to go into the cost structure etc. Only when the goods are not sold, *e.g.* used for the captive consumption, etc. and when the actual sale price is not available, would the assessable value have to be determined with refernce to the cost of manufacture and addition of the reasonable margin of profit. Hence the question of giving details of cost structure did not arise, where the actual wholesale prices were available and no proforma was prescribed for the purpose. When the goods were not actually sold but used for captive consumption, the manufacturers were required to file statements of the cost structure duly certified by an independent Chartered Accountant or Cost Accountant. No proforma was prescribed for this purpose."

3.20. The Committee wanted to know whether the Department could reject the assessable value furnished by any firm and if there were instances of such type. The Department of Revenue have in a note stated:—

"Sub-rule (2) of rule 173C of the Central Excise Rules, 1944 states, 'The proper officer shall approve the price list after making such modifications as he may consider necessary so as to bring the value shown in the said list to the correct value, for the purpose of assessment as provided in Section 4 of the Act.' It implies therefore that the officer does have the power to modify the price list to the extent as considered necessary. While carrying out the modifications, the officer can refuse to accept the assessable value declared by the assessee in the price list submitted for approval, after following the principles of

natural justice by affording an opportunity to the assessee to explain either in writing or in person why the value declared by him shoiuld not be rejected and a different value approved. In the event of his price list not being approved, the assesse can avail himself of the remedy of appeal and revision under sections 35 and 36 of the Central Excise and Salt Act, 1944. There would be quite a number of instances of non-acceptance of values declared in the price list submitted by the assessees for approval."

3.21. he Committee wanted to know how the price quoted initially by the manufacturer was accepted in April 1973. The Finance Secretary has stated in evidence:—

"If no price had been established, it would have been the duty of the department to assess the price, and they would have assessed it correctly. Since they reported that transactions had been established at Rs. 6 per dozen, this was treated as a sale and the price had to be accepted."

3.22. The Committee are given to understand that the Department of Revene and Banking in their letter No. F.232/224/76-CX 7 dated 21st February, 1977 read with letter No. 233/73/77-CX 7 dated 5th Novmber, 1977 addressed to Audit, had accepted that the sale price which was lower than even the cost of container, did not fully cover the cost of manufacture of minipacks. The Department stated that there was no relationship between Chesebrough Ponds (Inc) Ltd. and Brooke Bond India Ltd. and that the latter were not favoured buyers, the sale having been contracted in the normal course at arm's length on principal to principal basis. It was also stated that the supply of mini packs with 'Bru' coffee would serve the purpose of advertisement of M/s Chesebrough Ponds Product, and that it was possible that because of this they sacrificed a portion of their cost of manufacture. It was further pointed out that where there was an actual sale at arm's length, the sale price necessarily had to be reckoned for the assessable value even if the product was sold at a loss.

3.23. The Committee wanted to know if any action was taken by the Department to ascertain the reasons for the fixation of the unduly low prices in this case. The Department of Revenue have in a note stated:—

"The price of Rs. 6/- per dozen less 30 per cent Trade Discount for the Pond's Dream Flower Talc mini packs was initially approved on the basis of price list No. 2/73 filed

by M/s Chesebrough Ponds together with a covering letter of the same date. This price list was not with reference to sales to M/s Brooke Bond. The letter stated that the minipack will be invoiced to all dealers at Rs. 6/- per dozen and a trade discount of 30 per cent (However it came to light subsequently that the actual arrangement was that the dealers did not ultimately bear het cost of these tins. As explained by the assessee subsequently, the dealer was invoiced in accordance with the price list and the amount was "charged" to the dealer's current account. Subsequently when the dealer had completed free delivery of the goods to the consumers, he was given a reimbursment by a credit to his current account for the full value of the goods involved). The Department was at that time accepting the price at which M/s Chesebrough Pond's were selling their products to this dealer. The price quoted for the minipacks *viz.*; Rs. 6/- per dozen with 30 per cent discount was also accepted without investigating whether it could be considered unduly low. Subsequently, when sales started to be made to Brooke Bond from 6th September, 1973, there was no need for M/s Chesebrough Pond to file a fresh price list as the price had already been approved and the occasion for investigating into the transaction did not arise at that stage."

3.24. According to Audit Paragraph the licencee had a proposal to export the 'mini' tins abroad and they had filed a separate list of them in 1973 wherein the ex-factory cost was indicated as Rs. 15.93 per dozen which was nearly thrice the rate adopted for assessment in this case. Asked why that price was not taken into account for the determination of the value in this case, the Member (Excise) has replied:—

"We pointed out that this is not correct. This export price list was not for Talcum powder. It was for face powder, a different commodity. They have been selling both face powder and talcum powder. Weight for weight the price for face powder has been higher than that of talcum powder. The tins would be the same. In their price lists one type is face powder and another talcum powder. The difference in price can be attributed largely to the fact that one is face powder and the other talcum powder."

3.25. Asked about the extent of difference in the prices of talcum and face powder, the witness has replied:

> "With regard to the list of 1974 for talcum dream flower of 196 grams the selling price is shown as Rs. 62 per dozen; for face powder for 82 grams is shown as Rs. 60 per dozen; it is more than double. Actually most of the price was due to the tin, the actual cost of the powder was only 10 or 12 per cent. So pro data calculation on the basis of the weight would not be strictly accurate."

3.26 Explaining the position further in this connection, the Department of Revenue have in a note stated:

> "What the licensee had proposed to export were not mini tins of talcum powder but mini tins of face powder which was a different product. The ex-factory price of Rs. 15.93 per dozen indicated by the assessee for the purpose of export of face powder of 30 grams pack, cannot be applied to talcum powder of 30 grams. pack and therefore the comparison with the export price of face powder was not justified."

3.27. The Committee wanted to know why the Department did not compare the prices when 90 per cent of the total cost constituted the cost of the tins and it was identical. The Finance Secretary has replied:—

> "In the month of April, 1973, these facts were not known. At the next stage, they did not think that it was such a transaction which attracted their attention."

3.28. The price adopted for the initial clearance was Rs. 3.93 per dozen for a part of consignment and Rs. 3.23 per dozen for another part of the consignment which worked out to 27 paise per tin. Asked whether it would not arouse suspicion in case a tin of the type was supplied at below cost for 27 paise only, the Member (Excise) has replied:—

> "The company had said this would serve the purpose of developing their product also because in the process of developing Bru, samples of this would get distributed to consumers and possibly have a positive effect on the sale of Ponds' products. Each was interested in developing its own product."

3.29. Further asked whether a party could be allowed to sell an item costing Rs. 10/- at Rs. 2/- only, the Finance Secretary has stated:—

> "They can do whatever they like. The point is that the Department accepts the first transaction as the bonafide sale transaction because there are a large number of dealers and they were not dealing with one sole distributor."

3.30. The Committee wanted to know the alternatives available to the Department in case an assessee declared a ridiculously low figure as assessable value. The Department of Revenue have in a written note stated:—

> 'If the excisable goods are actually sold, the assessable value has to be determined according to Section 4 of the Central Excises & Salt Act, 1944 on the basis of the actual sale price. If the manufacturer chooses to sell the goods at a loss (below the actual cost of manufacture) because of any reasons such as distress sale or glut in the market or as a trade sample, such a price if genuine and open to any buyer would have to be accepted for the purpose of assessment even if it is less than the cost of manufacture, however, where it appears that the sale price declared by the manufacturer is not a genuine open market price, it would not be accepted for assessment and the assessable value would have to be determined under Section 4(b) as it stood prior to amendment of Section 4 of Central Excises and Salt Act, 1944."

3.31. When asked as to how the concept of relationship between two firms was assessed, the Finance Secretary has replied:—

> "The relationship would come in when the profit made by the one is enjoyed by the other, that is the concept."

3.32. On being asked as to when the Department would accept the price quoted by the firms without any questioning, the Member (Excise) has replied:—

> "If they are not directly or indirectly related, there is no financial link between them and there is no suspicion of any surreptitious transaction or underhand passage or money."

3.33. The Committee were informed during evidence that there was no assessment made of the second transaction. The acceptance of the price of Rs. 6/- was on the first transaction with their own dealers. In this context the Committee wanted to know whether the manufacturer had masterminded the first transaction in order to prepare ground for the other. The Finance Secretary has stated:—

> "But the size would not justify it at all. According to their letter, the packet was not for sale, it would be distributed to select potential consumers. It was an ambiguous letter. We have interpreted it to mean that they would sell to their dealers. They are now claiming that they meant it as part of sales promotion."

3.34. Asked if a transaction without consideration was not *bona fide*, the witness has replied:—

> "We are taking that view now."

3.35. In the same context he added:—

> "Today it is not an uncommon practice that you try to promote one produce which is new to the market by offering another product which is not new. Dream Flower Talc was already a well known product, Bru was new. They are pushing Bru and they give away a better known product. That does not establish necessarily that the two companies are inter-related. We have other examples of people giving away glasses, spoons, vacuum flasks etc. when there is necessarily no relationship between the two companies."

3.36. Since the second transaction was stated to have been accepted because of the first one, the Committee wanted to know whether the first transaction with the dealers was not masterminded to prepare the ground for the second transaction as a handle to get a bigger transaction sanctioned. The witness has informed during evidence:—

> "In his case it has now been established after adjudication that in respect of the first transaction Chesebrough Pond had made some inaccurate statements to the department, and in the second case they did not disclose that Brooke Bond had subsequently paid them a higher sum of money. This has come to light now and so action is being taken to recover the duty from them, and we are also considering prosecution."

3.37. Asked about the result of the verification of the relevant documents, the Department of Revenue have in a note stated as under:—

> "It was found that M/s Chesebrough Pond's had actually invoiced the mini tins of Dream Flower talc powder sold to M/s Brooke Bond India Ltd., at the declared price of Rs. 6/- per dozen less 30 per cent discount and subsequently at the same price less 5 per cent discount. Later on it came to light that M/s Chesebrough Pond's had been paid on additional amount of Rs. 84.201.06 by M/s Brooke Bond."

3.38. Asked about the special circumstances for this payment over and above the sales price approved earlier, the Department of Revenue in a note have stated thus:—

> "From the available documents and in the explanations given by the M/s. Chesebrough Pond, it is seen that they had initially agreed to sell the mini tins to M/s. Brooke Bond India Ltd. at Rs. 6/- per dozen less 30 per cent discount. M/s. Chesebrough Pond's however incurred a loss in the transaction as the sale price was less than the cost of manufacture. It appears that as a result of the tie-up programme of supplying one mini tin of talcum powder free with one bottle or jar of Bru, M/s. Brooke Bond India had bumper sales of the product "Bru Coffee" and were considerably benefited by this scheme. It is reported that M/s. Chesebrough Pond had approached M/s. Brooke Bond India Ltd. for compensating their loss at least to some extent, in view of the considerable benefits which M/s. Brooke Bond India had gained as a result of the tie-up programme and M/s. Brooke Bond agreed to compensate them to the extent of about half of the loss of about Rs. 1,70,000/- incurred by M/s. Chesebrough Pond's Inc. They actually paid an additional amount of Rs. 84.201.06 to M/s. Chesebrough Pond's Inc. in June 1974."

3.39. While disputing that the export price of Rs. 15.93 per dozen should be adopted as the assessable value, the Department of Revenue had themselves informed Audit that by adopting the basis of cost of manufacture plus the margin of profit, the cost of manufacture duly certified by the Chartered Accountant came to Rs. 6.81 and with the addition of margin of profit of 15.72 per cent the assessable value would work out to Rs. 7.88 per dozen. A show cause

notice had been issued for the differential duty on the basis of Rs. 7.88 per dozen on 29170 dozens cleared to M/s. Brooke Bond. The Committee wanted to know how the under valuation came to the notice of the Department and the action taken by them in the matter. The Department of Revenue have in a note furnished the following information:—

> "The fact of under valuation came to the notice of the Department as a result of the audit objection. A show cause notice was issued demanding the differential duty of Rs. 49,793.72 based on the revised assessable value of Rs. 7.88 per dozen which was determined on the basis of the cost of production of Rs. 6.81 per dozen as given in a cost sheet verified by a Chartered Accountant and furnished by the company (Appendix XIV) with the addition of a margin of profit at the rate of Rs. 15.72 per cent which was the overall profit margin of the company during 1973. M/s. Chesebrough Pond have paid the short levy of Rs. 49,793.72. No prosecution has so far been launched in this case."

3.40. Asked if the Department had come across any such cases, the Department of Revenue have in a note stated as under:—

> "All the Collectors of Central Excise were requested to report similar cases where a manufacturer of a particular excisable product manufactured and cleared during April 1972 to March 1977, the same product in quantities/ sizes varying from the one normally manufactured, cleared and marketed by him, for supply to another manufacturer, for free distribution or otherwise alongwith the product of the latter. According to the reports of the all the collectors of Central Excise, except Kanpur there was no such case in their Collectorates.
>
> The Collector of Central Excise, Kanpur has, however, reported that M/s. Unichem Laboratories Ltd.; manufacturing 'Uni-protein' powder falling under T.I. 1-B dealing with P or P Food, were supplying 50 grams pack to their customers free. From 10-3-74 the assessable value of 200 grams, 100 grams and 50 grams packs of uni-protein powder were Rs. 9.09, Rs. 5.45 and Rs. 2.75 respectively. Reportedly, the assessable values were enhanced on 22-10-74 in regard to 200 grams and 100 grams packs to Rs. 11.36 and 6.73 respectively, though the assessable value of 50 grams pack continued to remain the same. Though the Accountant General Uttar Pradesh, has con-

sidered this as a case of loss of Rs. 14,701.00 in respect of 50 grams pack upto 31-1-1975, on the basis of pro-rata calculations from 100 and 200 grams packs, the Collector has reported that the lower price declared by the party is based on the cost of manufacture plus margin of profit of 4 per cent which was considered reasonable keeping in view of the fact that the party is not charging any price for the smaller pack (50 grams). Consequently the Collector has not admitted the loss alleged by the A.G. Uttar Pradesh and the issue is reported to be under correspondence. However, strictly this is also not a case where a manufacturer of a particular excisable product manufactured and cleared during April 1972 to March, 1977 the same product in quantities/sizes varying from the one normally manufactured, cleared and marketed by him, for supply to another manufacturer for free distribution or otherwise alongwith the product of the latter, as reported by the other Collectors."

3.41. The Committee find that Chesebrough Pond (Inc) Madras produced Pond's Dream Flower Talcum Powder in mini tins each containing 30 grams of powder. In April 1973 they declared to the Excise authorities that it was intended to be given free by their dealers but that they would be invoicing their dealers at Rs. 6/- per dozen. The transaction value of Rs. 6/- per dozen less 30 per cent trade discount was initially approved on the basis of price list No. 2/73 filed by M/s Chesebrough Pond on 19-4-1973. It was accepted at that stage by the authorities under the impression that it was being sold to the Chesebrough dealers at Rs. 6/- per dozen. Subsequently, it came to light that according to actual arrangement the dealers did not ultimately bear the cost of these tins. The dealers were invoiced in accordance with the price list and the amount was "charged" to the dealer's account. When the dealer eventually completed free delivery of the goods to the consumers, he was given a reimbursement by a credit to his current account for the full value of the goods involved so that, in effect, there was no sale between them and their dealers. The Committee would like it to be examined whether this was permissible under Section 4 of the Excise & Salt Act.

3.42. Later on M/s Chesebrough Ponds manufactured the same mini-tins and supplied to M/s Brooke Bond India Ltd., Calcutta from September 1973 onwards who in turn distributed them free of cost alongwith their own coffee product 'Bru'. The tins bore the inscription 'free with Bru'. The entire transaction was a tie up arrangement and was obviously meant to promote the sale of each

other's product. The supply was made at the rate approved on the basis of the price list No. 2/73 filed in April, 1973 and no fresh price list was filed for this purpose.

.. 3.43. According to Sub-Rule (2) of the Rule 173(c) of the Central Excise Rules, 1944, the proper Officer has to approve the price list after making such modifications as he may consider necessary so as to bring the value shown in the said list to the current value, for the purpose of assessment as provided in Section 4 of the Central Excises & Salt Act, 1944. If implies therefore that the Officer does have the power to modify the price list to the extent as considered necessary. While carrying out the modifications, the Officer can refuse or accept the assessable value declared by the assessee in the price list submitted for approval, after following the principles of natural justice by affording an opportunity to the assessee to explain either in writing or in person as to why the value declared by him should not be rejected and a different value approved. Price lists for contract prices are to be checked with the price range of that type of article with reference to contract deeds and where the prices quoted in the contract deeds under check are abnormally low, Sector Officer has to take up the matter with the factory and ensure that the prices are genuine. The assessable value under Section 4 may either be deduced on the basis of market prices for the articles of like kind and quality or by means of the principle of costing.

3.44. The Committee regret to note that even when the Department had come to know that the mini packs were being supplied to the Brooke Bond Co. under what could be termed as a 'contract deal' the aforesaid elaborate and comprehensive procedure for determination of assessable value was given a go bye and the price quoted for mini-packs viz. Rs. 6/- per dozen with 30 per cent discount was accepted without investigation whether it could be considered unduly low. Explaining the reasons, therefore, the Finance Secretary informed during evidence that "if no price had been established, it would have been the duty of the department to assess the price and they would have assessed it correctly. Since they reported that transaction had been established at Rs. 6/- per dozen, this may be treated as a sale and the price had to be accepted." In regard to the supplies made to Brooke Bond at that price the Department has intimated "When sales started to be made to Brooke Bond from 6-9-73, there was no need for M/s Chesebrough Pond to file a fresh list as the price has already been approved and the occasion for investigating into the transaction did not arise at that stage." The Committee feel that the Excise authorities should have woken up in time and asked the company to submit a fresh price list.

3.45. The Department has conceded that the sale price which was lower than even the cost of container did not fully cover the cost of manufacture of mini-packs. It means that the department had knowledge of under-valuation ab-initio but they refrained from making any investigation in regard to the proper valuation or to take remedial steps necessary for the upward revision of the price quoted by the manufacturer. The fact that because the sale was made otherwise than for monetary considerations should not have made the Department so complacent as to ignore the observance of departmental instructions in this regard. The Committee desire that a probe should be made with a view to fix the responsibility at various levels for appropriate action.

3.45. According to the Finance Secretary "as subsequent events have revealed the manufacturer had made inaccurate statements to the department in respect of the first transaction when there was actually no sale to the dealers. In regard to the second transaction they did not disclose to the Department the fact of having received a higher sum of money." The Committee greatly deplore the lack of vigilance which resulted in heavy loss of revenue to the tune of more than one lakh of rupees.

3.47. The Committee have been further informed that the manufacturer had a proposal for the export of mini tins abroad for which they had filed a separate price list in 1973 wherein the ex-factory cost was indicated as Rs. 15.93 per dozen which was two and half time, the rate viz. Rs. 6/- adopted for assessment in this case. The mini-tins for export however contained face powder which was different from talcum powder and the Department had come forward with the plea that "the ex-factory price of Rs. 15.93 per dozen indicated by the assessee for the purpose of export of face powder of 30 gms. pack cannot be applied to talcum powder of 30 gms. pack and therefore the comparision with the export price of face powder was not justified." The Member (Excise) has, however, informed the Committee during evidence that the actual cost of the powder in both the containers was 10 or 12 per cent only. He further stated that the price of talcum dream flower of 196 gms. was shown as Rs. 62/- per dozen in 1974 and that of face powder for 82 gms. as Rs. 60/- per dozen. Assuming, therefore, that the cost of talcum powder was less than double of face powder, the Committee find it difficult to agree that 10 to 12 per cent contents of the mini tins should have led to the determination of assessable value for Talcum Powder tin at such low level as Rs. 6/- per dozen. The Committee feel that the price list for the export of mini-tins available with the Department should have been compared with the price list

filed by the manufacturer in April, 1973 for adoption of the correct assessable value. That after disputing the adoption of export price of Rs. 15.93 per dozen for determination of assessable value suggested by audit, the Department had themselves re-assessed the value at Rs. 6.81 per dozen on the basis of cost of manufacture etc. certified by charted accountant shows that the scrutiny needed was lacking initially. The Committee, however, note that the Chesebrough Ponds have promptly paid the short levy of differential duty of Rs. 49,793.72 demanded by the Department. The Committee would however like the Department to make a thorough probe with a view to ascertain the reasons for this initial lapse and issue necessary instructions to make the procedure fool-proof to obviate the chances for recurrence of such instances in future.

3.48. The Committee would also like to draw attention to their earlier recommendation made in paragraph 1.29-30 of their 90th Report (5th Lok Sabha- wherein they had desired that with a view to avoiding omissions in determining assessable values a suitable proforma indicating various details should be devised so as to make the assessee furnish break up of the cost. The Committee are distressed to find that no such proforma has been devised so far with the result that the break-up of the cost of the products of M/s Chesebrough Pond are also not available. Had such a proforma been devised the break-up of the cost of the product would have been available to the Department and the omission of the type, as has happened in the instant case for the determination of the proper assessable value, would not have occurred. The Committee desire that the Department should move swiftly in the matter and ensure that the proforma for the purpose is devised without any further delay.

C. M. STEPHEN,

Chairman,

Public Accounts Committee.

NEW DELHI;

27th April, 1978

7th Vaisakha, 1900 (S).

APPENDIX I

(*Vide* Para 1.6)

Statement showing effective rates of basic, special auxiliary and additional duties on cigarettes in force from time to time since 1970

Cigarettes of which the value per thousand	Effective rates		
	Basic	Spl. (As % of additional BED)	
1970 (with effect from 1-3-70)			
(i) Exceeds rupees 25	125% ad valorem	10%	24% ad valorem
(ii) Exceeds rupees 9·50 but does not exceed rupees 25	80 % ad valorem	10%	15% ad valorem
(iii) Does not exceed Rs. 9·50	42 1/2 % ad valorem	10%	5% ad valorem
1971 (with effect from 29-5-71)			
(i) Exceeds rupees 40	140% ad valorem	20%	70% ad valorem
(ii) Exceeds rupees 30 but does not exceed Rs.40	135% ad valorem	20%	60% ad valorem
(iii) Exceeds rupees 20 but does not exceed Rs. 30.	95% ad valorem	20%	30% ad valorem
(iv) Exceed rupees 20 but does not exceed Rs. 30.	95% ad valorem	20%	30% ad valorem
(v) Exceeds rupees 10 but does no exceed Rs. 20.	90% ad valorem	20%	25% ad valorem
(vi) Does not exceed Rs. 10	60%	20%	10% ad valorem

Cigarettes of which value per one thousand	Basic	Additional
1972 (with effect from 17-3-72)		
(i) Exceed rupees forty.	165% adv.	75% adv.
(ii) Exceeds rupees thirty but does not exceed rupees forty.	160% adv.	65% adv.
(iii) Exceeds rupees twenty but does not exceed rupees thirty.	110% adv.	35% adv.
(iv) Exceeds rupees ten but does not exceed Rs. twenty.	105% adv.	30% adv.
(v) Does not exceed Rs. ten	70% adv.	15% adv.

Cigarettes of which the value per one thousand	Basic	Additional	Auxiliary
1973 (with effect from 1-3-73)			
(i) does not exceed rupees ten . . .	75% adv.	25% adv.	Exempted
(ii) exceeds rupees ten	75% adv. plus 30% adv. for every addl. rupee or part thereof in in excess of a-value of rupees ten per one thousand.	25% adv. plus 20% adv. for every addl. rupee or part thereof in in excess of a value of rupees ten per one thousands.	Exempted
1974 (with effect from 1-8-74)			
(i) does not exceed rupees ten . . .	75% adv.	25% adv.	10% as per centage of BED
(ii) exceeds rupees ten	75% adv. 3% ad-valorem for everty additional rupee or part thereof in excess of a value of rupees ten per one thousand	25% adv. Plus two percent ad-valorem for every additional rupee or part thereof in excess of a value of rupees ten per thousand	
1975 (with effect from 1-3-76)			
(i) Does not exceed rupees ten . . .	90% adv.	25% adv.	10% of the BED.
(ii) Exceeds rupees ten	90% adv. plus 3% adv. for every Addl. rupee or part thereof in excess of a value of rupees ten per one thousand	25% adv. plus 2% adv. for every addl. rupee or part thereof in excess of a value of rupees ten per one thousand	

Cigarettes of which the value per one thousand	Basic	Additional	Auxiliary
1976 (with effect from 16-3-76)			
		percentage of BED	
(i) does not exceed rupees fifteen . .	115% adv.	10%	35% adv.
(ii) Exceeds rupees fifteen but doe not exceed rupees sixteen	116% adv.	10%	36% adv.
(iii) Exceeds rupees sixteen but does not exceed rupees seventeen.	117% adv.	10%	37% adv.
(iv) Exceeds rupees seventeen but does not rupees eighteen.	118% adv.	10%	38% adv.
(v) Exceeds rupees eighteen but does not exceed rupees nineteen.	119% adv.	10%	39% adv.
(vi) Exceeds rupees nineteen !but does not exceed rupee twenty.	120% adv.	10%	40% adv.
(vii) Exceeds rupees twenty	120% adv. plus 4% adv. for every addi-tional rupee or part thereof in excess of a value of rupees twenty per one thousand.		40% adv. plus 3% adv. for every addi-tional rupee or part thereoef in excess of a value of rupees twenty per one thou-sand.

Cigarettes of which the value per one thousand	*Basic Excise Duty*
1977 (with effect from 18-6-77)	
(i) Doesnot exceed rupees fifteen . ..	115% adv.
(ii) Exceeds rupees fifteen but not exceed rupees twenty.	115% adv. plus 3% adv. for every additional rupee or part thereof in excess of a value of rupees fifteen per one thousand.
(iii) Exceeds rupees twenty	130% adv. plus% adv. for every additional rupee or a part thereof in excess of a value of rupees twenty per one thousand.
	Additional Excie Duty B.E.D.
(i) Does not exceed rupees fifteen . .	35% adv.
(ii) Exceeds rupees fifteen but does not exce d rupees sixteen.	36% adv.

Cigarettes of which the value per thousand	Basic Excise Duty
(iii) Exceeds rupees sixteen but does not exceed rupees seventeen.	37% adv.
(iv) Exceeds rupees seventeen but doe not exceed rupees eighteen.	38% adv.
(v) Exceeds rupees eighteen but does not exceed rupees nineteen.	39% adv.
(vi) Exceeds rupees nineteen but does not rupees twenty.	40% adv.
(vii) Exceeds rupees twenty . . .	40% adv. plus 3% adv. for every additional rupee for part thereof in excess of a value of rupees twenty per one thousand.

APPENDIX II

(*Vide* Paras 1.11 & 3.16)

M.F. (D.I.C.C.E.) F. No. 509/1/72, dated 10-12-1972

DEPARTMENTAL INSTRUCTIONS ON THE PRICE LISTS FILED BY AN ASSESSEE WORKING UNDER SELF REMOVAL PROCEDURE.

Under Rule 173-C of the Central Excise Rules, 1944, an assessee who produces, manufactures or warehouses goods chargeable with duty at a rate dependent on their value is required to file with the proper officer for approval a price list, in such form and in such manner as may be prescribed by the Collector. The proper Officer for purposes of this rule is a Superintendent of Central Excise or Asstt. Collector of Central Excise in case of complicated excises where so ordered by he Collector. The list is required to be submitted by the assessee in quadruplicate.

Preliminary Scrutiny by the Sector Officer or Inspector Dealing with the Commodity:

Immediately on receipt of the valuation list the sector Officer or the Inspector dealing with the commodity, as the case may be, should examine:—

(i) whether a detailed description of each and every variety of the goods produced, manufactured or warehoused by the assessee has been furnished, indicating particular specifications of the commodity having a bearing on its value;

(ii) whether the list shows the price of each variety of the commodity produced, manufactured or warehoused by him in his factory or warehouse;

(iii) whether the various trade discounts allowed by him to buyers and other deductions are correctly mentioned;

(iv) whether two attested copies of the contract deeds pertaining to the price list for goods intended to be cleared on contract basis are attached to it;

(v) whether the assessee availing exemption under Notification No. 144/70, dated 11-7-70 has specifically mentioned his declaration of contract prices that all the conditions laid down in the above Notification have been fulfilled.

If the price list is found to be deficient in any material information, it should be got completed by the manufacturer or assessee and put up to or sent to the Supdt. In-charge of the range or jurisdictional Assistant Collector as the case may be for approval.

Action by Sector Officer on Lists Containing Contract Prices:

The Sector Officer should check the price lists for contract prices as follows:—

(i) check prices with reference to the contract deeds and satisfy that they are genuine and compare well with others for like items or sorts;

(ii) check the price range of that type of article with reference to the contract deeds (or price lists received on previous occasions) and where the prices quoted in the contract deeds under check are abnormally low, take up the matter with the factory and ensure that the prices are genuine;

(iii) bring to the notice of the Supdt. cases where the verification of contract deeds reveals that the prices quoted in the contract deeds are not genuine or bonafide;

(iv) ensure that the contracting parties in the contract deeds are mutually independent with no special relationship;

(v) ensure that the prices settled between the contracting parties are bonafide ones;

(vi) submit the lists alongwith the contract deeds to the Supdt./Assistant Collector for further action and approval.

Action by Superintendent/Assistant Collector:

After satisfying himself about the completion of the valuation list and the accompanying documents the Supdt. or Assistant Collector, as the case may be, should:

(1) conduct verification himself or through the Inspectors of the values declared in the light of the instructions issued from time to time and in accordance with the instructions laid down in the Basic Manual, *viz.*, verify the prices and discounts with reference to:

(i) 10 per cent of the factories and sole selling agents' or distributors' more recent invoices, sale journals, ledgers and other relevant records;

(ii) the prices prevailing in the wholesale market at the place of manufacture or, if such wholesale market does not exist there, at the nearest wholesale market for such goods;

(iii) such collateral evidence as is available in the assessee's records, in case the price list relates to products manufactured for the first time.

(2) not accept any change in prices already approved which have the effect of lowering the existing approved assessable values, unless they have been carefully checked and finally accepted;

(3) make necessary changes, if warranted; in the list already approved;

(4) accord approval to the price list after maing such modifications as may be considered necessary so as to bring the value shown therein to the correct value and suitably endorse the checks actually carried out on all copies of the list except the one meant for the assessee and dispose them of as under;

(5) communiate to the assessee to take clearances on provisional assessment as set out in Rule 9 if the verification and approval of first list is likely to take some time.

A. Price Lists General:

(i) send one copy to the assessee;

(ii) retain one copy in the Range/Divisional Office; (in case the Supdt. happens to be a Circle Officer and the valuation list has to be approved in respect of a manufacturer under the charge of an Inspector and the Range is not located in the Circle Office, he should retain an attested copy of the list in the Circle Office and send the approved copy to the Inspector Incharge of the Range).

(iii) send one copy to the assistant Collector (Audit);

(iv) send one copy to the jurisdictional Assistant Collector. In case the approving Officer is an Assistant Collector, he would send on copy to the Range Officer for his use.

B. Price Lists showing Contract Prices between the Mills and the Contract Merchants:

(i) return the original to the assessee mentioning thereon the fact of having received two attested copies of the contract deed(s) and also initialling them true copies as evidence of having seen the original contract deed(s);

(ii) forward one copy of the contract deed(s) to the Jurisdictional Assistant Collector for information and use by Inspection Group;

(iii) intimate the factory about the rejection of the contract price in writing together with reasons therefore in case the prices quoted in the contract deed(s) are reported to be not genuine or bonafide. In such cases assessments have automatically to be made under Section 4 of Central Excise and Salt Act, 1944;

(iv) check at least 25 per cent of the contract prices to ensure that they are bonafide; correct and are between two independent contracting parties;

(v) ensure that the quantity cleared on the basis of a particular contract does not exceed the quantity contracted for;

(vi) for purpose of checks at (iv) above ask the assessee to keep a running account of gate pass-wise issues on the back of the contract form or on a separate sheet attached thereto and also incorporate therein the detailed particulars of the invoices, i.e. number, date, quantity and amount;

(vii) file the approved copy of the price list retained by him factory-wise and commodity-wise. In case more than one commodity is manufactured in a factory, a separate file for each commodity should be opened. Subsequent corrections or fresh supplementary lists should be filed in the same file with proper remarks in the remarks column to indicate the current price list, and where the number of price lists is too big, a record of the approval of price lists in the prescribed form (Appendix VII to BEM) should be maintained.

Action by the Jurisdictional Assistant Collector:

(i) on receipt of the price lists in the Divisional Office the Assistant Collector should scrutinise those approved by the Supdt. to see whether the approval has been given

after proper scrutiny and checks and whether he has recorded his observations on each such list;

(ii) during the course of his normal inspections of range records, satisfy himself that the instructions for approval of contract prices have been strictly carried out by the Sector/Range Officer and Inspection Groups;

(iii) carry out a percentage check of the values approved by the Supdt., the number of checks being decided by him at his own discretion;

(iv) make a detailed mention of the checks carried out by him in his inspection note or diary;

Action by Inspection Group:

During the course of their inspections the Inspection Group should:

(i) check at least 25 per cent of the items assessable at ad valorem rates in each price list;

(ii) check at least 25 per cent of the contract prices with reference to the contract deed (s) on price lists received for early periods;

(iii) carry out percentage checks with reference to factory invoices and original contract documents available with the assessee.

Action by Collectorate Headquarters.

In the matter of ad valorem assessments and furnishing of valuation lists by the assessees and their approval of the Officers, the Collectorate will;

(i) issue executive instructions for the guidance of officers on ad valorem assessments and approval of valuation lists, whenever necessary;

(ii) issue clear local instructions with regard to the manner of verification of contract prices depending upon the peculiar circumstances prevailing in the Collectorate on the matter of approval of contract prices;

(iii) ensure that the valuation cells, if any, undertake the various checks on the valuation lists to bring about uniformity of assessable values in respect of items of like kind and quality;

(iv) obtain approval of the Board while extending the concession envisaged under rule 173-C allowing the manu-

facturers of some goods to declare the transacted price on the gate passes after taking into account the nature of the goods and frequency of their market fluctuations;

(v) arrange training of Supdts. at Headquarters in valuation matters and other matters.

Action by Assistant Collector (Audit).

The Assistant Collector (Audit) will:

(i) examine the valuation lists to see that there has been no delay in approval of prices;

(ii) ensure examination of valuation lists for purposes of study of the organisations of sale and the admissibility of the various deductions made by the assessees on account of trade discounts, packing charges etc. from the wholesale cash price;

(iii) ensure that the principles relating to valuation of goods under Section 4(a) and 4(b) of the Central Excise Rules, 1944 have been correctly applied.

(iv) examine if the contract prices have been correctly approved and the principles for approval have been uniformly applied throughout the Collectorate;

(vi) guide the valuation cells at Collectorate Headquarters in carrying out their functions;

(vi) take up the disparities noticed in the prices of goods of identical nature with the concerned formations for rectification;

(vii) ensure uniformity of valuation of goods in the Collectorate;

(viii) file the valuation lists in a systematic manner rangewise and commodity-wise.

These instructions should be read in conjunction with those which have so far been issued or may be issued by the Government/ Board/Collectorat on this subject. However, they are supplemental in matters not provided for earlier."

APPENDIX III

(*Vide* Para 1.13)

Copy of Central Board of Excise & Custom's letter F. No. 202/35/75-CX-6 dated 21-6-76.

To

All Collectors of Central Excise,

Deputy Collector of Central Excise, Silliguri.

Subject:—Central Excise—Classification list and price list—Question of review of instructions as observed by the Member (CX) in his note relating to his visit to Delhi Collectorate, MOD. I:—Instructions regarding.

Sir,

Your attention is invited to the instructions contained in Board's letter F. No. 223/16/71-CX-6 dated 26-7-72 wherein it was desired that the Assistant Collectors should ensure that the correct principles of valuation are followed. The intention was that price lists in most of the cases should be approved by the Assistant Collectors. In simple cases, however, the Assistant Collector, after a preliminary study of the pattern of marketing of a particular unit, could authorise the Range Superintendent to accord approval to the price lists. It was clearly indicated that only in those cases where no disputed trade discount was involved or where there was clearly verifiable wholesale price, could the Range Superintendents be authorized to approve the price lists.

Member (Central Excise) sometime back during his visit to a Collectorate noticed that the Assistant Collector had issued orders specifying certain tariff item in respect of which classification and price lists were to be approved by the Range Superintendents. Such a practice is quite contrary to the intention of the Board so far as it relates to the approval of price lists. Under para 4 of the Board's letter referred to above, it was not contemplated to distribute the work of approval of price lists between the Assistant Collector and the Superintendent commodity-wise. The Assistant Collector was empowered to delegate this function to Range Superintendent after preliminary study of the marketing pattern in respect of a particular unit. It is, therefore, reiterated that in all

cases where the price lists have been submitted by the assessees for the first time, the approval should be accorded by the Assistant Collectors. However, subsequent price lists in respect of that unit, so long as there is no change in the marketing and sales pattern, can be approved by Range Supdts, if they have been authorised to do so by the Assistant Collector. In any case where there is a decrease in prices or where there is a change in sales and marketing pattern, the price lists should be approved by the Assistant Collector, even though after the preliminary study and initial approval of the price lists by the Assistant Collector, the Range Supdt. has been authorised to accord approval.

After introduction of new Section 4, the valuation aspect has assumed an added importance. It is necessary that in any case where the operation of the new provisions results in an increase in the assessable value or rejection of the price lists which were earlier accepted, the matter should be put up at least to Assistant Collectors, and if there is any doubt at that level, then to the Collector. In line with existing instructions, in case of dispute concerning valuation or classification, the appealable order should be passed by the Assistant Collector or even by the Deputy Collector or Collector, if the importance of the case deserves it.

Please acknowledge this letter.

Yours faithfully,

Sd/- (KRISHNA KANT)

Under Secretary to the Government of India.

Copy forwarded to:—

1. Director of Inspection, Customs and Central Excise New Delhi.
2. Director, Statistics & Intelligence, New Delhi.
3. Director, Central Exchange, 21 Range Road Lala Lajpatrai Nagar, New Delhi.
4. All Appellate Collectors of Central Excise.
5. Director of Training, New Delhi.

Sd/- (KRISHNA KANT)

Under Secretary to the Government of India.

APPENDIX IV

(*Vide* Para 1.17)

Copy of letter F. No. 314/2/75-CX-10 dated 13-11-76 from the GIS, Deptt. of Revenue & Banking.

To

All Collectors of Central Excise.

Subject:—Central Excise (SRP) Review Committee Recommendations—regarding—Approval of classification/Price lists—

Sir,

The Self Removal procedure (Review) Committee has referred in its report to a widespread complaint concerning delays in approval of classification and price lists and the considerable inconvenience and uncertainty thereby caused to the assessees. While recommending that the classification lists should be approved by the proper officer within a stipulated period, the Committee also recognised that in certain cases approval of classification/price lists may be subject to delays due to circumstances beyond the proper officer's control. It, however, has observed that it did not see any justification for keeping such approval open for an indefinite length of time and recommended that the Government could provide for such contingencies by prescribing tw or more stipulaprovide for such contingencies by prescribing two or more stipulated period should ordinarily be a matter of days and in *no case more than three months.*

2. The recommendation of the Committee has been accepted in principle. The Government has, however, come to the conclusion that instead of such a time limit being provided in the statute the same object should be achieved by executive instructions. In this context a view has been expressed that the time necessarily taken by outside agencies (ie. agencies not under the control of the Department) as also the time taken by the assessees for furnishing full and complete information, should be excluded in computing the stipulated period.

3. The matter has been further examined in consultation with

the Directorate of Inspection (Customs and Central Excise) regarding—

(i) the size of the time limits and types of cases to which these should apply; and

(ii) the drill for ensuring that the proposed time limit(s) is/ are observed.

With regard to the time limit the Board are of the view that for normal cases, where all the necessary information/details have been furnished by the assessee a period of fifteen days should be adequate within which the proper officer must accord approval to the classification/price lists except:

(i) in cases where Chemical Examiner's Report is required, the time limit should be one month;

(ii) where a certain article is put to more than one use and the question of deciding its excisability under one or another item may require a personal hearing to be given to the party to explain his views and stand or where on the spot studies are called for or consultations with experts may be required, the time limit should be two months;

(iii) in cases of new products involving varification of goods/ invoices, the period should not exceed three months.

Thus in no case should approval of classification/price lists take more than 3 months and it has to be ensured that consultations, where necessary, are completed within the stipulated period. You may issue suitable instructions in the matter for observance by the officers in the field. It would also be necessary to issue trade notices calling upon the assessees to extend their cooperation in filing the classification/price lists with complete and correct details.

4. As soon as a classification/price list is received a time chart should be attached to it to watch the time taken at different stages. The Officer incharge of the Range, having jurisdiction over the licensee, receiving the classifiaction/price list should, in cases where he cannot take a decision himself, submit the same to the Divisional Assistant Collector within three days of its receipt after making necessary verification where as required. Where it is necessary to draw a sample, the same should be drawn and sent to the Chemical Examiner within this period with a request to send the test report to the concerned officer within a fortnight. In

the Divisional Office, the classification/price list should be submitted to the Assistant Collector within three days of its receipt. In case the Divisional Officer finds further enquiries or consultations necessary, the same should be completed in time to enable the finalisation of the list within the time stipulated in the preceding paragraph.

5. The record prescribed *vide* Board's letter F. No. 202/16/72-CX-VI, dated 8-4-74 to show the date of receipt and approval etc. of the classification/price lists should continue to be maintained in addition to the time chart. The Collectors and Deputy Collectors should, during their visits to, or inspections of the Division/Range offices, make it a point to examine this record to satisfy themselves that the classification/price lists are being approved in time. The Divisional Officers should report every month to the Collector facts of cases relating to their charge in which the prescribed time limit could not be adhered to, giving precise reasons therefor. Such cases should be analysed at the Collectorate headquarters not only to render necessary advice to the Divisional Officers but also to enusre that there was no uncalled for delay at any stage.

6. Receipt of this letter may please be acknowledged.

Yours faithfully,
Sd/- (K. D. TAYAL)
Under Secretary.

Distribution: (As usual).

APPENDIX V

(*Vide* Para 1.58)

Statement showing the details of the Claims for refund of Rs 10/- lakhs and above for the period w.e.f. 1-2-72 to 1-10-1975

Serial No	Name of the Party	Date of filing the refund claim	Amount of refund claimed	Period to which the claim pertains	Grounds in brief for claiming refund	Date and nature of decision	Present Position
1	2	3	4	5	6	7	8
			Hyderabad Collectorate				
1	M/s, Vazir Sultan Tobacco Co. Hyderabad	24-12-74	63,22,319·34	1-10-72 to 30-9-73	The amount being duty on post manufacturing expenses was included in the assessable value for cigarettes cleared by them	Claim rejected by Assistant Collector and the appeal also rejected	The party has filed Revision Application to the Govt. of India which is pending decision
2	Do.	5-9-74	90,68.126·95	1-10-73 to 31-7-74	Do.	Do.	Do.
3	Do.	21-10-74	47,981·74	Do	Do.	Do.	Do.
4	Do.	17-1-75	5,12,649·57	1-8-74 to 30-9-74	Do.	Before a decision was taken by the Deptt. the matter became an issue in the Local High Court.	The writ petition filed by the party was allowed by the High Court and the Deptt. has preferred an appeal in the Supreme Court which is pending decision.

5	M/s Vazir Sultan Tobacco Co., Hyderabad	30-5-75	8, 35,133·89	1-10-74 to 22-12-74	Do.	Do.	Do.
6	Do.	Do.	18,92,406·65	23-12-74 to 28-2-75	Do.	Do.	Do.
7	Do.	Do.	21,482·65	1-10-72 to 30-9-73	Do.	Do.	Do
8	Do.	Do.	6,79,397·71	1-8-74 to 30-9-74	Do.	Do.	Do.
9	Do.	30-3-73	64,19,060·13	1-9-70 to 22-2-72	Do.	Do.	Writ petition filed by the party is pending in the High Court.
10	Do.	28-2-73	2,80,062·46	23-2-72 to 16-3-72	Do.	Claim was rejected by the Asstt. Collector	Matter is pending in Appeal before the Appellate Collector, Madras.

1	2	3	4	5	6	7	8
				Hyderabad—Contd.			
11	M/s Vazir Sultan Tobacco Co., Hyderabad	28-2-73	45,48,029·94	17-3-72 to 21-2-73	The amount being duty on post manufacturing expenses was included in the assessable value for cigarettes cleared by them.	Claim was rejected by the Asstt. Collector.	Matter is pending in Appeal before the Appellate Collector, Madras
12	Do.	2-6-73	4,31,726·82	1-3-73 to 31-3-73	Do.	The claims were rejected by the Asstt. Collector. Appeals allowed by the Appellate Collector and amounts paid under protest were refunded.	
13	Do.	30-8-77	9,99,225·25	1-4-73 to 11-7-73	Do.		
14	Do.	14-6-74	2,02,709·93	18-6-73 to 11-7-73	Do.	The claims were rejected by Asstt. Collector. Appellate Collector has directed the lower authority to assess the goods at 140% taking into account selling price as Rs. 40·25. The Collector has referred the matter to the Board for review of the appellate Col-	Refund Section
15	Do.	1-7-74	25,58,037·40	12-7-73 to 7-2-74	Do.		Do.

							lector order Govt. of India have confirmed the order in appeal on 19-9-77.	
16	M/s. Premier Tyres . . .	25-5-74	3,09,107·88	Aug. 73	Consequent on Supreme Court Judgement in Volta's case, the party filed a price list claiming deduction of post manufacturing expenses from assessable value. This was not allowed and they approached High Court who issued interim stay.	Claim rejected by the Asstt. Collector.	Appellate Collector directed to decide the case in view of High Court Judgement in favour of the party steps taken to file petition for leave to appeal to the Supreme Court and claims can be selected on receipt of decision taken.	
17	Do.	21-8-74	2,35,299·74	Sep. 73	Do.	Do.	Do.	
18	Do.	24-9-74	3,39,061·50	Oct. 73	Do.	Do.	Do.	
19	Do.	18-10-74	3,46,136·86	Nov. 73	Do.	Do.	Do.	
20	Do.	30-10-74	3,44,140,13	Dec. 73	Do.	Do.	Do.	
21	Do.	26-11-74	1,77,863·06	Jan. 74	Do.	Do.	Do.	
22	Do.	3-12-74	2,25,226·42	Feb. 74	Do.	Do.	Do.	
23	Do.	18-12-74	1,53,264·60	March, 1974	Do.	Do.	Do.	
24	Do.	6-1-75	1,10,139·59	April, 74	Do.	Pending settlement.	The original claims were returned to the Company for resubmission after receipt of decision from High	
25	Do.	6-1-75	1,07,223·31	May, 74	Do.	Do.		
26	Do.	20-1-75	5,68,394·20	June, 74	Do.	Do.		

1	2	3	4	5	6	7	8
		Cochin Collectorate—contd.					
27	M/s. Premier Tyres . .	3-2-75	6,55,371·58	July, 74	Repeat	Repeat	Court of Kerala in writ petition filed by the Company. The claims resubmitted are pending for reasons stated above.
28	Do.	31-1-75	6,26,602·42	Aug. 74	Do.	Do.	
29	Do.	30-1-75	6,19,795·71	Sep. 74	Do.	Do.	
30	Do.	17-2-75	7,61,844·12	Oct. 74	Do.	Do.	
31	Do.	5-2-75	37,900·21	1-11-74 to 14-11-74	Do	Do.	
32	M/s. Toshiba Anand Batteries Ltd.	23-9-75	62,89,806·09	15-12-71 to 17-7-75	Claim preferred on the basis of Supreme Court judgement in Voltas' case. The party claim that the assessable value included post manufacturing expenses and selling profit.	Claim rejected by Asstt. Collector.	Company filed appeal to the Appellate Collector who remanded the case saying that claims hit by timesbar cannot be entertained and claims within the time limit of Rules 11 and 173 I has to be considered afresh. The assessee has since filed a revision application.
		Shillong Collectorate					
33	M/s. India Carbon Ltd. .	28-7-73	6,47,453·42	29-5-71 to 30-6-73	Under Section 4 as defined by Supreme Court in Voltas' case.	Claim rejected	Appeal preferred by the party has not yet been decided.

34	Do. . . .	3-1-74	1,17,952·20	1-7-73 to 31-12-73	Do.	Do.	Relief granted by the Govt. of India order No. 1293 dt. 30-6-77.
35	Do.	17-7-74	1,47,828·53	1-1-74 to 30-6-74	Do.	Do.	Do.
36	Do.	10-3-75	1,99,223·66	1-7-74 to 31-12-74	Do.	Do.	Appeal preferred by the party has not yet been decided.
37	M/s. N T C (I) Ltd. . .	4-8-73	17,37,075·17	1-2-72 to 19-1-73	Refund claim since Central Excise duty was paid by the parties on the values inclusive of post manufacturing cost and profit According to Supreme Court's judgement in Voltas' case duty should have been levied only on the amount representing the manufacturing cost plus the manufacturing profit.	Claim sanctioned by Assistant Collector.	Show cause notice issued by the Board for repayment of refunded amount and the assessees has filed a writ petition in Calcutta High Court which is sub-judice in that Court.
38	Do.	4-8-73	41,482·70	20-1-72 to 29-1-72	Do.	Do.	Do.
39	Do.	20-10-73	12,42,457·06	17-3-72 to 31-1-73	Do.	Sanctioned by Asstt. Collector.	Do.
40	Do.	20-10-73	51,422·63	1-2-73 to 12-2-73	Do.	Do.	Do.

1	2	3	4	5	6	7	8
				Madurai Collectorate			
41	M/s Dalmia Cement (Bharat) Ltd.	24-6-74	37,90,756·76	1-6-62 to 31-5-73	On the basis of Supreme Court's judgement in the case of Shri A.K. Roy Vs. M/s Voltas Ltd	Pending finalisation	Pending finalisation
42	Do	24-6-74	34,24,685·98	1-6-73 to 31-12-73	Do.	Do	Do
43	M/s Dalmia Cement (Bharat) Ltd.	31-8-74	20,14,856·67	1-1-74 to 30-6-74	On the basis of Supreme Court's judgement in the case of Shri A.K. Roy Vs. M/s Voltas Ltd	Do.	Do.
				Bangalore Collectorate			
44	M/s M.M. Rubber Co .	26-3-73	6,44,895·38	1-3-72 to 28-2-73	These claims have been preferred as a result of allowing a writ petition filed by the party in the High Court of Karnataka contesting that assessable value cannot include post manufacturing expenses	The claims are kept pending as Deptt had filed an appeal against the High Court's judgement in the Supreme Court	As in Col 7

45	Do	4-7-73	3,21,937·25	1-3-71 to 29-2-72	Do.	Do	Do	
46	Do	4-7-73	98,408·93	1-3-70 to 28-2-71	Do	Do	Do	
47	M/s I T C Ltd . . .	15-2-73	42,60,661·72	17-3-72 to 31-1-73	The refund claimed by the party represented the differences between the duty (Basic Addl) paid by the party on the prices at which the 1st stage wholesale dealer (formerely known as distributors) sold the cigarettes to the 2nd stage wholesale dealers and that leviable on the price at which the cigarettes were sold by the assessee to the 1st stage wholesale dealers	The Appellate Collector, Central Excise Madras in order in appeal dt 12-7-76 modified the order in original passed by the original authority allowing the appeal and directing for grant of refund on such claims within one year of the payment of duty as prescribed under rule 11 of Central Excise Rule Accordingly Rs 51,85,674·16 for the period 17-2-72 to 22-2-73 has been refunded on 28-2-77	Department issued a show cause notice for repayment of refunded amount. The party filed a writ petition in the High Court. The Court ordered that the Deptt can proceed with the matter and no final order should be passed without the leave of this Court
48	Do	16-2-73	6,07,248·27	16-2-72 to 16-3-73				
49	Do	27-2-73	29,72,544·80	1-9-70 to 28-5-71				

1	2	3	4	5	6	7	8
			Bangalore Collectorate—contd.				
50	M/s I. T. C. Ltd. .	27-2-73	36,08,190·00	29-5-71 to 15-2-72			
51	Do	13-3-73	3,37,712·25	1-2-73 to 22-2-73			
			Kanpur Collectorate				
52	M/s. Hind Lamps. . .	18-4-75	1,43,54,686·12	Jan. 70 to 8-4-73	Differential duty on Bulbs/Fluorecent Tubes. The refund arose consequent to the judgement by the Allahabad High Court on the writ petition filed by the party in the wake of Supreme Court judgement in Voltas' case.	Not yet decided.	..
53	M/s. I.T.C. Ltd. . . .	16-7-74	38,59,576·81	17-7-73 to 2-8-74	The party claimed the refund on account of excess duty allegedly paid on certain post manufacturing charges/cost which were included in the assessable value. Writ Pe-	Not yet decided.	Proposal for special leave petition under article 136 of the Constitution is under the consideration of Board.

					tion filed by the party was decided in their favour.			
Madras Collectorate.								
54	M/s. Dunlop India Ltd. .	16-5-73	3,85,781·62	Jan. 70	Post manufacturing expenses.	Not given by Collector. Being ascertained.		
55	Do.	Do.	3,85,311·51	Feb., 70	Do.	Do.		
56	Do.	Do.	4,71,254·31	March. 70	Do.	Do.		
57	Do.	Do.	4,30,838·45	April, 70	Do.	Do.	..	
58	Do.	Do.	2,82,439·76	May 70	D.	1 Do.	..	
59	Do.	Do.	4,39,628·08	June 70	Do.	Do.	..	
60	Do.	Do.	5,16,757·43	July 70	Do.	Do.	..	
61	Do.	Do.	4,22,364·46	Aug., 70	Do.	Do.	..	
62	Do.	Do.	3,70,976·35	Sep. 70	Do.	Do.	..	
63	Do.	Do.	4,74,806·18	Oct., 70	Do.	Do.	..	
64	Do.	Do.	5,01,142·09	Nov., 70	Do.	Do.	..	
65	Do.	Do.	5,90,263·46	Dec., 70	Do.	Do.	..	
66	Do.	8-5-73	4,43,450·71	Jan., 71	Do.	Do.	..	
67	Do.	Do.	4,70,605·70	Feb., 71	Do.	Do.	..	

1	2	3	4	5	6	7	8
68	M/s. Dunlop India Ltd. .	8-5-73	5,32,790·00	March, 71	Post manufacturing expenses.	Not given by Collector. Being ascertained.	..
69	Do.	Do.	5,06,718·88	April 71	Do.	Do.	..
70	Do.	Do.	3,56,075·32	May 71	Do.	Do.	..
71	Do.	Do.	5,59,045·89	June 71	Do.	Do.	..
72	Do.	Do.	5,83,450·30	July, 71	Do.	Do	..
73	Do.	Do.	6,01,645·34	Aug., 71	Do.	Do.	..
74	Do.	Do.	6,67,267·32	Sep., 71	Do	Do.	..
75	Do.	Do.	5,74,783·31	Oct., 71	Do.	Do.	..
76	Do.	Do.	5,90,746·42	Nov., 71	Do.	Do.	..
77	Do.	Do.	7,18,471·73	Dec., 71	Do.	Do.	..
78	Do.	9-5-73	5,36,774·94	Jan., 72	Do.	Do.	..
79	Do.	Do.	5,72,109·04	Feb., 72	Do.	Do.	..
80	Do.	Do.	3,22,846·91	1-3-72 to 16-3-72	Do.	Do.	..
81	Do.	Do.	1,50,609·24	17-3-72 to 31-3-72	Do.	Do.	..
82	Do.	Do.	37,448·97	May, 72	Do.	Do.	..
83	Do.	Do.	6,02,964·46	June 72	Do.	Do.	..
84	Do.	Do.	6,73,959·16	July, 72	Do.	Do.	..

85	Do. . . .	Do.	6,85,525·00	Aug., 72	Do.	Do.	—
86	Do.	Do.	7,58,284·00	Sept., 72	Do.	Do.	—
87	Do. . . .	Do.	5,83,359·66	Oct., 72	Do.	Do.	..
88	Do.	Do.	1,60,867·77	Nov., 72	Do.	Do.	—
89	Do. . .	4-2-74	8,702·72	Jan., 73	Do.	Do.	..
90	Do.	Do.	6,63,704·21	July, 73	Do.	Do.	..
91	Do.	Do.	3,32,546·37	Feb., 73	Do.	Do.	..
92	Do.	Do.	2,42,925·91	March, 73	Do.	Do.	—
93	Do.	Do.	3,06,602·31	April, 73	Do.	Do.	..
94	Do.	Do.	4,32,172·49	May, 73	Do.	Do.	—
95	Do.	Do.	6,08,817·88	Sep., 73	Do.	Do.	—
96	Do.	Do.	6,58,559·45	Aug., 73	Do.	Do.	..
97	Do.	Do.	4,00,669·06	June, 73	Do.	Do.	—
98	Do.	Do.	6,43,847·19	Oct., 73	Do.	Do.	—
99	Do.	Do.	7,10,523·14	April, 74	Do.	Do.	—
100	Do.	Do.	6,55,995·22	May, 74	Do.	Do.	..
101	Do.	Do.	9,68,440·63	June 74	Do.	Do.	—
102	Do.	Do.	11,35,531·79	July 74	Do.	Do.	..

1	2	3	4	5	6	7	8
103	M/s. Dunlop India Ltd. .	4-2-74	12,53,438·78	Aug, 74	Post manufacturing expenses.	Not given by Collector. Being ascertained.	..
104	M/s. India Tyres & Rubber Co. (I) P. Ltd.	16-5-74	10,47,146·60	March 73 to Jan., 74	Do.	Do.	..
105	M/s. Madras Rubber Factory Ltd.	2-3-73	16,40,245·24	1-10-72 to 31-1-73	Do.	Under appeal by the Deptt. with the Supreme Court.	..
106	Do.	5-3-73	43,18,782·49	10-1-71 to 30-9-72	Do.	Do.	..
107	Do.	1-3-73	27,47,592·58	1-10-70 to 30-9-71	Do.	Do.	..
108	Do.	5-3-73	30,18,295·42	1-10-69 to 30-9-70	Do.	Do.	..
109	Do.	1-3-73	26,06,010·00	1-10-68 to 30-9-69	Do.	Do.	..
110	Do.	5-3-73	24,46,149·89	1-10-67 to 30-9-68	Do.	Not given by Collector. Being ascertained.	..

111	Do.	2-3-73	22,44,927·61	1-10-66 to 30-9-67	Do.	Do.	..
112	Do.	1-3-73	27,90,884·16	1-10-65 to 30-9-66	Do.	Do.	..
113	Do.	2-2-74	22,75,212·75	1-10-63 to 30-9-64	Do.	Do.	..
114	Do.	1-3-73	2,95,477·12	1-10-71 to 30-9-72	Do.	Do.	..
115	Do.	Do.	3,42,587·19	1-10-68 to 30-9-69	Do.	Do.	..
116	Do.	Do.	3,06,940·10	1-10-69 to 30-9-70	Do.	Do.	..
117	Do.	Do.	1,86,388·45	1-4-68 to 30-9-68	Do.	Do.	..
118	Do.	Do.	2,41,472·04	1-10-70 to 30-9-71	Do.	Do.	..
119	Do.	Do.	48,898·01	1-10-72 to 31-1-73	Do.	Do.	..
120	Do.	11-6-73	6,16,018·82	1-10-62 to 30-9-63	Do.	Do.	..

1	2	3	4	5	6	7	8
121	M/s. I.O.C. Barauni Oil Refinery	27-1-73	2,03,502·59	1/73 to 9/73	For exclusion of post manufacturing cost and post manufacturing profit.	Rejected by Asstt. Collector.	Appellate Collecto. rejected the appeal
122	Do.	27--6-74	31,617·95	1/73 to 9/73	Do.	Do.	Do.
123	Do.	16-9-74	11,21,399·27	10/73 to 7/74	Do.	Do.	Do.
124	Do.	29-11-73	1,40,249·03	1/73 to 9/73	Do.	Do.	Do.
125	Do.	27-9-74	7,47,553·04	10/73 to 7/74	Do.	Do.	Do.
126	Do.	1-7-75	9,68,269·20	8/74 to 5/75	Do.	Do.	Do.
127	Do.	22-2-74	80,199·68	22-8-73 to 31-8-73	Do.	Do.	Do.
128	Do.	22-11-73	28,96,745·95	1/73 to 9/73	Do.	Do.	Do.
129	Do.	1-7-75	22,62,213·17	8/74 to 5/75	Do.	Do.	Do.
130	Do.	20-9-74	1,06,30,929·66	10/73 to 1/74	Do.	Do.	Do.
131	Do.	1-7-75	19,315·82	9/74 to 5/75	Do.	Do.	Do.

132		Do. . . .	27-11-73	22,269·92	1/73 to 9/73	Do.	Do.	Do.
133		Do. .	26-9-74	16,588·44	10/73 to 2/74	Do.	Do.	Do.
134	M/s. I.T.C. Ltd.	.	17-2-73	18,92,018·41	17-3-72 to 31-1-73	Postmanufacturing expenses and post manufacturing profit.	Do.	The Appellate Collector ordered for denovo adjudication in these cases on ground of natural justice. The party was heard and the claims have been rejected in denovo cases.
135		Do. .	12-3-73	1,85,903·35	1-2-73 to 28-2-73	Do.	Do.	Do.
136		Do. .	8-3-73	16,92,256·42	29-5-71 to 16-2-72	Do.	Do.	Do.
137		Do.	27-2-73	12,64,895·27	1-9-70 to 28-5-71	Do.	Do.	Do.
	Baroda Collectorate							
138	M/s. Atic Industries	.	6-6-75	2,07,34,134·00	22-5-61 to Feb. 75.	The party was selling their dyes to 3 buyers. The prices at which the buyers sold the dyes were taken for the purpose of assessable value. Supreme Court allowed the appeal filed by the party and hence refund allowed.	Refund sanctioned on; 6-10-75 and 20-10-75.	Party has been show caused for Rs. 2,0585,00,45,434 and the matter is under Examination of Board.

1	2	3	4	5	6	7	8
	Bombay Collectorate						
139	M/s. Golden Tobacco Co. .	27-9-72	53,86,474·79	1-3-71 to 31-8-72	Misconstrued the assessable value. Prices charged by the party to their distributor was the assessable value.	Claim rejected by the Asstt. Collector on 25-2-74.	Appeal allowed for period of one year under rule 11 by the Appeallate Collector.* *Accordingly claim was sanctioned for Rs. 32,52,981·87.
140	M/s. Godrey Phillips India Ltd.	1-10-72	12,16,227·50	1-4-72 to 23-9-72	Original assessment was based on prices charged by the distributors to wholesaler and as a result of Volta's case the party filed claimon the basis for prices charged by the manufacturer to distributor.	Sanctioned	The party has gone in appeal for balance amount.
141	Do. .	18-4-72	4,85,976·47	19-4-71 to 6/71		Sanctioned Rs. 4,05,100·40	Do.
142	Do.	21-7-72	10,90,441·70	Aug. 71 to Dec. 71	Do.	Sanctioned Rs. 9,01,887·65	Do.
143	Ms/. Indian Tobacco Co. .	23-2-73	13,20,083·47	25-9-71 to 14-2-72	Assessable value inclusive of marketing and distribution expenses, advertisement freight & interest.	Rejected as time barred under rule 11.	Upheld by High Court. The party has gone in appeal before Division Bench.
144	Do.	26-2-73	10,05,944·99	1-9-70 to 28-5-71	Do.	Do.	Do.

145	Do.	5-2-75	10,16,417·83	17-3-72 to 6-10-72	Do.	Sanctioned	Do.
146	Do.	14-2-75	1,83,685·67	15-2-72 to 16-3-72	Do.	Do.	Do.
147	M/s Crompton Greaves Ltd.	10-7-75	12,11,235·48	July 74 to Dec. 74	The Assessable value was arrived at on the wrong interpretation of statutory provision of Section 4.	Rejected by Asstt Collector.	..
148	Do.	5-10-71	17,07,894·41	Jan. 74 to June 74	Do.	Do.	Rejected in appeal also.
149	M/s Ceat Tyres of India	31-12-74	15,28,195·00	July 74	Exclusion of packing charges in assessable value based on Voltas judgment.	Claim rejected	Party has gone in High Court in appeal.
150	Do.	,,	19,38,802·00	Aug 74	Do.	Do.	Do.
151	Do	3-2-75	17,87,839·00	Sep. 74	Do.	Do.	Do.
152	Do.	,,	15,05,694·00	Oct. 74	Do.	Do.	Do.
153	Do.	17-5-75	17,64,302·00	Nov. 74	Do.	Do.	Do.
154	Do.	26-9-73	6,46,89,102·00	1960 to June 63	Do.	Do.	Do.
155	Do.	5-2-74/ 15-4-74	53,30,896·00	July 73 to Feb. 74	Do.	Do.	Do.

1	2	3	4	5	6	7	8
156	Do.	..	12,27,630·00	March 74 to April. 74	Do.	Do.	Do.
157	Do.	30-8-74	10,80,035·00	May 74	Do.	Do.	Do.
158	Do.	..	11,95,964·00	June 74	Do.	Do.	Do.
159	Do.	24-5-75	16,90,918·00	January 75	Do.	Do.	Do.
160	Do.	15-7-75	13,05,560·00	Feb. 75	Do.	Do.	Do.
161	Do.	15-7-75	17,40,526·00	March 75	Do.	Do.	Do.
		Bombay Collectorate—Contd.					
162	M/s Ceat Tyres of India	27-8-75	15,41,144·00	April 75	Exclusion of packing charges in assessable based on Voltas Judgment.	Claim rejected.	Party has gone in High Court in appeal.
163	Do.	,,	9,28,435·00	May 75	Do.	Do.	Do.
164	Do.	,,	10,29,053·00	June 75	Do.	Do.	Do.
165	Do.	,,	16,27,835·00	Dec 74	Do.	Do.	Do.
166	M/s Fire Stone Tyres	14-2 75	2,40,95,044·28	Dec. 73 to Oct. 74	Do.	Do.	Do.

(1) N. B. Collectors of Central Excise, Guntur, Delhi, Jaipur, Ahmedabad, Poona, Goa, Bhubaneswar, Chandigarh and Indore have furnished 'NIL' Reports.

(2) Reports from the Collectors Allahabad and West Bengal, Calcutta have not yet come and a reminder has been sent.

APPENDIX VI

(*Vide* Para 2.5)

Extract of Supplement of Manual Departmental Instruction 'Footwear' Paras 15 to 26.

Section 'B'—Removal of Samples

15. *General:*—Samples drawn from footwear factories may be broadly classified under the following types:—

1. Samples for test inside the factory;
2. Samples of new brands sent to the firm's agents or experts for test or approval;
3. Trial shoes;
4. Samples sent against tenders by Government buying organisations;
5. Samples for display in industrial exhibitions, fairs etc.;
6. Trade samples for canvassing orders;
7. Departmental samples;
8. Samples shoes in odd pairs.

All footwear, whether they are issued from a factory as samples or as research shoes or for any other purpose, are likely to enter consumption like any others cleared as merchandise unless they are destroyed in test. Once they leave the factory, it is also difficult to track their further use. Duty free issues of footwear as samples should, therefore, generally be confined to issues within the factory for tests.

Some of the samples issued are, however, returned to the factory unused. To provide facilities to the industry to issue such returnable samples, they may be issued without payment of duty in the first instance, provided the manufacturer undertakes to pay duty on them if not returned to the factory within 3 months from the date of issue and the procedure prescribed hereunder is followed. (See para 24).

16. *Samples for test inside the factory:*—Such samples are drawn to determine if the manufacture has gone according to specification and standards prescribed.

A manufacturer may draw such samples under intimation to the Factory Officer, entering particulars thereof in the register of samples maintained in the factory (see paragraph 25). If such samples are destroyed during test, they should be shown in the R.G. I as re-issued for manufacture.

17. *Samples of new brands sent for test or approval*:—The need for such samples arises only when a new pattern of shoe is contemplated. One single or a couple of pairs at most would have been manufactured at that stage. These are sent to the firm's marketing agents or experts stationed outside the factory for test or for ascertaining their views as to its prospects in the market and its appeal to the public taste. Such samples involving a single or a couple of pairs may be passed after due entry in the register of samples provided the manufacturer makes a separate application for permission to issue the sample without payment of duty and undertakes to pay duty therein if not returned to the factory within 3 months.

18. *Trial shoes*:—Some factories issue trial shoes to their employees and school children in their labour colony, the purpose being to conduct service tests as to the wearing qualities of the material used. These shoes are brought to the factory for inspection by the technical experts at specified intervals.

As these shoes enter consumption like any other shoes cleared on payment of duty, and are not returned to the factory unused, they should be cleared on payment of duty.

19. *Samples sent against tenders by Government buying organisations*:—Samples sent to the Military, Police and other Government Departments are said to be supplied free of cost by the Factories and are not always returned since they are destroyed in test. Nevertheless, as the disposal of these samples by Government departments cannot be watched and there is every likelihood of such footwear entering consumption, they cannot be issued duty free. As, however, only one pair will be sent against each tender, such samples also may be issued under entry in the register of samples and on the undertaking to pay duty if not returned to the factory within 3 months.

20. *Samples for display in industrial exhibitions, fairs etc.*:—These are usually not sold but are returned after the exhibitions are over. One pair of footwear under each brand may, therefore, be permitted under the same terms as samples falling under Paras 17 & 19.

21-A. *Trade Samples for canvassing orders*:—Trade samples are sent by factories to their marketing agents for canvassing orders on particular brands already manufactured. Such samples may not be

limited to a single pair but may consist of many pairs according to the number of agents or depots the firm has. Such samples may not also return to the factory and should be cleared on payment of duty.

21-B. *Samples intended for export*:—Such samples may be allowed to be cleared without payment of duty provided that—

(a) the quantity of such samples cleared does not exceed three pairs or three odd pieces of each variety at a time; and

(b) such samples are punched in the sole so that the sole and, thus, the footwear is really rendered unsuitable for actual use as such yet it is not rendered valueless for purposes of use as samples.

"(c) There should be a prior application in writing by way of intimation to the Central Excise Officer-in-charge and the manufacturer should be asked to produce evidence within a reasonable time-limit that such samples have actually been exported out of the country."

22. *Departmental samples*:—The need for drawing samples by Central Excise Officers may arise when the inspection of a shoe is necessary for price fixation or for disposing of an appeal on price fixation. Such samples may, on the authority of the orders issued by the Superintendent or Assistant Collector, be drawn by the factory Officer with the consent of the manufacturer, the latter making necessary entries thereof in his register of samples at the time of issue of samples from the factory. Duty is not to be levied on such samples, but they should be returned to the factory within 3 months of issue.

23. *Sample shoes in odd pieces*:—Certain factories, manufacture a single shoe instead of a pair for purposes of test, examination or approval by their experts. Occasionally it may be that such tests are carried out by these experts stationed outside the factory. As these shoes have no commercial value, they may be cleared free of duty provided they are punched in the sole and manufacture of such shoes is confined to one type of such shoe only *i.e.* the left foot or the right foot. These single pieces of footwear manufactured and issued as samples need not figure in the R.G. 1. They should be accounted for separately.

24. *Procedure for issue and re-entery of samples*:—A manufacturer who intends to clear samples without payment of duty for any of the purpose enumerated in Paras 17, 19 & 20 must apply in writing to

the factory Officer in the following form at least not less than 2 hours before the intended removal of the samples:—

S. No.

Date

To

The Factory Officer

.....Factory.

Sir,

Please permit the removal of the undermentioned pairs of footwear as samples without payment of duty.

1. Brand and size.
2. No. of pairs under each with identification marks and numbers.
3. Value for purposes of assessment.
4. Excise duty leviable.
5. Date and time of removal.
6. Purpose for which removed.

I/We undertake to pay the excise duty on the above in the event of the goods not being brought back to the factory within 3 months of date of removal.

Signature

Manufacture or authorized Agent.

25. *Register of samples*:—A manufacturer who intends to issue samples of footwear without payment of duty must maintain a register in the form shown in Appendix J. Each time for permission to issue samples out of the factory he should complete columns 1 to 7 of the register and forward it alongwith the relevant gate passes to the factory officers, who should sign column 8 of the register when permitting removal. The rest of the columns in the register should be filled up when the samples are returned or when duty is levied on samples not returned to the factory.

26. *Levy of duty on samples not returned*:—On the 1st and 15th of each month the Factory Officer should scrutinize the entries in the above register and issue a demand for duty on all samples not brought back to the factory within three months of the date of removal.

APPENDIX VII

(*Vide* Para 2.5)

Copy of letter F. No. 36|2|70-CX-8 dated 7-4-1971 from the Central Board of Excise and Customs, New Delhi.

To

All Collectors of Central Excise,

(including Cochin/Goa)

The Deputy Collector of Central Excise,

Amritsar/Jaipur/Trichy.

SUBJECT:—*Footwear-Removal of non-duty paid samples of footwear for test, approval or display-Procedure under the Self Removal Procedure.*

Sir,

I am directed to refer to paras 17, 19 & 20 of the Supplement to the Manual of Departmental Instructions on Excisable Manufactured Products—Footwear, dealing with the procedure for removal of samples of footwear for purposes of test, approval or display without payment of duty and the duty being paid thereon if these are not returned to the factory within the specified period. The matter has been reviewed in the context of Self Removal Procedure and it has been decided that samples of footwear for the said purposes may be continued to be removed under the existing instructions in the Footwear Supplement with the following changes:—

(a) Instead of obtaining prior permission of the Central Excise Officer for the removal of samples, the manufacturer should send in intimation to the Range Officer regarding his intention to remove samples of footwear at least 48 hours in advance of the actual removal. The letter prescribed in para 24 of the Supplement may be suitably worded.

(b) The samples are to be removed without any counter signature of Central Excise Officer of the gate pass in Form

G.P. 2. The gate-pass should be prepared in triplicate as provided in rule 52A(2) of the Central Excise Rules, 1944 from a separate book set apart for this purpose marked prominentely "Non-duty-paid, for test/approval/display" on each foil. The description of the footwear in the gate-pass should invariably include the name of the brand and the size number. Originally copy of the gate pass should accompany the foot-wear, the duplicate should be sent to the range Officer on the same day by hand or under certificate of posting and the triplicate kept in record. On return of the footwear, the original copy of the gate pass should be filed alongwith the triplicate copy noting thereon the date of return.

(c) The register for samples mentioned in para 25 of the Supplement, will, needless to say, not require to be signed by a Central Excise Officer and Column 8 thereof may therefore be omitted and other Columns renumbered.

Suitable detailed instructions in the matter may please be issued to the lower formation.

[This disposes of letter No. VI(a) (21)215-Tech./68/45167, dated the 1st November, 1968].

[For CCE, Kanpur only]

Yours faithfully,
Sd/-
(K. L. MUKHERJI)

Copy of the above forwarded to:—

1. Dte. of Inspection (Cus. & Central Excise), New Delhi with reference to their U.O. F. No. 772/2/68, dt. 5-2-71.

APPENDIX VIII

(*Vide* Para 2.13)

Copy of letter F. No. 261|36|3|77-CX-8 dated 30-11-1977 from the Central Board of Excise and Customs, New Delhi.

To

All Collectors of Central Excise.

SUBJECT:—*Instructions regarding drawal of samples for test purposes in respect of Footwear.*

Sir,

I am directed to say that detailed instructions relating to removal of samples of footwear from the factories are contained in Section 'B', paras 15 to 26 of the Supplement to the Manual of Departmental Instructions on Excisable manufacture Products (Footwear). In respect of the Bata Shoe Company the procedure for drawal of samples of footwear is contained in Section V para 12 of the Bata (Footwear) Supplement to the Manual of Departmental Instructions on Excisable Manufactured Products. However, subsequently the Government have issued notification No. 171|70-C.E. dated 21-11-1970 which provides for drawal of samples of footwear for export purposes, and notification No. 3|77-C.E. dated 2-1-77 providing for samples of footwear for test purposes within the factory premises without payment of duty. With the issue of the above two notifications the instructions contained in the two Supplements referred to above have became otiose to the extent of the provisions made in the said two notifications. It is, therefore, desired that the clearance of the samples of footwear for export purposes and for test within the factory may be governed by the relevant notifications instead of the instructions referred to above.

Yours faithfully,

Sd|-

(S. K. BHARADWAJ)

Under Secretary.

Copy forwarded to:—

(As per list)

APPENDIX IX

(*Vide* Para 2.13)

Copy of letter F. No. 261|36|3|77-CX-8 Dated 8-12-1977 from the Central Board of Excise and Customs, New Delhi.

To

All Collectors of Central Excise.

Sir,

SUBJECT:—*Instructions regarding drawal of samples for test purposes in respect of footwear.*

I am directed to invite a reference to Board's letter of even number dated the 30th November, 1977 on the above subject and to say that with the issue of notification No. 336/77-CE dated 3-12-1977, instructions regarding drawal of samples of footwear for soliciting business within the country contained in Supplement to the Mannual of Departmental Instructions on Excisable Manufactured Products (Footwear) and the Bata (Footwear) Supplement have become otiose. It is, therefore, desired that clearances of samples of footwear for soliciting business within the country may henceforth, be governed in terms of notification No. 336/77-CE dated 3-12-1977.

Please acknowledge receipt of this letter along with the letter referred to above.

Yours faithfully,
Sd/-
(S. K. BHARADWAJ)
Under Secretary.

Copy forwarded to:—

Directorate of Inspection (C. & C.E.) is requested to carry out necessary amendments to the Mannual.

Directorate of Revenue Intelligence, New Delhi.

Directorate of Statistics & Intelligence, New Delhi.

Directorate of Training (Customs and Central Excise), New Delhi.

The Chief Chemist, C.R.C.L., New Delhi.

APPENDIX X

(Vide Para 3.9)

CHESEBROUGH-PONDS INC.

PRN/KG/1527

April 19, 1973.

The Superintendent of Central Excise,
Guindy Mixed Range,
Madras-32.

Dear Sir,

Approval of Price List and Classification of Pond's Dreamflower Talc--Mini Pack

Enclosed please find in quadruplicate, price List and Classification List of Pond's Dreamflower Talc—Mini Pack, falling under Tariff item 14 (f) in cosmetics for approval.

The pack is not for sale and will be distributed FREE to selected potential consumers as samples for increasing the brand awareness.

The Mini Pack will be invoiced to all dealers at Rs. 6.00 per dozen and a trade discount of 30 per cent will be allowed on the invoice. The total quantity to be released initially will be 10,000 Dozens.

The price list furnished will remain in force, until further revision. We undertake not to make any change in the price without prior intimation and approval by you.

We shall thank you to approve the Price list and Classification at an early date, enabling us to launch the compaign shortly.

Very truely yours,

CHESEBROUGH—POND'S INC.,
INDIAN BRANCH

Sd/-

K. VISVANATHAN
PLANT MANAGER.

Submitted to the Assistant Collector of Central Excise, Madras II Division. Madras-34 for favour of approval.

Sd/-

M. RAMACHANDRAN
Superintendent of Central Excise,
Guindy Mixed Range,
.. .. *Madras-32.*

PRICE LIST

1 Name of the manufacturer : Chesebrough Ponds Ltd. Chrompet, Madras-44

Price list No. 2/73 Guindy Range Madras I.D.O.

Full Address : G.S.T. Road, L. 4, No. (Cosmetics 2/67)
Commodity : Cosmetics

Period of the Price list :

Sl. No.	Name of the Commodity (variety and type to be given)	Ex-factory Price Inclusive of excise duty per dozen	Price Exclusive of excise duty per dozen	Sole selling Agents wholesale price Inclusive of excise duty per dozen	Sole selling Agents wholesale price Exclusive of excise duty per doz	Trade discount on ex-factory price per dozen	Allowed on sole selling agent's wholesale price per doz.	Assessable value per doz.	Remarks BED + Total BE ED@ 30% ad. val.
1		2(a)	2(b)	3(a)	3(b)	4(a)	4(b)	5	6 7
Tariff 14(f)(i) COS									
	PONDS DREAMFLOWER TAIK Mini Pack (1 doz. in an outer) 30 gms .	6·00	5·00	..	..	30%	1·80	..	3·23 0·97

I/We declare the above particulars to be true and correctly stated

I/We enclosed the prices are inclusive of packing charges/insurance charges/freight charges.

Verified Sd/- Inspector of Central Excise, Guindy Mixed Range, Guindy, PO Madras-32
Station : Madras-600044
Date : 19-4-73
PL 2/73

Sd/- Superintendent of Central Excise, Guindy Mixed Range, Guindy PO Madras-32

For Chesebrough Ponds Ltd,
Sd/- K. VISWANATHAN
Plant Manager
Signature of the Manufacturer.

ENDORSEMENT BY CENTRAL EXCISE OFFICER

I approve the assessable value as mentioned in this list (subject to such modification therein by me) in respect of Cosmetics and Toilet Preparation manufactured by Messrs Chesebrough Pond's Inc. Ltd. GST Road, Chrompet, Madras-600044, at their factory situated in Chromopet Madras, 600044. This approval is effective from Inc. 3-5-1973.

C. No. V/14E/17-7-73
To the assessee
Copy to the Supdt. of C. Ex. Guindy MOR
Copy to the A. C. (Audit) Madras-34.

Sd/- Asstt. Collector of C. Ex. Madras II Dn.
Madras-34.

Received price list Sd/- M. CHANDRAN
of M/s. Chesebrough Ponds.

Range : MOR Guindy | *ANNEXURE—I* | Original | C. L. 1/79

District : Madras II | FORM I | Duplicate

Collectorate : Madras | Triplicate
Quadruplicate

Classification List of excisable goods produced, manufactured or warehoused and other goods produced or manufactured and intended by the Assessee

1 Name and address of the assessee : . . . . . Chesebrough Pond's Inc.

2 Location of the Factory/warehouse : . . . . . G.S.T. Road, Chrommepet, Madras-44

3 Central Excise licence No. . . . . I4.2/67 Cosmetics

4 Particulars of all excisable goods produced, manufactured or warehoused

Serial No.	Full Description of goods	Item No. and sub item, if any, of the first schedule to the Central Excise and Salt Act, 1944 under which the goods fall	Tariff value in respect of goods assessed on advalorem basis		Rate of duty leviable (give details of basic and other duties separately	No and date of the relevant notification if any, issued under rule 8 having a bearing in the rate of duty	Remarks
			Tariff value fixed	No & date of the nofn.(s) under which tariff value is fixed			
1	2	3	4(a)	4(b)	5	6	7
			..	..			

5. Particulars of other goods produced or manufactured and intended to be recovered by the assessee.

S. No.	Full description of the goods	Remarks
1	2	3
	PONDS ODORONO STICK (DEODORANT)	Medicinal and toilet preparations containing 65·10% alcohol

Verified :
Inspector or C. E. Guindy MOR

Sd/- x x x x x
Supdt. of C.E.
Guindy Mixed Range Guindy,
Madras-32

Place :
Signature and Stamp of the C.E. Officer Incharge

Place : Madras-600034
Date : 19-3-1973

for CHESEBROUGH POND'S Inc.

Sd/- P. R. PARAMESWARAN,

Signature of the Assessee or Authorised Agent

CL 1/73

MEMORANDUM BY THE ASSTT. COLLECTOR OF C.E.

Strike out the portions which are not applicable,

(i) ..

(ii) ..

(iii) All goods described against S. No. 8 of item 5 is non-excisable.

Place : Madras-34

Date : 4·73

Sd/- x x x x x x

Signature and Stamp of Asstt. Collector of Central Excise, Madras II Division Madras-34.

To
The Assessee
Copy to the Supdt. of C.E. Guindy MOR
Copy to the Asstt. Collector (Valuation)-Madras-34.

APPENDIX XI

(*Vide Para* 3.9)

CHESEBROUGH POND'S INC.

Ref: P&N|Ven|2891

April 4, 1974.

The Superintendent of Central Excise,
Guindy, Madras.

Dear Sir,

Approval of price of tariff (f) (*i*) *commodity.*

Enclosed please find in quintuplicate, price list of commodity under tariff (f) (i) cosmetics containing full information regarding the wholesale cash price which this commodity is sold, together with trade discount allowed thereon, for approval. The price list furnished will remain in force until further revision. We undertake not to make any invoices till the price approval is received from you. We also undertake not to make any changes in the prices without prior intimation and approval by you.

Very truely yours,

Chesebrough Pond's Inc.
Indian Branch

Sd|- K. Visvanathan
Plant Manager.

ANNEXURE I

PRICE LIST

Name of the Manufacturer :. . . . . CHESEBROUGH POND'S LTD. Price List No 10/74

Full Address . . . G S T Road, CHROMEPET, MADRAS-600044 Guindy Range

L. 4 No. (Cosmetics 2/67

Commodity . . . . . Cosmetics

Period of the price list

Serial No.	Name of the Commodity (Variety & type to be given)	Ex-factory price		Sole selling Agent's wholesale price		Trade Discount allowed		Assessable value per doz.	REMARKS BED @ 30% on A.V.	ABD@ 50% on BED	Total incidence of duty
		Inclusive of excise duty per doz.	Exclusive of excise duty per doz.	Inclusive of excise duty per doz.	Exclusive of excise duty per doz.	On Ex-factory duty per doz.	On sale selling Agents' wholesale price per doz.				
		Rs. P	Rs. P	Rs. P	Rs. P	Rs. P	Rs. P	Rs. P	Rs. P	Rs. P	Rs. P
1		2(a)	2(b)	3(a)	3(b)	4(a)	4(b)	5	6	7	8
	Tariff 14(F) (i) COS										
	Pond's Dreamflower TALC—Mini Pack (2 doz in an outer) 30 gms	6·00	4·23	..	..	(5%) 0·20	..	3·93	1·18	0·59	1·77

Continued Price List No. 10/74 *ANNEXURE* I—*contd.*

I/We declare the above particulars to be true and correctly stated.

I/We declared the prices are/inclusive of packing charges/insurance charges/freight charges.

For CHESEBROUGH POND'S INC.

Madras, 4-4-1974	Sd/- Inspector of Central Excise 9-4-74	Sd/- Superintendent of Central Excise Guindy Mixed Range 9-4-1974	Sd/- (K. VISVANATHAN) Plant Manager

INDORSEMENT BY CENTRAL EXCISE OFFICER

I approve the assessable value as mentioned in this list (subject to such modification made therein by me in respect of Cosmetics & Toilet preparations manufactured by Messrs Chesebrough Pond's Inc., G S T Road, Chromepet, Madras 600044, at their factory situated at Chromepet, Madras 600044 Thus approval is effective from 10-4-1974.

MADRAS 600044

DATED : 10-4-1974

Sd/- 10-4-74
Assistant Collector of Central Excise,
Madras II Division, Madras-44

APPENDIX XII

(*Vide* Para 3.17)

Departmental instructions in regard to the break-up of the cash of various products

73. Central Excise—Determination of assessable value under Section 4 in respect of articles chargeable to duty *ad-valorem*—regarding.

Attention is invited to section 4 of the Central Excise and Salt Act, 1944 which provides for determination of value of excisable articles which are chargeable to duty *ad valorem* and for which no tariff value has been fixed by the Central Government. Section 4 consists of two separate sub-sections (a) and (b). In addition, there is an Explanation at the end of the section which is common to both the sub-sections. For the sake of convenience, the principles of valuation under section 4 are explained in four parts as follows:—

PART I—MEANING OF CERTAIN WORDS USED IN SECTION

2(i) "Wholesale." The price of an article can be said to be "wholesale" when the article is sold in wholesale lots and not in retail quantities. Central Excise Officers should be guided by trade practice and sales recognised in the trade as wholesale should ordinarily be treated as wholesale for purposes of valuation under section 4(a).

(ii) "Cash price." The price can be said to be cash price when the buyer is required to pay for the goods on delivery. However, ascertainment of a wholesale cash price from a wholesale credit price of the same goods by allowing for the normal rate of discount for the period of credit would be in order under section 4(a).

(iii) "Of the likekind and quality." This phrase means exactly similar goods or identical goods. Thus, the same class of goods manufactured by two different manufacturers are not goods of the likekind and quality. Where wholesale cash price is not ascertainable for any class or quality of an article, it is not permissible to deduce a wholesale cash price for it from transactions in other classes or qualities of the article.

(iv) "Is capable of being sold." This clause will cover those cases where either there is no sale or because of the nature of the

transaction the sale price is not acceptable for purposes of assessment. For example—

(a) cases where owing to special relationship between seller and buyer transactions between them do not take place in genuine "open market" conditions or in the ordinary course of business and cannot, therefore, be accepted for purposes of assessment to duty;

(b) cases where there is no sale of the goods and the goods are entirely consumed by the manufacturer himself in the manufacture of other goods;

(c) cases under section 4(a) where, although a substantial and reasonably continuous market for the goods is established, there are on the date of clearance fro mthe factory no similar goods in the market so that the wholesale cash price has to be determined by reference not to actual sales on that date but to the price which buyers would be willing to offer and sellers accept for the goods.

(v) "Market." Market for purposes of valuation under section 4(a) means an "open" market in which dealings are conducted in the ordinary course of business and at known and generally recognised rate and it is open for any independent wholesale buyer to purchase the goods at such rates. If a manufacturer sells his goods from his factory to an independent wholesale buyer, the market can be said to exit at the factory gate. If, on the contrary, he consigns his goods to his own storage depot or sells them to a sole selling agent and such depot or sole selling agent at the place nearest to the factory sells the goods to independent wholesale buyers, the market can be said to exist at such nearest place provided the sales are substantial and reasonably continuous ones. Sporadic sales to independent wholesale buyers do not constitute a market.

PART II—VALUE UNDER SECTION 4(a)

3. The essential elements of value under section 4(a) for the purpose of assessment are—

(i) it must be a wholesale price;

(ii) it must be a cash price [deduction of cash price from a credit price being permissible as already explained in para 2(ii) above];

(iii) it must be the price ruling in the market at the place of manufacture or if a wholesale market does not exist for

a factory's product at the place of manufacture, the price ruling at a place nearest to the factory where such market exists;

(iv) it must be the price ruling on the date of actual removal of the goods from the factory or other premises of manufacture or production.

4. The wholesale cash price acceptable for assessment represent transactions conducted in the ordinary course of business at known and generally recognised rates at or near the place of manufacture in a contemporary open market condition; that is to say, the price must be one at which any independent buyer of a normal wholesale lot can procure it for cash on delivery and must not be dependent on any special relationship between the seller and the buyer of such a nature as to vitiate the representative character of the transaction. Thus the price charged by the manufacturer from an associate firm, a sole selling agent/distributor or favoured dealers by itself is not acceptable under section 4(a).

5. In the case of proprietary articles which are sold at listed wholesale prices and are available to any independent wholesale buyer at such listed prices, assessment can be made under section 4(a) on the basis of such listed prices.

6. The words "independent wholesale purchaser" should be interpreted liberally. It is quite common for manufacturers or their agents/distributors to sell proprietary articles to authorised dealers only who are bound with them with some sort of trade agreement regarding purchase, stocking, display, sale and after sale service of the articles. So long as it is open to any independent wholesale buyer to become an authorised dealer upon fulfilment of conditions uniformly applicable to all authorised dealers and to purchase the goods at prices available to all authorised dealers, the transaction shoud be treated as a transaction in the ordinary course of business and the non-discriminatory price available to all authorised dealers should be accepted as the basis for assessment. However, where the authorised dealership is not open to any independent wholesale dealer but is restricted to a limited number, as for example in a case where a specified area is assigned to each dealer and no other authorised dealer would be appointed in that area, the transactions are not an acceptable basis under section 4(a) as an "open" market for the goods does not exist. It would depend upon facts and circumstances of each case and terms and conditions of the agreement

entered into between the manufacturer and the dealers whether the dealers are independent buyers or favoured buyers. For deciding this point the agreement should be read as a whole. The number of dealers to whom the manufacturer accords equal treatment is also a material factor. If the number is very large, it would point to independent character of the dealers. If on a perusal of a particular agreement or arrangement it can be said that they are favoured buyers, the price at which the manufacturer sells to such dealers should be discarded and the price at which such dealers would sell in wholesale market should be taken into consideration.

7. If there is a market in existence for a manufacturer's products and it is possible to ascertain their wholesale cash price, all of his products of the like kind and quality should be assessed on the basis of such price, regardless of the fact that a portion of the said products is sold direct to consumers or is sold at reduced rates to a chosen few or is sold at rate contract prices or is consumed by the manufacturer himself in the manufacture of other goods. A manufacturer may try to create shadow 'market' for his goods by dispesing of a small percentage of his output at lower prices to a few independent wholesale buyers at or near the place of manufacture. Officers should guard against such use. Unless a substantial portion of the manufacturer's output is sold at such lower price under open market conditions. such lower price should not be accepted for purposes of assessment.

PART III—VALUE UNDER SECTION 4(b)

8. Resort to section 4(b) can be had only if wholesale cash price under section 4(a) is not ascertainable. The essential test for a value acceptable under section 4(b) is that it should be a genuine price charged under ordinary course of business. Some of the cases which would involve valuation under section 4(b) are discussed below:—

(i) *Sale to a sole selling agent/distributor.* Where the manufacturer sells his entire output to a sole selling agent/distributor, such agent/distributor is clearly a favoured buyer and prices charged from him and discounts given to him are not admissible. Assessment should in such a case be made on the basis of the price at which such agent/distributor sells the product to others who are not favoured buyers provided a wholesale cash price under section 4(a) is not ascertainable.

(ii) *Sale to a number of distributors or dealers each of whom is sole selling agent for a specified area.*—This pattern of sale is quite common in the case of many proprietary articles, particularly machinery articles. There are good and legitimate trade reasons why a manufacturer would not sell such articles to any number of independent wholesale purchasers. He is interested in proper show-room facilities, after-sale service and customer goodwill for his products. In return for these facilities, he assigns exclusive rights of sale of his products in a particular area to a particular dealer. The agreement entered into by the regional or zonal distributor or the dealer with the manufacturer should be examined. If on reading the agreement as a whole, it can be concluded that they are not favoured buyers but are independent parties having no special relationship with the manufacturer, prices uniformly charged from and discounts uniformly given to them should be accepted provided a wholesale cash price under section 4(a) is not ascertainable. Extra caution should, however, be exercised by Central Excise Officers in admitting such prices and discounts and the possibility of the manufacturer appointing a few associate firms or creating shadow concerns as a ruse to undervalue the goods should be carefully investigated. It should also be investigated whether the dealers/distributors are performing some of the functions (like adverting, warranty etc. in respect of the goods) which appropriately belong to the manufacturer. Any discounts or reduction in price in consideration of the distributors performing such functions are not admissible. If there is a large number of regional distributors or dealers and all of them are charged a uniform price, the possibility of the price being a *bona fide* one is greater.

(iii) *Sales at rate contract prices.*—Individual rate contract prices may be accepted for the purposes of assessment subject to the following conditions:—

(a) No wholesale market exists for the article for ascertaining the value under section 4(a).

(b) Rate contract prices are based on trade considerations alone and do not involve any special relationship between the buyer and the seller.

(c) The contract documents are produced for inspection.

(d) The contracts on critical examination are found to be genuine.

(iv) *Sales are mostly direct to consumers.*—Price charged from and discount granted to all consumers uniformly by the manufacturer are acceptable provided no wholesale market is in existence for the goods.

(v) No sale.—Goods are entirely consumed by the manufacturer himself in the manufacture of other goods.

(a) When there is no sale of an article, it is necessary to find out the price at which articles of the like kind and quality are capable of being sold. In such cases, assessable value should be arrived at on the basis of cost accounting. After determining the total cost incurred by the manufacturer in manufacturing that article—which will include cost of raw-materials, components manufacturing expenses and overheads—a suitable addition for margin of profit should also be made. A reasonable margin of profit is the addition which the manufacturer would have ordinarily made to his cost of production had he chosen to sell the article to others.

(b) As Central Excise Officers do not, by and large, know cost accounting techniques the manufacturer should be asked in writing to furnish the information regarding his cost of production, with break-up details under various heads like the cost of raw material, manufacturing expenses, overheads, etc. duty certified by a Chartered Accountant or Cost Accountant. The manufacturer should also be called upon to declare the average profit (as a percentage of his cost of production) which he is at that time adding to fix the sale price of his finished products (made out of the excisable raw material or components in question) which he offers for sale. If the manufacturer does not cooperate by furnishing the requisite information on a written request being made to him, resort should be had to section 14 of the Central Excises and Salt Act, 1944. In the case of small scale units, certification by a Chartered Accountant need not be insisted upon. For purposes of checking, the margin of profit declared by the manufacturer should be compared with the gross profit disclosed in his latest balance-sheet, where available, and the total price (including profit) declared by him should

be compared with the price of articles of comparable quality sold by other manufacturers. If found reasonable, the declared price should be approved by the Superintendent. The price so approved should hold good for that calendar year unless major fluctuations in the price of raw materials or in the profit margin of the manufacturer warrant a fresh determination of price during the same calendar year.

(c) Another method to determine the assessable value of an article which is not sold could be to deduce its value from the price of the finished product in the manufacture of which the said article has been used, after making due allowance for the cost of other materials added and the manufacturing expenses incurred between the manufacture of the said article and the finished product. This method would, however be suitable only in these cases where further processes after the manufacture of the said article as well as the number of other materials etc. added are not very significant from the cost point of view.

PART IV—ABATMENT OR DEDUCTION FROM PRICE

9. In determining the price of any article under section 4, no abatment or deduction should be allowed except in respect of trade discount and the duty assessable. Under section 4(a), the admissible trade discounts are those which are allowed uniformity to all independent wholesale dealers under open market conditions. Under section 4(b), the admissible trade discounts are those which are actually and uniformly allowed to all buyers satisfying the same conditions. Subject to these general principles, the following types of discounts are admissible for deduction:—

(i) Quantity discounts. Actual quantity discounts, that is to say, discounts granted in the ordinary course of business, which are based on the quantity of goods supplied, should be allowed, provided that such discounts—

(a) are uniformly admissible to all independent buyers of the same quantity, and

(b) are proved to have been granted outright at the time of removal of the goods from the factory.

It should be carefully noted that only the actual quantity discount appropriate to the size of the lot sold is admissible under section 4(a) as well as 4(b). However, where the higher discount is

based on the sise of the lot purchased, it may be pointed out that the law does not preclude grant of such discounts for the entire clearance of the goods in one or more lots, or spread over a period of time, whatever the size of the individual consignments cleared, provided that such a discount is not exceptional and it is allowed to all dealers in the normal course of business and such a discount is or would be open to all purchasers in similar situations.

However, if order is placed for a bigger lot but due to any reason it is not fully supplied, quantity discount appropriate to the quantity actually supplied should be allowed and not the discount appropriate to the quantity for which the order was placed.

(ii) Cash discounts. Cash discounts, i.e., discounts for prompt payment of price of goods on delivery are admissible in arriving at the assessable value, if they are available to all buyers.

10. The following types of discounts are not admissible:—

(i) Discounts allowed under a particular contract. Any discount which has been allowed only under a particular contract, and is not generally available to all independent buyers is not admissible.

Example.—A discount allowed to a buyer in consideration of an arrangement by which he takes the whole output of a factory is inadmissible.

(ii) Conditional discounts.—Any discount which is, in any sense conditional at the time of delivery of the goods from the factory, that is to say, any discount which can be earned only in consideration of the fulfilment of certain conditions either before or after such delivery is not admissible.

Example.—A discount is inadmissible if it is allowed in consideration of the payment of the sale price being made in advance of the actual delivery from the factory.

(iii) Discount in kind.—If any discounts are given in kind, full duty should be charged on the extra quantity allowed as discount.

(iv) Sample discount.—A sample discount, that is to say, a special discount given for a sample supply of goods if the

samples are of the saleable kind or quality ordinarily offered for sale is not admissible.

(v) Advertising discount.—Discount of the nature of remuneration for pushing or advertising a particular line of goods is not admissible.

11. Other deductions:—

(i) Local taxes.—All local taxes such as sales-tax, octroi etc. should be excluded in determining the value for assessment.

(ii) Cost of distribution. No deduction from price on account of cost of distribution can be allowed on the ground that such prices are loaded with the average cost of distribution of the goods up-country from the place of removal.

(iii) Freight charges. No abatment on account of expenses incurred by the manufacturer on freight charges should be allowed.

(iv) Packing charges.—Attention is invited to Ministry of Law's advice forwarded to all Collectors under Board's letter F. No. 2/11/67-CXI dated the 29th April, 1967. As advised therein, packing cannot be regarded as part of the process of manufacture if the article is such as could have been delivered to the customers without packing. Consequently, packing charges cannot be included in the assessable value of such an article. It can be said that an article could be delivered without packing if there are substantial actual sales of the article without packing. If packing is required before the article could be delivered to the customers, then packing is a process incidental to the completion of the manufactured article and the cost for such packing should be included in the assessable value. No distinction should be made between ordinary and special packing in such cases. Cost of the actual packing in which the article is delivered from the factory should be included in the assessable value.

NOTE.—The forgoing list of admissible and inadmissible discounts and deductions given in paras. 9 to 11 is not intended to be exhaustive.

12. Whether discount should be calculated on *cum*-duty price or ex-duty price.—Under section 4, trade discount is what is actually

given to the buyer. Calculation of discount, that is, whether it should be a percentage of *cum*-duty price or ex-duty price, should depend upon the practice which the seller actually adopts in giving the discount to the buyer. The important point is that the quantum of trade discount, in absolute terms, should not, if otherwise admissible be more or less than the quantum which is actually allowed to the buyer.

13. Instructions laid down in Government of India's General Order (Central Excise) No. 4 of 1955 and Board's letter F. No. 9|31|56-CXMII dated the 14th November, 1957 and all other orders regarding valuation under section 4 issued so far are hereby cancelled.

14. These orders should be given effect to immediately. Past assessments which have already been closed should not be reopened. Assessment practices in individual cases which are contrary to these instructions but which have arisen because of orders-in-appeal or orders-in-revision, under section 35 or 36 of the Central Excise and Salt Act, 1944 should, however, continue as there is no power of review under the Central Excise Law at present. There may also be individual cases in which valuation is being done at present in accordance with a court judgment. If the Collector feels that the existing practice in such cases is not in accordance with these instructions he should make a detailed report to the Board and await Board's orders before changing the existing practice.

[M.F. (D.R.&I) F. No. 36/45/68-CX.I, dated 14-11-1968)
(Circular letter Misc. No. 68/68-CX.I.)]

APPENDIX XIII

(*Vide* Para 3.18)

Copy of the letter dated 23-11-73 from Chesebrough Ponds' indicating the break up of post manufacturing expenses.

Chesebrough Pond's Inc.

Ref: PRN|VSN|2198

November 23, 1973.

To

The Superintendent of Central Excise
Guindy Mixed Range,
Guindy,
Madras-600032.

Dear Sir,

Central Excise—Cosmetics and Toilet preparation—Price list—approval of—Regarding

We have for acknowledgment your letter No. 5885/73 dated 31st October, 1973, and furnish below the details called for—

(1) A revised price list, showing the price, exclusive of excise duty in Col. 2(b) is sent herewith.

(2) The post manufacturing expenses inculde items like, Distribution, selling, Media, Merchandising etc. as shown separately in a statement.

(3) Our products are sold on F.O.R. destination basis. We have warehouses all over India and distribution of our products is done to dealers on an uniform trade discount of 5 per cent.

We are enclosing a statement showing the break up of post manufacturing expenses, duly certified by our Auditors.

We trust that the above information will meet with your requirements and look forward to the early refund order of our claims.

Thanking you,

Very truly yours,
Chesebrough Pond's Inc.
Indian Branch.
Sd/- K. Visvanathan,
Plant Manager.

Encl:

CHESEBROUGH POND'S INC. (INDIAN BRANCH)

Break up of post-manufacturing Expenses for the year 1972

POST MANUFACTURING EXPENSES

1. Distribution	7·15%	on Gross sale value	
2. Selling	6·09%	,,	,,
3. Media	4·22%	,,	,,
4. Merchandising	4·51%	,,	,,
5. Marketing Control & Supervision	5·07%	,,	,,
Total	27·04%		
6. Selling profits	—3·3%	,,	,,
7. Post manufacturing expenses plus selling profits	30·34%	,,	,,

Place : Madras
dated November 17, 1973.

For Chesebrough Pond's Inc.
Indian Branch

Sd/- General Manager.

We have verifitd the above statement with books and records produced to us and have found the same to be correct.

Sd/- S. R. BATLIBOI & CO.
CHARTERED ACCOUNTANTS

36, Ganesh Chandra Avenue
Calcutta-700013.
dt. November, 17, 1973.

APPENDIX XIV

(*Vide* Para 3.39)

Name of manufacturer:

Chesebrough Pond's Inc.
Indian Branch, Madras-44.

***Actual** cost sheet of Dream Flower Talc (Mini Pack) Unit: Dozen*

1. Ingredients cost per dozen	Rs. 0.74
2. Metal Containers	Rs. 3.41
3. Caps	Rs. 0.27
4. Tops	Rs. 1.91
5. Outers	Rs. 0.28
6. Breakage and wastage	Rs. 0.07
7. Labour	Rs. 0.13
	Rs. 6.81

(Rs. Six and Paise eighty one only)

Sd/- For Sankaranth & Co.
M. Sankaran
Partner

N. No. 12573

M. Sankaran. B.Com.C.II
Chartered Accountant
No. 4, Tilk Street Extn.
T. Nagar, Madras-47.

Sd/-
General Manager
for Chesebrough Ponds Inc.

APPENDIX XV

Sl. No.	Para No.	Ministry/ Department	Conclusions/Recommendations
1	2	3	4
1	1.59	Ministy of Finance (Deptt. of Revenue)	The Committee find that the Monghyr factory of Indian Tobacco Company Ltd., Calcutta had cleared certain brands of cigarettes manufactured by it during 1st March 1974 to 12 March 1974 on payment of duty at the revised rates prevalent from 1-3-1974 but the assessable value was calculated on the basis of price prevalent before 1-3-1974. The adoption of old price towards assessable value had resulted in under-assessment to the extent of Rs. 1,22,473. The Central Board of Excise and Customs have conceded "while checking the RT-12 returns for the month of March, 1974, the assessing officer should have detected the short payment and that there was a lapse on the part of the said Inspector to this extent." What is more distressing is the fact that this discrepancy could not be detected by the Inspection Group which visited the factory subsequently. This goes to prove that the check exercised in this regard was perfunctory and not done in the right earnest. The plea that "the mistake in this case

had occurred due to the ignorance of the Inspector on account of inexperience in the Self Removal Procedure system and that no explanation was called for from other officers as it was the Inspector who had made the assessment" is not convincing. A review of the whole procedure of selection of suitable personnel for the job and fixing the accountability of the supervisory officers is urgently called for. Since provisions already exist for the Inspection group and Internal Audit Party to check the assessment from time to time, it is rather strange that such costly lapses should occur and thereby deprive the Exchequer of the revenue which would otherwise have accrued to it. The Committee are also unable to understand why in this case the question of assessment was left merely at the discretion of an Inspector who was inexperienced. A counter-check should have been envisaged by his higher authority who was authorised to do it. According to the Committee, this was all the more necessary, especially when they were aware that a revision in the rate had taken place in the relevant period. The Committee would like the matter to be investigated thoroughly with a view to fixing responsibility and taking action against the derelict officers.

2	1.60	do	Another disquieting feature which has come to the notice of the Committee during evidence is that although under sub-Rule 2 of Rule 173 C the Central Excise officers have the power to look into the genuineness of the proposal for any revision of the prices declared by assessee, they lack expertise particularly where knowledge of costing is required. The Chairman, Central Board of Excise and Customs has conceded that "the technical competence of our officers

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			at the basic levels is not at present what it ought to be". In such circumstances it is difficult to agree with the Department's view that had this case not been detected by Audit, this would have remained as one of the "stray cases which manage to escape the check". It is difficult to accept the observation of the Department that the question of suspicion of an assessment value "depends very much on the officer". The Chairman, Central Board of Excise and Customs, however, informed the Committee about the decision to have a Cost Accountant in the Department. The Committee have also seen that a Directorate of Training has been set up to impart training to direct recruits. While the Committee welcome these proposals they are at a loss to understand how in the existing situations, the authorities concerned managed to assess correctly for duty the different values of items from time to time without detriment to the interest of Government. In para 18 of Chapter 16 of their recommendation, the Self Removal Procedure Review Committee had recommended that services of suitable experts might also be obtained on deputation from other Government Departments. This was accepted in principle by the Government at the Group A level of officers. The Committee would like to know how far this decision has been implemented and what the present position is.
3	1.61	Ministry of Finance (Deptt. of Revenue)	In the instant case the revised price list submitted by the Company was approved by a Superintendent of Central Excise. The Committee have, however, been informed that "the proper officer for

approval of the price list is the Assistant Collector. However in simple cases which do not involve disputed discounts or are easily verifiable with the wholesale prices, the Asst. Collector after a preliminary study of the pattern of marketing of a particular unit may authorise the Superintendent for verification of the prices with the help of field staff and approval of the value". In this case dispute was going on even prior to 1 March 1974 between the assessee and the Department as to whether the price at which they sold their cigerettes to their dealers or distributors should be taken as the open market price of wholesale price. That inspite of this background the approval of the revised price list should have been left to the Superintendent is a serious lapse on the part of the Department. The Committee desire that the circumstances in which it was left to be approved by a Superintendent should be examined and responsibility fixed.

4	1.62	do	The Committee are concerned to note that the checks exercised by the Department in case of cigarettes do not make any distinction between upward revision of prices and downward revisions. They feel that in cases of downward revision of prices, greater check should be exercised so that it is ensured that the Public Exchequer is not put to a loss by unscrupulous activities of companies dominating a particular field. From the evidence it appears that large companies having a number of units and brands may manipulate by both raising or lowering the prices of different brands of cigarettes in a manner which can bring substantial loss to the public exchequer.

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			The Committee would like the Department to examine how far the present tariff structure of manufactured tobacco has acted as an incentive or otherwise to such manipulations.
5	1.63	Ministry of Finance (Deptt. of Revenue)	The Committee have also been informed that there is no regular system for communicating the assessable values determined by one Collectorate to other Collectorates unless occasion arises to do so. They feel that there should be regular coordination between the different Collectorates dealing with a particular company during a particular time. This would eliminate the wide fluctuations in the rates of assessment values quoted by the firm at their various units.
6	1.64	do	The Committee learnt from Audit that in their price list issued from 1-3-1973 onwards, a large tobacco Company had deducted from the wholesale price of cigarettes certain percentage thereof as per certification by the company's auditors on account of post-manufacturing and selling expenses and duty was assessed on the net amount. This practice was not approved by the Central Excise authorities because the "Department was inclined to the view that the price at which the cigarettes were sold by the dealers for further sale should form the basis for assessment value". On the other hand "manufacturers' contention was that the price at which they themselves sold to their dealers or distributors should form the basis. The manufacturers had further claimed basing themselves on the Voltas judgment* that even a portion of the price at which they sold to

their dealers or distributors should be excluded from the value *viz.*, roughly about 3 per cent of what could be the value." The manufacturer had filed writ petitions in the Patna High Court and obtained stay orders. Pending decision of the court, all price lists from 1-3-1973 onwards were approved by the Department on a provisional basis; the price list effective from 1-3-1974 was also approved provisionally for the same reason. The Committee have been further told during evidence that the Patna High Court has since decided that the Department should base their assessment on the wholesale price *i.e.* the price on which they were sold to the distributors but excluding what was claimed as post-manufacturing expenses. The Committee were also told that the Collector of Central Excise, Patna had applied to the Patna High Court for leave to appeal to the Supreme Court. The Committee would like this dispute to be settled expeditiously.

7	1.65	do	Section 4 of the Central Excise & Salt Act, 1944 was amended by Central Excise & Salt Act, 1973 with a view to overcome various difficulties experienced in valuation of excisable goods for purposes of Excise Duty some of which got highlighted in the judgement of the Supreme Court in A. K. Roy and others *vs.* Voltas Ltd. The new Section 4 of the Act provides as far as practicable for assessment of duty on excisable goods on the basis of the normal price, that is to say, the price at which such goods are ordinarily sold by the assessee to a buyer in the course of wholesale trade for delivery

*The Supreme Court in its judgement in the case of A.K. Roy and others *Vs.* Voltas Ltd held in December, 1972 that the sale to the distributor constituted transactions in the wholesale market and that the valuation for purposes of Excise Duty would include only manufacturing cost plus the manufacturers' profit.

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			at the time and place of removal, where the buyer is not related person and the price is the sole consideration for the sale. Further, it makes specific provisions with respect to certain situations which were not provided for earlier and which are frequently encountered in the sphere of valuation. It also contains enabling powers for Central Government to frame rules for situations where value cannot be determined in the manner laid down in clause (a) of sub-section (1) of the new section 4. The Committee are distressed to note that despite the amendment of the Act, disputes continue to arise in the matter of determination of the assessable value. In several cases, the matters have been taken to the Courts. The Committee desire that this problem should be studied in depth and a solution found so that while the manufacturers do not face harassment, the interests of the Exchequer are also protected.
8	1.66	Ministry of Finance (Deptt. of Revenue)	The Government of India had brought forward a Bill to amend Section 4 of the Central Excise and Salt Act, 1944 in May, 1973 which was passed by the Parliament with the stipulation that the same shall come into force from such date as may be notified by Government. The Government issued a notification on 8 August, 1975 stating that the amended Section 4 shall become effective from 1 October 1975 i.e. about 2½ years after the amending Act was passed by Parliament.

9	1.67	do	The Department of Revenue have intimated that when a new provision involves substantial changes in the law, a reasonable period of time is necessary for drafting the rules and instructions to familiarise the assessee with there provisions to enable them to file revised price lists in advance. The Finance Secretary has however conceded that *prima facie* the period of about two years was unreasonably long in that context as it happened in this case. The Committee find that the judgment of the Supreme Court came in December 1972 and the amending Bill was introduced in May 1973 to overcome the difficulties which were encountered by the Department consequent on that judgment. This period of about 6 months was reasonbly sufficient for the Department to give full consideration to all operational aspects and it was not necessary to take long spell of about 2½ years to bring into effect the operation of the amended section. Audit has pointed out that the delay has caused a loss in revenue of about Rs. 17 crores. Even if it is not treated as a loss technically, it cannot be denied that if the notification had been issued earlier, as it ought to have been, more revenues could have been realized. From the information furnished by the Department the Committee find that there have been as many as 166 claims which were filed by the various parties for the refund of Rs. 10/- lakh or more in each case consequent on the judgement of the Supreme Court delivered in December, 1972. These claims had started pouring in from February 1973 onwards themselves and the Department should have alerted themselves and realised the urgency of the situation for the enforcement of the amended Section which remained inoperative till 1 October, 1975.

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			The Parliament had enacted the amendment to ensure that the exchequer will not suffer loss of revenue as a result of the judgement of the Supreme Court. All that had to be done was to issue the notification enforcing the amendment. The lapse of 2½ years for this notification resulting in loss of revenue to the tune of more that Rs. 17 crores is a circumstance for which the Committee can not find any justification. Whoever caused this delay had in effect defeated the purpose and intentment of the Parliament in enacting the amendment. That the delay was allowed even in face of the pouring claims for refund from a large number of assessees adds to the seriousness of the situation. Taking everything into consideration, the Committee feels that a greater probe with a view to fixing the responsibility for the delay is called for.
10	2.75	Ministry of Finance (Deptt. of Revenue)	The Committee note that samples of footwear taken out in pairs are required to be cleared on payment of duty. However, where the sample of left foot is sent out for examination and the right foot remains in the sample room, the departmental instructions require that the left foot of each pair should be punched with a hole in the sole. The Committee are, however, surprised to learn that the requirement of punching the sole of left foot is not enforced in the case of shoes produced by M/s. Bata India Ltd. From the information furnished by the Department the explanation for this exemption is that "This is not being done in this factory and (therefore) need not be insisted upon." The Committee are amazed by

			this reasoning. What is distressing is the fact that the file pertaining to year 1959 leading to the issue of Bata Supplement which *inter alia* provides for this specific exemption, is not traceable in the Department who have expressed their inability to list out the reasons for giving this special concession to Bata factories. This concession was given some time in the year 1959 and since then it has not been subjected to any review so far. The Committee are unable to comprehend the rationale behind such discriminatory provisions which afford preferential treatment to M/s. Bata India vis-a-*vis* others in the line.
11	2.76	do	The Department's admission that "it is not known whether any review of these instructions was carried out in the sixties or subsequently" is all the more deplorable. It is obvious that only after the PAC decided to examine this matter, the Department had reviewed the matter and issued instructions on 30-11-77 and 8-12-77 stressing the instructions issued in 1970. The Committee would like the reasons for granting exemption to Bata's to be fully investigated and responsibility fixed for lapse if any. That such exemption should have not been reviewed earlier than 1977 is most reprehensible.
12	2.77	do	The Committee find that M/s. Bata India Ltd., Batanagar under the Collectorate of Calcutta manufactured *inter alia* one or two different varieties of footwear for testing and sample purposes. The assessee usually removed the left foot of each odd pair from

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			the factory and sent them to its Sales Office both in India and abroad for the purpose of testing, examination and approval by the experts. The remaining right foot of such odd pairs was retained as specimen in the sample room of the factory. The Departmental instructions provide that these samples are required to be returned to the factory unused because they are issued without payment of duty in the first instance. The duty is, however, liable to be paid in case the samples are not returned to the factory within 3 months from the date of issue. When the factory at Batanagar was inspected by the Departmental Internal Audit in June, 1973, it was noticed that the footwear cleared as samples on test/examination purposes were neither received back in the factory nor duty was paid on them. The Committee have been informed that a total duty amount of Rs. 1,21,648.00 has been demanded from M/s. Bata on the samples cleared during the period from November, 1970 to June 1977 which is still pending recovery at various stages. The Committee would like to be apprised of the progress made in the realisation of the dues in the action taken notes. The Committee regret that information prior to the period of November 1970 is not available with the Department.
13	2.78	Ministry of Finance (Deptt. of Revenue)	The Committee note that M/s. Bata India Ltd. have three factories at Batanagar falling under the Collectorate of Central Excise Calcutta, Bataganj in Patna Central Excise Collectorate and

			Faridabad in Chandigarh Collectorate. In regard to the factory at Batanagar, the Collector of Central Excise, Calcutta has reported that they are maintaining samples of footwear w.e.f. 1-4-1973 and the records of samples of footwear prior to that date are not available. With reference to the Bataganj unit of this assessee, the Collector of Central Excise, Patna has reported that they do not send any samples without payment of duty thereon. Whatever samples are despatched are from duty paid premises and they therefore do not maintain any sample register in the statutory form. In the case of Collector of Central Excise, Chandigarh it has been reported that M/s. Bata India Ltd. do not clear any samples and hence do not maintain any register for samples.
			The Committee are at a loss to understand why the record of the samples cleared by M/s. Bata India Ltd. from their Batanagar factory should not be available to the Committee. A manufacturer is required to maintain a register of samples and this is required to be scrutinised by the Department periodically. The Committee apprehend that neither such a record was maintained by the firm nor was it insisted upon by the Department. They would therefore like the matter to be investigated thoroughly with a view to identify the persons responsible for the lapse, fix responsibility and start proceedings against them under the law.
14	2.79	do	The Committee understand that one of the pleas put forward by M/s. Bata India Ltd. in reply to the demand raised by the Department for the non-receipt back of the samples of footwear is that the

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			same were destroyed. In the absence of the record of samples, it has not been possible for the Department to verify the authenticity of this statement even though they have not accepted the plea of the firm. The omission was first brought to the notice of the Department in July 1973 by the Internal Audit Department of the Calcutta Collectorate. But only after 1½ years the Asstt. Collector concerned had issued orders for realization of duty on samples so cleared from the factory. Even then such an important omission was not brought to the notice of the Board. What is worse is that the account of clearance of samples prior to 1-4-1973 is not available with the factory. The Committee desire that the manufacturer should be required to maintain all records of clearance in future and that systematic and continuous checking of such records should be undertaken by the Department. In order to avoid such situations in future, the Committee also desire that the samples from Batanagar factory may be allowed clearance only on payment of duty. This will ensure uniformity of procedure in both the factories at Batanagar and Bataganj and also plug the loophole existing at present for the avoidance of duty. According to the information furnished, the Collector of Central Excise Bombay in whose jurisdiction M/s. Carona Sahu Co. Bombay falls, had reported that the assessee recorded the sample pieces and regular pairs in their RGI account and samples were cleared on payment of duty only. If the

			procedure could be followed in respect of Carona Sahu Co. there is no reason why it could not be followed in respect of Batas.
15	2.80.	do	The Committee find that Bata's Footwear Supplement provides that the Design and Sample Section should be visited 3 to 4 times a month by surprise and the stocks of complete pairs and right foot compared against the record of designs made and Gate Passes issued. During that visit verification is to be made with reference to factory's accounts in regard to the unapproved footwear destroyed and approved footwear brought to account. The Committee have been informed that there is no mention of surprise visits in the available records in regard to Batanagar Unit of M/s. Bata India Ltd. although such surprise checks were conducted by the Inspection Group of the other Unit at Bataganj on 17-8-1970, 6-9-1971, 21-7-1972 to 31-7-1972, 15-2-1973, 16-10-1973 to 19-10-1973, 23-9-1974 to 30-9-1974.
16	2.81	do	**The Committee are unable to understand the reasons for non-availability of the records of inspection made in respect of Batanagar Unit for 4 years from 1970 to 1974. When the procedure provided for one check in a year and the same was done in respect of one unit at Bataganj there is no valid reasons for not conducting such a check in respect of Batanagar unit. The Member Central Excise had admitted that "this should have been done." This is a serious lapse. The Committee deprecate this lapse and desire that appropriate action should be taken against the officials for their failure to observe the Departmental instructions in letter and spirit.**

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17	2.82	Ministry of Finance (Deptt. of Revenue)	The Committee find that footwear produced in any factory wherein not more than 49 workers are working or working on any day of the preceding 12 months or the total equivalent of power used in the process of manufacturing footwear does not exceed 2 H.P. are exempted from the whole of duty of excise leviable thereon. These are small scale units which are required to register themselves with the States' Directorates of Industries. This exemption is also available to those manufacturing units whose footwear are affixed with the brand or trade name (registered or not) of another manufacturer or trader. In other words, footwear manufactured by Small Scale Units and affixed with the brand name of Batas or any other big footwear manufacturer, will not be treated as the product of Batas or any other big footwear manufacturer and as such will not be liable to duty. The intention of this exemption is primarily to help the small scale manufacturers to market their production easily and efficiently. While the Committee appreciate and endorse the intention of the Government to help the small manufacturer, they at the same time want that the Government should be alert to ensure that the provisions of this exemption are not abused by big manufacturers by virtue of their dominant position. They suspect that with this exemption, the bigger units can set up small *benami* units which though actually owned by them are not so shown on the records. The Committee would like the

			Department to exercise more effective vigilance and devise ways and means for maintaining complete surveillance on such units to satisfy that none of the units enjoying exemption from duty is *benami* of any big manufacturer. The Committee also desire that a thorough investigation may be made by the Department about *Benami* units of large manufacturer and a report submitted to them at an early date.
18	2.83	do	The Committee find that there are a large number of small units which are totally dependent on big manufacturers like Batas and Caronas etc. which provide them with marketing outlet. But the Small Scale Units can derive the real benefit of the exemption from duty granted to them if they have proper marketing outlets and are able to sell their products directly without the help of larger units. The Committee are given to understand that the Government have set up Bharat Leather Corporation whose function *inter alia* is to provide marketing facilities solely for the small scale sector internally as well as for exports. This Corporation is said to be embarking upon a detailed scheme for providing marketing facilities and the Government have provided a large sum of money in the Annual Plan for the building up of a marketing net-work. The Committee appreciate this step which is in the right direction and desire that the Government should make incessant efforts to ensure that the desired objectives are achieved in letter and spirit.
19	2.84	Ministry of Industry (Deptt. of Industrial Development)	The Committee note that the Government have set up the Tannery and Footwear Corporation of India Ltd. Kanpur (TAFCO) who manufacture only Gents' Shoes and Sandals. In order to have

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			a complete range of products, such as Ladies and Children's shoes, Chappals etc. they were getting for sometime these products manufactured from units which are exempted from payment of excise duty. However, they had to abandon this practice of procurement because of imperfect system of placement of orders with parties and asking them to supply directly to third party without having any quality control and the third party rejecting them. From the information furnished by the Government in regard to the comparative practice followed by M|s Bata India Ltd. *vis-a-vis* TAFCO, the Committee find that the imperfection was caused *inter alia* due to lack of adequate appraisal of the technical competence of the small scale footwear manufacturing concerns, absence of technical assistance by TAFCO to small scale units and non-supply of raw material, components etc. by TAFCO to these units invariably in all cases. The Committee fail to comprehend the reasons which have prevented TAFCO from perfecting all the pre-requisites necessary for the making of the products of small scale units when a private concern like Bata has been able to do it successfully. The Committee are convinced that with a closer watch and periodic reviews of functioning TAFCO can show better results.
20	3.41	Ministry of Finance (Deptt. of Revenue)	The Committee find that Chesebrough Pond (Inc.) Madras produced Pond's Dream Flower Talcum Powder in mini tins each

containing 30 grams of powder. In April, 1973 they declared to the Excise authorities that it was intended to be given free by their dealers but that they would be invoicing their dealers at Rs. 6/- per dozen. The transaction value of Rs. 6/- per dozen less 30 per cent trade discount was initially approved on the basis of price list No. 2/73 filed by M/s Chesebrough Pond on 19-4-1973. It was accepted at that stage by the authorities under the impression that it was being sold to the Chesebrough dealers at Rs. 6/- per dozen Subsequently, it came to light that according to actual arrangement the dealers did not ultimately bear the cost of these tins. The dealers were invoiced in accordance with the price list and the amount was "charged" to the dealer's account. When the dealer eventually completed free delivery of the goods to the consumers, he was given a reimbursement by a credit to his current account for the full value of the goods involved so that, in effect, there was no sale between them and their dealers. The Committee would like it to be examined whether this was permissible under Section 4 of the Excise & Salt Act.

21	3.42	do	Later on M/s Chesebrough Ponds manufactured the same mini-tins and supplied to M/s Brooke Bond India Ltd., Calcutta from September, 1973 onwards who in turn distributed them free of cost alongwith their own coffee product 'Bru'. The tins bore the inscription 'free with Bru'. The entire transaction was a tie up arrangement and was obviously meant to promote the sale of each other's product. The supply was made at the rate approved on the basis of the price list No. 2/73 filed in April, 1973 and no fresh price list was filed for this purpose.

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			According to sub-Rule(2) of the Rule 173(c) of the Central Excise Rules, 1944, the proper Officer has to approve the price list after making such modifications as he may consider necessary so as to bring the value shown in the said list to the current value, for the purpose of assessment as provided in Section 4 of the Central Excises & Salt Act, 1944. It implies therefore that the Officer does have the power to modify the price list to the extent as considered necessary. While carrying out the modifications, the Officer can refuse or accept the assessable value declared by the assessee in the price list submitted for approval, after following the principles of natural justice by affording an opportunity to the assessee to explain either in writing or in person as to why the value declared by him should not be rejected and a different value approved. Price lists for contract prices are to be checked with the price range of that type of article with reference to contract deeds and where the prices quoted in the contract deeds under check are abnormally low, Sector Officer has to take up the matter with the factory and ensure that the prices are genuine. The assessable value under Section 4 may either be deduced on the basis of market prices for the articles of like kind and quality or by means of the principle of costing.
22	3.44	Ministry of Finance (Deptt. of Revenue)	The Committee regret to note that even when the Department had come to know that the mini-packs were being supplied

to the Brooke Bond Co. under what could be termed as a 'contract deal', despite the aforesaid elaborate and comprehensive procedure for determination of assessable value was given a go bye and the price quoted for mini-packs *viz.* Rs. 6|- per dozen with 30 per cent discount was accepted without investigation whether it could be considered unduly low. Explaining the reasons therefor the Finance Secretary informed during evidence that "if no price had been established, it would have been the duty of the Department to assess the price and they would have assessed it correctly. Since they reported that transaction had been established at Rs. 6/- per dozen, this may be treated as a sale and the price had to be accepted." In regard to the supplies made to Brooke Bond at that price the Department has intimated "When sales started to be made to Brooke Bond from 6-9-73, there was no need for M/s Chesebrough Pond to file a fresh list as the price has already been approved and the occasion for investigating into the transaction did not arise at that stage." The Committee feel that the Excise authorities should have woken up in time and asked the company to submit a fresh price list.

23	3.45	do	The Department has conceded that the sale price which was lower than even the cost of container did not fully cover the cost of manufacture of mini-packs. It means that the Department had knowledge of under aluation *ab-initio* but they refrained from making any investigation in regard to the proper valuation or to take remedial steps necessary for the upward revision of the price quoted by the manufacturer. The fact that because the sale was made

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			otherwise than for monetary considerations should not have made the Department so complacent as to ignore the observance of departmental instructions in this regard. The Committee desire that a probe should be made with a view to fix the responsibility at various levels for appropriate action.
24	3.46	Ministry of Finance (Deptt. of Revenue)	According to the Finance Secretary "as subsequent events have revealed the manufacturer had made inaccurate statements to the Department in respect of the first transaction when there was actually no sale to the dealers. In regard to the second transaction they did not disclose to the Department the fact of having received a higher sum of money." The Committee greatly deplore the lack of vigilance which resulted in heavy loss of revenue to the tune of more than one lakh of rupees.
25	3.47	do.	The Committee have been further informed that the manufacturer had a proposal for the export of mini-tins abroad for which they had filed a separate price list in 1973 wherein the ex-factory cost was indicated as Rs. 15.93 per dozen which was two and half time, the rate *viz.* Rs. 6/- adopted for assessment in this case. The mini-tins for export however contained face powder which was different from talcum powder and the Department had come forward with the plea that "the ex-factory price of Rs. 15.93 per dozen indicated by the assessee for the purpose of export of face powder of 30 gms. pack cannot be applied to talcum powder of 30 gms. pack and therefore the comparison with the export price of face

			powder was not justified." The Member (Excise) has, however, informed the Committee during evidence that the actual cost of the powder in both the containers was 10 or 12 per cent only. He further stated that the price of talcum dream flower of 196 gms. was shown as Rs. 62/- per dozen in 1974 and that of face powder for 82 gms. as Rs. 60/- per dozen. Assuming, therefore, that the cost of talcum powder was less than double of face power, the Committee find it difficult to agree that 10 to 12 per cent contents of the mini tins should have led to the determination of assessable value for Talcum Powder tin at such low level as Rs. 6/- per dozen. The Committee feel that the price list for the export of mini-tins available with the Department should have been compared with the price list filed by the manufacturer in April, 1973 for adoption of the correct assessable value. That after disputing the adoption of export price of Rs. 15.93 per dozen for determination of assessable value suggested by audit, the Department had themselves re-assessed the value at Rs. 6.81 per dozen on the basis of cost of manufacture etc. certified by chartered accountant shows that the scrutiny needed was lacking initially. The Committee, however, note that the Chesebrough Ponds have promptly paid the short levy of differential duty of Rs. 49,793.72 demanded by the Department. The Committee would however like the Department to make a thorough probe with a view to ascertain the reasons for this initial lapse and issue necessary instructions to make the procedure fool-proof to obviate the chances for recurrence of such instances in future.
26	3.48	do.	The Committee would also like to draw attention to their earlier recommendation made in paragraph 1.29-30 of their 90th

1	2	3	4
			Report (5th Lok Sabha) wherein they had desired that with a view to avoiding omissions in determining assessable values a suitable proforma indicating various details should be devised so as to make the assessee furnish break up of the cost. The Committee are distressed to find that no such proforma has been devised so far with the result that the break-up of the cost of the products of M/s. Chesebrough Pond are also not available. Had such a proforma been devised the break-up of the cost of the product would have been available to the Department and the omission of the type, as has happened in the instant case for the determination of the proper assessable value, would not have occurred. The Committee desire that the Department should move swiftly in the matter and ensure that the proforma for the purpose is devised without any further delay.

Sl. No.	Name of Agent	Agency No.
	DELHI.	
24.	Jain Book Agency, Connaught Place, New Delhi.	11
25.	Sat Narain & Sons, 3141, Mohd. Ali Bazar, Mori Gate, Delhi.	3
26.	Atma Ram & Sons, Kashmere Gate, Delhi-6.	9
27.	J. M. Jaina & Brothers, Mori Gate, Delhi.	11
28.	The Central News Agency, 23/90, Connaught Place, New Delhi.	15
29.	The English Book Store, 7-L, Connaught Circus, New Delhi.	20
30	Lakshmi Book Store, 42, Municipal Market, Janpath, New Delhi.	23
31.	Bahree Brothers, 188 Lajpatrai Market, Delhi-6.	27
32.	Jayana Book Depot, Chapparwala Kuan, Karol-Bagh, New Delhi.	66
33.	Oxford Book & Stationery Company, Scindia House, Connaught Place, New Delhi—1.	68
34.	People's Publishing House, Rani Jhansi Road, New Delhi.	76
35.	The United Book Agency, 48, Amrit Kaur Market, Pahar Ganj, New Delhi.	88
36.	Hind Book House, 82, Janpath, New Delhi.	94
37.	Bookwell, 4, Sant Narankari Colony, Kingsway Camp, Delhi-9.	96
	MANIPUR	
38.	Shri N. Chaoba Singh, News Agent, Ramlal Paul High School Annexe, Imphal.	77
	AGENTS IN FOREIGN COUNTRIES	
39	The Secretary, Establishment Department, The High Commission of India India House, Aldwych, LONDON, W. C.—2.	59

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