

# **NINETY-SIXTH REPORT**

## **PUBLIC ACCOUNTS COMMITTEE (1981-82)**

(SEVENTH LOK SABHA)

**UNION EXCISE DUTIES  
ELECTRIC MOTORS AND  
COTTON TEXTILES**

MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

*Presented to Lok Sabha. . . . .*  
*Laid in Rajya Sabha on. . . . .*

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*March, 1982/Chaitra 1904 (Saka)*

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(1981-82)

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**Shri Satish Agarwal**

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\*Ceased to be a Member of the Committee consequent on his appointment as a Deputy Minister w.e.f. 15-1-1982.

\*\*Ceased to be a Member of the Committee consequent on his appointment as a Minister of State w.e.f. 15-1-1982.

[iv]

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22. **Shri Indradeep Sinha**

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

## INTRODUCTION

I, the Chairman of the Public Accounts Committee, as authorised by the Committee, do present on their behalf, this 96th Report on Paragraphs 2.29 and 2.65(b) of the Report of the Comptroller & Auditor General of India for the year 1979-80, Union Government (Civil), Revenue Receipts, Vol. I, Indirect Taxes relating to Electric Motors and Cotton Textiles respectively.

2. The Report of the Comptroller & Auditor General of India for the year 1979-80, Union Government (Civil), Revenue Receipts, Vol. I, Indirect Taxes was laid on the Table of the House on 17 March, 1981.

3. In chapter I of the Report, the Committee have examined a case of underassessment of excise duty due to non-inclusion of the value of gear mechanism in the assessable value of electric motors in terms of the instructions issued by the Central Board of Excise and Customs in March, 1976 and May, 1978. The Committee have observed that while issuing the aforesaid instructions the Board had not exercised adequate care in examining and analysing the issue thoroughly. The fact that the defects in the above instructions could be detected and corrective action in the form of issuing a fresh Tariff Advice on 31 August, 1981 cancelling the earlier instructions could be taken only as a result of the follow-up action on the objection raised by the Statutory Audit would seem to indicate the inadequacy of the departmental machinery in scrutinising the instructions before their issue. The Committee have, therefore, recommended that the Ministry of Finance should devise an effective machinery in order to ensure that the tariff advices, clarifications and other instructions issued by the Board are properly scrutinised in all respects before they are issued.

4. In Chapter II of the Report, the Committee have dealt with certain cases of underassessments of excise duty in 6 Collectorates involving a total amount of Rs. 69.03 lakhs due to incorrect classification of cotton fabrics under tariff item 191(2) (a) to 191(2)(e) and incorrect application of compounded levy rates in the case of yarn used in the making of such cotton fabrics. The classification of cotton fabrics under tariff item 191 based on counts of yarn was changed with effect from 18 June, 1977 as the Ministry of Finance found the classification to be 'complicated'. The Committee have observed that the fact that misclassifications of cotton fabrics falling under tariff item 191(f) have been reported only from 6 Collectorates and that assessments were being done correctly in other Collectorates

would seem to indicate that the under-assessments could not be attributed to complications in the law. The Committee have, therefore, recommended that responsibility should be fixed for this lapse after holding an enquiry.

5. The Committee (1981-82) examined paragraphs 2.29 and 2.65(b) on the basis of the written information furnished by the Ministry of Finance (Department of Revenue). The Committee considered and finalised the Report at their sitting held on 30 March, 1982. 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 VI to 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 also place on record their appreciation of the assistance rendered by the Office of the Comptroller & Auditor General of India in the examination of these Paragraphs.

NEW DELHI:

SATISH AGARWAL

*Chairman*

*Public Accounts Committee*

1 April, 1982.

11 Chaitra, 1904 (Saka).



## **REPORT**

### **CHAPTER I**

#### *Audit Paragraph*

#### **ELECTRIC MOTORS**

1.1 A licensee in a collectorate, manufactured electric motors falling under tariff item 30. The speed of these motors was regulated by a gear mechanism, which was also manufactured in the same factory. Such geared motors were therefore, required to be assessed to duty on the value including the value of the gear mechanism. However, the geared motors were assessed to duty excluding the value of the gear mechanism resulting in under assessment of duty of Rs. 4,72,470 during the period 1st April, 1976 to 22nd May, 1979. When this was pointed out in audit in August, 1978, the department issued show cause notices demanding the duty (April, 1979 and November, 1979). Further progress is awaited (May, 1980).

1.2 The licensee started paying duty on the total value of geared motors with effect from 23rd May, 1979.

1.3 The paragraph was sent to the Ministry of Finance in August, 1980, reply is awaited (December, 1980).

[Paragraph 2.29 of the Report of the Comptroller & Auditor General of India for the year 1979-80, Union Government (Civil), Revenue Receipts, Volume I—Indirect Taxes].

#### *Excise Duty on Electric Motors*

1.4 Electric motors of all sorts and parts thereof were brought under excise control with effect from 1 March, 1960. They are chargeable to duty *ad valorem* under tariff item 30. Rate of duty differs according to the rated capacity of the motor and the current on which it is capable of operating.

#### *Tariff Advice dated 26 March, 1976 and clarification issued on 1 May, 1978*

1.5 The Central Board of Excise and Customs vide tariff advice No. 14/76 dated 26 March, 1976 issued vide F. No. 146/8/75-CX.4 (Appendix I) clarified that the geared motors were quite different from variable speed/dual or multispeed motors and even after coupling of the gear unit to the base induction motor, the essential characteristics of the base motor were not changed and, therefore, both the base motor and geared motor would fall under the same sub-item of Item 30. It was also clarified

that in the case of integrated units, the duty would be chargeable on the final product, namely, geared motors.

1.6 The above tariff advice was subsequently discussed at the instance of Collector of Central Excise, Bangalore in the Second South Zone Central Excise Tariff Conference held at Bangalore in April, 1977. The Members of the Conference then felt that this tariff advice did not need duty review.

1.7 On 1 May, 1978 the Central Board of Excise and Customs further clarified vide letter F. No. 146/10/76-CX.4 (Appendix II) that the units assembling geared motors by manufacturing in their premises the geared mechanism and procuring from outside duty paid electric motors, should be brought under the excise control, and the geared motors produced by them should be subjected to excise levy under tariff item 30. Such manufacturers would be eligible to proforma credit in respect of electric motors received in their premises for further manufacture of geared motors.

1.8 The Committee desired to be informed of the background for the issue of clarification dated 1 May, 1978 and the specific purpose it was intended to serve. The Ministry of Finance (Department of Revenue) have in a note stated:—

“The background leading to the issue of Board's letter F. No. 146/10/76-CX. 4 dated 1-5-78 was to charge duty on the additional value of the geared mechanism attached to the motors and the specific purpose was to avoid situations where certain manufacturers would bring in duty paid motors and attach these motors to geared mechanism in separate premises to evade duty chargeable on the additional value of the geared mechanism”.

#### *Audit Objection*

1.9 In the present para the Audit have highlighted a case of under-assessment of duty due to non-inclusion of the value of gear mechanism in the assessable value of electric motor in which it was fitted and with which it was cleared.

#### *Facts of the Case*

1.10 M/s. Hercules Hoists Ltd. Mulund, Bombay, manufactured hoists by using electric motors manufactured in the factory itself. In order to regulate the speed of the motors, gear mechanism was also manufactured and used in the electric motors. The unit was paying duty on electric motors under tariff item 30 and subsequently on hoist together with gear box under tariff item 68. According to the Audit as the speed of the electric motors was regulated by the gear mechanism, the gear formed a

part of the electric motor and it would be a geared motor manufactured in an integrated factory and was therefore chargeable to duty on the value including the value of gear mechanism as clarified by the Central Board of Excise and Customs on 26 March, 1976 and 1 May, 1978 (referred to above). It has been pointed out by Audit that the assessed company to the instant case cleared geared motors for captive consumption without taking into consideration the value of gear mechanism resulting in an under-assessment of duty of Rs. 4,72,470 for the period 1 April, 1976 to 22nd May, 1979.

*Action taken on the audit objection*

1.11 The objection was raised by the audit on 18 July, 1978. The Committee desired to know the action taken on the objection. The Ministry of Finance (Department of Revenue) have in a note stated:

“The Divisional Officer replied to the audit report stating that in the instant case the gear box or gear mechanism was a separate attachment and should not be treated as a part of the electric motor and that the gear box was used for regulating the speed of the electric hoist.

Demand for Rs. 2,43,180 for the period from 1-4-76 to 31-3-78 was issued on 4-4-1979. Demand for Rs. 2,20,960 for the period from 1-4-78 to 22-5-79 was issued on 17-11-79. Objection in the form of statement of facts was received on 15-2-80.”

1.12 The Committee were informed that the assessee started paying duty in accordance with the audit objection under protest from 23 May, 1979.

*Issue of fresh Tariff Advice and cancellation of earlier instructions*

1.13 The Committee desired to know how the present case (i.e. of M/s. Hercules Hoists Ltd. Mulund, Bombay) stood on a different footing from the type of cases sought to be covered by Tariff Advice No. 14/76 dated 26 March, 1976 and the clarification issued on 1 May, 1978. In their note furnished to the Committee on 21 July 1981, the Ministry of Finance (Department of Revenue) stated that the matter was being further examined.

1.14 On 31 August, 1981, after further examination, the Central Board of Excise and Customs issued a fresh Tariff Advice No. 89/81 vide F. No. 146/2/81-CX. 4 cancelling the instructions contained in the Board's circular No. 146/10/76-CX. 4 dated 1 May, 1978. A copy of the Tariff Advice is at Appendix III.

1.15. In the Tariff Advice No. 89/81 issued on 31 August, 1981 a distinction has been made between a gear motor and a motor coupled to a gear mechanism. In the case of a gear motor the gear mechanism was an integral part of the motor and there was a common housing and the motor had no separate existence of its own. In contrast, a motor could be separately coupled to gear mechanism in which case the motor and gear mechanism would remain two separate identifiable entities. In the former case the gear mechanism was treated as an integral part of an electric motor whereas in the latter case it was treated as an accessory of an electric motor. Thus the present case has been sought to be covered within the latter category.

1.16 According to this Tariff Advice the value of gear mechanism need not be included in the value of electric motor for assessment of duty on electric motors because geared motor cannot be said to have come into existence in an independent and identifiable manner.

1.17 Paragraph 5 of the Tariff Advice *Inter alia* read as follows:—

“...The instructions contained in the Board's circular F. No. 146/10/76-CX. 4 dated 1-5-78 do not appear to be correct for the reason that Item 30, as it exists, does not have a separate sub-item of the type 'All Others' and the net result would, therefore, be that once the motor has paid duty under Item 30 and after the geared mechanism is attached to it, it continues to be classified under Item 30 and, therefore, no duty can be charged second time on the same product. As regards the classification of hoist, it would be seen that the motor is manufactured separately and is put into a single casing which contains other two mechanism also *i.e.* the gear and limit switches. They are contained in a single casing and it cannot be said that the geared motor has been manufactured. Thus, at no stage, the geared motor can be said to have come into existence which can be bought and sold as such. It is the entire equipment which comes into existence on the assembly line by fitting in three components *i.e.* the motor, the gears and the limit switches in the main housing. In other words, the hoist cannot be bought and sold as a geared motor. Accordingly, whereas the hoist is classifiable under Tariff Item 68, the value of the gear mechanism in such cases, would not be included in the value of electric motor as “geared motor” cannot be said to have come into existence in an independent and identifiable manner as to be recognised in the market as such. In view of this position the instructions contained in the Board's circular issued vide F. No. 146/10/76-CX. 4 dated 1-5-78 are hereby cancelled.”

1.18. The Central Board of Excise and Customs further instructed the Collectors that all pending assessments might be finalised in the light of the instructions contained in the above Tariff Advice.

1.19. The Committee desired to know the reasons for the cancellation of the Board's instruction dated 1 May, 1978 by issuing Tariff Advice No. 89/81 dated 31 August, 1981. The Ministry of Finance (Department of Revenue) have in a note stated:

“During the course of the examination of the issue of classification of hoists, the issue as to whether or not a geared motor comes into existence was also examined. It was during the examination of the issue that it was found that the Board's instructions dated 1-5-78 providing for proforma credit of the duty paid of the electric motor and used in the manufacture of electric motor with gear mechanism would not be proper as no new manufacture has taken place and therefore duty cannot be charged again on the duty paid motor and gear mechanism. Keeping in view this legal position, the instructions dated 1-5-78 were cancelled.”

1.20. The Committee wanted to know the difference between an electric motor linked with gear mechanism by means of a pinion or coupling and a geared motor. The Ministry of Finance (Department of Revenue) have in a note stated:

“The difference between an electric motor linked with a gear mechanism by means of pinion or coupling and a geared motor is that whereas in the case of a geared motor the gear mechanism is an integral part of the motor and either of the two cannot be used separately, in the other case, the motor and the gear mechanism are two separate parts which are joined together with the help of the pinion or coupling and can be used separately.”

#### *Defective instructions*

1.21. The Committee enquired whether the clarification dated 1 May, 1978 was not indicative of the fact that a geared motor would be having an identifiable a gear mechanism and a motor separately. The Ministry of Finance (Department of Revenue) have in their note stated:

“The term ‘geared motor’ in the Circular No. 1/78 has been used rather loosely as it speaks of assembling of geared motor by manufacturing in some premises, the gear mechanism and producing from outside duty paid electric motors. The said instructions have since been rescinded.”

1.22 When asked whether the Ministry were already aware that motor fitted with gear and a geared motor are two different identifiable products and if so why was this point not clarified while issuing the Tariff Advice No. 14/76 and letter dated 1 May, 1978, the Ministry of Finance (Department of Revenue) stated:

“The omission is regretted.”

1.23 While cancelling the instructions contained in the circular No. 146/10/76-CX. 4 dated 1 May, 1978 *vide* Tariff Advice No. 89/81 dated 31 August, 1981 the Central Board of Excise and Customs had stated that the instruction issued on 1 May, 1978 did not appear to be correct for the reason that Item 30, as it existed did not have a separate item ‘All others’ and the net result would be, therefore that once the motor has paid duty under Item 30 and after gear mechanism is attached to it, it continues to be classified under Item 30 and, therefore, no duty can be charged second time on the same product.

1.24 The Committee desired to know whether the tariff description of item 30 at the time of issue of letter dated 1 May 1978 was not the same as at present. The Ministry of Finance (Department of Revenue) in their note have stated:

“The Tariff description under Tariff Item 30 was the same at the time of issue of letter dated 1-5-78 as at present.”

1.25 Asked how did the fact that it did not contain sub item ‘All others’ escape attention at that time, the Ministry of Finance (Department of Revenue) have stated:—

“The escapement of this fact, in 1978 is regretted.”

*Discouragement to production of geared motors*

1.26 The effect of the issue of tariff advice No. 89/81 dated 31 August, 1981 would be that gear mechanism manufactured by an integral unit will be chargeable to duty under tariff item 30 alongwith electric motor whereas in the case of other units gear mechanism will be chargeable to duty under tariff item 68.

1.27 On being enquired by the Committee as to whether the tariff advice dated 31 August, 1981 would not result in discouraging the production of geared motors in integral units, the Ministry of Finance (Department of Revenue) have in their note stated as under:—

“The Government are aware of the implications of Tariff Advice dated 31-8-81 and suitable corrective measures will be taken

so that there is no discouragement in the production of geared motors in the integrated units."

*Failure of Inspection Groups Audit Parties*

1.28 The Committee desired to know whether the department had an Inspection Wing to check the records of manufacturers to verify that duty was paid correctly. The Ministry of Finance (Department of Revenue) have in a note stated as follows:

"The Department used to have inspection Group and audit parties. At present there are only audit parties. The functions of the Inspection Group and the audit parties are to check the manufacturers' accounts, manufacturing process etc."

1.29 On being enquired as to whether such Inspection Wing visited the factory of the assessee in the present case, the Ministry of Finance (Department of Revenue) have in their note, stated as under:

"The factory of Hercules Hoist was visited by Inspection Group V of the erstwhile division III on 24-9-76 for the period 1-3-76 to 31-8-76, by Inspection Group-III on 11-1-77 for the period 1-4-76 to 31-12-76, by Inspection Group I on 26-9-77 for the period 1.1.77 to 30-6-77. The same factory was visited by the Assistant Collector (Audit) from 21st to 23rd June, 1978, for the period 1-7-77 to 31-5-78."

1.30 Asked how then it escaped the notice of such Inspection Wing/Audit parties that the unit was not paying duty in accordance with the instructions/classifications in vogue at that time, the Ministry of Finance (Department of Revenue) have in their note, stated as under:

"The Unit Hercules Hoist Ltd., was paying duty on Electric Motor as such right from the beginning without adding the value of gear Mechanism to such Electric Motors. Since no Gear Motor as such has been manufactured by this unit. It was only when the audit objection was received that the assessee began paying duty under protest on such electric Motors after adding the value of Gear Mechanism to such Motors. The various Inspection Groups visiting this unit earlier did not think it proper to realise duty on the combined value of Gear Mechanism and the Electric Motor because of the fact that no Gear Motor as such had come into existence."

*Delay in taking decision*

1.31 The Committee were informed that the Audit paragraph in the present case was received by the Ministry of Finance (Department of

Revenue) on 16 August, 1980 to which the reply was furnished by the Ministry on 6 June, 1981.

1.32 On enquiry, the Committee were further informed that replies to Draft Audit paragraphs were required to be sent by the Ministry within a period of six weeks.

1.33 Asked how the reply in the instant case was delayed so much and sent months after the printing of the Audit Report and its presentation to the Parliament, the Ministry of Finance (Department of Revenue) have in a note stated as under:

“The Collector, Central Excise Bombay II entertained certain doubts regarding the exact classification of the electric motors being manufactured by M/s. Hercules Hoist Ltd. Mulund, Bombay and sponsored the same for discussion in a tariff conference. This point was discussed in the 14th West Zone Tariff Conference held in Bombay on 16-17th March, 1981. Since the decision in respect of the findings of the tariff conference took some time there has been delay in furnishing the necessary comments to the Audit.”

1.34 The Committee pointed out that while the objection was raised by the audit as far back as in July, 1978, the issue was discussed at the tariff conference in March, 1981 and tariff advice was ultimately issued in August, 1981 only. They wanted to know the reasons for the delay of 3 years in taking the decision. The Ministry of Finance (Department of Revenue) have, in a note, stated as follows:—

“The issue was brought to the notice by the Collector, Central Excise, Bombay-II *vide* his letter dated 4-2-81 and the issue was first discussed in March, 1981 and reviewed in the West Zone Tariff Conference on the 29th and 30th June, 1981. It would, therefore, be seen that the Board has not, taken three years in deciding the issue.”

#### *Lack of uniformity in assessments*

1.35 At the instance of the Committee the Ministry of Finance (Department of Revenue) have furnished details in respect of the procedure



that was being followed in other Collectorates with regard to assessment of electric motors. A brief summary of the same is indicated below:

S.No.	Name of Collectorate	Units manufacturing gear motor.	Brief
1.	Madras	2 units	Both the units are paying duty to total value of motor inclusive of gear mechanism.
2.	Hyderabad	M/s. Electronic Corporation of India Ltd.	Unit is paying duty on total value of motor inclusive of gear mechanism.
3.	Bombay-I	1. M/s. Rami Udyog	Unit is paying duty on total value of motor inclusive of gear mechanism.
		2. M/s. Climar Textile Eng-gravers	Do.
		3. M/s. Rajendra Electrical Industries Pvt. Limited	Do.
		4. M/s. Electro-Power Industries	Duty for post clearance was demanded which was set aside by the Bombay High Court as it was found patently illegal on the part of adjudicating officer to have deemed the total value of geared motors assessable value.
4.	Baroda	M/s. Pomer Build Limited Vallabha Vidya nagar. aranand	Depositing duty in nationalised Bank as directed by the Gujarat High Court. Case is pending decision.
5.	Bangalore	M/s Kirloakar electric company	Paying duty on total value inclusive gear mechanism under protest. Writ petition filed in Karnataka High Court.
6.	Bombay II	M/s Hoist-O-Mach Ltd. Thana	Paying duty on electric motor exclusive of the value of gear box. Duty on gear box is paid under tariff item 68 with hoist.

S.No.	Name of Collectorate	Units manufacturing gear motor	Brief
4.	Calcutta	1. M/s Nem All- enbury Works	Paying duty on total value of motor inclusive of gear mechanism under protest at the instance of Audit.
		2. M/s Sur Elec- trical(P) Ltd.	Paying duty on total value of motor inclusive gear mechanism since 2-9-1978 under protest.

1.36. It would be seen from the Table given above that different procedures were being followed by different Collectorates in respect of assessment of electric motors. The Committee desired to know whether the Ministry were aware of this and if any corrective measures were taken. In a note furnished to the Committee, the Ministry of Finance (Department of Revenue) have stated:

"No specific reference indicating different assessments procedures was made to the Ministry excepting the issue discussed in the Tariff Conference leading to the issue of T.A. No. 89/91 dated 31-8-81. One of the corrective measures was, therefore, taken with the issue of Tariff Advice No. 89/91."

*Procedure for payment of duty under protest*

1.37. Apart from the case under examination, it would also be seen from the Table showing procedure of assessment of electric motors prevailing in various collectorates that 3 more assessees were paying excise duty under protest. The Committee wanted to know whether there was any time limit prescribed for deciding cases which are pending decision with the department and in which duty was deposited under protest. The Ministry of Finance (Department of Revenue) have in a note stated:—

"No time limit has been prescribed for deciding cases which are pending decision with the Department and in which duty has been deposited under protest. However, under Ministry's letter F. No. 233/14/81 CX 6 dated 12-5-1981 (Appendix IV) vide which Range Superintendents are required to maintain a register in respect of protest cases in order to keep a proper watch on the progress of these cases. This record is to be reviewed by the Supervisory Officers during their visits."

1.38. From the information furnished it was found that until the issue of Notification No. 115/81-CE dated 11 May, 1981 inserting rule 233 B in the Central Excise Rules, 1944 vide Central Excise (15th Amendment) Rules, 1981, no specific procedure was laid down in order to ensure that an assessee did not abuse the facility of payment of duty under protest and resorted to paying duty under protest indefinitely.

1.39. Electric motors of all sorts and parts thereof are chargeable to duty ad valorem under tariff item 30. Rate of duty differs according to rated capacity of the motor and the current on which it is capable of operating. According to a Tariff Advice issued by the Central Board of Excise and Customs on 26 March, 1976 it was clarified that both the base motor and the gear motors would fall under the same sub-item of item 30 and in the case of integrated units, the duty would be chargeable on the final product, viz., geared motors. On 1 May, 1978, the Board further clarified that the units assembling geared motors by manufacturing in their premises the geared mechanism, and procuring from outside duty paid electric motors, should be brought under the excise control, and the geared motors produced by them should be subjected to excise levy under tariff item 30.

1.40. The Committee find that M/s. Hercules Hoist Ltd., an assessee in the Bombay II collectorate manufactured hoists by using electric motors manufactured in the factory itself. In order to regulate the speed of the motors, gear mechanism was also manufactured and used in the electric motors. According to the instructions issued by the Central Board of Excise and Customs on 26 March, 1976 and 1 May 1978, such geared motors were required to be assessed to duty on the value including the value of the gear mechanism. However, in the case under examination, the geared motors were assessed to duty excluding the value of gear mechanism resulting in an under-assessment of duty of Rs. 4.72 lakhs for the period 1 April, 1976 to 22 May, 1979. After the objection was raised by Audit on 18 July, 1978, the department issued show cause notices and the assessee started paying duty under protest with effect from 23 May, 1979.

1.41. The Committee note that the audit objection was brought to the notice of the Central Board of Excise and Customs by the Collector of Central Excise, Bombay II in February, 1981. The Board were however already seized of the matter as the draft audit paragraph had come to them in August 1980. The issue was discussed in the West Zone Tariff Conference in March and June, 1981 and later was examined by the Board itself. After review, the Board issued a fresh Tariff Advice on 31 August, 1981 cancelling their earlier instructions dated 1 May, 1978.

1.42 During review, a distinction was made between a gear motor and a motor coupled to a gear mechanism. In the case of a gear motor, the gear mechanism was an integral part of the motor and there was a common housing and the motor had no separate existence of its own. In contrast, a motor could be separately coupled to gear mechanism in which case the motor and gear mechanism would remain two separate identifiable entities. In the former case the gear mechanism was treated as an integral part of an electric motor whereas in the latter case it was treated as an accessory of an electric motor. Thus, according to the Tariff Advice issued on 31 August, 1981, the case under examination fell within the latter category and in this case, the value of gear mechanism need not be included in the value of electric motor for assessment of duty on electric motors as the geared motor cannot be said to have come into existence in an independent and identifiable manner.

1.43 The Tariff Advice issued on 31 August, 1981 seeks to set at rest the controversy over the inclusion of the value of gear mechanism in the value of electric motor for assessment of excise duty. However, there are a few features of the operation of the instructions issued in March 1976 and May 1978 which deserve mention. For instance, the Committee fail to understand as to how the distinction now made between a motor fitted with gear and a geared motor should have escaped the attention of the Central Board of Excise and Customs while issuing the Tariff Advice in 1976 and further instructions in 1978. The Ministry of Finance have not been able to put forth any convincing reason for this glaring lapse and while admitting the omission, the Ministry have now merely sought to explain that, "the term 'gear motors' in the Circular No. 1/78 has been used rather loosely".

1.44 Further, while issuing the Tariff Advice on 31 August, 1981, the earlier instructions dated 1 May, 1978 were not found to be correct by the Central Board of Excise and Customs for the reason that Item 30 as it existed did not have a separate item of the type "All others". According to the Board, the net result of this would be that once the motor has paid duty under Item 30 and after the mechanism was attached to it, it continues to be classified under Item 30 and, therefore, no duty can be charged second time on the same product. It is pertinent to point out in this connection that the tariff description under Item 30 was the same as at the time of issuing of instructions dated 1 May, 1978 as at present. During examination, the Ministry of Finance conceded the fact that the tariff item 30 did not contain sub-item "All Others" had escaped the attention of the Board while issuing clarification on 1 May, 1978.

1.45 The Committee are constrained to infer from the foregoing that while issuing instructions in 1976 and later in 1978 adequate care was

not exercised by the Board in examining and analysing the issue thoroughly. The fact that the defects in the Tariff Advice/instructions could be detected and corrective action taken only as a result of the follow-up action on the objection raised by the Statutory Audit would seem to indicate the inadequacy of the departmental machinery in scrutinising the instruction before their issue. The Committee would, therefore, strongly recommend that the Ministry of Finance should devise an effective machinery in order to ensure that the tariff advices, clarifications and other instructions issued by the Board are properly scrutinised in all respects before they are issued.

1.46 The Committee observe that as a result of the Tariff Advice issued on 31 August, 1981 gear mechanism manufactured by an integral unit will now be chargeable to duty under tariff item 30 alongwith electric motor whereas in the case of other units gear mechanism will be chargeable to duty under tariff item 68. Thus, the aforesaid Tariff Advice is likely to discourage the production of geared motors in integral units and may consequentially result in loss of revenue to the Government. Although the Ministry of Finance assured the Committee during examination that, "the Government are aware of the implications of Tariff Advice dated 31-8-1981 and suitable corrective measures will be taken so that there is no discouragement in the production of geared motors in the integrated units", yet the Committee have not been informed of the action taken/proposed to be taken by the Ministry in this behalf. The Committee, however, note that in the Finance Bill, 1982 the tariff Description of Item No. 30 relating to Electric Motors in the First Schedule to Central Excise Act is sought to be changed or amended so as to specifically include motors equipped with gears or gear box within the purview of this item.

1.47 The Committee are concerned to note from the information furnished at their instance by the Ministry of Finance that no uniform procedure was being followed by different Collectorates in the assessment of electric motors. The Ministry of Finance have attempted to explain this serious shortcoming in the functioning of the department by merely stating that 'no specific reference indicating different assessment procedures was made to the Ministry excepting the issue discussed in the Tariff Conference leading to the issue of T.A. No. 89/81 dated 31-8-81'. The Committee cannot accept this explanation in view of the fact that the matter had been discussed in a Tariff Conference even in April, 1977. The Board have been clearly remiss in performing their supervisory role. The Committee cannot also understand as to how such shortcomings in the functioning of the department as prevalence of divergent assessment procedures over long periods in respect of the same

excisable item in different collectorates could not be detected by the departmental organs like the Directorate of Inspection. In the instant case the fact that different assessment procedures were being followed by different Collectorates in the assessment of electric motors came into light only after the matter was inquired into by the Committee. The Committee expect the Board to be more vigilant in performing their supervisory role and such divergent practices should not go unnoticed for too long. The Committee may also be informed of the machinery which exists for bringing about uniformity in the procedure followed by the different Collectorates.

1.48 The Committee find that the factory of the assessee in the case under examination was visited by Inspection Groups of the department on three occasions and once by the Assistant Collector (Audit) during the period between March, 1976 and June, 1978 for checking the manufacturers accounts, manufacturing process etc. Surprisingly, none of them were able to detect the fact that the assessee was not paying duty in accordance with the instructions prevailing at that time. The Committee are unhappy that the Ministry of Finance have now sought to justify such patent lapses of their departmental surveillance machinery by stating that "the various Inspection Groups visiting this unit . . . earlier did not think it proper to realise duty on the combined value of Gear Mechanism and the Electric Motor because of the fact that no Gear Motor as such had come into existence". The Committee would recommend that the Central Board of Excise and Customs should look into such failures of their mechanism for departmental control and take appropriate measures in order to make excise surveillance more effective.

1.49 Another disquieting feature noticed by the Committee was that the audit objection raised on 18 July, 1978 was brought to the notice of the Central Board of Excise and Customs by the Collector of Central Excise, Bombay II on 4 February, 1981 only. The issue was first discussed in March, 1981 and later in June, 1981 at the West Zone Tariff Conference and thereafter a Tariff Advice was issued by the Board on 31 August, 1981. The Ministry of Finance have not been able to adduce any plausible explanation for this deplorable delay of more than 2½ years on the part of the Collector of Central Excise, Bombay II in bringing the matter to the notice of the Board. The Committee would strongly recommend that the Board should issue necessary instructions to the Collectors to bring such cases to the notice of the higher authorities promptly so that necessary remedial/corrective measures could be initiated in time.

1.50 The Committee note that under the existing procedure, assessee could pay excise duty 'under protest'. The Committee are surprised to note that no specific procedure had been laid down upto 31 May,

1981 in order to ensure that an assessee did not abuse this facility and resorted to payment of duty "under protest" indefinitely. A Notification has now been issued on 11 May, 1981 inserting new rule 233 B in the Central Excise Rules, 1944 vide Central Excise (15th Amendment) Rules, 1981 prescribing specific procedure for payment of duty under protest with effect from 1 June, 1981. From the details of cases of assessments of electric motors furnished to the Committee it was seen that in many cases assesseees were paying duty under protest. The Committee were informed that at present no time limit has been prescribed in the Central Excise Rules for deciding cases which are pending decision with the Department and in which duty has been deposited under protest except that the Range Superintendents are required to keep a Register in respect of protest cases in order to keep a proper watch on the progress of these cases. The Committee feel that simply maintaining a register of protest cases cannot ensure prompt decision on such cases. The Committee would, therefore, recommend that the Government should prescribe a time limit, preferably three months, in order to avoid abnormal delay in deciding cases pending with the Department and in which duty has been deposited under protest.

## CHAPTER II

### *Audit paragraph*

#### COTTON TEXTILES

2.1 Prior to 18 June, 1977, cotton fabrics falling under tariff item 19 I(2) were further classified as 'superfine', 'fine' etc., depending upon the average count of yarn contained in the fabrics calculated under the rules prescribed in explanation III below tariff item 19. This formula would apply only when the fabrics contained in warp and weft or both, single count of yarn and when fabrics were manufactured by using different counts of yarns in warp and weft or both, the average count would not be determinable and such fabrics would become classifiable under tariff item 19 I(2) (f) as 'cotton fabrics not otherwise specified'. Similarly, the yarn used for manufacture of such fabrics would also be assessable to duty at tariff rates at the spindle stage, since the compounded rate of duty was not prescribed for 'cotton fabrics not otherwise specified'.

2.2 Twelve units in two collectorates cleared fabrics manufactured by using different counts of yarn in warp and weft or both after paying duty at rates under tariff items 19 I(2) (a) to (e) instead of under item 19 I(2) (f) resulting in underassessment of duty of Rs. 44.76 lakhs (Rs. 28.78 lakhs on cotton fabrics plus Rs. 15.98 lakhs on yarn content in such fabrics) during the period 1st January 1974 to 17th June 1977.

2.3 On this being pointed out by Audit in November 1979, the department accepted the objection (February 1980). Recovery particulars are awaited (April 1980).

2.4 The paragraph was sent to the Ministry of Finance in August 1980; reply is awaited (December 1980).

[Para 2.65(b) of the Report of the Comptroller and Auditor General of India for the year 1979-80, Union Government (Civil) Revenue Receipts, Volume I, Indirect Taxes.]



2.5 From the information furnished to the Committee it is seen that prior to 18 June, 1977 cotton fabrics falling under Tariff Item No. 19 I(2) of Central Excise Tariff were being classified as under:

- (a) Super fine . . . . . in which average count of yarn was 61s or more.
- (b) Fine . . . . . in which the average count of yarn was 71s or more but less than 61s.
- (c) Medium-A . . . . . in which the average count of yarn was 26s or more but less than 71s.
- (d) Medium-B . . . . . in which the average count of yarn was 17s or more but less than 26s
- (e) Coarse . . . . . in which the average count of yarn was than 17s
- (f) Not otherwise specified.

2.6 The average count of yarn was to be determined by applying the formula given in Explanation III(d) below T.I. 19 as it existed prior to 18 June, 1977. However, if the average count of yarn could not be determined by application of the said formula, the fabrics were classifiable under sub-item (f) above.

2.7 In a note furnished to the Committee on the formula given under Explanation III(d) below Central Excise Tariff Item No. 19, the Ministry of Finance (Department of Revenue) have stated:

“The expressions used in explanation III under tariff item No. 19 are “count of warp” and “count of weft”.

For determining the count, the length and the weight of the yarn are to be taken into account. For arriving at the ‘French count’ the size of yarn expressed as the number of 1000 metres hanks per one half kilogram is to be worked out. For English count the size of yarn expressed as the number of 840 yard hanks per pound forms the basis. For the purposes of cotton fabric tariff, it has been provided that ‘count’ is the count of grey yarn. It has further been provided that for multiple fold yarn the count of the basic single yarn shall be taken and that in the case of fabrics manufactured from cotton and other yarn, the other yarns shall be deemed to be cotton yarn.

For the purpose of determining the average count of yarn to classify the cotton fabrics into different categories like super-fine, fine etc. (which are based on the average count of yarn, in such fabrics), it is the ‘count of warp’ or ‘count of weft’ which is

relevant for the purposes of rule (d) under Explanation III, and not the counts of individual strands in the warp or the weft, as the case may be. By taking a given piece of fabric the total length of the yarn in warp/weft can be ascertained (by multiplying the length or width with the number of strands) and by subjecting it to weighment (depending upon whether we want to express the results under English system or under French system) the average count of warp/weft can be arrived at. The warp/weft may contain different types of yarn but it does not seem to be relevant. We are concerned only with the count of warp/weft as a whole and not count of different strands which make warp/weft. In the case of multi-fold yarn for arriving at the total length, the length of single yarn contained in such multi-fold yarn is to be taken separately."

2.8 Rule-96 W of the Central Excise Rules, 1944 which existed upon 17 June, 1977 prescribed compounded rates of duty in respect of cotton yarn falling under T.I. 18A used in the making of the varieties of cotton fabrics falling under sub-items (a) to (e) under T.I. 19 I(2) only *vide* Notification No. 48/69-CE dated 1st March, 1969 as amended. These compounded rates were lower than the tariff rates prescribed under T.I. 18A. But no such compounded rate of duty was prescribed for cotton yarn used in the making of the cotton fabrics falling under sub-item (f) under T.I. 19 I(2) *viz.*, cotton fabrics classifiable as "Not otherwise specified". This implied that in respect of cotton yarn used in the making of such cotton fabrics, the duty was leviable at the tariff rates only.

2.9 The Committee desired to know the rationale for laying down certain compounded rates below the tariff rates of duty on yarn in respect of fabrics. The Ministry of Finance (Department of Revenue) have in a note stated:

"Compounded levy is in lieu of effective rates of duty on an excisable commodity. The rates are fixed taking into consideration the average burden and administrative convenience. The rates cannot be equivalent to tariff rates as the compounded levy has to be attractive and is applied only after receiving an option from the manufacturer to comply with the Central Excise Rules applicable for manufacture plus clearance of the goods. Rule 96W as it then existed is self-explanatory."

2.10 The Ministry of Finance (Department of Revenue and Banking) *vide* their Circular Letter CE/1/76-CX-2 issued under F. No. 51/18/74-CX-2 dated 4 January, 1977 clarified that since the average count of yarn

in fabrics with different counts of yarn in warp and/or weft was not determinable directly under the formula given below item 19 of the Central Excise Tariff, such cotton fabrics would be classifiable as "Not otherwise specified" *i.e.*, under sub-item (f).

2.11 The Committee wanted to know the circumstances which necessitated the issue of the clarification contained in Board's letter No. 51/18/74-CX2 dated 4 January, 1977. The Ministry of Finance (Department of Revenue) have in a note stated as follows:

- (i) "The local audit in their report on M/s. Ahmedabad Manufacturing and Calico Printing Co. Ltd. Ahmedabad (Calico Mills) pointed out that certain sorts of cotton fabrics manufactured by the unit contained yarn of different counts in warp or weft or in both and were assessed under tariff item 19 I(2) according to average count declared by the mill. The average count of such sorts was ascertained by taking the number of ends of each count of yarn separately and then applying the formula prescribed under explanation III to T.I. 19.
- (ii) Audit held that the formula prescribed was not applicable in case where yarn of different counts have been used in warp or weft and such fabrics should be assessed under tariff item 19 I(2)(f).
- (iii) The Comptroller and Auditor General of India, New Delhi, advised in his letter dated 29-1-75 that in calculating the average count of such fabrics no direct application of the formula was made and he, therefore, suggested that the Ministry might look into this aspect and examine whether the Explanation III to T.I. 19 needed any further amplification. The matter was accordingly examined in consultation with Chief Chemist, DGTD, ISI, Textiles Commissioner and the representatives of the National Textile Corporation. It was suggested that if the resultant count of the yarn was obtained by taking the harmonic mean of the counts of the individual yarns and the formula applied then it would result in a lower average count and hence it was felt that such fabrics should be assessed as cotton fabrics NOS.
- (iv) The Law Ministry on 15-9-76 had advised that applying any expanded formula appeared to be a practical way out but it did not have any legal backing. The Law Ministry, therefore, suggested that when ISI has evolved specifications for deter-

mining average count of fabrics according to inter-national specifications, suitable amendment of the existing statutory formula<sup>r</sup> may be examined.

- (v) In view of the position explained above, the Board advised all the Collectors of Central Excise to classify all such fabrics as NOS under tariff item 19 I(2)(f) till amendment of the formula was made in the tariff item itself. However, in 1977 classification of cotton fabrics based on average count of yarn was done away with and accordingly the formula was omitted w.e.f. 18-6-77 till issue of Notification No. 226/77, dated 15-7-77 when the cotton fabrics once again required calculation of average count and yarn of 41s and above for assessment. Cotton fabrics below 41s were chargeable to duty on the basis of value per sq. meter."

2.12 Asked what was the effect of the clarification issued on 4 January, 1977 on past and future assessments, the Ministry of Finance in their note stated as under:

"The effect of the clarification was to help in determining classification under Item 19 I(2)(f) for future assessments and demands for future assessments and to raise demands for the past subject to period of limitation."

2.13 The Committee desired to know the reasons for the change of classification of cotton fabrics under Tariff Item 19 I with effect from 18 June, 1977. In a note furnished to the Committee, the Ministry of Finance (Department of Revenue) have stated as follows:

"Prior to 18th June, 1977 classification of cotton fabrics (other than certain specific varieties) was based on the average count of yarn used in the fabric. Accordingly separate rates of duties had been prescribed for superfine, fine, Medium 'A', Medium 'B' coarse fabrics, etc. The classification based on counts was found to be complicated. It was accordingly decided in the 1977 Budget to do away with the classification of cotton fabrics based on counts and to adopt a classification based on value of the fabrics, which admits of a higher degree of progression in the duty structure. At the consideration stage of the Finance (No. 2) Bill, 1977, however, it was decided to reintroduce as separate classification with a separate rate of duty for fine and superfine fabrics in the interest of the decentralised sector, retaining the duty structure based on value for other varieties of fabrics."

2.14 It has been pointed out by the Audit that twelve units in two collectorates manufactured certain varieties of cotton fabrics using different counts of yarn in warp and weft or both. These fabrics were classified as superfine, fine etc., under tariff item 191(2) (a) to (e) and were cleared by paying duty as applicable to the cotton fabrics under tariff items 19 I(2)(a) to 19 I(2)(e). But as yarn of different counts was, used in warp and/or weft in the manufacture of the cotton fabrics under reference, the average count of yarn in these fabrics was not determinable under the formula given in Explanation III(d) below T.I. 19. As such, these cotton fabrics could not be classified as superfine, fine etc., under the Tariff items 19 I(2)(a) to 19 I(2)(e) and were appropriately classifiable under 19 I(2)(f) as "Not otherwise specified". This resulted in under-assessment of Central Excise duty on cotton fabrics to the extent of Rs. 28,78,307 for the period from 1 January, 1974 to 17 June, 1977.

2.15. The Audit has further pointed out that the duty on cotton yarn used in the making of the above stated cotton fabrics was also paid at the compounded rates under rule 96W of the Central Excise Rules, 1944, the rates of duty having been prescribed *vide* notification No. 48/69-CE dated 1 March, 1969 as amended. But, as the cotton fabrics under reference were classifiable under T.I. 19 I(2)(f) as 'Not otherwise specified' and the compounded rate of duty having not been prescribed for cotton yarn used in the making of cotton fabrics falling under T.I. 19 I(2)(f), the duty on cotton yarn used in their making should have been paid at the tariff rate. So there was an under-assessment on cotton yarn to the extent of Rs. 15,98,227/- for the period from 1 January, 1974 to 17 June, 1977.

2.16. Thus, according to the Audit, the total amount of underassessment of duty on the above item in 12 units for the period 1 January, 1974 to 17 June 1977 stood to the extent of Rs. 44.76 lakhs.

2.17 Explaining the facts of the case, the Ministry of Finance (Department of Revenue) have in a note stated:

"Prior to 18th June 1977 cotton fabrics falling under tariff item 19 I(2) of Central Excise Tariff were classified as superfine, fine etc. depending upon the average count of the yarn contained in the fabrics, and calculated as per formula given below explanation—III(d) of tariff item 19. This formula would apply only when the fabrics contained in its warp and weft or both single count of yarn and when fabrics are manufactured by using different count of yarn in warp or weft or both, the average count could not be determined and as such fabrics would become classifiable under tariff item 19 I(2)(f) as "cotton fabrics not otherwise specified". The A.G.'s Audit

party during their audit of records of Jupiter Mills Ltd. Ahmedabad, Sri Arbuda Mills Ltd. Ahmedabad, New Swadeshi Mills Ltd., and Sarangpur Cotton Manufacturing Mills Ltd., observed that in respect of few sorts manufactured by the assesseees the fabrics had wrongly been classified under tariff item 19 I(2)(a) to (e) instead of tariff item 19 I(2)(f). They also pointed out that similarly in case of cotton yarn the duty on cotton yarn contained in such fabrics classifiable as "cotton fabrics not otherwise specified" was to be charged at the tariff rate instead of compounded levy rate.

2.18 From the details of under assessment of duty furnished by the Ministry of Finance (Department of Revenue) on 1 August, 1981 it is seen that the short levy of duty in 13 units amounted to Rs. 92.56 lakhs.

2.19. The Committee pointed out that according to the Audit paragraph the total duty under-assessed in twelve units in two collectorates amounted to Rs. 44.76 lakhs. When asked to reconcile the discrepancies in the two figures, the Ministry of Finance (Department of Revenue) furnished a fresh statement indicating that the total under-assessments of excise duty involved in the Audit para amounted to Rs. 63.01 lakhs in 14 units in 2 collectorates. The details of under-assessments with their respective positions of recoveries of duty are shown in the following Table:

Sl. No.	Name of the Unit	Amount of short levy	Latest position communicated to the Committee
1	2	3	4
1.	M/s Rohit Mills Ltd. Ahmedabad	1,99,709.46	Demands under process of adjudication.
2.	M/s Mihir Textiles Ltd., Ahmedabad	39,100.00	Do.
3.	M/s. Jupitar Mills Ltd., Ahmedabad	10,724.72	Duty realised
4.	M/s Arbuda Mills Ltd., Ahmedabad	12,22,579.76	Demands under process of adjudication.
5.	M/s. Sarangpur Cotton Manufacturing Mills Ltd. No.1, Ahmedabad	81,909.12	Duty paid by the assessee under protest.
6.	M/s Sarangpur Cotton Mfg. Mills Ltd. No. II, Ahmedabad	2,20,359.50	Demands under process of adjudication.
7.	M/s New Swadeshi Mills Ahmedabad	17,465.32	Do.
8.	M/s Calico Mills Ltd., Ahmedabad	12,38,812.03	Do.

1	2	3	4
9.	M/s Surat Cotton Spinning & Weaving Mills, Surat	3,17,158.35	Demand being redetermined
10.	M/s New Shorrock Mills Ltd., Nadiad	13,66,372.75	Demands under process of adjudication.
11.	M/s Soma Textiles Ltd., Ahmedabad	11,37,963.78	Do.
12.	M/s Manjushri Textiles, Ahmedabad	29,918.77	Under decision.
13.	M/s Mahendra Mills Ltd., Kalol	2,48,087.84	Demands set aside.
14.	M/s Maharana Mills Ltd., Porbunder	1,71,266.12	Demands under process of adjudication.
		63,01,27.52	

2.20 From the information furnished to the Committee it is seen that in most of the cases adjudication proceeding have been activated only in October, 1981 *i.e.*, after the Audit Paragraph was taken up for examination by the Committee.

2.21. Explaining the reasons for the discrepancies in the figures, the Ministry of Finance (Department of Revenue) have in their note *inter alia* stated:

“The reasons for difference is that similar under assessment not pertaining to period involved in Audit Para was also inadvertently reported. Besides under-assessment on account of fabrics manufactured out of yarn falling under tariff item 18E was also reported due to some mis-understanding on the part of field Officers.”

2.22. The Committee wanted to know the manner that was being adopted for determination of average count of yarn in fabrics when the fabrics were made by using different counts of yarn in warp and weft or both with effect from 15 July, 1977. The Ministry of Finance (Deptt. of Revenue) have stated as follows:—

“After issue of Notification No. 226—227/77 dated 15-7-77 there were difficulties in the application of rules for determination of average count of yarn in cotton fabrics having:—

- (i) multifold yarn of different counts;
- (ii) more than one count of yarn in warp or weft;
- (iii) Non-cotton yarn.

According, the rules were reviewed as built-in in the explanatory notification and certain deeming provisions were added thereto and in consultation with the Ministry of Law, the notification was amended *vide* Notification No. 7/78 and 8/78 dated 17-1-78.”

2.23. Asked whether the difficulties experienced in the classification of such fabrics prior to 18 June 1977 have since been overcome, the Ministry of Finance (Deptt. of Revenue) replied in the affirmative.

2.24 While intimating latest position of recovery of duty from M/s. Surat Cotton Spinning and Weaving Mills, Surat, the Ministry of Finance (Deptt. of Revenue) stated as follows:

“The Collector of Central Excise, Baroda has reported that in the case of Surat Cotton Spinning and Weaving Mills, Surat demands for Rs. 2,83,651.86 were confirmed by the Assistant Collector. The assessee filed an appeal to the Appellate Collector Bombay who allowed the appeal subject to the condition that if by taking the yarn of the highest count in the warp or weft the average count could be determined and if it is found that the average count of the fabrics would be the same as was declared and approved earlier, no differential duty should be demanded. In case on such redetermination, the average count is found to be on higher side calling for higher duty, the demand could be worked out accordingly and the appellant shall pay the same.

Against the orders of the Collector (Appeals) a review proposal was sent by the Collector to the Government of India. The Government of India has taken the view that the amending Notification No. 7/78 dated 17-1-78 had to be taken to clarify the matter and the ratio of the decision would also apply for concluding that the impugned order in appeal is not a fit case for review.

In view of the Government's observation that the orders passed by the Collector (Appeals) Bombay are not fit for review, the Asstt. Collector has been asked to redetermine the demand as directed by the Collector (Appeals) to see if any amount is chargeable from the assessee. Similar action is to be taken by the Asstt. Collector on the demand for Rs. 33,506.49, which was not confirmed by him as the order of the Appellate Collector was sent for review to the Government. Now the Asstt. Collector has been asked by the Collector to take similar action on this demand also.”



2.25. In respect of the position of the demand raised against M/s. Mahendra Mills Ltd., Kalol, the Ministry of Finance (Deptt. of Revenue) have in their note stated:

“Demands for Rs. 1,31,115.43, Rs. 92,980.21 and Rs. 11,584.97 in respect of M/s. Mahendra Mills Ltd., Kalol have been set aside in appeal by the Appellate Collector, Bombay on merits while demand for s. 2,392.20 has been set aside by the Appellate Collector as being of time barred.”

2.26. On perusal of the relevant records of the above assessee furnished by the Ministry of Finance (Deptt. of Revenue) it is seen that the following demands were raised by the Deptt. against short-levy of duty:

Period covered	Amount
	Rs.
(i) 1974,75 and 76 . . . . .	1,31,115.43
(ii) 1-1-1977 to 31-3-1977 . . . . .	23,992.20
(iii) 1-4-77 to 17-6-77 . . . . .	92,980.21
* (iv) 15-7-77 to 17-1-78 . . . . .	11,584.97

\*Period not covered by Audit objection.

2.27. Appeals filed by the assessee against demands mentioned at (i), (iii) and (iv) above were allowed by the Appellate Collector, Bombay. While partly allowing the appeal filed by the assessee against the demand for Rs. 1,31,115.43 the Appellate Collector *inter alia* observed as follows:

“I have carefully gone through the case records, submissions made in the appeal memo and those made at the time of personal hearing. The appellants do not dispute that the fabrics in question contained yarn of different counts in warp and weft. But the mere fact that these contained yarn of different counts does not mean that the average count of the fabrics could not be determined. The appellants cannot be denied the benefit merely because the Department had the difficulty in determining the average count of the yarn in fabrics in the particular period, more so when subsequently a method was in fact found for such determination. It may be mentioned that subsequently the Government of India amended the relevant provisions to clarify that where there are yarns of different counts in warp or weft or both, the count of the yarn which has the highest count, shall be taken to be the count of warp or weft, as the case may be. It is felt that this amendment

is in the nature of clarification or explanation which would equally apply to the past cases. In view of this, I am not inclined to agree with the lower authority's views that in such cases the average count could not be determined. This can be by taking the yarn of the highest count in the warp or weft, as the case may be. Accordingly, the jurisdictional Assistant Collector shall determine the average count and if on this basis it is found that the average count of the fabrics would be the same as was declared and approved earlier, no differential duty should be demanded. In case, on such re-determination, the average count is found to be on a higher side calling for higher duty, the demand could be worked out accordingly and the appellants shall pay the same.

Coming to the time-bar pleaded by the appellants, I find that the show cause notice to pay differential duty was issued on 26-7-77 and it pertained to the clearances made during the years 1974-75 and 76. Since the clearances were made in accordance with the approved classification list and assessments were finalised by the department, I agree with the appellants' contention that the demand for differential duty could have been made under rule 10 of the Central Excise Rules, 1944. In accordance with the provisions of rule 10 read with rule 173J of the Central Excise Rules, 1944, the demand could be raised for a period of 12 months before the date of issue of show cause notice. Accordingly, any duty might be required to be paid in accordance with the directions given in the preceding para, has to be restricted for the period commencing on 26-7-76 only. No demand can be sustained for the earlier period."

2.28 Duty demanded by the deptt. for the period from 1-1-77 to 31-3-77 was set aside by the Appellate Collector on the following grounds:—

"Duty was demanded under No. SON/13/MH/78 dated 2-5-78 and related to the period 1-1-77 to 31-3-77 during which the clearance of yarn was made. On the facts and circumstances of the case neither the provisions of superseded Rule 10 A nor that of Rules 9 are applicable to the instant case. Accordingly, I hold that demand made under the aforesaid show cause notice and a confirmed through the impugned order is time-barred. Without going into the merits of the case, I set aside the impugned order and allow the appeal with consequential relief."

2.29. In his order allowing the appeal filed by the assessee against demands of duty of Rs. 92,980.21 and Rs. 11,584.97 for the periods 1-4-77 to 17-6-77 and 15/7/77 to 17/1/78 respectively, the Appellate Collector cited the same grounds as mentioned in the above paragraph. Dealing with the plea of the appellant to set aside the demands raised by the deptt. on grounds of time-bar, the Appellate Collector observed as under:—

“Coming to the time-bar pleaded by the appellants, I find that in the case of fabrics cleared on or after 15-7-77, Show-cause Notice was issued on 27-2-78. Since the appellants had declared all the relevant information to the deptt. before effecting clearances, short levy, if any, should be collected for a period of 6 months before the date of issue of S.C. Notice: the extended period of 5 years should not apply in the instant case. Accordingly, any duty which might be required to be paid in accordance with the directions given in the preceding paragraph, has to be restricted for the period commencing on 27-8-77 in so far as clearances during the period commencing on or after 15-7-77 are concerned. As regards the clearances effected during the period prior to 15-6-77, neither the appellants have advanced the plea of time-limit nor it is available.”

2.30. It was seen that in this letter dated 21 November, 1980 to the Collector of Central Excise, Ahmedabad on the orders passed by the Appellate Collector against demands of duty for Rs. 1,31,115.43, Rs. 92,980.21 and Rs. 11,584.97 the Asstt. Collector *inter alia* requested as follows:

“As per the letter F. No. 51/18/74/CX-2 dated 4-1-77 of Director of Revenue and Banking (Circulated under Hdqrs. File No. VI9 (B)2/MP-77 dated 26-1-77) such fabrics are classifiable under T.I. 19.1(2) (f) as cotton fabrics NOS. The amendment regarding taking the highest were/west for the taking the purpose of determining average count under Notification No. 226/77 was made *vide* Notification No. 7/78 dated 17-1-78. There is no provision in the said notification No. 7/78 that it will effect retrospectively. In the circumstances, such fabrics are classifiable under 19 (2) (f) till 16-1-78. In view of this, it is felt that orders-in-appeal referred to above being at variance with the instructions of Deptt. and as such the cases need to be proposed for review by Government of India under section 36 of Central Excise and Salt Act, if deemed fit.”

2.31 In reply to the above communication, the Asstt. Collector of Central Excise (Legal), Ahmedabad, *inter alia* stated as under:—

“The Deputy Collector Customs & G. Ex. Ahmedabad does not agree with the above proposal as the orders in original are in the nature of clarification and substitution of the instructions and as such it will have retrospective effect being of procedural nature.”

2.32 The Committee asked whether the amending notice notification No. 7/78 dated 17 January, 1978 referred to above, could be applied retrospectively and whether the opinion of Ministry of Law was obtained on that point. The Ministry of Finance (Deptt. of Revenue) have in a note stated:

“...the decision of the Appellate Collector in case of M/s. Surat Cotton Spinning & Weaving Mills, Surat was not reviewed by the Government of India. This decision was taken by Revisionary authority in a quasi-judicial capacity and it will not be appropriate for the Ministry to ascertain from Revisionary Authority if the opinion of the Law Ministry was obtained and to comment whether notification No. 7/78 CE dated 16/17-1-78 can be applied retrospectively.”

2.33 At the instance of the Committee, the Ministry of Finance (Deptt. of Revenue) have furnished details of in respect of similar cases of misclassification of cotton fabrics in other collectorates.

2.34. A table indicating names of such assessee, collectorate-wise, amounts of under-assessment, period involved and present position is given below:

Sl.No.	Name of the assessee	Period involved	Amount involved	Present position
1	2	3	4	5
<i>Calcutta Collectorate</i>				
			Rs.	
1.	M/s. Dunbar Mills Ltd.	15-7-77 to 16-1-78	58,162.50	No demand has been raised. Collectorate is being asked to raise the demand.
2.	M/s Kesoram Cotton Mills	7-5-77 to 6-6-77	3,672.26	Demand raised.
3.	M/s. Do.	15-7-77 to 16-1-78	9,385.33	No demand has been raised. Collector is being asked to raise the demand.

1	2	3	4	5
<i>Indore Collectorate</i>				
1.	M/s. J.C. Mills, Gwalior	1-11-73 to 28-2-75	50,036.21	Still under process of decision. Concerned Divisional Officer has been directed by the Collector to dispose of the show - cause notice early.
2.	Do.	11-3-75 to 31-3-76	1,44,676.39	
3.	Do.	1-4-76 to 31-5-77	2,36,635.51	
<i>Madras Collectorate</i>				
1.	M/s. B&C Mills, Madras	October, 1976 to May 1977	3,625.63	Case is still under process of adjudication.
<i>Bombay Collectorate</i>				
1.	M/s. Pircmal Spinning & Weaving Mills Ltd.		30,932.38	Pending adjudication
2.	M/s. Shree Sitaram Mills (CY)		55,274.10	On appeal the Appellate Collector has stayed the realisation subjector Bank guarantee.
	(CF)		9,738.64	Pending adjudication
			6,02,11.95	

2.35. The Ministry of Finance (Deptt. of Revenue) have stated that in respect of Allahabad, Bombay-II, Bangalore Chandigarh, Cochin, Bhubaneswar, Delhi, Guntur, Hyderabad, Jaipur, Madurai, Kanpur, Meerut, Patna, Pune, West Bengal, Goa and Shillong Colectorates, no cases of similar under-assessment were reported.

2.36 It will be seen from the above Table that out of 10 cases, 7 cases are still pending and are under a process of adjudication|decision. In one case, the demand has been raised and it has not been stated whether the amount has been realised or not. The Committee desired to know the reasons for such inordinate delays in deciding cases involving heavy demands. The Ministry of Finance (Deptt. of Revenue) have in a note stated:—

- “(1) In respect of cases relating to Central Excise Collectorate, Calcutta, the Collector has been directed to raise necessary demands.
- (2) In respect of M/s. B&C Mills falling in the jurisdiction of the Collector of Central Excise, Madras, it has been reported

that due to frequent changes of Asstt. Collectors, the case could not be adjudicated. A personal hearing has again been fixed by the present Assistant Collector of Central Excise, Madras III Division and the outcome of the adjudication proceedings is awaited.

- (3) The Collector of Central Excise, Bombay I, has reported that M/s. Piramal Mills disputed the demand on the ground that results of test by Dy. Chief Chemist were not communicated to them. M/s. Sitaram Mills also disputed the demand on the ground that assessment was done as per duly approved classification list. All efforts are being made to decide the demand cases early.
- (4) The Collector of Central Excise, Indore, has reported that the show cause notices issued to M/s. J. C. Mills Ltd. have since been confirmed by the Asstt. Collector of Central Excise, Gwalior. While confirming, the Asstt. Collector has revised the amount of duty on cotton fabric from Rs. 2,83,167.71 for the period 1-11-73 to 28-2-75 to Rs. 59,036.21 P and from Rs. 3,17,144.81 for the period 1-3-75 to 31-3-76 to Rs. 1,44,676.39 P. The amount of Rs. 2,36,635.51 P. for the period 1-4-76 to 31-5-77 however remains unchanged. Thus the total amount comes to Rs. 4,31,348.11 P. instead of Rs. 8,36,948.03 P. The incidence of duty worked out while issuing the show cause notice was incorrect due to wrong application of rates of duty. Duty on yarn used in such fabrics was not worked out and has to be calculated with reference to records which are voluminous and therefore time-consuming."

**2.37 Prior to 18 June 1977 cotton fabrics falling under tariff item 191(2) were being classified as 'superfine', 'fine' etc. under sub-items (a) to (e) depending upon the average count of yarn contained in the fabrics. The average count of yarn was to be determined by applying the formula given in Explanation III(d) below T.I. 19 as it existed prior to 18 June, 1977. However, if the average count of yarn could not be determined by application of the said formula, the fabrics were classifiable under sub-item (f) of T.I. 19 I(2) as 'cotton fabrics not otherwise specified'.**

**2.38 Further, under rule 96-W (which existed upto 17 June 1977) of the Central Excise Rules, 1944, compounded rates of duty were prescribed in respect of cotton yarn falling under T.I. 18A used in the making of the varieties of cotton fabrics falling under sub-items (a) to (e)**

under T.I. 19 I(2). But no such compounded rate of duty was prescribed for cotton yarn used in the making of the cotton fabrics falling under the sub-item (f) under T.I. 19 I(2), viz. cotton fabrics classifiable as 'not otherwise specified'. This implied that in respect of cotton yarn used in the making of such cotton fabrics the duty was leviable at the tariff rates only.

2.39 The Audit Paragraph under examination has disclosed that 12 units in Ahmedabad and Baroda Collectorates manufacturing certain varieties of cotton fabrics using different counts of yarn in warp and/or weft cleared such fabrics after paying duty at rates under tariff item 19 I(2) (a) to (e) instead of under 19 I(2) (f). According to the Audit as yarn of different counts was used in warp and/or weft in the manufacture of the cotton fabrics the average count of yarn in these fabrics was not determinable under the formula given in Explanation III(d) below T.I. 19 and should have been appropriately classified under T.I. 19 I(2) (f) as 'not otherwise specified'. This resulted in under-assessment of duty on cotton fabrics to the extent of Rs. 28.78 lakhs for the period 1 January, 1974 to 17 June, 1977.

2.40. Further, the duty on cotton yarn used in the making of the cotton fabrics by the above assesses was also paid at the compounded rates under rule 96-W of the Central Excise Rules, 1944. According to the Audit as the cotton fabrics under reference were classifiable under T.I. 19 I(2) (f) as 'not otherwise specified' and as the compounded rate of duty was not prescribed for cotton yarn used in the making of cotton fabrics falling under T.I. 19 I(2) (f), the duty on cotton yarn used in their making should have been paid at the tariff rate. This resulted in under-assessment on cotton yarn to the extent of Rs. 15.98 lakhs for the period 1 January 1974 to 17 June, 1977.

2.41 Thus, according to the Audit, the total under-assessment of duty due to incorrect classification of cotton fabrics under tariff item 19 I(2) (a) to 19 I(2) (e) and incorrect application of compounded levy rates in the case of yarn used in the making of such fabrics in 12 units in 2 Collectorates amounted to Rs. 44.76 lakhs. However, while admitting the Audit objection, the Ministry of Finance have now submitted revised figures of under-assessments of Rs. 63.01 lakhs. The main reasons for the increase are that some amounts now included by the Ministry were not intimated by the department to Audit earlier and the final amount also included certain amounts which were already reported in earlier Audit Report.

2.42 The Committee find that apart from the above under-assessments involving Rs. 63.01 lakhs in two Collectorates, misclassifications

of similar types were reported in four other Collectorates involving Rs. 6.02 lakhs (dealt with in Para 2.52). The Ministry of Finance have not apprised the Committee of the precise reasons for these glaring cases of under-assessments of duty. Nevertheless, while explaining the background for the change in classification of cotton fabrics under T.I. 19 I with effect from 18 June, 1977, the Ministry have stated that, "the classification based on counts was found to be complicated. It was accordingly decided in 1977 Budget to do away with the classification of cotton fabrics based on counts.

2.43 The fact that misclassifications of cotton fabrics falling under tariff item 19 I (2) (f) have been reported only from 6 collectorates and that assessments were being done correctly in other collectorates would seem to indicate that the under-assessments could not be attributed to complications in the law. The Committee recommend that responsibility should be fixed for this lapse after holding an enquiry and the result thereof be communicated to the Committee.

2.44 The Committee note that it was proposed in the 1977-78 Budget to do away with the classification of cotton fabrics based on counts and to adopt with effect from 18 June, 1977 a classification based on value of the the fabrics which admits of a higher degree of progression in the duty structure. However, at the consideration stage of the Finance (No. 2) Bill, 1977, it was decided to reintroduce a separate classification with a separate rate of duty for fine and super fine fabrics in the interest of the decentralised sector, retaining the duty structure based on value for other varieties of fabrics and a notification was accordingly issued on 15 July, 1977. The Committee were informed that even after issue of notification dated 15 July 1977, difficulties in the application of rules for determination of average count of yarn in cotton fabrics continued to persist. The Ministry of Finance, therefore, reviewed the matter in consultation with the Ministry of Law and the notification was amended vide another notification on 17 January 1978. In this connection the Committee find from the relevant records relating to the assessment in the case of M/s. Mahendra Mills, Kalol, one of the assesseees, where misclassification under tariff item 19 I(2) had continued during the period between 15 July, 1977 and 16 January 1978 as well. The Committee would therefore, like to be informed of the details of under-assessments due to such misclassification during the intervening period between 15 July 1977 and 16 January, 1978 in all such cases.

2.45 The Committee note that out of a total under-assessment of duty of Rs. 63.01 lakhs in 14 units, only an amount of Rs. 0.93 lakh from two assesseees has been recovered so far. Demands raised against short levy of duty in 10 units amounting to Rs. 56.44 lakhs are stated



to be under the process of adjudication/decision. From the information furnished by the Ministry, it is seen that even the adjudication proceedings have been activated only after the subject was taken up for examination by the Committee. The Committee cannot but express their displeasure over such inordinate delays. They expect that all such pending cases will be finalised expeditiously and a report submitted to them forthwith.

2.46 The Committee find that in one case, viz. that of M/s Surat Cotton Spinning and Weaving Mills, out of total demands of Rs. 3.17 lakhs, a demand for Rs. 2.84 lakhs was confirmed by the Assistant Collector. Against this, the assessee filed an appeal to the Collector (Appeals) Bombay, who allowed the appeal. A review proposal was sent by the Collector to the Government of India against the orders of the Collector (Appeals). In their orders on the review proposal, the Government of India held the view that the amending notification dated 17 January 1978 had to be taken into account to clarify the matter and the ratio of that decision would also apply for concluding that the impugned order-in-appeal is not a fit case for review. In view of the Government's observation, it was stated that the department was redetermining the whole demand (Rs. 3.17 lakhs) in order to see if any amount was chargeable from the assessee. The Committee also find that an appeal filed by another assessee, viz. Mahendra Mills Ltd. Kalol was partly allowed by the Appellate Collector on the same grounds.

2.47 To a pointed question of the Committee as to whether the amending notification dated 17 January 1978 could be applied retrospectively and whether the opinion of the Ministry of Law was obtained on that point, the Ministry of Finance stated that, "...this decision (in the case of Surat Cotton Spinning and Weaving Mills, Surat) was taken by Revisionary authority in a quasi-judicial capacity and it will not be appropriate for the Ministry to ascertain from Revisionary authority if the opinion of the Law Ministry was obtained and to comment. . ." The decision of the Collector (Appeals) had been sent by the Collector for review by the Government of India. The Committee's question apparently referred to this stage of review. The Ministry's answer is not relevant. The Committee would like to know why the question that the amendment could not have retrospective effect was not taken into account at that stage.

2.48 The Committee find that in the case of M/s. Mahendra Mills Ltd., Kalol where a short-levy of Rs. 2.48 lakhs was reported for the period covered by Audit objection, the demands raised by the department were set aside by the Appellate Collector on an appeal by the assessee. The department had raised demands against short levy of duty of Rs. 1.31 lakhs. (for the years 1974, 1975 and 1976), Rs. 0.24 lakh (for the

period 1 January 1977 to 31 March 1977) and Rs. 0.93 lakh (for the period 1 April 1977 to 17 June 1977). The demand for Rs. 0.24 lakh was set aside by the Appellate Collector on the ground of time bar without going into the merits. Appeals of the assessee against demands for Rs. 1.31 lakhs and Rs. 0.93 lakh were allowed by the Appellate Collector on the same grounds cited in the case of M/s Surat Cotton Spinning and Weaving Mills and the department was asked to redetermine the demands.

2.49. However, on perusal of the relevant records furnished by the Ministry of Finance the Committee find that the Appellate Collector while partly allowing the appeal of the assessee (M/s Mehendra Mills Ltd.) against the demand for Rs. 1.31 lakhs had also held that as the show cause notice for differential duty was issued on 26 July, 1977 only, even if any duty was payable by the assessee after re-determination, such duty had to be restricted for the period commencing on 26 July, 1976 only. Thus, the plea of time bar advanced by the assessee was also partly allowed by the Appellate Collector.

2.50. The Committee observe from yet another order passed by the Appellate Collector partly allowing an appeal filed by the assessee against the demand of Rs. 11,585 towards short-levy during the period 15 July 1977 to 17 January 1978 that the show cause notice was not issued by the department within the requisite period.

2.51. The Committee are constrained to infer from the foregoing cases that the department had woefully failed in issuing the demands for duty within the requisite period and as a result of this delay the demands were held to be time-barred in the orders-in-appeal. The Committee recommend that responsibility should be fixed for the lapse. The Ministry of Finance should also identify the reasons for such delays in issue of demands for duty and take necessary corrective measures in this regard.

2.52. The Committee find that out of 10 cases involving under-assessment of Rs. 6.02 lakhs of duty on account of similar misclassifications reported from 4 other collectorates, 7 cases were still under adjudication/decision. Out of the remaining three cases (reported in the Calcutta Collectorate) demands for the under-assessments were yet to be raised in 2 cases involving a total duty of Rs. 67,548. The Ministry of Finance have in their note merely stated that the "Collector is being asked to raise the demand". Further, while intimating the position of recovery of duty in the case of B&C Mills under the Madras Collectorate, the Ministry of Finance inter alia stated that the case could not be adjudicated due to frequent changes of Assistant Collectors.

2.53. The Committee are concerned to note there have been inordinate delays in finalising cases involving heavy amounts of duty.

Moreover the Ministry of Finance have not been able to adduce any plausible reason for the delay on the part of the Collector of Central Excise, Calcutta in raising the demands in two cases. The Committee are unhappy that the Ministry of Finance have sought to justify the delay in adjudication by putting forth plea such as frequent changes of Assistant Collectors. The Committee recommend that all such pending cases should be finalised expeditiously and latest position regarding recovery of duty intimated to them.

SATISH AGARWAL

NEW DELHI:

1 April, 1982

11 Chaitra, 1904 (S)

Chairman

Public Accounts Committee

## PART II

### MINUTES OF THE SITTING OF THE PUBLIC ACCOUNTS COMMITTEE HELD ON 30 MARCH, 1982

The Public Accounts Committee sat from 1500 to 1830 hrs. in  
Committee Room No. 50, First Floor, Parliament House, New Delhi.

#### PRESENT

##### *Chairman*

Shri Satish Agarwal

##### *Members*

2. Shri Mahavir Prasad
3. Shri Ashok Gehlot
4. Shri Hari Krishna Shastri
5. Shri K. P. Unnikrishnan
6. Shri Patitpaban Pradhan
7. Prof. Rasheeduddin Khan

#### REPRESENTATIVES OF THE OFFICE OF THE C.&A.G.

1. Shri R. C. Suri—*Addl. Dy. C.&A.G.*
2. Shri N. Sivasubramaniam—*Director of Receipt Audit II.*
3. Shri G. N. Pathak—*Director of Audit (Defence Services).*
4. Shri S. R. Mukherjee—*Director of Audit, CW&M.*
5. Shri M. M. Mehta—*Director of Audit, Central Revenues.*
6. Shri R. S. Gupta—*Joint Director (Defence Services).*
7. Shri N. C. Roy Choudhury—*Joint Director (Receipt Audit).*
8. Shri G. R. Sood—*Joint Director (Reports).*
9. Shri K. H. Chhaya—*Joint Director (Railways).*

#### SECRETARIAT

1. Shri D. C. Pande—*Chief Financial Committee Officer.*
2. Shri K. C. Rastogi—*Senior Financial Committee Officer.*
3. Shri K. K. Sharma—*Senior Financial Committee Officer.*
4. Shri Ram Kishore—*Senior Legislative Committee Officer.*

2. The Committee took up for consideration and adopted the following Draft Reports subject to certain modifications/amendments as given in Annexures I\*—IV.

1. 96th Report on Para 2.29 (Excise)—Electric motors and para 2.65(b) (Excise)—Cotton Textiles.

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3. The Committee also agreed to incorporate certain typographical errors/verbal changes as suggested by Audit.

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| 4. | * | * | * | * | * | * |
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*The Committee then adjourned.*

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\*Annexure I is shown as Appendix V. Annexure II, III and IV are not printed.

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## APPENDICES

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**APPENDIX—I**

(*vide* para 1.5)

*Tariff Advice* No. 14/76

F. No. 146/8/75-CX.4

Government of India

Central Board of Excise and Customs

*New Delhi, dated the 26th March, 1976.*

To

All Collectors of Central Excise

All Appellate Collectors of Central Excise

Sir,

Sub:—Electric Motors—Geared Motors—Classification regarding—

I am directed to state that a doubt has been raised whether duty should be charged on geared motors under Item 30, when they are made from electric motors on which duty liability has already been discharged under the said Tariff item.

2. The matter was discussed in the Seventh Tariff Conference in which the views of the technical authorities were also examined. The Conference felt that geared motors as a class were quite different from variable speed/dual or multi-speed motors and even after coupling of the gear unit to the base induction motor, the essential characteristics of the base induction motor were not changed. In view of this, the Conference felt that both the base motor and the geared motor would fall under the same sub-item of Item 30 and accordingly no further duty would be leviable on the geared motors, if the base motors were already duty paid. Since geared motors also would fall under Item 30, they would not be classifiable under Item 68 of the Tariff. However, in the case of integrated units, the duty would be chargeable on the final product *viz.*, geared motors.

3. Receipt of this Tariff Advice may be acknowledge.

Your faithfully,

Sd/-

(R. K. Chakrabarti),

Under Secretary, Central Board of Excise  
and Customs.

**APPENDIX—II**

(Vide Para 1.7)

**CIRCULAR LETTER NO. 1/Electric Motor**

**F. No. 146/10/76-CX.4**

**Central Board of Excise and Customs**

*New Delhi, the 1st May, 1978.*

To,

All Collectors of Central Excise,

Subject:--Central Excise—Item No. 30—Electric Motors—Levy of  
Excise Duty on geared motors—Reg.—

Sir,

I am directed to invite attention to Tariff Advice No. 14/76 dated 26th March, 1976 issued from Board's F. No. 146/8/75-CX.4 wherein it was clarified that both the base motor and the geared motor would fall under the same sub-item of Item No. 30 and no further duty would be leviable on the geared motors if the base motors have already paid duty. It was also clarified that since geared motors also would fall under Item No. 30A such motors would not be classifiable under Item No. 68 of the C.E.T. and in the case of integrated units, the duty would be chargeable on the final product, namely, geared motors.

2. The above Tariff Advice was the subject matter of discussion in the Second South Zone Central Excise Tariff Conference, held at Bangalore in April, 1977. The Conference felt that the Tariff Advice No. 14/76 did not need review. A copy of the Minutes is enclosed for ready reference.

3. It is clarified that the units assembling geared motors by manufacturing in their premises the geared mechanism and procuring from outside, duty paid electric motors, should be brought under the excise control and the geared motors produced by them should be subjected to excise levy under Item No. 30 of the C.E.T. Such manufacturers would be eligible to proforma credit in respect of electric motors received in their premises for further manufacture of geared motors.

4. Receipt of this Circular letter may kindly be acknowledged.

Yours faithfully,

Sd/-

(S. N. Busi)

Under Secretary,

Central Board of Excise and Customs.

Encl: As above.



**Extract of the Minutes of the Second South Zone Central Excise Tariff Conference held at Bangalore in April, 1977.**

**Point No. 9: Electric motors—geared motors—Classification of—Review of Tariff Advice No. 14/76 (F. No. 146/8/75-CX. 4) dated 26th March, 1976.**

The above additional point was proposed for discussion by the Collector of Central Excise, Bangalore with the permission of Member, Central Excise.

The Collector requested a review of the Tariff Advice No. 14/76 according to which geared motors are to be classified under the same sub-item of Item No. 30-CET as the base motors which are fitted for such geared motor units. His view was that geared motors fell within sub-item (3) of Item 30 "all others". The consensus of the Conference was that if a motor fell within the description of sub-item (1) or (2), it would have to be classified under that sub-item and not under sub-item (3). The Conference felt that, as the description of sub-item (3) stood, viz., "All others", it would not be permissible to interpret it as including "Special types of motors" of the categories specified in sub-items (1) and (2), as suggested by the Collector. Sub-item (3) would cover, for example, electric motors designed for use in a circuit at a pressure between 250 and 400 volts.

The motor under consideration appeared to be designed for use in circuits at a pressure exceeding 400 volts and therefore, classifiable under sub-item (2).

Further, as it was sold as one unit, described as a "geared motor", it appeared that the whole unit would be assessable as a single article under Item 30(2). However, if an assessee were to produce only the gear mechanism separately, the gear mechanism alone would be classifiable under Item 68 and not under item 30. The Conference therefore felt that the Tariff Advice No. 14/76 did not need review.

**APPENDIX—III**

*(Vide para 1.14)*

*Tariff Advice No. 89/81*

**F. No. 146/2/81—CX.4**

**Central Board of Excise and Customs**

*New Delhi, the 31st August, 1981*

**To,**

All Collectors of Central Excise.

All Collectors of Customs.

All Collectors (Appeals), Customs and Central Excise.

**Subject:—**Classification of gears alongwith Electric Motors used in the manufacture of electric Hoists.

**Sir,**

I am directed to say that doubts have been raised regarding the classification of gears alongwith electric motors which are used in the manufacture of electric Hoists.

2. It has been stated that a hoist is a device to facilitate raising and lowering heavy loads by applying comparatively small force. A hoist comprises an electric motor (prime mover), gear mechanism housed in a gear box and built-in-limit switches to control the top and bottom positions of the hook. The hoist with its different components are used in the main housing consisting of three parts. The middle position of the housing consists of the electric motor with a rotor drum, the right hand part consists of Limit Switches and the left hand part houses the gear box. The connection between the gear box and electric motor is hinging on a shaft or an axle of the rotor, which extends to the gear box. The extended portion of the shaft is fixed with a pinion having teeth. The spur gears are connected to this pinion.

3. This matter was discussed in the 14th West Zone Tariff-cum-General Conference held at Bombay on the 16th and 17th March, 1981. The Conference observed that the gear box was an independent part and mere linking it with the electric motor by means of a pinion or coupling did not make it a part and parcel of the electric motor and, therefore, the motor could not be considered as geared motor. It was pointed out in the Conference that CERA had raised an objection on the assessment of motors. According to the CERA, as speed of the motor was regulated by the gear mechanism which was also manufactured in the same factory, the motor

was a geared motor and value of the gear mechanism should have been included in the value of the electric motor. The objection raised by CERA appears to have been based on Tariff Advice 14/76 circulated under Board's letter F. No. 146/8/76-CX.4, dated 26th March 1976 wherein it was clarified that the geared motors were quite different from variable speed/dual or multiple motors and even after coupling of the gear unit to the base induction motor, the essential characteristics of the base motor were not changed and, therefore, both the base motor and geared motor would fall under the same sub-item of Item 30. This Tariff Advice was subsequently discussed at the 2nd South Zone Tariff Conference in April, 1977 and in pursuance of the discussions in the said Conference, the Board issued a circular No. 146/10/76-CX.4 dated 1st May 1978. In this circular, the Board clarified that the units assembling gear motors by manufacturing in their premises the gear mechanism and procuring from outside duty-paid electric motors should be brought under central excise control and geared motors produced by them should be subjected to excise levy under Item 30. Board, however, clarified that such manufacturers would be eligible to proforma credit in respect of the electric motors received for further manufacture of geared motors.

4. The Conference further observed that a geared motor was a term applied to a special type of motor in which the gear mechanism was an integral part of the motor. There was a common housing and the motor had no separate existence of its own. In contrast, a motor could be separately coupled to gear mechanism in which case the motor and gear mechanism would remain two separate identifiable entities. In the case of hoist in question, the motor without gear mechanism was independently manufactured. The motor was levied to duty under Item 30 and then the motor was fixed with the gear mechanism in a common housing which also contains the limit switches. Thus at no stage an identifiable product known as 'geared motor' appeared. The electric motor and gear mechanism together by itself was not marketable as geared motor since this system formed an integral part of the hoist together with limit switches. In the case of geared motors, it was offered for sale as independent item and cleared as such. In view of this, the Conference that at no stage a product called 'Geared Motor' emerged, and therefore, the question of adding the value of the gear mechanism to the value of the motor did not arise.

5. The matter has been further examined in the Board's Office. The instructions contained in the Board's circular F. No. 146/10/76-CX.4 dated 1st May, 1978 do not appear to be correct for the reason that Item 30, as it exists, does not have a separate sub-item of the type "All Others" and the net result would, therefore, be that once the motor has paid duty under Item 30 and after geared mechanism is attached to it, it continues to be classified under Item 30 and, therefore, no duty can be charged second

time on the same product. As regards the classification of hoist, it would be seen that the motor is manufactured separately and is put into a single casing which contains other two mechanism also i.e., the gear and limit switches. They are contained in a single casing and it cannot be said that the geared motor has been manufactured. Thus, at no stage, the geared motor can be said to have come into existence which can be bought and sold as such. It is the entire equipment which comes into existence on the assembly line by fitting in three components i.e., the motor, the gears and the limit switches in the main housing. In other words, the hoist cannot be bought and sold as a geared motor. Accordingly whereas the hoist is classifiable under Tariff Item 68, the value of the gear mechanism in such cases, would not be included in the value of electric motor as "geared motor" cannot be said to have come into existence in an independent and identifiable manner as to be recognised in the market as such. In view of this position the instructions contained in the Board's circular issued vide F. N. 146/10/76-CX.4 dated 1st May 1978 are *hereby cancelled*.

6. All pending assessments may, therefore, be finalised in the light of the above instructions. Field formations may be informed accordingly. Trade interests may also be informed as per Annexure attached.

7. Receipt of this letter may be acknowledged. Hindi version will follow.

Yours faithfully,

*Sd/-*

(J. R. Nebhoria)

*Under Secretary, Central Excise and Customs.*

Copy to:—As per list attached.

(R. N. Chauhan)

.. *Section Officer.*

Internal Distributions *As usual.*

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#### ANNEXURE

**Subject:—Classification of gears alongwith Electric Motors used in the manufacture of electric hoists.**

It is considered that the value of the gear mechanism in the case of a hoist need not be included in the value of electric motor for assessment of duty on electric motor is "geared motor" cannot be said to have come into existence in an independent and identifiable manner.

**APPENDIX—IV**

*(Vide para 1.37)*

F. No. 223/14/81-CX-6

**GOVERNMENT OF INDIA**

**Ministry of Finance**

**(Department of Revenue)**

*New Delhi, the 12-5-1981.*

To

All Collectors of Central Excise,

**Subject:—Central Excises-Procedure for payment of duty “under protest”  
Incorporation of new rule 233-B**

Sir,

I am directed to say that though an assessee could pay excise duty “under protest” no specific procedure in this regard had been laid down in order to ensure that an assessee did not abuse this facility and resorted to payment of duty “under protest” indefinitely. It has now been decided that such an assessee should follow a definite procedure.

2. Accordingly Notification No. 115/81-CE dated 11th May, 1981 inserting rule 233B in the Central Excise Rules, 1944, has been issued. Provision of the rule are Self-explanatory.

3. In order to keep a proper watch on such payments under protest, a register should be maintained in the Range Office in the enclosed proforma. The Range Superintendent should review this record every month, Supervisory officers should during their visit see that the register is being properly maintained.

4. The notification shall come into force w.e.f. 1-6-81 suitable instructions to the field formations should be issued and the trade informed *immediately*.

Please acknowledge receipt of this letter.

Yours faithfully,

Sd/- K. D. TAYAL

Enclosure: As above.

*for Director (Central Excise)*

Enclosure to F. No. 223/14/81-CX-6  
dt. 12-5-1981

*Proforma for Register of protest*

(To be maintained in the Range Office)

Sl. No.	Name of the party	Description of the goods	Brief facts of the case	
(1)	(2)	(3)	(4)	
<hr/>				
Date of filing of letter of protest		Date of Acknowledgement	Date of filing of representation	Date of communication of decision on representation
(5)		(6)	(7)	(8)
<hr/>				
Date of filing of appeal		Date of communication of decision in Appeal	Date of filing of Revision Application	Date of communication of decision in Revision
(9)		(10)	(11)	(12)
<hr/>				
Action taken in the light of the decision referred to in Columns 8, 10 or 12 as the case may be		Range file Number	Remarks	Signature with date of Superintendent
(13)		(14)	(15)	(16)

## COPY

TO BE PUBLISHED IN PART II, SECTION 3, SUB-SECTION (i) OF THE GAZETTE OF INDIA EXTRAORDINARY DATED THE 11TH MAY 1981.

GOVERNMENT OF INDIA  
**Ministry of Finance**  
 (Department of Revenue)

*New Delhi, the 11th May, 1981*

21, *Vaisakha*, 1903

## NOTIFICATION

## CENTRAL EXCISES

G.S.R. In exercise of the powers conferred by section 37 of the Central Excises and Salt Act, 1944 (1 of 1944), the Central Government hereby makes the following rules further to amend the Central Excise Rules, 1944, namely:—

1. (1) These rules may be called the Central Excise (15th Amendment) Rules, 1981.
- (2) They shall come into force on the 1st day of June, 1981.
2. In the Central Excise Rules, 1944, after rule 233-A the following rule shall be inserted, namely:—

*"233-B. Procedure to be followed in cases where duty is paid under protest.*

- (1) Where an assessee desires to pay duty under protest, he shall deliver to the proper officer a letter to this effect and give grounds for payment of the duty under protest.
- (2) On receipt of the said letter, the proper officer shall give an acknowledgement to it.
- (3) The acknowledgement to given shall, subject to the provisions of sub-rule (4), be the proof that the assessee has paid the duty under protest from the day on which the letter of protest was delivered to the proper officer.
- (4) An endorsment "Duty paid under protest" shall be made on all copies of the gate-pass, the Application for Removal and From R.T. 12.

- (5) In cases where the remedy of an appeal or revision is not available to the assessee against an order or decision which necessitated him to deposit the duty under protest, he may, within three months of the date of delivery of the letter or protest, give a detailed representation to the Assistant Collector of Central Excise.
- (6) In cases where the remedy of an appeal or revision is available to the assessee against an order or decision which necessitated him to deposit the duty under protest, he may file an appeal or revision within the period specified for filing such appeal or revision, as the case may be.
- (7) On service of the decision on the representation referred to in sub-rule (5) or of the appeal or revision referred to in sub-rule (6) the assessee shall have no right to deposit the duty under protest:
- Provided that an assessee shall be allowed to deposit the duty under protest during the period available to him for filing an appeal or revision, as the case may be, and during the pendency of such appeal or revision, as the case may be.
- (8) If any, of the provisions of this rule has not been observed, it shall be deemed that the assessee has paid the duty without protest.

*NOTE : A letter of protest or a representation under this rule shall not constitute a claim for refund.*

(No. 115/81-CE)

Sd/- R. DEB

*Under Secretary to the Govt. of India-*

*Notification No. 115/81-CE F. No. 223/14/81-CX-6*



## APPENDIX V

(Vide part II)

### MODIFICATIONS/AMENDMENTS MADE BY THE PUBLIC ACCOUNTS COMMITTEE IN DRAFT NINETY-SIXTH REPORT RELATIONS TO UNION EXCISE DUTIES—ELECTRIC MOTORS AND COTTON TEXTILES

Page	Para	Line	Modifications/Amendments
18	1·41	4	After "February, 1981" add "The Board where however already seized of the matter as the draft audit paragraph had come to them in August, 1980".
18	1·41	5	For "and the" read "The"
18	1·41	10	Delete "26 March 1976 and"
26	1·47	7	Before "The Committee" and "The Committee cannot accept this explanation in view of the fact that the matter had been discussed in a Tariff Conference even in April, 1977. The Board have been clearly remiss in performing their supervisory role."
23	1·47	7—8	For "feel it strange" read "cannot also understand"
23	1·47	10	After "procedures" add "over long periods"
23	1·47	12—13	For "machinery itself" read "organs"
23	1·47	13—14	Delete "and Audit etc."
23	1·47	17	For "into focus" read "to light"
23	1·47	18	For "seized of" read "inquired into"
23	1·47	18—24	Substitute the sentence "The Committee... collectorates" by "The Committee expect the Board to be more vigilant in performing their supervisory role and such divergent practices should not go unnoticed for too long. The Committee may also be informed of the machinery which exists for bringing about uniformity in the procedure followed by the different Collectorates."
49	2·41	11—16	For "in respect of... Collectorates" read "of Rs. 63·07 lakhs. The main reasons for the increase are that some amounts now included by the Ministry were not intimated by the department to Audit earlier and the final amount also included certain amounts which were already reported in an earlier Audit Report".

Page	Para	Lines	Modifications/Amendments
50	2.43	6—7	<i>For</i> "had taken place not merely due" <i>read</i> "could not be attributed".
50	2.43	8—15	<i>Substitute</i> "The Committee.....thereon" by "The Committee recommend that responsibility should be fixed for this lapse after holding an enquiry and the results thereof be communicated to the Committee".
52	2.44	2	After "16 January 1978" <i>add</i> "in all such cases."
54	2.47	1—7	<i>Substitute</i> "The Committee.....Baroda" by "The decision of the Collector (Appeals) had been sent by the Collector for review by the Government of India. The Committee's question apparently referred to this stage of review. The Ministry's answer is not relevant. The Committee would like to know why the question that the amendment could not have retrospective effect was not taken into account at that stage."
56	2.51	1—2	<i>Delete</i> "consider it a serious lapse and".
56	2.51	3	<i>For</i> "aeme" <i>read</i> "lapse"

**APPENDIX VI**  
**CONCLUSIONS/RECOMMENDATIONS**

S.No.	Para No.	Ministry/Deptt. concerned	Conclusion/Recommendation
1	2	3	4
1	1-39	Ministry of Finance (Department of Revenue).	<p>Electric motors of all sorts and parts there of are chargeable duty <i>ad valorem</i> under tariff item 30. Rate of duty differs according to the rated capacity of the motor and the current on which it is capable of operating. According to a Tariff Advice issued by the Central Board of Excise and Customs on 26 March, 1976 it was clarified that both the base motor and the gear motors would fall under the same sub-item of item 30 and in the case of integrated units, the duty would be chargeable on the final product, viz. geared motors. On 1 May, 1978, the Board further clarified that the units assembling geared motors by manufacturing in their premises the geared mechanism, and procuring from outside duty paid electric motors, should be brought under the excise control, and the geared motors produced by them should be subjected to excise levy under tariff item 30.</p>
2	1-40	Do.	<p>The Committee find that M/s. Hercules Hoist Ltd., an assessee in the Bombay II collectorate manufactured hoists by using electric motors manufactured in the factory itself. In order to regulate the speed of the motors,</p>

gear mechanism was also manufactured and used in the electric motors. According to the instructions issued by the Central Board of Excise and Customs on 26 March, 1976 and 1 May 1978, such geared motors were required to be assessed to duty on the value including the value of the gear mechanism. However, in the case under examination, the geared motors were assessed to duty excluding the value of gear mechanism resulting in an underassessment of duty of Rs. 4.72 lakhs for the period 1 April, 1976 to 22 May, 1979. After the objection was raised by Audit on 18 July, 1978, the department issued show cause notices and the assessee started paying duty under protest with effect from 23 May, 1979.

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1-41

Ministry of Finance  
(Department of Revenue)

The Committee note that the audit objection was brought to the notice of the Central Board of Excise and Customs by the Collector of Central Excise, Bombay II in February, 1981. The Board were however already seized of the matter as the draft audit paragraph had come to them in August 1980. The issue was discussed in the West Zone Tariff Conference in March and June, 1981 and later was examined by the Board itself. After review, the Board issued a fresh Tariff Advice on 31 August, 1981 cancelling their earlier instructions dated 1 May, 1978.

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1-42

Do.

During review, a distinction was made between a gear motor and a motor coupled to a gear mechanism. In the case of a gear motor, the gear mechanism was an integral part of the motor and there was a common housing and the motor had no separate existence of its own. In contrast,

a motor could be separately coupled to gear mechanism in which case the motor and gear mechanism would remain two separate identifiable entities. In the former case the gear mechanism was treated as an integral part of an electric motor whereas in the latter case it was treated as an accessory of an electric motor. Thus, according to the Tariff Advice issued on 31 August, 1981, the case under examination fell within the latter category and in this case, the value of gear mechanism need not be included in the value of electric motor for assessment of duty on electric motors as the geared motor cannot be said to have come into existence in an independent and identifiable manner.

5            1.43            Do.

The Tariff Advice issued on 31 August, 1981 seeks to set at rest the controversy over the inclusion of the value of gear mechanism in the value of electric motor for assessment of excise duty. However, there are a few features of the operation of the instructions issued in March, 1976 and May, 1978 which deserve mention. For instance, the Committee fail to understand as to how the distinction now made between a motor fitted with gear and a geared motor should have escaped the attention of the Central Board of Excise and Customs while issuing the Tariff Advice in 1976 and further instructions in 1978. The Ministry of Finance have not been able to put forth any convincing reason for this glaring lapse and while admitting the omission, the Ministry have now merely sought to explain that, 'the term 'gear motors' in the Circular No. 1/78 has been used rather loosely".....

6            1.44            Do.

Further, while issuing the Tariff Advice on 31 August, 1981, the earlier instructions dated 1 May, 1978 were not found to be correct by the Central Board of Excise and Customs for the reason that Item 30 as it existed did

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not have a separate item of the type "All others". According to the Board, the net result of this would be that once the motor has paid duty under Item 30 and after the mechanism was attached to it, it continues to be classified under Item 30 and, therefore, no duty can be charged second time on the same product. It is pertinent to point out in this connection that the tariff description under Item 30 was the same as at the time of issuing of instructions dated 1 May, 1978 as at present. During examination, the Ministry of Finance conceded the fact that the tariff item 30 did not contain sub-item "All Others" had escaped the attention of the Board while issuing clarification on 1 May, 1978.

7

1.45

Ministry of  
Finance  
(Department  
of Revenue)

The Committee are constrained to infer from the foregoing that while issuing instructions in 1976 and later in 1978 adequate care was not exercised by the Board in examining and analysing the issue thoroughly. The fact that the defects in the Tariff Advice/instructions could be detected and corrective action taken only as a result of the follow-up action on the objection raised by the Statutory Audit would seem to indicate the inadequacy of the departmental machinery in scrutinising the instructions before their issue. The Committee would, therefore, strongly recommend that the Ministry of Finance should devise an effective machinery in order to ensure that the tariff advices, clarifications and other instructions issued by the Board are properly scrutinised in all respects before they are issued.

8 1-46 Do.

The Committee observe that as a result of the Tariff Advice issued on 31 August, 1981 gear mechanism manufactured by an integral unit will now be chargeable to duty under tariff item 30 alongwith electric motor whereas in the case of other units gear mechanism will be chargeable to duty under tariff item 68. Thus, the aforesaid Tariff Advice is likely to discourage the production of geared motors in integral units and may consequentially result in loss of revenue to the Government. Although the Ministry of Finance assured the Committee during examination that, "the Government are aware of the implications of Tariff Advice dated 31.8.1981 and suitable corrective measures will be taken so that there is no discouragement in the production of geared motors in the integrated units", yet the Committee have not been informed of the action taken/proposed to be taken by the Ministry in this behalf. The Committee, however, note that in the Finance Bill, 1982 the tariff description of Item No. 30 relating to Electric Motors in the First Schedule to Central Excise Act is sought to be changed or amended so as to specifically include motors equipped with gears or gear box within the purview of this item.

9 1-47 Do.

The Committee are concerned to note from the information furnished at their instance by the Ministry of Finance that no inform procedure was being followed by different Collectorates in the assessment of electric motors. The Ministry of Finance have attempted to explain this serious shortcoming in the functioning of the department by merely stating that 'no specific reference indicating different assessment procedures was made to the Ministry excepting the issue discussed in the Tariff Conference leading to the issue of T.A. No. 89/81 dated 31-8-81'. The Committee cannot accept this explanation in view of the fact that the matter had been discussed in a

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Tariff Conference even in April, 1977. The Board have been clearly remiss in performing their supervisory role. The Committee cannot also understand as to how such shortcomings in the functioning of the department as prevalence of divergent assessment procedures over long periods in respect of the same excisable item in different collectorates could not be detected by the departmental organs like the Directorate of Inspection. In the instant case the fact that different assessment procedures were being followed by different Collectorates in the assessment of electric motors came into light only after the matter was inquired into by the Committee. The Committee expect the Board to be more vigilant in performing their supervisory role and such divergent practices should not go unnoticed for too long. The Committee may also be informed of the machinery which exists for bringing about uniformity in the procedure followed by the different Collectorates.

10. 1.48

Ministry of  
Finance  
(Department  
of Revenue)

The Committee find that the factory of the assessee in the case under examination was visited by Inspection Groups of the department on three occasions and once by the Assistant Collector (Audit) during the period between March, 1976 and June, 1978 for checking the manufacturers accounts, manufacturing process etc. Surprisingly, none of them were able to detect the fact that the assessee was not paying duty in accordance with the instructions prevailing at that time. The Committee are unhappy that the Ministry of Finance have now sought to justify such patent lapses of their departmental surveillance machinery by stating that "the various Inspection Groups visiting this unit...earlier did not think it proper to



realise duty on the combined value of Gear Mechanism and the Electric Motor because of the fact that no Gear Motor as such had come into existence". The Committee would recommend that the Central Board of Excise and Customs should look into such failures of their mechanism for departmental control and take appropriate measures in order to make excise surveillance more effective.

11. 1.49

Do.

Another disquieting feature noticed by the Committee was that the audit objection raised on 18 July, 1978 was brought to the notice of the Central Board of Excise and Customs by the Collector of Central Excise, Bombay II on 4 February, 1981 only. The issue was first discussed in March, 1981 and later in June, 1981 at the West Zone Tariff Conference and thereafter a Tariff Advice was issued by the Board on 31 August, 1981. The Ministry of Finance have not been able to adduce any plausible explanation for this deplorable delay of more than 2½ years on the part of the Collector of Central Excise, Bombay II in bringing the matter to the notice of the Board. The Committee would strongly recommend that the Board should issue necessary instructions to the Collectorate to bring such cases to the notice of the higher authorities promptly so that necessary remedial/corrective measures could be initiated in time.

59

12. 1.50

Do.

The Committee note that under the existing procedure, assesseees could pay excise duty 'under protest'. The Committee are surprised to note that no specific procedure had been laid down upto 31 May, 1981 in order to ensure that an assessee did not abuse this facility and resorted to payment of duty "under protest" indefinitely. A Notification has now been issued on 11 May, 1981 inserting new rule 233 B in the Central Excise Rules,

1944 *vide* Central Excise (15th Amendment) Rules, 1981 prescribing specific procedure for payment of duty under protest with effect from 1 June, 1981. From the details of cases of assessments of electric motors furnished to the Committee it was seen that in many cases assesseees were paying duty under protest. The Committee were informed that at present no time limit has been prescribed in the Central Excise Rules for deciding cases which are pending decision with the Department and in which duty has been deposited under protest except that the Range Superintendents are required to keep a Register in respect of protest cases in order to keep a proper watch on the progress of these cases. The Committee feel that simply maintaining a register of protest cases cannot ensure prompt decision on such cases. The Committee would, therefore, recommend that the Government should prescribe a time limit, preferably three months, in order to avoid abnormal delay in deciding cases pending with the Department and in which duty has been deposited under protest.

13 2-37 Ministry of  
Finance  
(Department  
of  
Revenue)

Prior to 18 June, 1977 cotton fabrics falling under tariff item 19 I(2) were being classified as 'superfine' 'fine' etc. under sub-items (a) to (e) depending upon the average count of yarn contained in the fabrics. The average count of yarn was to be determined by applying the formula given in Explanation III(d) below T.I. 19 as it existed prior to 18 June, 1977. However, in the average count of yarn could not be determined by application of the said formula, the fabrics were classifiable under sub-item (f) of T.I. 19I(2) as cotton fabrics not otherwise specified'.

14 2.38

Do.

Further, under rule 96-W (which existed upto 17 June 1977) of the Central Excise Rules, 1944, compounded rates of duty were prescribed in respect of cotton yarn falling under T.I. 18A used in the making of the varieties of cotton fabrics falling under sub-items (a) to (e) under T.I. 19I(2). But no such compounded rate of duty was prescribed for cotton yarn used in the making of the cotton fabrics falling under the sub-item (f) under T.I. 19I(2), viz. cotton fabrics classifiable as 'not otherwise specified'. This implied that in respect of cotton yarn used in the making of such cotton fabrics the duty was leviable at the tariff rates only.

15 2.39

Do.

The Audit Paragraph under examination has disclosed that 12 units in Ahmedabad and Baroda Collectorate manufacturing certain varieties of cotton fabrics using different counts of yarn in warp and or weft cleared such fabrics after paying duty at rates under tariff item 19I(2) (a) to (e) instead of under 19I(2) (f). According to the Audit as yarn of different counts was used in warp and/or weft is the manufacture of the cotton fabrics, the average count of yarn in these fabrics was not determinable under the formula given in Explanation III (d) below T.I. 19 and should have been appropriately classified under T.I. 19I(f) as 'not otherwise specified'. This resulted in under-assessment of duty on cotton fabrics to the extent of Rs. 28.78 lakhs for the period 1 January, 1974 to 17 June, 1977.

16 2.40

Do.

Further, the duty on cotton yarn used in the making of the cotton fabrics by the above assesseees was also paid at the compounded rates under rule 96-W of the Central Excise Rules, 1944. According

1	2	3	4
17 2.41	Ministry of Finance (Deptt. of Revenue)	<p>to the Audit as the cotton fabrics under reference were classifiable under T.I. 19 I(2)(f) as 'not otherwise specified' and as the compounded rate of duty was not prescribed for cotton yarn used in the making of cotton fabrics falling under T.I. 19I(2) (f), the duty on cotton yarn used in their making should have been paid at the tariff rate. This resulted in under-assessment on cotton yarn to the extent of Rs. 15.98 lakhs for the period 1 January 1974 to 17 June, 1977.</p> <p>Thus, according to the Audit, the total under-assessment of duty due to incorrect classification of cotton fabrics under tariff item 19I(2) (a) to 19I(2) (e) and incorrect application of compounded levy rates in the case of yarn used in the making of such fabrics in 12 units in 2 Collectorates amounted to Rs. 44.76 lakhs. However, while admitting the Audit objection, the Ministry of Finance have now submitted revised figures of under-assessments of Rs. 63.01 lakhs. The main reasons for the increase are that some amounts now included by the Ministry were not intimated by the department to Audit earlier and the final amount also included certain amounts which were already reported in earlier Audit Report.</p>	63
18 2.42	Do.	<p>The Committee find that apart from the above under-assessments involving Rs. 63.01 lakhs in two Collectorates, misclassifications of similar types were reported in four other Collectorates involving Rs. 6.02 lakhs (dealt with in Para 2.52). The Ministry of Finance have not apprised the Committee of the precise reasons for these glaring cases of under-assessments of duty. Nevertheless, while explaining the background for the</p>	

change in classification of cotton fabrics under T.I. 19I with effect from 18 June, 1977, the Ministry have stated that, "the classification based on counts was found to be complicated. It was accordingly decided in 1977 Budget to do away with the classification of cotton fabrics based on counts....."

19 2.43

Do.

The fact that misclassifications of cotton fabrics falling under tariff item 19I 2(f) have been reported only from 6 collectorates and that assessments were being done correctly in other collectorates would seem to indicate that the under-assessments could not be attributed to complications in the law. The Committee recommend that responsibility fixed for this lapse after holding an enquiry and the result thereof be communicated to the Committee.

20 2.44

Do.

The Committee note that it was proposed in the 1977-78 Budget to do away with the classification of cotton fabrics based on counts and to adopt with effect from 18 June, 1977 a classification based on value of the fabrics which admits of a higher degree of progression in the duty structure. However, at the consideration stage of the Finance (No. 2) Bill, 1977, it was decided to reintroduce a separate classification with a separate rate of duty for fine and super fine fabrics in the interest of the decentralised sector, retaining the duty structure based on value for other varieties of fabrics and a notification was accordingly issued on 15 July, 1977. The Committee were informed that even after issue of notification dated 15 July, 1977, difficulties in the application of rules for determination of average count of yarn in cotton fabrics continued to persist. The Ministry of Finance, therefore,

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reviewed the matter in consultation with the Ministry of Law and the notification was amended *vide* another notification on 17 January 1978. In this connection the Committee find from the relevant records relating to the assessment in the case of M/s. Mahendra Mills, Kalol, one of the assesseees, where misclassification under tariff item 19I(2) had continued during the period between 15 July, 1977 and 16 January, 1978 as well. The Committee would therefore, like to be informed of the details of under-assessments due to such misclassification during the intervening period between 15 July, 1977 and 16 January, 1978 in all such cases.

21 2.45

Ministry of  
Finance (Deptt. of  
Revenue)

The Committee note that out of a total under-assessment of duty of Rs. 63.01 lakhs in 14 units, only an amount of Rs. 0.93 lakh from two assesseees has been recovered so far. Demands raised against short levy of duty in 10 units amounting to Rs. 56.44 lakhs are stated to be under the process of adjudication/decision. From the information furnished by the Ministry, it is seen that even the adjudication proceedings have been activated only after the subject was taken up for examination by the Committee. The Committee cannot but express their displeasure over such inordinate delays. They expect that all such pending cases will be finalised expeditiously and a report submitted to them forthwith.

84

22 2.46

Do.

The Committee find that in one case, *viz.* that of M/s Surat Cotton Spinning and Weaving Mills, out of total demands of Rs. 3.17 lakhs, a demand for Rs. 2.84 lakhs was confirmed by the Assistant Collector.

Against this, the assessee filed an appeal to the Collector (Appeals) Bombay, who allowed the appeal. A review proposal was sent by the Collector to the Government of India against the orders of the Collector (Appeals). In their orders on the review proposal, the Government of India held the view that the amending notification dated 17 January 1978 had to be taken into account to clarify the matter and the ratio of that decision would also apply for concluding that the imungned order-in-appeal is not a fit case for review. In view of the Government's observation, it was stated that the department was redetermining the whole demand (Rs. 3.17 lakhs) in order to see if any amount was chargeable from the assessee. The Committee also find that an appeal filed by another assessee, viz. Mahendra Mills Ltd. Kalol was partly allowed by the Appellate Collector on the same grounds.

23 2-47

Do.

To a pointed question of the Committee as to whether the amending notification dated 17 January 1978 could be applied retrospectively and whether the opinion of the Ministry of Law was obtained on that point, the Ministry of Finance stated that, ". . . this deision (in the case of Surat Cotton Spinning and Weaving Mills, Surat) was taken by Revisionary authority in a quasi-judicial capacity and it will not be appropriate for the Ministry to ascertain from Revisionary authority if the opinion of the Law Ministry was obtained and to comment. . ." The decision of the Collector (Appeals) had been sent by the Collector for review by the Government of India. The Committee's question apparently referred to this stage of review. The Ministry's answer is not relevant. The Committee would like to know why the question that the amendment could not have retrospective effect was not taken into account at that stage.

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24	2.48	Ministry of Finance (Dept. of Revenue)	<p>The Committee find that in the case of M/s. Mahendra Mills Ltd. Kalol where a short-levy of Rs. 2.48 lakhs was reported for the period covered by Audit objection, the demands raised by the department were set aside by the Appellate Collector on an appeal by the assessee. The department had raised demands against short-levy of duty of Rs. 1.31 lakhs (for the years 1974, 1975 and 1976), Rs. 0.24 lakh (for the period 1 January 1977 to 31 March 1977) and Rs. 0.93 lakh (for the period 1 April 1977 to 17 June 1977). The demand for Rs. 0.24 lakh was set aside by the Appellate Collector on the ground of time bar without going into the merits. Appeals of the assessee against demands for Rs. 1.31 lakhs and Rs. 0.93 lakh were allowed by the Appellate Collector on the same grounds cited in the case of M/s Surat Cotton Spinning and Weaving Mills and the department was asked to redetermine the demands.</p>
25	2.49	Do.	<p>However, on perusal of the relevant records furnished by the Ministry of Finance the Committee find that the Appellate Collector while partly allowing the appeal of the assessee (M/s Mahendra Mills Ltd.) against the demand for Rs. 1.31 lakhs had also held that as the show cause notice for differential duty was issued on 26 July, 1977 only, even if any duty was payable by the assessee after re-determination, such duty had to be restricted for the period commencing on 26 July, 1976 only. Thus, the plea of time bar advanced by the assessee was also partly allowed by the Appellate Collector.</p>



- 26 2-50 Do. The Committee observe from yet another order passed by the Appellate Collector partly allowing an appeal filed by the assessee against the demand of Rs. 11,585 towards shortlevy during the period 15 July 1977 to 17 January 1978 that the show cause notice was not issued by the department within the requisite period.
- 27 2-51 Do. The Committee are constrained to infer from the foregoing cases that the department had woefully failed in issuing the demands for duty within the requisite period and as a result of this delay the demands were held to be time-barred in the orders-in-appeal. The Committee recommend that responsibility should be fixed for the lapse. The Ministry of Finance should also identify the reasons for such delays in issue of demands for duty and take necessary corrective measures in this regard.
- 28 2-52 Do. The Committee find that out of 10 cases involving under assessment of Rs. 6.02 lakhs of duty on account of similar misclassifications reported from 4 other collectorates, 7 cases were still under adjudication/decision. Out of the remaining three cases (reported in the Calcutta Collectorate) demands for the under-assessments were yet to be raised in 2 cases involving a total duty of Rs. 67,548. The Ministry of Finance have in their note merely stated that the "Collector is being asked to raise the demand". Further, while intimating the position of recovery of duty in the case of B&C Mills under the Madras Collectorate, the Ministry of Finance *inter alia* stated that the case could not be adjudicated due to frequent changes of Assistant Collectors. 2
- 29 2-53 Do. The Committee are concerned to note that there have been inordinate delays in finalising cases involving heavy amounts of duty. Moreover the
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Ministry of Finance have not been able to adduce any plausible reason for the delay on the part of the Collector of Central Excise, Calcutta in raising the demands in two cases. The Committee are unhappy that the Ministry of Finance have sought to justify the delay in adjudication by putting forth plea such as frequent changes of Assistant Collectors. The Committee recommend that all such pending cases should be finalised expeditiously and latest position regarding recovery of duty intimated to them.

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