

**HUNDRED AND FIFTY-EIGHTH
REPORT**

**PUBLIC ACCOUNTS COMMITTEE
(1982-83)**

(SEVENTH LOK SABHA)

UNION EXCISE DUTIES—RELATED PERSON

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



Presented in Lok Sabha on 29-4-1983

Laid in Rajya Sabha on 29-4-1983

**LOK SABHA SECRETARIAT
NEW DELHI**

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(vi)	6	4	Appendix*	Appendix
(vi)	6	-	Delete the foot note read as "*Not Appended"	
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27	1.33	16	ageat	agent
30	1.39	2	seletion	selection
31	1.42	1	Add the word "to" after "system"	
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PUBLIC ACCOUNTS COMMITTEE

(1982-83)

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2. Shri K.C. Rastogi—*Chief Financial Committee Officer*
3. Shri K. K. Sharma—*Senior Financial Committee Officer*

INTRODUCTION

1. The Chairman of the Public Accounts Committee, do present on their behalf, this 158th Report on Paragraph 2.63 of the Report of the C&AG of India for the year 1980-81, Union Government (Civil) Revenue Receipts, Vol.I, Indirect Taxes relating to Related Person.

2. The Report of the C&AG of India for the year 1980-81, Union Government (Civil) Revenue Receipts, Vol.I, Indirect Taxes was laid on the Table of the House on 31.3.1982.

3. The Committee have examined a case of under-assessment of excise duty in which clearances were assessed at the price at which the manufacturers sold the goods to the sole selling agent (related person) instead of at the price charged by that related person from dealers as per proviso (iii) of Section (1) (a) of the Central Excises and Salt Act, 1944. The Committee have observed that despite clarifications issued by the Department from time to time, the term 'related person' continues to be interpreted differently by different authorities within the Department. The Committee have desired that the Board should develop a system of obtaining regular feed back from the field so that the law is applied uniformly in all the collectorates.

4. Classification and Valuation Cells were set up in the various Collectorates in the year 1971 in order to ascertain veracity of prices in respect of important industries with sizeable volume of transactions or monopoly sales by actual reference to sale invoices/general ledger and other relevant records. These cells have now been in existence for a period of more than 10 years and received a large number of price and classification lists over the years 1976-77 to 1981-82. The Committee have observed that only a small proportion of such lists were checked and number of cases where undervaluation was noticed or duty recovered was quite negligible. They have further expressed their distress over the fact that these cells are not taking up important cases and are not making any checks by visits to monopoly houses and units selling to related persons.

5. The Committee (1982-83) examined the paragraph on the basis of written information furnished by the Ministry of Finance (Department

(vi)

of Revenue). The Committee considered and finalised the Report at their sitting held on 27.4.1983. Minutes of the sitting of the Committee form Part II of the Report.

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

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

8. The Committee place on record their appreciation of the assistance rendered by the Office of the C&AG of India in the examination of this paragraph.

NEW DELHI;

28, April, 1983

8, Vaisakha, 1905 (S)

SATISH AGARWAL

Chairman

Public Accounts Committee

*Not Appended.

REPORT

RELATED PERSON

Audit Paragraph

1.1 According to section 4 (1) (a) (iii) of the Central Excises and Salt Act, 1944 read with the rules made thereunder, the assessable value of goods, sale of which is arranged through a related person is required to be determined on the basis of the price charged by such related person to dealers. Sole selling agents are deemed to be related persons for this purpose.

1.2 (a) It was noticed in audit that a licensee manufacturing rubber products (tariff item 16 A) had cleared most of the goods manufactured (81.5 per cent during 1978-79 and 94.74 per cent during 1979-80) to a sole selling agent and duty was assessed on the price charged by the manufacturer to the sole selling agent, instead of determining the assessable value on the higher price charged by the sole selling agent from the dealers.

1.3 On this being pointed out in audit, the department raised a demand (September 1980) for Rs. 3.75 lakhs.

1.4 The Ministry of Finance have admitted the facts as substantially correct (December 1981).

1.5 (b) A licensee in a collectorate manufacturing internal combustion engines chargeable to duty under tariff item 29 (ii), sold some special types of engines through distributors and also directly to industrial consumers and others. The distributors were given a discount of 15 per cent on the list price which was accepted by the department for determining the assessable value under section 4 of the Act. During the audit of the unit conducted in February, 1977, and on further examination of the case in February 1979, it was seen that sales through the distributors were as per a contract between the licensee and the distributors which provided, *inter alia*, after sales service of engines, prohibition of sale of similar engines of competitive manufacturers etc. The licensee gave over-riding commission

to the distributors in respect of direct sales to independent buyers. According to the Ministry's clarifications issued in August 1975 and September 1977, such distributors would be deemed to be related persons and the discounted prices charged to them cannot be considered for assessment on *ad valorem* basis. The distributors sell the goods to independent buyers at the list price which would be the normal price. Based on the list price, the under-assessment of duty in respect of clearances through a distributor worked out to Rs. 7,75, 335 during the period 1 October 1975 to 30 June 1978.

1.6 The department did not accept the objection and maintained that the distributors were not related persons for the purpose of the proviso to section 4 of the Act, which was not correct for the reasons stated above.

1.7 While admitting the audit objection, the Ministry of Finance have stated (December 1981) that the jurisdictional Assistant Collector has been directed to raise the necessary demand.

[Para 2.63 of the Report of the Comptroller and Auditor General of India for the year 1980-81, Union Government (Civil) Revenue Receipts, Volume I, Indirect Taxes].

1.8 Section 4 of the Central Excises and Salt Act, 1944 in regard to valuation of excisable goods for purposes of levy of excise duty which came into force w. e. f. 1. 10. 1975 reads as under—

“4. (1) Where under this Act, the duty of excise is chargeable on any excisable goods with reference to value, such value shall, subject to the other provisions of this section, be deemed to be—

(a) the normal price thereof, 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 a related person and the price is the sole consideration for the sale ;

Provided that—

(i) where, in accordance with the normal practice of the wholesale trade in such goods are sold by the assessee at different prices to different classes of buyers (not being related per-

sons) each such price shall, subject to the existance of the other circumstances specified in clause (a) be deemed to be the normal price of such goods in relation to each such class of buyers ;

- (ii) where such goods are sold by the assessee in the course of wholesale trade for delivery at the time and place of removal at a price fixed under any law for the time being in force or at a price, such being the maximum, fixed under any such law, then, notwithstanding anything contained in clause (iii) of this proviso, the price or the maximum price, as the case may be, so fixed, shall, in relation to the goods so sold, be deemed to be the normal price thereof;
 - (iii) where the assessee so arranges that the goods are generally not sold by him in the course of wholesale trade except to or through a related person, the normal price of the goods sold by the assessee to or through such related person shall be deemed to be the price at which they are ordinarily sold by the related person in the course of wholesale trade at the time of removal, to dealers (not being related persons) or where such goods are not sold to such dealers, to dealers (being related persons) who sell such goods in retail ;
 - (b) where the normal price of such goods is not ascertainable for the reasons that such goods are not sold or for any other reason, the nearest ascertainable equivalent thereof determined in such manner as may be prescribed.
- (2) Where, in relation to any excisable goods the price thereof for delivery at the place of removal is not known and the value thereof is determined with reference to the price for delivery at a place other than the place for removal, the cost of transportation from the place of removal to the place of delivery shall be excluded from such price.
- (3) The provisions of this section shall not apply in respect of any excisable goods for which a tariff value has been fixed under sub-section (2) of section 3.
- (4) For the purposes of this section,—

- (a) "assessee" means the person who is liable to pay the duty of excise under this Act and includes his agent;
- (b) "place of removal" means—
 - (i) a factory or any other place or premises of production or manufacture of the excisable goods; or
 - (ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty, from where such goods are removed;
- (c) "related person" means a person who is so associated with the assessee that they have interest, directly or indirectly, in the business of each other and includes a holding company, a subsidiary company, a relative and distributor of the assessee, and any sub-distributor of such distributor.

Explanation—In this clause 'holding company', 'subsidiary company' and 'relative' have the same meanings as defined in the Companies Act, 1956;

1956 (1 of 1956)

- (d) "Value", in relation to any excisable goods,—
 - (i) where the goods are delivered at the time of removal in a packed condition includes the cost of such packing except the cost of the packing which is of a durable nature and is returnable by the buyer to the assessee.

Explanation—In this sub-clause 'packing' means the wrapper, container, bobbin, pirn, spool, reel or warp beam or any other thing in which or on which the excisable goods are wrapped, contained or wound ;

- (ii) does not include the amount of the duty of excise sales tax and other taxes, if any, payable on such goods and, subject to such rules as may be made, the trade discount (such discount not being refundable on any account whatsoever) allowed in accordance with the normal practice of the wholesale trade at the time of removal in respect of such goods sold or contracted for sale ;

- (e) **“wholesale trade” means sales to dealers, industrial consumers, Government, local authorities and other buyers, who or which purchase their requirements otherwise than in retail.”**

1.9 The Ministry of Finance (Department of Revenue and Insurance) issued clarification on 8.8. 1975 in regard to the revised Section 4 (c) of the Central Excise and Salt Act 1944. This clarification reads as under :

“The expression ‘interest in the business of each other’ refers to interest in general between the business of the two parties and does not refer to the interest which is created by the sale of goods. The interest may be pecuniary or of such nature as would have the effect of promoting the business of each other. By the use of the words ‘directly or indirectly’, the intention is to cover all those inter-relationship which may arise as a result of any financial or other involvement, directly or through third parties.”

1.10 In regard to “distributor” and “sub-distributor” the clarification *ibid* stated:—

(1) *Distributor*

- (a) The term ‘distributor’ has not been defined in the new section. Broadly speaking, a distributor is a dealer who is appointed by the assessee to sell or to arrange the sale of his goods and who takes upon himself the responsibility for the distribution of the goods of the assessee. Sometimes the distributors are called selling agents or authorised dealers. One has, therefore, to look at the exact relationship between the assessee and such a person to determine whether such person is a distributor or not.
- (b) An independent dealer does not undertake any responsibility or obligations relating to distribution of goods on behalf of the assessee. He is not concerned with the distribution of the goods of the assessee; he has no responsibility to promote the sales of the goods produced or manufactured by the assessee. He is free to buy any goods from any assessee. The distributor on the other hand, has certain fetters on his buying and selling activities.
- (c) An authorised dealer, like a distributor, may maintain show-rooms and may also provide facilities with regard to after sales

servicing. Like distributors, authorised dealers may also have some agreement with the assessee. But the similarity between the two ends here. An authorised dealer does not have the rights and liabilities of a distributor. For instance, a distributor is appointed for a particular area or territory and within that area the assessee is not authorised to sell goods to any other party, and if he sells the goods to any other party, he would have to pay the over-riding commission to the distributor on the basis as if the goods had been sold through the distributor. Normally no area is assigned to an authorised dealer and he cannot claim that the assessee should not sell goods to any other dealer in any particular area. The authorised dealer would also not be entitled to any over-riding commission.

- (d) Normally where under the distributorship agreement the territory or market assigned is whole of India, or a particular State or States, or a metropolitan city, like Bombay, Calcutta, Delhi, Madras and the like, there can be no doubt that such a person will not be an authorised dealer and would be a distributor only.
- (e) Where the area or territory assigned is a district, town or a similar area, for determining a dealer or a distributor, the following factors may be taken into consideration :—
 - (i) Generally the terms of the agreement between the assessee and the dealer specify the nature of authorisation viz. whether the dealer is appointed as a distributor or an authorised dealer.
 - (ii) The number of dealers to whom the assessee accords equal treatment and sells the goods is also a material factor in deciding whether such dealers are distributors or authorised dealers. In the very nature of things, the distributors are bound to be few in number.
 - (iii) If it is open to any independent wholesale buyer to become an authorised dealer upon fulfilment of the conditions uniformly applicable to all such dealers and to purchase the goods at prices available to all such dealers, such buyers would ordinarily be an authorised dealer and not a distributor. But where such dealership is restricted to a limited number and within the area

assigned it is not open to anyone else to become an authorised dealer, the dealer would be a distributor and not an authorised dealer

- (iv) Generally, a distributor undertakes to perform various obligations on behalf of, or at the instance of, the assessee or agrees to restrict his trading activity or right in such manner as may be specified by the assessee. This may not be so in the case of authorised dealers.
- (v) In the case of a distributor, the assessee undertakes not to sell the goods to anyone except the distributor within the specified territory or market and, in turn, the distributor also undertakes not to sell the goods outside the specified territory or the market.
- (vi) Normally a distributor is restrained from selling or purchasing competitive products or manufactured by other assesseees. This is not always so in the case of authorised dealers.
- (vii) In the case of distributors, it is normally one of the terms and conditions of the agreement that the distributor shall sell the goods at a price fixed by the assessee. The assessee may also lay down certain other conditions for sale by the distributor. In the case of authorised dealers, such conditions are generally absent.
- (viii) Normally a distributor undertakes to maintain a show-room, supply of spare parts and after sales-servicing. Some of these things may also be done by authorised dealers. But unlike authorised dealers, a distributor also undertakes to execute warranty obligations for which he is not separately compensated either by the assessee or the purchaser of the goods. The cost or the expenses of these obligations are generally taken into consideration by the assessee while fixing his sale price of the goods to the distributor.
- (f) It is to be noted that any one of the factors referred to in paragraph (e) above may not by *itself* be decisive to ascertain whether the buyer is a distributor or an authorised dealer. In each case it will be necessary for the proper officer to take into consideration the totality of all these factors for judging whether a person is a distributor or an authorised dealer.

(2) Sub-Distributor

For determining whether a dealer is 'sub-distributor' or not, the considerations mentioned with regard to 'distributors' should be kept in view.

1.11 Subsequent to the aforesaid clarification, Ministry of Finance issued further clarification on the subject on 4.3.1977 which reads as under :—

- “It has come to the notice of the Board that in several cases, either pending with the Central Excise Authorities or in the Courts, a question has arisen as to whether certain buyers are dealers/stockists or distributors/sub-distributors and whether such buyers could be treated as related persons for purposes of Section 4 of the Central Excise and Salt Act.
2. The words 'distributor' and 'sub-distributor' are not defined in Section 4 and, therefore, their meanings have to be understood according to the normal commercial usage and the concept of valuation and related person as envisaged in Section 4. The concept of 'distributor' was explained in paragraph 13 of the Government's instructions contained in its letter F. No. 312/1/75 -CX-X of 8th August, 1975. In these instructions various criteria were laid down for the purpose of distinguishing whether a buyer is an authorised dealer or a distributor. It was also mentioned that any one of the criteria may not by itself be decisive to ascertain whether the buyer is a distributor or an authorised dealer and in each case it will be necessary for the proper officer to take into consideration the totality of all these factors for judging whether a person is a distributor or an authorised dealer.
 3. One of the important criteria mentioned in the aforesaid instructions related to the number of dealers to whom the assessee accords equal treatment. It was mentioned that, in the very nature of things, the distributors are bound to be few in number. It was also stated that normally where under the distributorship agreement, the territory or market assigned to a dealer is whole of India, or a particular State or States or a metropolitan city like Bombay, Calcutta, Delhi, Madras and the like; the buyer would be a distributor and not an authorised dealer. But where

the area or territory assigned is a district, town or a similar area, certain additional factors were indicated to be taken into consideration. In actual practice, these guidelines have been found to be general and not specific enough for solving the problem. Thus, difficulty has been experienced in their application to different types of cases which arise for consideration. A very large number of disputes regarding valuation have remained unsolved resulting in uncertainty. It has, therefore, become necessary to concretise the various types of situations and provide to the extent possible, more specific guidelines to enable the officers to decide cases where there are no written agreements appointing dealers as distributors.

4. It has to be kept in mind that the concept or 'related person' or 'distributor' was introduced to take care of cases where it may not be possible to prove that price was not the sole consideration. Yet, the relationship between the assessee and the dealers is such that price may well have been influenced.
5. There may be cases where there is a sole dealer for the whole of India, or there are four or five regional dealers each for a region comprising several States. Such dealers may or may not be for sales to Government, local authority or industrial consumers. In these cases, it should not be difficult to decide that these dealers are distributors and consequently related persons. Similarly, in cases where there is only one dealer for each State or group of very small States (per 2 or 3 for big State), it would not be unreasonable to proceed on the basis that these dealers, who would be generally two dozens or so in number for the whole of India, are distributors.
6. On the other hand, there are cases where there is a dealer for a district, a town or similar area, which would imply that the number of such dealers for the whole of India would run into a hundred or more. Individually, each of these dealers, barring a few exceptions, may not be buying goods or more than one per cent or so of the total value of such goods sold by the assessee in a year to the dealers. Normally such large number of dealers, each purchasing less than one per cent or so, but taken together

constituting preponderant majority of sales to dealers, would not be financially linked with the assessee. Their business association is also purely on commercial considerations and there is hardly any possibility of manipulation in prices or for taking a view that they are in any sense favoured buyers or that the price to them is not the sole consideration for the goods. It is not necessary that such dealers should purchase or sell competitive products produced or manufactured by other assessees. They may also sell the goods at a price fixed by the assessee and it is also likely that they are appointed as stockists or authorised dealers by the assessee himself. Nevertheless, if considering their large number relatively small volume of trade of each dealer with the assessee (less than one percent or thereabout), their collective purchases accounting for preponderant majority of sales to dealers, absence of any agreement appointing them as distributors, it is felt that there is little possibility of consideration for the goods, it would not be reasonable to class them as distributors or sub-distributors and the proper view to be take would be that such dealers be accorded the same treatment as independent wholesale, dealers unless they are found to be 'related persons' otherwise than as distributors. In the absence of any other interest of the assessee in the business of the dealer, such dealers cannot be said to be having any association with the assessee of a kind that it could influence the price of the goods. This view also gets support from Section 4 itself as under..... proviso (iii) even sales to related dealers who are retailers from the basis of valuation for assessment, on the obvious assumption that when large number of buyers are concerned, they could not be said to be influencing price. There may, however, be exceptions where there are written agreements between the assessee and the dealer stipulating overriding commission in the event of sales being made outside the assigned area; additional payments to the assessee suggestive of indirect consideration or obligations regarding sales promotion, or where the dealer and the assessee have any interest, other than that created by the dealership, in the business of each other. Such cases would have to be dealt with on a separate footing.

7. If it is found that there are any areas which are not covered by the aforesaid instructions, or any departure from them is contem-

plated in any case, or any difficulties are still experienced, these may be intimated to the Board.”

1.12 The Committee desired to know the methodology adopted for the determination of the assessable value of excisable goods when sale was arranged through related persons. In a written note, the Ministry of Finance (Department of Revenue) informed as under :—

“If sale is through a related person, the assessable value of the goods is determined in terms of proviso (iii) to Clause (a) of Section 4 (1) of the Central Excises and Salt Act, 1944. It says that where an assessee so arranges that the goods are generally sold by him in the course of wholesale trade to or through a related person, the normal price of the goods sold by the assessee to or through such related person shall be deemed to be the price at which they are ordinarily sold by the related person in the course of wholesale trade at the time of removal to dealers (not being related persons) or where such goods are not sold to such dealers, to dealers (being related persons) who sell such goods in retail. Where the assessable value cannot be determined under proviso (iii) to clause (a) of section 4 (1) in case of sale to or/through a related person, it has to be determined in accordance with the provisions of rule 6 (c) of the Valuation Rules, 1975.”

1.13 In regard to “Valuation Rules”, the clarification *ibid* stated:—

“New Section 4 (1) (b) provides that where the normal price of the excisable goods is not ascertainable for the reason that such goods are not sold or for any other reason the value shall be the nearest ascertainable equivalent of the normal price determined in the manner as may be prescribed. The manner for such determination is prescribed in the Central Excise (Valuation) Rules, 1975.

Under these rules, the value of the excisable goods is to be determined first by application of rule 4 or rule 5, as the case may be, and then by application of rule 6. If the value cannot be determined by application of rule 4 or rule 5 or rule 6, it is to be determined under rule 7.

(1) Rules 1, 2 and 3 : These are self explanatory.

(2) Rule 4 :

(a) Rule 4 applies when the value of the excisable goods for delivery at the time of removal is not known, but such value is ascertainable for delivery at any other time.

The value of the goods for delivery at the time of removal may not be ascertainable for a variety of reasons. It may be that there are no sales of such goods for delivery at the time of removal or there are sales for delivery at the time of removal but the price for such sales does not conform to the normal price as defined in new Section 4. In such cases the value of excisable goods may be based on the value of such goods sold by the assessee for delivery at any other time nearest to the time of the removal of the goods but in difference between the time of removal and such other time should not be unduly large, particularly having regard to the change in prices from time to time.

(b) While determining the value under this rule, adjustment on account of the difference in—

- (i) the date of delivery of 'such goods'; and**
- (ii) the date of delivery of the goods under assessment, has to be made. If there are two or more values of the goods referred to at (ii) for delivery at different points of time, the one which is applicable for delivery at the time nearest to the time of removal of the goods under assessment should be taken as the basis for determining the value of the goods under assessment. The exact quantum of the adjustment will be determined by the assessing officer considering the circumstances as a whole and taking into account the general trend of prices in that particular commodity during the period between the two dates referred to at (i) and (ii).**

(3) Rule 5 :

(a) Rule 5 applies where all factors of the 'normal price' are present except that the price is not the sole consideration for the sale of the goods and there is some additional consideration flowing, directly or indirectly from the buyer to the assessee. This additional consideration may be in cash or in any other form. It may be separately ascertainable or it may

form part of some payment made or to be made by the buyer to the assessee.

(b) Where the additional consideration is not in the form of money, but is in kind or in the form of services, the money value of the additional consideration will have to be determined and added to the price to determine the 'normal price' under this rule.

(c) As stated earlier, the additional consideration need not be a direct payment from the buyer to the assessee. It may be a payment to some other person who receives it on behalf of the assessee or the additional consideration may reach the assessee through an intermediary. In all such cases, the additional consideration can be added to the price declared by the assessee for determining the 'normal price' of the goods.

(4) *Rule 6 :*

(a) Rule 6 applies in those cases only where the value is not ascertainable under the main definition of the 'normal price' and the value also cannot be determined under rule 4 or rule 5.

(b) Rule 6 has three clauses, each covering a different situation. Clause (a) applies where the assessee does not sell the goods in wholesale but sells the goods in retail. Clause (b) applies where the excisable goods are not sold by the assessee, but are used or consumed by him in the production or manufacture of other articles. Clause (c) applies where the assessee so arranges that the excisable goods are generally not sold by him in the course of wholesale trade except to or through a related person, and the value cannot be determined under proviso (iii) of the main definition.

(5) *Rule 7 :*

If the value of the goods cannot be determined under rules 4 to 6, the value may be determined by the proper officer to the best of his judgment, under rule 7. The order made by the proper officer in this regard need not be an elaborate order but it should succinctly record reasons for the value determined by him. The expression 'to the best of his judgment' does not imply an arbitrary determination of value based on totally extraneous material. As far as possible, the proper officer should take into consideration all the available relevant factors in determining the value. For this purpose, he may take into consideration any one or more

of the methods provided for in rules 4 to 6. As will be seen, the methods for determination of the value as specified in the rules relate to specific situation mentioned in these rules. If the value cannot be determined under the methods specified in a particular rule, rule 7 gives the authority to the assessing officer to apply any other method which may normally be applicable to a different situation. It is also open to the assessing officer to combine one or more of the methods if he consider it proper for determination of the value. The assessing officer, however, need not confine himself to the methods specified in rules 4 to 6. He may take into consideration any other methods which he considers appropriate on the facts and the circumstances of a particular case.

1.14 The Committee desired to know if the Ministry/Board were apprised by Internal Audit Wing or Directorate of Inspection and Audit on how these clarifications were being interpreted. The Ministry of Finance (Department of Revenue) have in a written note stated as under :—

“Ordinarily the clarifications issued by the Board are to be kept in view by the field officers. The Internal Audit Parties of the Collectorate, during inspection of the excisable units, are expected, *inter-alia* to look into whether various instructions/clarifications issued by the Government or the Board are being correctly applied by the Range Staff.

In the past, the Audit objections resulting from the review/inspections made by the Internal Audit Parties, which touched upon the transactions between manufacturers and related persons for the purpose of determining assessable value, were made. Some of these objections were also included in the All India Audit Bulletins issued by the Directorate of Inspection and Audit each quarter.”

1.15 The detailed facts of the two cases referred to in the Audit Paragraph are as under :—

“(i) M/s Anand Rubber Industries, Mangalore cleared most of their goods manufactured by them to a sole-selling agent M/s Swasti Enterprises, Mangalore. Under notification 71/78 CE dated 1.3.1978 levy of duty on first clearance of specified goods upto an aggregate value not exceeding Rs. 5 lakhs made during a

financial year by a manufacturer is exempt from excise duty subject to certain conditions. The manufacturer was allowed to avail the concessions intended for Small Scale manufacturers under the said notification but the total clearance during the period from 1 April 1978 to 31 March 1979 valued Rs. 7,34,424. Accordingly the licensee paid central excise duty on goods cleared in excess of the first clearance of Rs. 5 lakhs. The clearance during period from 1 April 1979 to 15 November, 1979 was Rs. 3,71,950. The clearance therefore formed 81.5% and 94.74% of the total production during the year 1978-79 and 1979-80 respectively, and were assessed on the price at which the manufacturer sold the goods to the sole-selling agent (related person) instead of at the price charged by that related person (M/s Swasti Enterprises, Mangalore) from dealers as per proviso (iii) to section 4 (1) (a) of the Central Excises and Salt Act 1944. Had the clearance been valued in accordance with the aforesaid provisions of the said Section 4 *ibid*, the manufacturer would have crossed the prescribed monetary limit of Rs. 5 lakhs much earlier.

When this mistake in determining the assessable value was pointed out in audit, the department raised a demand for Rs. 3.75 lakhs (basic Rs. 3,70,514 plus special Rs. 4,488) which was confirmed on 9.11.1981.

The Ministry of Finance accepted (December 1981) the facts as substantially correct. Subsequently, on 15.3.1982 the Appellate Collector of Central Excise set aside the aforesaid orders of 9.11.1981 because the department had not led in any evidence to show that M/s Swasti Enterprises are related person within the meaning of section 4.

(ii) M/s Kirloskar Oil Engines, Limited, Pune manufacturing internal combustion engines chargeable to duty under tariff item No. 29 (ii), sold some special types of engines through their distributors—M/s Escorts and some also directly to industrial consumers and others. The distributors were allowed a discount of 15 per cent on the list price which was accepted by the department for the purpose of determining the assessable value under Section 4 of the Act *ibid*. The sales through the distributors were under a contract between the manufacturer and the distributors which

provided, *inter alia*, for after sales service of engines, prohibition on sale of similar engines of rival manufacturers, etc. According to the clarifications issued by the Ministry of Finance in their letters No. 312/1/75 CX 10 dated 8.8.1975 and No. 6/16/77—CX 1 dated 4.3.1977 such distributors are deemed to be related persons and the discounted prices charged to them cannot be considered to be the value for the purpose of assessment on *ad-valorem* basis. The distributors sell the goods to other independent buyers at the list price which is the normal price. By reference to the list price, on clearance made by the distributors during the period from 1.10.1975 to 30.6.1978, duty was levied short by Rs. 7,75,335.

While admitting the audit objection, the Ministry of Finance stated (December 1981) that the Assistant Collector has been directed to raise necessary demands.

While the objections have been accepted by the Ministry, the Appellate authority had not accepted the stand of the Ministry that the sole selling agent was *ipso facto* a related person. Though the Ministry held that a distributor was a related person; the collector and assessing officer did not consider a distributor to be *ipso facto* a related person.”

1.16 The Committee wanted to know the intervals at which the price lists once approved were reviewed. The Ministry of Finance (Department of Revenue) stated as under in a written note :—

“An assessee is required to file price list in the prescribed proforma once every year at the commencement of each financial year or at the close of the accounting year followed by the assessee, irrespective of whether or not there is any change in the price-list furnished previously. The proper officer should cross-check the price list so received with the information in the previous price-list of the assessee and other relevant material and approve the assessable value or values for the excisable goods of the assessee. If during the currency of the approved prices, there is an alteration in the basis of valuation or the pattern of sale, etc, the assessee should immediately communicate the alteration to or file a new proforma with the proper officer.”

1.17 The Committee wanted to know as to on what date and by whom the price lists in the said two cases were reviewed between October

1975 and June 1978. In a written note the Ministry of Finance (Department of Revenue) furnished the following information :—

- “(i) CCE, Bangalore has stated that between 22.9.1975 to 1.6.1978, as many as 10 price lists were filed by the assessee, M/s Anand Rubber Industries, Mangalore effective from 1.10.1975 onwards. On four occasions, these price lists were reviewed in Classification and Valuation Cell of the Collectorate office i.e. on 1.12.1976, 18.1.1977, 3.6.1977 and 30.7. 1979. Only certain minor observations were made during the review of these price lists.
- (ii) It has been reported by the Collector of Central Excise, Pune that in the case of M/s Kirloskar Oil Engines, Khadki, Pune, the pattern of sale had come up for examination in September 1975, November, 1975 and April 1978. Accordingly, a show cause notice was issued asking the factory as to why the distributors should not be held as related person and the assessment was regulated accordingly. The review proceedings were initiated by the Collector of Central Excise, Pune in June 1980 and it was decided by the Collector that the distributors are “related persons” in this case. The assessee has gone in a writ petition in the Bombay High Court. Decision on the writ is awaited.”

1.18 The Committee desired to know as to how the mistake escaped the notice of the Department. In a written note, the Ministry of Finance (Department of Revenue) have stated as under:-

“In so far as the Bangalore Collectorate is concerned, CCE, Bangalore has reported that there was no irregularity in approving the price list and in this connection he has referred to the Order-in-Appeal passed by the Appellate Collector in the instant case. So far as Pune Collectorate is concerned, the pattern of sale in respect of M/s Kirloskar Oil Engine, Pune came up for examination in September, 1975, November, 1975 and April, 1978 and accordingly a show cause notice was issued to the party as to why the distributors should not be held as ‘related persons’. The assessment was regulated accordingly.”

1.19 Asked as to why the clarifications were not taken into account by the Officers of the Collectorate, the Ministry of Finance (Department of Revenue) have stated as follows :

“ It cannot be said that the Officers of the Bangalore Collectorate had not taken into account the departmental clarifications in the matter of determining the assessable value. So far as Pune Collectorate is concerned, in view of the fact stated it cannot be said that the officer of the Collectorate had not taken into account the departmental clarifications in the matter of determining the assessable value.”

1. 20 The Committee desired to know if the differential duty had been realised from the two licensees and if not the reasons therefor. The Ministry of Finance (Department of Revenue) in a written note, stated as follows:-

“ So far as the cases relating to the Bangalore Collectorate is concerned, the Divisional Assistant Collector had confirmed a demand for Rs. 3,75,001.89. Appellate Collector, Madras, in his Order-in-Appeal No. 61/82 (B) dated 15-3-1982 set aside the demand on the ground that the order of the original authority was not based on law. So far as Pune Collectorate is concerned, it has been reported by the Collector concerned that the differential duty has not been realised because the party has filed a writ petition in the Bombay High Court and obtained a stay order.”

1. 21 The Committee wanted to know if there were similar cases in other collectorates. The Ministry of Finance (Department of Revenue) have stated as under :—

“The following Collectorates have reported that there are no such cases :

Ahmedabad, Baroda, Cochin, Delhi, Goa, Hyderabad, Kanpur, Madras, Madurai, Meerut, Nagpur and Shillong, Bhubaneswar, Calcutta, Guntur, Chandigarh, Indore, Jaipur, West Bengal and Patna. Reply is still awaited from Allahabad, Bombay-I, Bombay-II.”

1. 22 The Committee desired to know if the Government had issued any orders to ensure that cases of under-valuation of sale to related persons were pursued in Courts appropriately. In a note, the Ministry of Finance (Department of Revenue) have stated as under :—

“That every case in court has to be assiduously contested with reference to its facts and evidence is exiomatic and would not appear to call for any general instructions. Every sale through a related person may not always be *ipso facto*, a case of undervaluation which is a distinct concept. Where there is evidence of under-valuation, (which in simple terms, means that the sale was actually at a price higher than that disclosed to the Department and there was flow back of the differential to the assessee, regardless of whether the sale was to or through a related person or not) the case has to be dealt with and pursued in Court as such. Thus when the sale is through a person who in terms of section 4 is a related person, the duty is attracted on the sale price of such related persons based on the authority of law and evidence of undervaluation is not a sinequanon.”

1.23 The Committee desired to know if the Valuation Cells should be entrusted with the work of examination of the commercial accounts of major manufacturers which truly reflect values and price declared to excise authorities. The Ministry of Finance (Department of Revenue) stated as under :—

“The Ministry agrees that the Classification and Valuation Cells should as and when necessary also look into the commercial accounts of major manufacturers.”

1.24 Asked if the valuation cells were manned by staff with the requisite qualifications and of the level needed for gathering commercial intelligence, the Ministry of Finance (Department of Revenue) stated as follows :

“Staff of the level of Superintendents and Inspectors, with necessary ministerial staff has been posted in such cells. In important Collectorates, separate Assistant Collectors have also been posted as incharge of these cells. This staff has to work under the direct guidance of Dy. Collector (Audit) or Dy. Collector (Technical) subject to the overall control of Collectors. Thus in a way all levels of executive officers have been associated with this task. To detect undervaluation, knowledge of central excise law with particular reference to provisions of valuation of excisable goods is essential. Apart from knowledge of the excise

law, some knowledge of accounting and marketing practices is also desirable. Efforts have been made to impart in-service training to officers of various levels by the Directorate of Training of this Department."

1.25 The Committee wanted to know if the work handled by the Valuation Cells did not duplicate the work being done by the assessing staff and internal audit. The Ministry of Finance (Department of Revenue) have stated :

"Some of the functions, such as verification of prices declared by some major manufacturers, may overlap with the functions of the assessing staff and Internal Audit staff. But a wide area of functions of such cells would not be covered by aforesaid two organisations. Some of the functions such as (i) study of general of pattern trade and price structure in different commodities (ii) collection of intelligence regarding wholesale and retail prices from important markets in the Collectorate, (iii) conducting *ad-hoc* enquiries in respect of individual proposals of tax exemption and (iv) collection of factual data required by Tax Research Unit of the Board, would not be a duplication of work."

1.26 The Committee desired to know if the Valuation Cells should not be required to gather preventive intelligence. In a note, the Ministry of Finance (Department of Revenue) replied as under :

"There are other institutionalised arrangements for collection of intelligence like preventive Intelligence units at the Head Quarters of the Collectorates and other field formations, apart from apex preventive organisation *viz.* Directorate of Anti Evasion which was set up in 1979. Yet every Officer responsible for collection of duty is expected in a broad sense, also to prevent its evasion and leakage. The Valuation Cell can reasonably be expected in the course of its normal functioning together such information and intelligence as may be necessary for effective discharge of these functions. Preventive intelligence gathering will be an approach in right direction."

1.27 The Committee desired to know the number of commodities in respect of which intelligence was collected, number of commodities

where wide disparity in prices of goods was found, number of licensees from whom additional duty was recovered as a result of disparity in prices noticed and the amount of duty realised during the last 5 years by the Classification and Valuation Cells, of all the Collectorates. In a note, the Ministry of Finance (Department of Revenue) have intimated that such intelligence was gathered in 7 Collectorates only and have furnished information in respect thereof (Appendix I).

1.28 The Committee wanted to know the number of classification and price lists received in the various Collectorate during the last 6 years from different manufacturers and send to the Classification and Valuation Cells, number of such lists checked by the Cells, number of cases in which mistakes were noticed in the Cells and number of cases in which duty was recovered as a result of rectifications suggested by Audit. A statement showing these details prepared on the basis of the information furnished by the Ministry of Finance (Department of Revenue) is at Appendix. II.

1.29 Based on the details furnished by the Ministry of Finance (Department of Revenue) another statement showing the duty realised during the last six years on the basis of the rectifications suggested by the Classification and Valuation Cells and the total expenditure incurred during these years on the Cells in the various Collectorates excluding those of Bangalore, Delhi, Bombay II and Patna is at Appendix III.

1.30 The classification and valuation cells in the various Collectorates are required to study *inter alia* the procedures in regard to the appointment of sole-selling agents, distributors, Sub-distributors and dealers by the various manufacturers. The Committee wanted to know the names of the manufacturers and their commodities in respect of which such studies were made (Collectorate-wise) during the last 5 years. In a note, the Ministry of Finance (Department of Revenue) have stated that no such studies were made in 17 collectorates while nothing was known about Delhi and Madras Collectorates. In respect of the remaining 6 Collectorates the following information has been furnished:—

S.No.	Collectorate	Name of the Units	Name of the Commodity
1.	Bangalore	1980-81 M/s I.T.C. Co. Ltd.	
2.	Baroda	1976-77 M/s Bharat Bobbins Ltd.	Organic Surface Active Agent (15AA)

S. No.	Collectorate	Name of the Units	Name of the Commodity
		M/s Garden Silk Mills (P) Surat.	Made-made fabrics (22)
		M/s Ambuja Chem. Ahmedabad.	Organic Surface Ac- tive Agents (15AA)
1977-78		M/s Hindustan Tractors Ltd. Baroda.	Tractor (34)
1978-79		Nil	Nil
1979-80		M/s Bharat Linder Pvt. Ltd. Baroda.	All other goods not elsewhere specified.
1980-81		M/s Jay Chemicals Odhay Ahmedabad.	S.O. Dyes (14D)
		M/s Transpeck Indus- tries Baroda.	Sodium Hydro Sul- phate (14AA)
		M/s Wood Paper Mills, Ltd. Billimoria.	Paper and Paper Board (17).
		M/s Guj Chem. Dis- trilleries India Ltd. Billimoria.	Hydro Chloric Acid (14G)
1981-82		M/s Amer Watch Co. Baroda.	Watches (T.44)
		M/s Dye Aze Gorwa, Baroda	S.O. Dyes (14B)
		M/s Hindustan Oxygen Ahmedabad.	Gases (14H)
		M/s Mahalaxmi Fabrics Ahmedabad.	Cotton fabrics (19)
		M/s Satyadev Chemi- cals Baroda.	Chemicals (14AA)
3.	Goa	1979-80 M/s Chriotine Hadden India Ltd.	Sanitary towels (68).
4.	Jaipur	M/s Jai Drinks (P) Ltd. Jaipur	Aerated Waters

S. No.	Collectorate	Name of the Units	Name of the Commodity
5.	Kanpur	1976-77 M/s Hind Lamps Ltd. Shikohabad.	—
		1977-78 M/s Jay Engineering Works Agra.	—
		M/s Kanpur Bottling Co. Ltd. Kanpur.	—
		M/s Jai Hind Bottling Co. Ltd. Kanpur.	
		1978-79 M/s J.K. Cotton Spinn- ing & Weaving Mills, Kanpur.	
		1979-80 M/s Ashoka Grah Udyog Kanpur.	
		1980-81 M/s Indian Organic and Pharmaceutical Works Kanpur	
6.	Patna	1981-82 M/s Hyderabad Asbe- stos Cement Pro- ducts (P) Ltd. Dhanbad.	Asbestos Cement Pro- ducts T.I. 23-C
		M/s Morton Confecti- onary & Milk Pro- ducts Marhowrth Chapra.	(1) Confectionary T.I. 1(A) (4) (2) Prepared or Pre- served Food T.I. IB.
		M/s Waxpol Industries (P) Ltd. Talisilwai, Ranchi.	(1) Polishes & Creams T.I. No. 15D (2) Metal Containers T.I. No.46 (3) Waxpol T.I. No. 68

1. 31 When asked about the outcome of such studies, the Ministry of Finance (Department of Revenue) intimated as under :—

“(i) Baroda

The study of the sales pattern disclosed that the following units were selling their products to the sole-selling agents/ distributors (related persons). In such cases the prices of the related persons should have been approved as per proviso (iii) of Section (1) (a) of the Central Excise and Salt Act, 1944. As a result the demands as shown against each unit have been raised for recovery of additional duty on the differential value between the value charged by the related persons and the approved assessable value :

Name of the manufacturer	Amount for which show cause notice issued
1. M/s Bharat Bobbins Pvt. Ltd. Ahmedabad	5,24,316.43
2. M/s Ambuja Chemicals, Ahmedabad	2,36,844.67
3. M/s Garden Silk Mills (P) Ltd. Surat	42,336.33
4. M/s Wood Paper Mills, Billimoria	10,27,223.73
5. M/s Guj Chem. Distilleries India Ltd. Billimoria	19,262.41

(ii) Goa

It was found that sales were being made through distributors being related persons. Show cause notice cum demand was raised and confirmed by Assistant Collector of Customs and Central Excise but it was set aside by Collector of Central Excise (Appeals), Bombay on grounds that sales to distributors are at arms' length. The case is being sponsored for review.

(iii) Patna

The following are the names of manufacturers and their Commodities in respect of which such studies were conducted :

- 1981-82 M/s Hyderabad Abbestors Cement Products (P) Ltd. Dhanbad. Asbestos Cement Products T. I. 23-C
- (2) M/s Morton Confectionary & Milk Products Marhowrth, Chapra (1) Confectionery T. I. 1(A) (4)
- (2) Prepare of Preserved Food I. T. 1B
- (3) M/s Waxpol Industries (P) Ltd. Talisilwai Ranchi. (1) Polishes & Creams T. I. No. 15D
- (2) Metal containers T. I. No. 46
- (3) Waxpol T. I. No. 68

(iv) Jaipur

In the case of M/s Jai Drinks (P) Ltd. Jaipur manufacturers of Aerated Waters, the pattern of sales through their distributors had revealed that the declared prices of aerated waters given by assessee were much below the prices at which some well-known brands of aerated waters were being sold in the market. Since it was felt that the transactions between the assessee and the distributor may not have been at an arm's length, enquiries were instituted first by the I. A. D. which were subsequently taken over by the valuation branch. The enquiries have not been completed so far.

(v) Bangalore

The case relating to I. T. C. Ltd. pertains to the year 1980 and the same is not yet finalised.

(vi) Kanpur

The studies were conducted in respect of the following manufacturers.

The outcome of the studies conducted is also indicated ;—

Name of the unit	out come of study conducted
1. M/s Hind Lamps Ltd. Shikohabad.	On the basis of study conducted it appeared that sales were being effected through four distributors. The duty

was sought to be levied on the price at which the goods were sold by these distributors. The matter was challenged in court and is now pending in the Supreme Court.

2. **M/s Jay Engineering Works, Agra.**

—do—

(Duty was sought to be levied on prices at which goods were sold by M/s Usha Sales Corporation)

3. **M/s J. K. Cotton Spinning and Weaving Mills, Kanpur.**

It was revealed that the factory was selling all goods to four dealers termed as independent whole-sale dealers but actually goods were cleared by these dealers directly, and all goods actually were resold to one concern through whom actual wholesale transactions were made. On issue of show cause notice to the factory asking them to show cause why this concern should not be treated as sole distributor, the factory has filed writ petition and obtained stay order from the Court, challenging the concept of related person in Section 4.

4. **M/s Kanpur Bottling Co. Ltd., Kanpur.**

5. **M/s Jai Hind Bottling Co., Kanpur.**

It was seen that these two concerns were marketing their goods through distributors and not through independent whole-sale dealers. Demands for differential duty have been confirmed but the parties have filed appeals against the Assistant Collector's orders.

6. **M/s Ashoka Grah Udyog, Kanpur.**

7. **M/s Indian Organic and Pharmaceutical Works, Kanpur.**

On investigation it was seen that goods were being marketed through sole distributors and not through independent dealers as claimed. The matter is under adjudication."

1.32 According to section 4 (1) (a) (iii) of the Central Excises and Sale Act, 1944 read with the rules made thereunder, the assessable value of goods, sale of which is arranged through a related person is required to be determined on the basis of the price charged by such related person to dealers. "Related person" has been defined in Sub-section 4 (c) as a person who is so associated with the assessee that they have interest, directly or indirectly, in the business of each other and includes a holding company, a subsidiary company, a relative and distributor of the assessee and any sub-distributor of such distributor. In this clause, "holding company" "subsidiary company" and "relative" have the same meaning as in the Companies Act, 1956.

1.33 Under notification No. 71/78 CE dated 1 March, 1978, levy of duty on first clearance of specified goods upto an aggregate value not exceeding Rs. 5 lakhs made during a financial year by a manufacturer is exempt from excise duty subject to certain conditions. M/s Anand Rubber Industries, Mangalore cleared most of their goods manufactured by them to a sole selling agent M/s Swathi Enterprises, Mangalore. The manufacturer was allowed to avail the concession intended for small scale manufacturers under the said notification but the total clearance during the period from 1 April, 1978 to 31 March, 1979 valued Rs. 7,34,424. Accordingly, the licensee paid central excise duty on goods cleared in excess of the first clearance of Rs. 5 lakhs. The clearance during the period from 1 April, 1979 to 15 November, 1979, valued Rs. 3,71,950. The clearance through the sole selling agent formed 81.5 per cent and 94.74 per cent of the total production during the year 1978-79 and 1979-80 respectively. These clearances were assessed at the price at which the manufacturer sold the goods to the sole selling agent (related person) instead of at the price charged by that related person from dealers as per proviso (iii) to Section 4 (1) (a) of the Central Excises and Salt Act, 1944. The mistake in the determination of the assessable value resulted in short-levy of duty to the tune of Rs. 3.75 lakhs. On the mistake being pointed out in audit, necessary demand was raised and confirmed on 9 November, 1981. Subsequently, the Appellate Collector of Central Excise set aside the orders of 9 November, 1981 because the Department had not led in any evidence to show that M/s. Swathi Enterprises were related person within the meaning of Section 4.

1.34 The provision of "Related person" in Section 4 was primarily intended to ensure that the sale price to the related person was determined

by the manufacturing costs and manufacturing profits and not by extra commercial considerations. The main objective of the provision was to protect the interest of exchequer against under-valuation. It is also to be borne in mind that a sole selling agency does not *ipso facto* become a related person until under-valuation in sale price can be established to show association involving interest. The Committee were informed that the firm had filed 10 price lists effective from 1 October, 1975 onwards and the same were reviewed on four occasions when no case of undervaluation was detected by the Classification and Valuation Cells.

From the circumstances of the case it would appear that despite the clarifications issued by the Department from time to time, the term "related person" continues to be interpreted differently by different authorities within the Department. The Committee would like the Ministry to examine the matter in depth and issue further guidelines, if necessary, to obviate such embarrassing situations.

1-35 The Committee are surprised to find that the Central Board of Excise and Customs has not kept any track in regard to the interpretation by the field formations of the clarifications issued by them in August, 1975 and 4 March, 1977 on valuation of excisable goods for purposes of levy of excise duty under Section 4 of the Central Excises and Salt Act, 1944. To a pointed query by the Committee whether the Board was kept apprised by the Internal Audit Wing or Directorate of Inspection and Audit in regard to the interpretation of the aforesaid clarifications, the Committee have been furnished with a vague reply that "ordinarily the clarifications issued by the Board are to be kept in view by the field officers and that the Internal Audit Parties of the Collectorates are expected in the course of inspection of excisable units *inter alia* to look into whether the various instructions/clarifications issued by the Government or the Board are being correctly applied by the Range Staff." Even though the clarifications issued are quite exhaustive and detailed the Committee consider it necessary that the Board develops a system of obtaining regular feed back from the field so that the law is applied uniformly in all the Collectorates and it is ensured that the provisions of law with regard to "related person" are effectively utilised to bring to book cases of undervaluation. The Committee would like to be apprised of the steps taken by the Board in this regard.

1.36 The Committee understand that an assessee is required to file price list in the prescribed proforma once every year at the commencement of each financial year or at the close of the accounting year followed by the assessee, irrespective of whether or not there is any change in the price list furnished by him previously. The proper officer is supposed to cross-check the price list so received with the information in the previous price-list of the assessee and other relevant material and then approve the assessable value or values for the excisable goods of the assessee. The pattern of sales in the case of M/s Kirloskar Oil Engines, Pune, came up for examination in September, 1975, November, 1975 and April, 1978. The dates when the price lists were submitted by them and the reasons for non-examination of the pattern of sales for a period of about $2\frac{1}{2}$ years from November, 1975 and April 1978 have not been intimated to the Committee, in the absence of which it has not been possible for the Committee to arrive at any conclusion. The Committee would like to be furnished with this information and also whether there was any lapse on the part of the Department to obtain price lists on the due dates from the said firm and if so, the reasons therefor.

1.37 The Committee further observe that in the revenue proceedings initiated by the Collector of Central Excise, Pune in June 1980, it was decided that the distributors are "related persons". The assessee is stated to have gone in a writ petition to the Bombay High Court and obtained a stay order. The Ministry's note is silent on the point whether the Government has moved to get the stay vacated. Apparently this has not been done. As more than $2\frac{1}{2}$ years have since elapsed, the Committee consider that the Department should have given a precise reply about the position in the case. They cannot but deprecate this lapse. They desire that the High Court should be moved immediately in the matter.

1.38 The case underscores the need for having a separate Directorate in the Central Board of Customs & Central Excise to monitor all court cases so as to ensure that huge amounts of revenue do not remain locked up in such cases for unduly long time. The Committee would like the Ministry of Finance to consider this matter very seriously. The Committee would like to be apprised of the decision taken in this regard.

1.39 The Committee find that the Classification and Valuation Cells were set up in the various Collectorates in the year 1971 in order to ascertain veracity of prices in respect of important industries with sizeable volume

of transactions, or monopoly sales by actual reference to sale invoices/general ledger and other relevant records. This study on a selection basis in respect of important units will be undertaken by visit to the factories by the Cell staff. These cells have now been in existence for a period of more than 10 years. These cells received a large number of price and classification lists over the years 1976-77 to 1981-82 but only a small proportion of them were checked. Further, the number of price and classification lists where undervaluation was noticed and the number of cases in which duty was recovered as a result of rectifications suggested by the Cells was quite negligible. This is borne out by the fact that during the 6 years from 1976-77 to 1981-82 a total number of 13,37,821 price and classification lists were sent to the Cells, about 6,94,117 lists were checked by them, mistakes were noticed in about 12,775 lists and duty was recovered in approximately 618 cases in all. The Committee is distressed to see that the Valuation Cells are not taking up important cases and are not checking by making visits to monopoly houses and units selling to related persons etc. It is only engaged in routine checks duplicating work of internal audit.

1.40 The classification and valuation cells in the various Collectorates are required to study *inter alia* the procedures in regard to appointment of sole selling agents, distributors, sub-distributors and dealers by the various manufacturers with a view to determine the 'related persons' and under-valuation of sale prices. The Committee find that during the last 5 years such study was conducted only in 6 Collectorates viz. Bangalore, Baroda, Goa, Jaipur, Kanpur and Patna whereas no studies were conducted in 17 Collectorates. No information has been furnished about the remaining 2 Collectorates. This is a sad commentary on the working of the classification and valuation cells, majority of which have failed to discharge one of their most important functions of detecting cases of undervaluation of sale to "related person". The Committee cannot but express their deep concern at this.

The Committee would like to be apprised of the precise reasons which have prevented the cells in a large number of Collectorates from conducting any study during the last 5 years and the remedial measures taken in this regard.

1.41 One of the other functions assigned to the Classification and Valuation Cells is the collection of intelligence in respect of various commodities where wide disparity in prices of goods is found. During a period of 5 years from 1976-77 to 1981-82, such intelligence was collected only in 7

Collectorates in respect of a total of 153 commodities out of which wide disparity in prices was found in 59. As a result, additional duty of only about Rs. 15 lakhs was realised from 18 licensees only. The Committee feel that if intelligence is collected systematically in all the Collectorates and covering extended to all excisable commodities, leakage of revenue could be effectively curbed. The Committee would therefore like to know the reasons for the non-collection of intelligence in majority of the Collectorates and the action taken by Government to ensure that this work becomes the regular feature of the activities of all the Collectorates.

1.42 The Committee note that at present there is no foolproof system ensure that the Valuation Cells examine the commercial accounts of the major manufacturers to ensure that these accounts truly reflect values and prices declared to excise authorities. The Ministry agrees that the classification and valuation cells should as and when necessary also look into the commercial accounts of major manufacturers. The Committee recommend that a regular system in this regard should be introduced early.

1.43 It is a matter of common knowledge that a large number of manufacturers are passing on goods to their relations for sale on agency basis, thereby avoiding excise duty. The Committee therefore desire that the matter should be examined systematically and regularly by Competent Officers entrusted wholly with such task so as to detect such cases and initiate deterrent penal action. The Committee would like to be apprised of the action taken in this regard.

NEW DELHI ;

28 April, 1983

8 Vaisakha, 1905 (S)

SATISH AGARWAL

Chairman

Public Accounts Committee

PART II

Minutes of the 76th Sitting of Public Accounts Committee held on 27 April, 1983

The Public Accounts Committee sat from 0930 to 1100 hrs. in Room No. 53, Parliament House, New Delhi.

PRESENT

Shri Satish Agarwal—*Chairman*

- | | | |
|----------------------------|---|----------------|
| 2. Shri Chitta Basu | } | <i>Members</i> |
| 3. Shri G.L. Dogra | | |
| 4. Shri Bhiku Ram Jain | | |
| 5. Shri Sunil Maitra | | |
| 6. Shri Jamilur Rahman | | |
| 7. Shri Uttam Rathod | | |
| 8. Shri G. Narsimha Reddy | | |
| 9. Shri Ram Singh Yadav | | |
| 10. Smt. Pratibha Singh | | |
| 11. Shri Nirmal Chatterjee | | |

REPRESENTATIVES OF THE OFFICE OF THE C&AG

Shri R. S. Gupta—Director of Receipt Audit I
Shri N. Sivasubramanian—Director of Receipt Audit II
Shri R. Balasubramanian—Joint Director

SECRETARIAT

1. Shri T. R. Krishnamachari—Joint Secretary
2. Shri K. C. Rastogi—Chief Financial Committee Officer
3. Shri Ram Kishore—Senior Financial Committee Officer
4. Shri K. K. Sharma—Senior Financial Committee Officer
5. Shri M. G. Agrawal—Senior Financial Committee Officer

APPENDIX I

Statement showing the position in 7 Collectorates of Central Excise in regard to the (i) no. of commodities in respect of which intelligence was collected by them, (ii) no. of commodities where wide disparity in prices of goods was found, (iii) no. of licensees from whom additional duty was recovered and (iv) the amount of duty realised during the last 6 years.

	1976-77	1977-78	1978-79	1979-80	1980-81	1981-82	Total
(i) No. of Commodities in respect of which intelligence was gathered.	26	27	14	32	22	32	153
(ii) No. of Commodities where wide disparity in prices of goods was found.	6	6	4	11	14	18	59
(iii) No. of licensees from whom additional duty was realised as a result of disparity in prices noticed.	—	1	—	4	6	7	18
(iv) Amount of additional duty realised.	— 4,09,503.69— 3,69,251.75 16, 709.02 10,71,311.73						-18,66,776.19

x Not relevant.

APPENDIX II

Statement showing the (i) total no. of Classification and Price List sent to the Classification and Valuation Cells (ii) no. of such lists checked by the Cells (iii) no. of cases in which mistakes were noticed in the Cells and (iv) no. of cases in which duty was recovered as a result of rectifications suggested by Audit during the last 6 years.

Grand Total

	1976-77		1977-78		1978-79		1979-80		1980-81		1981-82		
	C. List	P. List	C. List	P. List	C. List	P. List	C. List	P. List	C. List	P. List	C. List	P. List	
(1) No. of Classification and Price Lists received in the various Collectorates from different manufacturers and sent to the Classification and Valuation Cells.	72,365	1,46,842	84,725	1,23,091	96,067	1,50,187	80,474	1,43,320	89,852	1,60,995	72,452	1,17,451	13,37,21

												Grand Total	
1976-77		1977-78		1978-79		1979-80		1980-81		1981-82			
C. List	P. List	C. List	P. List	C. List	P. List	C. List	P. List	C. List	P. List	C. List	P. List	C. List	P. List
(2) No. of Classification and Price Lists checked by the Cells													
26,941	48,774	35,987	60,995	45,282	70,302	39,459	80,286	50,095	1,11,618	44,955	79,423	6,94,117	
(3) No. of cases in which mistakes were noticed in the Cells.													
856	675	1203	625	1261	934	1044	1089	1489	1371	1150	1078	12,775	
(4) No. of cases in which duty was recovered as result of rectification suggestion by Audit.													
6	25	7	33	7	33	1	60	3	61	180	202	618	

APPENDIX III

Statement showing the total amount of duty recovered on the basis of rectifications suggested by the Classification and Valuation Cells and the total expenditure incurred on these cells during the last 5 years.

Grand Total

	1976-77		1977-78		1978-79	
Duty						
realised	18,008.36	2,92,087.71	1,74,715.19	14,96,176.73	2,46,147.57	90,624.38
Expendi-						
ture	17,49,858.34		19,24,936.75		20,01,259.75	

Grand Total

	1979-80		1980-81		1981-82	
Duty						
realised	1,51,463.25	1619.66	2,37,121.46	1,01,18,081.72	3,80,038.67	1,82,06,084.70
Expendi-						
ture	24,33,176.25		25,95,627.71		22,83,283.86	1,29,88,142.66

APPENDIX IV

Conclusion/Recommendation

S. No.	Para	Ministry/Dept. Concerned	Conclusions/Recommendations
1	2	3	4
1.	1.32	M/o Finance Depart- ment of Revenues	Excises and Sale Act, 1944 read with the rules made thereunder, the assessable value of goods, sale of which is arranged through a related person is required to be determined on the basis of the price charged by such related person to dealers. "Related person" has been defined in Sub-section 4(c) as a person who is so associated with the assessee that they have interest, directly, or indirectly, in the business of each other and including a holding company, a subsidiary company, a relative and distributor of the assessee and any sub-distributor of such distributor. In this clause, "holding company" "subsidiary company" and "relative" have the same meaning as in the Companies Act, 1956.
2.	1.33	—do—	Under notification No. 71/78 CE dated 1 March, 1978, levy of duty on first clearance of specified goods upto an aggregate value not exceeding Rs. 5 lakhs made during a financial year by a manufacturer is exempt from excise duty subject to certain conditions. M/s Anand Rubber Industries, Mangalore cleared most of their goods manufactured by them to a sole selling agent M/s Swathi Enterprises, Mangalore. The manufacturer was allowed to avail the concession intended for small scale manufacturers under the said notification but the total clearance during the period

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from 1 April, 1978 to 31 March, 1979 valued Rs. 7,34,424. Accordingly, the licensee paid central excise duty on goods cleared in excess of the first clearance of Rs. 5 lakhs. The clearance during the period from 1 April, 1979 to 15 November, 1979 valued Rs. 3,71,950. The clearance through the sole selling agent formed 81.5 per cent and 94.74 per cent of the total production during the year 1978-79 and 1979-80 respectively. These clearances were assessed at the price at which the manufacturer sold the goods to the sole selling agent (related person) instead of at the price charged by that related person from dealers as per proviso (iii) to Section 4 (1) (a) of the Central Excises and Salt Act, 1944. The mistake in the determination of the assessable value resulted in short-levy of duty to the tune of Rs. 3.75 lakhs. On the mistake being pointed out in audit, necessary demand was raised and confirmed on 9 November, 1981. Subsequently, the Appellate Collector of Central Excise set aside the orders of 9 November, 1981 because the Department had not led in any evidence to show that M/s. Swathi Enterprises were related person within the meaning of Section 4.

- 3 1.34 M/o Finance (Department of Revenue) The provision of "Related person" in Section 4 was primarily intended to ensure that the sale price to the related person was determined by the manufacturing costs and manufacturing profits and not by extra commercial considerations. The main objective of the provision was to protect the interest of exchequer against under-valuation. It is also to be borne in mind that a sole selling agency does not *ipso facto* become a related person until under-valuation in sale price can be established to show association involving interest. The Committee were informed that the firm had filed 10 price lists effective from 1 October, 1975 onwards and the same

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were reviewed on four occasions when no case of undervaluation was detected by the Classification and Valuation Cells.

From the circumstances of the case it would appear that despite the clarifications issued by the Department from time to time, the term "related person" continues to be interpreted differently by different authorities within the Department. The Committee would like the Ministry to examine the matter in depth and issue further guidelines, if necessary, to obviate such embarrassing situations.

4 1.35 -do-

The Committee are surprised to find that the Central Board of Excise and Customs has not kept any track in regard to the interpretation by the field formations of the clarifications issued by them in August, 1975 and 4 March, 1977 on valuation of excisable goods for purposes of levy of excise duty under Section 4 of the Central Excises and Salt Act, 1944. To a pointed query by the Committee whether the Board was kept apprised by the Internal Audit Wing or Directorate of Inspection and Audit in regard to the interpretation of the aforesaid clarifications, the Committee have been furnished with a vague reply that "ordinarily the clarifications issued by the Board are to be kept in view by the field officers and that the Internal Audit Parties of the Collectorates are expected in the course of inspection of excisable units *inter alia* to look into whether the various instructions/clarifications issued by the Government or the Board are being correctly applied by the Range Staff". Even though the clarifications issued are quite exhaustive and detailed the Committee consider it necessary that the Board develops a system of obtaining regular feed back from the field so that the law is applied uniformly in all the Collectorates and it is ensured that the provisions of law with regard to "related person" are effectively

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utilised to bring to book cases of undervaluation. The Committee would like to be apprised of the steps taken by the Board in this regard.

5 1.36 -do-

The Committee understand that an assessee is required to file price list in the prescribed proforma once every year at the commencement of each financial year or at the close of the accounting year followed by the assessee, irrespective of whether or not there is any change in the price list furnished by him previously. The proper officer is supposed to cross-check the price list so received with the information in the previous price-list of the assessee and other relevant material and then approve the assessable value or values for the excisable goods of the assessee. The pattern of sales in the case of M/s Kirloskar Oil Engines, Pune, came up for examination in September, 1975, November, 1975 and April, 1978. The dates when the price lists were submitted by them and the reasons for non-examination of the pattern of sales for a period of about 2½ years from November, 1975 and April 1978 have not been intimated to the Committee, in the absence of which it has not been possible for the Committee to arrive at any conclusion. The Committee would like to be furnished with this information and also whether there was any lapse on the part of the Department to obtain price lists on the due dates from the said firm and if so, the reasons therefor.

6 1.37 -do-

The Committee further observe that in the revenue proceedings initiated by the Collector of Central Excise, Pune in June 1980, it was decided that the distributors are "related persons". The assessee is stated to have gone in a writ petition to the Bombay High Court and obtained a stay order. The

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Ministry's note is silent on the point whether the Government has moved to get the stay vacated. Apparently this has not been done. As more than $2\frac{1}{2}$ years have since elapsed, the Committee consider that the Department should have given a precise reply about the position in the case. They cannot but deprecate this lapse. They desire that the High Court should be moved immediately in the matter.

7 1.38 -do-

The case underscores the need for having a separate Directorate in the Central Board of Customs & Central Excise to monitor all court cases so as to ensure that huge amounts of revenue do not remain locked up in such cases for unduly long time. The Committee would like the Ministry of Finance to consider this matter very seriously. The Committee would like to be apprised of the decision taken in this regard.

8 1.39 -do-

The Committee find that the Classification and Valuation Cells were set up in the various Collectorates in the year 1971 in order to ascertain veracity of prices in respect of important industries with sizeable volume of transactions, or monopoly sales by actual reference to sale invoices/general ledger and other relevant records. This study on a selection basis in respect of important units will be undertaken by visit to the factories by the Cell staff. These cells have now been in existence for a period of more than 10 years. These cells received a large number of price and classification lists over the years 1976-77 to 1981-82 but only a small proportion of them were checked. Further, the number of price and classification lists where undervaluation was noticed and the number of cases in which duty was recovered as a

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result of rectifications suggested by the Cells was quite negligible. This is borne out by the fact that during the 6 years from 1976-77 to 1981-82 a total number of 13,37,821 price and classification lists were sent to the Cells, about 6,94,117 lists were checked by them, mistakes were noticed in about 12,775 lists and duty was recovered in approximately 618 cases in all. The Committee is distressed to see that the Valuation Cells are not taking up important cases and are not checking by making visits to monopoly houses and units selling to related persons etc. It is only engaged in routine checks duplicating work of internal audit.

9 1.40 -do-

The classification and valuation cells in the various Collectorates are required to study *inter alia* the procedures in regard to appointment of sole selling agents, distributors, sub-distributors and dealers by the various manufacturers with a view to determine the 'related person' and undervaluation of sale prices. The Committee find that during the last 5 years such study was conducted only in 6 Collectorates viz. Bangalore, Baroda, Goa, Jaipur, Kanpur and Patna whereas no studies were conducted in 17 Collectorates. No information has been furnished about the remaining 2 Collectorates. This is a sad commentary on the working of the classification and valuation cells, majority of which have failed to discharge one of their most important functions of detecting cases of undervaluation of sale to "related person". The Committee cannot but express their deep concern at this.

The Committee would like to be apprised of the precise reasons which have prevented the cells in a large number of Collectorates from conducting any

1	2	3	4
			study during the last 5 years and the remedial measures taken in this regard.
10	1.41	M/o Finance (Deptt. of Revenue)	One of the other functions assigned to the Classification and Valuation Cells is the collection of intelligence in respect of various commodities where wide disparity in prices of goods is found. During a period of 5 years from 1976-77 to 1981-82, such intelligence was collected only in 7 Collectorates in respect of a total of 153 commodities out of which wide disparity in prices was found in 59. As a result, additional duty of only about Rs. 15 lakhs was realised from 18 licensees only. The Committee feel that if intelligence is collected systematically in all the Collectorates and covering extended to all excisable commodities, leakage of revenue could be effectively curbed. The Committee would therefore like to know the reasons for the non-collection of intelligence in majority of the Collectorates and the action taken by Government to ensure that this work becomes the regular feature of the activities of all the Collectorates.
11	1.42	-do-	The Committee note that at present there is no foolproof system to ensure that the Valuation Cells examine the commercial accounts of the major manufacturers to ensure that these accounts truly reflect values and prices declared to excise authorities. The Ministry agrees that the classification and valuation cells should as and when necessary also look into the commercial accounts of major manufacturers. The Committee recommend that a regular system in this regard should be introduced early.
			It is a matter of common knowledge that a large number of manufacturers are passing on goods

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to their relations for sale on agency basis, thereby avoiding excise duty. The Committee therefore desire that the matter should be examined systematically and regularly by Competent Officers entrusted wholly with such task so as to detect such cases and initiate deterrent penal action. The Committee would like to be apprised of the action taken in this regard.

20. Atma Ram & Sons,
Kashmere Gate,
Delhi-6.
21. J.M. Jaina & Brothers,
Mori Gate, Delhi.
22. The English Book Store,
7-L, Connaught Circus,
New Delhi.
23. Bahree Brothers,
188, Lajpatrai Market,
Delhi-6.
24. Oxford Book & Stationery
Company, Scindia House,
Connaught Place,
New Delhi-1.
25. Bookwell,
4, Sant Nirankari Colony,
Kingsway Camp,
Delhi-9.
26. The Central News Agency,
23/90, Connaught Place,
New Delhi.
27. M/s. D.K. Book Organisations,
74-D, Anand Nagar
(Inder Lok),
P.B. No. 2141,
Delhi-110035.
28. M/s. Rajendra Book Agency,
IV-D-50, Lajpat Nagar,
Old Double Storey.
Delhi-110024.
29. M/s. Ashoka Book Agency,
2/27, Roop Nagar,
Delhi.
30. Books India Corporation,
B-967, Shastri Nagar,
New Delhi.

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