P.A.C. No. 547

PUBLIC ACCOUNTS COMMITTEE
(1977-78)

(SIXTH LOK SABHA)

EIGHTH REPORT

UNION EXCISE DUTIES

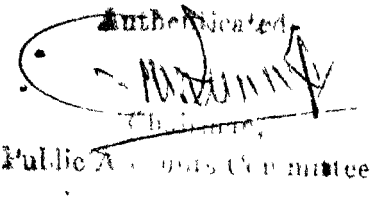
MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE & BANKING)

[On paragraphs of the Report of the Comptroller and Auditor General of India for the year 1972-73, Union Government (Civil), Revenue Receipts, Volume I, Indirect Taxes relating to Union Excise Duties]

Presented in Lok Sabha on ..2.0 11.77

Laid in Rajya Sabha on ..



LOK SABHA SECRETARIAT
NEW DELHI

August, 1977/Sravana, 1899 (Saka)

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

PUBLIC ACCOUNTS COMMITTEE

(1977-78)

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1. Shri B. K. Mukherjee—Joint Secretary.
2. Shri T. R. Ghai—Senior Financial Committee Officer.

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*Ceased to be Members on their appointments as Ministers of State w.e.f. 14.8.77.

INTRODUCTION

I, the Chairman of the Public Accounts Committee, as authorised by the Committee, do present on their behalf this Eighth Report of the Public Accounts Committee on paragraphs relating to Union General of India for the year 1972-73, Union Government (Civil), Excise Duties included in the Report of the Comptroller & Auditor Revenu Receipts, Volume I, Indirect Taxes.

2. The Report of the Comptroller & Auditor General of India for the year 1972-73, Union Government (Civil), Revenue Receipts, Vol. I, Indirect Taxes, relating to Union Excise Duties was laid on the Table of the House on 8 May 1974. The Committee (1974-75) examined these paragraphs at their sittings held on 28 and 29 October 1974 (FN & AN), 26 November 1974 (AN) and 10 and 11 December 1974 (AN). The Public Accounts Committee (1976-77) considered and finalised this Report at their sitting held on 21 December 1976 but could not present it due to dissolution of Lok Sabha on 18.1.77. The Committee (1977-78) considered and finalised this Report at their sitting held on 10 September 1977 based on the evidence taken and further information furnished by the Ministry of Finance earlier. Minutes of the sittings form part II* of the Report.

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

4. The Committee place on record their appreciation of the commendable work done by the Public Accounts Committee (1974-75) and (1976-77) in taking evidence and obtaining information for the Report and considering the Report.

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

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

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

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

NEW DELHI;
September 28 1977
Asvina 6, 1899 (*S*)

UNION EXCISE DUTIES

'Audit Paragraph:

1.1. The receipts under Union excise duties during the year 1972-73 were Rs. 2,324.25 crores. The receipts for the last five years along with the corresponding number of commodities on which excise duty was leviable are given below:—

Year	Receipts under Union Excise duties (in crores of rupees)	Number of commodities on which excise duty was leviable
1968-69	1320·67	76
1969-70	1524·31	81
1970-71	1791·44	91
1971-72	2061·10	116
1972-73	2324·25	120*

1.2. The break-up of the receipts for 1972-73 with the corresponding figures for 1971-72 is given below:—

Heads of Account	Actuals for 1971-72	Actuals for 1972-73
II. Union Excise Duties :	Rs.	Rs.
A. Shareable duties :		
Basic excise duties	17,05,09,88,549	19,81,12,34,844
Additional excise duties on Mineral Products	1,19,81,88,489	1,29,90,47,753
TOTAL (A)	18,24,91,77,038	21,11,02,82,597

*Does not include changes brought about in Finance Bill 1973 introduced in Parliament 28th February, 1973.

Heads of Account	Actuals for 1971-72	Actuals for 1972-73
B. Duties assigned to States :	Rs.	Rs.
Additional excise duty in lieu of Sales Tax	1,05,51,47,611	1,43,47,96,577
C. Non-shareable duties :		
Regulatory excise duties	17,79,16,182	52,56,13,419
Special excise duties	1,16,98,46,522	87,02,287
Other duties	76,45,899	9,89,08,520
Newspaper and other printed periodicals	78,32,917	4,05,41,093
Auxiliary duties of excise	..	8,28,92,527
TOTAL (C)	1,36,32,41,520	75,66,57,846
D. Cess on Commodities	29,47,78,409	34,12,48,204
E. Miscellaneous	1,75,54,245	4,42,92,530
Gross receipts	20,97,98,98,823	23,68,72,77,754
F. Deduct—Refunds & Drawbacks :		
A. Shareable duties		
1. Basic excise duties	(—)13,97,37,271	(—)16,38,39,785
2. Additional excise duties on Mineral Products	(—)2,52,648	(—)10,926
TOTAL (A) Refunds etc.	(—)13,99,89,919	(—)16,38,50,711
B. Duties assigned to States :		
Additional excise duties in lieu of Sales Tax	(—)26,15,041	(—)78,17,185
C. Non-shareable duties namely regulatory excise duties special excise duties	(—)43,05,768	(—)72,28,380
D. Cess on Commodities	(—)5,10,013	(—)4,71,980
E. Miscellaneous	(—)22,15,09,176	(—)26,53,87,762
TOTAL refunds & Drawbacks	(—)36,89,29,917	(—)44,47,56,018
Net Receipts	20,61,09,68,906	23,24,25,21,736

1.3. Out of 120 commodities on which duties were levied, the following seven commodities accounted for more than 50 per cent of the total receipts:

	(In crore of rupees)
1. Sugar	177·26
2. Cigarettes	195·72
3. Motor Spirit	228·18
4. Kerosene	137·91
5. Refined disel oil Vaporising oil	283·79
6. Rayon and Synthetic fibres and yarn	104·97
7. Iron and Steel products	148·16
TOTAL	1,275·99

Variation between budget estimates and the actuals

1.4. The budget figures, actual realisation and variations for the year 1972-73 together with corresponding figures for the last three years are given below:—

Year	Budget estimates	Actuals	(In crores of rupees) Variations	Percentage
1969-70	1521·27	1524·31	3·04	0·20
1970-71	1812·75	1758·55	(—)54·20	(—)2·99
1971-72	2071·56	2061·10	(—)10·46	(—)0·5
1972-73	2464·75	2324·25	(—)140·50	(—)5·7

Cost of Collection

1.5. The expenditure incurred in collecting revenue on account of Union excise duties during the year 1972-73 together with the corresponding figures for the preceding years are given below:—

(In crores of rupees)

Year	Collections	Expenditure on collection
1969-70	1524·31	12·78
1970-71	1758·55	14·34
1971-72	2061·80	15·57
1972-73	2324·32	16.91

(Paras 16, 17 and 18 of the Report of the C. & A.G. of India for the year 1972-73-Union Government (Civil), Revenue Receipts-Vol. I-Indirect Taxes relating to Union Excise Duties)

1.6. The Committee asked why there had been shortfall of about Rs. 140.50 crores in the actuals of revenue realisation over the budget estimates during the year 1972-73 under the head II—Union Excise. The Ministry of Finance, in a written note, stated:

> "As per departmental returns (now available), the commodity-wise actual realisation excluding cess on coal, salt, rubber and iron ore, comes to Rs. 2326.20 crores (net) as against the Budget Estimates of Rs. 2442.75 crores (net), thus indicating a short-fall of Rs. 116.55 crores."

This shortfall is accounted for by—

(i) shortfall in realisations *vis-a-vis* estimates from some major revenue yielding items;

(ii) higher grants of refunds and drawback the order of Rs. 26.48 crores.

The Budget Estimates of revenue are based upon the estimates of revenue from a large number of individual commodities exceeding 100, subject to excise levy. In respect of some commodities the actual revenue realisations fell short of the Budget Estimates, and in respect of others hey exceeded the estimates. In sum, however, there was a shortfall in the total realisations. The major part of the shortfall amounting to Rs. 95.52 crores occurred in respect of the following 8 major revenue-yielding commodities, where marked variations between the budgeted figures and actual realisations have been noticed:

Commodity	Shortfall in revenue (Rs. crores)
Tea	10·41
Unmanufactured Tobacco	10·18
Cigarettes	22·38
Motor spirit	11·82
Kerosene	23·89
Furnace oil	5·18
Aluminium	6·91
Matches	4·75
Total	95·52

1.7. The Ministry of Finance also furnished a statement (Appendix I) indicating the factors which appear to have affected revenue realisations for the above 8 commodities. According to the statement, broadly speaking, in the case of Tea, injunctions obtained by Tea gardens in 1970 but which continued throughout the year 1972-73, are stated to have adversely affected the revenue realisation. As regards unmanufactured Tobacco, the exports had reached an all time high figures and this factor coupled with an unprecedented drought which effected the purchasing power of the consumer resulted in lower realisation. Substantial decline in the clearances of cigarettes and shift in their production pattern were responsible for lower realisation of revenue in the case of

cigarettes. In the case of petroleum products, the actual production in 1972-73 did not come upto the expected level of growth rate of 5 per cent and was even less than the production in the previous year because of repeated shut-down at Cochin refinery and lower imports of crude due to foreign exchange constraints etc. In so far as Aluminium is concerned, the shortfall in production was caused by severe power cuts in U.P. and Karnataka and labour strike in Belgaum Aluminium Factory. The production of matches in the country also registered marked decline due to shortage of raw materials like potassium chlorate, woodsplints and veneers and strike and lock-out in Wimco Factory at Madras.

1.8. A statement showing commodity-wise realisation of revenue from Basic Duty and Basic-cum-Special duty during the years 1971-72 and 1972-73, as furnished by the Ministry of Finance, is appended to this Report (Appendix II). It will be seen from this statement that there was a shortfall in revenue realisation on Cotton Yarn and Jute to the extent of Rs. 13.3 millions and Rs. 9.6 millions respectively in the year 1972-73 as compared with 1971-72. The Committee, therefore, wanted to know the reasons for the substantial shortfall in the duty realisation on cotton yarn and jute during the year 1972-73 as compared to 1971-72. A representative of the Ministry of Finance stated during evidence:—

> "In the 1972 budget we modified the nomenclature of tariff entries relating to Yarn-cotton, man-made fibres, wool, jute etc. and confined the basic entries to those yarns which contain 90 per cent or more of that particular fibre. The balance was transferred to a residuary entry covering all others. So, some part of the revenue which was originally shown under Cotton yarn entry has been transferred to the other entry."

1.9. The Ministry of Finance in a detailed note subsequently explained:

> "In the case of cotton yarn, the revenue came down from Rs. 34.98 crores in 1971-72 to Rs. 33.65 crores in 1972-73. A part of this fall in revenue is attributable to the tariff changes made in the definitions of various textiles in 1972 Budget due to which some cotton yarn earlier classified under item 18 got classified under a new tariff item 18E yarn, all sorts, NES. There were also comparatively smaller clearances of yarn by the composite mills for

production of cloth on payment of duty under special procedure. As for the jute manufactures, there was actually no shortfall in revenue as compared to 1971-72 in as much as the tariff item 22A was bifurcated into two items 18D and 22A and if the revenue from these items is taken together and compared with the revenue for 1971-72 (when both the items were clubbed together) it would be seen that the actual revenue realisation in 1972-73 is more than that realised in 1971-72."

1.10. The Committee wanted to know as to why there was shortfall in the estimated duty realisation of tobacco during the year 1972-73. The Secretary, Ministry of Finance stated during evidence:

"Against the budget estimates of Rs. 103.28 crores the actual collection was Rs. 93.10 crores. The reasons that have been given are that the duty paid clearance of tobacco during 1972-73 amounted to 278 million Kg. as against 296 Kg. in 1971-72. This seems to have been due partly also to the higher exports of unmanufactured tobacco during 1972-73, when they seem to have reached the all time high figure of 94.5 million Kg., as against 54.3 million Kg. in 1971-72."

1.11. Explaining further the relation between the actual yield of tobacco and the realisation of estimated duty, the witness deposed:

"It is possible to establish a direct correlation between the crop and the duty collected because tobacco crop is such that after it is cured most of it moves into the warehouses. There is provision in our law for the tobacco being kept in the warehouse for a period of three years. So, the clearance cannot be directly correlated with the production in a particular year. It is not like a manufactured product where any exciseable goods manufactured in a particular year will almost entirely be cleared in the same year. In the case of tobacco, where a substantial part of it moves into the warehouse, there is bound to be a certain amount of staggering of tobacco clearances, depending upon the demand, the market conditions and also the offtake of cigarettes and beedies and various other factors."

1.12. The Committee wanted to know as to why this abnormal concession of storage for 3 years is allowed in the case of tobacco. A member of the Board of C&C.E. replied:

> "This is being continued from 1944. This is one of the terms of reference to the Tobacco Export Committee. They will be examining this question whether three years is justified."

1.13. The Ministry of Finance in a written note subsequently intimated:

> "The rationale for fixing the normal period of storage in bond in Warehouse as 3 years is not known as related papers are not traceable. However, an expert Committee known as 'Tobacco Expert Committee' under the Chairmanship of Shri K. Raghuramiah, M.P. was appointed in January, 1956 and this Committee after taking evidence from trade interests and others concerned concluded that overall opinion was that the existing provisions for granting extension in individual cases by Assistant Collectors/Collectors by two more years is adequate. This position continues."

1.14. The Committee noted that according to the Refunds and Receipts exhibited in the Audit Reports, under the minor head Miscellaneous for the years 1970-71 to 1972-73 the refunds far exceeded the amounts of collections and wanted to know the reasons for the same. The Ministry of Finance in a written note stated:

> "Before 1-4-74, there was no separate sub-head for drawbacks under Central Excise and consequently it appears that drawback sanctioned under Central Excise was included under the minor head 'Miscellaneous', and shown as refunds. This resulted in inflation of figures under 'refunds' in excess of receipts under the minor head 'Miscellaneous'. Now under the revised heads of accounts prescribed with effect from 1-4-74, the payment on account of refunds and drawback will be adjusted under distinct subheads *viz.*, 'deduct refunds' and 'deduct drawbacks'. As per figures supplied by the Director Statistics and Intelligence during the year 1972-73, the amount of drawback paid in respect of Central Excise was of the order of Rs. 2645 lakhs."

1.15. Supplementing further the Ministry of Finance in a written note stated:—

"In this connection, it may be stated that in January, 1970, instructions in consultation with C&AG regarding accounting of Central Excise Revenue receipts under "Group Minor Heads" and 'Minor Heads' were issued to all Collectors of Central Excise vide F. No. 15/41/65-CXI/CX-6 of 3-1-70. This accounting procedure was to be brought into force from the financial year 1970-71. These instructions provided for accounting of "refunds and drawbacks" under a combined head "F-Deduct Refunds and Drawbacks" with a further break-up under 'Minor Heads' such as basic, special duty etc.

When an analysis of the figures maintained by the Accountants General under Group 'Minor Heads' and "Minor Heads" for 1970-71 in 1972 was undertaken, it was noticed that refunds against "miscellaneous" Head were substantially higher than the receipts against that Head. The study indicated that the Central Excise portion of drawback was possibly and inadvertently booked against "miscellaneous" head. In this context, the instructions to Collectors of Customs issued *vide* F. N. 34/51/56-Cus. IV dated 12-4-58 for proper accounting of Central Excise portion of the drawback granted, would be relevant. It appears that these figures were regularly reported to the Accountants General concerned but in some cases these figures had not been included in the departmental returns with the result that the departmental figures of estimates of "refunds and drawbacks" continued to be depressed to that extent.

Suitable steps have since been taken for accounting of "refunds and drawbacks" separately. Besides, Collectors of Customs have been asked to report regularly the Central Excise portion of the drawback granted, to facilitate more accurate forecasting under the Head "Refunds and drawbacks."

1.16. The Committee desired to know the reasons for the classification of drawback as 'Miscellaneous' refunds prior to 1-4-74. The Ministry of Finance stated in a written reply:

"It may be mentioned that the instructions to the effect that refunds and drawbacks should distinctly be classified as from 'basic excise duty', from 'special excise duty', from 'cess' etc., were issued to the Collectors of Central Excise *vide* letter F. No. 15/41/65-CX-I/CX-6 dated 3-1-70. Unfortunately these instructions were not endorsed to the

Collectors of Customs... The position was set right with effect from 1-4-74 with the issue of instructions contained in letter F. No. 205|4|73-CX-6 dated 30-3-1974."

1.17. The Committee found that special excise duties had been abolished w.e.f. 17-3-72 and the rates of basic duties were correspondingly enhanced simultaneously. The total of basic and special excise duties for 1971-72 worked out to Rs. 18,22,08,35,071 whereas the realisation of basic duties for 1972-73 amounted to Rs. 19,81,12,34,844. The Committee wanted to know how much of the net increase of Rs. 1,59,03,99,773 was attributable commodity-wise to (i) new levies (ii) increase in production and (iii) increase in prices. The Ministry of Finance in a written note stated:

"According to the departmental returns in form Ex-4, 5, 6 etc. the revenue/realisation from basic duty in the year 1972-73 was about Rs. 1997.70 crores as against Rs. 1819.97 crores in the year 1971-72. The impact of the imports in 1972 Budgets on the revenue in the year 1972-73 was of the order of Rs. 107.38 crores. As the rise in prices and rise in production get inter-locked in the case of commodities assessed *ad valorem*, it has not been possible to work out separately the impact of the increase in production and increase in prices separately. However the combined impact of Rs. 70.35 crores as due to "Other causes" has been shown in the commodity-wise statement enclosed (Appendix II)."

1.18. The Committee desired to know whether any investigation had been carried out to analyse, as accurately as possible, the reasons for the variations between the budget estimates and actuals of the duty realised on different commodities and the machinery available with the Government, for this purpose. The Ministry of Finance in a written note stated:

"Tax Research Units is entrusted with the work of formulation of Budget Estimates for excisable commodities. The Directorate of Statistics and Intelligence (Central Excise and Customs) assists it in this work. For Budget Estimates puropses, TRU collects data not only from Dte. of Statistics and Intelligence but other independent sources also, and holds every year inter-Ministerial meetings with various administrative Ministries and organisations like DGTD, Office of the Textile Commissioner, MMTC, STC etc. A watch on the actual trend of revenue realisations month to month *vis-a-vis* the Budget Estimates for each commodity is kept at different levels (i) by the Collectorates of Cen-

tral Excise (ii) by the Dte. of Statistics and Intelligence and (iii) by the Tax Research Unit. The Dte. of Statistics and Intelligence undertakes every year three comprehensive reviews—at the end of 3 months, 6 months and 8 months wherein the trends of revenue realisations from each commodity *vis-a-vis* the Budget Estimates are analysed. Wherever significant variations are noticed, between the actual realisation and the Budget Estimates, the reasons and factors for such variations are investigated by enquiries from the Collectorates and other independent sources including studies of various newspapers, journals and periodicals. The Collectorates also keep a watch on the trends of revenue realisation from various excisable commodities in their jurisdiction *vis-a-vis* the apportioned part of the Budget Estimates of that commodity (indicated to them by the Dte. of Statistics and Intelligence) and report to the Dte. of Statistics and Intelligence reasons for short-falls wherever any significant variations are noticed. TRU also keeps a regular watch on the trends of revenue realisations from different commodities *vis-a-vis* the Budget estimates and tries to analyse independently the reasons for variations especially in the case of major revenue yielding commodities, by collecting information from newspapers, periodicals, various administrative ministries and organisations and by writing to the Collectors. The reasons for variations between the Budget Estimates and the actuals in the case of major revenue yielding commodities are further investigated in detail in the inter Ministerial meetings when the work of revised Budget Estimates for the current year and fore-cast for the next year is undertaken."

1.19. The Committee wanted to know if any important recommendation of the Tax Research Unit which was found worthwhile had been implemented. A representative of the Ministry of Finance stated during evidence:

"The name, Directorate of Tax Research, I think, is to some extent a misnomer. It gives the impression as though it is a full fledged directorate concerning itself with the entire gamut of the economic operations of the Government and takes all aspects into consideration including price effects, checking price trends and that it conducts studies from time to time and submit reports to the Gov-

ernment. It is nothing but a cell primarily designed to make commodity studies with a view to making specific Budget proposals. Beyond this, its scope is very limited. No doubt, there is scope for improving the work that is done in this particular unit."

1.20. The Committee enquired whether Tax Research Unit needed to be strengthened as excise had become the largest portion of the revenue. In reply, the Secretary, Ministry of Finance deposed during evidence:

"We could not agree more that the tax research unit has to be strengthened. But, we would submit one or two things for your consideration. May I have your attention? I was just wanting to say that we would certainly welcome an increase in the strength and improvement in the quality of the tax research unit. But, we must also point out other aspects. The Tax Research Unit must be something which is geared to the needs, primarily of increase in duty, particularly, excise duties, customs duties and so on. On the other hand, we would submit that it is not the function of this unit to carry out a sort of comprehensive study of the general economy or the price trends etc. We are interested purely from the taxation point of view. There may be so many other factors which also influence prices, like supply-demand considerations, capacity utilisation, new units coming up and so on. This is something which is completely outside our scope and with which we should have very little to do because there are specialised organisations in the Planning Commission and elsewhere who are studying such matters."

1.21. According to the Audit paragraph out of 120 commodities on which excise duties were levied during 1972-73, 7 commodities accounted for more than 50 per cent of the total receipts. On the basis of the sanctioned Budget Estimate for 1973-74, 23 of the 123 excisable commodities alone accounted for more than 84 percent of the total Budget realisation and no fewer than 77 commodities accounted for a meagre 7.11 per cent of the total revenue. The Committee wanted to know whether it was better not to tax commodities with a low revenue yield to avoid disproportionate cost of collection. The Ministry of Finance in a written note stated:

"Seven per cent of the sanctioned Budget Estimates of Rs. 2752.37 crores for 1973-74 meant an estimate of over Rs. 192 crores. Even though the number of commodities

from which this amount was expected to be collected is fairly large as compared to the 23 major revenue yielding commodities referred to by the P.A.C., the amount of the order of Rs. 192 crores cannot be given up in the present context of the need to raise more and more resources for the developmental activities of the Government. It may be indicated that the cost of collection of excise revenue from all the commodities for 1973-74 was placed at Rs. 18.67 crores only which forms about 0.7 per cent of the R.B.E. of Rs. 2633.84 crores for 1973-74. This cost of collection in any case does not indicate any disproportionate cost as compared to the revenue realised even if the major revenue yielding commodities are left out."

The Committee were informed by the Ministry of Finance in a written note that there were 117357 factories in India which produced excisable goods of these 72515 units yielding an annual revenue of Rs. 50,000 or less contributed gross revenue of Rs. 21.59 crores. The remaining Rs. 4.30 crores of gross revenue was realised from units which fell under the revenue slab of more than Rs. 50,000 but not more than Rs. one lakh per year.

1.22. The Committee desired to know the reasons for a large number of units contributing low revenue. The Ministry of Finance in a written note stated:

"Out of 72,515 units, 56,106 units are in a small scale powerloom sector, mostly working under compounded levy, independent processing units undertaking processing of cotton fabrics, cotton twist yarn and thread units undertaking reeling from straight reeled hanks to cross reeling etc., involving small rates of duty paying Rs. 77.87 lacs annually."

1.23. On an enquiry whether these units processed consumer goods and how many of these were in the small scale sector, the Ministry of Finance replied:—

"Some of the units are producing consumer goods such as Khandsari sugar, Confectionery P. P. Foods, Aerated Water, Package Tea, V.N.E. Oil, P.P. Medicine, Cosmetics, Soap, Cotton Fabrics, Woollen Fabrics, Rayon and Art Silk Fabrics etc. There is no information about the capital investment etc., for such units. Judging from the revenue yielded, it appears that major portion of these units comes within small scale sector."

1.24. The Committee wanted to know if any cost-benefit analysis of the collection of duties was carried out. The Chairman, Central Board of C&C.E. replied,

> "We are entirely agreed that where an item is low yielding, it should not deserve the same attention by way of supervision and control as the other item. This is the SRP Committee's recommendation and it is being considered. It is being looked into as to whether the entire pattern is to be changed as the SRP Committee has suggested."

1.25. Adding in this connection further, the Member, C.B. of C&CE stated:

> "For units which are small revenue yielding units it is not possible to come to a conclusion about the cost of collection under the present system of control. It is not possible to ascertain separately the actual cost of collection for such units."

1.26. The Committee stressed the need for the study of the impact of the levy of various duties on the economy, the administration, the cost of collection and efficiency etc. Explaining the position, the Secretary, Ministry of Finance stated during evidence:

> "The main object in view obviously is that the Government should push through its developmental plans and this necessitates raising of additional revenues. So, the paramount need really is for the raising of the additional revenues and for increasing the investments and increasing the savings. Now, in these circumstances, to let go the duty on certain low revenue yielding items and to concentrate only on the more fertile items which yield considerable revenues may not perhaps be indicated. As a general principle, I do not think Government is in a position to forego any revenues at all. The only point to be considered is whether some of these low yielding items are so troublesome in the matter of collecting excise or because collection charge is so much high that it is not worthwhile to do so. I do not think there has been any exercise in the past on things like oil seeds, edible oil, etc. but at the present moment even for comparatively low yielding items. I do not think it is desirable for Government, having regard to commitments towards developing schemes, to let these items go

without levying excise duty. It is not because the collection is only 0.27 per cent which is really a very low figure and hence those items are levied. Therefore, in these circumstances, I do not see why there should be any compulsion on the part of the Government to let go these low yielding items. After all it might be desirable to ensure that the taxation burden is distributed as widely as possible so that it does not operate too harshly on any particular sector of the community."

1.27. The Committee wanted to know whether an effort was made to ensure that the burden of the levy of excise duty fall least of all on the common man and if so, how it was done. Elucidating the present practice, the Secretary, Ministry of Finance stated during evidence:

"Selection of commodities and in devising the tariff, every effort is made to ensure that the burden on the common man is reduced to the minimum. Therefore, one would find that from year to year, the selection of commodities has been such that they are consumed mostly by the more affluent section. It is always items like fine, superfine and synthetic fabrics, cigarettes, particularly the more expensive brands that have taken the burden. Similarly, even on some of the high yielding items like the petroleum products, it is petrol which is taking the burden rather than items such as HSD. In fact, recently duty on a commodity such as HSD was brought down, although a very sharp increase was made in the form of excise duty on motor spirit.

Now, the entire accent is to try and ensure that the elite section of the community—the more affluent section of community—pay more duty and to try and moderate or cushion the effect of these duties on the comparatively less affluent section of the community."

1.28. The Committee noted that the expenditure on collections during the three years 1970-71 to 1972-73 was Rs. 14.34, 15.57 and 16.91 crores respectively. The Committee asked for the break-up of the figures for these years between (i) expenditure on assessment; (ii) expenditure on preventive functions; (iii) expenditure

on audit and inspections and (iv) other expenditure. The Ministry of Finance in a written note stated:

> "According to the existing procedure, the expenditure under the Union Excise Grant is not booked on function-wise basis. It is booked under various prescribed Heads of Accounts. During the financial years 1970-71, 1971-72 and 1972-73, the expenditure in question was accordingly booked under the following Heads and sub-heads of Accounts:—

MAJOR HEAD "2"—UNION EXCISE DUTIES

'B' Collectorate Charges: (Headquarters Office, Collectorate of Central Excise)

Establishment Charges

Interim Relief

Travelling Expenses

Other Charges

Secret Service Expenditure

'C' Charges on collection of Union Excise Duties:

Same headings as shown above under 'B' Collectorate Charges.

'D' Charges on collection of Land Customs:

Same headings as shown above under 'B' Collectorate Charges.

'E' Grants-in-aid, Contributions, etc.

'F' Works

'G' Cost of printing banderols and Union Excise Stamps and Lables.

'H' Payments to other Government, Department etc.

'I' Miscellaneous:

(i) Expenditure on printing and publications.

(ii) Hospitality and Entertainment expenses.

'J' Commission paid to Posts & Telegraphs Department for sale of Union Excise Revenue Stamps.

Accountants General also booked the Collectorates expenditure under the above mentioned Heads. Departmental expenditure figures were reconciled with the Accountants General's figures and the same were finally accepted by the respective Collectorates and the Accountants General concerned at the end of each financial year.

2. A break-up of expenditure on collection of Union Excise Duties under Broad heads of accounts for the years 1970-71, 1971-72 and 1972-73 is given below: —

(in lakhs of Rupees)

	1970-71	1971-72	1972-73
I. Pay of Officers and Staff	763.69	801.05	830.76
II. Other Allowances and Interim Relief	676.30	742.10	852.05
III. Travelling Expenses	102.56	135 36	141.63
IV. Other Charges (including all minor heads)	259.97	304.49	299.43
	1802.52	1983.00	2123.87
Deduct recoveries from Customs Department (for Outports & Land Customs)	(—) 369.09	(—) 426.26	(—) 433.30
Net Expenditure.	1433.43 or 1434.00	1556.74 or 1557.00	1690.57 or 1691.00

3. Since the expenditure on collection of Union Excise Duties is booked according to the above specified heads and not according to functions, a break-up of this expenditure on (i) Assessment (ii) Preventive Functions (iii) Audit and Inspection and (iv) Other expenditure is not available. In the Collectorates, certain categories of officers, *e.g.* Dy. Collectors, Assistant Collectors, etc. are jointly looking after the work of assessment, preventive audit and inspection, besides other work not directly related to any of these functions such as supervision over exports. Moreover, the expenditure of the headquarters offices of the Collectorates on staff which performs combined duties relating to Customs and Central Excise, is initially booked under the Union Excise Grant. A part of this expenditure is debited to the Customs Grant on the basis of a prescribed formula towards the close of the year.

4. In the above circumstances, it is not possible to furnish function-wise break-up of expenditure under Union Excise Grant in respect of financial years 1970-71 1971-72 and 1972-73 as called for by the Public Accounts Committee."

1.29. The Committee also noted that the expenditure on cost of collection was not maintained commodity-wise. They wanted to know the reasons for the inability of the Government to furnish the cost of collections individually commodity-wise.

1.30. The Ministry of Finance in a written note stated:

> "In the SRP set up, separate staff is not earmarked for commodity-wise individual units. The Multiple Officers Range staff is doing work of assessment, realisation etc. of Union Excise Duties for a group of unit (Factories etc.). In a large number of cases, the same staff is working both for manufactured and unmanufactured products. It will, therefore, be appreciated that it will not be possible to allocate the cost of collection individually commodity-wise on realistic basis."

1.31. The Committee wanted to know whether the scope of evasion has increased on account of the complexity of the tariff by numerous classifications and sub-classifications carrying different rates of duty in the tariff. The Ministry of Finance, in a written note, stated:

> "With a view to collect the tax on any commodity efficiently and progressively various classifications and sub-classifications in an item where there are large number of varieties having different forms, prices, etc. cannot be avoided. Efforts are, however, made to ensure that the description of the tariff item and the various classifications or sub-classifications are precise, and un-ambiguous to avoid complications in the collection of duties. SRP Committee views that the present differentiations of rate structure in certain items, is liable to abuse by unscrupulous manufacturers. How far the evasion tendencies can be checked by reorganising the system of administration (including tightening of preventive controls) and by rationalisation of tariff structure is already under examination and necessary changes, whenever considered essential, would be made in the tariff after the Committee's report is fully examined and decisions taken thereon."

1.32. The Committee were informed that the 'SRP' in respect of matches had been replaced by a partial 'physical control' system. The Committee wanted to know when it was done, what its effect was on revenue and what the monthly average revenue had been prior to this date and after that date. The Ministry of Finance in a written note stated:

> "(a) Matches were brought under physical control with effect from 1-10-72 *vide* Notification No. 200/72-C. Ex. dated 21-9-72.
>
> (b) & (c) A statement showing the figures of revenue derived from matches during the period October 1971—September,

1972, October 1972 to September, 1973 and October 1973 to September, 1974 is enclosed (Appendix III). It will be seen therefrom that while there was short-fall during the period of one year immediately after introduction of physical control *viz.*, October 1972—September 1973 (Rs. 28,05,93,000) when compared with the figures of pre-physical control period of one year from October 1971 to September 1972 (Rs. 28,12,91,000), there has been appreciable increase during the Second post physical control period of one year from October 1973 to September 1974 (i.e. Rs. 32,37,67,000). The fall in the immediately post physical control year (October 1972 to September 1973) was mainly due to prolonged strike and lock-out in the power operated units of M/s. WIMCO (ii) load shedding resulting in less production and (iii) shortage of raw materials like potassium chlorate, wood for splints and veneers, etc."

1.33. From the information furnished by the Ministry of Finance, the Committee find that as against the Budget estimate of Rs. 2442.75 crores, the actual realisation of union excise duties during the year 1972-73 was Rs. 2326.20 crores, thus indicating a serious shortfall of Rs. 116.55 crores. The Committee were informed that the shortfall was accounted for by (i) decline in realisations vis-a-vis estimates from 8 major revenue-yielding items and (ii) higher grants of refunds and drawbacks of the order of Rs. 26.48 crores.

As regards the major portion of this shortfall (Rs. 95.52 crores) in respect of 8 major revenue yielding commodities viz. tea, unmanufactured Tobacco, cigarettes, motor spirit, kerosene furnace oil, aluminium and matches, the Ministry explained that in the case of Tea, injunctions obtained by Tea gardens in 1970, which continued throughout the year 1972-73, adversely affected the revenue realisation. As regards unmanufactured tobacco, the exports had reached an all time high and this factor, coupled with an unprecedented drought, affected the purchasing power of the consumer within the country and thereby resulted in lower realisation. Substantial decline in the clearance of cigarettes and a shift in their production pattern were said to be responsible for lower realisation of revenue in the case of cigarettes. In the case of petroleum products, the actual production in 1972-73 did not come up to the level commensurate with the expected growth rate of 5 per cent and was even less than the production in the previous year, because of repeated shut-down at Cochin refinery and lower imports of crude on account of foreign exchange constraints. In regard to aluminium, the short-fall in production was reported to

have been caused by severe power cuts in U.P. and Karnataka, and also labour strike in the Belgaum Aluminium Factory. The production of matches registered marked decline, because of shortage of raw materials like potassium chlorate, wood-splints and veneers as well as such events as strike and lock-out in Wimco Factory at Madras.

The Committee are not convinced by this attempt at explaining away the decline in revenue. It was not alone in the year 1972-73 that there had appeared serious gaps between budget estimates and actual realisation of Union Excise duties. Indeed, in paragraph 1.5 of their 90th Report (1972-73), the Committee had expressed their concern that in respect of some of the commodities the shortfall in actual collection of duties had become a "recurring feature." The Ministry of Finance was then asked to adopt all necessary measures to ensure that budget estimates were framed carefully and more realistically in future. However, the only reply vouchsafed by Government was that the observations of the Committee had been 'noted' [vide p. 12 of 98th Action Taken Report of P.A.C. (5th Lok Sabha)]. The Committee wish urgently to reiterate that budget estimates should be drawn up cautiously and more realistically so that, as far as possible, there is not much of a gap between expectation and realisation of revenue.

1.34. The Audit Report pointed out that the refunds exhibited under the minor head—'Miscellaneous' during the years 1970-71 to 1972-73 (1970-71—Rs. 16.44 crores, 1971-72—Rs. 22.15 crores, 1972-73—Rs. 26.54 crores) far exceeded the amount of collection (1970-71—Rs. 2.81 crores, 1971-72—Rs. 1.75 crores, 1972-73—Rs. 4.43 crores). The Ministry's explanation that there being no separate sub-head before 1 April 1974, for drawbacks under Central Excise, drawback sanctioned under that head had to be included under the Minor Head 'Miscellaneous' and shown as 'Refunds' appears to the Committee somewhat bland and by no means satisfactory.

The Ministry of Finance, it seems, had issued instructions on 12-4-58 to the Collectors of Customs that the Central Excise portion of the drawback granted should be properly shown in the accounts. Accordingly, these figures were regularly reported to the Accountants General concerned, but in some cases these figures do not appear to have been included in the departmental returns. Later, the Ministry of Finance issued further instructions on the 3rd January 1970 in consultation with the C and AG to all the Collectors of Central Excise providing for the correct accounting of "Refunds

and drawbacks" under a combined Head "From Deduct Refunds and drawbacks" with a further break up under Minor Head such as Basic/Special Excise Duties. The Committee are surprised that inspite of the instructions issued in April 1958, there had been cases where the figures reported regularly to the Accountants General were not included in the Departmental returns with the result that estimates of Refunds and drawbacks continued to be depressed to that extent and presented a misleading and distorted picture. An analysis of the figures maintained by the Accountants General under "Group Minor Heads" and "Minor Heads" for 1970-71 showed that refunds against "Miscellaneous" Head were higher than the receipts under that head. It showed that the Central Excise portion of drawback was perhaps inadvertently shown against "Miscellaneous" Head in contravention of the instructions of 3rd January 1970. The Committee are constrained to observe that if lapses such as these occur inspite of absolutely clear and categorical instructions, it reveals a sorry state of affairs and detracts from the efficiency of our tax administration. The Committee recommend that responsibility for such lapses may be fixed and proper action taken against persons found guilty of violation of the instructions issued on the subject.

1.35. The Committee find that there was an overall increase of Rs. 177.73 crores in revenue realized during the year 1972-73 as compared to the year 1971-72. Out of this amount, the sum of Rs. 107.30 crores was on account of the introduction of new levies in the Budget of 1972. Government found themselves unable to state how much of the balance of the additional revenue (viz., Rs. 70.35 crores) was on account of (i) increase in production and (2) increase in prices, on the ground that in commodities assessed ad valorem the increase in production and increase in prices get interlocked, and their impact cannot be separately identified.

The Committee are not convinced of this difficulty. They feel that it is very essential to study the impact of the additional revenue realised in a year over and above the revenues of the preceding year to find out whether and how far the same are attributable to the introduction of new levies, to increase in production or to increase in prices. Such details are required in order that constant vigilance could be maintained on the continuance or otherwise of (an increase or decrease in) the rate of duty levied on various commodities from time to time. The Committee recommend that Government should ensure that such statistics are collected in respect of all the affected commodities and utilised for the regulation of imports in future.

1.36. Another feature which compels attention is the lack of an agency in Government to carry out an analysis of the reasons for the variation between the Budget estimates and the actuals of duty realised from different excisable commodities. The Committee have been informed that the Tax Research Unit has been entrusted with the work of formulation of Budget estimates for excisable commodities. The Directorate of Statistics and Intelligence assists the Tax Research Unit in its work. The Tax Research Unit collects data not only from the Directorate of Statistics and Intelligence but also from other independent sources and holds Inter-Ministerial meetings every year to keep a watch on the actual trend of revenue realisation. But during evidence when the Committee wanted to know whether any important recommendation of the Tax Research Unit had been implemented, the representative of the Ministry of Finance stated that the Unit was not a full-fledged Directorate concerning itself with the entire gamut of economic operations, but that its scope was "very limited" and it neither engaged in studying price trends nor submitted any report to Government. When the Committee pointed out that excise having become the largest portion of the revenue, there was special need to strengthen research effort in quantity as well as quality, the Secretary, Ministry of Finance deposed, "We could not agree more that the tax research unit has to be strengthened . . . . We would certainly welcome an increase in the strength and improvement of the tax research unit." The Committee, therefore, urge that the said Unit should be adequately equipped for the task of scientifically studying the various aspects of a subject of great importance to revenue and of the expanding and deepening the range and the methodology of research in the field of taxation.

1.37. The Committee note that out of 120 commodities on which excise duties were levied during 1972-73, 7 commodities alone accounted for more than 50 per cent of the total receipts. When the Committee desired to know whether it would be better not to tax commodities with a low revenue yield to avoid disproportionate cost of collection, the Secretary Ministry of Finance deposed, "As a general rule, I do not think, Government is in a position to forego any revenues at all. The only point to be considered is whether some of these low yielding items are so troublesome in the matter of collecting excise or because collection charge is so high that it is not worthwhile to do so."

The Committee would like to draw the attention of Government to paragraph 1.8 of their 83rd Action Taken Report (1972-73) in

which the Committee had suggested that the cost of collection of duties on commodities yielding low revenue that are produced by a large number of small units should be computed on some alternative and feasible basis, so that it could be decided whether it was worthwhile taxing them in the normal way. The Committee reiterate their earlier view and recommend that Government should take effective steps to identify commodities which do not yield substantial revenue but involve disproportionate cost of collection.

1.38. The Committee understand that the Government of India have in July 1976 appointed a Committee with Shri L. K. Jha as its Chairman, to review the existing structure of Indirect taxes-Central, State and Local, and to advise the Government on the measures to be taken in this field. The terms of reference of the said Committee include examination of the structure and levels of excise duties, the impact of these duties on prices and costs, the cumulative effect of such duties, their incidence on various expenditure groups, and the scope for widening the tax base and increasing the elasticity of the system.

The Committee trust that this expert body will take note of various recommendations made by this Committee from time to time.

1.39. The Committee find that expenditure on the collection of Union Excise Duties is booked under various heads of account. When the Committee desired to have a break-up of the expenditure on the collection of Union Excise Duties on (i) assessment (ii) preventive functions (iii) audit and inspection and (iv) other expenditure, it was learnt that such a break-up of the expenditure was not available because the expenditure was not booked on a functional basis. In this connection it was stated by Government that in the Collectorates, certain categories of Officers e.g. Deputy Collectors, Assistant Collectors, etc. were jointly looking after assessment, preventive work audit inspection, as well as other work not directly related to any of these functions. To a query if the cost of collection of excise duties on individual commodities was at all available, the reply came that in the Self-Removal Procedure, separate staff was not earmarked commodity-wise for individual units. The Committee feel that it should not be too difficult for Government to devise a system which may enable them to analyse the expenditure on collection of duties not only function-wise but also commodity-wise and intimate the results to the Committee.

1.40. The Committee learn that the scope of evasion is enhanced on account of the complexity of tariff under numerous classifications and sub-classifications. While in the interest of efficient Collection of tax on any commodity and the classification and sub-classification in items which have a large number of varieties with not only different forms but also varying prices may not be unavoidable, the Committee stress that the various classifications and sub-classifications adopted for the purpose should be as precise and unambiguous as possible. The Committee are not sure how far the present differentiation of rate structure is such as to rule out the possibility of abuse by unscrupulous manufacturers. The question of rationalisation of the tariff structure, however, is said to be already under examination of Government and changes, wherever necessary, are expected to be made in the tariff after the S.R.P. Committee's Report has been examined. The Committee would like to be informed of the decision taken by Government on the basis of such examination and the improvements which are proposed to be effected to check misclassifications and evasion of taxes.

FORTUITOUS BENEFITS DERIVED BY AN OIL COMPANY

Audit Paragraph:

2.1. The Public Accounts Committee in para 2.29 of their 72nd Report (Fourth Lok Sabha) made some suggestions to curb speculative clearances of excisable goods in pre-budget months so that avoidance of payment of increased duty may not take place. To this the Ministry expressed certain difficulties and promised to place the recommendations before the Select Committee on the Central Excise Bill.

2.2. The Central Excise Rules provide for facility of movement of mineral oils without payment of duty to be stored at approved oil installations pending final removal on payment of duty. The tanks in such oil installations, in which mineral oils are stored, are bonded for the purposes. If full duty is paid on the oil contained in a tank, the tank could be released from bond.

2.3. On 25th February, 1970 an oil company approached the Collector of Central Excise concerned for permission to debond one tank of motor spirit and one tank of furnace oil on the ground that the tanks were required for immediate emptying for re-alignment of pipe lines. This was granted and on payment of duty the tank was debonded. The company, however, did not empty the tanks till 16th March, 1970. Meanwhile, excise duties on these products were enhanced in the budget of 1970 and the oil company derived an unintended fortuitous benefit in excise duties to the extent of Rs. 4.08 lakhs.

2.4. Again on 21st February, 1973, the same oil company had one tank of motor spirit debonded with the permission of excise authorities and derived a benefit of Rs. 39,568 on duty increases in the budget that followed.

[Para 21 of the C&.A.G. of India's Report for the year 1972-73, Union Government (Civil) Revenue Receipts Volume I—Indirect Taxes]

2.5. The case in question relates to the Indian Oil Corporation, Tondiarpet who had requested for debonding of tanks before the budget in February, 1970 and February, 1973 and necessary permission was given by the Assistant Collector concerned, as the competent licensing authority, since there was no restriction under Rule 224(3) on the clearance of 'excisable goods' during the month of February in the relevant years.

2.6. According to the information received by Audit, the Government was deprived of revenue by four companies during the years 1970-71 as detailed below:

Location	Date of debonding	Amount
BURMAH SHELL		
Calcutta	29-5-71	7,57,391
Bombay	24-2-73	2,34,167
Gujarat	27-2-73	1,46,381
Madras	16-2-70	1,07,815
		12,45,754
ESSO		
Bombay	25-2-70	25,320
Bombay	15-5-71	24,67,980
Bombay	24-2-73	2,57,319
Ernakulam	21-2-70	5,65,695
		33,16,314
CALTEX		
Bombay	22-2-73	55,740
Bombay	2-11-73	6,07,056
Madras	14-2-70	1,24,265
Madras	14-5-71	1,05,394
Madras	22-2-73	22,241
		9,14,696

Location	Date of debonding	Amount
INDIAN OIL CORPORATION		
Sabarmati	26-2-70	3,16,440
Do.	24-5-71	16,06,607
Okha	14-3-72	1,02,419
Sabarmati	15-3-72	77,645
Do.	26-2-70	2,50,578
Cochin	25-2-70	1,45,774
Madras	25-2-70	3,06,209
Do.	25-2-70	1,12,985
Do.	22-2-73	27,116
Do.	25-2-70	59,623
Do.	25-5-71	4,17,052
Do.	14-3-72	3,70,658
Do.	21-2-73	1,21,206
		29,14,372

2.7. The Committee desired to know as to what prompted the Indian Oil Corporation to take decision of debonding oil on a particular date prior to the budget or any financial exercise in Parliament. The Chairman, Indian Oil Corporation deposed during evidence:

> "I would submit that there was a feeling in the organisation that it was not illegal. That is why to show more profit in order to get the organisation running efficiently in my opinion, they did that way. I personally do not have that feeling."

2.8. Explaining the action taken in the matter, the witness stated:

> "This came to my notice sometime last July and soon after it came to my notice, I directed the Managing Director of the Marketing Division to stop this practice immediately. I had also issued letter saying that that should not happen any more in future in the Corporation."

2.9. The Committee then referred to the evasions of about Rs. 83 lakhs of revenue by the various Oil Companies including the Indian Oil Corporation by debonding before the budget during the years 1970—73 and wanted to know the authority in Government who took

the decision about Indian Oil Corporation. A representative of the Ministry of Petroleum & Chemicals stated in evidence:

> "These matters do not come to the Ministry. These things are possibly done at the Management level."

2.10. The Committee wanted to know if there was any procedure prescribed or instructions issued for debonding of tanks containing petroleum products. The Ministry of Petroleum & Chemicals in a written note stated:

> "161. There was no prescribed procedure in the Marketing Division of IOC regarding debonding of storage tanks. Whenever storage tanks at installation were required to be debonded, instructions were generally given by the Marketing Division to the Regional Office on telephone, who in turn used to convey the same to the concerned installations."

2.11. The Ministry of Petroleum & Chemicals subsequently informed the Committee in a written note:

> "To avoid giving an impression of malafide in debonding of petroleum products and other items like steel, etc., just before the Budget, for speculative purposes, Chairman, Indian Oil Corporation ordered the issue of instructions (Appendix IV) to the Marketing Division."

2.12. The Committee then desired to know the action taken by Government to curb speculative clearances by other Oil Companies. The Ministry of Petroleum and Chemicals in a written note stated:

> "The Ministry has issued instructions (Appendix V) to all the Oil Companies on the same lines as issued by the Chairman, Indian Oil Corporation."

2.13. On being asked by the Committee, the Ministry of Finance furnished a statement indicating the date of application, the date on which the tanks were actually emptied in respect of four oil companies for the period for 1970-71 to 1973-74. The same is appended as Appendix VI. The Committee found from this statement that in a number of cases the period between the dates of debondings and the actual dates of emptying the tanks ranged upto 4 months.

2.14. The Committee wanted to know whether there was any machinery available with the Government to ensure that the time lag between debonding and actual removal was not large and that oil companies did not derive fortuitous benefits by speculative de-

bonding before the budget. The Ministry of Finance in a written note stated:—

> "There is no legal provision. Department has no control once the duty on entire content of the storage tank is paid and the tank deleted from L-5 licence."

2.15. The Committee also noted from the statement furnished by the Government that the reasons advanced by the companies in most of the cases in their applications for grant of permission for debondings were 'operational difficulties', 'operational exigencies' and 'operational necessities' etc.

2.16. The Committee wanted to know the rationale behind the provision of Rule 224(3) of the Central Excise Rules to allow clearance upto 150 per cent of the normal clearance in the month of February and whether this provision did not encourage speculative clearances. The Ministry of Finance in a written note stated:—

> "To ascertain the facts leading to the fixation of 150 per cent efforts have been made to locate the file from which the amendment under reference was issued. However, the file is not available. The limit of 150 per cent was probably provided for to take care of vagaries of production (which might be affected by several factors such as strikes, lock-out, shortage of raw materials, break down etc. during the course of the year) and also to ensure adequate supply of essential goods to the consumers at all times, particularly because there is no provision for grant of relaxation in the sub-rule."

2.17. The Committee drew the attention of the representative of the Ministry to the recommendations contained in their 72nd Report (1968-69) wherein they had suggested that the power under Rule 224(3) may be invoked to impose restrictions on the movement of goods in pre-budget months and wanted to know the action taken by the Government. The representative of the Ministry of Finance during the evidence merely read out the following action taken note furnished to the Committee on 28-10-1969:—

> "The Ministry has carefully considered the recommendations of the Public Accounts Committee in the light of the experience gained from the working of rule 224(3) in the last 25 years. Prior to 1957, restrictions under this rule were imposed in respect of a few items only. Since 1957, these restrictions have not been enforced at all, partly because of the objection raised by the various Ministries on

the ground of smooth movement of certain essential items and partly because experience had shown that in attempting to enforce these restrictions, abuses came to light and man-power resources are further strained. If the past experience is any guide, imposition of the restrictions on all excisable goods is not feasible. On the other hand, there is a danger in their selective enforcement. With progressive increases in the rate of duty on most of the important times under excise, speculation about budget changes in excise duties has become a very sensitive issue. By the end of January or beginning of February every year, the Ministry knows the commodities which are likely to be affected by the forthcoming budget proposals. At that stage it is embarrassing for the Ministry to say that such and such items (which the Ministry knows are being affected by the Budget) should not be subjected to the restrictions of rule 224(3). On the other hand, the excluded items are likely to be taken as a clue by the trade that in respect of these items no budget change was perhaps contemplated speculation would then perhaps increase in respect of the items subjected to the restrictions, as being the likely items going to be affected by the Budget. Selective operation of the rule would thus lead to greater speculation and perhaps also to outright evasion. The Ministry has also noted the fact that no such restrictions are imposed on clearances of goods from Customs docks. Finally, with the introduction of the self-removal procedure in respect of all excisable goods except unmanufactured tobacco and consequent withdrawal of Central excise staff from factories, the problem of administration has, if anything, become more complicated.

Considering all these factors, the Ministry came to the tentative conclusion that restriction under rule 224(3) are difficult to operate and accordingly it has not made any provision corresponding to this rule in the Central Excise Bill, 1969 which is intended to replace the existing Central Excise Law. This Bill is at present before the Select Committee of the Lok Sabha. The Ministry would like to place the Public Accounts Committee's suggestions before the Select Committee so that the Select Committee could go into the matter further in consultation with the trade and industry and if necessary recommend making necessary provisions in the Bill corresponding to Rule 224(3) in such modified form as it may deem fit."

2.18. The Committee noted that Rule 224(3) was applied in connection with the Supplementary Budget presented in July, 1974 and enquired the reasons for the same. The Secretary, Ministry of Finance stated during evidence:

> "We had applied this rule 224(3) in connection with the supplementary budget. I must say that I did have a certain amount of difficulty because people approached me for certain exemptions saying that if we do not allow clearance, there would be a hold up of fertilisers and certain films which were due to be exhibited. We did have a certain amount of difficulty. But I think on the whole we felt that it was worthwhile."

2.19. The Committee enquired whether the debonding earlier than the date of possible revision of duty was a normal thing. The representative of the Ministry of Finance stated:

> "I would like to say something by way of general comments on this entire issue. So far as the question of clearance from bond is concerned, it is one of the facilities which the law permits. It is a different matter whether it occurs before or around the budget day. I have got some figures here which may not be precise. I have got them hurriedly to see whether, in the case of motor spirit and other items, there is any deliberate effort to have too many clearances from the bond during February, as against earlier months. I do not want to be pinned down to these figures; but they will give rough idea. These figures relate to 1974 itself.
>
> During February, 1974 the clearance of motor spirit was to the extent of 163,000 kilo-litres; and the average for earlier 11 months during 1973-74 *i.e.* excluding February, 1974 was 186,000 kilo-litres. That is to say, comparatively speaking there were fewer clearances during February, 1974.
>
> In the case of refined diesel oil, clearance during February, 1974 was to the extent of 543,000 kilo-litres as against the 11 months average of 488,000 kilo-literes."

2.20. It would be seen from the figures quoted by the representative of the Ministry of Finance that even in February, 1974 clearance of refined diesel oil was much higher than the average monthly clearance of previous 11 months.

2.21. The Committee wanted to know whether the evasion of duty during the last month of the financial year could be avoided. A representative of the Ministry of Finance stated:

"If anybody puts in an application on the 25th February you have got to allow it under the existing procedure unless you change it. Let us consider whether we can change the procedure or not. So far as bonding is concerned, you cannot change it. On the question of debonding, we are seriously considering this. Where there is an application for debonding and the tank becomes debonded, that is, he pays the duty, but the oil continues in the same tank, this is a bit of a, shall I say, concession, and we are seriously thinking whether this could be withdrawn.'

2.22. Elucidating the position further the witness stated:—

"If anybody applies for clearance from bond on a day prior to 28th—on 28th we may not allow—the law permits him. But there are two ways of clearing. One is physical clearance from the tank itself. The other is, this. There is the bonded tank. Simultaneously there is an application from the oil company 'Please debond my tank. I will pay the duty'. In other words, the tank on payment of duty becomes debonded, but there is no movement of oil. The oil remains in the same tank. We are considering whether this limited facility cannot be withdrawn. We shall consult the administrative Ministry whether it will involve them in any practical difficulty."

2.23. After pointing out that the oil companies took delivery of a certain quantity of oil which was not subjected to new enhanced levy but continued to take the levy from the consumer, the Committee wanted to know the reactions of the Government. The Secretary. Ministry of Finance stated during evidence:—

"I am entirely at one with you and I would certainly say that every possible measure should be taken to ensure that the public exchequer is not defrauded, also that the consumer is not mulcted and that the oil corporations and companies do not profit at the public expense. Here I am one with you and I would certainly recommend that steps should be taken to ensure, as Chairman, Board of Indirect Taxes has just now mentioned, that this system of merely debonding by which the oil stays where it is but it is cleared on the basis

of paying the additional duty, this sort of concession should be withdrawn. I think the committee would be doing a very great service if such measures were taken and steps were enforced so as to tighten up and to ensure that this sort of debonding immediately before the budget in anticipation of a hike in the duty is discouraged and a positive check is put on this practice. But I would only submit one further point. We should try and ensure that there is no unnecessary hindrance to the movement of an essential commodity like oil and oil products, because it does have a chain reaction on other items. If you hold up the movement of petrol or high speed diesel, it may interfere with the agricultural operations, movement of the trains and so on. Subject to that, we would greatly appreciate any constructive proposal which would ensure that this sort of tax evasion or defrauding or mulcting of the consumer and profiteering by the oil company is checked."

2.24. The Committee desired to know as to why the provisions of Rule 224(3) could not be amended to protect the consumer's interest against any speculative activity before the budgetary changes or duty changes occurred. The Secretary, Ministry of Finance, deposed during evidence:—

"We will certainly look into it. But I cannot commit on behalf of Government that it will be accepted. We welcome your suggestions. They will certainly be examined."

2.25. The Committee then referred to the debonding of an oil tank by Caltex (India) Ltd., Bombay on the 2nd November, 1973, a day before the duties on petroleum products were revised and enquired if that was not a case of budget leakage. A representative of the Ministry of Finance deposed during evidence,

"That was a clear case of fraud that we found it out in the same month. Immediately the whole differential duty was realised and the Collector has now imposed penalty of Rs. 20 lakhs on that party."

2.26. The Ministry of Finance in a written note furnished the details of the case which are reproduced in Appendix VII.

2.27. The Committee wanted to know whether penal action for the withdrawal of bonding facilities was not taken against this company which was found guilty of fraud. A representative of the Ministry of Finance deposed during evidence,

> "Withdrawal of bonding facilities would mean cancellation of the licence."

2.28. The Committee enquired as to whether they have ever considered prosecution in such cases. The representative stated:

> "Prosecution can be considered only after adjudication and that is being considered in consultation with the Law Ministry."

2.29. The representative further informed the Committee that the Company had filed an appeal against the order of the adjudicating officer. On enquiry as to whether the amount was paid before the appeal was filed, the representative stated,

> "The Appellate authority has the discretion to stay the recovery of penalty. The duties have been paid but not the penalty yet."

2.30. The Committee were informed that prosecution had been initiated against high officials, namely, Vice President, General Manager, Manager, Marketing Operator, Terminal Superintendent and Area Engineer of M/s. Caltex (India) Ltd. and the report of the C.B.I. was still awaited.

2.31. Elucidating the procedure, the Secretary, Ministry of Finance deposed:—

> "Apparently, the practice is to go in first for adjudication proceedings and, thereafter it is open to the Department to prosecute or not to prosecute as the case may be, the reason being that if we reverse the sequence and start off with prosecution first, the papers would have to be handed over to the investigating authorities like the Police etc. and it would have been very difficult to carry on our revenue functions and also the adjudication. Adjudication is not an estoppel to criminal prosecution afterwards."

2.32. The Committee wanted to know as to why the Department could not go to the court and launch a case against them. The Secretary, Ministry of Finance explained:—

> "The point is that if you want to prosecute somebody, you have to stand the scrutiny, it has to be sustainable and one has to work within the four corners of the Criminal Law. For this, it is better to depend upon a regular Police Investigating Agency such as the C.B.I. and it is for them to take up the investigation. They are an expert body and if they recommend prosecution, we prosecute them."

2.33. The Committee regret to note that a public undertaking of the stature of Indian Oil Corporation resorted to debonding of oil tanks in the pre-budget months in the year 1970 to 1973 and derived what may be termed unearned benefit to the tune of Rs. 28,32,734. There had been 13 cases of such speculative clearances by the Indian Oil Corporation during the aforesaid period and these covered all products, namely, motor spirit, furnace oil, superior kerosene oil. In the instant case, permission for debonding one tank of furnace oil was obtained by Indian Oil Corporation in February, 1970 on the ground that the tanks were required for immediate emptying for the realignment of pipelines. The tanks were, however, actually got emptied only in March, 1970. Meanwhile, excise duties on these products were enhanced in the Budget of 1970 and the Oil Company derived an unintended and fortuitous benefit of Rs. 4.08 lakhs. Again on 21 February, 1973, the same oil company had one tank of motor spirit debonded with the permission of excise authorities and derived a benefit of Rs. 39,568 on duty increases in the budget that followed. During evidence the Chairman, Indian Oil Corporation himself admitted that "there was a feeling in the organisation that it was not illegal. That is why to show more profit in order to get the organisation running efficiently in my opinion, they did that way." He further added "I personally do not have that feeling." This was why he had directed the Managing Director to stop this practice. The Committee welcome the reactions of the Chairman of the Indian Oil Corporation but at the same time deplore that such basically impermissible practice should have continued for quite some time.

2.34. The Committee find that not only the Indian Oil Corporation but also other Oil Companies, viz. Burmah Shell, ESSO and Caltex had resorted to such debonding in pre-budget months or when changes in duty were about to be made. While in the

case of Indian Oil Corporation the amount involved in the debondings in question was only Rs. 39,568, and the total amount between 1970 to 1973 was Rs. 28,32,734, the amount involved during that period in respect of the other three companies (Burmah Shell ESSO and Caltex) was Rs. 54,76,764. The Committee would like Government to investigate carefully all cases of pre-budget debondings during the last five years and determine whether they involved any laps and adopt all appropriate measures.

2.35. The Committee find that this mode of debonding oil tanks to avoid payment of higher duty rates subsequently foilowed by an oil installation was brought to the notice of the Central Board of Excise and Customs as early as August, 1970. It transpires that the Board had not taken adequate steps to prevent debondings of oil tanks just before Budget Day. The Committee would like to put it on record that if adequate steps had been taken the cases of loss of duty through debonding as reported above could have been avoided.

2.36. The Committee note that according to the existing procedure the tanks are debonded immediately on payment of duty on the oil contained therein but there is no compulsion to clear the oil stored in the tanks. They learn also that the period between the dates of debonding and actual clearance ranged upto 4 months. It appears also that most of the companies resorted to debonding on the plea of operational difficulties. The Department, however, seems to have no machinery to make sure that debonding was resorted to for genuine reasons and the gap between debonding and actual clearance was not wide. The Committee consider this very unsatisfactory and wish that strict watch is kept on such debondings so as to ensure that the practice is not abused.

2.37. The Committee were informed during evidence that while there was no legal provision to ensure that the time lag between debonding and actual removal was not large and that the Oil Companies might not be deriving fortuitous benefits by speculative debondings, Government were seriously thinking of withdrawing the concession which permits the oil to remain stored in the same tank after payment of duty. The Committee would like to know the action taken by the Government in this regard, since the current position is unsatisfactory.

2.38. The Committee learn that if the rate of duty is increased after such payment and debondings, the Companies are not liable to pay the difference in duty but that they charge the additional

levy from the consumer on removal of oil after the enhancement of duty. This results not only in evasion of excise duty at higher rates and profiteering by oil companies but also the defrauding of the consumers. The Committee would like Government to make sure that all such contrived profits are taken fully into account in relevant years for each of the oil companies for the purpose of determining and recovering corporate tax.

2.39. The Committee wanted to know whether the provisions of the rule could be so amended as to protect the consumer's interest and the Secretary, Ministry of Finance stated during evidence: "We will certainly look into it . . . . We welcome your suggestions. They will certainly be examined." The Committee would like to know the result of the examination made by Government and the action taken or proposed to be taken in the matter.

2.40. The Committee were informed that the provisions of Rules 224(3) of the Central Excise Rules are not invoked before the presentation of the annual budget because the restricted items can be taken as a clue by the trade as items likely to be affected by the Budget. Selective operation of the Rule is considered, therefore, to lead to greater speculation and also to outright evasion. The Committee, however, note that even the non-operation of rule 224(3) has in fact led to speculative activities before the budgetary changes or when changes in duty were made. The Committee have already recommended in paragraph 2.29 of their 72nd Report (1968-69) that the powers under Rule 224(3) may be invoked to impose restrictions on the movement of goods in pre-budget months. All that Government pointed out, however, after 9 years is that the Ministry has come to a tentative conclusion that restrictions under Rule 224(3) are difficult to operate. On the other hand, the Committee observe that on the occasion of the Supplementary Budget presented in July 1974 the Ministry of Finance invoked Rule 224(3), and in spite of difficulties the Ministry had felt that "it was worthwhile." In these circumstances, the Committee do not feel convinced with the argument advanced by the Ministry that the invocation of Rule 224(3) can be taken as a clue by the trade of the items likely to be affected by the Budget. They would like to reiterate their earlier recommendation and stress the desirability of invoking the provisions of Rule 224(3) invariably in respect of all commodities before the presentation of the annual budget so as to ensure that no scope is left for speculation or manipulation in any particular commodity in anticipation of the Budget.

2.41. It is further necessary to re-examine the rational of proviso to Rule 224(3) of the Central Excise Rules which allows clearance upto 150 per cent of the normal clearance in the month of February. The Ministry of Finance, regrettably, were not able to locate the file from which the Amendment under reference was issued. They have merely conjectured that the limit of 150 per cent was probably provided to take care of the vagaries of production (which might be affected by several factors such as strikes, lock-outs, shortage of raw materials, breakdowns etc. during the course of the year) and also to ensure adequate supply of essential goods to the consumers at all times, particularly because there is no provision for grant of relaxation in the sub rule. The Committee would recommend the operation of Rule 224(3) to be examined with reference not only to oil but other commodities during the last 3 years and ensure that no scope is left for speculative clearance or fraud.

2.42. The Committee observe that one of the foreign oil companies (viz. Caltex Ltd.) applied for permission to debond their oil tank on 1st November 1973 and were granted the facility on the 2nd November 1973, i.e. a day before the duties on petroleum products were revised. The Ministry could detect the fraud but could only recover the duty that was payable. They have not been able even to recover the penalty as the party is stated to have gone in appeal against the order of the adjudicating officer. The Ministry's contention appears to have been that if the authorities chose to prosecute the fraudulent party first, the relevant papers had to be handed over to an investigating agency first and it would then have been difficult to carry on revenue functions, and that it was therefore preferable to go in for adjudication first in such cases. The Committee are distressed that Government seem not to be armed with prompt and legitimate powers to take action against companies found guilty of such patent frauds. Government could perhaps move on their own to withdraw bonding facilities and should adopt all appropriate measures for the instant recovery of heavy panalties which would be a deterrent to such fraudulent practices.

2.43. The Committee learn from Audit that prosecution has been launched against Caltex Ltd. and would like to be apprised of the results thereof.

NON-LEVY OF DUTY

Audit paragraph:

3.1. According to notification No. 74/63 issued in May 1963, intermediate petroleum products, falling under tariff item No. 11-A and produced in refineries, are exempted from the whole of the excise duty, if used as "fuel" within the refinery for the production of other excisable products.

3.2. On the strength of this notification, in a refinery, a petroleum product named "Intermediate Bitumen" was used as "fuel" without payment of duty from July 1965 onwards. In May, 1969, the Board clarified that classification of the petroleum oils (including intermediate products) was required to be made on the basis of the specifications/descriptions laid down in the Central Excise Tariff. As a result, the above product which earlier conformed to the description under tariff item 11-A, was classifiable under tariff item 11. However, no duty was collected on this resulting in a loss of revenue of Rs. 1,40,32,171 for the period from 1st May, 1969 to 16th December, 1970.

[Paragraph 22(a) of C&A.G's Report for 1972-73—Union Govt. (Civil) Revenue Receipts—Vol. I—Indirect Taxes]

3.3. The Committee learnt from Audit that Mineral fuel, lubricants and other petroleum products are categorised under tariff items 6 to 11C depending on their specifications and are liable to central excise duty at rates applicable to the relevant item. Asphalt, Bitumen and Tar are classifiable under tariff item 11 and the rate of duty is specified with reference to weight. Item 11A covers all residual petroleum products with a tariff rate of duty, which at present is 20 per cent *ad valorem*. Intermediate petroleum products produced and used as fuel within the refineries for the production or manufacture of other finished petroleum products were classified and assessed to Central Excise duty under the different items *viz.* slope oil as diesel oil n.o.s., under item 9, burner fuel and intermediate fuel components as furnace oil under item 10, intermediate bitumen as bitumen (bulk) under item 11 and reduced crude as petroleum produce n.o.s. under item 11-A. However, in structions were issued in the Board's letter dated 10-6-1963 that these intermediate petroleum products should be assessed to excise duty under

item 11-A (introduced with effect from 24-4-1962). Simultaneously, by issue of an exemption notification No. 74/63 dated 18-5-1963, these intermediate petroleum products produced in the refineries, classified under item 11-A as per the revised instructions of 10-5-63, if used as fuel within the refineries for the production of manufacture of other finished petroleum products, were exempted from whole of the duty of excise leviable thereon.

3.4. In 1965 Government issued instructions regarding classification of petroleum products. It was explained then that mere conformity to certain chemical tests was not to be the only criterion but marketability too. Demands issued on intermediate products should be withdrawn it was stated. The question regarding the principles of classification of petroleum products *viz.* their marketability or otherwise was further review sometime in 1969 and the Board issued instructions in their letter F. No. 12/16/66-CX-III dated 1-5-1969, in consultation with the Ministry of Law that the products should be classified under the appropriate tariff item conforming to the specifications laid down in the tariff, irrespective of the fact whether or not they were known to the market and/or marketed as such.

3.5. It was observed during the course of audit of M/s. Burmah Shell Refineries, Bombay that the intermediate bitumen manufactured by the refinery and used within the factory as fuel for the production of other finished petroleum products was classified under item 11-A on the basis of Ministry's instructions dated 10-5-1963 and was exempted from payment of excise duty under notification No. 74/63 dated 18-5-1963. This continued to be so treated even after issue of Board's instructions dated 1-5-1969, though on the basis of the analysis report of the Deputy Chief Chemist on a sample tested as far back as in 1962 the product was classifiable under item 11.

3.6. It was only later by issue of notification No. 180/70 dated 17-12-1970 that exemption from payment of duty was granted in respect of all petroleum products falling under tariff item Nos. 6 to 11-A, if used as fuel within the refinery for the production or manufacture of other finished petroleum products.

3.7. Explaining the background of the issue of exemption Notification No. 74/63 dated the 18 May, 1963, the Ministry of Finance stated in a note:

> "If the exemption was not granted, the refineries would have burnt crude oil which was not liable to duty and/or refinery gas which was exempt from duty. The Administrative Ministry (Mines and Fuel) had not viewed such a development with favour particularly when burning of

crude oil would involve loss of foreign exchange. The position prior to 18-5-1963 and after the introduction of item No. 11-A from April, 1962 was that in some Collectorates intermediate products were assessed under item 11-A and in some others under tariff items like 9, 10 and 11. Thus there was no uniformity."

3.8. During the course of evidence, the representative of the Ministry of Petroleum & Chemicals deposed,

"the fuel used in refineries are in general gases which cannot be otherwise used or marketed normally. Apart of the fuel oil is also used because usually gas alone will not give sufficient fuel for operating the refinery. On certain occasions, they may be using some other material which they cannot otherwise dispose off. Anything which cannot be disposed off as a refined product would be used in preference to something which can be sold."

3.9. The Committee pointed out that under the exemption notification in May, 1963 any intermediary product including naptha or just short of motor spirit could be used as fuel. The Committee asked as to how the authorities could tolerate such a colossal waste of material most of which is imported and also the loss in excise duty. The Finance Secretary stated during the course of evidence:

"The greatest safeguard here would be, in my opinion, the economics and profitable operation of the refinery. Obviously, a person or a company, which is running a refinery is not going to use as fuel the stuff which is marketable at a higher price and to that extent, they will certainly be using the material which is of low value. I would further submit that the prices of the various petroleum products are fixed more or less by the Government, and at present these have been fixed on the basis of the recommendation of the Shantilal Shah Committee. There is another Committee which is going into this matter now. What they will do is, I think, that they will take into account the price of the crude and fix those of the related products allowing a reasonable return and assuming that the refinery is operating in a fairly economical manner. Now, if they are going to misuse some of these products, then the entire economics of the refinery would go wrong. Further, I would submit that if we were to charge heavy excise duty on these particular intermediaries, then the

entire economics of the refinery itself would go wrong. So, it is not correct to say that the material which is being used within the refinery as fuel should be subject to the levy of these high excise duties."

3.10. The Committee pointed out that it was not only the question of economics of a refinery that should be taken into account but the needs of the country also should be given higher priority. Most of the crude oil was imported. The country was wasting its foreign exchange and heavy excise levies by using the oil products as fuel. The Finance Secretary replied:

"I do not think that the economics of the refinery and the overall public interest are very much at variance. We can get that checked up by the Ministry of Petroleum and Chemicals."

3.11. The Committee suggested that even so Government should try to issue guidelines as to what are the intermediate products that can be used and a notification embodying this could be issued for Excise purposes. This would increase the revenues. The Finance Secretary replied:

"This may not be particulary necessary because the market values of the products would be such as to ensure that only the useless and unmarketable stuff is being used as fuel. I do not think that refinery would go out of the way and defraud public revenue and thereby inflict losses on themselves....It is not my intention at all to say that technical innovation cannot be introduced. .....It is in the interest of the refinery itself to try and market stuff of high values and products of high value rather than to use it was fuel. By and large, it is our feeling that material they use as fuel is something which cannot be used or marketed to better purpose otherwise and to that extent their interest and our interests more or less coincide."

3.12. The Committee desired to know whether Government had examined the economics of using these products as fuel. In a note the Ministry of Finance stated.

"Although the question of economics of each of the products utilised as fuel by various refineries in the country was not considered specifically, was, however, considered in a general way before issuing exemption notification No. 180/70 dated 17-12-1970. In this connection an extract from a note dated 14-6-70 furnished by the Ministry of Petroleum and Chemicals is reproduced below:

"To put the whole thing differently, the refinery must use some fuel to process the crude oil and manufacture goods which attract excise duty. Like all other industrial units, it chooses a fuel which is either the cheapest or the most economical or which cannot be blended into a marketable product or even if it conforms to the specifications of a marketable product, it cannot be sold to outside parties for lack of an outlet, and therefore, has to be burnt within the refinery in the larger interests of avoiding a reduction in refinery output, or its eventual shut-down due to the building up of an untenable non-marketable stream. Therefore in the larger interests of the refineries Operation at optimum levels and the country's needs for different products, a certain inevitable stream that throw themselves up in their operations have got to be disposed and their use as refinery fuel will often be the only way of their disposal, irrespective of their excise classifications.

In view of the above difficulties, it is recommended that the exemption classification may be amended to cover all such streams derived from petroleum crude when used as fuel within the refinery limits."

3.13. The Committee desired to know the petroleum products that were used as fuel in the refineries in the country. The Ministry of Finance stated in a note that: "Refineries are located in the following Collectorates: Cochin/Madras/Patna/Shillong/Bombay and Guntur. Reports received so far are as under:—

Guntur:—Caltex Refinery at Visakhapatnam.

(i) Fuel Oil (High Visocity) (ii) refinery gas (iii) coke and (iv) naptha distillate.

Madras:—Madras Refineries Ltd.

M/s. Madras Refineries use only 'plant fuel oil' as fuel in their refinery. Plant fuel oil is reported to be in solid or semi solid form at natural temperature.

Bombay:—Burmah Shell & Hindustan Petroleum Corp. Two refineries at Trombay—Intermediate bitumen, intermediate fuel component, refinery gas, reduced crude.

Shillong:—Two Refineries—Digboi and Noonmati High Speed Diesel Oil, Diesel Oil (M-NOS) and light Diesel oil coking fuel and refinery gas.

Cochin:—Cochin Refineries Ltd.

Tapped (reduced crude), refinery gas and raw naptha

Patna:—M/s. I.O.C. (Refinery Division)

Refinery gas and reduced crude."

About the practice in other countries, the Ministry of Petroleum & Chemicals stated that "due to economic reasons, the refineries in other countries are also expected to use heavy ends mostly besides gases available."

3.14. In reply to a question whether the so called intermediate products could not be further processed to produce new products the Ministry of Finance replied:

> "Many of the intermediate products are in fact further processed to produce finished petroleum products."

Raw Naptha is used as fuel in Cochin refineries. The Committee asked whether this raw naptha did not have an outlet in the country. In a note the Ministry stated:

> "*Bombay*:—Raw Naptha is also used in the manufacture of fertilisers, methanol and petrochemicals. Raw Naptha was used as fuel in petrochemical refineries during initial stages but the practice was discontinued singe 9/72 Raw Naptha in such cases bore concessional rates under Notification No. 134/66 dated 23-4-1966 as amended.
>
> *Madras*:—Madras Refineries Ltd. do not use raw naptha as fuel in the refinery for production of petroleum products. Raw Naptha has got an outlet for manufacture of fertilisers.
>
> Raw Naptha is not used as external fuel in petrochemical refineries or factories. Raw Naptha is used as fuel in the manufacture of processing of steel etc. and will be chargeable to concessional rate of duty at Rs. 500 per kl. under Notification No. 186/72 as amended.
>
> *Patna*:—No raw naphta is used as fuel inside the oil refinery. Whatever naptha is produced in this refinery is cleared out to different L5 and L6 licensees and certain portion is despatched for defence purposes.

Shillong:—Raw Naptha is not used as fuel in any of the refineries. In Digboi refinery until end of 1974 entire raw naptha was used as motor spirit after treatment with chemical additives. From Nov. 1974 small quantities of raw naptha is being issued for use as feedstock for production of fertilisers.

Cochin:—Raw Naptha produced in refineries is mainly issued for use in fertilizer manufacture and a portion issued for use in the manufacture of petrochemicals on payment of concessional rates of duties under Chapter X procedure. Only a small portion known as visbreaker raw naptha which is highly unsaturated generally unfit for other uses is consumed as fuel within the refinery.

Guntur:—Caltex Refinery use raw naptha also as fuel, besides other intermediate products. Raw Naptha is not cleared for use as fuel in other factories. It is, however, cleared for manufacture of fertilisers at concessional rate of duty under Notification No. 187/61 dated 23-12-1961. During 1970-71 quantity of raw naptha used as fuel is 2748.232 MT valued at Rs. 273845, 1971-72 quantity of 2211.719 MT valued at Rs. 229801 and during 1972-73 Nil."

3.15. Refineries in Assam use high speed diesel oil as fuel. The Committee asked whether this oil was not readily marketable. The Ministry of Finance replied:

"In Shillong Collectorate High Speed Diesel oil is cleared and is readily marketed."

3.16. The Committee desired to know whether any of the products used as fuel in refineries was so used in neighbouring petrochemical industries and if so could not excise duty be charged on such fuel. In a note the Ministry of Finance stated:

"The Products used as fuel in refineries are in general light gases and liquid fuels usually heavy liquid fuel. Petrochemical industries also generally use heavy liquid fuel, for example fuel oil. Generally, light gases are not available to petrochemical industries except for gases produced during the operation of petrochemical units. As in refineries, if such gases cannot be put to better alternative uses, they are used as fuel by the petrochemical industries.

Fuel used in refineries is free of excise duty. However, fuel used by petrochemical industries is charged to duty when such fuel is bought from outside sources."

3.17. The Committee asked whether the refinery would bear excise duty if they were to get fuel from outside. The Ministry of Finance replied in a note:

> "Yes, the fuel obtained from outside would pay the appropriate basic and additional excise duties. However, as the payment of duty on fuel would increase the cost of production, the difference between such increased cost and the ceiling selling prices would be less than what it is now and which is mopped up in the shape of additional excise duty. Therefore, the recovery of duty on fuel oil used by refinery resulting in increased production cost may eventually affect the revenue from additional excise duties."

3.18. The Committee asked whether the pricing of petroleum products took into account the fact that the refineries were using duty free fuel. In a note the Ministry of Finance replied:—

> "Under the pricing arrangement in force since 1961 (including the current arrangement based on the Oil Prices Committee report of October 1969) the basic ceiling selling prices of bulk refined petroleum products are fixed by Government on the basis of 'import parity' on the recommendations of the various Pricing Committees set up from time to time.
>
> The formula recommended by OPC and accepted by the Government takes into account refineries own consumption, loss in refining etc. On the question whether we are taking into account the fact that refineries use duty free fuel, it may be mentioned that since the products used by the refineries are generally of non-standard specifications and are not in a position to be economically marketed, there are no real revenue implications."

3.19. A statement showing the total crude oil run in each refinery, percentage of fuel consumed and percentage of losses in fuel during the year 1970, 1971, 1972 and 1973 furnished by the Ministry of Petroleum and Chemicals at the instance of the Committee is reproduced at Appendix VIII. It would be seen there from that the percentages of refinery fuel varied from one refinery to another. While the average consumption was about 4 per cent in Burmah Shell, it was 6.5 per cent in the case of Caltex, 12.5 per cent in Assam Oil Company and ranged from 7 per cent to 10 per cent in case of various refineries of Indian Oil Corporation.

3.20. During the course of evidence, the representative of the Ministry of Petroleum & Chemicals stated:—

> "In regard to fuel and losses, we went into it in great detail last year. We had also to do so especially to answer certain questions in the Parliament and we had to make a comparative study of our losses and our fuel consumption as compared to other refineries abroad. Our study indicated that our refineries, by and large depending on the design and the type of crude used and the type of products produced, compare very well with the refineries in other countries. Recently we invited a team of Russian experts to visit our refineries. They went round Barauni and Koyali refineries which were built with Rumanian and Russian collaborations. We wanted them to tell us whether we can improve our fuel consumption and our losses. They have just left the country a few days ago. They have made certain remarks which have been looked into for implementation. Their view was that we are doing well and there was not much we could do."

3.21. The Committee desired to have note showing the remarks/ suggestions made by the Russian team. Extracts from the note received from the Ministry of Petroleum and Chemicals are reproduced below:

* * * * * *

(a) to achieve higher fuel economy.

* * * * * *

2. The conclusions reached after the visit of the Soviet specialists have been recorded in the form of record not of discussions. These discussions were held at the three refineries and also at the Head Office of I.O.C. at New Delhi.

3. IOC themselves have been conscious of the need to reduce refinery fuel and losses and improve the product pattern. Technical Audit Cells have been functioning in each of the three refineries with a view to achieve fuel economy, improve production pattern and reduce losses. The Technical Audit Cells have been playing an extremely useful role and have achieved considerable results. The discussion with the Soviet specialists was only to supplement the effort that was already being made by IOC in the direction of reducing losses and improve production.

4. Brief details of the discussions held and the suggestions made by the Soviet specialists are given below:

(i) *Economy in fuel consumption*:—To achieve increased fuel economy in the Indian Oil Corporation refineries, various suggestions and schemes have been developed by the IOC engineers themselves. These were discussed in detail with the Soviet specialists. Most of the suggestions made by the IOC engineers were accepted by the Soviet specialists. The Soviet specialists suggested modification in the existing burners as well as installation if necessary of a new type of burner which has now been developed in USSR.

They also suggested some change in the operations of the steam distribution system which will help to reduce steam consumption."

* * * *

3.22. The Committee also desired to have a copy of the Report about the comprehensive study made by the Ministry of Petroleum & Chemicals on the losses in fuel consumption as compared to the refineries abroad. The Ministry of Petroleum and Chemicals furnished a note which is annexed as Appendix IX. Relevant extracts from the note are reproduced below:

"There has been a marginal increase in the total refinery fuel and losses during the period 1960—72 though the "losses" have fallen and "fuel" has gone up. A major cause of this has been the increased complexity of the later plants and the manufacture of lubricating oils in India especially in the Barauni and Madras refineries.....The use of coal as refinery fuel has also been under consideration.... Unfortunately, the designs of the existing boilers in refineries are such that they cannot be easily converted from oil to coal firing without large investment.....Nevertheless, we have recently taken a decision to go in for coal firing also in the captive power station attached to the Mathura refinery.....The Managing Director, Indian Oil Corporation (Refineries and Pipelines Division) has recently written to all the refineries stressing the need to exercise maximum care in the use of energy and to achieve savings by improving operations and the maintenance schedules. The Technical Audit Department in the I.O.C. (Refineries) which have been existing for the past few years are in charge of this effort and they are being suitably strengthened."

3.23. The Committee regret that Government appear not to have been able to appreciate the Audit point of view that since the Board had by an order issued in May 1969, clarified that classification of petroleum oils (including intermediate products) was required to the made on the basis of specifications laid down in the Central Excise Rules, the said products which had earlier conformed to the description in tariff Item 11A were to be classified under tariff Item 11. It is clear that duty was therefore payable in the instant case till 17 December, 1970 when full exemption from payment of duty was granted in respect of all petroleum products under tariff items 6 to 11 if used as fuel. The economics of using the intermediate product as a fuel or marketable product are not strictly relevant from the revenue angle, once such product was liable to duty according to classification during the aforesaid period.

The representative of the Ministry of Finance seemed to suggest that since the recovery of duty on fuel oil used by the Refineries would result in increased production cost and eventually affect the revenue from additional excise duty, it was fair that such fuel oil was exempted from excise duty. But when the Committee asked a specific question whether the pricing of petroleum products took into account the fact that the Refineries were using duty free fuel, he mentioned that "since the products used by the Refineries are generally of non-standard specifications and are not in a position to be economically marketed there are no real revenue implications." If the likely loss of revenue to the extent of Rs. 1,40,32,171, as pointed out in the present case is kept in mind, the revenue implications of the case are certainly not inconsequential, as the Finance Ministry appears to imagine. The Committee would like this aspect of the use of intermediate products as fuel to be kept seriously in view.

3.24. The Committee have a feeling that Government appear at present to be rather complacently expecting that the Refineries would, on their own, not use as fuel, products which could give better revenue after certain processing operations. The representative of the Ministry of Finance had stated that in his opinion the economic of the refinery and the overall public interest was not at variance. In spite of it, however, the Committee find that no specific study in depth had been made from the 'revenue' point of view in regard to each of the products allowed exemption from duty, with the result that one cannot be sure if any of such products could not be converted by the refineries into better revenue earning items.

The Committee are concerned to learn that different petroleum products are used as fuel in various Refineries in the country. For example, Refineries in Assam are reported to be using as fuel high speed diesel oil which is easily marketable. While agreeing with the Ministry that in the interest of 'operation at optimum levels' and the country's need for different refinery products, certain inevitable streams that throw themselves up in their operations have got to be disposed of and their use as refinery fuel is an easy way of their disposal, the Committee fell that some criteria could be devised so that such products as can be marketed should, in general, not be allowed to be used as fuel. The Committee recommend that the economic of each of the intermediate products used as fuel in the Refineries be examined by experts with a view to ascertaining whether they should be refined or processed for something better than fuel to be consumed. In the context of the present high cost of crude, this issue takes an additional importance and a sound decision would also safeguard the interests of revenue.

3.25. The Committee note from the information furnished by Government in regard to the fuel consumed in various refineries and the percentage of fuel losses during the year 1970, 1971, 1972 and 1973 that the percentage of fuel consumption varied from one refinery to another by about 4 per cent to 12.5 per cent. The Committee also learn that a team of Russian experts visiting the various refineries had studied inter alia the question of improvement in fuel consumption and of reduction in costs. It appears that they suggested modification in the burners as well as the installation, where necessary, of a new type of burner developed in USSR. The Committee would like to know of the action taken by Government on these suggestions and the results, if any, achieved in fuel efficiency.

3.26. A Study conducted by the Ministry of Petroleum and Chemicals reveals that there was a marginal increase in the total consumption of refinery fuel during 1960 to 1972, and that while the amount of loss showed some decline, the trend was still disquieting. The Committee were informed that instructions had been issued to all Indian Oil Corporation refineries by the Managing Director (Refineries and Pipelines Division) to effect economy in fuel consumption by improving operations, and that action was also being taken to strengthen the Technical Audit Department in the I.O.C. (Refineries) to tone up such efforts. The Committee would like to know precisely the outcome of these exercises.

3.27. The Committee stress that the feasibility of using coal instead of petroleum-based fuel in the existing Refineries may be systematically examined and where found practicable implemented as per a time bound programme. The Committee would like Government to ensure that in the expansion of existing Refineries and the setting up of new Refineries coal instead of petroleum-based fuel may be used to the maximum extend possible, so that scarce petroleum stock could be put to best economic use.

NON-LEVY OF DUTY—MINERALS OILS

Audit Paragraph:

4.1. By virtue of a notification issued by the Central Government on 23rd December, 1961, 'raw naphtha' intended for use in the manufacture of fertilisers became liable to excise duty at 5 per cent *ad valorem*. With effect from 7th May, 1971 the rate of duty was changed to Rs. 4.15 per kilolitre at 15°C. In one collectorate the quantity of 'raw naphtha' issued by a licensee for the manufacture of fertilisers was determined on the basis of tank wagon measurements instead of dip measurements of the calibrated storage tank of such oil, which resulted in non-levy of duty on the quantity issued in excess as ascertained by dip measurement. The duty involved on 337.231 kilolitres thus escaping assessment amounted to Rs. 3,43,807 for the period 1st April, 1971 to 28th January, 1972.

4.2. This loss of revenue having been pointed out by audit in March 1972, the department issued a notice of demand to the licensee on 9th November, 1972, for duty amounting to Rs. 5,62,887 for the period 30th March, 1971 to 17th July, 1972. Though the question of levy of duty on tank wagon measurement instead of on dip recordings of storage tanks was referred by the Assistant Collector of Central Excise concerned to the Collector in August 1971, the latter gave a clarification only in February 1973. Reply of the Ministry is awaited (March, 1974).

[Paragraph 22(b) of C. & A. G.'s Report for 1972-73—Union Government (Civil), Revenue Receipts—Volume I, Indirect Taxes.]

4.3. M/s. Indian Oil Corporation, Rajbandh under the Collectorate of Central Excise, West Bengal issued Raw Naptha to M/s. Fertiliser Corporation of India, Sindri and to M/s. Fertiliser Plant, Hindustan Steel Ltd., Rourkela. It was noticed in audit that duty was levied on the quantity determined on the basis of tank wagon measurements and not on the basis of dip measurements of the calibrated storage tanks. That is to say, the quantity of oil removed was determined with reference to the dip measurements of the wagons after filling up, insted of determining the quantity on the basis of dip readings of the bonded tank (from which the oil is

pumped out)—before and after the operation. The quantity on which duty was levied on the basis of tank wagon measurements was found to be lesser than the quantities ascertained on the basis of dip measurements of calibrated tanks. Consequently the quantity issued in excess escaped assessment to duty.

4.4. The Committee learnt from audit that the Accountant General Central, Calcutta in his letter dated 11th July, 1974 had stated that total amount of non-levy for which demands had been raised works out to Rs. 9,25,776 for the period from 30th March, 1971 to 28th February, 1973.

4.5. Describing the procedure followed in determining the quantity of mineral oils for assessment, the Ministry of Finance stated:

> "The following procedure has been prescribed generally in para 99(c) of Supplement on Motor Spirit, Kerosene Oil etc., to determine the quantity of mineral oils for assessments:
>
> In cases where only a part of oil in a storage tank is to be withdrawn the manufacturer should state the quantity of oil to be transferred into another tank wagon used for the storage of duty paid Oil. The factory Officer will seal the outlet valves of the receiving tank, take the dips of the storage tank if it contains motor spirit untitlsed to wastage allowance, remove the seals from the outlet valves of the storage tank and permit the requisite quantity of oil to be withdrawn therefrom. After the withdrawal is completed he will seal the inlet valves of the receiving tank wagon and the outlet valves of the storage, gauge the contents of the storage tank and then prepare a dip statement."

4.6. When asked as to whether this procedure was followed in the case referred to in the Audit Paragraph, the Ministry of Finance replied in the negative.

4.7. Explaning how and when the irregularity came to the notice of the Department and what action was taken when it came to their notice, the Ministry of Finance stated:

> "The Indian Oil Corporation, Rajbandh were supplying raw naptha under bond at concessional rate through tank wagon to fertiliser plant of HSL, Rourkela and Fertiliser Corporation of India, Sindhri. Since there was a difference in quantity between the calculation based on the dip differential of storage tank as shown in clearance do-

cuments and other based on dip measurement of tank wagons, the consignee *viz.* HSL found it difficult to get the rewarehousing certificate from the local Central Excise Officers. The procedure of tank discharge was changed to tank wagon dip system. However, the procedural difficulties are reported to have been discussed by local official of the I.O.C. with the local Central Excise Inspector in April, 1971. The change came to the notice of Supdt. of Central Excise incharge of the installation on 1st July, 1971. The assessee was also advised by the Supdt. of Central Excise Durgapur to stop the practice of paying duty on the quantity ascertained by dip measurement of tank wagons on 1st July, 1971. In the mean time the Assistant Collector of Central Excise, Burdwan made a reference to the Collector seeking order in this regard on 4th August, 1971. The Assistant Collector, Burdwan was advised on 17th February 1973 to follow the procedure of calculation of the quantity of oil issued on the basis of dip measurement of storage tank. On the basis of this order, the Assistant Collector decided the matter in the show cause notice on 24th July, 1973 and the assessee was asked to pay the amount of differential duty."

4.8. Demands on account of short levy related to the period from 30th March, 1971 to the 17th July, 1972.

4.9. The Assistant Collector of Central Excise, Burdwan sought a clarification only on the 4th August, 1971 even though substantial duty was involved and the Collector furnished the clarification only in February, 1973. The Committee asked for the reasons for delay at each stage. In a note, the Ministry of Finance stated:

"As already stated * * * * * * the change in procedure came to the notice of Supdt. Central Excise incharge of the installation in July 1971 and there was some correspondence between the Asstt. Collector and Collector seeking clarification that duty is to be charged on the basis of tank discharge system. The Collector of Central Excise, West Bengal wrote to Collector of Central Excise, Patna on 16th September, 1971, to intimate the practice prevalent at Barauni. Reply from Patna Collector was received by CCE, West Bengal only in January, 1973 after four reminders issued between 26th September, 1972 and 10th January, 1973. On 17th February, 1973, on the basis of practice prevalent at Barauni, CCE West Bengal confirmed pre-

sumption of Assistant Collector, Burdwan that duty should be charged on the basis of tank discharge system. Prior to 26th September, 1972 no reminder was sent by CCE, West Bengal to CCE Patna.

The Collector of Central Excise, Patna has admitted that the matter was lost sight of and was again taken up on receipt of 2nd reminder from CCE, West Bengal on 12th January 1973. There has no doubt been laxity at the level of Divisional Officer for not reminding the Collector of West Bengal for about a year and Collector's office for not reminding the CCE, Patna and CCE, Patna's office for not sending the requisite-information."

4.10. Describing the action taken for these delays and lapses, the Ministry of Finance stated that "the Collector of Central Excises, West Bengal and Patna have warned the erring officers to be more careful in future."

4.11. In another note the Ministry of Finance stated:

"Correct produre was followed prior to 30th March, 1971. A wrong practice was adopted by I.O.C. Rajbandh from 30th March, 1971 on their own considering their procedural difficulties. Range Officer directed I.O.C. Rajbandh on 1st July, 1971 to stop the wrong practice. Demand for differential duty on Dip difference between tank wagon/ tank lorry and storage tank was raised upto 5/74. Practice of determination of quantity on the basis of dip reading of the tank wagon/tank lorry continued upto 5/74. Storage tank discharge system was resorted from 6/74."

4.12. The party in this case had gone in appeal and according to the latest position communicated by the Ministry of Finance, "the case has since been decided rejecting the party's appeal."

4.13. The Committee observe that according to the procedure in vogue raw naptha on removal for use in the manufacture of fertilisers is liable to duty on its quantity as determined on the basis of dip-readings of the bonded tanks from which the oil is pumped out. The Committee are distressed to find that Central Excise authorities deviated from this normal procedure, with effect from 30 March 1971, and the quantity of raw naptha supplied by India Oil Corporation, Rajbandh was determined on the basis not of dip readings but of tank wagon measurement inspite of Assistant Collector,

Burdwan having advised on 17 February 1973 to follow the correct earlier procedure. This resulted in an escapement of duty involving Rs. 9,25,776 for the period from 30 March 1971 to 28 February 1973.

The matter was referred by the Assistant Collector of Central Excise and Customs, to the concerned Collector in August, 1971 but the latter replied only in February, 1973 that the duty was to be charged on the basis of tank discharge system and not tank wagon dip system. The Committee deprecate the peculiar dilatoriness of the Collector who took 1 year to offer this simple clarification. Had the matter been accorded the desired attention and attended to expeditiously, the present short levy could have been avoided.

The Committee cannot help expressing their deep dissatisfaction Over the perfunctory manner in which this matter was pursued by the local excise officers and the different Collectors. The Committee are not satisfied with the mere warning said to have been issued by the Collectors of Central Excise, West Bengal and of Patna to the erring officers.

4.14. The Committee understand that the party had gone in appeal against the demand and the same has been rejected. The Committee would like to be apprised of the state of the recovery of the demand.

4.15. The escapement of duty due to the wrong method of measurement adopted by the Central Excise authorities at Rajbandh, as a result of which less oil was shown in the tank wagon also raises the question of the whereabouts of the oil which had escaped assessment. According to the dip measurements test, a higher quantity of oil appears to have been removed from the bonded tank. The Committee wish that the whereabouts of the oil which escaped assessment may be investingated and the lapses, if any, either on the part of the excise staff or the staff of the two public undertakings, Indian Oil Corporation and Fertiliser Corporation, be fixed for appropriate action.

LOSS OF REVENUE BY GRANT OF UNINTENDED CONCESSION

Audit Paragraph:

5.1. Strawboard and millboard, produced mainly in small scale units had been enjoying certain excise duty concessions from November, 1956. By a notification issued on 1st March, 1964 slab exemption was granted on strawboard and millboard cleared by factories in a financial year, exempting the first 125 metric tonnes from excise duty. At the same time, with a view to stimulating production of paper in the Third Five Year Plan period, duty relief was allowed to new units and to existing units which had expanded their capacity, by issue of another notification dated 1st March 1965. However, certain factories availed themselves of the concessions under both the notifications concurrently. This unintended benefit was stopped by Government by issue of a notification only on 1st March, 1966 under which factories producing strawboard and millboard were prevented from enjoying both the concessions concurrently.

5.2. There was consequently a loss of revenue of Rs. 1,55,731 in respect of three factories which enjoyed this unintended concession from April 1964 to March, 1966.

[Paragraph 32 of C. & A.G.'s Report for 1972-73, Union Government (Civil) Revenue Receipts—Vol. I—Indirect Taxes.]

5.3. The factories that got this un-intended benefit were:

(1) M/s. Chandigarh Paper Board Mills, Chandigarh.

(2) M/s. Mysore Paper Mills, Bhadravati.

(3) M/s. Punalur Paper Mills, Punalur.

5.4. During the course of evidence, the representative of the Ministry of Finance deposed:

"The double benefit has accrued to the small sector, not the large sector. The sequence of events was like this. There were certain slab concessions to small mill board and straw board manufacturers, and then later on as part of the budget proposals of 1964, we gave certain concessions to paper manufacturing units irrespective of their size.

These additional concessions were intended for new units and also to units which were in existence before, but whose capacity was expanded after a specified date."

5.5. The Finance Secretary added:

"It appears to me, both these two notifications viz 35/64 which gave some exemption on the first 125 metric tonnes and the second one viz. 35/64 also dated 1st March, 1964 which gave exemption based upon the period were issued on the same date and I think it would be very hard to believe that the same Department issuing these two notifications on the same date with consecutive serial number were not aware of these two notifications going out and I think it was a part of the general intention to give effect to both these exemptions. This concession though unintended was allowed to continue."

5.6. Explaining the objective behind these exemptions in a note submitted subsequently, the Ministry of Finance stated:

"Objective of the concession was to give fiscal support to the smaller units manufacturing straw-board and mill-board which are the cheaper types of boards. In this connection a copy of Ministry's comments on the Draft Para No. 35/72-73 (Audit Para 32/72-73) indicating therein the circumstances under which concessions in respect of straw board and pulp board were made in the Budget proposals of 1966 is reproduced as under:—

"Un-intended concession referred to above, is admitted. However, the extent of the concession pointed out by the concerned three Collectorates is set out below:—

Collector of C.E.	Cochin	.. Rs.	4,010.78
Collector of C.E.	Bangalore	.. Rs.	4,553.33
Collector of C.E. (for the period	Chandigarh 64-65 & 65-66)	Rs.	1,31,945.22
		Rs.	1,40,509.33

The reasons for difference in amount stated in the Audit Para read with C. & A.G.'s letter No. 1255-Rec. A/189/73/CE. III dated 12th June, 1974 in respect of Chandigarh Collectorate is being further looked into and correct position is being ascertained.

The circumstances under which budget proposals of 1966 in respect of straw board and pulp board were made are as follows:—

(i) Almost from the very beginning exemption had been granted by executive notifications to certain specified quantities of straw-board and mill board as a measure of fiscal support to the smaller units. However, it was decided in November, 1963 to freeze the concessional rates applicable to straw board and pulp board to only such of the factories as were already in existence, as had been done earlier in the case of certain other excisable commodities *e.g.* soap and paints and varnished, etc. Consequently new units which came into existence after 9th November, 1963, were not entitled to the then existing lower effective rates for the first 2500 tonnes of straw board and pulp board, including grey board, taken together. This step was taken to prevent any tendency to fragment existing units and to discourage setting up of small size units which depended mainly on this type of tax differentiation.

(ii) The concession was further reviewed at the time of 1964 Budget. Slab concessions available separately for straw-board and pulp board were combined, quantum of concession was reduced from 3000 to 2500 tonnes and effective rates of duty were stepped up. The concession was, however, made applicable to all units irrespective of their output.

(iii) With a view to stimulating production of paper and paper board to attain self-sufficiency during the Third Five Year Plan, it was further decided at the time of 1964 Budget that duty relief should be given to new units and expanded capacity of older units for a period of three years at 25 per cent, 20 per cent and 15 per cent of duty during first year, second year and third year respectively.

(iv) The net effect was that the new comer was placed at a disadvantage *vis-a-vis* the manufacturers who went into production before 9th November, 1963. As the cost of production of new units was higher, due to higher capital cost, that the cost of production of old units, it was necessary to rationalise the scheme of slab concession so as to improve the competitive position of new comers.

(v) It was also observed that such of the factories which went into production between 1st April, 1961 and 9th November, 1963 were getting an un-intended benefit in-as-much as they got two concession *viz.*, the lower rate of duty for the first 2500 tonnes of their production of straw and pulp boards, and again another concession of 15 per cent reduction in duty on such boards available to all units which had commenced production between 1st April, 1961, and 1st March, 1964. This double concession, therefore, gave them an undue advantage and it was proposed to exclude the 15 per cent concession intended primarily for new units set up under adverse circumstances in the Third Plan Period."

5.7. In reply to a question as to why this un-intended concession was continued for so many years, the Ministry of Finance stated:

"The need for fiscal support has been felt all through and the concession is being retained with suitable adjustment/modification from time to time."

5.8. In 1963, it was decided as a matter of policy to freeze the concessional duty for straw board and millboard. The Committee desired to know whether this policy did not put the new units to be set up at a disadvantage. The Ministry of Finance replied:

"This step was taken to prevent fragmentation of existing units and to discourage mushrooming of small sized units which depended mainly on tax differentiation. It was perhaps not intended to place the new units at a disadvantage and the step taken was purely an anti-fragmentation measure."

5.9. When asked whether this acpect was examined at that time, the Ministry of Finance replied:

"The relevant file is not traceable. However, attempts are being made to locate the same."

5.10. Explaining the additional concessions granted in March, 1964 and the objectives behind these concessions, the Ministry of Finance stated:

"As a part of 1964 Budget proposals two concessions were given vide notifications No. 33/64, and 34/64. The concessions were—

(i) relief in duty to the extent of 5 naya paise per Kg. for paper containing not less than 50 per cent bagasse in the form of pulp (intended to encourage unconventional raw material for paper manufacture);

(ii) relief in duty leviable on paper and paper boards manufactured in newly established units or expanded capacity of existing units. Duty relief for a period of three years at 25 per cent, 20 per cent and 15 per cent of duties during the 1st Year, 2nd Year and 3rd year respectively. (This was intended to stimulate production of paper and paper boards to attain self sufficiency during the Third Plan period)."

5.11. Explaining the concessions granted on account of the enlarged production, the Ministry of Finance state:

"For all paper factories existing immediately before 1st March, 1964 whose production capacity has been enlarged and brought into operation on or after the first March, 1964, to the extent such production was attributable to the enlarge capacity, the extent of exemption was fixed at 25 per cent, 20 per cent and 15 per cent of the duty leviable in the 1st year, 2nd year and 3rd year respectively (vide notification No. 34/64 dated the 1st March, 1964)."

5.12. The Committee desired to know the effect of freezing the concessions on the industry as a whole. The Committee also desired to know whether the Directorate of Inspection was directed to go into the working of the concessions when these were announced in 1964. In a note the Ministry of Finance replied:

"No information is readily available on these questions as the available records do not show any study having been made on the effect of freezing the concessions, or the working of the concessions announced in 1964."

5.13. The Committee asked as to what was the normal procedure followed when duty concessions were granted with specific objects in view and whether any review was undertaken at some interval. The Ministry of Finance replied:

"The duty concessions under exemption notifications came up for *ad hoc* review."

5.14. The Committee asked whether the notifications current were reviewed at the time of every budget and if so, how could the Government explain the continuance of the double concession even after 1965 budget. The Ministry of Finance replied:

"All current exemption notifications issued under the rule 8(1) of the Central Excise Rules are not reviewed at the time of every budget. In the present case, apparently the notification did not come up for review at the time of 1965 Budget."

5.15. When asked how the Government came to know about this unintended benefit and why it was not stopped immediately, the Ministry of Finance replied:

"The exact date on which the Deptt. came to know that certain factories were availing the concessions under both the Notifications 34/64 and 35/64, is not known. Reference to such fact occurs in the note of Secretary, Central Board of Excise & Customs dated 18-11-65 of Board's F. No. 8/127/65-CXVI/ 2. Note dated 19-8-65 of the file (8/14/65-CXVI) indicates that reports had been called from the Collectors of Central Excise in the matter. As such, it can be presumed that Board noticed this in the second half of 1965. Rectification, after due study, was carried out in early 1966.

It, however, appears that restricting slab exemption in respect of straw board and mill board to old units was a deliberate antifragmentation measure to prevent break up of existing units to multiply benefits. Such antifragmentation measures were also taken in respect of several other commodities like soap, paint and varnish, matches etc. The concession to new units or to who enlarge their capacity on or after 1-3-64, was primarily meant to compensate the mills for the higher capital cost involved in setting up of new mills or enlarging the existing capacity. The concession, however, was intended for paper and was only incidentally applied to board.

It was, however, apparent that slab concession to old units and concession for new units or for enlarged production capacity were mutaually exclusive. While the slab concession with the antifragmentation clause was intended to protect the existing small units of straw board and mill-board, the concession to new units or for enlarged production capacity was intended to compensate rising capital cost for setting up new plants. It was perhaps thought that old units would not be eligible for concession given to new units. The advisability of giving preferential treatment to existing small units *vis-a-vis* the new units also in the small sector was independently examined and in the case of paper, the antifragmentation clause was deleted in 1966 vide Notification No. 67/66 dated 30-4-66. Subsequently it came to notice (the exact date is not available) that old units were also entitled to and availing of the concession meant for new units."

5.16. The Committee desired to know whether there was any other factory which enjoyed the un-intended benefit even beyond 1-4-1966 and if so how it had happended. The Ministry of Finance replied:

"Information received from all the Collectorates reveals that only in one Collectorate *viz.* Collector Central Excise, Bangalore the concession was enjoyed beyond 1-4-66, details are given as under:

Bangalore:

M/s. Tungabhadra Pulp & Board Mills Ltd. availed of the concession under notification No. 34/64 and 35/64 concurrently upto 12-12-67, the amount involved being Rs. 1,43,749.37 for the period 10-4-66 to 12-2-67. The jurisdicational Assistant Collector passed an Order-in-Original dated 29-12-71 demanding payment of the duty involved. The party went in appeal against the Assistant Collector's order-on-original. The Appellate Collector of Central Excise Madras, allowed the appeal on the ground that the demand was time barred. The issue was, thereafter referred to the Govt. of India as a fit case to be taken up in review under Sec. 36(2) of the Central Excise and Salt Act, 1944, in view of the substantial amount of revenue involved. The Ministry issued show cause notice to the party on 23-2-74 and the case is pending decision before the Government of India.

M/s. Tungabhadra Pulp & Board Ltd. commenced production in Dec. 64. Hence, they were not availing of exemption under column 4 of table annexed to Notification No. 163/65. Accordingly, the amendment made by Notification 24/66 was of no significance to this unit. When Notification No. 68/66 dated 30-4-66 was issued amending Notification No. 163/65 so as to exclude straw board and Mill-board, this unit was affected and hence the concession should not have extended beyond 30-4-66."

5.17. The Committee desired to know about the fiscal concessions given to boost up the production of paper under Central Excise Act. In their Note the Ministry of Finance stated:

"To encourage setting up of new paper mills and to increase production of various categories of paper and paper boards, at present the following two concessions are available—(i) paper mills which commence manufacture on or after 1st April, 1973 are given relief to the extent of 15 per cent of the effective basic duty leviable on the different categories of paper and paper boards. (The exemption is not applicable to certain specified varieties of categories of

paper/board namely waxed paper, polyenthene coated paper, polyethene coated boards, corrugated boards, straw boards and mill boards) (ii) To encourage expansion of mills existing immediately before 1st April, 1973, the production capacity of which has been enlarged and brought into operation on or after 1st April, 1973, such production which is attributable to the enlarged capacity is exempt from duty leviable thereon to the extent of 15 per cent. (This concession is applicable to factories where the total quantity of paper all sorts other than straw boards and mill-boards produced in the preceding financial year does not exceed 30,000 metric tonnes).

5.18. The Committee asked whether any study had been made as to the total exemption and concessions given to the paper industry as a whole to find out the margin of profit that is available to this industry. The Ministry of Finance replied in the negative.

5.19. The Committee note that the Government issued two notifications on the 1st March, 1964 regarding the grant of certain exemption/concessions in duty to straw-board, pulp-board, and paper-board units. By notification No. 35/64, slab concession rates of duty were levied for the first 2500 metric tons of the straw-board and pulp board cleared by factories in a financial year. This concession was allowed to factories which were working on 9.11.63 in order that any tendency towards fragmentation of existing units could be prevented by the setting up of small-size units which depended mainly on this type of tax differentiation could be discouraged. Through the other notification No. 34/64, Government gave duty relief to new units and also the expanded capacity of older units for a period of 3 years, at 25 per cent, 20 per cent and 15 per cent of duty during the first, second and third year respectively, so that the production of paper and paper boards could be stimulated and self-sufficiency expedited during the Third Five Year Plan.

The Committee are concerned to learn that the units in production prior to 9-11-1963 which enjoyed the concession contained in notification No. 35/64 were also allowed the concessions detailed in notification No. 34/64 which were meant primarily to compensate the new comers in the field on account of the higher cost involved in setting up new mills or for the enlargement of their existing capacity. This shows the lack of care on the part of the authorities concerned in not having examined, in the beginning itself, all the aspects of the case, with the result that losses

have accrued to Government, because of the unintended benefits to units in production from 9 November, 1963.

5.20. The fact that concessions were availed of by certain manufacturers under both the notifications came to the notice of the Government only in the latter half of 1965, and the position could be rectified in 1966, by which time considerable revenue was denied to Government by way of duty.

This unintended benefit occured because at the time of the 1965 Budget this notification was not reviewed. The Committee were earlier given to understand that "during formulation of the budget proposals from year to year tariff rates, both statutory as well as those fixed, under exemption notifications are kept under review with a view to determining whether any changes are necessary or not." [Para 1.80 of 80th Report (Fifth Lok Sabha) refers . The Ministry have now stated that all current exemptions under Rule 8(1) of the Central Excise Rules are not regularly reviewed at the time of every budget. The Committee would like to be informed whether there has been any recent shift in the procedure. The Committee would also invite the attention of the Government to paragraph 1.25 of their 111th Report (4th Lok Sabha) and suggest that all operative exemptions should be invariably reviewed at budget time both from the point of revenue and from the administrative angle, so that any lacunae might be removed and revenue augmented.

5.21. The Committee are distressed that Government have not conducted any study about the impact of the exemption and concessions granted apparently ad hoc to the paper industry from time to time. The Committee recommend that before the question of any such exemption/concession is considered there should be a thorough study of the issue and especially of the revenue implications. The Committee also urge that adequate statistics about the impact of such concessions/exmptions are maintained for purposes of such study and of periodic review of the position.

5.22. The Committee would like to draw attention to its recommendation made in para 1.246 of their 111th Report (4th Lok Sabha) to the effect that the Central Board of Excise and Customs should review the existing arrangements for drafting of notifications and entrust work in this regard to officers with a legal background and a thorough understanding of the Central Excise Law. The Ministry of Finance intimated in their Action Taken note on 27 January, 1971 that the question as to how best the existing

system could be impreved in the light of the observations made by the Public Accounts Committee was being examined in consultation with the Ministry of Law and the decision with arrived at would be intimated to the Committee. The Committee had made the recommendation more than five years' earlier and feel that the mistake of the type noticed in the instant case could have been obviated if their recommendations had been implemented. The Committee desire that conclusive action should be taken on their recommendations without any further delay.

GRANT OF REFUND ON NYLON YARN

Audit Paragraph:

6.1. Synthetic yarns are assessable to Central Excise Duty at specific rate on the basis of their weights. In respect of filament yarn the rate of duty depends on the denierage of such yarn, the higher the denierage, lower is the rate of duty.

6.2. A factory manufacturing nylon yarn of different deniers, was also making crimped nylon yarn out of such manufactures. Crimping involved stretching the basic single yarn and making it zig-zag with another such yarn and thereafter giving a twist to it. The factory had been clearing crimped yarn of 76,90,100 and 105 deniers under the nomenclature 76/2,90/2, 100/2 and 105/2, deniers. Assessment was made on the basis of 76, 90, 100, 105 deniers. The party had, however, contended that the assessment should be on the basis of 152, 180, 200 and 210 deniers, respectively.

6.3. The claim of the factory was rejected by the Assistant Collector and on appeal by the Collector of Central Excise concerned on the following grounds:

(i) by their own declaration in the case of sample forwarded for test the deniers were 76,90,100 & 105;

(ii) duty is attracted at the time of manufacture and not clearance;

(iii) since crimped yarn fetches higher price, there is justification in assessing it as for single yarn;

(iv) the Chemical Examiner's report is that the assessment should be made on the basis of single yarn.

6.4. The factory thereupon went in revision to the Government of India. The Government of India ordered reassessment conceding the claim of the assessee on these facts:

(i) that the export and drawback incentives are based on the denierage of the resultant yarn;

(ii) the opinion of the Chief Chemist of the Department who was consulted druing the hearing and afterwards was not acceptable.

6.5. Consequently, the Department granted a refund of Rs. 1.37 crores for the period from 1st January 1970 to 16th June 1972. This also resulted in a fortuitous benefit to the manufacturer, as the duty paid at the higher rates had already been passed on by the manufacturer to the consumers.

[Paragraph 34 of the Report of the Comptroller and Auditor General of India for the year 1972-73, Union Government (Civil), Revenue Receipts, Volume I, Indirect Taxes.]

6.6. In this case J. K. Synthetics Ltd., Kota, had been manufacturing nylon yarn assessable to Central Excise Duty under tariff item 18. The yarn manufactured was of different deniers 76 d, 90 d, 100 d and 105 d. Out of such yarn, the factory was also manufacturing 2 ply crimped yarn. This process involved heating the single yarn to high temperature (200°) when the yarn crimps to zig-zag shape and thus gains elasticity. One yarn is made in 'S' shape and the other yarn of same denier is made in 'Z' shape and thereafter the two are twisted together to make the final 2 ply crimped yarn which has sufficient elastic property for being used in hosiery mainly for manufacture of socks, sweaters, etc. While the yarn was assessed to duty on single yarn basis, the factory was paying duty under protest and claiming assessment on the basis of denierage of the 2 ply crimped yarn. Thus while the actual assessment of 76 d crimped yarn of 2 ply was done on the basis of duty rates applicable to 76 d, the factory was claiming it to be of 152 d and asked for assessment at lower rate of duty applicable to 152 deniers. Thus for the yarn of deniers 76, 90, 100 and 105 the factory claimed assessment as for 152, 180, 200 and 210 deniers. This claim of the factory was rejected by the Assistant Collector of Central Excise, Kota and the Collector of Central Excise, Delhi on appeal.

6.7. According to the Ministry of Finance, the factory 'started manufacturing nylon filament yarn in the month of March 1962 and started crimping in the same month'.

6.8. The Committee wanted to know as to how the factory had declared the yarn to the Excise authorities. The Ministry of Finance stated in a written note:

> "In all the Central Excise records, *i.e.* A.R.Is. and Gate Passes this product (yarn) of the factory had been shown as synthetic yarn with its denierages. In Col. 5 of A.R.Is. *i.e.* 'description of goods with tariff classification' and in Gate Passes against item No. 4, *i.e.* 'Description of excisable goods', it has been declared as 'synthetic yarn (90 denier)'."

6.9. The Committee enquired how the crimped yarn is marketed in trade parlance. The Ministry of Finance stated in a note:

> "The description given in the Gate Pass is like Polyamide Nylon Yarn 222 x 2 P crimped. 222 denotes the denierage of the resultant yarn and 2 P denotes the number of plies. However, local market enquiries made at Delhi reveal that the technical name given to crimped yarn is 'Texturised Yarn'. In common parlance it is known as crimped/ stretch yarn. The manufacturers sell this yarn as crimped yarn. Crimping is done on single filament yarn as well as after doubling of filament yarn."

6.10. At the instance of the Committee, the Government furnished the following information in regard to the normal uses of single yarn and crimped yarn:

> "Uncrimped single yarn is used in the textile industry for weaving of fabrics. It is also used for manufacture of Tyrecord, Parachutes, Fishing Nets and Ropes. Crimped yarn, on the other hand, is mainly used in hosiery industry though it is also used for weaving of fabrics and sarees, like Georgette where better feel effect and stretch effect are required."

6.11. On an enquiry whether the single yarn and crimped yarn could be treated as identical, the Ministry of Finance stated:

> "The uncrimped single filament yarn and crimped yarn cannot be said to be identical or same goods as they are known in the market to be different goods and their uses are also different, though both are yarn in the generic sense."

6.12. The Committee desired to know the instructions issued by the Government as regards the stage of levy of excise duty on synthetic yarn prior to February 1973. In a note, the Ministry of Finance stated:

> "No special instructions as to the stage of levy on synthetic yarn were issued by the Government prior to 22-2-1973 (the date when the clarification was finally issued)."

6.13. However, according to Audit, the Central Board of Excise and Customs issued instructions *vide* letter No. 12|19|57-CX-III dated the 3rd March 1958, that the stage at which yarn should be taken as manufactured for excise purposes, is the stage before it is sent for weaving or sizing.

6.14. The Committee desired to know as to how the crimped yarn was assessed to duty earlier and whether the Collector had made any reference to Board as to how such yarn should be assessed. The Ministry of Finance stated:

> "The crimped yarn was assessed to duty on the basis of the basic single yarn denier from the very beginning. No reference from the Collector as to how crimped yarn should be assessed appear to have been made to the Board."

6.15. The Committee wanted to know the date when J.K. Synthetics Ltd. filed the petition, the authority who took the decision thereon and the person who represented the factory. During evidence, the witness stated that J.K. Synthetics Ltd. field revision petition on 23-7-1970. The case was decided by Shri..... Joint Secretary in-charge of Revision Applications on behalf of the Government. The witness added:

> "It appears that three hearings were given. The first was on 27th of December 1971. Person hearing was fixed on 6-1-72, but the actual hearing was given on 7-1-72. The case was again heard on 6-3-72. I am sorry—one date was 22-2-72 when the case was fixed for hearing. It was adjourned as the hearing did not materialise. Three hearings were fixed but actually there were only two hearings which were heard."

6.16. In a note furnished subsequently, the Ministry of Finance stated that the revision orders were issued on 29-5-1972.

6.17. The Revisionary Authority in his final orders, *inter alia*, stated:

> "(i) The Government of India observe that there is no doubt that ordinarily the petitioner's declaration does count, legally it has also to be established whether a tax is due and the conditions for the levy of such tax have been fulfilled.
>
> (ii) It is a well established principle that while legally the goods become liable to duty on production, the rules provide that the date of determination of duty is the date of removal of goods from the factory. This is evident not only from Sec. 4 of the Act which requires the assessable values to be determined as at the time

of removal of goods, but also from Rule 9 and 9A which deal with the clearance of goods from the place of production and the determination of the rate of duty and tariff valuation in the case of goods cleared from a factory is the date of removal of such goods from such factory.

(iii) Crimped yarn falls under item 18 itself, and is, therefore, assessable in the same manner as the single straight yarn, at the time of clearance from the factory on the basis of the denier of the yarn in the form it is presented for clearance. And the denierage of such yarn has to be determined according to the standard methods available. There is no stipulation in these methods that in the case of crimped yarn, either single or plied yarn, this denierage would be the denierage of the single yarn. As for the argument based on the price factor, even if it were in principle, it will not be correct in law to go behind the intention of a particular tariff item. An assessment can only be based on the language of the tariff as it exists.

(iv) The conventional description followed in the grade only show the particulars of constituent yarn(s), the number of filaments and twists etc. ostensibly to help those who manufacture further goods, to judge the suitability of the yarn in all its aspects; and it is not the resultant denier of the yarn as such. Consequently a declaration of the denier of basic single yarn on the part of the petitioners is not adequate to conclude that the assessment should be based on the denier of the basic single yarn."

6.18. One of the grounds on which the Revisionary Authority gave the decision in favour of the factory was that the export and the drawback incentives were based on the denierage of the resultant yarn. The Committee asked how it was relevant to the levy of excise duty. The Customs duty was on the goods in the final stage in which they were imported or exported whereas the excise duty was levied when the goods were first manufactured irrespective of how they were used later within the factory or outside. The Member, Central Board of Excise and Customs replied:

"It is embarrassing and difficult for me to answer this. This is a quasi-judicial order, based on what was the evidence led before the deciding authority which is not known to me."

6.19. According to the information furnished by the Ministry of Finance, the Chief Chemist was consulted on 8-3-1972. A copy of his opinion is reproduced at Appendix X. The Committee asked when once the opinion of the Chief Chemist was obtained what was the necessity for consulting the Deputy Chief Chemist. The Ministry of Finance replied in a note that:

> "There is no hard and fast rule on this matter. Technical authorities concerned are consulted as necessitated by circumstances of each individual case."

6.20. The Committee asked about the present position of the order of the Revisionary Authority after the issue of clarificatory instructions. During evidence, the witness stated:

> "The order still holds the field. We have only taken corrective action to see that there is no loss of revenue. The instructions were issued on 22-2-1973."

6.21. When asked what instructions were issued, the witness replied:

> "The instructions broadly say that duty should be collected at the stage of clearing the filament yarn. It is a distinct stage. The filament was marketed as such. Therefore, for the excise duty we have clarified the moment the filament yarn is manufactured and is in a condition to be removed either for sale or manufacture of other commodity, duty should be collected at that stage and not postponed to a later stage of crimping."

6.22. Subsequently these instructions were further clarified by the Board in their circular dated 22-2-1973 and 21-5-1973 which are reproduced as Appendices XI and XII. The Committee asked as to what was the occasion and need for issuing these instructions. The Ministry of Finance stated:

> "In the Revisional Order No. 843 dated 29-5-72 in the case of J.K. Synthetics Ltd., Kota, it was held that assessment of multiple fold crimped yarn should be on the basis of the calculated denier by multiplying the number of plies with the denier of the basic single yarn. In Kanpur Collectorate Modipon Ltd. were manufacturing multiple fold nylon filament yarn (crimped yarn) on which duty was being recovered on the basis of denier of the basic single yarn. After issue of the above order in revision, they

approached the Collector of Central Excise, Kanpur requesting for assessment of their goods on the basis of the decision contained in the said order-in-revision. Since the order-in-revision had no general application the Collector approached the Board for clarification before acceding to the request of Modipon Ltd. The matter was examined further and the position was clarified in the said circular dated 22-2-1973. Since prior to 22-2-73 duty was not being charged on single ply filament yarn before it was taken for crimping etc. and as such, it escaped assessment, Collectors were advised to raise demands on all single ply filament yarn taken for crimping in the past."

6.23. Subsequently the Ministry of Finance wrote:

"On the basis of order-in-revision, the Assistant Collector, Kota granted a refund of Rs. 1,36,78,459.10 to the party and this has been paid. The refund was received by the company during Sept./Dec. 1972."

6.24. The Committee were also informed by the Ministry of Finance that after the issue of clarification on 22-2-1973, Modipon Ltd. were not allowed final assessment at lower rate. The company filed a writ petition in the Delhi High Court and got a stay order. The arrears for the period September 1972 to May 1974 amounted to Rs. 57,47,982.59 and were mounting further pending decision by the High Court.

6.25. Instructions were issued by the Board on 21-5-1973 to the Collectors to raise demands for the past periods also (prior to 22-2-1973) in respect of duty levied as for crimped yarn instead of as for single filament yarn. The Committee asked as to what was the additional duty liability of J. K. Synthetics Ltd., as a result of these demands. The Committee also asked whether this differential duty had been paid by the factory. The Ministry of Finance stated:

"A show-cause notice demanding an amount of Rs. 4,16,89,116.57 for the period from 7-5-64 to 16-6-72 as differential duty on single filament yarn converted into crimped yarn was issued on 21-5-1974. Another show-cause notice has been issued on 12-2-1974 for demanding an amount of Rs. 28,98,-173.23 as duty on single filament yarn gone in waste while making crimped yarn during the same period. Year-wise details are awaited from the Collector. The differential duty has not been paid by the factory in view of Delhi High Court's stay order."

6.26. In a subsequent note, the Ministry of Finance stated:

"Year-wise break-up of details of show-cause notice issued on **21-5-74 for raising** the demand amounting to Rs. 4,16,89,116.57 is as under:

Period	Quantity cleared	Duty involved
1/72 to 16-6-72	1,98,301·690	42,93,955·54
1/71 to 12/71	3,90,558·580	84,04,933·80
1/70 to 12/70	4,13,043·220	89,94,797·68
1/69 to 12/69	3,38,107·470	62,36,367·08
1/68 to 12/68	2,85,620·830	57,18,195·10
1/67 to 12/67	2,16,254·450	36,39,654·17
1/65 to 12/66	1,49,915·900	16,49,827·88
1/65 to 12/65	93,370·020	9,33,700·20
5/64 to 12/64	81,768·510	8,17,685·12
TOTAL	21,66,940·670	4,16,89,116·57

The Collector has since intimated that the said show-cause notice is for duty on single filament yarn cleared as two ply crimped yarn and not for differential duty as reported earlier."

6.27. In their further note on the subject, the Ministry of Finance stated:

"On rechecking the Collector has reported that the correct amount of duty demanded on single filament yarn gone in waste while making crimped yarn during the period 7-5-64 to 16-6-72 was Rs. 28.98,173.88 and not Rs. 28,98.173.28 or Rs. 28,98,173.20 as reported in Ministry's letter of even number dated 17-2-75 and 25-3-75. The inconvenience caused is regretted. He has since furnished year-wise

break-up of the said amount covered by show-cause notice dated 12-12-74 which is as follows:

Period	Amount of duty on waste
7-5-64 to 31-12-64	56,840·42
1-1-65 to 31-12-65	65,424·36
1-1-66 to 31-12-66	1,14,542·19
1-1-67 to 31-12-67	2,52,810·31
1-1-68 to 31-12-68	3,97,422·70
1-1-69 to 31-12-69	5,02,062·95
1-1-70 to 31-12-70	6,24,306·79
1-1-71 to 31-12-71	5,83,307·07
1-1-72 to 16-6-72	3,01,457·09
TOTAL	28,98,173·88"

6.28. The Committee desired to know how many other cases had been considered by Shri..... Joint Secretary in-charge of Revision appeals and orders thereon passed and in how many cases had the Government found that the orders passed by him were erroneous and also in how many cases the Government had to resort to corrective action. In a note, the Ministry of Finance stated:

> "Apart from the case (M/s. J. K. Synthetics Ltd.), another case of M|s. Bharat Carpets was found to be erroneous and corrective action was taken thereon. Facts are enclosed as Appendix XIII."

6.29. The Committee desired to know whether Government had any power to review an order passed by a Joint Secretary on a Revision Application prejudicial to revenue, so as to rectify the prejudicial order in the same manner as powers have been given to Government to rectify the orders of Collectors. The Committee also desired to know whether Government should not be vested with such powers if it did not have them at present. The Ministry of Finance replied:

> "At present Government has no powers to review orders (prejudicial to revenue) passed by Joint Secretary on Revision application. The question whether such a power should be acquired is under consideration."

6.30. During the course of evidence the Committee asked what were the basic qualifications for appointment of a Revisionary Authority. The Chairman, Central Board of Excise & Customs replied:

> "The Government takes care that they should have adequate experience of excise and customs."

When asked whether Shri ..... satisfied these norms, the Chairman replied:

> "He was Senior Collector of Customs. If you like I can get a note on his various postings."

6.31. Subsequently the Ministry of Finance furnished the following written note:

> "The appointment of the post of Joint Secretary (Revision Applications) is made from amongst the senior most officers of the Indian Customs and Central Excise Service who have adequate background and ripe experience of the Customs and Central Excise, taxation laws and procedure and connected matters. Since the selection is restricted to the very senior officers in the field who have acquired the necessary technical expertise over their long years of service, no necessity has been felt of formally prescribing any other norms or guidelines. In addition, the general requisites for appointment to posts under the Senior Staffing Scheme of the Government of India are followed. If any very complicated legal issues are involved in dealing with a revisionary case, the general issue that arises can be got clarified by the Ministry of Law whose function it is to advise the various Ministries of the Government of India on legal matters. Shri... ..... fulfilled the requirements as indicated for this job."

6.32. The Committee were informed by the Ministry of Finance that certain serious allegations were made against the Joint Secretary (Revision Application) by a Supdt. of the Central Excise Department. The allegations related *inter alia*, to carrying on private business, running of a Cooperative Store, misuse of staff car, detailing of subordinate staff on private work. As a senior official of the Department was involved in these allegations, the then Finance Secretary called the explanation of Joint Secretary (RA). After perusal of the explanation, the then Chairman of Central Board of Excise and Customs ordered a preliminary enquiry by a Member (Central Excise). In his enquiry report the enquiry officer concluded

that there was no material to support the allegation against the Joint Secretary (RA) from the vigilance angle. The matter was thereupon referred to the Central Vigilance Commission for advice. The Central Vigilance Commission in their advice observed that a recordable warning may be administered to the complaint for levelling allegations against a senior officer without substantiating the same. Accordingly a warning was issued to the complainant on 26th February, 1970.

6.33. During evidence the Committee asked how many years Shri..... had before retirement when he was appointed as Joint Secretary, the Chairman, CBE&C replied:

> "Only a few months. By the time all the formalities were gone through and he was appointed, he had only seven months."

6.34. When asked as to how he was promoted when he was nearing the retirement, the Chairman replied:

> "I have gone through the entire file. All I can say is that everything including the fact that he was going to retire shortly was fully considered at the level by the Finance Minister. This point was glaringly brought to his notice."

6.35. The Committee pointed out that this particular officer was retiring shortly and also there had been an allegation against him. The Committee asked how in such circumstances he was promoted. The Chairman replied:

> "I would very respectfully submit that if a man's career is going to be spoiled merely because somebody is making an allegation against him even if it is not substantiated, I do not think that is correct. We do not go according to that. Here he had been cleared by the Central Vigilance Commission. All I am saying is that the Appointment Committee considered this case and the Finance Minister personally applied his mind and then they came to the conclusion that he could be given that post. This was finally cleared by the Appointment Committee in which the Prime Minister was a member."

6.36. The Committee asked whether all the facts including the allegations made against Shri .... were presented to the Cabinet Sub-Committee. The Chairman replied:

> "I cannot say off-hand, but I do not think so. Once certain allegations were made, an enquiry had been conducted.

When the Finance Secretary ordered the enquiry, he also went on record to say that in the light of the preliminary enquiry made by the Member, Central Excise, if there was sufficient case for a further enquiry, the case may be referred to C.B.I. But in the light of the enquiry made by the Enquiry Officer it did not appear to the Department that there was anything wrong in the conduct of Shri..... ..... But still the matter was referred to the CVC and they came to the conclusion that the matter should be closed. So, once a matter is closed. I don't think the Department should take the initiative of opening it again in connection with an officer's promotion or appointment. Moreover, the complainant, who was still at Gwalior, did not choose to make a complaint till April, 1968 and in his own complaint he says that these allegations refer to the period 1961-62. That is to say, he wanted to have six long years to make these allegations and, again, he is supposed to have made them when he was overlooked for Class I promotion."

6.37. The Central Vigilance Commission has recorded the following note in this connection:

"The Commission agrees that the allegations against Shri..... ....., which have a vigilance angle, have not been established. The technical violation of Rule 19(3) of the Conduct Rules, referred to in paragraph 10 of the Enquiry Officer's note may be ignored in the circumstances of this case."

6.38. At the time of the promotion of Shri....., the following communication was addressed to the C.V.C. by the Ministry of Finance on 1-2-1969:

"Please refer to C.V.C.s U.O. No. 8/93/68 V(II) dated the 14th January, 1969, under which the C.V.C. has agreed that the allegations against Shri .....having a vigilance angle have not been established. They have further advised that the technical violation of Rule 18(3) may also be ignored. The Government is now considering the question of appointing Shri ..... as the Director of Inspection (Customs and Central Excise). In this capacity he will be the additional Chief Vigilance Officer in respect of offices subordinate to the Central Board of Excise and Customs. We request the C.V.C.s concurrence for appointment of Shri.....as Director of Inspection (Customs and Central Excise)."

6.39. The following reply was sent by the C.V.C on 31-3-1969 to the Ministry of Finance:

> "Please refer to the correspondence resting with your D.O. letter Dy. No. 768-M(CX-K)/69 dated the 1st February. 1969 addressed to the Secretary Central Vigilance Commission regarding appointment of Shri..... as Additional Chief Vigilance Officer.
>
> The Commission concurs in the proposed appointment."

6.40. During evidence, the Committee asked about the name of the person who had represented J.K. Synthetics Ltd. in their Revision application before JS(R). The witness replied:

> "Shri N.L. Mehta represented the factory. He is a retired Collector of Central Excise."

6.41. When asked whether Shri Mehta secured permission of the Government to practise as a Consultant Advisor, the Ministry of Finance stated in a note that:

> "Shri N.L. Mehta retired from Government service on 28-2-59. Article 531-BB of the Civil Service Regulations imposing restrictions on the setting up of practice by revenue service officers was notified on 25-2-65. Since the period of bar provided for in this article was only two years and as this period was long past in the case of Shri N.L. Mehta, when this article was incorporated in the Civil Service Regulations, there was no need for them to obtain permission of the Government for practising as a consultant adviser."

6.42. The Committee asked in how many other cases Shri Mehta appeared before Shri ..... and that was the outcome of such cases. The Ministry replied:

> "The records are not maintained in a manner that would enable this information to be readily given. There are a few thousand Revision Application every year and all the files dealt with by Shri ..... as Joint Secretary (Revision Application) will have to be gone through to collect this information and this would obviously take a long time and considerable effort. An attempt was, however, made to go through the copies of orders that are readily available, and no other instance has come to notice where Shri N.L. Mehta appeared before Shri ..... for personal hearing."

6.43. The Committee desired the Ministry of Finance to check the last 1000 revision orders passed by the Joint Secretary (Revision Appeals) and find out how many cases were represented by the retired officials (Assistant Collectors and above) of the Department of Central Excise & Customs and furnish brief details of such cases including amount of duty involved, decision given including the duty remitted/enhanced, the date of retirement of these officers, the time gap between their retirement and first appearance for the revision appeals and whether these officers were given permission to do this job. In a note the Ministry of Finance furnished the following particulars:

> "Besides one thousand cases each in respect of Customs and Central Excise revision applications pertaining to year 1974, 300 appeals have been scrutinised and the requisite information in respect thereof is given in Appendices XIV and XV."

6.44. It would be observed from the particulars furnished (Appendices XIV and XV) by the Ministry of Finance that out of 21 revision applications in which the retired officers of the Customs and Excise Department had appeared on behalf of the petitioners, 9 revision applications were rejected by the Revisionary Authority and the remaining 12 appeals were fully or partially accepted. The brief particulars of these 12 cases are given below:

Case No.	Decision of the Collector	Decision of the Revisionary Authority
1	2	3
1	Imposed fines of Rs. 74,000 and Rs. 70,000 in 2 cases in lieu of confiscation of goods.	Remitted fine in full.
2	Imposed fine of Rs. 65,500.	Reduced the fine to Rs. 6,500.
3	Fine Rs. 1·80 lakhs.	Give benefit of doubt and allowed appeal.
4	Fine of Rs. 60,200 in lieu of confiscation of goods.	Reduced fine to Rs. 10,000.
5	Fine of Rs. 20,000 in lieu of confiscation of goods and penalty of Rs. 5,000.	Reduced the fine to Rs. 8,000 and penalty of Rs. 2,000.
6	Payment of duty and a fine of Rs. 2,000/.	Under the orders of the High Court the Board remitted the issue. Set aside the orders of Collector leaving him a liberty to readjudicate the case with the principles natural justice.
7	Penalty of Rs. 2,000/. and confiscation of goods redeemable on payment of a fine of Rs. 2,000.	Orders set side.

1	2	3
8	Penalty of Rs. 1 lakh and confiscation of goods with an option for payment of a fine of Rs. 1 lakh.	Fine in lieu of confiscation reduced to Rs. 20,000 and penalty reduced to Rs. 20,000.
9	Penalty of Rs. 1 lakh and of Rs. 28018·13.	Penalty reduced to Rs. 25,000. Appeal otherwise rejected.
10	Penalty of Rs. 1 lakh confiscation of goods with option to pay the fine of Rs. 35,000.	Fine reduced to Rs. 17,500. Appeal otherwise rejected.
11	Penalty of Rs. 4·5 lakhs and fine of Rs. 1·5 lakhs in lieu of confiscation of goods.	Penalty reduced to Rs. 2·4 lakhs and fine reduced to Rs. 40,000.
12	Penalty of Rs. 10,000 each on two persons and confiscation of goods.	Orders on personal penalty set aside.

6.45. The Ministry of Finance did not furnish the complete details required, particularly the date of retirement of the Customs & Excise Officers appearing on behalf of appellants and the time-gap between their retirement and first appearance for appeals/revision appeals. However, from the statement of appeals (Appendix XIV) the Committee find that one retired officer (consultant) appeared in a case though he was refused permission to practice as he had held All India Jurisdiction as Director Revenue Intelligance before his retirement.

6.46. The Committee noted that according to the rules/orders followed in the Income Tax Department, a person formerly employed as an Income Tax authority, not below the rank of Income Tax Officer, and who retired or resigned from such employment after having served for not less than three years in any capacity was not entitled to represent any assessee for a period of two years from the date of his retirement or resignation, as the case may be. During the course of evidence, the Committee asked why in order to ensure that the retired officers from the Excise & Customs Department do not abuse their previous position held in service by appearing for the appellants in the Departmental appeal and Revision cases, Government does not apply the Income-tax provisions to the Central Excise and Customs side also. The Finance Secretary replied:

> "We agree that the provisions in the Income-tax Act are salutary. We would certainly try to see whether a similar provision should be introduced in the Customs & Excise Act, also. We will certainly examine it."

He added:

> "While we would really be very grateful for any recommendations of the august Committee which would help to clear the atmosphere and which would have a salu-

tary effect, I would be failing in my duty if I do not bring to the notice of the Committee one or two aspects which you might like to consider. The first is that the question of private employment subsequent to retirement has been a perennial one. It has been examined time and again. The Santhanam Committee had recommended at one stage that it might be desirable to stop all commercial employment after retirement of Government officers but this was not found acceptable because it would be something which is not permissible under the Constitution. The second point is that under the Pension Rules there is a general bar of 2 years for taking up employment. If for the Revenue Services you would like to have a longer cooling off period than for the other Government employees, than that too will have to be justified to the hilt. There may be a case of reasonable classification or there may not."

6.47. The Chairman, CBE&C added further:

"Here I want to give one or two relevant points which generally come to our notice. One is that these officers are available to the various appellants and other trading community much more reasonably and cheaply than the advocates and lawyers who are literally fleecing. Secondly, it has been noticed that when these officers appear, since they already have the knowledge, the time they waste is very little. One thing is cheaper service to the community and other is little wastage of time.

6.48. The Customs and Central Excise Bar Association, New Delhi had submitted a memorandum to the Ministry of Finance regarding violation of the provisions of Advocates Act, 1961, by the retired officers of the Finance Ministry. The Committee desired to know the reactions of the Government on their representation. The Ministry of Finance submitted the following note:

"In their letter dated 31-7-72, the Customs & Central Excise Bar Association took objection to the retired Customs and Central Excise officers taking to consultancy work or the work of appearing before the Customs and Central Excise authorities on the following grounds:—

(i) These officers are not advocates and have not obtained a licence from the State Bar Council for practising

law. Under Section 29 of the Advocates Act there is only one class of persons entitled to practise the profession of law namely advocates. According to Section 33 of the Advocates Act, no person is entitlad to practise in any court or before any authority or person unless he is enrolled as an advocate under the Advocates Act. There is no provision either in the Central Excise Act or in the Customs Act or in the Rules providing for any other class of persons to practise the profession of law before the Customs & Central Excise Authorities.

(ii) There is a provision in the Government Servants Conduct Rules also that the Government Servant cannot take any employment, profession, or vocation without the permission of the Government.

The question whether persons other than advocates can represent parties in proceedings before the Collectors was considered in consultation with the Ministry of Law. It is true that in terms of sections 29 and 33 of the Advocates Act, only advocates are entitled to practise the profession of law. However, both these sections of the Act are subject to conditions of any other law or rules in this regard. Section 32 of the Advocates Act, however, permits the court, the tribunal or any authority to allow other persons other than the advocates to appear, before them in a particular case. Besides, it is a general common law approved by the Supreme Court in Revulu Subba Rao Vs. Union of India, Income-tax Act (1956) Supreme Court P. 604 that under the common law, a person has the right to do through an agent whatever he can do himself. Thus, a party has the right to appear before the Collector if he considered it fit, he can empower an agent to appear before him.

In this connection, it may be relevant to note that section 288 of the Income-tax Act specify the class of persons who can represent the assessee before any income-tax authority or the appellant tribunal as—

(i) an employee or assessee,

(ii) an officer of the scheduled bank with which the assessee maintains a current account,

(iii) a legal practitioner,

(iv) any accountant,

(v) any person who has acquired such educational qualifications as prescribed by the Board.

However, there is no such provision in the Customs Act and Central Excise and Salt Act. The proposal to make similar provision in these acts, is separately under consideration of the Board. Under the existing provisions of the Customs and Central Excise laws no restraint can be imposed on a person against whom action is being taken regarding the choice of a person to represent/define his case.

2. On the question whether retired officers should be permitted to take up consultancy work or the work of appearing before departmental authorities, the provisions of Article 531-BB of Civil Service Regulations which have been incorporated under Rule 11 of the Central Civil Service (Pension) Rules, 1972 would show that Government had considered this question and decided that this could be permitted, subject to the conditions and safeguards laid down in that rule. This rule prohibits a retired officer of the Indian Revenue Service or an officer or any other Central Service, Class I retired from the post under the Department of Revenue to set up practice either independently or as a partner of firm or a consultant or an adviser in matters relating to Income-tax, Customs duties, Central Excise duties, Estate duty, Wealth tax, or as representatives of assessees in proceedings under enactments relating to such taxes, before the expiry of two years from the date of his retirement, absolutely in any area which was within the local limit of his jurisdiction during the last three years immediately before his retirement. Thus, there is already a built-in safe-guard in this rule. There is no reason to change the policy in this regard. It is no doubt true that some retired officers do not mind taking very bad cases such as those of obvious smuggling or evasion and unblushingly putting forward false defences. On the other hand, there are quite a number of officers who present their cases in a straight forward and workman-like manner, which facilitates matters for the departmental authority concerned. Therefore, just as there are good and bad lawyers, there are good and bad departmental officers, and it would not be to the benefit of the public, or of the department, or finally of the retired officers themselves, to throw out the good with the bad."

6.49. This is a case where a firm was manufacturing crimped yarn of 76,90,100 and 105 deniers but had been clearing it under

the nomenclature 76/2, 90/2, 100/2 and 105/2 respectively, Crimping involved stretching the basic single yarn and making it zig-zag with another such yarn and thereafter giving a twist to it. Assessment of Central Excise Duty was made on the basis of single yarn since duty is attracted at the time of manufacture and not clearance. The firm, however, claimed that the assessment should be on the basis of 152, 180, 200 and 210 deniers, respectively, because the higher the deniers the lower was the rate of duty. The claim of the firm was rejected by the Assistant Collector and, on appeal by the Collector of Central Excise concerned on the ground that:

(i) by their own declaration in the case of sample forwarded for test the deniers were 76,90,100 and 105;

(ii) duty was attracted at the time of manufacture and not clearance;

(iii) crimped yarn fetched higher price;

(iv) the Chemical Examiner's report indicated that the assessment may be made on the basis of single yarn.

The firm thereupon went in revision to the Joint Secretary, (RA), Government of India, who in order No. 843 of 1972 allowed the Revision Application. With regard to the point (i) the Revisionary Authority held that "there is no doubt that ordinarily the petitioner's declaration does count, legally it has also to be established whether a tax is due and the conditions for the levy of such tax have been fulfilled". Referring to point (ii), it was pointed out that "it is a well established principle that while legally the goods become liable to duty on production the rules provide that the date of determination of duty is the date of removal of goods from the factory." xxx with regard to point (iii), it was stated "Crimped Yarn" falls under item 18 itself, and is therefore assessable in the same manner as the single straight yarn, at the time of clearance from the factory on the basis of the denier of the yarn in the form it is presented for clearances. xxx As for the argument based on the price factor, even if it were in principle to be correct it will not be correct in law to go behind the intention of a particular tariff item. An assessment can only be based on the language of the tariff as it exists." As regards point (iv), viz., the Chief Chemist's conclusion that in the plied yarn, the denier of basic single yarn is given primary importance and the resultant denier is added only as information in parenthesis, it was stated "it is evident that the conventional description followed in the trade only show the particulars of constituent yarn the

number of filaments and twists etc. ostensibly to help those who manufacture further goods to judge the suitability of the yarn in all its aspects, and it is not the resultant denier of the yarn as such."

On the basis of this order the Collector granted a refund of Rs. 1.37 crores for the period from 1 January 1970 to 16 June 1972 which was received by the Company during September/December 1972.

The orders of the Revisionary Authority of May 1972 have thrown up a number of important issues which in the opinion of the Committee call for serious attention by Government.

6.50. The Company had been pressing for assessment of crimped yarn on the basis of the denierage of the resultant yarn. It is pertinent to recall that on 22 February 1973, the Board clarified to all Collectors of Central Excise that "excise duty is on the production/manufacture of excisable goods and not on their sale. Since the single filament yarn as such is in a fully manufactured condition and is also marketed as such, it is immaterial for the purpose of levy of exicse duty whether it is removed as such outside the factory or taken to another portion of the factory for manufacture of crimped yarn." The Board further clarified that "Under Rule 9(1) of the Central Excise Rules, 1944 no excisable goods shall be removed from any place where they are manufactured whether for consumption or manufacture of any other commodity in or outside such place until the excise duty leviable thereon has been paid at such place."

The Committee feel that an authoritative ruling of the nature issued by the Board in February, 1973 should have in fact been circulated to all concerned much earlier. This would have obviated scope for any misunderstanding of the rate and incidence of duty. At any rate, when Govt. came to know in May, 1972 that in the revision orders certain interpretation was given in respect of the rate and incidence of excise duty on crimped yarn, this clarification should have been processed and issued in a matter of days rather than taking nine long months over it. This would have made for earlier issue of the notice of recovery of Rs. 4.45 crores from J. K. Synthetics Ltd. in the light of the Government's clarification and there would have been no question of granting the company a gratuitous refund of Rs. 1.37 crores as this would have been adjusted against the larger amount due from the company. The Committee would like this aspect to be thoroughly

investigated with a view of fixing responsibility for failure to take conclusive and timely action in 1972 to safeguard public revenue. The Committee would like to be informed of the precise action taken in pursuance of this recommendation.

6.51. The Committee also note that J.K. Synthetics Ltd. got a fortuitous benefit of Rs. 1.37 crores by way of refund as the duty paid at the higher rates had already been passed on by the manufacturers to the consumers. The Committee understand from Audit that the Company has not returned the sum of Rs. 1.37 crores as income in the Income Tax Return. This is a serious default, and the Committee wish that the matter is immediately investigated by Government. Action taken against the company to recover the taxes due and impose penalty should be intimated to the Committee within three months.

The Committee would also like to know why Government could not recover the amount from the balance lying in credit in the Personal Ledger Account as well as from securities furnished by the J.K. Synthetics Ltd. If this was done, at least part of the amount in arrears could have been recovered.

6.52. The Committee need hardly point out that it is the bounden duty of the Board and the Collectorate of Central Excise and Customs to pursue conclusively the question of the recovery of Rs. 4.45 crores for which J.K. Synthetics Ltd. are stated to have obtained a stay order from the High Court. The Committee would like to be informed of the concrete steps taken by the Board/Collectorate in the matter and the progress made in effecting the recovery of Rs. 4.45 crores.

6.53. It may be recalled that another company namely Modipon Ltd. Manufacturing multiple fold nylon filament yarn (crimped yarn) were paying excise duty on the basis of denier of the basic single yarn. After the revisionary order was passed in the case of J.K. Synthetics Ltd., Modipon Ltd. approached the Collector of Central Excise, Kanpur to assess their goods also on the basis of this decision. Though this request was not acceded to, Modipon Ltd. have gone in writ petition to the Delhi High Court and got a stay order. Consequent on this, arrears of Rs. 57.48 lakhs are stated to be pending recovery. The Committee stress that early and firm action should be taken to have the stay order vacated and recover the arrears of Rs. 57.48 lakhs.

6.54. Another issue meriting attention is whether the excise duty should bear a relationship to the price fetched by the product. While the Collector and Assistant Collector of Excise took the fact of higher price fetched for crimped yarn as a justification for levy of higher duty as for single yarn, the Joint Secretary (RA) held that "even if it were in principle to be correct it will not be correct in law to go behind the intention of a tariff item". This view appears to be much too narrowly legalistic. If the yarn of a higher denier including crimped yarn carries a higher value there is no reason why it should not be subjected to a higher excise duty rather than a lower rate of duty. The Committee need hardly point out that in equity and in reason the rate of excise duty should be tangibly related to the price of the commodity.

6.55. This case also throws up the need for fixing the excise duty on ad valorem basis rather than on ad hoc basis so that there is a clear rationale for the differential in the levy of duty and there is no scope for technical grounds to be availed of and a lower duty paid even when the price realised per unit is higher. The Committee would like Government to review the existing excise rates in order to place them as far as possible on ad valorem basis.

6.56. This case also raises a very fundamental question in regard to the stage where Excise Duty is leviable. Under Section 3 of the Central Excise Act, 1944, liability for excise duty arises as soon as a product is manufactured and become identifiable under the relevant tariff description. However, the manner of levy and collection prescribed under Rule 49 of the Central Excise Rules. 1944 provides that duty is chargeable only on the removal of goods from the factory premises or from a place of storage. It means that duty shall not be collected on excisable goods manufactured in a factory until they were about to be removed. In other words, Rule 49 does not determine the chargeable duty but allows postponement of the payment of duty till the removal stage.

The Committee feel that the duty becomes chargeable as soon as an exciseable goods was produced and should be realised immediately thereafter irrespective of the fact whether the same are removed immediately or after lapse of some time. While examining Paragraph 25(a) of the Audit Report (Civil) on Revenue Receipts, 1969, the Committee drew the attention of the Government to the Supreme Court judgment in the Union of India Vs. Delhi Cloth and General Mills in which the learned Judges had inter-alia

observed that 'Excise duty is on the manufacture of goods and not on the sale'. The Committee in Paragraph 1,217 of their 111th Report (4th Lok Sabha) noted the assurance of the Finance Secretary that legal opinion will be taken on this question and had desired that the matter should be referred to the Ministry of Law immediately and corrective action, as necessary taken in the light of the opinion. The Committee are unhappy to note that even after the lapse of 7 years, no concrete corrective action has been taken so far with the result that duty due is evaded and unintended advantage derived by manipulating the provisions of Rule 49 as has happened in the instant case. The Committee consider this delay as highly regrettable. They desire that the Government should act with promptness and apprise the Committee of the outcome of the action taken in the matter.

6.57. It is ironical that in case a decision comes to be given on a Revision Application by a Joint Secretary (RA), which, if implemented as in the present case, would result in loss of revenue on an unprecedented scale, Government do not have powers to review such orders and if necessary to revoke them. The representative of the Ministry of Finance agreed during evidence that there was need to have powers to revise, supersede or annul the decisions given by the Joint Secretary (RA) in excise cases. The Committee were informed that this question was under the consideration of Government. The Committee would like to know what follow-up action was taken by Government after realising this predicament as early as in 1972 on account of this judgement. The Committee also desire the Government to examine the feasibility of introducing suitable provision in the relevant Statute to make it obligatory on the part of Revisionary Authority to bring the matter to the notice of the Minister before pronouncing his final order for the refund of the duty already realised.

6.58. This case has given rise to another important issue. The company was represented by an officer, who after his retirement as Collector of Central Excise on 28 February, 1959 had started practising as a Consultant Advisor. The Committee were informed that he was not required to obtain prior permission for this, as Article 531-BB of the Civil Service Regulations imposing restrictions on the setting up of practice by Revenue Service Officers for a period of two years was notified only on 25 February, 1965. The Committee understand that in their letter dated 31 July, 1972, the Customs & Central Excise Bar Association took

objection to the retired Customs and Central Excise Officers taking to consultancy work or the work of appearing before the Customs and Central Excise authority. The Association pointed out that these officers are not qualified as advocates and have not obtained a licence from the State Bar Council for practising law. During evidence the Chairman, Central Board of Excise and Customs defended the practice saying that "these officers are available to the various appellants and other trading community much more reasonably and cheaply than the advocates and lawyers who are literally fleecing." A random sampling of the decisions of the Revisionary Authority in cases in which the departmental officers appeared before the authorities on behalf of petitioners has shown that in 12 out of 21 cases appeals were fully or partly accepted. In all these 12 cases, the penalties and fines wherever levied were either remitted in full or substantially reduced. These facts have a certain significance which, if it is not exactly sinister, is not particularly propitious. With all respect to the revisionary authority, any suggestion of the likelihood of their being influenced by the appearance and advocacy before them of former high functionaries in their own line requires to be firmly and in a principled fashion guarded against.

6.59. The Committee find that the Income Tax Act stipulates certain restrictions on practice by retired Income Tax Officials.* During evidence the Finance Secretary assured the Committee, "We would certainly try to see whether a similar provision should be introduced in the Customs and Excise Act also."

The Committee would like Government to take early action at least, as a first step, to make a provision on the same lines as for Income Tax Officers so that the Customs and Excise Officers are not authorised under the law to represent any private party for a period of two years from the date of retirement or resignation.

A better lasting solution to the problems outlined above would seem to lie in the creation of Appellate Tribunals for customs and central excise cases on the model of those set up in the Income Tax department. In this connection the Committee would recall the

*288 Notwithstanding anything contained in this section, if the authorised representative is a person formerly employed as an Income-tax authority, not below the rank of Income-tax Officer, and has retired or resigned from such employment after having served for not less than three years in any capacity under this Act or under the Indian Income-tax Act, 1922, from the date of his first employment as such, he shall not be entitled to represent any assesse for a period of two years from the date of his retirement or resignation, as the case may be.

following pertinent observations made by the Supreme Court in the case of Siemens Engineering and Manufacturing Co. of India Ltd. Versus the Union of India and others (Civil Appeal No. T1277 of 1968):—

> "In fact it would be desirable that in cases arising under Customs and Excise laws an independent quasi-judicial tribunal like the Income Tax Appellate Tribunal or the Foreign Exchange Regulation Appellate Board, is set up which would finally dispose of appeals and revision applications under these laws, instead of leaving the determination of such appeals and revision applications to the Government of India. An independent quasi-judicial tribunal would definitely inspire greater confidence in the public mind."

The Committee also reiterate their own observations in paragraph 1.133 of their 111th Report (4th Lok Sabha)—1969-70, to the effect that "Government should consider the question of setting up an Appellate Tribunal on the Customs and Central Excise side on the lines of Income Tax Appellate Tribunals."

Early decision in the matter and intimation thereof to the Committee is required within six months.

MANUFACTURE WITHOUT A CENTRAL EXCISE LICENCE

Audit paragraph:

7.1. The Central Excise Rules require every manufacturer of excisable goods to take out a licence before he conducts his business. Anyone engaged in the manufacture, production or storage of such goods without having applied for a licence is liable to a penalty not exceeding thrice the value of such goods or Rs. 5,000, whichever is higher, and also to pay such duty thereon as determined by the excise officer.

7.2. A factory manufactured "Plastic coated cotton fabrics" from January 1968 without a licence, though the product was excisable. An offence case was booked against the manufacturer in March 1969 and was compounded for Rs. 150 in March. 1970. The party applied for a licence in September, 1969, and the same was issued to him in October, 1969 and the manufacturer paid duty on his goods as "processed cotton fabrics". In February 1970, however, the department classified the product as "Cotton fabrics processed in any other manner", and the manufacturer paid duty on the product accordingly from December, 1969. The product was reclassified by the department in April, 1972, as "Cotton fabrics impregnated or coated with preparation of cellulose derivatives or other artificial plastic materials" as falling under tariff item 19-III and a demand was raised in June 1972 for Rs. 1,07,957 for the period 9th June, 1971 to 30th April 1972. No demand for differential duty consequent on such reclassification was raised on the quantities of goods cleared during the period 23rd January, 1968 to 8th June, 1971.

7.3. The omission having been pointed out by audit in September, 1972 the department raised, in January, 1973, additional demand for Rs. 1,78,259 for the period from 23rd January, 1968 to 8th June, 1971. The realisation of the demands is pending.

[Paragraph 37(a) of Comptroller and Auditor General of India's Report for 1972-73—Union Government (Civil)—Revenue Receipts—Vol. I—Indirect Taxes]

7.4. The Committee learn from Audit that a factory under the Central Excise Collectorate, Calcutta and Orissa started manufacture of "Plastic coated cotton fabrics" since 23rd

January, 1968 without obtaining a central excise licence as required under rule 174 of the Central Excise Rules. The product was classifiable under item 19 up to 29 February, 1968; under item 22-B from 1 March, 1968 to 28-2-1969; and under item 19 III from 1 March, 1968 onwards. The manufacturer applied for a licence on 9-9-1969 and the same was issued by the Department on 3-10-1969. However, duty was paid from 1-12-1969 treating the product as "Processed cotton fabrics" classifying the same under item 19-I(2). The department in its letter dated 1-11-1969 intimated the manufacturer that the said product should fall under tariff item 19 III and asked him to produce a sample. However, on 26-2-1970 the department classified the product as "Processed cotton fabrics-processed in any other manner" under item 19-(2) instead of item 19 III. Subsequently the Superintendent of Central Excise Unit No. II informed the assessee in a letter dated 6-4-1972 that the product should fall under item 19 III instead of being classified under item 19-I (2). Accordingly the licensee submitted a fresh classification list in May, 1972 classifying the product under item 19 III which was approved by the Assistant Collector, Calcutta IX division on 20-6-1972.

7.5. Consequent upon re-classification of the product under tariff item No. 19 III demand for Rs. 1,07,957.56 on account of differential duty for the period from 9-6-1971 to 30-4-72 was raised against the manufacturer on 7-6-1972. However, no demand or show-cause notice was issued for duty on the quantity cleared during the period from 23-1-1968 to 8-6-71. This omission was pointed out in audit through audit memo dated 11-9-1972 and inspection report issued on 27-10-1972. Thereupon a demand was raised on 19-1-1973 by the department for Rs. 1,78,259.88 for the period from 23-1-1968 to 8-6-1971.

7.6. The Committee desired to know on what basis and what level the classification was decided in this case. The Ministry of Finance stated in a note that:—

> "Initially the fabric was classified as 'Cotton fabrics processed in any other manner' on the basis of the test result of chemical analysis. Subsequently on receipt of Board's letter F. No. 59/1/71-CX-2 dated 9-2-72, the product was re-classified as "Cotton fabrics impregnated or coated with cellulose derivatives or other artificial plastic materials" falling under item No. 19-III. These classifications were done at Assistant Collector's level."

The Committee wanted to know the reasons for the delay in deciding the classification of the products in this case. The witness replied:—

> "In so far as the final decision on the classification is concerned, there was some delay and this arose out of certain doubts."

7.8. Subsequently, the Ministry of Finance furnished the following note in this connection:—

> "The party had declared the goods as 'water proofed. *Prima facie*, the goods were believed to fall under 19-III. As such there were doubts whether the product was coated fabric falling under Item 19-III or as fabric processed in any other manner falling under Item 19-I(2). The doubts could not be resolved due to divided technical opinion at different times as would be evident from the following:—
>
> In regard to the question of classification of the goods, the officers in Calcutta and Orissa Collectorate initially exercised their own judgment in the matter. However, the question regarding classification in respect of the product was under consideration of the Board. "Textile fabrics impregnated or coated with preparations of cellulose derivatives or other artificial plastic materials" was introduced as T.I. 22-B for the first time in 1968 *w.e.f.* 1-3-68. A doubt arise whether polythene laminated or coated fabrics would be covered by the description "impregnated or coated" fabrics. Collector of C.E. West Bengal made a reference enquiring whether jute fabric laminated with polythene film manufactured would be covered under the new item 22-B or it would continue to be covered under notification 53/65 dt. 20-3-65 issued under item 22A (Jute manufacturers). The problem was considered inconsultation with the Chief Chemist and the Jute Commissioner and decision was conveyed in Board's letter F.No. 26/9/68-CX.II dt. 13-8-69 that polythene laminated hessian or polythylene lined jute fabrics or any other fabric known by a similar term would not be covered by the new item 22-B and that it would continue to be covered by exemption Notification 53/65 dated 20-3-65 under item 22A. The main criterion which led to this decision was that the latest technical dictionaries made a dis-

tinction between 'laminated' fabric and 'coated/impregnated' fabric as in Fairchild's dictionary of Textiles. The definition "laminated fabric" was quoted as follows:—

"A fabric united to a plastic sheet, *i.e.* laminated jersey (booked and bonded with synthetic foam)".

In this connection the opinion dated 28-7-69 of the Chief Chemist, Delhi and the Tour note of Deputy Chief Chemist, Calcutta-Custom House, are enclosed. * The opinion of Deputy Chief Chemist, Calcutta Custom House was also relied upon by the Jute Commissioner, Calcutta. The Deputy Chief Chemist who visited the factory of M/s. xxx who manufactured the same type of goods and by an identical process of manufacture, as M/s. xxx opined that the fabrics manufactured by the former factory are to be considered as laminated fabrics obtained by transfer of hot film of plastic from roller to hessian or cloth.

In view of the instructions dated 13-8-69 and opinion expressed by chemical Examiner, Calcutta, the local officers, perhaps classified the products under item 19I(2) as "Cotton fabrics processed in any other manner."

On a reference from CCE, Kanpur, the specific question of classification of the "polythelene film laminated cotton fabric" came up for further consideration. After consulting the Chief Chemist a clarification on the subject was circulated to the Collectors *vide* Board's letter F.No. 26/9/68-CX.II dt. 15-3-70 confirming that such products were classifiable under item 19-I(2) as "cotton fabric processed in any manner."

It, however, appeared that despite the Ministry's letter dated 15-3-70, practice regarding classification of such product varied in different Collectorates. *Vide* their letter dated 8-3-71, M/s. xxx brought to the notice of the Board that their product was being charged under item 19-(III) whereas the same product in other Collectorates like Baroda, Mardas, Kanpur, C&O and Nagpur was being assessed under item 19-I(2). In view of the differing interpretations and practice in the matter of classification the entire matter was re-examined in detail in Board's Office in consultation with the Chief Chemist. The Board

*Not reproduced.

was advised that there was no clear line of demarcation between lamination and coating; that coating is a wider term covering lamination technique and polythelene film was for all purposes permanently fixed in the base fabric so that it could not easily be separated. In view of the above factors, tariff advise was issued *vide* Board's letter F. No. 50/1/71-CX. II dated 9-2-1972.

The above sequence of events will indicate the reasons for delay in resolving the matter before its final classification."

7.9. An offence case was booked against the party in March, 1969. The party applied for a licence in September, 1969. The Committee desired to know whether the factory was manufacturing the goods between March and September, 1969. In a note the Ministry of Finance replied:—

"Yes. The factory was manufacturing the goods after detection of the offence and before receipt of A.L. 4." *

7.10. The Committee then asked the extent of penalty imposable for offences of this kind under the procedure in vogue in the respective periods from 23-1-1968 when the party started manufacturing the goods upto 8-9-1969 when he applied for the licence. In a note the Ministry of Finance stated:—

"S.R.P. was introduced for this item w.e.f. 1-8-69. Prior to S.R.P. offence of manufacturing without licence could either be compounded or prosecuted in the Court. Having regard to the small amount of duty involved till date of detection, alternative of "compounding the offence" was preferred by the Assistant Collector. Under the S.R.P. since the commodity was covered by S.R.P. provision, both departmental adjudication and prosecution could be pursued. 173-Q is the relevant provision which provides penalties under S.R.P. to the extent of three times the value of the offended excisable goods or Rs. 5000/- whichever is greater."

7.11. During the course of evidence the Committee asked as to why the offence was not booked under Rule 173-Q for the period from 1-8-1969 when S.R.P. was introduced for this item upto 8-9-69

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* Application for licence to manufacture goods.

when the party applied for licence. The witness replied:—

"In this particular case the offence was booked in March, 1969 and therefore it has to be judged from that point of view and not having regard to the fact that the S.R.P. came into effect in August, 1969. In March, 1969, it was open to the Department either to prosecute or compound the offence. This decision was to be taken at appropriate level having regard to the revenue involved as on that particular date, apparently the authority concerned decided to go in for compounding the offence."

7.12. In a note subsequently the Ministry of Finance stated that:

"a compounding notice under Rule 210-A of C.E. Rules for manufacturing excisable goods without licence was served on the party on 27-10-69. The case was compounded by the Assistant Collector after payment of compounding fee of Rs. 150 by the party. Duty charged from the very beginning on the product was duly paid. No separate offence case, as such was booked for August and September, 1969 when SRP was introduced presumably due to the fact that the period was covered by the compounding notice served on 27-10-69."

7.13. During the evidence the Committee asked if the Ministry of Law was consulted as to whether Rule 173-Q could be applicable in this case or not, the Finance Secretary replied:

"At that time we did not proceed under S.R.P. rules and make out a case. Then the Department ferreted out this case and brought those persons to book. However, we shall certainly find out the legal position from the Law Ministry".

7.14. Subsequently the Ministry of Finance stated in a note that:—

"In this connection it may be mentioned that the S.R.P. provisions of Rule 173-Q did not apply to the offence case booked against the party on 26-3-69 for producing goods without licence during the period 23-1-68 to the date of the detection of the goods. With effect from 1-3-69, item relating to "Cotton fabric impregnated or coated with preparations of cellulose derivatives or of other artificial plastic materials" was transferred from a comprehensive

item 22-B to 19(III). Self Removal Procedure was extended to this item (*i.e.* item 19) w.e.f. 1-8-69 only. As such the offence booked on 26-3-69 would not be covered by the penal provisions prescribed in Rule 173-Q. The offence was one of manufacturing without licence and was, therefore, a contravention of Section 6 of the Act. Hence, there were only two alternatives available under the provisions of the Central Excises & Salt Act, namely, (i) launching prosecution against the party in a court of law or (ii) compounding the offence under Rule 210 A. Since the amount of duty involved till the date of detection of the case was Rs. 1517.14 only, the Asstt. Collector adjudicating the case did not perhaps think it fit to launch prosecution against the party. As such, he compounded the offence. Keeping in view the small amount of duty involved a compounding fee of Rs. 150/- was considered adequate by him. Collector has reported that no separate offence was booked under S.R.P. presumably due to the fact that the period was covered the compounding notice served on 27-10-69. Collector did not consult the Ministry of Law nor did he refer the question to the Board for consideration here. Offence under the S.R.P. could perhaps be booked. Ministry of Law is being consulted now and suitable instructions will be issued as per their advice."

7.15. Subsequently, the Ministry of Finance furnished a copy of the opinion given by the Ministry of Law, an extract of which is reproduced below:—

"It would appear that in this reference the manufacturer in question had proceeded to manufacture goods without a licence for a period prior to the introduction of the Self Removal Procedure and rule 173Q, as well as for a period after the introduction thereof. The offence would appear to have been registered prior to the introduction of the S.R.P. The Assistant Collector had compounded the offence in terms of Rule 210A, not-withstanding the fact that he could have proceeded under Rule 173Q as well for the period after the introduction of the said provision. The question would appear to be if it was competent for him to have invoked rule 173Q for the period after the introduction of the S.R.P. and procedure to penalise the manufacturer thereunder.

It would appear that he could have proceeded to act in terms of Rule 173Q also for the period during which the offence was committed after the introduction of the S.R.P. and the said rule.

There is of course no question of any prosecution for the said offence at this distance of time as already advised by us."

7.16. About the present position regarding the recovery of the demand, the Ministry of Finance stated as under:—

"Two demands were raised for the period given below:—

(i) S/C notice issued on 19-1-73 for the period 23-1-68 to 8-6-71 (under Rule 10-A). Rs. 1,78.259

(ii) S/C notice issued on 7-6-72 for the period 9-6-71 to 30-4-73 (under Rule 10). Rs. 1.07,957

As regards demand at (i), after confirmation of the amount by the Assistant Collector in his adjudication order No. 46/19/73/2-AC/73 dt. 19-4-73, the party went in appeal and the Appellate Collector has set aside the demand as time barred *vide* his order dated 3-1-74 without going into merits of the case. Regarding demand (ii), the party has gone in appeal against Asstt. Collectors's order No. 49/19/72/3-AG/73 dt. 19-4-74 confirming the amount. The case is still pending and the Appellate Collector has issued stay of recovery of the amount on 7-11-73."

7.17. The Committee note that a separate tariff item (item 22-B) for 'textile fabrics impregnated or coated with preparation of Cellulose derivatives or other artificial plastic materials' was introduced for the first time w.e.f., 1 March, 1969. A doubt arose whether 'polythene laminated or coated fabrics' would be covered by the description "impregnated or coated" fabrics. On the analogy of the instructions issued by the Board on 13 September, 1969 and the opinion expressed by the Chemical Examiner, Calcutta in regard to 'Jute fabric laminated with polythene film' the local officers classified the product under 19-I(2) as 'Cotton fabrics processed in any manner'. The specific question of the classification of 'polythene film laminaed cotton fabric' was however considers further in consultation with the Chief Chemist and a clarification was issued by the Board to all the Collectors on 15 March, 1970 confirming that such products were classifiable under item 19-I(2) as 'Cotton fabrics processed in any other manner.'

The Committee are concerned that in spite of the issue of these unambiguous instructions by the Board, the product continued to be classified differently in various Collectorates and this came to the notice of the Board only when a party complained on 8 March, 1971 that a product identical to theirs was being classified in one of the Collectorates under item 19-III. Even thereafter, surprisingly, the Board spent nearly a year in ascertaining the practice obtaining in various Collectorates, and advised them on 9 February, 1972 to classify such fabrics as "Cotton and impregnated or coated with preparation of Cellulose derivatives" under item 19-III. The re-classification order appears to have been issued in April 1972. The Member, Central Board of Customs and Excise admitted during evidence that "there was some delay and this arose out of certain doubts." The Committee regret that this delay accounted for the additional demand for Rs. 1,78,259 for the period 23 July, 68 to 8 June, 1971 being raised later on, and found unrealisable on account of being time-barred.

7.18. The Committee find that there are no standard criteria, precisely formulated, for the classification of different products by the various collectorates. The same product is found sometimes classified differently in various Collectors in spite of the instructions issued by the Board on 15 March, 1970. The Committee, therefore, recommend that there should normally be a continuous exchange of information between the various Collectorates on important issues relating to classification, levy of duty, assessment etc., and also that the Board should ensure that its instructions are well thought out and precise and its inspecting machinery is strict and efficient.

7.19. The Committee note that having regard to the recommendations made by them in their 212th Report (5th Lok Sabha), Government have established in June, 1974 a Central Exchange for Assessment Data. The functions of this Central Exchange are mroadly to ascertain the diverse practices actually obtaining in regard to classification in various Customs Houses and to bring about uniformity to the extent possible. It may be worth while either to enlarge the scope of this Central Exchange to cover excise or to have a cell exclusively for excise, whichever may be a more effective and economic arrangement. The Committee would like Government to examine this matter and intimate the decision taken and concrete measures initiated with a view to uniformity in the classification of excise matters in the Collectorates.

7.20. The Committee note that the offence committed by the party was compounded under Rule 210 A for a paltry sum of Rs. 150 only

on the consideration that the duty involved was Rs. 1517.14 which works out roughly to 10 per cent. The Committee need hardly point out that the quantum of compounding fee should should been co-related to the offence involved also and not merely the duty involved. As the Assistant Collector did not resort to the other alternative in this judgement of launching prosecution against the party, it is not clear to the Committee as to why a higher amount of fine permissible under the Rules could not be imposed.

7.21. The S.R.P. procedure was extended to this item with effect from 1 August, 1969 and all offences under this procedure were to be penalised under the provisions of Rule 173-Q which inter alia provides for penalty not exceeding 3 times the value of excisable goods or Rs. 5.000 whichever is greater. On an enquiry as to why the party was not penalised under Rule 173-Q, the Committee were informed that the Collector did not book any separate offence under S.R.P. "presumably due to the fact that the period was covered by the compounding notice served on 27th October, 1969". The Collector did not obtain any legal advice nor did he refer the question to the Board for consideration. Subsequently, at the instance of the Committee, the Ministry of Finance consulted the Ministry of Law and they opined that the manufacturer could have been proceeded against in terms of Rule 173-Q also for the period from 1st August, 1969 onwards when the offence was committed after the introduction of S.R.P. The Committee are of the view that the Collector failed in his responsibilty since he neither referred the matter to the Board for advice nor obtained legal opinion before compounding in the office. Any rectificatory steps, if taken, in this regard should be intimated to the Committee.

7.22. Another interesting aspect of the case is that even after an offence case was booked against the party in March 1969, it continued to manufacture goods before the receipt of licence. The S.R.P. was introduced for this item with effect from 1 August, 1969. Since the commodity was covered by the S.R.P. provisions, both departmental adjudication and prosecution could simultaneously be pursued. Had provisions of 173-Q been applied, the penalty could have been to the extent of three times the value of the offended excisable goods or Rs. 5,000/-, whichever was greater.

7.23. The Committee note that even though the charge of manufacturing excisable goods without a license was booked against the party on the 26 March, 1969, the compounding notice was issued only on the 27 October, 1969. It is surprising that the Department took 7 months to issue the notice called for under the rules. The

Committee feel that the issuance of such notices should invariably be done without delay and would like to know the reasons for the gross delay in the present instance and also the action taken against the defaulting officials.

7.24. The Committee are concerned to note that the Government have been put to a substantial loss of Rs. 1,78,259 for the period from 23 January, 1968 to 8 June, 1971, in excise revenue in this case on account of what is called the operation of the time bar. The Appellate Collector has set aside the demand without going into the merits of the case. In regard to similar cases, the Committee in paragraph 19.9 of their 177th Report (5th Lok Sabha) had recommended that the Government should study the reasons for the losses due to the so called 'time-bar' and the reasons for not taking timely action to issue show cause notices/demands. The Committee reiterate the desirability of expediting that study and of remedial measures for avoiding losses in duty solely on the ground of technical lapse of time.

7.25. The Committee learn that for the demand of Rs. 1,07,957 on account of differential duty for the period from 9 June, 1971 to 30 April, 1972, the party had gone in appeal against the order of the Assistant Collector. The Committee would like to be informed of the decision of the appeal in due course.

LOSS OF REVENUE DUE TO MISDECLARATION

Audit Paragraph:

8.1. During the period between March, 1965 and May, 1968, a textile mill cleared some varieties of cotton fabrics paying duty at the concessional rates by declaring the fabrics as controlled cloth. The department did not verify the correctness of the declaration, but permitted the concessional rates of duty relying on the instructions of the Ministry of Finance issued in October, 1964, which *inter alia* stated that the central excise officers need only verify the requisite markings required to be made on the cloth. In April, 1968, an internal audit party of the collectorate found that these clearances not being controlled cloth, were not eligible for the concessional rate of duty. Demands for the differential duty to the extent of Rs. 90,013 were, however, issued by the Assistant Collector of Central Excise in November, 1968 and September, 1969, but the demands were decided as barred by limitation, by the Collector of Central Excise, on appeal by the assessee.

8.2. These instructions of 1964 were issued at a time when there was no difference in the rates of duty between controlled and other cloth. When these clearances took place, the department exercised physical control over the goods. The Ministry of Finance issued instructions in April, 1967 that Central Excise Officers be alerted about these possibilities and that past assessments should be reviewed and a report sent to them. Further, irregularities brought to light were also required to be reported immediately to the Textile Commissioner. The collectorate, however, sent a 'Nil' report to the Central Board of Excise and Customs in August, 1967.

8.3. Thus there was failure to exercise physical control over the clearances when concessional rates of duty were prescribed for controlled cloth. By the time the department found out the irregular clearances, the demand for differential duty could not be sustained due to operation of time-bar. The duty lost on this account for this period was Rs. 90,013.

[Para 38 of the Report of the C.&A.G. of India 1972-73—Indirect Taxes (Union Excise Duties)]

8.4. Explaining the scheme of price stamping of controlled cloth and the instructions issued from time to time on the scope of excise

checks on such cloth, the Ministry of Finance have stated in a note:

"The production and Price Control Scheme was introduced with the object of ensuring an adequate supply of popular varieties of cotton fabrics for consumption by the common man at a reasonable price. In this connection Noti. Nos. S.O. 3656, S.O. 3657 and S.O. 3658 dated 13-10-64 were issued by the Ministry of Commerce, Office of the Textile Commissioner, Bombay at the time of introduction of the scheme.

* * * * *

3. In connection with the implementation of the above Scheme it was agreed to between this Ministry and the Ministry of Commerce that the Central Excise Officers would not be required to enter into any controversy over correctness or otherwise of price and or description of the fabrics sought by the manufacturers to be cleared as controlled cloth under the above scheme. Even after the prescription of concessional rates of duty in respect of controlled varieties of cotton fabrics, the C.E. Officers, in accordance with the instructions contained in this Ministry's letter F. No. 12/66/64-CX.II, dated 21-10-64 (Appendix XVI) permitted the manufacturers to avail of the concessional rates of duty in respect of all those varieties of cotton fabrics which were declared by them to be controlled cloth.

4. Sometime during the year 1966, certain manufacturers had been detected to have availed of the concessional rates of duty in respect of those cotton fabrics also which did not conform to the description of controlled cloth as notified by the Textile Commissioner from time to time. Instructions were, accordingly, issued to the Collectors of C. E. under letter F. No. 1/26/66-CX. II, dated 29-4-67 (Appendix XVII) to alert the officers. It was also desired that as and when irregularities were brought to light, they should also be immediately reported to the Textile Commissioner for immediate action in addition to action being taken against the licensees for evasion of duty under the C. E. Law.

5. In order to lay down a procedure which may eliminate scope for any mis-declaration by mills to clear cotton fabrics in the garb of controlled cloth when their constructional particulars are outside the specifications prescribed for controlled cloth, a meeting was held on 11-4-72 which was attended by the representative of this Ministry, Ministry

of Foreign Trade (who were then concerned) the Central Revenues Control Laboratory and the Textile Commissioner's Organisation. The decision arrived at that meeting in brief, were—

(a) There would be no difficulty now for the Textile Commissioner's Organisation which has also six regional offices, to under-take checks of all 'C' forms for their conformity to the specifications laid down for controlled varieties of fabrics and in case deviations are noticed, to bring such instances to the notice of the C. E. Officer-in-charge of the mill.

(b) As revenue officers, it would not be proper for the C. E. Officers to completely divest themselves of the responsibility of exercising checks to ensure correctness of their assessments. Thus it would be a part of the responsibility of the C. E. officers to draw samples of such cotton fabrics periodically at random and forward the same to the Chemical Examiner for necessary test, in order to ensure that the particular fabrics conform to the specifications of controlled fabrics. Any instances of misdeclaration coming to the notice could be brought promptly to the notice of the Textile Commissioner for remedial action as deemed fit.

While forwarding a copy of the minutes of the above meeting, (Appendix XX) to the Collector C. E., it has been made clear that it is now a part of the responsibility of the C. E., Officers to draw samples of controlled fabrics for purposes of test in order to ensure that the fabrics conform to the specifications prescribed for controlled fabrics."

Responsibility of the Central Excise Officers under instructions issued in 1964.

8.5. The Committee called for a copy of the instructions issued in 1964. It would be seen from the instructions (Appendix XVI) that while it was no doubt stated that it was not the function of the Central Excise Officers to check whether all the "Controlled Cloth" produced by a manufacturer has been declared as such or whether the prices intended to be stamped on the controlled cloth was in accordance with the relevant notifications or other orders that may be issued by the Textile Commissioner on the subject, the instructions did not completely absolve the Central Excise Officers from their

responsibility as the following extracts of those instructions would show:—

(a) "A watch is required to be kept on the 'controlled cloth' received by independent processors to ensure that such cloth is duly stamped after being processed."

(b) "Any irregularity that may come to notice is required to be promptly reported (under registered post) to the Regional Office of the Textile Commissioner under intimation to the Enforcement Branch of the Textile Commissioner's Headquarters at Bombay."

(c) "The function of the Central Excise Officers posted to composite mills is to ensure that there is marking of a price and other items on a fabric described by them as one of the four varieties of controlled cloth. If any Central Excise officer has any information of any malpractice prevailing with regard to price control, he has to pass on the information to the Textile Commissioner."

(d) "The working of the above procedure may be carefully watched and any difficulties found or envisaged to be experienced should be referred to this Ministry demi-officially."

8.6. The instructions issued by the Ministry of Finance in October 1964 referred to above had *inter alia* stated that Central Excise Officers need only verify requisite markings to be made on the cloth and that they should not enter into controversy whether a fabric is shirting or long cloth or dhoti or saree. As these instructions appeared to be somewhat peculiar, the Committee desired to know the background to those instructions. In a written note the Ministry of Finance have explained the background thus:—

"(i) intimation about production and price control scheme being introduced by the Ministry of Commerce was received through the Collector of Central Excise, Madras on 16-10-64.

(ii) As indicated in the then DS (CX)'s note dated 20-10-64, the role of Central Excise Officers with a view to assist the Ministry of Commerce in enforcement of their scheme was discussed by the then Chairman of the Board with the Ministry of Commerce. The following portion of that note is of particular relevance:

'It was clearly explained that the Central Excise Officer posted to the factories will not get into controversy over correctness of price or description of the cloth'."

(iii) Telegraphic instructions that were issued to the Collectors of the Central Excise on 20-10-64 were as dictated by the then Chairman. These instructions could not be shown to the then Secretary as he was not available. His approval was, however, subsequently obtained as indicated by the then Chairman in his note, dated 24-10-64.

The above is the background in which the instruments were issued."

Delay in issue of revised instructions in 1967

8.7. In February 1965 concession in excise duty was given for the controlled cloth. This changed the entire situation. After the introduction of the concessional rates instances were noticed where certain varieties of cloth not conforming to the specific controlled varieties were cleared as controlled varieties availing of the concessional rates. The Ministry of Finance, therefore, issued instructions on 29-4-67 (Appendix XVII) in which local Central Excise Officers were directed to be alert in this respect and to report the irregularities to the Textile Commissioner as also to take action against the licensees for evasion of duty under the Central Excise law. A report was required to be sent to the Ministry regarding the review of past assessments and the action taken on the above cited letter.

8.8. The Committee asked during evidence as to why the instructions issued in 1964 were not reviewed immediately after February 1965 since the tendency of the mills would naturally be to try to avail of the new concessions on excise duty of controlled cloth. The representative of the Ministry of Finance replied during evidence:

"It is a fact that though the instructions issued in October 1964 did need a review, the actual instructions were issued by Government and the Board only on the 29th April, 1967."

8.9. Subsequently, the Ministry of Finance furnished the following note:—

"There is nothing on record to show the reasons for which revised instructions were not issued in 1965 itself. However, the following considerations may have possibly influenced the Board in allowing the instructions issued October, 1964 to continue to hold the field:—

(i) Production and Price Control Scheme that was introduced by the Ministry of Commerce with effect from 20-10-64 was to ensure adequate supply of popular varieties of cotton fabrics for consumption by common man at reasonable price. As essential feature of this scheme was that the manufacturers were required to furnish detailed

constructional and other particulars of cotton fabrics declared by them to be "controlled cloth" to the Textile Commissioner in the prescribed form. Check over the correctness of such declarations made by the manufacturers was intended to be exercised by the Textile Commissioner and it was hoped that in the event of any such declaration being found to be incorrect, the fact would be intimated to the Central Excise Officers concerned enabling them to take necessary action to recover the due amount of duty.

(ii) If the manufacturers for one reason or the other were unable to conform to the proscribed norms of controlled cloth, they could, as was well known to the trade approach the Textile Commissioner to issue deviation orders, as he had the authority to permit a particular manufacturer to treat cotton fabrics of any description as "controlled cloth".

(iii) It was not expected of the bigger and reputed mills to resort to clearing uncontrolled varieties of cotton fabrics as controlled cloth as the fabrics manufactured by them could fetch better price if marketed as uncontrolled fabrics and thus it should not have been a profitable proposition for them to declare uncontrolled varieties as controlled cloth merely with the object of deriving benefit of duty concession.

The fact, however, that the above expectations did not prove to be correct and that in certain cases uncontrolled varieties of cotton fabrics, even though not covered by the deviation orders of the Textile Commissioner, were found to have been cleared as controlled cloth is a different aspect of the matter."

8.10. During the course of evidence the representative of the Ministry of Finance gave the reasons for the delay thus:—

"First, the particular case (brought to the notice by the Audit para) was being looked into; and then it came to the notice of the officer dealing with the subject that there was need to issue fresh instructions. My only defence is that after it came to our notice, we had detected 31 cases."

8.11. The Committee enquired what were the circumstances which led to the issue of revised instructions in April, 1967. The witness from the Ministry of Finance stated:

"As a consequence of several instances of malpractices coming to notice, it came to our notice through a draft Audit para

in August 1966 not in this particular case but in some similar case."

8.12. When asked to furnish the details of the mal-practices detected, the dates when these were detected and the reasons for taking a long time to issue instructions, the Ministry of Finance stated in a note as follows:—

"In a draft audit para received from the Comptroller and Auditor General sometime in August 1966 for inclusion in the Audit Report Central (Civil) on Revenue Receipts 1967, it was reported that in two textile mills cotton fabrics which did not answer to the description of controlled cloth had been allowed duty concession incorrectly.

It was found to be correct that particular varieties of printed shirting and chint manufactured by M/s. New Manekchowk Spg. and Wvg. Mills, Ahmedabad and of split poplin bleached manufactured by New Rajpur Mills Co Ltd., Ahmedabad did not conform to the prescribed definition of shirting but were cleared as controlled cloth on payment of concessional rate of duty. Even though the due amount of duty in respect of both these cases amounting to Rs. 6,589.35 was recovered in full from the manufacturers, yet revision of the instructions issued in October 1964 seemed to be a desirable step. Thus, after our reply to draft audit para had been finalised in consultation with Collector of Central Excise concerned and sent to the Comptroller and Auditor General some time towards the end of November 1966, the matter was brought to the notice of the Textile Commissioner and an enquiry was got made from the Directorate of Inspection (Customs and Central Excise) for examining the matter on an all India basis and recommending ways and means which might be administratively practicable and yet effective so as to avoid recurrence of the above type of cases. A copy of the report, dated 1st April, 1967 received from the Directorate is enclosed (Appendix XVIII). It will be seen that the Directorate had given an indication of the aspect mentioned (as mentioned earlier above) and also observed that the responsibility in that regard must be allowed to rest with the Textile Commissioner. As a measure of safeguard drawal of samples had been suggested.

Despite the fact that modification of the earlier instructions had not been considered by the Directorate to be called for, the Board ordered issue of revised instructions. These

instructions were issued in letter F. No. 1/26/66-CX-II, dated 29th April, 1967."

Malpractices discovered prior to the issue of 1967 instructions

8.13. The Committee referred to the cases (31 in number) detected by the Excise Department on their own and desired to know the details of those cases including the duty involved, demands raised, penalties imposed and the position of the recovery. The Ministry furnished a statement which is given at Appendix XIX.

8.14. Of these 31 cases two cases may be specifically mentioned. In one case J. K. Cotton Spinning and Weaving Mills, Kanpur, had shown different composition in Central Excise records and different particulars were discovered from their private records. The amount of duty involved is Rs. 14,35,209.35. The case is pending adjudication.

8.15. In another case, Modern Mills No. 2 Bombay had cleared long cloth as controlled cloth during the period from 25th June, 1966 to 28th December 1967. The cloth had answered the description of controlled long cloth as defined by the Textile Commissioner under the Textile Control Order, 1948 and it was stamped as such and assessed accordingly. Subsequently, however, it was noticed that most of the cloth in question was supplied by the Mill to embroidery manufacturers and was not eligible to the concessional excise duty. As per the Textile Commissioner directions contained in his Circular No. CC/Tech/Pol. 15, dated 27th February, 1965, it was the Mills' responsibility to mark the controlled cloth going for industrial use—as "For Industrial use—not for sale" and not to clear it as Controlled Cloth. It was by the issue of Notification No. 51/71-CE, dated 15th May, 1971 that a specific provision was made that the exemption on the controlled cloth supplied to an industrial concern was not admissible unless such concern certified that the cloth would be used exclusively for wholesale purposes. A duty demand for Rs. 37716.81 for the period from 25th June, 1966 to 28th December, 1967 was confirmed both at the original and appellate level but as per Government of India's order No. 1664 dated 27th December, 1973 the demand prior to 20th November, 1967 was treated as time barred. However, in pursuance to the above revisionary order a fresh demand for Rs. 5346.20 was issued and it was honoured by the Mill. It has been added that the Government of India in the aforesaid order had held "that the lower duty was levied on account of the statement made by the Mills."

Failure to exercise watch after the issue of instructions in 1967

8.16. The Internal Audit Party of the Excise Department during the course of their audit of the accounts of M/s Dewan Bahadur Ram

Gopal Mills (D. B. R. Mills) Secunderabad pointed out in April 1968 that the manufacturer had availed of concessional rates in respect of some varieties of cloth declared as controlled cloth which were in effect not controlled and consequently the concessional rates were not admissible. It was noticed by Audit that the Collector had sent a nil report to the Central Board of Customs and Excise in response to the latter's circular of August, 1967 alerting the Excise Officers to be vigilant against any malpractices in production of price controlled varieties.

8.17. The Committee desired to know how the Collector sent a nil report. During the course of evidence, the representative of the Ministry of Finance replied:—

> "This is a fact that 'Nil' figure was reported. But I am not satisfied with the answer given by the Collector. I am looking into this aspect."

8.18. When asked on what date the action had been initiated in this respect, the witness replied:—

> "We have to collect papers. He gave the report on the basis of the report of Assistant Collector. I find no satisfactory answer to this paragraph. The Collector will be fixing responsibility and I shall then see whether the responsibility has been properly fixed.....There ought not to be much delay. It happened in 1968 and the Collector was told in 1973; he had to collect all the old records."

8.19. The Committee then asked for a choronological note stating the action taken in the matter of fixing responsibility, reasons for delay, if any, at each stage. The Ministry of Finance furnished the following note:

> "On receipt of the Draft Para on 20th December, 1973 it was forwarded to the Assistant Collector, Hyderabad I Division on the same day by the Collector. An incomplete report was received in this connection by the Collector. After some correspondence and after receipt of additional information, a fairly comprehensive report was received in the Ministry from the Collector under his letter dated 3rd June, 1974. Even at this stage the Divisional Office File DA Dis. No. V/19/30/45/67-MP-2, an important document was not made available in Collectorate's office. Since most of the files were called for examination in Ministry's office which were sent by Collector on 4th June, 1974 it was not possible to proceed with the fixation of responsibility of individuals.

Even so, efforts continued to be made to have some idea of possible responsibilities on one or more of the following lapses:—

(a) failing to ensure that at least after 18th April, 1968 no un-controlled cloth was cleared as controlled cloth.

(b) failing to avoid that demands in respect of erroneous assessments in March-April, 1968 did not get time-barred.

(c) failing to report correct position, by the A.C's office to the Collectorate's office, and by the Collectorate office to the Board after April, 1967, in respect of past clearances.

(d) failing to report the matter to the Textile Commissioner.

The Division Office File DA. Div. No. V. 19/30/45/67-MP 2, referred to above is now traced. An old file of the Sector Officer has also been traced only now. In view of the fact that the Collector's office file DB. Dis. No. 19/30/16/67, was destroyed before its retention period expired, the new files are indispensable for any further action. On receipt of records from the Ministry, the Collector has reported that it has been possible to draft charges against certain officers."

8.20. In another note the Ministry of Finance have stated as follows:—

"As regards the responsibility fixed for the loss of revenue, it has been reported that the following officers have been held responsible for the lapses:

(a) Two Inspectors were in charge of the factory during the period 27th July, 1967 and from 20th July, 1968 onwards respectively. They have been held responsible for failing to ensure that at least after 18th April, 1968 no un-controlled cloth was cleared as controlled cloth, and for failing to avoid the demands in respect of erroneous assessments in March-April 1968 against time-barred.

(b) One of the two inspectors has also been held responsible for not reporting the correct position to the Collector's Office and by the Collectorate's office to the Board.

(c) They have also been held responsible for not reporting the matter to the Textile Commissioner.

(d) The following Superintendents were incharge of the Range relating to the period referred to above.

1.

2.

3.

Charges have been framed against all the officers mentioned above and further action is being initiated."

8.21. During the evidence the Committee asked how much time was normally taken to fix the responsibility. The witness replied: "Not more than 2-3 months".

8.22. Pointing out that the time taken for such enquiries, fixing responsibilities and disciplinary proceedings was quite considerable, the Committee asked whether there could be some other procedure to ensure that the disciplinary proceedings are conducted with efficiency and speed, the Finance Secretary replied:—

"We would certainly examine that point and I think it is well worth laying down a certain machinery for the disposal of disciplinary proceedings as quickly as possible."

8.23. Asked whether it was not the essence of good administration that whenever any delinquency or neglect is observed, action should be prompt and immediate and it should not be dragged on for years, the Finance Secretary replied:—

"We would entirely agree with that; but it would also be the essence of good administration that certain rules are followed.....to complete disciplinary proceedings a certain procedure has to be followed. Otherwise, it will be just thrown out by a court of law.....All that I can say is that, with the efflux of time, things become harder and harder. We are dealing with orders issued in 1964; we are dealing with time-barred cases of 1968. I would submit that so many years have passed by and a number of changes have taken place in the personnel; some people have been relieved while some retired, and so on. In these circumstances, it becomes extremely difficult and also time-consuming to fix responsibility on the particular individual who is guilty. It is only thereafter that we can start framing charges and hearing proceedings."

Loss of revenue due to Demand notice being declared time-barred.

8.24. According to the Audit the demands for short levies in the case to the extent of Rs. 90,013/- referred to in Audit paragraph were

issued by the Assistant Collector of Central Excise in November, 1968, and September, 1969. But the demands were decided as barred by limitation by the Collector of Central Excise on appeal by the assessee. The Committee desired to know the reasons for the delay in issuing demand notices which led to their being declared time-barred by the Collector on appeal:—

"It has been reported by the Collector that immediately on receipt of instructions in Ministry's letter F. No. I/26/66-CX-II, dated 29 April, 1967, Collectorate Standing Order (Tech.) No. 74/67-Cotton Fabrics No. 8/67, dated 10th May, 1967 was issued directing the field officers to be watchful against possible evasion of duty by removal of uncontrolled varieties of cotton fabrics as controlled varieties. Past cases were also required to be reviewed. The Asstt. Collector, Hyderabad—I Division sent on 12th July, 1969 'nil' report. He evidently based his report on a written intimation from the Inspection-in-Charge of Mills. It was only as a result of the Audit of M/s. D. B. R. Mills, Secunderabad, by the Head Quarters Internal Audit Party in March/April, 1968 that the irregularity was brought to light. Immediately thereafter, the Assistant Collector (Audit) wrote a D.O. dated 18 April, 1968 to the Asstt. Collector, Hyderabad-I to take immediate action. Thereafter, the Audit note, giving details of the irregularities, was issued on 14 June, 1968. It was, therefore, possible that, if more expeditious and careful action had been taken immediately on receipt of the D.O. in April, 1968, further erroneous assessments thereafter could be avoided and demands could have been issued in the months of May/June, 1968. It appears, however, that in this Collectorate, there was in existence practice of issuing demands under Rule *10-A whenever it was found that time limit under Rules** 10 had expired. The practice did not stop until after the Supreme Court judgement in the case of N. B. Sanjana Vs.

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*10. Recovery of duties or charges short-levied or erroneously refunded:

When duties or charges have been short-levied through inadvertence, error, collusion or mis-construction on the part of an officer, or through mis-statement as to the quantity, description or value of such goods on the part of the owner, or when any such duty or charge, after having been levied, has been owing to any such cause, erroneously refunded, the person chargeable with the duty or charges so short-levied, or to whom such refund has been erroneously made, shall pay the deficiency or pay the amount paid to him in excess, as the case may be, on written demand by the proper officer being made within three months from the date on which the duty or charge was paid or adjusted in the owners account-current, if any, or from the date of making the refund.

**10-A. *Residuary powers for recovery of sums due to Government.*

Elphinstone, Bombay. The urgency imposed by Rule 10, therefore, was not appreciated.

Initially, the following demands were raised in the month of November, 1968:—

Sl. No.	Demand No.	Date of issue of demand	Amount (Rs.)
1.	33627	12-11-68	14,559·69
2.	33623	12-11-68	1,132·43
3.	33625	12-11-68	10,950·98
4.	33624	12-11-68	5,016·95
5.	33631	27-11-68	48,970·84
6.	33632	27-11-68	233·68
7.	33622	8-9-69	9,149·23

The demands had been issued in respect of under levies in November, 1968 also. What happened in September, 1969 was merely the issue of a revised demand for the reduced sum as compared to the demand for Rs. 25,247·12."

Where these Rules do not make any specific provision for the collection of any duty, or of any deficiency in duty if the duty has for any reason been short levied, or of any other sum of any kind payable to the Central Government under the Act or these Rules, such duty, deficiency in duty or sum shall, on a written demand made by the proper officer, be paid to such person and at such time and place, as proper officer may specify.

8.25. The Committee desired to know whether there were any provisions for imposition of penalty in the cases where the malpractices as indicated in the Audit paragraph were detected and if so whether any penal action was taken against the mills. The Ministry of Finance replied in a note as under:—

"It appears that clearances would have been effected under Gate Passes in compliance with the provisions of Rule 52—A of the Central Excise Rules, 1944. A person who 'enters any particulars in the Gate Pass which are, or which he has reason to believe to be false', in terms of Sub-rule (5) of Rule 52—A, 'shall be liable to a penalty not exceeding one thousand rupees'. In addition goods are also liable for confiscation. Since, however, goods are

not available for confiscation, only action which appears to be likely is that of imposition of penalty of Rs. 1000/- in respect of each of the Gate Passes.

Order for the collection of the Gate Passes has been issued. Immediately after the collection of these Gate Passes, Show Cause Notices will be issued."

Responsibility of the Textile Commissioner's organisation under the scheme.

8.26. As stated earlier the statutory control on production and prices was introduced with effect from 20 October, 1964. Under the scheme mills were required to determine the maximum ex-factory/ retail price and stamp the same controlled cloth comprising of dhoti, saree, long cloth, shirting and drill of all categories. It was agreed to between the Ministry of Finance and the Ministry of Commerce that the Central Excise Officers would not be required to enter into any controversy over the correctness or otherwise of price of description of the fabrics sought by the manufacturers to be cleared as controlled cloth. In these instructions, however, it was *inter alia* emphasised that any irregularity that may come to notice is to be promptly reported to the Regional Office of the Textile Commissioner under intimation to the Enforcement Branch of the Textile Commissioner's Headquarters at Bombay.

8.27. The amplified instructions issued on 29-4-67 after the concessional rates on controlled varieties of cloth were made applicable w.e.f. 28 February, 1965, mentioned instances which had been brought to notice where certain varieties of cloth which did not conform to the specifications laid down for "controlled" varieties had been declared as "controlled" varieties to avail incorrectly of the concessional rates of duty. The Ministry alerted the excise officers and specially asked them that "as and when such irregularities are brought to light they should also be immediately reported to the Textile Commissioner for immediate action in addition to action being taken against the licencees for evasion of duty under Central Excise law. Past assessments should also be scrutinised and appropriate action taken wherever necessary." The Committee, therefore, desired to know what instructions, if any, were issued from time to time by the Textile Commissioner's Organisation.

8.28. The Ministry of Commerce (Textile Commissioner's Office) submitted the following note:

"The area of control was initially 45 per cent of the total backing. The operation of the scheme was reviewed from

time to time and the area was suitably revised. With effect from 2nd May, 1968 the area of control was reduced to 25 per cent covering five items of Controlled cloth, but of coarse and lower medium categories only.

2. In view of the partial nature of the control it has been necessary to specify as to what would constitute controlled varieties which are required to be price stamped. The definitions of controlled varieties currently in force are governed by Notification No. CER|1|68 dated the 2nd May, 1968. The Textile Commissioner's Notification No. 80-Tex 1/46 (iii) dated the 2nd August, 1968 and subsequently substituted *vide* Notification No. CER/3/69 dated the 19th September, 1969 specify the markings to be made on controlled cloth. Currently the marking of prices at every metre of controlled cloth is statutory.

3. The Mills are required to determine the maximum ex-factory price of controlled varieties of cloth in accordance with the Schedule of Multiplier notified under Clause 22 of the Cotton Textiles (Control) Order, 1948. The current multiplier is governed by Notification No. CER/1/68 dated the 2nd May, 1968. The responsibility of correct classification of an item of cloth either as a controlled variety or non-controlled variety rests with the mills, equally so the responsibility of determining the correct price and stamping. The mills are required to submit the particulars of manufacture, and the details of price calculations for each controlled variety in the 'C' form prescribed.

4. This office has been examining the 'C' forms from the point of view of the classification of varieties either controlled or non-controlled and also the correctness of price calculation. Looking to the large number of 'C' forms, during the period ending 30th April, 1968, the number of 'C' forms checked was of the order of 15 per cent to 20 per cent. With effect from 2nd May, 1968, all the 'C' forms received are being checked.

5. The examination of 'C' forms at the Headquarters is confined to the correctness of the classification and the price calculation based on the declarations. The correctness of the declarations of the particulars of manufacture is, however, being carried out by the Inspecting staff of the concerned Regional Office of this Organisation and action is taken in the event of any irregularity being noticed. The frequency of inspection is limited to the extent of Budgetary provisions and the dispersal of units within

the region itself. It is not considered possible to ensure that the entire quantity produced is checked for its correctness of classifications or the price matter.

6. Earlier, Excise Officials had been posted at each composite cotton textile mill, but with the introduction of self Removal Procedure, no physical check by the Excise staff is obligatory."

8.29. The aforesaid note *inter alia* brings out three facts: (1) the Mills are required to submit the particulars of manufacture and determine price classification for each controlled variety in the 'C' form. The correctness of the declaration of the particulars was being verified by Inspecting staff of the concerned Regional officers of the Textile Commissioner's Organisation; (2) the mills are required to determine the maximum ex-factory price of controlled variety cloth in accordance with the schedule of Multiplier Notified under clause 22 of the Cotton Textile (Control) Order, 1948, the current multiplier being covered by notification dated the 2nd May, 1968; (3) the responsibility of correct classification of an item of cloth either as controlled variety or non-controlled variety rested with the mills, as also the responsibility of determining the correct price and stamp.

8.30. The Committee desired to have a note on the work of Regional Offices showing, *inter alia*, the number of inspections conducted by them year-wise and mill-wise, the number of irregularities noticed, brief details thereof and action taken against the parties concerned during the periods (i) from 13th October, 1964 to March, 1974 and (ii) April, 1974 to December 1974. The Ministry of Commerce submitted the following note:

"The Regional offices of the Textile Commissioner's Organisation have been charged with the responsibility of carrying out field inspections with a view to enforce the provisions of the various notifications issued under the Textile Control Orders, for regulating the activities of the Mill sector and the de-centralised sector of the textile industry. Besides inspection from the point of view of enforcement of the provisions of the Textile Control Orders, the field staff of the Regional Offices of the Textile Commissioner's Organisation carry out verification of utilisation of imported items of stores and spares, inter-mill transfer of Indian Cotton, replacement and scrapping of obsolete machinery diversion for sale in the internal market of goods originally packed for exports, processing of outside

cloth by composite mills and issue of certificates of origin for export of handloom cloth, etc.

The mill-wise details of inspections conducted by the Regional Offices are not available. However, a statement showing the total number of inspections of mills conducted by the Regional Offices and the number of irregularities noticed during the period 13-10-1964 to 31-12-1974 is attached.* It is not possible to give details of each of the irregularities noticed during a period of over ten years. However, it may be stated that the irregularities relating to the control on cotton cloth fall within one or more of the following categories:—

(1) Irregularities in the particulars of manufacture which have an impact on the ultimate ex-factory price.

(2) Non-stamping or wrong stamping of statutory markings on the face-plait and the second part of two part pieces of controlled and non-controlled cloth and on the bale containing such cloth.

(3) Packing irregularities.

(4) Non-submission and late submission of 'C' forms in respect of controlled cloth.

As regards the irregularities falling in category (1) above, the mills are as an alternative to the time-consuming and costly litigation, required to pay into the Government treasury the excess amount, if any, recovered by them through sale of cloth. The stock on hand is required to be opened and repacked after stamping the correct prices. Other irregularities are of a technical nature, which usually occur due to inadvertance and it is not considered worthwhile taking any serious action against the mills in such cases. They are let out with a warning to be more careful in future."

8.31. As regards the responsibility of the mills to correctly classify an item of cloth either as controlled variety or non-controlled variety it is pertinent to recall the following observations made by the Committee in their 223rd Report on Controlled Cloth:—

"There have also been a number of complaints that the industry itself has been indulging in a systematic sabotage of the controlled cloth scheme. Various news media have also carried reports on the clandestine sale of controlled cloth at different times to bulk buyers either for reprocessing or conversion into readymade garments. In fact, even

the then Minister of Foreign Trade, while addressing an ICMF Conference on 7th October, 1972 had stated:—

'...It appears that the moment the controlled cloth leaves the mills gate, it disappears without leaving any trace behind....' I believe a fair quantity reaches the processing houses where it changes shade and colour and re-emerges as non-controlled processed cloth with a high unit value."

The Bureau of Industrial Costs and Prices had alluded to this fact, in September, 1972 and had recommended 'fuller examination' of this aspect. Admittedly, prior to November, 1972, before the distribution system introduced by the Commerce Ministry came into force, complaints of controlled cloth being largely diverted to processing units were received by Government and were found to have some basis. Though the clandestine sales of long cloth to the processing houses was apparently within the knowledge of Government for a fairly long time and Government were also aware that the mal-practices alleged related largely to the long cloth component which constitutes a substantial portion of the total production, the Committee are surprised and perturbed that it was only in September, 1974 that orders were issued by the Textile Commissioner directing the mills to bring down the proportion of long cloth in the total production and to produce long cloth only in the bleached form instead of the grey form which is susceptible to reprocessing and conversion. The Committee seriously deplore the delay in taking these remedial measures and would like urgently to know the reasons therefor. They would ask Government to be truly vigilant in this regard and come down heavily on those mills/dealers whose self-interested and clandestine transactions tended clearly to sabotage a national welfare scheme."

Earlier recommendation of P.A.C.

8.32. It is also relevant to mention in this connection that it is not for the first time that a escapement of duty on controlled cloth by declaring it as uncontrolled cloth had been brought to the notice of the Department of Revenue. In the Audit Report 1969 paragraph 31 (A) (ii) (B) a case had been brought to notice according to which saree which neither conformed to the definition of controlled variety prescribed by the Texile Commissioner nor covered by his deviation orders were also cleared at the concessional rate of duty during the period from 1st March 65 to 25th October 1967. The Committee had

been desired to know the circumstances in which the sarees manufactured by the licensees had been allowed to be cleared at the concessional rate. As in the present case, the Ministry for Finance at that time had stated that according to the instructions issued by the Ministry of Finance in October 1964 they were not required to enter into controversy whether the declaration made by the manufacturer was correct or not. It was only after 29th April 1967 instructions that the Collectorates of Central Excise were *inter alia* directed to alert the local officers to guard against such cotton fabrics being assessed the concessional duty when they did not conform to the definition of controlled cloth. The Public Accounts Committee were not satisfied with this explanation and had made the following observations in paragraph 1.104 of their 111th Report 1969-70:—

> "It is regrettable that Government should have issued instructions to the Excise Officers not to enter into controversy whether the declaration made by the manufacturer was correct or not. These instructions were liable to be construed as a directive to ignore even wrong declarations by manufacturers for the purpose of claiming duty concessions. The fact that Government themselves after 2½ years of issue of these instructions, had to direct the assessing officers to be alert against mills clearing fabrics not constituting 'controlled cloth' on payment of concessional rates of duty applicable to such cloth shows that the original instructions issued by Government were ill-advised".

8.33. In the Action taken Note (Department of Revenue and Insurance O.M. No. F. 11/2/70/CX-7 dt. 24-9-1970), it has been stated "The observations of the Committee have been noted".

8.34. The Committee note that a scheme of price and production control of cotton fabrics manufactured by textile mills and introduced with effect from 20 October, 1964. The scheme envisaged production of cloth for popular consumption with the prices stamped on it. The role of the Central Excise Officers was then discussed by the then Chairman of the Central Board of Excise and Customs with the Ministry of Finance on the 21st October, 1964. These instructions *inter alia* enjoined on the excise officials that "any irregularity that may come to their notice is required to be promptly reported (under Registered Post) to the Regional Office of the Textile Commissioner under intimation to the Enforcement Branch of the Textile Commissioner Headquarters at Bombay". While it is true that the Excise officers were asked not to enter into a controversy whether a fabric is a shirting, long cloth, dhoti or saree, it was also laid down that "if any Central Excise Officer has information of any malpractice prevailing with regard to price control, he has to pass

on the information to the Textile Commissioner. Besides, the ministry had specifically stipulated that "the working of the above procedure may be watched and any difficulties found or envisaged to be experienced should be referred to the Ministry demi-officially." When these instructions were issued, there was no concession in excise duty on controlled cloth.

In February, 1965, concession in excise duty on controlled cloth was announced and in order to avail themselves of that concession some of the mills wrongly cleared as 'controlled cloth' certain non-controlled varieties of cloth.

The Committee feel that the instructions issued in October, 1974, were fairly comprehensive and if the excise officers in the field had maintained the vigilance expected of them they would have pinpointed the irregularities indulged in by the textile mills in declaring cloth which did not conform to the prescribed definition of controlled cloth for purposes not only of availing themselves of the concessional excise duty but also of notionally showing what was ficticious and false, namely, that they were producing controlled varieties of cloth required for the poorer sections of our people. The Committee cannot also see any reason why the Collectors, who had been asked to keep a careful watch on the working of the procedure and to bring to notice the difficulties found or anticipated, did not discharge this responsibility by bringing to the notice of the Ministry at the earliest the aforementioned malpractices which had crept into the procedure and by which the textile mills were trying not only to pass off cloth which was not in conformity with the definition of controlled cloth but also deprived the exchequer of legitimate excise duties.

8.35. It is significant that many of the irregularities mentioned in the detailed statement, furnished by the Ministry at Appendix XIX relate to the period between 1964 and 1967. For instance, Messrs Modern Mills No. 2, Bombay, cleared long cloth as controlled cloth between 25 June 1966 and 28 December 1967. Subsequently, it was noticed that most of the cloth in question was supplied by the mill to embroidery manufacturers and was not eligible for being treated as controlled cloth or being stamped as such or be allowed the concessional excise duty. The Committee would like to refer in this connection also to their 223rd Report on 'Controlled Cloth' wherein they have brought out how the social purpose underlying the scheme of controlled cloth was not fulfilled because of peculiarly contrived difficulties and deliberately devised malpractices by some textile mills and the trade generally.

8.36. The Committee find that Government took more than two years after the introduction of the concessional duty on controlled cloth to issue instructions on 29 April, 1967, to alert the Collectors about certain instances where cloth, which did not conform to the specifications of 'controlled' varieties, had been cleared at concessional rates by declaring i t as 'controlled' varieties e.g. sarees of less than 4.15 metres each in length, shirting which did not conform to the specifications laid down for this purpose, etc. The Collectors were in their turn directed to alert the officers to take suitable action and bring such irregularities promptly to the notice of the Textile Commissioner for immediate action, apart from proceeding against the offenders for evasion of duty under the Central Excise law. The Collectors had also been asked to scrutinise the past assessments and take appropriate action wherever necessary. The Committee find that in spite of the issue of these instructions, conclusive action was not taken by Collectors to review the position and proceed positively against the parties that had evaded the excise duty by wrongfully declaring the cloth as that of a controlled variety. Even now, action has yet to be conclusively taken against 31 Mills to recover an amount of over Rs. 15 lakhs due from these mills for having illegally taken advantage of the concession on controlled cloth for varieties which did not conform to that description. Apart from the case of Modern Mills No. 2, Bombay, already mentioned, the Committee take a serious view of another case, that of a leading mill, Messrs J.K. Cotton Spinning and Weaving Mills, Kanpur, against whom there is a claim for Rs. 14.35 lakhs on this account. According to the Ministry, "the manufacturer had been showing different composition in Central Excise records and different particulars were discovered from their private records." The case is stated to be still pending adjudication. The Committee feel that when a mill of the dimension and standing of J.K. Cotton Spinning and Weaving Mills indulge in such fraudulent practice, not only should the amount of excise duty be forthwith recovered in full but further stren action, as admissi le under the law, should be taken against the mill, so that it acts as a deterrent to others. The Committee would like to be informed of the action taken in this regard.

8.37. The Committee find that there was an interval of nearly five years, after the issue of instructions in 1967, when the position was stated to have again been reviewed at a meeting held on the 11 April 1972 between the representatives of the Ministry of Finance (Central Board of Excise and Customs), Ministry of Foreign Trade (now Ministry of Commerce), the Central Revenue controlled laboratories and the Textile Commissioner's organisation. At this

meeting it was made clear that "it would not be proper for the Central Excise Officers to completely divest themselves of the responsibility of exercising checks to ensure correctness of their assessments. Thus it would be a part of the responsibility of the Central Excise Officers to draw samples of such cotton fabrics periodically at random and forward the same to the Chemical Examiner for necessary test in order to ensure that the particular fabrics conform to the specifications of controlled fabrics. Any instances of misdeclaration coming to their notice could be brought promptly to the notice of the Textile Commissioner for such remedial action as deemed fit." The Committee have not been informed of the concrete follow-up action taken in pursuance of these instructions though they had asked for this information specifically from the Ministry.

8.38. The Committee cannot but conclude that the various Departments ministries of the Government of India and their field organisations have not acted in an integrated or even a reasonably coordinated manner after the announcement of the scheme for controlled cloth in the interest of the weaker sections of society, with the result that the mills were able to exploit fully the shortcomings and loopholes in the government arrangements by not producing the controlled cloth of the requisite quality or quantity and by diverting such cloth to other uses for which it had not been meant.

8.39. The Committee have dealt, in their 223rd Report on Controlled Cloth, with these shortcomings which have riddled the scheme from the very inception and defeated the basic and most desirable objective of making available cloth of acceptable quality at controlled prices to the poorer sections of our people. The Committee would like Government not only to fix responsibility for this lack of integrated action but to learn a lesson from these costly and serious lapses. It is of the utomost importance that when a scheme of making available an essential commodity like controlled cloth to the weaker sections of society is conceived, it should be worked out in meticulous detail in consultation with the Ministries/Departments and the field organisations concerned so that no loopholes are left for subverting the scheme or defeating its purpose. The Committee wish that meetings should be held at least once every quarter between the senior representatives of the Ministry of Commerce, the Textile Commissioner's organisation, the Ministry of Finance, Central Excise Officers, Central Revenue control laboratories, etc., in order to critically review the position and devise remedial measures for plugging the loopholes and rectifying shortcomings. The Committee urge that a high-level comprehensive review should be

undertaken well before the conclusion of the financial year and the finalisation of the budget proposals, so that timely and effective action may be taken to modify and improve the excise structure and its concomitant arrangements and the underlying socio-economic objectives of our tax structure are fulfilled more faithfully.

8.40. The Committee are perturbed at the considerable delay in raising demands for the differential duty to the extent of Rs. 90,013 in the cases referred to in the Audit paragraph. This lapse was pointed out by Audit as long ago as in April, 1968. The demands were, however, raised only in November, 1968 (i.e. after 7 months) and in September, 1969 (i.e. after 1 year and 5 months). The result of the delay has been that the cases have been declared time-barred on appeal. The Ministry of Finance have admitted that the Assistant Collector (Audit) wrote a D.O. letter on 18 April, 1968 to the Assistant Collector, Hyderabad to take immediate action on the irregularities. They have conceded that had immediate and more careful action been taken on receipt of the aforesaid D.O. letter in April 1968, further erroneous assessments thereafter could have been avoided and demands for the past period issued in the month of May/June, 1968. The Committee find a chain of apparent lapses and failure in this case e.g. failure to ensure that at least after 18 April, 1968 (date of Internal Audit Party's visit) no uncontrolled cloth was cleared as controlled cloth, failure to ensure that demands in respect of erroneous assessment in March-April, 1968 did not get time-barred, failure to report correct position by the Assistant Collector's office to the Collector's office and by the Collector's office to the Board after April, 1967 in respect of past clearances, and failure to report the matter to the Textile Commissioner. The Committee are also perturbed that the Collector's office file was destroyed even before its retention period was over. During evidence, the representative of the Ministry of Finance stated: "I am not satisfied with the answer given by the Collector. I am looking into this aspect." From subsequent replies the Committee learn that charge sheets have been issued against 3 Superintendents of Central Excise and 2 Inspectors. The Committe are of the view that cases such as the present one where delays reduce or limit the prospects of realisation of demands on account of differential duty should be a matter of grave concern to the Government and should be at once probed thoroughly. The Committee desire that the extent of lapses on the part of the supervisory officers, Assistant Collector and Collector should also be determined and appropriate action taken without delay. The Committee would like to be informed soon of the action taken against the defaulting officials.

8.41. The Committee learn that a person who "enters any particulars in the Gate Passes which are, or which he has reason to believe to be false" in terms of sub-rule (5) of Rule 52A of the Central Excise Rules, 1944 is liable to penalty not exceeding one thousand rupees besides the liability for the confiscation of goods. The Committee have been informed that orders for the collection of Gate Passes in cases of false declaration by the textile mills had been issued and that show-cause notices were being issued. The Committee would like to be apprised of the outcome of this exercise and the amount actually recovered from the defaulting mills.

8.42. The Committee take a serious view of the role unhappily played by the Textile Commissioner's organisation. It was clearly the duty of the Textile Commissioner to see that uncontrolled cloth was not declared fraudulently as controlled cloth. The Regional Offices of his organisation are charged with the specific responsibility of carrying out field inspections with a view to enforcing the provisions of the various modifications issued under the Textile Control Orders for regulating the manufacture of the textile mills. As stated in one of the replies furnished by the Ministry, check on "non-stamping or wrong stamping of statutory markings on the controlled and uncontrolled cloth and on the bale containing such cloth" was the clear responsibility of the Textile Commissioner's staff. The Committee cannot, therefore, accept the plea that such irregularities are of a "technical nature which usually occur due to inadvertance." The Committee are surprised that the Ministry of Commerce apparently consider such lapses to be so minor that it was "not worthwhile taking any serious action against the mills in such cases." In the Committee's view, this indifference towards malpractices involving, detriment to the country's revenue and to the poorer consumer of an essential commodities cannot be countenanced. The Committee, therefore, ask for a critical review of the Textile Commissioner's role in this regard. If the Central Excise staff were not considered technically or professionally well equipped to determine whether a particular variety of cloth answered the specifications of controlled cloth or not, it was all the more necessary for the Textile Commissioner to have exercised the necessary check in this direction.

8.43. Another distressing feature that has come to surface is that during the period March, 1965 and May, 1968, the percentage of 'C' forms (wherein Mills submitted particulars of manufacture and the details of price calculations for each controlled variety) checked by the office of the Textile Commissioner was not more than 20 per cent

and it was only from May, 1968 that all the 'C' forms were subjected to a check. The Committee would like Government to investigate why it was not possible for the Textile Commissioner to conduct a more extensive, if not a 100 per cent check of such forms, because had such a checked been exercised, it is more than likely that the scale at which the malpractice of passing of uncontrolled variety of cloth as controlled and availing of concession in excise duty would have been revealed much earlier and provided an earlier opportunity to Government to prevent loss of revenue on this account.

ALUMINIUM (TARIFF ITEM 27)—UNDER ASSESSMENTS AUDIT PARAGRAPH

Audit Paragraph:

9.1. Aluminium manufactures are assessable to excise duty on *ad-valorem* basis and value for this purpose is the price fixed under the Aluminium (Control) Order 1970. The controlled prices are inclusive of duty and therefore for assessment purposes, duty has to be abated to arrive at the assessable value.

9.2. Regulatory duty at 25 per cent of basic duty was imposed on aluminium products with effect from 13th December, 1971. The Ministry of Steel and Mines (Department of Mines) allowed manufacturers to add this duty to the controlled prices till a revised notification fixing prices inclusive of regulatory duty was issued. The revised notification was issued on 21st January, 1972. Similarly when budgetary changes were effected on 17th March, 1972, special excise duty was abolished and basic duty was consequently enhanced, resulting in higher quantum of regulatory duty. Again the manufacturers were allowed to add the extra duty to the controlled prices under Ministry of Steel and Mines letter dated 30th March, 1972. The order fixing the revised prices consequent on these budgetary changes was issued on 2nd May, 1972.

9.3. It was noticed that a licensee in one collectorate had cleared 989.154 metric tonnes and 752.949 metric tonnes of aluminium rods during the periods from 13th December, 1971 to 20th January, 1972 and 17th March, 1972 to 1st May, 1972 respectively and paid excise duty on sale (controlled) prices, without including therein the regulatory duty. In arriving at the assessable value, however, the department allowed full duty abatement as if the regulatory duty was included in full in such composite prices. As a consequence, the duty abatement was higher than due and assessable value was lower than what it should have been, resulting in under assessment to duty. The under-assessment due to such incorrect abatement or regulatory duty during the above periods worked out to Rs. 1,10,158.

[Paragraph 40(a) of C&A.G.'s Report for 1972-73—Union Government (Civil)—Revenue Receipts—Vol. I—Indirect Taxes.]

9.4. Aluminium in any crude form and its manufactures, as specified in the Tariff itself, are leviable to central excise duty under

Tariff Item No. 27. From 1 March, 1970 the mode of levy of duty was changed from specific rates to *ad-valorem*. Since the price of aluminium is statutorily fixed by the Central Government under the Aluminium (Control) Order, 1970, such statutory prices were to be accepted for assessment to duty. The prices fixed were inclusive of duty prices. In other words for arriving at the assessable value, the duty element included in these prices had first to be set off.

9.5. The Government of India imposed, under notification No. 204/71-CE dated 13-12-1971, regulatory duty on aluminium at the rate of 25 per cent of the basic duty. The Ministry of Steel and Mines (Deptt. of Mines) in their letter No. 5(127)/71 Met. 1/71 dated 18/22-12-1971 Appendix XXI allowed the manufacturers to add this duty to the prices already declared under the Aluminium (Control) Order, 1970, till a revised notification inclusive of regulatory duty was issued. The revised notification including such duty was subsequently issued on 21-1-1972.

9.6. Similary, when under the Finance Act (1972) the quantum of regulatory duty was increased to 33/1-3 per cent of basic duty, the manufacturers were allowed to add the additional regulatory duty to the controlled prices *vide* Ministry of Steel and Mines letter No. 5 (127)/Met. 1/71 dated 25/30-3-1972 (Appendix XXII). The revised notification in this case was issued on 2 May, 1972.

9.7. The Committee learnt from Audit that the licensee Power Cables Ltd., Baroda, mentioned in the Audit para had cleared 989.154 tonnes and 752.949 tonnes of aluminium rods during the periods from 13 December, 1971 to 20 January, 1972 and 17 March, 1972 to 1 May, 1972 and paid central excise duty on the assessable value fixed on the basis of sale prices notified earlier by the Ministry of Steel & Mines without taking note of the additional regulatory duty which was to be added under the Ministry of Steel and Mines letters dated 18-12-1971 and 30-3-1972. However, while working out the assessable value the additional regulatory duty element was allowed to be abated in full for the periods from 13 December, 1971 to 20 January, 1972 and 17 March, 1972 to 1 May, 1972. This resulted in fixation of lower assessable values and consequently under-assessment of duty to the extent of Rs. 1,10,158.

9.8. The Committee wanted to know when the departmental officials had noticed the short levy in this case and why it was so much delayed. The Ministry of Finance have informed that:

> "after imposition of regulatory duty on 13-12-1971, the Superintendent concerned sought clarification on 15-1-1972

from the Assistant Collector, Baroda whether regulatory duty is to be included in the selling price or to be excluded. The Assistant. Collector in turn referred the matter to the Collector on 9-2-1972, for his orders since the assessments were being done provisionally. In reply the Collector intimated the Assistant Collector on 30-3-1972 to examine the issue in the context of Notification No. S.O. 56 dated 21-1-1972 fixing enhanced selling prices of aluminium and also asked for report whether the query raised in his letter dated 9-2-1972 solved the issue or not. The Superintendent expressed an opinion in the File on 11-4-1972 that the S.O. 56 dated 21-1-1972 of Ministry of Steel and Mines did not apply to the period 13-12-1971 to 20-1-1972 and the problem persisted for this period. But follow up action was neither taken by the Assistant Collector of the Division nor by the Superintendent.

On 27-4-1972, Asstt. Collector raised the same issue again with the Collector after 1972 Budget which enhanced the rate of regulatory duty from 25 per cent to 33 1/3 per cent and requested the Collector to check up with the Controller of Aluminium. On 1-6-1972, Collector again asked the Assistant Collector to examine the matter in the light of Ministry's letter F. No. 6/4/72-CX. I dated 11-5-1972 circulating enhanced selling prices of aluminium. Assistant Collector informed the Collector on 19-7-72, after getting confirmation from the Range Superintendent that the problem had been solved by Ministry's letter dated 11-5-1972.

The short assessment arose because the letters F. No. 5(127)/71-Wet. 1 dated 18-12-1971 and 30-3-1972 issued by Ministry of Steel and Mines were not received by the concerned field officers i.e. Collectorate of Baroda. These letters authorised the manufacturers to enhance the prices of aluminium to the extent of increase in duties of excise with effect from 13-12-71 and 17-3-72 respectively pending issue of formal notification."

9.9. Copies of letters No. F. 5 (127)/71-MET. I dated 18-12-1971 and 30-3-1972 issued by the Department of Mines, are reproduced in Annexure I & II. It is noticed from the letters that they were neither addressed to the Ministry of Finance nor to any Collectorate of Central Excise. The letters were addressed directly to 15 Aluminium manufacturing Units. It includes only one unit of Gujarat, Naran Lala Metal Works, Navsari but there is no mention of Power Cables Ltd. Baroda.

9.10. The Committee then asked what was the occasion for the Board to issue instruction on 19 August, 1972 and what action was taken by the officers on these instructions and when. In a written note the Ministry of Finance stated:

> "Ministry's letter F. No. 6/18/72-CX. I dated 19-8-1972 was issued to the Collectors only to get a confirmation from them that during the intervening periods i.e. 13-12-1971 to 20-1-1972 and 17-3-1972 to 1-5-1972 the regulatory duty had been charged by them. It was also advised in this letter to take corrective steps if not already done."

9.11. In reply to another question as to when the show cause notice was issued or demand revised and what were the reasons for delay, the Ministry of Finance replied in a note as follows:—

> "On receipt of the Ministry's letter dated 19-8-1972 it was circulated to all Divisional Officers on 8-9-1972 for report. After examining the report of the concerned Assistant Collector, the Collector directed him on 10-11-1972 to raise demands and accordingly the Superintendent concerned issued show cause notice on 12-12-1972 to the party demanding Rs. 1,10,157.76."

9.12. During the course of evidence the Committee asked whether the demand raised had been realised.

The witness replied:

> "The demand raised has been confirmed and the party has gone in appeal."

9.13. Duty on aluminium is paid under Self Removal Procedure. The Committee asked whether the manufacturer had revised the classification List after 13 December 1971 and 17 March 1972. The Committee also asked why the Department did not indicate the correct method of calculation of duty while scrutinising the classification lists for approval. In a written note the Ministry of Finance replied:

> "Imposition of regulatory duties w.e.f. 13-12-1971 was intimated through telexes/telegram and so are budgetary changes given effect to immediately. The fact that regulatory duty was imposed and given effect to by the concerned field officers, is apparent from abatement given on account of the element of regulatory duty from the existing statutory prices of aluminium.

The Collector of Central Excise, Baroda and the manufacturer concerned were not aware of the letters dated 18-12-1971 and 30-3-1972 issued by the Ministry of Steel and Mines. In the absence of the knowledge of increase in prices to the extent of increased regulatory duty, method of calculation adopted was legally correct.

The party had filed the classification list showing the regulatory duty on 25-12-71. By Finance Bill 1972, the rate of regulatory duty was enhanced to 33½ per cent and also that of basic duty was increased to 30 per cent and the special excise duty was abolished. In view of these changes, the party again filed a revised classification list on 18-3-1972 which was approved on 21-3-1972."

3.14. The Committee note that the statutory prices of aluminium are fixed by Government under the Aluminium (Control) Order, 1970. These prices are inclusive of duty and the assessable value for purposes of duty is worked out after abatement of duty element included in these prices. The Government of India imposed regulatory duty on aluminium at the rate of 25 per cent of basic duty with effect from 13 December, 1971. The Department of Mines in its letter dated 18 December, 1971, allowed the manufacturers to add this duty to the prices declared under the Aluminium (Control) Order, 1970 till such time as a revised notification inclusive of regulatory duty was issued. The notification including this additional duty was issued on 21 January, 1972. Subsequently under the Finance Act, 1972, special excise duty was abolished and the basic duty was consequently enhanced, resulting in a higher quantum of regulatory duty with effect from 17 March, 1972. The manufacturers were again allowed to add the extra duty to the controlled prices under the Department of Mines letter dated 30 March, 1972 pending issue of revised notification about the sale price. The Order fixing the revised prices consequent on budgetary changes was issued on 2 May, 1972.

A company, Power Cables Ltd., Baroda, had cleared 989.154 tonnes and 752.949 tonnes of aluminium rods respectively during the period from 13 December, 1971 to 20 January, 1972 and from 17 March, 1972 to 1 May 1972 on payment of central excise duty on the assessable value fixed on the basis of the previous sale prices notified by the Department of Mines without taking note of the regulatory duty enhanced with effect from 13 December, 1971 and 30 March, 1972 respectively. However, while working out the assessable values the element of additional regulatory duty was

allowed to be abated in full during the aforesaid periods which resulted in the fixation of low assessable values and consequent under-assessment of duty to the extent of Rs. 1,10,158.

The first increase in regulatory duty with effect from 13 December, 1971 had created doubts in the mind of local excise officials whether regulatory duty was to be included in the sale price or not. The Superintendent concerned sought clarification from the Asstt. Collector, Baroda, on 15 January, 1972 who in turn referred the matter to the Collector on 9 February, 1972 for his orders, in the meantime the assessments were done provisionally. In reply the Collector directed the Assistant Collector on 30 March, 1972 to examine the matter in the context of the notification dated 21 January, 1972 issued by the Department of Mines about revised prices and also asked for report whether the query raised in his letter dated 9 February, 1972 had been resolved or not. Even though the Superintendent of the concerned Collectorate had expressed an opinion on the file that the notification dated 21 January, 1972 issued by the Department of Mines did not apply to the period from 13 December, 1971 to 20 January, 1972, "follow-up action was neither taken by the Assistant Collector of the Division nor by the Superintendent." The matter was allowed to be dragged on until the clarification of the whole position was given by the Central Board of Excise and Customs itself in their letter dated 19 August, 1972. Had the Assistant Collector acted with promptness and taken conclusive action to ascertain the correct method of assessment at the time of increases in regulatory duty with effect from 13 December, 1971 and 17 March, 1972, the avoidable under-assessment of Rs. 1,10,158 in revenue could have been avoided. There was evidently considerable delay on the part of the officials of the Collectorate in taking action. The Committee recommend that appropriate action should be taken against those found responsible for the delay.

9.15. The Committee have been informed that the under-assessment arose because of the non-receipt by the Collectorate of Baroda of letters dated 18 December, 1971 and 30 March, 1972 issued by the Department of Mines (Appendices XXI and XXII) These letters were addressed to 15 Units in various Collectorates including one unit (Narain Lal Metal Works, Near Railway Station, Navsari, Gujarat) located in the Baroda Collectorate. It is unfortunate that these were not addressed to the company in question (Power Cables Ltd., Baroda) in Baroda nor copies thereof were endorsed to the Ministry of Finance or any of the Collectorates of

Central Excise. The Committee would like Government to investigate as to why the copies of the communications of the Department of Mines having a bearing on controlled prices were not endorsed to the Collectorates of Customs and Central Excise. The Committee recommend that responsibility for this serious lapse should be fixed and appropriate action taken against the defaulting officials.

9.16. The Committee are also of the opinion that the mistake in the instant case could have been avoided if consolidated instructions were issued by Government after consultation between the Department of Mines and the Ministry of Finance (Central Board of Excise and Customs). The Committee desire that in the interest of avoiding loss of revenue and repetition of such cases, Government should advise all the administrative Ministries/Departments concerned to endorse copies of all such instructions/letters to the Ministry of Finance (Central Board of Excise and Customs) and Collectors of Customs and Excise etc., in the interest of ensuring timely action by the concerned authorities.

9.17. The Committee note that Power Cables, Baroda, had filed revised classification lists on both the occasion when the regulatory duty was enhanced. The first list was filed on 25 December, 1971, and the second on 18 March, 1972, which were approved by the Collectorate on 10 January, 1972 and 21 March, 1972 respectively. The Committee need hardly point out that if the Lists were subjected to thorough and proper scrutiny, the under assessment could have been avoided.

9.18. The Committee also feel that it is not unlikely that similar cases of under-assessment in respect of aluminium manufacturing units could occurred in other collectorates as well. The Committee would like that all these cases should be reviewed and efforts made to recover the amount after proper assessment.

ALUMINIUM—SHORT LEVY OF DUTY

Audit Paragraph:

10.1. Aluminium wire rods falling under tariff item No. 27(a), produced by a manufacturer out of duty paid aluminium ingots brought from outside were assessed at the concessional rates of duty at Rs. 950 per metric tonne towards basic excise duty and Rs. 70 per metric tonne towards special excise duty during the year 1968-69, under a notification issued on 1st March, 1968. It was noticed that the manufacturer had simultaneously availed of the benefit of partial exemption under another notification of the same date for the aluminium in crude from manufactured in his factory out of bauxite ore, even though the latter notification was conditional that it would not be available to any manufacturer who had availed of the exemption under the former notification.

10.2. On this being pointed out in audit, the department accepted the objection and issued a demand for Rs. 76,344 being the short levy of duty on 636.204 metric tonnes of such wire rods cleared during 1968-69 by this manufacturer. Particulars of realisation are awaited.

[Paragraph 40(b) of C&AG's Report for 1972-73, Union Government (Civil)—Revenue Receipts—Vol. I—Indirect Taxes]

10.3. The case in question related to Madras Aluminium Co., Mattur Dam, an ore-based manufacturer who manufactured Aluminium in crude form. The Company was also engaged in conversion of duty paid ingots brought from outside into wire rods.

10.4. The Government of India issued two notifications providing certain concessions in excise duties in regard to the assessment of Aluminium on 1 March 1968. By notification No. 24/68 duty concession of Rs. 270 per metric tonne was allowed to manufacturers of Aluminium from ores. Three conditions were required to be fulfilled to avail of the concession under this notification:—

(i) This concession was not available to a manufacturer who availed of the concession under another notification No. 32/68 dated 1-3-1968.

(ii) Such aluminium was manufactured by the manufacturer from bauxite or aluminium or both;

(iii) Clearance of aluminium in whatever form by the said manufacturer during the preceeding financial year did not exceed 12500 metric tonnes.

10.5. By another notification No. 32/68 issued on the same day aluminium manufacturers were allowed a duty concession of Rs. 120 per metric tonne.

10.6. Notification No. 24/68 had a clause to the effect that it would not apply to a manufacturer who availed of the concession under Notification No. 32/68 but notification No. 32/68 did not have any corresponding prohibitive clause.

10.7. On 19 March, 1968 the Ministry of Finance clarified in a circular that the manufacturers who were primarily ore based but who undertook the conversion of duty paid ingots for outsiders on Job basis should not be denied the concession provided by notification No. 24/68 dated the 1 March 1968. This appears to have been taken as allowing simultaneously the concession contained in the two notifications.

10.8. Instructions issued by the Ministry of Finance *vide* their letter No. B.2/1/68-CX.I dated the 19 March, 1968, are reproduced below.—

"Intention behind notification No. 24/68 dated 1 March, 1968 has already been clarified in the budget instructions. The intention is to allow further reduction of Rs. 150 per metric tonne to ore-based producers whose clearances during the preceding financial year did not exceed 12,500 M. Tonnes. Manufacturers who are primarily ore-based producers but who also undertake conversion of duty paid ingots of outsiders on job basis in order to utilise spare capacity available with them are not to be denied the further exemption granted under Notification No. 24/68. As already indicated in Shri Narasimhan's D.O. No. 12/65-OSD(CX)-68, dated the 8 March 1968 clearances of such converted Aluminium may be regulated on quantity to quantity basis minus melt loss or process loss considered necessary.

Converted Aluminium already manufactured out of duty paid ingots received under Rule 56-A procedure should be allowed clearance on payments of duty on full tariff rates.

No amendment of the notification No. 24/68 is considered necessary for the sake of limited stock of such Aluminium."

10.9. The Committee enquired as to why it was considered necesary to issue the clarification on 19 March, 1968. The Ministry of Finance in a written note stated:

> "Occasion for issuing this clarification was a representation from M/s. ALUCOIN West Bengal, Calcutta that the local officers were not giving them the benefit of Notification No. 24/68 dated 1-3-1968 because they were taking in process the duty paid aluminium ingots brought from outside under Rule 56-A for manufacture of aluminium and its products out of Bauxite or Alumina. It was further amplified in January, 1969."

10.10. The Ministry of Finance stated further that:

> "The instruction dated 19-3-1968 was self explanatory. It was addressed to the Collector of Central Excise, West Bengal and copy endorsed to the Collector of Central Excise, Madras presumably because only these two were concerned. It was received by the concerned Collector of Central Excise, Madras on 22-3-1968. The Collector had reported that since the instruction was clear, it was communicated as such to all the Assistant Collectors for information and guidance on 2-4-1968."

10.11. When asked whether the assessments in this case were checked or reviewed at any stage, the Ministry of Finance stated that "the assessments were reviewed after receipt of letter dated 17-8-1971 of Accountant General, Madras."

10.12. The Committee desired to know whether the Government intended to give option to the manufacturer to choose between the two notifications No. 24/68 and 32/68. In a note the Ministry of Finance stated that:

> "Notification No. 24/68 dated 1-3-1968 was not available to a manufacturer who availed of the concession under notification 32/68 dated 1-3-1968. An option to avail of one or the other of the exemptions could be read into the notification, the benefits under notification 24/68 were more liberal as they included the exemption in notification 32/68."

10.13. When asked whether the Ministry of Law was consulted for ascertaining the exact meaning of the notifications, the Ministry of Finance replied in the negative.

10.14. The two notifications were issued soon after the presentation of the Budget in 1968. The Committee asked whether any superior officer had visited the concerned factory between 1 March, 1968 and 31 May, 1968 and acquainted himself with the assessment. The Ministry of Finance replied in the negative.

10.15. The Committee asked as to what was the position in March 1968 and how was the notification No. 24/68 interpreted at that time. The Committee also asked whether any Collector brought to notice any problem connected with the assessment under these notifications. In a note the Ministry stated:

> "The Collector of Central Excise, Madras did not report any difficulty. Clarification dated 19-3-68 was however issued soon after the Budget of 1968 and the Collector was well aware of the same. Following the introduction of S.R.P. the Collector of Central Excise West Bengal, sought clarification regarding working of Ministry's letter dated 19-3-1968. Otherwise Collectors did not bring the matter to the notice of the Board."

10.16. Explaining how the mistake occurred, the Ministry of Finance stated:

> "This was perhaps due to mis-interpretation of Board's letter F. No. B2/1/68-CX.I dated 19-3-1968 by the local officers. Confusion was caused partly by the stand taken by local audit in October, 1968 that notification 24/68 dated 1-3-1968 would not be applicable in the instant case whereas Ministry's letter dated 19-3-1968 clearly stated that benefit of notification 24/68 dated 1-3-1968 is not to be denied to parimary ore-based manufacturers who also undertake conversion of duty paid ingots of outsiders on job basis. The position because clear after receipt of A.G. Madras's letter dated 17-8-1971. The local officers were not clear whether the benefits under notification Nos. 24/68 and 32/68 dated 1-3-1968 could or could not be simultaneously allowed.
>
> Notification Nos. 24/68 and 32/68 alongwith Budget instructions of 1968 were communicated to the lower formations by the Collector in his general circular No. 29/68 dated 29-2-1968 and as these were self-explanatory, no further instructions were issued."

10.17. During the local audit of the factory conducted in October, 1968, it was pointed out to the Excise Department that the conces-

sions under both the notifications should not have been simultaneously given and that the concession allowed under notification No. 24/68 was not in order. In the light of subsequent clarificatory instructions issued by the Government on 9 January, 1969, the case was further examined and it was felt that as the manufacturer was mainly an ore-based manufacturer, the concession under Notification No. 24/68 only could be allowed and that the concession availed under notification No. 32/68 was not correct. This position was brought to the notice of the Collector concerned by the Audit on 17 August, 1971. This was accepted by the Department and a show cause notice was issued to the factory on 13 September, 1972 and after hearing the manufacturer, the Assistant Collector passed orders in January 1973 that the factory should pay a sum of Rs. 76,344.68 on demand towards the differential special excise duty on aluminium rods cleared during the period 1-3-1968 to 28-2-1969.

10.18. The Committee desired to know the position of recovery of the short levy. The Ministry of Finance stated that:

> "The Appellate Collector, Madras in his order dated 14-9-73 decided that the demand was time barred. The demands had already become time barred by the time position became clear to local officer after receipt of A.G.'s letter dated 17-8-1971 referred to earlier."

10.19. The Committee note that Government issued two Notifications on 1 March, 1968, providing certain concessions in excise duties in regard to the assessment of aluminium. By Notification No. 24/68 duty concession of Rs. 270 per M.T. was allowed to firms manufacturing aluminium from ores. The concession was admissible, subject to the fulfilment of the following conditions:—

(i) A manufacturer who availed of the concession under another Notification No. 32/68 was not allowed to avail himself of this concession;

(ii) Such aluminium was manufactured by the manufacturer from bauxite or alumina or both;

(iii) Clearance of aluminium in whatever from by the said manufacturer during the preceding financial year did not exceed 12,500 metric tonnes.

By another Notification No. 32/68 aluminium manufacturers were allowed a duty concession of Rs. 120 per metric tonne.

Government issued orders on 19 March, 1968, stating that the benefit of Notification No. 24/68 was not to be denied to primary ore-

based manufacturers who also undertook conversion of duty-paid ingots of outsiders on job basis.

The Committee find that during the local audit of Madras Aluminium Co. Mettur Dam, in October, 1968, it was pointed out to the Madras Collectorate of Excise that the concessions under both the notifications should not have been allowed simultaneously to the Company and that the concession allowed under Notification No. 24/68 was not in order. The case was further examined in the light of subsequent clarificatory instructions issued by Government on 9 January, 1969, and was felt by the Collectorate that as the manufacturer was mainly an ore-based manufacturer, the concession under Notification No. 24/68 only could be allowed and that the concession availed of under Notification No. 32/68 was not correct, but no conclusive action was taken to raise the demand against the Aluminium Company till September, 1972.

The mistake in allowing concessional excise duties simultaneously under both the notifications resulted in excise duty to the tune of Rs. 76,344 not being levied in time for the period from 31 March, 1968 to 28 February, 1969. The Committee are concerned at the avoidable delay of over three years in raising the demand for Rs. 76,344 by which time it became time-barred and could not be recovered. If the demand had been raised when the matter was first taken up by local Audit in October, 1968 instead of entering into a protracted correspondence, revenue of Rs. 76,344 could have been saved.

The Committee feel that after the objection was raised by local Audit in October 1968 the mistake could and should have been set right if the Collectorate had taken conclusive action in consultation with the Audit authorities. The Committee desire that responsibility for this unwarranted delay should be fixed and remedial measures taken to obviate such delays in future.

10.20. Notification No. 24/68 had a clause to say that the concession would not apply to a party availing itself of the concession under Notification No. 32/68 but there was no corresponding prohibitive clause in Notification No. 32/68. The contention of Government that "an option of availing one or the other of the exemptions could be read into the Notification" is not convincing. If the intention was to give option to the manufacturer to choose between either of the two concessions, the same should have been specifically provided in the notifications. The clarificatory instructions issued

by Government on 19 March, 1968 stating "that manufacturers who were primarily ore based but who undertook conversion of duty paid ingots from outsiders on job basis should not be denied the concession provided by Notification No. 24/68 dated the 1 March, 1968", also did not fully clear the matter and instead left scope for mis-interpretation of the underlying intention.

The Committee are unhappy that Government's Notifications providing for concessions in duty etc., are not very precisely worded as has happened in this case. As already recommended earlier in para 5.24, the Committee would like to reiterate the need to exercise greater care in drafting notifications and entrusting the work in this regard to officers with a legal background and thorough understanding of the Central Excise law.

LOSS OF REVENUE

Audit Paragraph:

11.1. Aluminium pipes of certain dimensions with wall thickness ranging from 0.50″ to 058″ and used in sprinkler equipment for agricultural irrigation purposes were allowed concessional rate of duty according to a notification dated 6th July, 1968. On 1st March, 1970, a revised notification amending the dimensions of wall thickness in metric units was issued. While doing so, instead of converting the inches into millimetres, the dimensions (in inches) were merely expressed in millimetres. This was, however, rectified in notification dated 1st April, 1972. During the period 1st March, 1970 to 31st March, 1972, some pipes conforming to the thickness provided by the earlier notification of 6th July, 1968 were cleared at concessional rate of duty of ten per cent *ad valorem*. The concessional rate was not admissible in such cases after the revised specifications were notified on 1st March, 1970.

11.2. The loss of central excise duty due to the incorrect concession allowed during the period 1970-71 and 1971-72 in respect of two units in two collectorates works out to Rs. 10,56,173.

[Paragraph 41 (a) of C&A.G.'s Report for 1972-73—
Union Government (Civil)—Revenue
Receipts—Volume I, Indirect Taxes]

11.3. Aluminium pipes and tubes other than extruded ones were earlier covered by Tariff item 27 (C) and extruded pipes and tubes by item 27(d) and both were assessable to duty *ad valorem*. By a notification No. 139/68 dated 6-7-1968 aluminium pipes of specified dimensions, as were used solely in sprinkler equipment for agricultural irrigation purposes were exempted from Central Excise duty in excess of the duty paid on stripe. The dimensions specified were as under:-

Outside diameter	Wall thickness
2″	0·050″
3″	0·050″
4″	0·050″
5″	0·052″
6″	0·058″

11.4. In the Finance Act 1970, these sub-items were changed respectively to (d) and (e) of the same item 27 and specified rates were changed to *ad valorem*. Simultaneously with the changes in the tariff item, these aluminium pipes were made to bear excise duty at 10 per cent *ad volorem* as against the tariff rate of 25 per cent *ad valorem*, and the duty paid on strip/sheets was to be given in the form of proforma credit under Rule 56A. A new notification was accordingly issued after rescinding notification No. 139/68. Under the new notification No. 46/70 dated 1-3-1970, new dimensions were prescribed as under:—

Outside diameter	Wall thickness
5·08 cms.	50 m.m.
7·62 cms.	50 m.m.
10·16 cms.	50 m.m.
12·70 cms.	52 m.m.
15·24 cms.	58 m.m.

11.5. Other conditions remained unchanged. It would therefore be seen that the wall thickness in the revised notification was restricted to 50 m.m., 52 m.m. and 58 m.m. only. Consequently, pipes not conforming to these dimensions were, strictly speaking, not eligible for the assessment as per notification of 1970. These were to be assessed to duty at 25 per cent *ad valorem*.

11.6. Explaining the background of this error during the course of evidence, the Member, Central Board of Excise & Customs stated:

> "Sir, the concession for aluminium pipes and tubes specially designed for use in the agricultural equipment was already there. The dimension of the particular specification was earlier set out in inches. Later on in the year 1970, when we made the duty *ad valorem*, we had expressed this concession also in *ad valorem* term. At that time, these specifications were also changed to metric system from inches, that is we specified them in centimetres and millimetres. Through an error, the wall thickness dimension which was previously .050" was unfortunately shown as 50 millimetres. The result of this change would have been that no pipe or tube would have got the benefits of exemption at all."

11.7. The Committee wanted to know whether the Ministry of Finance had assessed the total loss of revenue suffered in all the units as a result of this error. The witness replied:—

> "Actually, there has been no loss. Because right from the beginning, the intention was not to withdraw the exemption which was in existence even before, we only continued the exemption. Through an error, a specification was worngly shown".

The Chairman of the Board added:

> "The point of audit is that so long as that mistake has been made in the Notification, the Notification should be applied in the mistaken form. Since we seek to apply the Notification in the original correct form, therefore, there is a loss. We say that there is a clear mistake. That was never the intention. Even alongwith the budget instructions, it has been stated that there is no intention to change this. Only a clerical mistake has occurred in the Notification. Technically it might be correct. Audit view is that once mistake was there in the Notification you must read the Notification in the mistaken form. This assumed loss is there because of the mistaken form. If you do not go by words, then there is no loss of even a single pie. As a result of that mistake, there would be no concession; that concession ceases to exist."

11.8. The Director, Receipt Audit stated during the course of evidence:

> "The paragraph sent to them (Ministry of Finance) was exactly on the same lines as it appears except for figures. Then the first sentence of the comments is as follows:—
>
> 'The facts stated in the draft paragraph are substantially correct.'
>
> That is how the comments begin. This was a clerical error. In this connection, you kindly see serial No. 7 of Notification 1970. We, in Audit took the Notification as expressing the intention because, in fiscal matters, we take the notification as important. If we go behind it, there would be no limit to it. Your notification says this. The Collectors themselves have written to you: even then you took two years to amend it. During that period having the notifica-

tion as basis, there has been less collection of duty. I would like to add something about the purpose of putting in this paragraph. As the Chairman is aware, the P.A.C. has pointed out time and again that mistakes in the notification of Central Excise have occurred owing to errors of the Draftsmen. There is a specific recommendation of the Committee that there should be a more careful scrutiny of these notifications, with the help of the Draftsmen of the Law Ministry specially drafted to the Department. That recommendation is still to be implemented, even though the P.A.C. had made it 5 years earlier. These mistakes would not have occurred, if it had been done. That was the main purpose of bringing the paragraph in."

11.9. The P.A.C. in para 1.246 of their 111th Report (4th Lok Sabha) had desired to review the existing arrangements for drafting of notifications and to entrust work in this regard to officers with a legal background and a thorough understanding of the Central Excise Law. The Ministry of Finance in their Action Taken Note intimated on 27 January 1971 that the question as to how best the existing system could be improved in the light of the observations made by the P.A.C. was being examined in consultation with the Ministry of Law and the decision when arrived at would be intimated to the Committee. No further communication thereafter has been received from the Ministry of Finance.

11.10. The Committee desired to know as to how and why the Collectors failed to apply the notification No. 46/70 dated 1-3-1970 and if they found any defect in it why they did not point it out to the Board. The Committee also desired to know whether the Collectors read the notification at all. The witness replied:

"The fact that they do read the notification becomes obvious in the very instance, because the mistake was pointed out first by the Collector of Customs, Cochin, in whose jurisdiction this kind of a tube is not manufactured at all."

The Chairman of the Board added:

"As Member (Tariff) had pointed out, when the budget instructions were issued, there were instructions covering this notification. It was stated that there was no change at all in the existing notification. The Collectors had, therefore, continued to follow the earlier one, inspite of the error. It is not as if they ignored it."

The Finance Secretary said:

"May I make a submission? The intention always was to give the concessional rate for a particular type of tubes which were used for agricultural equipment etc. Now, this has been done and there has been no deviation from the intention also. By converting inches into mms. certain absurd results were following and nobody could manufacture pipes of this particular specification, because of the physical dimensions. There is a communication to show that it would lead to an absurdity because of the thickness as compared to the internal diameter and the overall diameter. There has been no net effect in revenue and nobody got hurt and nobody got benefited."

11.11. In reply to another question the witness stated that—

"there were two firms involved in it One is Premier Irrigation Equipment in Calcutta Collectorate and the other one is Jindal (P) Ltd. in the Mysore Collectorate."

11.12. The Committee desired to know the time gap between the occurrence of the mistake in the original notification and its correction by another notification. The Chairman of the Board replied:

"In the issue of formal notifications, there was a gap of two years."

11.13. When asked as to why it took two years to correct the mistake. the Chairman of the Board replied:

"Sir, this is a completely mishandled case. Firstly there was obviously an error, secondly for rectifying the error unduly long time had been taken. And unfortunately, somebody somehow thought that Collectors must be asked on this point even though it was a case of a simple error."

11.14. The following statement furnished by the Ministry indicates the chronological sequence of events and the action taken from the date of issue of the original notification (No 46/70) upto the time of the issue of the amended notification (No. 115/72):

"1-4-70 Issue of Notification No. 46/70 alongwith other Budget proposals.

22-9-70 Collector of Central Excise, Cochin brings the clerical error to Board's notice in his fortnightly confidential Report for the period ending 31-3-70. Extract in CX-4

file shows that the copy of extract was registered only 22-9-70. He recommended issuing the corrigendum.

29-9-77 Extract put up by the section suggesting that letter from the Collector of Central Excise, Bangalore was also received on the issue which had been passed on to TRU because the notification 46/70 was issued as a part of Budget proposals, 1970.

5-10-70 T.R.U. returns the file to CX-4 on the plea that all the papers have since been transferred to CX-4.

20-11-70 CX-4 again sends the file to TRU because the former did not know on what basis dimensional specifications have been converted.

23-11-70 TRU wrote that if need to the present Joint Director (Drawback) might be consulted as he was associated with the drafting of the said notification while he was under Secretary T.R.U.

27-11-70 D.I.C. & C.E. forwards an extract from the tour note No. 1/70 of CCE. Cochin to M/s. Indalco, Alumpuram to the Board for necessary correction in the notification.

7-12-70 File marked to Joint Director, Drawback for throwing light in the matter.

9-12-70 Joint Director observed that there obviously appeared to be clerical mistake. In the absence of Budget work-sheet it was not possible to throw any further light. He also suggested issuing the corrigendum.

21-12-70 Section put up a note that a corrigendum could be issued only if the mistake occurred at printing stage. Since in the instant case, mistake crept in at the drafting stage, only an amending notification would be necessary. Since an amending notification would only have prospective effect, practice of implementation of the notification 46/70 dated 1-3-70 might be enquired.

24-12-70 Letter issued to CCE's Cal. & Orissa/Bangalore/Cochin to know how the notification was being implemented. It was also stated therein that through clerical error the wall thickness previously shown in inches instead of being converted into metric system was shown as 'mms' instead of inches without conversions.

27-1-71 Collector of Central Excise, Cal. & Orissa reported that pipes of specification as mentioned in notification 139/68. dated 6-7-68 have been allowed exemption. He however, recommended that wall thickness of the pipes be also brought to C.G.S. (Metric) system.

20-2-71 CCE's Bangalore and Cochin reminded with referento Ministry's letter dated 24-12-70.

2-3-71 A.C.(T) Cochin sent an interim reply that report from the concerned formation was awaited.

26-3-71 CCE, Bangalore intimated that pipes of specification of wall thickness 0.050" or 1.277 being allowed the exemption under notification 46/70 dated 1-3-70

17-4-71 Section put up the report of CCE, Bangalore suggesting that report from Cochin might be awaited.

15-9-71 Indian Aluminium Co. from their Delhi Office brought the matter to the notice of Under Secretary Central Board of Excise & Customs stating that their customers have been put up to unnecessary hardship.

3-10-71 Section put up the letter submitting a draft telex reminder to CCE, Cochin.

13-10-71 Telex issued.

13-10-71 CCE, Cochin intimated that report already sent on 27-3-1971. Copy again sent with postal copy of telex. This was received on 16-10-1971. CCE, intimated that Indalco supplied pipes only to M/s. Voltas Ltd. of Bombay for sale on payment of full duty in view of non-production of endose certificate as well as the fact that specification for wall thickness were shown in mms and not in inches as laid down in notification No. 46/70.

7-11-71 Section put up the report alongwith a suggestion for issuing the corrigendum and a suitable draft therefor.

11-11-71 File marked to Law Ministry.

18-11-71 Dy. Legislative Council (Shri V. S. Bhashyam) returned the file that corrigendum can be issued only for mistake at printing stage. Only course in the instant case was to issue an amending notification which could not have retrospective effect.

24-11-71 US(CX-4) suggested to Section in his marginal note that the amending notification be forwarded by covering letter stating the factual position regarding the intention as was done on a number of occasions in the past such as 'glass fibre' and zinc.

26-12-71 Section put up a note that file relating to zinc is with CX-4 Section which would be procured Matter relating to glass fibre also obtained. Meanwhile, revenue implication from CCE, Bangalore be enquired.

30-12-71 Telex issued to CCE, Bangalore.

2-1-72 Telegram in reply received from Bangalore.

9-1-72 Draft amending notification put up by section. U.S. (CX-4) suggested on 11-1-1972 for putting up a self contained note because it required M(T)'s approval.

15-1-72 Self contained note submitted by US (CX-4) to DS (CX-4 ERS) alongwith a draft amending notification.

16-1-72 M(T) desired DS (ERS) to (i) re-check the conversion figures personally (ii) know how the error crept in the first notification (iii) to cover audit objection issuing individual orders under Rule 8(2). He desired to cover cases where the benefit of exemption had been given out demands had been raised.

17-1-72 DS (ERS) asked US (CX-4) to speak.

25-1-72 DS (ERS) observed that steps to issue the amending notification be taken and thereafter points (ii) and (iii) of M(T)'s minutes dated 16-1-1972 be examined.

29-1-72 File marked to Law Ministry for vetting the notification received there on 1-2-1972.

15-2-72 File returned to the Ministry after slight touching of the draft and received by the Ministry on 16-2-1972.

17-2-72 (i)US (CX-4) directed the section to send the file to official language commission for Hindi translation and getting it done quickly.

(ii) Fair copy of the notification/stencil put up for signature by the Under Secretary.

(iii) U.S. observed that stencil will be signed after receipt of the CSR No. from press.

24-2-72 Hindi translation received back.

28-3-72 (i) Draft circular letter and draft explanatory memorandum put by section.
(ii) Approved by the Under Secretary.

13/14-4-72 (i) Cyclostyled copies of the notification with a forwarding letter dated 1-4-1972 issued."

11.15. The Committee find that by a notification dated 6 July, 1968, Aluminium pipes of certain dimension with wall thickness ranging from 0.050" to 0.058" and used in sprinkler equipment for agricultural irrigation purposes were allowed concessional rate of excise duty. While issuing a revised Notification on 1 March, 1970, to express dimensions of wall thickness in metric units, the dimensions (in inches) were merely described in millimetres without in fact converting them into millimetres. Though this mistake was rectified by issuing Notification on 1 April, 1972, the delay resulted in a loss of central excise duty to the extent of Rs. 10,56,173 because of incorrect concession during the period 1 March, 1970 to 31 March, 1972, in respect of two units. The representative of the Ministry of Finance averred during evidence that if one went by the "intention" behind the notification issued on 1 April 1972, there was no loss. The Committee feel that in fiscal matters the language of the notification is as important as expressing the intention behind the notification. It is somewhat redeeming that the mistake was noticed by one of the Collectors in whose jurisdiction interestingly enough this kind of tubs is not manufactured at all. However, the error was rectified after 2 years. The Chairman of the Board admitted during evidence "this is a completely mishandled case." As regards the delay of two years in rectification of the mistake, the witness felt "first, there was obviously an error. Secondly, for rectifying the error unduly long time had been taken."

11.16. The Committee note from the chart furnished by Government showing the chronology of events/action taken from the date of issue of the original notification (46/70) on 1 March 1970 to the date of the issue of the corrective notification (115/72) on 1 April 1972 that avoidable delay had occurred at various stages. The Committee feel that when the mistake was initially brought to the notice of the Board by the Collector of Central Excise, Cochin in September, 1970, the Board should have acted promptly and taken conclusive action quickly. The Committee are distressed at the casual manner in which the case involving revenue implications was allowed to be dragged on under the apprehension that an amending

notification may not be effective from the date of the original notification. It is surprising that the routine movement of file without any action from the Section (CX-4) to another (T.R.U.) within the Ministry took 1½ months and reminders were issued after a period of 2 to 6 months. The Committee cannot resist expressing its displeasure over the manner in which this case was processed by the Board. They desire that drastic toning up of the working of the office of the Board of Customs and Central Excise is called for to ensure epeditious disposal of cases at all stages.

UNDER ASSESSMENTS—ALUMINIUM (TARIFF ITEM 27)

Audit Paragraph:

12.1. Under notifications issued on 1st March, 1968, (superceded by another notification issued on 13th May, 1969) aluminium in crude form failing under tariff item No. 27(a) manufactured out of bauxite was eligible for assessment at the concessional rate of duty of Rs. 870 per metric tonne without any special excise duty, (as against the tariff rate of Rs. 950 towards basic excise duty and Rs. 190 towards special excise duty) subject to the condition that the clearances of aluminium in whatever form by a manufacturer dueing the preceding financial year did not exceed 12,500 metric tonnes. However, under certain executive instructions issued by the Government on 19th March, 1968 and 9th January, 1969, the quantity of aluminium manufactured out of ingots brought out were excluded for determining the ceiling limit of 12,500 metric tonnes. Consequently, the benefit of concessional rate of duty of Rs. 870 per metric tonne was extended to manufacturer during 1969-70, even though the total clearances of aluminium in all forms during 1968-69 exceeded 12,500 metric tonnes.

12.2. These executive instructions which did not have the force of law, however, tended to substantially alter the basis provisions of the notification so as to confer unintended benefits to the manufacturer.

12.3. The loss of revenue due to the extra legal concession conferred by these executive instructions of Government in respect of one factory alone amounted to Rs. 19,89,433 during the period from April, 1969 to February, 1970.

[Paragraph 41(b) of the Report of the C.&A.G. of India, 1972-73—Indirect Taxes (Union Excise Duties)]

12.4. By a notification dated 1st March 1968 (as modified by another notification of 13th May, 1969) a primary ore bassed manufacturer of aluminium was given a concession of Rs. 80 per M.T. in basic excise duty and Rs. 190 per M.T. in special excise duty. A condition for availment of this concession stipulated—

> "clearances of aluminium in whatever form by the said manufacturer during the preceding financial year did not exceed 12,500 M.T."

12.5. One such manufacturer (M/s. Madras Aluminium Co., Ltd.) cleared aluminium manufactured by him during the years 1968-69 as under:—

aluminium produced from bauxite ore	12,340.819 M.T.
aluminium ingots brought from outside and converted to wire rods on job basis	643,416 M.T.
Total:	12,984.235 M.T.

12.6. According to Audit the concession was therefore not admissible to this manufacturer. But the Government of India issued instructions on 19th March, 1968 and 9th January, 1969, to say:—

(i) that such primary producers can also undertake the job of conversion of duty paid ingots to wire rods etc. to utilise the space capacity available with them,

(ii) such conversion production should not be added to primary production to apply the limit of 12,500 M.T.

12.7. The Committee desired to know the background for extending the above concessions of duty. In a note the Ministry of Finance stated that:—

"after the issue of notification No. 24/68 dated 1st March, 1968 granting partial exemption from duty to small ore based manufacturer of aluminium, the Aluminium Corporation of India Ltd., West Bengal had represented to the Board on 7th March, 1968 that they should not be denied the exemption contemplated in the said notification only because they were converting duty-paid aluminium ingots brought from outside, into properzi rods. The Collector of Central Excise, West Bengal was informed in Board's letter F. No. B-2/1/68-CX-I dated 19th March, 1968 that manufacturers who were manufacturers of primarily ore-based ingots, who also undertake conversion of duty paid ingots of outsiders on job basis in order to utilise the space capacity available with them, were not to be denied the exemption granted in specifically mentioned in Board's above order whether clearances of such converted products from duty paid ingots were to be excluded for calculating the ceiling limit of 12,500 M.T. as incorporated in the exemption notification. Further, on a reference from

M/s. Madras Aluminium Co., Ltd., on 14th November 1968, Board confirmed that the clearances of properzi rods converted from duty paid ingots brought from outside could be excluded for calculating the ceiling limit of clearances mentioned above.

Board in their letter F. No. 1/38/68-CX-3 dated 9th January, 1969 to the Collector of Central Excise, West Bengal further re-iterated that if an ore based aluminium factory brought from outside aluminium in any crude form or products thereof, under rule 56-A procedure, in respect of which proforma credit was allowed and processed such outside aluminium either by itself or in admixture with aluminium produced from bauxite and alumina or from both within the factory, the production of aluminium in whatever form exclusively attributable to aluminium brought from outside would not count for the purpose of determining the ceiling limit of clearances (12,500 M.T. in a preceding year) prescribed in the above mentioned notification.

The exemption contemplated in the above notification was granted to relatively small ore-based manufacturers to lighten the burden of the excise duty increases made in the Budget proposals of 1967, of which a part was to be absorbed by the producers. It was not the intention of the Government to deprive them of this exemption by including the clearances of products made from duty-paid aluminium brought from outside."

12.8. The Committee wanted to know the circumstances in which ceiling was placed. The Member, CBE&C stated during evidence:—

"The audit point of view is that by two letters (dated 19th March, 1968 and 9th January, 1969) issued to clarify the scope of the notification we have sought to expand the concession, whereas it is not so. They have construed these instructions as a form of further expansion of the scope of the notification and, therefore, what is outside the scope of the notification in their view, amounts to loss."

The Director Receipt Audit pointed out:

"The notification has been issued under the rule which refers to general commodities, but in fact, it was issued for a

particular unit, and that is why the figure of 12,500 happens to be mentioned. Apart from that it says:

"....Subject to the condition that such aluminium is manufactured from bauxite or from alumina or from both".

and then:

"clearance of aluminium in whatever form by the said manufacturer during the preceding year did not exceed 12,500 tonnes."

A notification is under statutory tariff. The executive instruction expands this by saying that this 12,500 tonnes should not be limited only to bauxite, and if something is brought from outside, the person should not be touched."

The Chairman CBE&C explained:

"The executive instructions were not intended to defeat the objective of this particular notification because in the Budget Speech the Finance Minister had made it very clear what the notification signifies. I have got an extract of it also. (Appendix XXIII). If after we explained that the intention of the notification was such and such, Audit has said that the intention has not been carried out, we would have said 'May be it is our mistake', but where is the question of any concession not warranted by the notification which was extended? The whole point hinges on the question whether clause 1 and 2 have to be read together or separately."

The Finance Secretary added:

"The purpose of this exemption was really to benefit the small scale producers. It was really meant for Madras Aluminium Co., and perhaps the Aluminium Corporation of India.... It so happens that in this particular industry the economies of scale play a very important role. This concession was meant for minor producers of aluminium i.e., those who produce aluminium upto 12,500 metric tonnes per annum. It was meant for that purpose. Now the point is whether 12,500 metric tonnes really means production from bauxite or whether it also includes certain quantities which people might have been fabricat-

ing out of different types of duty paid aluminium and thus making use of their surplus fabricating capacity? This point has been subsequently clarified in other letters. Incidentally, I would mention that when a further clarification was issued, it was also put upto the then Deputy Prime Minister and his approval was obtained. So, one must remember that the particular point that so far as exemption itself is concerned, it is the Government which can give the exemption whether it is issued in the form of an executive notification as such with the preamble saying 'Central Government in exercise of its powers under such and such a Section'. Both devices have practically the same meaning. I would not take a legal stand here. I would go by basic intention. And the basic intention was to give concession to manufacturers who produce upto 12,500 metric tonnes of aluminium from the ore and this intention is also clear because the order itself says that such aluminium manufactured by its manufacturers from bauxite or from alumina or from both and clearance of aluminium in whatever form by the said manufacturer during the preceding financial year did not exceed 12,500 metric tonnes. Here both the conditions are read together and it would not be correct to interpret this notification as saying that the limit of 12,500 metric tonnes applies to all products."

12.9. The Committee asked whether any ambiguity was detected in the notification and if there was an ambiguity why it was sought to be removed by executive instructions and not by a proper notification. The Chairman CBE&C replied:—

"We do not call it an ambiguity because if you at this stage or any stage amend the notification, that amended notification will take effect from the date of its amendment which, by implication, would mean that the earlier thing had some other meaning. It was for the Government to make up its mind, how the concession was to be given. It was to be given from the very date of the notification itself we had covered a long way and notification had been issued long before but at some stage if something happens you have got to clarify the position."

12.10. The Committee learnt that after the issue of notification No. 24/68 dated the 1st March, 1968, Messrs Aluminium Corporation

of India Ltd., Calcutta represented to the Ministry of Finance on the 7th March, 1968. Extracts from this representation are given below:—

"In terms of the notification (No. 24/68) we are entitled to the exemption in excise duty on all our aluminium products. However, the Asstt., Collector, Central Excise, Asansol Division, has refused to allow us this concession contending that the said notification is not applicable to us. Now the Collector, Central Excise, West Bengal, Calcutta has sought clarification from Central Board of Revenue.

The Asstt. Collector, Asansol Division seems to have confused the issue as clearance of rods converted out of customer's ingots has nothing to do with the clearance of our Aluminium and Aluminium products manufactured from bauxite of alumina. Circular No. 24/68 dated 1st March, 1968 is quite clear and we being an ore-based plant with annual clearance less than 12,500 tonnes are entitled to the exemption of duty mentioned in the notification and we will not be availing the exemption contained in the Notification of the Government of India, Ministry of Finance (Deptt., of Revenue and Insurance) No. 32/68 Central Excise dated 1st March, 1968.

As far as conversion of ingots into properzi rods in customers account is concerned, we are not claiming this exemption in duty as these will be received by us after duty has been paid by the customers on the rates applicable to the producers from whom the ingots have been obtained and therefore we would not come in the picture at all.

Under these circumstances, we trust that you would be good enough to instruct the Collector, Central Excise, West Bengal to issue orders to allow us to clear the goods manufactured by us in terms of the Notification 24/68 dated 1st March, 1968 by charging reduced rate of duty."

12.11. After the receipt of aforesaid representation dated the 7th March, 1968, the Ministry of Finance issued clarification in their letter dated the 19th March, 1968. On the 14th November, 1968 M/s. Madras Aluminium Company Ltd., made a representation. An extract of the representation is reproduced below:

"In terms of Budget for 1968, your Ministry's notification dated 1st March, 1968 exempted Aluminium falling under

Item No. 27 of the first schedule to the Central Excise and Salt Act, 1944 (1 of 1944) from Rs. 80/- per metric tonne of Excise Duty and the whole of the special duty of excise subject to the conditions that (i) such aluminium is manufactured by its manufacturer from Bauxite or from alumina or from both and (ii) clearances of aluminium in whatever form, by the said manufacturer during the preceding financial year did not exceed 12,500 metric tonnes.

Apart from manufacturing Aluminium from Bauxite, we are also converting imported ingots of some of our customers into Properzi Rods (both Ingots and Rods fall under Item No. 27) Since these rods converted out of imported ingots are also cleared through Excise and since they are not manufactured by us from Bauxite or from Alumina or from both, we presume that these clearances will not be included while considering our Excise clearances for the purpose of eligibility under the above notification. We are sure that it is not the intention of Government to include Rods converted out of imported ingots in our total clearances. However, in order to avoid any ambiguity, we request you to specifically notify that similar clearances mentioned above will not be included in the total clearances while judging the eligibility of the company for exemption."

12.12. The Ministry of Finance also furnished an extract from the note submitted to the then Deputy Prime Minister on 29-11-68 to seek his approval before the issue of clarification on 9-1-69 relevant portions thereof are reproduced below:

"The Madras Aluminium Company Ltd. have raised the following points for consideration viz:—

(i) that clearances of aluminium products (properzi rods) made by conversion of aluminium ingots supplied by parties on job basis should be excluded for calculating ceiling limit of clearances for concessional assessment under Government of India Notification No. 24/68 dated 1-3-68.

(ii) x x x x x x

2. Under the Government of India notification No. 24/68, dated 1-3-1968 manufacturers who manufacture aluminium, from bauxite, from alumina or from both and whose clearances of aluminium (whether for home consumption or export) in whatever form did not exceed 12,500 metric tonnes during the preceding financial year, enjoy certain duty concessions of Rs. 150 per metric tonne (partly out of special duty).

3. In terms of orders contained in this Ministry's letter F. No. B.2/1/68-CX-1 dated 19-3-1968, read with Central Board of Excise and Customs letter F. No. 1/11/68-CX.III dated 8-11-68 ore-based producers of aluminium who undertake conversion of duty paid ingots of outsiders on job basis are entitled to concession granted under the Government of India notification No. 24/68, dated 1-3-68 referred to above subject to the condition that clearances of the converted aluminium will be regulated on quantity to quantity basis minus melt loss or process loss. The request of Madras Aluminium Co. in item (i) of para 1 above is, therefore, already covered by the above orders."

4. x x x x x x

5. x x x x x x

12.13. The Committee desired to know whether Government were aware that such primary manufacturers had also been doing job convertions at the time when this concession was originally proposed. In a note, the Ministry of Finance replied in the negative. In another note the Ministry of Finance stated that the job works were undertaken to utilise the idle capacity. When asked about the capacity of Madras Aluminium Co. (Ltd.) to produce aluminium from (i) ores and (ii) by conversion of ingots to other products, the Ministry of Steel & Mines furnished the following information:

From one

"Year	Capacity of Aluminium production in tonnes (approximate)
1967	10,000
1968-71	12,500
1972	16,000
1973	18,000

The Company has been licensed to expand smelting capacity to 25,000 tonnes per annum."

For conversion

12.14. The licensed capacity of Madras Aluminium Company for conversion of E.C. grade aluminium into wire rods was 6,000 tonnes per annum from the year 1967. In the year 1970, an *ad hoc* permission for producing an additional 4,500 tonnes per annum of wire rods was given taking the total capacity to 10,500 tonnes per annum.

12.15. In addition, the company has been licensed to produce 7,000 tonnes of rolled products and 2,000 tonnes of extrusions. The capacity for rolled products and extrusions has not yet been set up.

12.16. When asked whether the factory utilised its full capacity in respect of both during the year 1967-68, the Ministry of Steel & Mines replied:

> "Yes. The total production of primary metal in 1967-68 was 10,835.5 tonnes. The production of wire rods in that year was 6,097 tonnes."

12.17. The Committee then asked whether the capacity of the factory to produce aluminium from ores could be diverted to conversion purposes, the Ministry of Steel and Mines replied:

> "The first stage involved in aluminium production is the chemical process for conversion of bauxite ores into alumina. The second stage is smelting involving the reduction of alumina into primary metal. Spare capacity available for smelting in a plant can be utilised for converting the alumina produced in some other plant into aluminium metal. However, it may be added that in practice such a conversion on toll basis has not taken place. For the purpose of conversion of primary metal into wire rods, a separate equipment called properzi mill is required. If there is spare capacity in this mill, this capacity can be utilised for conversion of metal received from the customers for such conversion."

12.18. The Committee asked if Government had considered that the limit placed at 12,500 tonnes of production in a year would act as disincentive to more production or restrict the clearance in

a year and fall within the exemption limit. In a note, the Ministry of Finance stated:

> "The Government did not think that the limit placed at 12,500 Metric tonnes would act as a disincentive to more production or restrict the clearance in a year to fall within the exemption limit."

12.19. The Committee note that Notification No. 24/68 issued by the Ministry of Finance on 1 March 1968 and amplified by their Notification No. 138/69 dated 13 May 1969 was meant for giving concession in duty to primary ore-based manufacturers subject to the fulfilment inter alia **of the condition that "clearances of aluminium in whatever form by the said manufacturers during the preceding financial year did not exceed 12,500 M.T." Explaining the rationale behind this condition it was stated by the Ministry of Finance that the concessions in duty were meant for relatively small ore-based manufacturers to lighten the burden of the excise duty increases made in the Budget proposals of 1967 and it was not intended to deprive them of this concession by including the clearances of products made from duty paid aluminium ingots brought from outside. Madras Aluminium Co. Ltd. Mettur Dam, an ore-based Aluminium manufacturer, was also engaged in the conversion of duty-paid aluminium ingots brought from outside on behalf of outsiders, into wire rods etc. The total clearances of that firm during the year 1968-69 exceeded 12,500 M.T. They were, however, allowed the concessions in duty because of the executive instructions of the Ministry of Finance contained in their letters No. FB21/69/CXI dated 19 March 1968 and F. 1/33/68-CXI-II dated 9 January 1969 which provided for the exclusion of the goods produced out of the excise-paid aluminium ingots brought from outside from the prescribed ceiling of 12,500 M.T.**

On an enquiry the Committee were informed that the Board was not aware at the time of issue of notification that such conversion job was being undertaken by the primary manufacturers.

The Committee feel that the Ministry should have carefully gone into the facts, especially when representations on the subject had been received by them from 1967 onwards to ensure that the notification which was issued to give effect to the Finance Minister's announcement in the Budget Speech of February 1968 carried out the intentions unambiguously. In any case it would have been better to clarify the matter through a corrective notification

rather than resort to clarificatory instructions so that matters having fiscal implications are dealt with correctly in accordance with statutory requirements. Besides, resort to a general notification under rule 8(1) to cover a particular case, when there is a separate provision for exemption for particular cases [rule 8(2)], is by no means a proper exercise of statutory powers. In this case, admittedly, the notification was issued for covering the requirements of Madras Aluminium Co. and perhaps also Indian Aluminium Co. and the conditions prescribed were tailored to fit in with those relating to Madras Aluminium Co. In the circumstances the notification should, if at all, have been issued under rule 8(2) provided further that the conditions mentioned in the rule were satisfied. In this connection the Committee would reiterate their earlier recommendation made in paragraph 1.294 of their 111th Report (Fourth Lok Sabha) where in they had stressed that only an amending notification should be issued as and when it becomes essential to issue a clarification in regard to the contents of the original notification. The Committee trust that this practice would be now invariably followed in future.

12.20. For lack of time, the Committee have not been able to examine some of the paragraphs relating to Union Excise Duties included in the Report of the Comptroller & Auditor General of India for the year 1972-73, Union Government (Civil), Revenue Receipts, Volume I, Indirect Taxes. The Committee expect, however, that the Department of Revenue and Banking and the Central Board of Excise and Customs will, in consultation with statutory Audit, take such remedial action as it called for, in those cases.

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

NEW DELHI;
September 28, 1977.

Asvina 6, 1899 (*S*).

APPENDIX I

(*Vide* Para 1.7)

Statement showing the reasons for the shortfall in the realisation of excise duty during 1972-73 *in respect of major revenue yielding commodities*

Tea: In the year 1970 a number of tea gardens filed writ petitions in various High Courts challenging the vires of rule 9(F of the Central Excise Rules, 1944 which enables the Government to group areas into zones for the purpose of assessment of tea produced in such areas, on the basis of the weighted average sale price in the internal and export auctions of tea in India. In a number of cases, the tea gardens obtained Court injunctions permitting them to pay duty at rates lower than the prescribed rates. These injunctions continued to be in operation throughout the year 1972-73 and adversely affected the revenue realisation.

Unmanufactured Tobacco: The duty-paid clearances of unmanufactured tobacco during 1972-73 amounted to 278 mn. Kg. as against 296mn. Kg. in 1971-72 and 282 mn. Kg. in 1970-71, thereby indicating a *significant fall* in the duty paid clearances, instead of any growth.

Exports of unmanufactured tobacco during 1972-73 reached an all time-high figures of 94.5 mn. Kg. valued at Rs. 61.07 crores as against 57.3 mn. Kg. valued at Rs. 42.2 crores during 1971-72 and 47.5 mn. Kg. valued at Rs. 31.3 crores during 1970-71.

The above factors coupled with an unprecedented drought in some parts of the country which affected the purchasing power of the consumers and thereby the clearances for home consumption appears to be responsible for the lower realisations.

Cigarettes: Clearances of cigarettes went down from 65581 mn. No. in 1971-72 to 60641 mn. No. 1972-73, thereby indicating a *substantial decline* in the clearances not to speak of any growth. Besides, there was a shift in production pattern and consequently in clearances from the higher value category i.e. Rs. 20—Rs. 30 per 1000 cigarettes bearing excise duty of 145 per cent *ad-valorem* to the lower valued category i.e. Rs. 10—Rs. 20 per 1000 cigarettes bearing a lower rate of excise duty of 135 per cent *ad valorem*. These factors adversely affected revenue realisations under this item.

Petroleum Products: While formulating forecast for 1972-73 for POL group, we had assumed a general growth rate of about 50 per cent. However, the actual production of petroleum products in 1972-73 turned out to be only 17.84 million tonnes, which was even lesser than the production of 18.64 million tonnes in 1971-72. This shortfall, therefore, affected our estimates during 1972-73.

As indicated by the Ministry of Petroleum and Chemicals, the shortfall in production in 1972-73 could be attributed to (i) reduction in crude processed by Cochin Refinery Ltd. due to repeated shut-downs of the refinery to carry out the expansion programme; (ii) reduction in crude processed by Burmah Shell, ESSO and CALTEX due to lesser imports of crude at higher prices within the foreign exchange released to them.

The pattern of production of various petroleum products is adjusted by the Ministry of Petroleum and Chemicals keeping in view the availability of crude, demand for various products, availability of refined products in international market at competitive prices, etc.

The actual pattern of production for 1972-73 *vis-a-vis* their production in 1971-72 is as given below:—

Sl. No.	Product	Production during		Col. 4 as % of col. 3.
		1971-72	1972-73	
1	2	3	4	5
	Indigeneous production		(mn. tonnes)	
1.	Motor Spirit	1·59	1·58	99·4
2.	Kerosene (Sup. Irf. & ATF)	3·78	3·56	92·4
3.	Diesel Oil, NOS	1·06	0·99	93·2
4.	Furnace Oil	2·93	2·16	73·7
5.	All other products.	9·28	9·55	102·9
	TOTAL	18·64	17·84	95·7
	B. Total through-put (crude)	20.04	19.33	

It would thus be seen that in 1972-73 the production of kerosene and furnace oil was lower as compared to 1971-72. The gap between

production and demand was sought to be met by imports of 0.75 mn tonnes and 1.90 mn. tonnes of kerosene and furnace oil respectively.

Besides the above factors, additional excise duty on motor spirit under the Mineral Products (Additional Duties of Excise and Customs) Act, 1958 was reduced from Rs. 99.50 to Rs. 81.55 per kilolitre with effect from 17.3.72 which could not be foreseen earlier had an adverse effect on the actual realisations under motor spirit during 1972-73.

These factors had an adverse effect on revenue under *motor spirits kerosene* and *Furnace oil.*

Aluminium: *As* against the anticipated production of 2 lakh tonnes, the actual production was 1.75 lakh tonnes during 1972-73, thus recording a shortfall of about 12.5. This shortfall could be traced to the following reasons:—

(i) there were severe power-cuts in the States of Uttar Pradesh and Karnataka (where major primary producers of aluminium are situated) which affected production of aluminium;

(ii) the industry also suffered due to strike for 20 days in Belgaum Aluminium factory.

Matches: The production of matches in 1972-73 registered a marked decline to about 62.5 million gross boxes of 50's, as compared to production of 67.5 million gross boxes of 50's during 1971-72 and 64.9 million gross of 50's in 1970-71.

This shortfall in production is traceable to the following factors:—

(i) shortage of raw materials like potassium chlorate, wood for splints and veneers, etc;

(ii) strike and lock out in WIMCO's factory at Madras (one of the biggest in the country) during the latter half of the year.

APPENDIX II

(*Vide* Para 1·8)

Statement Showing Commodity wise realization of revenue from Basic Duty and Basic-cum Special Duty during the years 1971-72 *and* 1972-73

(Figures in lacs)

Serial No.	T.I. No.	Commodity	Basic duty realised in 1972-73	Basic duty *cum* special duty realised in 1971-72.	Difference	Increase/Decrease (+)	Increase/Decrease (—)
						changes in rates of duty in the 1972 Budget.	other causes including increase/ decrease in production/ clearances prices etc.
1	2	3	4	5	6	7	8
1	1	Sugar	14066	13355	(+)711	—	711
2	1A	Confectionery	73	68	5	—	5
3	1B	P & P Foods	530	518	12	(—)10	22
4	1C	Food products	501	460	41	(—)40	81
5	1D	Aerated Water	635	329	306	293	13
6	1E	Glucose & dextrose	118	85	33	—	33
7	2	Coffee	386	384	2	(—)4	6
8	3	Tea [*vide foot note* (2)]	2973	3386	(—)423	—	(—)423

9	4I	Un-manufactured Tobacco	7838	7688	150	883	(—)733
10	4II(1)	Cigars and Cheroots	—	2	—2	—	—2
11	4II(2)	Cigarettes	14794	15460	—666	—453	—213
12	4II(4)	Smoking mixtures	2	—	2	—	2
13	6	Motor Spirit	21016	19806	1210	—	1210
14	7	Kerosene	10618	9575	1043	1646	(—)603
15	8	R.D.O. & V. O.	25078	23626	1452	—	1452
16	9	Diesel vil n.o.s	1089	1128	—39	—	(—)39
17	10	Furnace oil	1591	1947	—356	—	(—)356
18	11	Asphalt, Bituman and Tar	639	398	241	205	36
19	11A	Pet. Prod. N.O.S.	1778	1411	367	82	285
20	11B	Blended and Lubricating oils & Graueses. . . .	1148	793	355	196	159
21	11C	Calcined pet coke.	94	83	11	—	11
22	12	V. N. E. Oil	122	106	16	(—)13	29
23	13	Vegetable products.	1523	1337	186	(—)30	216
24	14	Paints and Varnishes	975	721	254	211	43
25	14A	Soda Ash	248	246	2	—	2
26	14AA	Chemicals	242	195	47	—	47
27	14B	Caustic soda	451	398	53	—	53

1	2	3	4	5	6	7	8
28	14BB	Sodium silicate	149	162	(—)3	—	(—)13
29	14C	Glycerine	21	17	4	—	4
30	14D	S. O. Dyes	995	582	413	249	164
31	14DD	Syn. Organic products	81	62	19	20	(—)1
32	14E	Prop. Medicines	1709	1530	179	—	179
33	14F	Cosmetics	593	584	9	—	9
34	14G	Acids	158	145	13	—	13
35	14H	Gases	436	349	87	—	87
36	14HH	Fertilisers	3538	2106	1432	1179	253
37	15	Soap	1144	1174	(—)30	(—)30	—
38	15A	Plastics	3412	2839	573	262	311
39	15AA	O. S. Active Agents	402	318	84	—	84
40	15B	Cellophane	177	183	(—)6	—	(—)6
41	16	Tyres	6946	6313	633	288	345
42	16A	Rubber product	1231	1046	185	75	110
43	16AA	Synthetic Rubber	79	101	(—)22	—	(—)22
44	16B	Plywood	378	314	64	—	64
45	17	Paper	3118	2625	493	534	(—)41
46	18	Rayon Yarn	10497	8988	1509	108	1401

47	18A	Cotton Yarn	3365	3498	(—)133	(—)60	(—)73
48	18B	Woollen yarn	420	551	(—)131	16	(—)147
49	18D	Jute Yarn	169	4	165	169	(—)4
50	18E	Yarn N.E.S.	1526	50	1476	1526	(—)50
51	19	Cotton Fabrics	5220	5401	(—)181	—	(—)181
52	21	Woollen fabrics	301	261	40	—	40
53	22	Art Silk Fabrics	1222	1558	264	234	30
54	22A	Jute Manufactures	2322	2418	(—)96	65	(—)161
55	22AA	Textile Fabrics N.E.S.	1	1	—	—	—
56	22B	Coated Textile Fab.	1	—	1	—	1
57	22C	Linoleum	19	9	10	—	10
58	22D	Ready made garments.	54	44	10	—	10
59	22E	Typewriter Ribbons	12	12	—	—	—
60	23	Cement	5489	4874	615	217	398
61	23A	Glass & Glassware	1022	914	108	—	108
62	23B	Chinaware	538	430	108	—	108
63	23C	Asbestos Cement	325	271	54	—	54
64	23D	Mosaic Tiles. -	40	25	15	(—)10	25
65	25	Iron in any crude from	562	484	78	—	78
66	26	Steel ingots	364	164	200	86	114
67	26A	Copper & Copper Alloys.	456	452	4	—	4

1	2	3	4	5	6	7	8
68	26AA	Iron & Steel products	9683	6964	2719	2240	479
69	26B	Zinc	191	110	81	—	81
70	27	Aluminium	3356	3410	(—)54	(—)2	(—)52
71	27A	Lead Unwrought	14	9	5	—	5
72	28	Tin plates	312	232	80	73	7
73	29	I. C. Engines.	203	166	(—)37	—	37
74	29A	Refrigerating & Air conditioning appliances & machinery	1508	1535	(—)27	—	(—)27
75	30	Electric Motors.	984	660	324	198	126
76	30A	Power Driven pumps	245	6	239	239	—
77	30B	Motor Starters.	104	66	38	—	38
78	31	Electric Batteries.	1279	988	291	109	182
79	32	Electric Bulbs.	610	589	21	—	21
80	33	Electric Fans	576	535	41	—	41
81	33A	Wireless Receiving sets.	582	458	124	125	(—)1
82	33AA	Parts of Wireless Receiving sets.	40	157	(—)117	(—)120	3
83	33 B	Elec. Wires & Cable	1307	1107	200	—	200
84	33 C	Domestic Elec. Appliances.	56	49	7	—	7
85	33D	Office machines.	191	184	7	—	7

86	33E	Electricity supply meters	86	140	(—)54	—	(—)54
87	34	Motor Vehicles.	3729	3561	168	—	168
88	34A	Parts of Motor vehicles	319	175	144	9	135
89	34B	Fork Lift Trucks	35	19	16	—	16
90	35	Cycles parts	—	—	—	—	—
91	36	Footwear	242	231	11	—	11
92	37	Cine Films	193	148	45	10	35
93	37A	Gramophones & parts	40	36	4		4
94	37b	Cin. projectors & parts	26	16	10	4	6
95	37C	Photographic cameras	11	7	4		4
96	38	Matches	2685	2947	( )262	..	(—)262
97	39	Mechanical Lighter	1	1	..	..	..
98	40	Steel furniture	343	333	10	(—)35	45
99	41	Crown corks	287	222	65	..	65
100	42	P. P. Caps	137	124	13	..	13
101	43	Wool Tops	390	446	56	..	(—)56
102	44	Sparking plugs	..	..	..	..	..
103	45	Safety Razor Blades	43	23	20	..	20

1	2	3	4	5	6	7	8
104	46	Metal containers	1110	1056	54	..	54
105	47	Slotted Angles & Channels	11	10	1	..	1
106	48	Safes, strong Boxes	41	35	6	(—)5	11
107	49	Rolling bearings	296	213	83	..	83
108	50	Welding Electrodes	220	155	65	..	65
109	51	Coated Abrasives and Grinding Wheels . . .	124	99	25	..	25
110	52	Bolts, nuts & screws	256	199	57	..	57
111	53	Zip or slide Fasteners	42	30	12	(—)5	17
112	54	Pressure cookers	40	36	4	..	4
113	55	Vacuum Flasks	55	33	22	..	22
114	56	Playing cards	38	31	7	(—)5	12
115	57	Camphor	26	19	7	..	7
116	58	Menthol	25	17	8	..	8
117	59	Electric Insulating Tapes	14	9	5	..	
118	60	Adhesive Tapes	35	27	8	..	8

119	62	Tool Tops			2	2	
120	63	Wire Ropes	1	..	1	1	..
121	64	Carbon Black	6	..	6	6	..
122	65	Rubber Processing Chemicals	Neg	..	..	..	Neg

NOTE : (1) The above figures exclude realisation under 'News Papers' for proper comparison with the Accounts figures where realisation under 'News Papers' are shown separately under the head 'non-sharable'.

(2) Roll in revenue under 'Tea' is due to operation of court injection permitting the tea estate to pay duty at rates lower than the ones permitted.

APPENDIX III

Statement showing the figure of Revenue derived from matches during October, 1971—September, 1972, October, 1972—September, 1973 and October, 1973—September, 1974

(In 000 Rupees)

October 71	2,92,52	October 72	1,84,73	October 73	2,26,65
November 71	2,43,90	November 72	2,05,91	November 73	2,62,39
December 71	2,50,38	December 72	2,32,43	December 73	2,93,18
January 72	2,33,24	January 73	2,24,88	January 74	2,86,46
February 72	2,29,09	February 73	2,34,84	February 74	2,76,33
March 72	2,50,59	March 73	2,25,55	March 74	2,64,57
April 72	2,22,35	April 73	2,18,33	April 74	2,55,62
May 72	2,17,01	May 73	2,43,26	May 74	2,77,34
June 72	2,17,60	June 73	2,68,67	June 74	2,71,62
July 72	2,61,29	July 73	2,65,63	July 74	3,10,02
August 72	2,31,42	August 73	2,50,83	August 74	2,79,27
September 72	2,26,52	September 73	2,50,87	September 74	2,33,72
TOTAL	28,12,91		28,05,93		32,37,67

APPENDIX IV

(*Vide* Para 2.11)

No. 57-4/13(7) 11th July, 1974.

My dear Shri Budhiraja,

In the course of internal audit, it has been observed that in certain cases, resort has been made in debonding of products in the second half of the February *i.e.* a few days before the announcement of the new budget. Debonding of petroleum products and other items like steel etc. just before the announcement of the new budget anticipating increase in excise duty tantamounts to speculation. Therefore, Chairman desires that we should not resort to such practice for the sake of maintaining a fair image of the Corporation. I shall be grateful if you kindly arrange to issue suitable instructions to the Branches in this connection.

Yours sincerely,

Sd/-
(DAULAT SINGH)

Shri S. B. Budhiraja,
Managing Director,
Marketing Division,
IOC Ltd.,
Bombay.

APPENDIX V

(*Vide* Para 2.12)

C. VENKATARAMANI
JOINT SECRETARY

D.O. No. IS:54012/(101)/74-IOC/FSP

MINISTRY OF PETROLEUM AND CHEMICALS
(PETROLEUM AUR RASAYAN MANTRALAYA)

...

NEW DELHI.

Dated: 29-1-1975.

Dear Shri

The Public Accounts Committee during its consideration of the Audit Report for 1972-73 (Revenue Receipts) has observed that in certain cases oil companies have been resorting to debonding of oil products in the second half of February, a few days before the announcement of the budget. Debonding of petroleum products and other items just before the announcement of the new budget anticipating increase in excise duty tantamounts to speculation.

The Chairman, Indian Oil Corporation has already issued instructions (Copy enclosed) when the matter was brought to his notice.

I would also request you to consider the above and issue suitable instructions to all concerned.

With kind regards,

Yours sincerely,

Sd/-

(C. VENKATARAMANI)

(1) Shri J. C. Finlay, Assam Oil Company, New Delhi.

(2) Shri M. S. Patwardhan, Burmah-Shell, Bombay.

(3) Shri F. H. Levenhagen, Caltex (India) Ltd., New Delhi.

(4) Shri S. Krishnaswamy, Hindustan Petroleum Corporation Ltd., New Delhi.

(5) Shri A. P. Verma, Indo-Burma Petroleum Co. Ltd., New Delhi.

APPENDIX VI

(*Vide* Para 2·13)

Statement showing the date of application and the date on which the oil tanks were actually emptied during the period from 1970-71 *to* 1973-74

Name of installation/ refinery	Name of Oil company	Date of application for de-bonding	Date on which permission given	Date on which tanks actually emptied	Justification or reason given in the application for debonding
1	2	3	4	5	6
Baroda					
I.O.C. Sabarmati	I.O.C.	24-5-71	24-5-71	7-6-71	Reasons being ascertained.
		7-12-71	7-12-71	Date not ascertainable and will be intimated	
		15-3-72	15-3-72	19-3-72	
		26-2-73	26-2-73	12-3-73	
Bangalore					
I.O.C. Bangalore		25-2-74	25-2-74	24-2-74	For receiving duty paid stock
		8-12-72	20-2-73	26-2-73*	
		8-12-72	20-2-73	26-2-73*	
		7-12-72	20-2-73	..	
		26-2-73	26-2-73	26-2-73	

* These dates are not the dates of actual emptying of the tanks but they are the dates on which the quantities remaining in the tanks discharged of duty liability, since they received duty paid oil in these tanks after payment of duty in the oil remaining in these tanks.

1	2	3	4	5	6
Cochin	Nil				
Guntur					
I.O.C. installation No. I .		15-3-72	No permission granted. Differential duty was raised. The matter is under appeal with Appellate Collector Madras	17-4-72	Being ascertained.
		20-2-73	28-2-73	9/10-3-73	
I.O.C. installation No. II.		20-2-73	[28-2-73	6-4-73	
Hyderabad					
I.O.C.		16-3-74	16-3-74	18-3-74	To get duty paid oil into their tanks.
Burmah Shell . .		27-8-74	28-8-74	30-8-74	
Kanpur	Nil				
Madras	Caltex Ltd. Tondiarpet	9-2-70	9-2-70	14-4-70	
		9-2-70	9-2-70	10-4-70	
		6-5-71	13-5-71	1-7-71	
		6-5-71	13-5-71	1-7-71	
		23-2-72	23-2-72	13-5-72	
			16-3-72		
		28-2-72	28-2-72	7-4-72	
			16-3-72		

			6-3-72	6-3-72 16-3-72	23-5-72	
			22-2-73	22-2-73 7-3-73	17-3-73	
Madurai	Nil					
Nagpur	Nil					
Poona	Nil					
West Bengal . . .	I.O.C., Siliguri .	20-12-72	24-12-72	December 1972	For storage of duty paid kerosene oil.	
		24-2-73	5-3-73	March 73	For storage of duty paid Diesel oil (Nos).	
West Bengal . . .	I.O.C., Rajbandh .	18-1-71	1-2-71	18-1-71	For storage of Naptha for supply to FCI.	
		18-1-71	1-2-71	18-1-71		
		29-1-71	1-2-71	29-1-71	For storing SKO Naptha inter phase with M.S. Licence.	
		14-2-71	14-2-71	14-2-71	For storing duty paid Motor spirit.	
		1-11-71	23-11-71	1-11-71	For storing duty paid ATF for meeting Defence emergency.	

1	2	3	4	5	6
		22-1-72	24-2-72	24-1-72	Originally used for SKO Debonded for storing RDO against fresh Bond.
		25-4-72	29-5-72	25-4-72	For storing duty paid R.D.O.
		9-12-72	25-2-73	9-12-72	For storing duty paid oil.
Shillong	Nil				
Goa	Report awaited.				
Delhi	Indian Oil Corp., Shakurbasti.	19-5-71	21-5-71	Actual date not available. Year is the same.	
		14-8-71	19-8-71		On receipt huge quantity of duty paid oil.
		21-2-73	23-2-73		
		15-3-73	17-3-73		
		21-3-73	29-3-73		
		27-5-74	27-5-74	-Do-	
		13-5-74	14-5-74		
	Indian Oil Corp., Palam.. . .	30-11-71	2-12-71	-Do-	To accommodate duty paid stock for Defence.
		9-8-72			
		8-8-72	8-8-72	-Do-	
	Esso (HPL) Shakurbasti,	15-7-74	16-7-74	-Do-	Due to larger receipt of duty paid stock of oil,

	Burma Shell, Shakurbasti . . .	4-8-70	14-8-70	-Do- ..	Due to expected receipt of large quantity of duty paid stocks for Kandla due to dislocation of traffic on the Eastern Sector.
Patna	Nil				
Shillong	Nil				
Allahabad . . .	Nil				
Bombay	Nil				Rebonded for HVLO on 16-2-70.
	H.P.C. Ltd., Sewree	13-2-70	16-2-70	13-2-70 ..	Due to operation necessity.
	Installation . .	13-2-70	..	13-2-70 -Do-	..
		25-2-70	26-2-70	Contains product duty paid under E. No. 320 of 25-2-70	Rebonded for F.O. on 17-4-70.
	Wadala . . .	20-2-70	24-2-70	24-2-70	-Do-
	-Do-	9-6-70	9-6-70	1500 M.T. duty paid on the balance Qnty. on 9-6-70	Rebonded for Esso Kotiad on 25-2-70.
	-Do-	13-7-70	23-7-70	13-7-70	-Do-
	-Do-	5-10-70	8-7-70	5-10-70	-Do-
	-Do-	18-2-70	21-2-70	Duty paid on 18-2-70	-Do-
	Habandar Wadala .	29-4-70	30-5-70	29-4-70	-Do-
		18-2-70	21-2-70	18-2-70	Rebonded for SKO on 25-3-70.
	Sewree . . .	20-2-70	25-2-70	Duty paid on the balance produt on 24-2-70	-Do-

1	3	4	5	6
	20-2-70	25-2-70	Duty paid on the balance product on 24-2-70	
	27-2-70	27-2-70	-Do- 27-2-70	Debonded on 26-3-70 Operational difficulties
Sewree	13-7-70	27-7-70	Empty	Debonded from HVLO and Rebonded for SKO Operational difficulties
H.P.C. Ltd., Sewree	14-5-71	19-5-71	Duty paid on he Qnty. in balance, paid on 17-5-71.	Due to operational necessity
-Do-	14-5-71	19-5-71	Duty paid on the balance product on 18-5-71	-Do-
-Do-	13-5-71	19-5-71	Duty paid on the balance product on 18-5-71	-Do-
-Do-	13-5-71	19-5-71	Duty paid on the balance product on 18-5-71	-Do
-Do-	26-8-71	1-9-71	Duty paid on the balance product on 26-8-71	-Do-
Wadala	3-5-71	17-5-71	Duty paid on balance product on 15-5-71	Due to operational necessity.
	22-5-71	27-5-71	Duty paid on the balance product on 26-5-71	-Do-
	22-6-71	31-7-71	Duty paid on the balance product on 15-7-71	-Do-
	1-10-71	1-10-71	*Empty Rebonded for Motor Spirit on* 1-10-71	-Do-

H.P.C. Ltd. Sewree	3-3-72	6-3-72	Duty paid on the Qunty. in balance on 2-3-72	Operational necessity
-Do-	12-3-72	27-4-72	Empty	Do
-Do-	22-8-72	22-9-72	-Do-	Do
H.P.C. Haybunder	29-6-73	19-7-73	Empty on 27-6-73	-Do-
Sewree	3-8-73	18-8-73	6-8-73	-Do-
Wadala	19-2-73	23-2-73	Duty paid on the Qunty. in balance on 24-2-73	Do
-Do-	19-2-73	23-2-73	Duty paid on the Qunty. balance on 24-2-73	Do-
H.P.C. Ltd. Wadala	15-3-74	29-3-74	Duty paid on Qunty in balance on 4-4-74	Do-
Sewree	14-6-74	17-6-74	Empty on 14-6-74	Do-
-Do-	21-6-74	13-8-74	Duty paid on the balance product on 22-6-74	-Do-
-Do-	26-8-74	28-8-74	Empty on 23-8-74	-Do-
-Do-	17-8-74	9-9-74	Empty on 29-8-74 Rebonded for SKO on 29-8-74	-Do
Mahul	2-3-74	2-3-74	Tank transfer to H.P.C. Fuel Refinery	
-Do-	3-1-74	18-2-74	Empty on 3-1-74 Rebonded for SKO on 18-2-74	—

1	2	3	4	5	6
	L.D.O. Sewree	19-2-70	20-2-70	Applied for debonding after paying duty on the balance stock.	The Co. has applied for debonding for operational exigencies.
	Furnace Oil Sewree	20-2-70	24-2-70		
	Do	23-2-70	24-2-70		
	Motor Spirit Sewree	23-2-70	24-2-70	-Do-	Do
	R.B.O. Sewree .	19-2-70	24-2-70	-Do-	Do
	,,	19-2-70	24-2-70	-Do-	Do
	S.B.P. Spirits	14-5-71	17-5-71	-Do-	
	Min. Turpentine .	18-5-71	19-5-71	19-5-71 (Tank debonded)	
	Furnace Oil .	14-5-71	17-5-71		
		Do	17-5-71	Applied for debonding after paying duty on the balance stock.	
		Do	17-5-71		
	Furnace Oil Wadi-Bunder	6-3-72	13-3-72	Debonding conducted on 13-3-72	Debonding for operational exigencies
	Furnace Oil Sewree	6-3-72	13-3-72	Do	Do
	Motor Spirit	3-3-72	13-3-72	Do	Do

	21-2-73	24-2-73	24-2-73	Do
Furnace Oil	21-2-73	Do	Do	Do
Furnace Oil Wadi-Bunder	Do	26-2-73	27-2-73	Do
R. D.O. Sewree	16-12-74	18-12-74	Empty at the time of the application for debonding	Do
M/s. Caltex (I) Ltd. Wadala	5-4-71	5-4-71	Not known	Operational and Maintenance
Do	23-2-72	24-2-72	Do	Maintenance and Repair
Do	20-2-73	22-2-73	Do	To carry out cleaning and use for H.S.D.
Do	1-11-73	2-11-73	Do	To convert it into different product service
M/s Caltex (I) Ltd. Sewree	16-4-71	16-4-71	Do	Maintenance and Repair
Do	12-12-72	12-12-72	Empty before debonding	To be bonded for H.S.D.
Do	13-9-73	13-9-73	Do	Do
Do	11-2-70	11-2-70	Not known	Maintenance and Repair
Do	7-3-72	8-3-72	Do	To carry out maintenance and Repair
Do	20-2-73	22-2-73	Do	Due to leakage in bottom after clearing bonding for S.K.O.

1	2	3	4	5	6
	M/s Caltex (I) Hay-Bunder	25-9-71	5-10-71	Empty before debonding	To bond F.O.
	Do	13-2-70	13-2-70	Not known	Maintenance and Repair
	Do	6-5-71	6-5-71	Do.	Do
	Do	14/15-11-73	17-11-73	Empty before debonding	To store different grade of oil
	M/s Indian Oil Corpn Wadala	22-5-71	22-5-71	Not known	Operational Exigencies
	Do	Do	Do	Do	
	Do	13-3-73	14-3-73	Do	Do
		21-5-73	22-5-73	Empty before debonding	Operational difficulties to bond R.D.O.
		19-12-73	21-12-73	Do	Do
		6-4-74	6-4-74	Not known	To receive line contents of W-1 pipe line
		21-8-70	22-9-70	Empty before debonding	Operational urgency
		19-11-73	19-11-73	Do	To receive Imported S.K.O.
		16-5-75	16-5-74	Do	Operational difficulties and to bond for S.K.O.
	M/s I.B.P. Wadala	30-1-70	4-2-70	Do	To receive Imported S.K.O.
		22-5-71	22-5-71	Not known	Operational Exigency
		13-3-72	14-3-72	Do	Do
		14-5-71	24-5-71	Empty before debonding	Do

M/s I.B.P. Sewree	8-12-71	8-12-71	Do	To bond for R.D.O.
M/s Indian Oil Corpn. Sewree	14-8-70	31-8-70	Do	Operational urgency to receive duty paid
Do	16-4-71	14-5-71	Do	Operational difficulties
Do	23-4-71	14-5-71	Do	Do.
M/s Indian Oil Corpn. Sewree	22-5-71	22-5-71	Not known	Operational Exigencies
	9-8-71	23-8-71	Empty before debonding	Do.
	13-3-72	14-3-72	Not known	Operational Exigencies
	24-2-73	24-2-73	Do.	Smooth Continuity in Operation.
	12-3-73	13-3-73	Empty before debonding	To bond for Axloil
	20-11-73	20-11-73	Do.	Do.
M/s I.B.P. Sewree	8-12-71	8-12-71	Do.	Do, R.D.O.
	14-5-71	24-5-71	Do.	Operational difficulties
	25-5-71	26-5-71	Not known	Operational Exigencies
	9-2-72	11-2-72	Empty before debonding	To bond for S.K.O.
Calcutta M/s Burmah-Shell, Budge Budge	15-10-70	22-10-70	15-10-70	
Do.	18-5-70	20-5-70	14-6-70	
Do.	30-8-71	16-9-71	2-9-71	

1	2	3	4	5	6
	M/s Burmah Shell Budge Budge	1-9-71	8-9-71	1-9-71	
	Do.	19-11-71	26-11-71	19-11-71	
	Do.	14-9-71	18-9-71	14-9-71	
	Do.	2-5-71	15-5-71	4-9-71	
	Do	15-9-71	25-9-71	15-9-71	
	Do	27-7-71	2-8-71	27-7-71	
	Do.	4-3-71	9-3-71	4-3-71	
	Do	14-2-71	19-2-71	12-2-71	
	Do.	6-3-71	9-3-71	6-4-71	
	Do.	6-3-71	9-3-71	30-4-71	
	Do.	15-7-71	18-7-71	15-7-71	
	Do.	16-7-71	21-6-71	16-7-71	
	Do.	16-8-71	19-8-71	29-8-71	
	Do.	6-3-72	9-3-72	25-3-72	
	Do.	12-10-72	20-10-72	12-10-72	
	Do.	21-10-72	2-11-72	21-10-72	
	Do.	10-11-72	14-11-72	10-11-72	
	Do.	10-11-72	14-11-72	10-11-72	

Do.	17-11-72	24-11-72	17-11-72
Do.	6-3-72	9-3-72	25-3-73
Do.	26-4-72	3-5-72	26-4-72
Do.	15-4-72	23-4-72	18-4-72
Do.	13-8-72	19-8-72	13-8-72
Do.	13-8-72	19-8-72	13-8-72
Do.	23-2-72	23-2-72	23-2-72
Do.	21-11-73	26-11-73	2-11-73
Do.	21-11-73	26-11-73	21-11-73
M/s Burmah-Shell Dum Dum . .	17-10-72	24-10-72	17-10-72
M/s Caltex Budge Budge . . .	23-2-70	26-2-70	24-3-70
Do.	12-5-71	17-5-71	17-6-71
M/s Caltex, Ram Nagar . .	10-6-70	12-6-70	10-6-70
Do.	20-4-71	14-5-71	18-5-71
Do.	24-2-72	10-3-72	31-5-72
Do.	21-10-72	2-11-72	21-10-72
Do.	25-7-72	2-8-72	24-7-72
Do.	15-2-72	27-2-73	22-3-73

2	3	4	5	6
M/s Caltex, Ram Nagar	16-4-73	24-4-73	16-4-73	
M/s Caltex Paharpur	28-12-70	30-12-70	28-12-70	
Do.	6-3-72	10-3-72	6-3-72	
M/s I.O.C. Budge Budge	13-4-70	21-4-70	13-4-70	
Do.	26-11-70	26-11-70	26-11-70	
Do.	18-1-71	29-1-71	18-1-71	
Do.	25-5-72	9-6-72	25-5-72	
Do.	30-6-72	26-7-72	30-6-72	
Do.	31-3-72	31-3-72	31-3-72	
Do.	3-3-72	6-3-73	3-3-73	
M/s I.O.C. Mourigoan	25-3-71	13-4-71	25-3-71	
Do.	26-5-71	10-6-71	26-3-71	
Do.	19-7-71	23-7-71	19-7-71	
Do.	19-7-71	23-7-71	19-7-71	
Do.	19-7-71	23-7-71	19-7-71	
Do.	12-4-71	4-5-71	12-4-71	
Do.	25-5-71	10-6-71	6-9-71	

Do.	22-11-72	23-11-72	22-11-72
Do.	14-9-72	27-9-72	14-9-72
Do.	14-9-72	27-9-72	14-9-72
Do.	4-10-72	20-10-72	4-10-72
Do.	5-2-73	9-2-73	5-2-73
Do.	22-2-73	6-3-73	13-3-73
Do.	22-2-73	6-3-73	17-3-73
Do.	12-4-73	12-4-73	12-4-73
Do.	12-4-71	12-4-73	12-4-73
Do.	7-4-73	24-4-73	7-4-73
Do.	21-4-73	23-4-73	21-4-73
Do.	9-5-73	14-5-73	9-5-73
Do.	9-5-73	14-5-73	9-5-73
Do.	14-12-73	30-12-73	14-12-73
Do.	25-3-73	13-4-73	25-3-73
M/s I.C.O. Haldia	7-11-72	9-11-72	7-11-72
	23-6-72	25-6-72	23-6-72
	23-6-72	25-6-72	23-6-72
	29-1-72	9-2-73	30-1-73
M/s I.O.C. Paharpur	24-11-70	26-11-70	24-11-70

1	2	3	4	5	6
	M/s I.O.C. Paharpur	21-3-71	24-3-71	21-3-71	
	Do.	10-3-71	14-3-71	10-3-71	
	Do.	29-6-72	4-7-72	29-6-72	
	Do.	22-2-72	10-3-72	22-2-72	
	Do.	22-2-72	10-3-72	10-2-72	
	Do.	23-9-72	5-11-72	23-9-72	
	M/s I.O.C. Dum Dum	16-3-71	22-3-71	16-3-71	
	Do.	25-3-71	30-3-71	25-3-71	
	Do.	8-10-71	11-10-71	8-10-71	
	Do.	4-4-71	8-4-71	4-4-71	
	Do.	1-3-72	2-3-72	1-3-72	
	Do.	13-3-72	15-3-72	13-3-72	
	Do.	30-3-72	30-3-72	30-3-72	
	Do.	1-6-72	3-6-72	1-6-72	
	Do.	23-8-72	15-9-72	23-8-72	
	Do.	23-4-73	24-4-73	23-4-73	
	M/s Esso Budge Budge	19-4-71	21-4-71	19-4-71	
	Do.	7-7-71	9-7-71	7-7-71	

Do.	7-7-71	9-7-71	7-7-71
Do.	20-7-71	23-7-71	20-7-71
Do.	8-1-72	20-1-72	20-1-72
Do.	28-2-72	9-3-72	21-2-72
Do.	28-2-72	9-3-72	22-4-72
Do.	3-11-72	4-11-72	3-11-72
Do.	4-12-72	6-12-72	4-12-72
Do.	25-2-72	27-2-72	25-2-72
Do.	27-8-72	29-8-72	27-8-72
Do.	24-2-73	27-2-73	10-6-73
Do.	27-8-73	29-8-73	27-8-73
M/s Burmah Shell Budge Budge	6-4-74	9-4-74	8-4-74
Do.	18-4-74	23-4-74	18-4-74
Do.	29-11-74	30-11-74	30-11-74
Do.	13-8-74	19-8-74	13-8-74
Do.	29-9-74	2-10-74	28-9-74
Do.	15-2-74	18-2-74	17-2-74
Do.	23-2-74	23-2-74	23-2-74
Do.	1-10-74	3-10-74	2-10-74

1	2	3	4	5	6
	M/s Burmah Shell Dum Dum .	30 11 74	4-12-74	30-11-74	
	Do.	30-11-74	4-12-74	30-11-74	
	Do.	30-11-74	11-12-74	30-11-74	
	M/s Caltex Budge Budge .	4-12-74	6-12-74	5-12-74	
	Do.	12-11-74	14-11-74	13-11-74	
	M/s I.O.C. Mourigoan	30-8-74	3-9-74	31-8-74	
	Do.	27-5-74	29-5-74	28-5-74	
	Do.	11-11-74	14-11-74	10-11-74	
	Do.	26-5-74	29-5-74	24-5-74	
	Do. Haldia .	10-3-74	18-3-74	11-3-74	
	Do.	10-3-74	18-3-74	11-3-74	
	Do.	1-1-74	9-1-74	1-1-74	
	Do.	28-12-73	9-1-74	29-12-73	
	Do.	28-12-73	9-1-74	29-1-74	
	M/s I.O.C. Budge Budge .	23-7-74	5-8-74	23-7-74	
	M/s I.O.C. Dum Dum	28-5-74	3-6-74	28-5-74	
	M/s Hindusthan Budge Budge .	3-12-74	6-12-74	5-12-74	
	Do.	26-8-74	29-8-74	28-8-74	

APPENDIX VII

(*Vide* Para 2.26)

Note showing the details of the debonding of oil tank by Caltex (India) Ltd.

On 1.11.1973, the Terminal Superintendent in Charge of the Wadala Installation to M/s Caltex (India) Ltd. applied to the Assistant Collector of Central Excise, Bombay II Division for permission to debond tank No. 207 on the ground that they had immediate plans to convert the said tank into different product service.

2. Permission was granted by the Asstt. Collector of Central Excise, Bombay II Division under his office letter No. V. (6) 13-5/73 dated 2.11.1973. This permission was subject to the condition that the debonding of the tanks should take place under excise supervision and duty realised before debonding.

3. On 2.11.1973, the dip measurement of the storage tank No. 207 was taken under the supervision of an Inspector of Central Excise. On the same date, i.e. 2.11.73, M/s. Caltex (India) Limited deposited in the Central Excise Treasury an amount of Rs. 27 lakhs for payment of the basic excise duty and Rs. 2,20,000 on account of additional excise duty, under their cheque No. B. 38841 dated 2.11.1973.

4. Based on the dip measurement of tank No. 207 at 12 hours on 2.11.1973, the Company prepared the out-turn No. 154 of 2.11.73. As per this out-turn, the quantity of motor spirit in tank No. 207 worked out to 607.056 K.Ls. at 15°C. The duty on this quantity came to Rs. 6,07,056.00 (basic) and Rs. 49,505.42 (additional). These amounts were debited in the company's Personal Ledger Account at E.No. 345 of 2.11.1973.

5. Ordinance No. 3 of 1973 issued by the Govt. of India on 2.11.73 enhanced the effective rate of basic excise duty on motor spirit from Rs. 1,000/- to Rs. 2,000/- per K.L. at 15°C, with effect from 3.11.73. An announcement to that effect was made on the radio and also on the television in the evening news of 2.11.73

6. On 3.11.1973 morning, the Range Superintendent wrote to all his sector Officer calling for reports whether any of the licensees had effected clearances of motor spirit and superior kerosene oil

on payment of duty at the old rates after the mid-night of 2/3.11.73. All the Inspectors reported that there were no such clearances, except at Santa Cruz Airport installations where the differential duty was subsequently recovered. On receipt of the reports, the Superintendent sent round one of his Inspectors to verify these reports.

7. On 23.11.1973, the Inspector brought to the notice of the Superintendent that M/s. Caltex (India) Limited had deposited an unusually large amount (Rs. 29,20,000) in the Personal Ledger Account on 2.11.73 and effected clearance of exceptionally large quantity of motor spirit from tank No. 208 to tank No. 207 between 14.00 and 19.00 hours on that day. This created suspicion in the mind of the Superintendent, and after making enquiries, he reported the facts to the Asstt. Collector on 26.11.1973. The Assistant Collector directed that all the relevant documents should be examined and detailed, if necessary.

8. During the course of enquiry, it came to light that after debonding tank No. 207, M/s. Caltex (India) Ltd. had shown as cleared a total quantity of 2006.881 K.L. at 15° C of motor spirit from tank No. 208. Out of the total quantity of 2006.881 K.L. a quantity of 1826.512 K.L. at 15° C was indicated as by transfer to tank No. 207 and the balance of 180.369 K.L. at 15° C was accounted for by local despatches as on the records. It was also found that the quantity of 1826.512 K.L. at 15° C transferred from tank No. 208 to tank No. 207 was shown as having been transferred on 2.11. 1973 before 20.00 hours and the amount of basic duty was debited in the Personal Ledger Account at the rate of Rs. 1,000/- per K.L. at 15° C. Considering the pumping facility available for clearance from tank No. 208, it was felt that it was rather improbable that a total quantity of 2006.881 K.L. at 15° C could have been cleared from Tank No. 208 within a period of about five hours, i.e. from 15.50 hrs to 20.00 hrs. on 2.11.1973.

9. In the course of further investigations, the 'Night Custodian Register' of M/s. Caltex (India) Limited was examined. In this register, there was an entry by the Night Custodian on 2.11.73 to the effect that at 09.30 P.M. on 2.11.73, tank to tank transfer from tank No. 208 to tank No. 207 was in progress. This entry revealed that the position as on other records of the company, viz. the Dip Ticket and out turn certificate, that the pumping of the product-motor spirit—from tank No. 208 to 207 was completed before 20.00 hrs. on 2.11.73 was not correct.

10. Accordingly, statements of the Terminal Manager and his assistants were recorded, wherein it was stated that the quantity

of motor spirit in question was cleared before 20.00 hours and proper duty was debited for clearance effected before 20.00 hours. An entry was also made in the R.G.I. register to this effect.

11. While the investigation was going on, M/s Caltex (India) Limited by a letter dated 3rd December, 1973 stated that they had concurrently enquired into the matter and they had found certain inconsistencies, and agreed to pay the differential duty on the balance quantity.

12. Accordingly, the Assistant Collector of Central Excise, Bombay II Division, vide his office letter No. II/39—50/73 dated 3.12.73 requested M/s Caltex (India) Limited to intimate to him the quantity on which they were agreeable to pay the differential duty.

13. M/s. Caltex (India) Limited again, under their letter dated 3.12.73, informed the Assistant Collector of Central Excise, Bombay II Division that they were prepared to pay duty on a quantity of 1486.861 K.L. at 15°C. The Assistant Collector permitted the company to pay the differential duty on that quantity on 5.12.73 without prejudice to the ultimate decision in the case. M/s Caltex (India) Limited paid the amount of Rs. 14 lakhs accordingly.

14. In the course of further investigation, the shore log Book maintained by Sewree/Wadala Installations was produced by the Manager, Marketing Operations together with torn pieces of page No. 78 of the said book, which was reportedly missing from the book. On arranging the pieces of the said page No. 78, the entry therein revealed that clearance from tank No. 208 to tank No. 207 was in progress until the morning of 3-11-1973 up to 09.00 A.M. This fact was further confirmed by the Manager in his statement. Thus, an attempt had been made to destroy written evidence by tearing away page No. 78 of the Log Book.

15. A notice to show cause on the basis of these allegations was issued to M/s Caltex (India) Limited, Bombay by the Collector of Central Excise, Bombay under his letter No. II/39-50/73 dated the 16th April, 1974 directing them to explain as to why duty should not be recovered from them under rule 1730 of the Central Excise Rules, 1944 at the rate of Rs. 2,000/- per K. L. at 15°C (the effective rate from 3-11-1973) on the full quantity of 2006.881 K. L. of motor spirit and also as to why a penalty should not be imposed on them under rules 151 and 173Q of the Central Excise Rules.

16. Under their letter No. AD/JPT dated 19th April, 1974 M/s Caltex (India) Limited requested the Collector of Central Excise for copies of certain documents and also to grant one month's time for

submitting the reply to the show cause notice. These requests of the company were granted.

17. As requested by the company, the Collector of Central Excise, Bombay granted a personal hearing to them on 14-6-74. Considering the circumstances and the facts of the case, the Collector found that the company was guilty of the contraventions alleged in the show cause notice and was liable to penal action under rule 173Q of the Central Excise Rules. He, therefore, ordered that the duty on the entire quantity of motor spirit said to be transferred from tank No. 208 to tank No. 207 during the period 2nd to 3rd November, 1973 be recovered at the enhanced rate. He also imposed a penalty of Rs. 20 lakhs under his adjudication order No. II/39-50/73 dated 10-7-1974.

APPENDIX VIII

(*vide* Para 3.19)

Statement showing the total crude oil run in each refinery, % age of product used as fuel and % age of losses, during in years, 1970 to 1973.

TABLE I—BURMAH SHELL

Year	Crude run '000' tonnes	Refinery Fuel %	Losses %	Total refinery fuel & losses %
1970	3447·5	4·5	2·2	6·7
1971	3900·5	4.0	2·0	6·0
1972	3636·8	4·0	2·2	6·2
1973	4481·0	3·7	1·8	5·5
TABLE II—(ESSO)				
1970	2350	4·1	0·9	5·0
1971	2768	4·0	0·9	4.9
1972	2523	4·2	1·0	5.2
1973	2912	4·3	0·2	4·5
TABLE III—(CALTEX)				
1970	1177·9	6·5	1·3	7·8
1971	1249·9	6·4	1·4	7·8
1972	1139·5	7·3	1·5	8·6
1973	1113·3	7·3	1·5	8·8
TABLE IV—(ASSAM OIL COMPANY)				
1970	490·4	12·0	2·2	14·2
1971	468·8	13·0	1·7	14·7
1972	527·3	12·0	1·6	13·6
1973	528·9	12·1	1·3	13·4

Year	Crude '000' tonnes	Refinery Fuel %	Losses %	Total refinery Fuel & losses %
TABLE V—(GAUHATI)				
1970	764·8	7·20	3·40	10·60
1970-71 . . .	685·7	7·30	2·60	9·90
1971-72 . . .	706·0	7·10	2·70	9·80
1972-73 . . .	793·1	7·20	2·80	10·0
TABLE VI—(BARAUNI)				
1969-70 . . .	2087·0	8·99	1·00	9·99
1970-71 . . .	2191·1	9·03	1·00	10·03
1971-72 . . .	2278·2	8·08	0·83	8·91
1972-73 . . .	2391·1	8·01	1·46	9·47
TABLE VII—(GUJARAT)				
1969-70 . . .	3397·9	5·5	1·6	7·1
1970-71 . . .	3463·0	5·8	2·0	7·8
1971-72 . . .	3642·7	5·8	1·1	6·9
1972-73 . . .	3728·5	5·8	1·4	7·2
TABLE VIII—(COCHIN REFINERIES LTD.)				
1970	2592·0	4·20	1·47	5·67
1971	2439·0	4·20	1·58	5·78
1972	2348·7	4·20	1·97	6·27
1973	1968·4	4·20	2·32	6·52
TABLE IX—(MADRAS REFINERIES LTD.)				
1970	2065·0	11·1	0·9	12·0
1971	2145·0	10·5	1·2	11·7
1972	2650·0	10·2	0·8	11·0
1973	2505·0	9·4	1·0	10·4

APPENDIX IX

(*Vide* Para 3.22)

Note from the Ministry of Petroleum and Chemicals on a comprehensive study made of losses in fuel consumption as compared to the refineries abroad

FUEL EFFICIENCY IN INDIAN REFINERIES

Refinery fuel and losses in quantitative terms and as percentages of crude refined from 1960 to 1972 are given in the attached tables for each refinery, and for all India in Table I. There has been a marginal increase in the total refinery fuel and losses during the period 1960—1972 though, as will be seen from the tables, the 'losses' have fallen and 'fuel' has gone up. A major cause of this has been the increased complexity of the later plants and the manufacture of lubricating oils in India especially in the Barauni and Madras refineries.

2. The losses reported by the refineries have generally come down over the years and in 1972 we have the lowest figure reported, only 1.18 per cent. This is the result of the efforts being put in by the Technical Audit Deptt. in the IOC refineries, and similar organisations in the other refineries.

3. The use of coal as refinery fuel has also been under consideration. Because of the requirement for close temperature control and the need to shut down heating instantaneously in cases of stoppages in oil flow, from the technical point of view it is essential to fire the refinery furnaces with oil or gas. The designs of the refinery furnaces also do not permit the use of coal. The other main use for fuel in a refinery is for production of electricity/steam. The general practice in refineries having their own power stations is to raise steam at high pressure, expand the high pressure steam through turbines to produce electricity and use the low pressure steam for processing. The system improves the total thermal efficiency. On the other hand, refineries without power stations would raise low pressure steam in steam boilers. For raising steam it is not particularly necessary that oil or gas fuel should be used and there is scope for substitution by coal. Unfortunately, the designs of the existing boilers in refineries are such that they cannot be easily converted from oil to coal firing

without large investment. Shortage of space for handling and storage of coal in the refineries is also a serious bottleneck. Nevertheless, we have recently taken a decision to go in for coal firing also in the captive power station attached to the Mathura refinery. Even though the furnaces in this refinery also would continue to use oil and gas, use of coal in the power station is expected to have approximately 100,000 tonnes of oil per year.

4. The Managing Director, IOC (Refineries & Pipelines Division) has recently written to all the refineries stressing the need to exercise maximum care in the use of energy and to achieve savings by improving operations and the maintenance schedules. The Technical Audit Departments in the IOC (Refineries) which have been working for the past few years are in charge of this effort, and they are being suitably strenghtened.

D.O. No. P-11056(1)/74-E&S

February 19, 1974.

Dear Shri Pande.

Kindly refer to your demi-official letter No. 62/5/15/73-EC of December 21, 1973 on the subject of fuel efficiency in our refineries.

2. The figures relating to consumption of refinery fuel indicated in the 'Indian Petroleum & Chemicals Statistics 1973' published by this Ministry and quoted in the enclosure to your letter have been found to be wrong, especially for the earlier years. In many cases in these years not all refineries reported the actual consumption of refinery fuel, and this was overlooked in working out total averages for India. I have now had these figures rechecked and the corrected refinery fuel and losses in quantitative terms and as percentages of crude refined from 1960 to 1972 are given in the attached tables for each refinery, and for all-India in Table I. You will notice that there has been a marginal increase in the total refinery fuel and losses during the period 1960—1972 though, as will be seen from the tables, the 'losses' have fallen and 'fuel' has gone up I am told that a major cause of this has been the increased complexity of the later plants and the manufacture of lubricating oils in India especially in the Barauni and Madras refineries.

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5. The Managing Director, I.O.C. (Refineries & Pipelines Divn.). has recently written to all the refineries stressing the need to exercise maximum care in the use of energy and to achieve savings by improving operations and the maintenance schedules. The Technical Audit Departments in the IOC (Refineries) which have been working for the past few years, are in charge of this effort, and they are being suitably strengthened.

Yours sincerely,

Sd. P. K. DAVE.

Shri B. D. Pande,
Cabinet Secretary,
New Delhi.
Encl: As above

TABLE—I

Refinery Fuel & Losses in Indian Refineries

('000' Tonnes)

Year	Crude Throughput	Refinery fuel inc. fuel to TPS	Losses	Total	% Col. 3 / Col. 2	% Col. 4 / Col. 2	% Col. 5 / Col. 2
1960	6069	287	109	398	4·76	1·79	6·55
1961	6384	308	103	411	4·82	1·60	6·42
1962	7014	355	101	456	5·06	1·43	6·49
1963	8119	391	119	510	4·81	1·46	6·27
1964	8933	436	131	567	4·88	1·46	6·34
1965	16009	498	179	677	4·97	1·79	6·76
1966	11838	610	236	846	5·14	1·99	7·13
1967	14978	805	350	1155	5·37	2·33	7·70
1968	13879	855	297	1152	6·16	2·13	8·29
1969 *	17576	1003	292	1295	5·70	1·66	7·36
1970	18463	1146	288	1434	6·20	1·56	7·76
1971	19688	1173	274	1447	5·95	1·39	7·34
1972	19749	1245	235	1480	6·30	1·18	7·48

* Includes data furnished by ICC refineries on financial year basis.

TABLE—II

BURMAH SHELL

Year	Crude '000' tonnes	Refinery fuel %	Losses %	Total refinery fuel & losses %
1960	2843·0	3·4	1·7	5·1
1961	2910·8	3·5	1·8	5·3
1962	3171·1	3·6	1.6	5·2
1963	3750·4	3·4	1·7	5·1
1964	3750·5	3·3	1·8	5·1
1965	3995·9	3·4	1·9	5·3
1966	4007·4	3·6	2·5	6·1
1967	3782·6	3·9	2·8	6·7
1968	3774·4	3·9	2·8	6·7
1969	3712·8	4·5	2·5	7·0
1970	3447·5	4·5	2·2	6·7
1971	3960·5	4·0	2·0	6·0
1972	3636·8	4·0	2·2	6·2
1973	4481·0	3·7	1·8	5·5

Note :—The losses indicated is high partly on account of the fact that Burmah-Shell has an acid treating unit for treating kerosene and this unit losses oil in the form of acid sludge.

TABLE—III

ESSO

Year	Crude run (000 tonnes)	Refinery Fuel %	Losses %	Total refine ry fuel & losses %
1960	1897	4·9	1·7	6·6
1961	2025	4·8	1·3	6·1
1962	2190	4·5	0·9	5·4
1963	2395	4·5	0·9	5·4
1964	2721	4·3	0·8	5·1
1965	2600	4·3	0·9	5·2
1966	2777	4·0	1·0	5·0
1967	2522	4·3	1·0	5·3
1968	2550	4·6	1·0	5·6
1969	2442	4·3	1·0	5·3
1970	2350	4·1	0·9	5·0
1971	2768	4·0	0·9	4·9
1972	2523	4·2	1·0	5·2
1973	2912	4·3	0·2	4·5

TABLE—IV

CALTEX

1960	878·5	6·3	1·1	7·4
1961	997·7	6·5	0·9	7·4
1962	957·0	5·9	1·7	7·6
1963	1050·0	5·5	1·1	6·6
1964	1058·1	6·0	0·5	6·5
1965	1115·7	5·6	0·9	6·5
1966	1285·9	5·8	1·1	6·9
1967	1238·3	6·4	1·5	7·9
1968	1543·0	5·2	1·3	6·5
1969	1305·6	5·7	1·7	7·4
1970	1177·9	6·5	1·3	7·8
1971	1249·9	6·4	1·4	7·8
1972	1139·5	7·4	1·2	8·6
1973	1113·3	7·3	1·5	8·8

Note :— The refinery fuel used is high partly because of the low capacity of the refinery.

TABLE—V.

ASSAM OIL COMPANY

Year	Crude run (000 tonnes)	Refinery fuel including power station %	Losses %	Total Refinery fuel and losses %
1960	450·4	9·7	3·9	13·6
1961	450·2	10·2	3·2	13·2
1962	461·2	14·0	1·4	15·4
1963	471·9	13·6	1·0	14·6
1964	493·9	13·3	1·1	14·4
1965	494·4	11·4	1·6	13·0
1966	499·5	11·1	0·8	11·9
1967	527·5	10·1	2·0	12·1
1968	517·6	11·5	1·9	13·4
1969	526·1	11·3	2·1	13·4
1970	490·4	12·0	2·2	14·2
1971	468·8	13·0	1·7	14·7
1972	537·3	12·0	1·6	13·6
1973	528·9	12·1	1·3	13·4

NOTE : The refinery fuel used is high because of :

(i) Low capacity of the refinery;

(ii) inclusion of units such as coker and lube plants which are the large consumers of fuel. The AOC refinery also includes a power station unlike the other three private sector refineries.

TABLE—VI

GAUHATI

1962	235·2	9·14	2·77	11·91
1963	451·4	7·79	3·59	11·38
1964	755·9	6·40	3·49	9·89
1965	790·8	6·15	2·87	9·02
1966-67	742·9	6·81	2·90	9·71
1967-68	811·7	6·60	3·70	10·30
1968-69	802·7	6·49	2·48	8·97
1969-70	764·8	7·20	3·40	10·60
1970-71	685·7	7·30	2·60	9·90
1971-72	796·0	7·10	2·70	9·80
1972-73	793·1	7·20	2·80	10·00

NOTE : The high fuel consumption is on account of:

(i) Captive power station;

(ii) small capacity of the plant;

(iii) the high loss reported is attributed to present of the coking unit and the sulphur dioxide extraction unit for treating kerosene which units generally show high losses; and

(iv) the conservative design of the refinery.

TABLE—VII.

BARAUNI

Year	Crude run (000 tonnes)	Refinery fuel including power station %	Losses %	Total refinery fuel and losses %
1964	154·0	10·40	2·65	13·05
1965	603·1	9·80	4·14	13·94
1966-67 . . .	1113·9	8·44	3·23	11·67
1967-68 . . .	1629·6	8·22	4·77	12·99
1968-69 . . .	1767·1	8·34	2·10	10·44
1969-70 . . .	2087·9	8·99	1·00	9·99
1970-71 . . .	2191·1	9·03	1·00	10·03
1971-72 . .	2278·2	8.08	0·83	8·91
1972-73 . . .	2392·1	8·01	1·47	9·47

Note :—The high refinery fuel consumption is accounted for by :

(i) Captive power station;

(ii) lube plant ; and

(iii) conservative design of the refinery.

TABLE—VIII

GUJARAT

1965-66 . . .	409·4	7·0	2·5	9·5
1966-67 . . .	1411·7	6·0	2·2	8·2
1967-68 . . .	1923·4	6·6	3·3	3·9
1968-69 . . .	2958·0	5·7	1·9	7·6
1969-70 . . .	3397·3	5·5	1·6	7·1
1970-71 . . .	3463·0	5·8	2·0	7·8
1971-72 . . .	3642·7	5·8	1·1	6 9
1972-73 . . .	3728·5	5·8	1·4	7·2

Note :—The comparatively high fuel consumption is accounted for by :

(i) conservative design of the refinery;

(ii) captive power station.

TABLE—IX

COCHIN REFINERIES LTD.

Year	Crude run ('000 tonnes)	Refinery fuel %	Losses %	Total refinery fuel losses %
1967	2542·8	4·20	0·85	5·05
1968	2261·1	4·20	0·98	5·18
1969	2468·7	4·20	1·23	5·43
1970	2592	4·20	1·47	5·67
1971	2439	4·20	1·58	5·78
1972	2348·7	4·20	1·97	6·17
1973	1968·4	4·20	2·32	6·52

Note :—The high loss reported in 1973 is a matter of concern. The refinery has explained that it was because of the large number of shut-downs and start-ups during 1973 in the course of expanding the capacity of the refinery.

TABLE—X

MADRAS REFINERIES LTD.

1969	870	8·0	1·5	9·5
1970	2065	11·1	0·9	12·0
1971	2145	10·5	1·2	11·7
1972	2650	10·2	0·8	11·0
1973	2505	9·4	1·9	10·4

Note : The high refinery fuel consumption is accounted for by :

(i) captive power station;

(ii) the refinery has a large lubricative oil plant which consumes a large amount of fuel.

(iii) The refinery has additional processing units to remove sulphur from diesel oil and kerosene.

APPENDIX X

(*Vide* Para 6.19)

Copy of the opinion given by the Chief Chemist

Collectors' Conference held at Delhi 27—29 May, 1970.

Art silk Twine and thread—levy of countervailing duty thereon.

13. The Conference noted that in the Board's ruling contained in its letter F. No. 15/3/67-Cus.I, dated the 6th June, 1968 the reference is only to Item 47(2) and it was agreed that according to this letter only such yarn as is assessable under Item 47 (2) I.C.T. is to be charged to countervailing duty under Item 18 of C.E.T. The conference felt that yarn falling under Item 47(8) of the Indian Customs Tariff should also be assessable to countervailing duty under that item of the Excise. To this extent the said letter of the Board needs to be modified. The conference was also of the view that where certain yarns, as for example those of 4000 deniers or more, are to be assessed under Item 53 of the I.C.T. as per Board's ruling of 1962, they would not be 'yarn' and hence no countervailing duty would be leviable. Under the Central Excise Tariff, duty is collected at the yarn stage and thus levy is attracted on the yarn contained in twine. If the intention of the Government is to levy countervailing duty on twine above 4,000 deniers also, a Notification may be issued under Section 2A(2) of the I.T. Act, 1934 to bring twine of above 4000 deniers within the purview of countervailing duty.

14. As regards the specific problems of the Calcutta Custom House as to whether assessment of Art Silk thread and twine should be on the basis of denierage of the basic single yarn or on the total denierage of multiplied yarn the conference noted that the trade practice as evident from literature was the former and assessment should be made accordingly.

Collectors' Conference held at Bombay on 28/30 June, 1971.

IV. LEVY OF COUNTERVAILING DUTY ON NYLON FISH NET TWINE

11. This issue was discussed in the Conference of Collectors held in May, 1970 and certain recommendations were made. The

matter has since been examined in the Board's office and Member (Tariff) has indicated that twine could not be accepted as an excisable article even though it is nothing but a collection of yarn which is excisable yarn as is commonly known in the trade is distinct from twine. The Board desired that the question of classification according to the denier and the need for invoking section 2A(2) of the Indian Tariff Act, 1934 and the I.T.C. classification should all be discussed in this conference.

12. Twine is distinguishable from both thread and yarn grouped together under Item 47(2) ICT in that it is made up of one or more strand of yarns. The twisting of the yarn is also in a direction opposite to the one employed for making the yarn. Further yarn or thread is used for weaying or sewing whereas twine is not ordinarily so used. Thus viewed from the manner of manufacture or actual use a twine is distinguishable from a theard or a yarn. Item 47(2) I.C.T. confines itself only to yarn and thread, hence a twine distinguished in the manner set out above should be excluded from the scope of item 47(2) I.C.T. It's correct classification would be under Item 53 ICT irrespective of the total denierage of the various yarns used in the manufacture of twine.

13. Item 18 C.E.T. refers only to fibres and yarns and excludes een thread. Hence twine will not be assessable to countervailing duty at all. However, twine is imported, will compete with that produced in the country. The indigenous product would have already attracted levy as a fibre or a yarn. It is, therefore, only rational that we invoke the provision of Section 2A(2) of the Indian Tariff Act, 1934 in the case of imported twine.

14. Board's rulings both on the Customs and Central Excise side fixing the denierage for purposes of assessment of yarn require to be modified suitably.

The issue raised in this file pertains to the determination of denier of crimped plied nylon yarn and how it should be reported for purposes of levy of C. Ex. duty.

The denier of yarn is expressed as the number of grams in a skein of 9000 metres. The formula of calculating the denier from length and weight determination would be

$$D = \frac{9000 \times W}{L}$$

Where D = Denier, W = Weight at standard regain in grams and L = length in metres.

The length of yarn is usually obtained by the use of yarn reel, and in the case of crimped yarn it is necessary to estimate the straightened length by taking into account the crimp percentage.

The books available in this Laboratory do not give the procedure in detail for determination of denier of crimped plied nylon yarn and how the denier is to be specifically reported, i.e. as to whether it should be on the basic yarn or on the sample as such. In this connection a reference from page 363 of ASTM Part 24 is of significance and is reproduced below:—

"In the conventional designation of a plied yarn or cord include a statement in parentheses, giving the resultant liner density explicitly, that is, the observed or determined, not the calculated number.

Example:

Denier 1650: F 720: z 13x2: S tpi (R denier 3800 or 420 tex).

From the above it would be seen that implied yarn the denier of the basic single yarn is giving primary importance and the resultant denier is added only as information in parent theses.

The book Textured Yarn Technology, Vol. I cited by the party is not available in any of the libraries in Delhi including the Shri Ram Research Institute, Delhi which is especially connected with the work on textiles. It is seen from page 8 of the affidavit filed by the party before the Joint Secretary, Government of India, that this book is the exclusive publication of M/s. Monsanto Co. of U.S.A. and the method of determination of yarn denier cited from this book at pages 276 and 277, a copy of which has been given to me, does not specifically mention that the method is applicable for the plied yarns as well. In this connection the Head of the Textile Division of Shri Ram Research Institute, Delhi, was also consulted by one of the Officers of this Laboratory and the former opined that the denier of the crimped yarn would appropriately be the denier of the basic single yarn, because this is first manufactured and later processed to give the two-ply crimped yarn. He could not, however, furnish any literature other than ASTM cited above to support his opinion.

It is true that in the work sheet of the Chemist in this laboratory file the denierage of the sample is given as 183.4 but the Chemical Examiner does not seem to have given credence to this in view of the facts that length of the yarn would be subject to great variation without the use of necessary apparatus for determining the crimp percentage and the declaration of the party on the T.M. is specific that the yarn sent for examination "is 90 Denier synthetic yarn". The Chemical Examiner had, therefore, called for the basic yarn used in the manufacture of crimped yarn. In this connection, it is of interest to mention that a sample of crimped yarn "MODIPON" received for test bore the lable "Nylon-6, 105—24—2—503" and the basic yarn from

which the above was stated to have been made bore the label "105—24—0—0—502", '105' is the denier of the basic single yarn, '24' is the number of filaments in the basic single yarn, '2' is the number of plies and '503' and '502' appear to be 'lot Nos.' of the manufacture. This indicates that the trade practice is guided by the denierage of the basic single yarn only.

It is also of relevance to mention that in the case of crimped yarn manufactured by certain other factories, the C. Ex. officers have been requested to forward basic single yarns which go into manufacture of crimped yarns and the factories concerned have been satisfied with the reporting of denierage of the basic single yarn and no protest has been received so far.

It is of relevance to take into consideration the method of manufacture of the crimped yarn under reference as given by the party in the affidavit *ibid*, namely, the following statement is of significance—"On emerging from a false—twist spindle the yarn has an inherent torque in either S or Z direction depending on direction of rotation of spindle. The applicant company imparts S and Z twists and to overcome torque single stretch yarn of equal and opposite torque are applied together". This would show that the single stretch yarns have already been manufactured before the plied yarn is made and for C. Ex. purposes, the single stretch yarn (basic single yarn) would attract C. Ex. duty.

In this connection the decision on the levy of c/v duty on Art silk Twine and thread taken at the Collector's Conference held at Delhi from 27th to 29th May, 1970, and at Bombay from 28th to 30th June, 1971, respectively are enclosed—(these may have a bearing to the example of Nylon twine and corn cited by the party). In the former conference it was decided that the denier of the basic single yarn should be taken into account for assessment. In the latter, however, it was decided that twine will not be assessable to c/v duty but that twine which is imported will compete with that produced in the country. The indigeneous product would have already attracted levy as a fibre or yarn and thus it is only rational that provisions of Section 2A(2) of the Indian Tariff Act, 1934, is invoked in the case of imported art silk twine. The Board have subsequently issued Tariff Advice No. 19/71 dated 17th September, 1971 that nylon and other art silk twine would be classifiable under Item 53 I.C.T. (*viz.*, Textile manufacture, not otherwise specified) and not under Item 47(2) I.C.T. *viz.*, "Art silk yarn and thread". The Tariff Advice also mentions that 'Act silk twine' would be outside the purview of Item 18 of the

C. Ex. Tariff, which covers only "rayon and synthetic fibres and yarns". These decisions would show that Nylon cord/twine would not merit to be compared on par with crimped yarn which is only a yarn and not a textile manufacturer, other than yarn.

This office file C. No. 87-Chem. Yarn. D/65 is retained here.

Sd/-

V. S. RAMANATHAN,

3rd April, 1972.

Min. of Finance (Deptt. of Rev. & Ins.) u/o

C.R.C.L. u/o C. 41-Ex. C/72-I dated 3-4-1972

APPENDIX XI

(*Vide* Para 622)

Circular letter No. Yarn/1/73

F. No. 50/14/70-CX-2

CENTRAL BOARD OF EXCISE AND CUSTOMS

New Delhi, the 22nd Feb., 1973

From,

Shri J.P. Kaushik,
Under Secretary, Central Board of Excise & Customs.

To,

All Collectors of Central Excise,
All Appellate Collectors of Central Excise,
All Deputy Collectors of Central Exise,
Deputy Commissioner, Andaman & Nicobar Islands, Port Blair.

Sir,

SUBJECT:—*Central Excise—Rayon and Synthetic fibre and yarn Nylon Multiple fold yarn—Duty liability thereof—Clarification regarding.*

I am directed to say that a doubt has been raised as regards the stage at which duty should be recovered under Notification No. 51/72-CE dated 17-3-72 in respect of nylon filament multiple fold yarn, also known as plied crimped yarn.

2. It has been reported to the Board that single filament yarn which is the raw material for manufacture of plied crimped yarn, is in a fully manufactured condition immediately after undergoing the process of stretching on the drawing machine. A major part of this yarn on cops is cleared, as such, on payment of duty; a small

percentage of it, however, is taken to another section where it is subjected to the process of crimping. After crimping, such yarn is either cleared from the factory on payment of duty as single crimped yarn, or it is taken to another machine called doubling machine, where two single crimped yarns are combined for subsequent clearance on payment of duty as double plied crimed yarn.

2. The question under consideration has been whether in such cases duty should be collected at the stage when the basic single yarn is manufactured, or later, when after crimping, it is cleared as double plied yarn. The matter has been examined in consultation with the Ministry of Law. The Board has been advised that there is no objection to levying and collecting duty on single filament yarn when it comes off the drawing machine and before it is taken for use in the further manufacture of crimped yarn. "Excise duty is on the production/manufacture of excisable goods and not on their sale. Since the single filament yarn, as such, is in a fully manufactured condition, and is also marketed as such, it is immaterial for the purpose of levy of excise duty whether it is removed, as such, outside the factory or taken to another portion of the factory for further manufacture of crimped yarn." "Under rule 9(1) of Central Excise Rules, 1944, no excisable goods shall be removed from any place where they are manufactured, whether for consumption or manufacture of any other commodity, in or outside such place, until the excise duty leviable thereon has been paid at such place. It has already been held by the Courts that removal of excisable goods for further manufacture, is "removal" for purposes of excise levy and duty can be collected before the goods are so removed." In view of the specific provision in the Rules, the Board is advised that duty may be collected as soon as the single filament yarn is manufactured and deferment of collection to a later stage would not appear to be in order.

4. In view of the above, excise duty on nylon single filament yarn may be levied and collected before such yarn is taken for further manufacture of crimped yarn.

5. You may advise the field staff suitable in the matter so that the practice of assessment of such yarn is brought in line with the above instructions and the pending cases decided accordingly.

6. The receipt of this letter may please be acknowledged.

Yours faithfully,

Sd/-J. P. KAUSHIK,

Under Secretary, Central Board of Excise & Customs.

APPENDIX XII

F. No. 50/8/73-CX-2

F. No. 50/8/73-CX-2

CENTRAL BOARD OF EXCISE AND CUSTOMS

New Delhi, the 21st May, 1973

From,

Shri J. P. Kaushik, Under Secretary, Central Board of Excise & Customs

All Collectors of Central Excise,

All Appellate Collectors of Central Excise,

All Deputy Collectors of Central Excise.

Deputy Commissioner, Andaman & Nicobar Islands, Port Blair.

Sir,

SUBJECT: —*Rayon and Synthetic Fibre yarn—Nylon filament yarn of single ply in manufacture or crimped yarn and or nylon multiple Fold yarn—Duty liability of—Raising of the demands for the past period—Instructions regarding.*

I am directed to refer to Board's letter F. No. 50/14/70 CX-2 dated the 22-2-1973, in which it was advised that nylon filament yarn of single ply should be assessed and duty collected before such yarn is taken for further manufacture of crimped yarn.

2. The question of collection of duty on clearances of such yarn in the past has been examined and it has been decided that demands in respect of past clearances of nylon filament yarn of single ply taken for manufacture of crimped yarn without payment of duty should be raised under Rule 10-A and the duty realised.

3. Please acknowledge receipt.

Yours faithfully,

Sd./- J. P. KAUSHIK,

Under Secretary, Central Board of Excise & Customs.

APPENDIX XIII

(*Vide* Para 6.28)

Note showing the facts of the case of Bharat Carpets Ltd. Delhi M/s. Bharat Carpets Limited, Delhi

F. No. 195/803/71-CX-V — Revision Application No. 1508 dated 26-7-1971.

This revision application against the Order-in-appeal No. C.V(21) 2/68-CE/69 Pt./20549 dated 1-5-1971 of the Collector of Central Excise, Chandigarh, was allowed by the Joint Secretary (Revision Application), Shri D. N. Kohli. The brief facts of the case are as under:—

M/s. Bharat Carpets Limited, Faridabad, manufacture carpets with tuftin machines worked by power. They were informed, during discussions with the Assistant Collector of Central Excise, Faridabad on 30-9-67, that excise duty was leviable under item No. 21 of the Central Excise Tariff on Woollen Carpets manufactured by them. On representation by the firm that these carpets are not assessable under item 21-C.E.T. as Woollen Fabrics, the Assistant Collector held, under his letter C.No. V(21) 3/2/CE/67/21170 dated 4-11-68 that the party's contention was not acceptable, and that excise duty was leviable on the carpets under item 21 C.E.T. read with Notification No. 50/62 as amended. The party appealed to the Collector of Central Excise, Delhi, in January, 1969 and a reply was sent to them by Shri C.L. Beri on behalf of the Collector stating that the party had already approached the Government of India in the matter, and the Ministry *vide* their letter F. No. 14/468-CX-II dated 9-12-68 had already conveyed their decision to the party that the tufted carpets in question were assessable under item 21 C.E.T. and in the circumstances the decision of the Assistant Collector stood merged with the above decision of the Government and hence the Collector was not in a position to give a decision over the decision of the Government of India. The letter accordingly stated that the remedy for the party would lie with the Government of India. The party filed a Revision Application on 6-6-69. and the then J.S. (RA) Shri A.V. Venkateswaran, held under his order No. 421 of 1970, that the Collector had failed as the Appellate authority to exercise his independent judgement and give his considered decision, and ac-

cordingly set aside the Collector's order and remanded the case to him for dealing with the appeal in accordance with law. The matter was then taken up by Collector of Central Excise, Chandigarh, Shri G. Sankaran and decided on merits under his order dated 1-5-1971 already referred to.

The description of Item 21 of the Central-Excise Tariff, at the material time, reads as under:—

"*Woollen Fabrics*:

'Woollen Fabrics means all varieties of fabrics manufactured wholly of wool or which contains 40 per cent or more by weight of wool and includes blankets, lohis, rugs, shawls and embroidery in the piece, in strips or in motifs. Provided that in the case of embroidery in the piece, in strips or in motifs, the percentage referred to above shall be in relation to the base fabrics which are embroidered:

(1) Woollen Fabrics other than embroidery in the piece, in strips or in motifs.

(2) Embroidery, in the piece, in strips or in motifs, or in relation to the manufacture of which any process is ordinarily carried with the aid of power.

Explanation: 'Base Fabrics' means fabrics falling under sub-item (1) of this item which are subjected to the process of embroidery.

N.B.—In addition, there shall be levied and collected on all woollen fabrics a duty of excise under the khadi and other Handloom Industries Development (Additional Excise duty on Cloth) Act, 1953, read with Section 28 of the Finance Act, 1955 and as subsequently amended by the Central Excises (Conversion to Metric Units) Act, 1960, at the following rate:

Provided that no such duty shall be levied on cloth which is exported out of India.

Woollen Fabrics .....

The basic issue for consideration was whether tufted carpets manufactured by the party and the predominant constituent of which was admittedly wool, fell within the scope of the said tariff item. The party's contention was that the term 'fabric' would refer only to woven, knitted, felted or bonded material, and the tufted carpets in question did not satisfy this and their process of manufacture does not involve any warp or weft and they are made in running lengths and in rolls. It was further contended that carpets have not been specifically mentioned, unlike certain

other specific items like lohis, rugs, shawls, etc. It was further maintained that the mention of the item rugs, preceded and followed by certain other specific items in the tariff entry like blankets, shawls, etc. would show that the term "rugs" would cover only body wraps and not carpets. It was further submitted that the words "Carpets" and "rugs" have different meanings. It was also contended that the Sales Tax Authorities do not regard Woollen Carpets, as woollen fabrics, and it would lend to an untenable position if a different view was taken for Central Excise purposes.

The Collector rejected the plea that the scope of the term "fabrics" was restricted as contended by the party and held that its scope was wider and the tufted carpets (in which the predominant material is wool) made by the process of manufacture employed by the party fell within the meaning of "Woollen Fabrics". In reaching this conclusion, he relied upon the meanings/ clarifications contained in authorities like Websters Third New International Dictionary, the Modern Textile Dictionary by George E. Linton, Manmade Textile Encyclopaedia by J. J. Pres. He also referred to the B.T.N. heading 58.02 to support his view point and held that the tufted carpets are, in the international usage and Custom, considered as textile fabrics. He also pointed out that, apart from the above, the expressions "rugs" and "carpets" are interchangeable as the meanings assigned to them in the "Fairchilds Dictionary of Textiles" would show. He rejected the plea that the word "rugs" in view of its juxtaposition with blankets, lohis and shawls, would cover only body wraps, and held that even assuming that this contention of the party is plausible, the carpets in question would be covered by the generic item "Woollen Fabrics". As regards the party's submission that the Sales Tax Authorities do not regard woollen carpets as woollen fabrics, he held that the authorities cited by the party do not warrant such an inference, as some of the authorities specifically exclude carpets from the meaning of the expression "Woollen Fabrics" for the purpose of levy of sales Tax, and this would show that but for the specific exclusion, they would fall within the meaning of the expression "Woollen Fabrics". In any case, he had held that the question before him was regarding the scope and meaning of item 21 of Central Excise Tariff and the reference to States Sales Tax Acts and Schedules were of no help in this context. In the result, the appeal was rejected by the Collector. Reference is invited to the copy of the order-in-appeal for a complete appreciation of the reasoning of the Collector.

The party filed a revision application on 26-7-71 against the above order. A personal hearing was granted to the petitioners by JS(RA), Shri D. N. Kohli on 1-2-72 when Shri T. C. Seth (Retired Member of CBE & C) accompanied by Shri B. N. Gupta, Managing Director of M/s. Bharat Carpets and Shri R. N. Gupta, Director of the firm, appeared before him. The party had, *inter alia* stated in the course of the personal hearing that the Govt. of India had, in their letter No. 14/4/68-CX II, dated 9-12-68, informed the petitioners that the tufted carpets manufactured by them are woollen fabrics and liable to duty as such. J S (RA) called for this file also and examined it, as also the various contentions of the petitioners and allowed the revision application. The Order-in-revision is detailed and may be seen for a proper and full appreciation of this decision. He held that from the process of manufacture of the carpet it was clear that a woollen pile, called a tuft is raised on jute fabric and hence the carpets under dispute could be aptly called as wool tufted jute fabric. For anything to be termed as woollen fabric, an essential factor would be that the fibres are laid one upon the other and if this criterion were applied, the sort of tufting that is done in the carpeting in question would not constitute a base fabric or wool. The tufting or raising of the pile would be similar to embroidering, and hence, on the analogy of embroidered fabric read with the Explanation figuring under item 21 C.E.T., the percentage of wool in the case of carpet would have to be determined in relation to the base fabric, to decide whether it is more than 40 per cent to bring it within the scope of item 21 of the Tariff entry. As the base fabric in the case of the tufted carpet is jute, it was held by JS(RA) that it cannot fall under item 21. He also held that the specific items mentioned under the tariff item in addition to the generic item of woollen fabrics, is not merely illustrative but includes all the articles to be levied to duty, and that the term 'rugs' used therein would refer only to wrap material, on the principle of *ejus dem generis*.

He has also referred to the Exemption Notification No. 50/62 under which unprocessed fabrics are wholly exempt, and has held that, even assuming for the sake of argument that the carpeting in question is woollen fabric, the process of "tufting" cannot be termed as processing of the base fabric. He has a accordingly maintained that either the carpeting remains unprocessed fabric in which case it is exempt from duty, or in the event it is held to be not covered by the exemption, it falls outside the scope of the tariff entry itself, in which case also no duty is leviable. He has also rejected the Collector's view point that the terms 'rug'

and 'carpets' are interchangeable, and has accepted the petitioner's contention that one has to be guided by the ordinary and commercial meaning of the term and has gone by the certificates and affidavits produced by them from the dealers in woollen fabrics that carpets are not treated as woollen fabrics.

In the result, he has held that in the absence of a specific mention in the tariff, it is difficult to maintain that the running lengths of carpeting are covered by the terms 'rugs' within the meaning of item 21 or the generic term "Woollen Fabrics", and has accordingly allowed the Revision Application.

In this order, the Government of India allowed the Revision Application dated the 26th July, 1971 of M/s. Bharat Carpets holding *inter alia* that "in the absence of a specific mention of the word 'carpet' in the Tariff it is difficult to hold that the running lengths of carpeting are covered by the term 'rugs' within the meaning of Item 21".

In pursuance of this, M/s. Bharat Carpets *vide* their letter No. BCL(L) 539/72 dated the 3rd July, 1972 filed with ACCE, Faridabad, a refund claim for Rs. 7,45,534.14 in respect of central excise duty paid on the said goods during the period 29th November, 1967 to 20th April, 1972 and relied in support of their claim on the R.A. order.

ACCE, Faridabad in his letter No. V(21)18/4/72/1562 dated the 1st September, 1972, in para 6 thereof, ordered refund of an amount of Rs. 14,381.06, in respect of central excise duty paid on the said goods during the period 29th November, 1967 to 27th March, 1968.

In the same letter dated the 1st September, 1972 the said M/s. Bharat Carpets, were asked to show cause as to why the balance amount of refund should not be rejected on the following grounds:—

(i) that the said order-in-revision of the Government of India is applicable only in respect of the consignments of woollen tufted carpets in respect of which the duty was paid under protest upto 27th March, 1968.

(ii) that the said order-in-revision of the Government of India does not specifically supersede an earlier order contained in letter F. No. 14/4/68-CX-2 dated the 9th December, 1968, addressed to M/s. Bharat Carpets, holding that woollen tufted carpets are correctly assessable to Central Excise duty under Tariff Item No. 21.

(iii) the question of classification of post-27-3-68 consignments is still to be determined.

The balance refund claim was rejected by ACCE, Faridabad *vide* his order dated the 31st March, 1973.

By another order dated the 31st March, 1973 he ordered a demand for Rs. 61,695.11, in respect of duty on clearances of woollen tufted carpets, for the period 12th May, 1972 to 31st July, 1972. Against the aforesaid orders of ACCE, Faridabad, the party filed a writ petition in the Delhi High Court. This was dismissed by a judgment of a Single Bench of the Delhi High Court, comprising Hon'ble Justice Rajinder Sachar, on the 7th June, 1974.

Thereafter the party has filed an L.P.A. (Letters Patent Appeal) against the Department in the Delhi High Court, and also submitted a stay application No. CN 1001/74 in L.P.A. No. 62/74. An interim stay was granted *vide* order dated the 8th August, 1974 of the Delhi High Court passed by the Divisional Bench consisting of Hon'ble Justice V. S. Deshpande and B. C. Misra. The recovery of the existing demands made by the Department till the disposal of the appeal was stayed subject to the condition that M/s. Bharat Carpets would furnish security of immovable property of the appellant company plus two personal bonds of the two Directors of the Company for the amounts demanded, to the satisfaction of the Deputy Registrar of the Delhi High Court. The recovery of the future demands was stayed subject to furnishing of similar security for the amounts that may be due. Thus, in this manner, the revenue interests of the department were fully safeguarded.

The balance of the refund claim that was rejected by the Assistant Collector of Central Excise, Faridabad amounted to Rs. 7,31,153.08. For recovering this amount, with interests M/s. Bharat Carpets filed a Civil Suit (No. 142 of 1973) also in Delhi High Court. Written statement in defence of that suit was filed in the High Court on 8-8-1973. The list of documents relied upon by the Government has been filed in the High Court on 26-9-1974. The suit has not yet come up for hearing.

APPENDIX XIV

(*Vide* Para 6·43)

Details of cases represented by the retired Officers of the Deptt of Central Excise & Customs.

Brief Particulars of each case	Amount of duty involved	Final decision given including duty remittances.	date of retirement of these officers	Time gap between their retirement and first appearance for Revision/Appeals.	Whether the officers were given permission and if so, how it was given immediately after retirement particularly when it was likely that these officials had themselves handled these cases.
1	2	3	4	5	6
SHRI D.E. BOATHWICK (RETIRED OFFICIAL REPRESENTING THE CASES)					
The appellants had imported crown wheels and Pinion for Mercedes valued at Rs. 61,957/- and Rs. 57,907/- in these two cases. The Collector of Customs, Calcutta, who adjudicated these two cases, held the importation in each case to be unauthorised as, according to him, the licence, issued specifically for Gears, Sprockets and Shafts, against which the goods imported were sought to be cleared was not valid for the goods imported. Accordingly, he imposed fines of Rs. 74,000/- and Rs. 70,000/- respectively in the two cases in lieu of confiscation of the goods imported.		It was clarified by the Chief Controller of Imports and Exports that "crown wheel and pinion" were technically covered by the broad nomenclature "Gears, Sprockets and Shafts." In view of this clarification, the Board allowed the appeals and remitted the fine in full in each case.			

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2. On prior information, the residence of the appellant was searched by the Calcutta Customs as a result of which camera accessories of foreign origin valued at Rs. 1,051/- (C.I.F.) and a brief case containing certain documents were seized. The appellant was also found guilty by the Collector of Customs, Calcutta, of (i) having traded in goods of foreign origin and (ii) being concerned in selling, purchasing and dealing in goods of foreign origin with the knowledge or having reasons to believe that these were liable to confiscation under the Customs Act, 62. The Collector of Customs, Calcutta, released the goods seized but imposed a penalty of Rs. 10,000/- upon the appellant.		The Board dismissed the appeal.			
3. The appellants had imported piston rings below 6 "diameter valued at Rs. 16,778/-. The Collector of Customs, Calcutta, held the importation as unauthorised as the licence produced was not found to be valid for the goods imported. We accordingly imposed a fine of Rs. 58,000/- in lieu of confiscation of the goods imported.		The appeal was rejected.			
4. The appellants had imported 187 reels of Canadian newsprint valued at Rs. 65,506/- (C.I.F.). the Collector of Customs, Calcutta, held the importation as unauthorised as		The Board observed that the importation took place in pursuance of an agreement between the State Trading Corporation of India and the foreign suppliers for the			

the licence produced was valid for rotogravure quality of newsprint whereas the goods were found to be standard newsprint and not of rotogravure quality. Accordingly, he imposed a fine of Rs.65,500/- in lieu of confiscation of the goods imported and also ordered that the licence against which the goods were sought to be cleared be debited with the value of the goods.

purchase of a bulk quantity out of which a quantity of 50 tons was allocated to the appellants by the Registrar of Newspapers and the specifications of the goods imported were as per the said Agreement. No. malafides on the part of the appellants was indicated. Evidence was produced to show that previously similar type of paper was imported and used in the publication of the weekly published by the appellants. Further, it appeared that the appellants had not played any active role in the placing of the order in any negotiation with the supplier, these functions seemed to have been performed by the local agents of the suppliers. The Board, therefore, accepted the appellants contention that they were not directly responsible for the goods imported. In view of these considerations and the facts that the appellants were Actual Users and the goods imported were capable of use for the purpose for which the licence was issued, the Board reduced the fine from Rs. 65,000/- to Rs. 6500/-.

5. The appellants had imported menthol crystals valued at Rs. 1,79,710/- and claimed clearance the reof against 5 licences, one of which was Actual Users Raw material licence bearing a specific endorsement for menthol crystals (other than pharmacopial grade) and the other 4 licences were

The specifications for technical grade of menthol were not available in any standard book and also the specifications for pharmacopial and non-pharmacopial grade of menthol were not markedly different in certain cases especially for I-menthol. It was observed from

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Actual User (Registered Exporters) licences. The clearance against the Actual User (Registered Exporters) licences was claimed under the benefit available as per paragraph 38 of the relevant ITC Policy, Vol II on the strength of the Actual Users raw material licence. The goods imported were, however, on examination by the Customs found to confirm to the specifications of menthol of pharmacopial grade. In view of the fact that the goods imported were menthol of pharmacopial grade, neither the Actual Users raw material licence nor the Actual User (Regd. Exporters) licences were valid for the goods imported. The Collector of Customs, Calcutta, therefore, held the importation as unauthorised and imposed a fine of Rs. 1,80,000/- in lieu of confiscation of the goods imported.		ISI. No. 3134-1955 that specifications for menthol as perfumery chemical were the same as those prescribed in pharmacoepial of India. Distinction between pharmacopial grade of Menthol and technical grade of Menthol was difficult and the India standards specifications also showed that the technical grade of Menthol had the same specifications as that the pharmacopial grade. Futher in a similar earlier case, the Board had allowed the appeal after consulting the Cheif Chemist. Having regard to all the aspects, the Board gave benefit of doubt and allowed the appeal. (On a reference made by the Board, the C.C.I. & E changed the subsequent policy in this regard).			
6. The appellants had imported 74 reels of printing paper valued at Rs. 60,211/- and claimed clearance thereof against a licence which was valid, *interalia*, for the import of photographic negatives and printing paper. As the licence produced thus did not appear to cover the goods imported, the Collector of Customs, Calcutta held the importation as unauthorised and imposed a fine of Rs. 60,200/- in lieu of confiscation of the goods imported.	—	The Board held the Collectors' action in confiscating the goods as correct in law. However, having regard to the following mitigating circumstances, it took a lenient view and reduced the fine from Rs. 60,200/- to Rs. 10,000/-:— (1) In their application for import-licence, the appellants had not applied for photographic printing paper; they had applied for three items—(a) Wood free			

White glazed board (b) Photographic Negative and (c) Printing Paper (Coated) (S.No. 157-160/IV). The goods imported were Printing Paper (Coated). There appeared to be force in the appellant's contention that the licensing authorities clubbed together the items of "Photographic Negative" and "Printing Paper" without specifying different serial numbers.

(2) The end product indicated on the licence was "Waxed Printed Cartons and Lables". Theoretically, photographic printing paper could be used for printing of labels, but it would be far too expensive and commercially not feasible. On the other hand the goods imported were suitable for the manufacture of label—one side for pasting and the other for printing.

(3) The licence was an Actual Users' licence;

(4) The goods had incurred considerable demurrage.

(5) Para 16(2) of the I.T.C. Handbook of Rules & Procedure helped the appellants;

(6) The margin of profit on the goods imported did not appear to be more than the margin on photographic paper permitted under the licence.

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On search of the export baggage of the appellants, diamond jewellery and gold jewellery collectively valued at Rs. 42,280/- was recovered as the jewellery had not been declared and also as the appellants had not produced any permit from the Reserve Bank of India for their export. The Collector of Customs, Calcutta, accordingly, imposed a fine of Rs. 20,000/- in lieu of confiscation of the jewellery and also imposed a penalty of Rs. 5,000/- upon each of the two appellants.	—	The Board found that the passengers were *en route* to Hongkong and had stayed in Calcutta only for the night and that (i) excepting jewellery worth Rs. 2,350/- the jewellery was used; (ii) a substantial part of the used jewellery was according to jewellery exports' opinion, such as was not very common in India. This was, therefore, considered to have been brought from abroad by the appellants for being taken back out of India. The Board also observed that under Notification No. FERA 117/53-RB, dated 21-7-53, as amended upto 13-3-63, any person other than a person domiciled in India could take out with him any precious stones brought by him into India without limit. Similarly, he could take out with him any jewellery made mainly or wholly of gold provided at the time of import the permission of the Customs Officer had not been obtained. For the above reasons, the Board observed that the charge in respect of jewellery brought from abroad was merely of non-declaration. Taking all these factors into consideration the Board reduced the fine in lieu of confiscation of the jewellery from Rs. 20,000/- to Rs. 8,000/- and also reduced the penalty imposed upon each of the two appellants to Rs. 2000/-.			

SHRI T. C. SETH (RETIRED OFFICIAL REPRESENTING THE CASE)					
8. The appellants had imported 39 cases said to contain, *Inter-alia* "Mechanism for Tape Players" and declared to be valued at Rs. 12, 842/- c.i.f. and claimed clearance thereof against a licence issued for "mechanism for tape players". However, on examination by the Bombay Customs, the goods were actually found to be complete tape players and recorders, the correct value of which was assessed to be Rs. 70,062. Had this misdeclaration with regard to value of the goods been not detected, there would have been a loss of duty to the extent of Rs. 34322/-. For this and the fact that the licence produced was not valid to cover the goods imported, the Collector of Customs, Bombay imposed a fine of Rs. 80,000/- in lieu of confiscation of the goods imported and also imposed a penalty of Rs. 20,000/- upon the appellants.	Rs. 34322/-	The appeal was rejected.	1-1-68	—	No permission granted. There are no restrictions on practice, after the expiry of 2 years from the date of retirement.
SHRI N. MOOKHERJEE (RETIRED OFFICIAL REPRESENTING THE CASE)					
The appellants were engaged in the manufacture production and storage of excisable goods without a licence required under Section 6 of the Central Excises and Salt Act, 1944. They had also produced and stored 556 kg. of cold rolled strips (value	19,612·73	Appeal rejected			

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Rs. 1223·20) without any accounting. Further they had removed 261·503 M.T. of cold rolled strips including 21 m.t. shown as baling hoops in a manner otherwise than as provided in the C.E. Rules, 1944. Collector of Central Excise, Calcutta and Orissa imposed a penalty of Rs. 1000/- under Rule 173-Q of the C.E. Rules and confiscated 556 kg. of cold rolled strips subject to an option for payment of a fine of Rs. 600/-. Differential duty on 261,503 tonnes of cold rolled strips (at the rate equal to difference between the rates of duty on C.R. and hot rolled strips) was also demanded. SHRI PESHAURI LAL (RETIRED OFFICIAL REPRESENTING THE CASE)					
The appellants were alleged to have removed 7423 maunds and 489 maunds of sugar without payment of duty. The Collector of Central Excise, Allahabad in his order Nos. 2/58 and 3/58, dt. 7-3-58 demanded duty on the above quantities of sugar and imposed a penalty of Rs. 2000/- in each of the cases. The appellants preferred appeals against the Collector's order but the Board in its order Nos. 10/59 and 11/59	33,000·00 approximately	The Board after reconsidering the appeals noticed that there had been violation of the principles of natural justice in as much as the show cause notices did not mention about the recovery of duty on sugar held to be clandestinely removed and the appellants were not given an opportunity of showing cause on that point. In a similar case the demand for duty and penalty had been	19-4-72		Full permission except in areas of Warangal and Delhi.

both dated 5-2-1959 rejected the appeals. The appellants thereafter filed a writ petition in Delhi High Court which observed that the Board's orders were not reasoned orders and directed the Board to re-hear the appeals after giving due opportunities to the appellants and to pass reasoned orders.		set aside by the Board/Government of India without pre-judice to the Collector's right to impose a further penalty. Further, in these cases the Collector who passed the orders did not hear the parties, although specifically requested to do so. This was against the principles of natural justice. The Board therefore did not go into the merits of the cases but set aside both the orders of the Collector leaving him at liberty to readjudicate the cases after complying with the principles of natural justice.		
SHRI BHARAT DAS (RETIRED OFFICIAL REPRESENTING THE CASE)				
The appellants were found in possession of 55 bags of Red Chopadia Petti tobacco weighing 1285 kg. allegedly in contravention of Rules 40 and 226 of the C.E. Rules, 1944 i.e. bringing tobacco without proper permit and without accounting for it properly in C.E. records. On adjudication, the Collector imposed a penalty of Rs. 2,000/- and confiscated the tobacco under Rule 40 of the C.E. Rules. The tobacco was redeemable on payment of a fine of Rs. 2,000/-.	3,700·00 approximately	The Collector's order was set aside on the ground that the principles of natural justice were not followed as the appellants were not supplied with a copy of the chemical examiner's test report which was used against them, and they were also denied the right of cross-examination of the Chemical Examiner. The Collector was directed to readjudicate the case after the appellants were allowed to cross-examine chemical experts concerned and if necessary after carrying out a retest of samples from the goods.	18-1-72	Permission given for doing chamber practice only in all areas.

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SHRI L. M. KAUL, RETIRED OFFICIAL REPRESENTING THE CASE)					
The appellant were alleged to have removed 18325 coils of cables valued at Rs. 1,87,135·10 involving duty of Rs. 28070·26 during November, 1967 to May, 1968 and 49950 coils and 8 kg. of cut pieces of wires and cables valued at Rs. 5,84,379·88 involving duty of Rs. 87656·94 during June, 1968 to December, 1970 without payment of duty and without gate passes, contravening the provisions of Rules, 52-A and 173-G of the C.E. Rules. Collector imposed a penalty of Rs. 5,000/- under Rules 9(2) and 173-Q and demanded duty amounting to Rs. 1,15,727·20 on quantities of cables held to have been removed in contravention of the C.E. Rules, 1944.	1,15,727·20	The Board upheld the Collector's finding that certain quantities of cables had been removed without payment of duty, and upheld the penalty imposed by him. The basis for the calculation of duty was disputed by the appellants, who urged that the rate should be 12% and not 15%, and that in respect of some items the duty amount was very high as compared to the values of the same items approved by the Department in their price lists. As this aspect was not examined by the Collector, he was directed to determine the duty amount after applying his mind to the facts and submissions of the appellants in this regard. The appeal was other-wise rejected.	1-6-71	Permitted to practice as consultant at Delhi subject to the condition that he will neither take up cases of Baroda and Ahmedabad Collectorates nor appear before departmental officers of these Collectorates.	
The special stock taking conducted from 13-10-65 to 16-11-65 in the appellants factory revealed a shortage of 6,32,134·06 linear metres of Med. A veriety and 2.90,303·63 Lin. Metres of coarse variety of cloth. There was also an excess of 3,37,220·08 L. Mtrs. in Med. B. variety of cloth.	1,69,980·71 (as stated by the appellants; exact amount not given in the Collectors' Order).	The Board rejected the appellant's arguments on the merits of the case and did not accept their plea to set aside the demand for duty amounting to about Rs. 1.70,000. The two personal penalties of Rs. 500/- were however set aside, having regard to the fact that the discrepancies related to the period before the Mill came under the			

The Collector demanded duty on the shortages mentioned above under Rule 223-A of the C.E. Rules. He also imposed a panalty of Rs. 500/- under Rule 223-A and Rs. 500/- under Rules 226 ibid.		present (Public) management. The appeal was otherwise rejected.			
SHRI T. C. SETH (RETIRED OFFOCOAL REPRESENTING THE CASE)					
The Central Excise staff had noticed excess stocks of 61 bobbings, 188 bobbins and 657 bobbins (176+481) and shortage of 657 bobbins and 224 bobbins on stock taking conducted in Nov. 1971. The appellants were charged with contravention of Rules 173-F, 173-G(2), 173-H and 226. After examination of the case and appellant's submissions Collector was satisfied about proper accounting of 48 bobbins & ordered confiscation of the remaining bobbins under Rules 173-Q and 226 of the C.E. Rules with an option for payment of a fine of Rs. 1 lakh. As regards shortages, the Collector was satisfied about the alleged shortage of 487 bobbins out of 657 bobbins. He, however, did not accept the explanation for the shoratge of 224 bobbins. A penalty of Rs. 1 lakh was therefore imposed under Rule 173-Q of the Central Excise Rules.	Rs. 11,761.26 (as represented by the appellants; exact amount not stated in the Collector's order)	In their appeal and the personal hearing the appellants were able to further account for a part of the excesses & shortages in respect of which action was taken by the Collector. The Board accordingly set aside the confiscation of 130 bobbins. The fine in lieu of confiscation was reduced to Rs. 20,000/- and correspondingly the penalty was also reduced to Rs. 20,000/-. The appeal was otherwise rejected.	1-1-68	No permission granted. There are no restrictions on practice, after the expiry of 2 years from the date of retirement.	

1	2	3	4	5	6
The appellants were manufacturing ISQ Kin-300 tablets from Isoniazid and Vit-B-6 and clearing these at the concessional rate of 2½% prescribed under notification No. 116/69 dt. 3-5-69. It was held by the Collector that the presence of Vit-B-6 made the product liable to duty @7½% in terms of the conditions of the notification. The clearances at the lower rate during 1971 and 1972 were held to have been in contravention of the provisions of C.E. Rules and the Collector held that the appellants had failed to declare the correct rate of duty in their classification list. He imposed a penalty of Rs. 1 lakh and demanded the duty of Rs. 28,018·13 under Rule 173-Q of the C.E. Rules, 1944 for offences under Rules 173-B, 173-F, 173-G(1) and 173-P *ibid*.	Rs. 28,018·13	While holding that the appellants were not entitled to the benefit of assessment at 2½%, the Board observed that the Collector appeared to have demanded extra duty at 7½% although duty had already been paid at 2½%. The Board therefore directed that if this was the case, the demand should be only at 5%. As regards the penalty, the Board observed that at one stage the appellants sent literature to the C.E. authorities, showing that the preparation contained Vit-B-6 and that the foil wrapping to the tablets also showed Vit-B-6. The Deptt. was however not sufficiently alert to take note of these facts. However, having regard to these circumstances, the personal penalty was reduced to Rs. 25,000/- The appeal was otherwise rejected.			
The appellants were charged under Rules 47, 52-A, 53, 173-G(4) and 173-Q for removing 1120 pieces of terecot shirting (2 metrs. each) without gate pass and without accounting in C.E. records. Further these pieces were alleged to have been deliberately converted into	Rs. 35,000/-	The Board rejected appellants' submissions on the merits of the case. The personal penalty was upheld. The fine of Rs.35,000/- which amounted to absolute confiscation, was reduced to Rs. 17,500/-. The appeal was otherwise rejected.			

fents by cutting sound fabrics. On adjudication the Collector imposed a penalty of Rs. 1 lakhs and confiscated the goods involved (1120 pieces) valued at Rs. 35,000/- with the option to pay fine of Rs. 35,000/- both under Rule 173-Q of the C.E. Rules.		
The appellants were alleged to have deliberately cut 2880·5 mtrs. of terene suiting into pieces ("fents") of 1·05 to 1·25 metres with the intention to evade duty, and gave false and misleading information that they had received the goods back from dealers for reshaping, restamping etc. The appellants were charged with contravention of Rules, 52-A, 198 and 226 of C.E. Rules. The Collector imposed a penalty of Rs. 4,50,000/- and fine of Rs. 1,50,000/- in lieu of confiscation of the goods involved (2880·5 5 mtrs.) under Rule 173-Q of the C.E. Rules.	N.R.A.	The Board rejected the appellants' submissions on the merits of the case. However, it was found that the Collector had erroneously taken the value of the offending goods as Rs. 1,63,000 which included the value of other goods for which he ultimately held that offences were not established whereas the value of the offending goods was only about Rs. 80,000/-. The fine of Rs. 1,50,000/- on these goods amounted to absolute confiscation and the penalty of Rs. 4,50,000/- was in excess of the statutory limit of 3 times the value of the offending goods. The Board accordingly reduced the fine to Rs. 40,000/- and the penalty to Rs. 2,40,000/-. The appeal was otherwise rejected.
The matter concerned the importation at Madras of a consignment of Nylon twine by M/S Champion Corporation, Bombay, in 1965, and the duty was assessed at the concessional rate in terms of Notification 27/64 dated 1-3-64 under item 53 Indian Customs Tariff.		The various contentions put forth by him during the personal hearing were found not acceptable by the Government and the Appellate Collector's order was set aside, and the Order-in-original of the Assistant Collector of Customs restored.

1	2	3	4	5	6
The importers claim for refund of countervailing duty was rejected by the Asstt. Collector of Customs, Madras, on the ground that the assessment made was in order. The importers appeal against this order to the Appellate Collector of Customs, Madras, was, however, allowed and the Appellate Collector directed that the countervailing duty collected on the subject goods should be refunded. This order created an anomalous situation, because there was, in fact, no countervailing duty charge on these goods, and as such the question of refund of countervailing duty did not arise. The matter was, therefore, referred by the Collector of Customs to the Government for review of the Appellate Collector's order, in terms of Section 131(3) of the Customs Act. Review proceedings were accordingly initiated by the Government, and Sh. T.C. Seth on behalf of the importers appeared for the personal hearing.					
SHRI G. P. DURAIRAJ (RETIRED OFFICIAL REPRESENTING THE CASES)					
On 15-10-70 the police officers attached to the Coimbatore Railway station intercepted and searched Sh. T.V. Govindan on the Railway	..	Appeal rejected.	3-12-79	Permitted to practice without any restrictions.	

Station premises. They recovered Rs. 54,100 from his person. A little later they searched Shri Balan *alias* Balakrishnan at the same place and recovered Rs. 33,000/- from his possession. Since both these persons were not able to account for the large amounts of Indian currency found with them, the police handed over the Indian currency and the two persons to the Central Excise authorities. It appeared to the Department that the Indian currency was the sale proceeds of smuggled gold, Sh. T.V. Kunhiraman, the brother of Shri T.V. Govindan, claimed that he had sent the money through Shri Govindan his brother and Balan *alias* Balakrishnan his servant to Coimbatore for the purpose of purchasing two lorries at Coimbatore. The Collector of Central Excise, Madras, confiscated the Indian currency seized under section 121 of the Customs Act, 1962.

On 18-3-72, the Central Excise officer acting on information searched a newly built house at Jarak Bande Kawal, a suburb of Yeswantpur, Bangalore and recovered 21,600 reels of metallic yarn of foreign origin valued at Rs. 4,32,000/-. The goods were seized in the belief that they were liable to confiscation. On the basis of evidence on record the Collector decided the case by confiscating the seized goods under section 111(d) of the Customs Act, 1962 and by imposing a

The Board found that on the basis of the evidence adduced the appellant Shri Thimmiah was not proved to have any association with the house or to have control over the house at any time. The only evidence against Sh. Thimmiah was the statement of Shri Venkata Raju who had claimed that Shri Thimmiah brought an unknown Marwari who had recommended that the house might be given to the Marwari gentleman on rent. As this was

1	2	3	4	5	6
penalty of Rs. 10,000/- each on S/Shri Ganesh Raju and Thimmiah under section 112 *ibid*.		not supported by any evidence on record, the Board found that there was not sufficient evidence to warrant the imposition of a personal penalty on the appellant Shri Thimmiah. Accordingly his appeal was allowed.			
SHRI GOPAL PRASAD (RETIRED OFFICIAL REPRESENTING THE CASE)					
On 23-11-73 the Customs Officer, Kanpur, searched the residential premises of Shri Daya Ram and recovered synthetic fabric of Japanese and British origin of a total value of Rs. 30,860/-. As the appellant was not able to show that the goods were legally imported into India the same were seized for further action under the Customs Act, 1962. On the basis of evidence adduced during the proceedings the Collector decided the case by confiscating the seized goods and by imposing a penalty of Rs. 5,000/- on the appellant under section 111(d) and Section 112 of the Customs, Act, 1962, respectively.	..	Appeal rejected.	31-10-72		He retired as Asstt. Secretary, SRP (Cx) Review Committee. Prior to that he was working as Inspecting Officer, Class I in the Directorate of Inspection and as Asstt. Collector of Central Excise Farrukhabad (this is during three years preceding his retirement). He was debarred from setting up practice in areas/ cases of Farrukhabad Division. He was granted permission for Chamber practice in all other areas.

APPENDIX XV

(Vide Para 6.43)

Details of the cases represented by the retired Officers of the Department of Central Excise and Customs

Brief Particulars of such case	Amount of duty involved	Final decision given including duty remitted/enhanced	Date of retirement of these officers	Time gap between their retirement and first appearance for revision/ appeals	Whether the officers were given permission and if so, how it was given immediately after retirement particularly when it was likely that these officials had themselves handled these cases.
1	2	3	4	5	6
		Shri L. M. Kaul, Consultant		Date of personal hearing	
Industrial Oxygen . . .	Rs. 18,040	Allowed	1-6-71	17-9-74	Permitted to practice as consultant at Delhi subject to the condition that he will neither take up cases of Baroda and Ahmedabad Collectorates nor appear before departmental officers of these Collectorates.
Aluminium	Not available in the file as the case records have been returned to the Appellate Collr.	Rejected		25-5-74	
Do.	Do.	Rejected		17-4-74	

1	2	3	4	5	6
		Shri T. C. Seth (consultant)			
M/s Hind Rubber—works footwear.		Rejected	1-1-68	27-12-73	No permission granted. There are no restrictions on practice, after the expiry of 2 years from the date of retirement.
		Shri G. P. Durairal (consultant)			
Shri K. Vali Saheb Storage loss of tobacco.	Not available in the file as the case records have been returned to the Appellate Collector.	Allowed	3-12-69	1-12-73	Permitted to practice without any restrictions.
M/s. T. R. Mills (P) Ltd. Non-payment of the duty on 51 bales of cotton fabrics.	Do.	Rejected		19-1-1974	
		Shri G. Koruthu (Consultant)			
Sugar Fixation of wholesale price	Do.	Rejected	1-9-67	6-2-74	He was refused permission to practice as he held All India Jurisdiction as D.R.I. before his retirement.
		Shri Bharat Das (Consultant)			
M/s. New Prahlad Mills Ltd.	Not available in the file as case records have been returned to Appellate Collector.	Rejected	18-1-72	23-4-74	Permission given for doing chamber practice only in all areas.
M/s. Power Conductors Benefit of proforma credit.	Do.	Rejected		30-1-74	

M/s Amrit Banaspati Co. Ltd. Vegetable Ghee.	Do.	Rejected		31-1-74	
Do.	Do.	Allowed		30-1-74	
		Shri Peshauri Lal (Consultant)			
Woollen Fabrics M/s. Modella Woollens Ltd.	Do.	Allowed	19-4-72	28-3-74	Full permission except in areas of Warangal and Delhi.
M/s. Universal Dying and Printing Works Art Silk Fabrics.	Do.	Allowed		7-12-73	
		Shri D. N. Mukherjee (Consultant)			
Paper/Board	Do.	Rejected			He had retired more than two years before Rules 531 BB came into existence on 25-2-65. Provisions of this rule not attracted.
		Shri D. N. Mukherjee (Consultant)			
Paper/Board	Not available as case records returned to Collector.	Rejected			
Woollen Shoddy yarn M/s J.J.R. Industries.	Do.	Partially allowed		18-1-74	
M/s. Chaliha Rolling Mills (P) Ltd.	Do.	Rejected		16-1-74	
M/s Mulchandani Electricals & Radio Industries Ltd. (classification list for Bush Discetron).	Do.	Rejected		18-1-74	

1	2	3	4	5	6
Iron & Steel	Do.	Rejected		10-9-64	
Do.	Do.	Allowed		11-9-74	
Do.	Do.	Rejected		10-9-74	
Do.	Do.	Rejected		14-3-73	
Tobacco	Do.	Rejected		23-8-74	
Do.	Do.	Rejected		23-8-74	
Do.	Do.	Rejected		23-8-74	
Do.	Do.	Rejected		23-8-74	
Tobacco	Do.	Rejected		23-8-74	
Do.	Do.	Rejected		23-8-74	
Do.	Do.	Rejected		23-8-74	
Do.	Do.	Rejected		23-8-74	
Paints/Varnish . . .	Do.	Rejected		21-8-74	
Transportation of goods without payment of duty.	Do.	Rejected		16-8-74	
Drugs violation of drug Control Rules.	Do.	Rejeteted			
Compressors/cold storage .	Do.	Rejected			
Iron & Steel . .	Do.	Rejected		15-7-74	

Match	Do.	Rejected	18-1-74
Fabrics	Do.	Rejected	24-7-74
Tobacco	Do.	Rejected	15-7-74
M/s. Madura Mills Co. Staple fibre yarn	Do.	Rejected	15-7-74
M/s. E.I.D. Ltd., Gas Nondioxide gas		Rejected (Rs. 1434/-)	18-7-74
M/s T.S. Industries M/s. Harish Trading Corporation	Do.	Rejected	12-6-74
M/s. M.M. Haribie Co.,	Do.	Rejected	21-1-74
M/s. Modipora Ltd.	Do.	Rejected	23-5-74
M/s. Bhor Industries (P) Limited.	Do.	Rejected	12-6-73
M/s Om Prakash Sharma	Do.	Rejected	23-5-74
M/s. Hajarimal Trilok Chand Oswal	Do.	Rejected	8-10-72
M/s. Cochin Refineries Ltd.	Do.	Rejected	12-3-74
Shri G.D. Banka & others	Do.	Three R.A. rejected and one allowed	26-12-73
M/s. Kamla Metal Wo	Do.	Allowed	21-3-74

1	2	3	4	5	6
Syed Narshin Pasha Qudir	Not available as the case records are returned to the Collector.	Rejected		20-3-74	
M/s. J.K. Rayon Kanpur	Do.	Rejected		3-1-74	
M/s. Nagrath Paints	Do.	Allowed		3-1-74	
M/s. Shree Cold Sotrage Compressors	Do.	Rejected		3-1-74	
M/s. Fezdez Production	Do.	Allowed		7-1-74	
M/s. Genge Private Ltd., Corporation	Do.	Partly allowed		3-1-74	
M/s. Sunrise Potteries	Do.	Allowed		12-1-73	
M/s. Chaubay Traders tobacco	Do.	Rjected		3-1-74	
M/s. Western India Vegetable Products Limited.	Do.	Rejected		21-4-73	
M/s. Asbestos Cement & Industries.	Do.	Rejected		22-3-74	
M/s. AP Sundaram Chettier Tobacco.	Do.	Rejected		21-3-74	
M/s. M.V. Muthia Pollai, Tobacco	Do.	Rejected		22-3-74	
Kasthuri Swami Naidu Tobacco.	Do.	Rejected			
Sh. Kasthuri Swami, New Delhi	Do.	Rejected		22-3-74	
M/s. Rashtriya Metal Industry Mills, Billets.	Do.	Rejected		8-10-73	

M/s. R.N.N. Corporation	Do.	Allowed	22-3-74
M/s. Grand Smithy Works Export of scrap removed from TISCO, Jamshedpur.	Do.	Allowed	2-2-74
M/s. Swastik Glass Works Glass.	Do.	Allowed	
M/s. Bihar Cottage Industries, Steel Furniture	Do.	Partially allowed	6-3-74
M/s. Tamil Nadu Handloom Weavers' Co-operative Society Ltd.	Do.	Rejected	30-11-73
M/s. Hind Confectionery Works, Sweets.	Do.	Allowed	14-2-74
Shri V. Natrajan, Tobacco.	Do.	Rejected	Personal hearing not requested for.
M/s. Raja Ram Chaman Lal Tobacco.	Do.	Rejected	Personal hearing not given
M/s National India Rubber Works Ltd., Neoprine Tubes	Do.	Rejected	5-12-1973
M/s. J & P Coats (India) (P) Limited, Cotton Thread	Do.	Remanded for *de novo* adjudication by a competent appellate authority.	16-8-1973

APPENDIX XVI

(*Vide* Para 8.4)

CIRCULAR LETTER NO. C.F. 22/64

F. No. 12/66/64-CX-II

Government of India Ministry of Finance

(DEPARTMENT OF REVENUE AND COMPANY LAW)

New Delhi, the 21st October, 1964.

From

Shri N. B. Sanjana,

Under Secretary to the Govt. of India.

To

All Collectors of Central Excise (including Pondicherry, Cochin & Goa) The Deputy Collector of Central Excise, Amritsar, Jaipur/Trichy.

Sir,

SUBJECT:—*Cotton fabrics—Price and Production Control—Checks by Central Excise Officers—Orders reg.*

I am directed to invite your attention to the Notification Nos. S.O. 3656, S.O. 3657 & S.O. 3658 (CER/1-3-64) dated the 13th October, 1964, issued by the Ministry of Commerce, Office of the Textile Commissioner, Bombay (Copy enclosed) regarding the price and production control that has been enforced on "DHOTI" "SAREE', "LONG CLOTH" and SHIRTING" produced by a manufacturer of Cotton fabrics in a factory having a spinning plant.

The above control came into force at 00 hrs. On the 20th October, 1964, and has given rise to the question as to what would be the consequential changes in the existing central Excise control over the manufacturer of the "controlled cloth", and the checks that the Central Excise Officers would be required to exercise in that context.

2. A copy of the telegram that has already been sent to you is enclosed. As indicated in that telegram:—

(i) Central Excise Officers are required to ensure that all the four varieties of 'controlled cloth', *viz.* Dhoti' Saree, Long cloth and shirting before these are packed get stamped in

RED INK according to the provision of the above-cited notifications so as to indicate that (a) it is 'controlled cloth', (b) it is DHOTI or SAREE or LONG CLOTH or SHIRTING as the case may be, (c) its ex-factory price, (d) its retail price, (e) the amount of Central Excise duty to be levied and (f) octori duty etc;

(ii) the 'controlled cloth' is required to be accounted for in R. G. I. and E. B. 4 accounts (in a separate opening), baled and store, separately, the bales containing such cloth also being required to bear appropriate markings;

(iii) the 'controlled cloth' is required to be cleared on separate A. R. documents;

(iv) a monthly statement giving the quantity of such cloth manufactured and cleared (separately for each type of controlled cloth, *viz.*, for Dhoti, Saree, Long cloth and Shirting) out of the factory is required to be sent to the Textile Commissioner, Bombay, under intimation to the S & I Branch;

(v) voluntary price marking which was hitherto obtaining having been dispensed with, cotton fabrics other than the 'controlled cloth' are *not to bear any price* markings;

(vi) fabrics *other than* Dhoties, Sarees, Long cloth and Shirting must not have the description of any of the four controlled varieties and on these fabrics there should *not be any marking of any kind in red ink;*

(vii) a watch is required to be kept on the 'controlled cloth' receieved by independent processors to ensure that such cloth is duly stamped after being processed; and

(viii) any irregularity that may come to notice is required to be promptly reported (under registered post) to the Regional Office of the Textile Commissioner under intimation to the Enforcement Branch of the Textile Commissioner's Head-quarters at Bombay.

3. It may please be noted that the function of Central Excise officers posted to composite mills is to ensure that there is marking of a price and other items on a fabric described by them as one of the four varieties of controlled cloth, as is required *vide* para 2(i). Our officers must not enter into controversy whether a fabric is Shirting or Long cloth or Dhoti or Saree. It is not the function of the Central Excise Officer to check whether all 'controlled Cloth' produced by a

manufacturer has been declared as such or whether the price intended to be stamped on the 'controlled cloth' in accordance with the provisions of the above-cited notifications, or such other orders that may be issued by the Textile Commissioner on the subject. In other words the only check required to be exercised is that such fabrics as are declared by the manufacturers to be 'controlled cloth' bear requisite markings in red ink. If any Central Excise officer has any information of any malpractice prevailing with regard to price control, he has to pass on the information to the Textile Commissioner.

4. Action is being taken separately to authorise Central Excise officers to exercise necessary checks under the Cotton Textile (control) Order, as well as to seize the 'controlled cloth' for violation of the provisions of that Order.

If and when it may be found to be unavoidable to affect seizure of the 'controlled cloth' the matter is required to be IMMEDIATELY reported to the Regional Office of the Textile Commissioner under intimation to the Textile Commissioner and this Ministry.

5. The working of the above procedure may be carefully watched and any difficulties found or envisaged to be experienced should be referred to this Ministry demi officially.

Yours faithfully

Sd/-

(N. B. Sanjana)
Under Secretary.

Copy forwarded to:—

As usual.

Copy of the Govt. of India, Ministry of Finance (Department of Revenue and Company Law) telegram† F. No. 12/66/64-CX-II, dated the 20th October, 1964, addressed to all Collectors of Central Excise.

To assist enforcement of statutory production and price control on mill-made repeat mill-made Dhoties, Sarees, Long Cloth and Shirtings, Central Excise staff posted in composite mills should ensure that all cloth of these four varieties produced from 00 Hours October

twentieth bears stampings in red ink as under:—

Controlled cloth;

Dhoti or Saree or Long cloth or Shirting, as the case may be;

Ex-factory price;

Retail price;

Excise duty;

Octroi etc.

Voluntary price marking simultaneously discontinued and no repeat no cloth other than these four varieties produced hereafter shall bear any price markings.

Dhoties, Sarees, Long cloth and Shirtings required to be price marked should be bale marked and stored separately and cleared on separate AR Documents and a monthly statement giving the quantity of such cloth cleared sent direct to the Textile Commissioner with a copy to S&I Branch.

Kindly issue necessary instructions immediately. Detailed letter follows. Steps being taken to delegate necessary powers under Textile Control Order.

APPENDIX XVII

(*Vide* Para 8.4)

F. No. 1/26/66-CX-II

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(Deptt. of Revenue & Insurance)

New Delhi, the 29th April, '67

From

Shri Daya Sagar,

Under Secretary to the Govt. of India.

To

All Collectors of Central Excise,

(including Pondicherry, Cochin & Goa) By Name

All Deputy Collectors of Central Excise, (By Name)

Sir,

SUBJECT:—*Cotton fabrics—Controlled Cloth—Checks by Central Excise Officers—*

I am directed to refer to this Ministry's letter F. No. 12/66/64-CX. II, dated the 21st October, 1964 on the subject referred to above.

2. The instructions contained in the letter cited above were issued at a time when the "controlled" varieties did not enjoy concessional rates of excise duties. However, w.e.f. 28.2.65 "controlled" varieties of medium and coarse fabrics are enjoying concessional rates. Some instances have now been brought to the notice of this Ministry that certain varieties of cloth which do not conform to the specifications of 'controlled' varieties have been cleared at concessional rates by declaring them as "controlled" varieties. For example sarees of less than 4.15 metres each in length (the lower limit prescribed for the "controlled" Saree) have been declared as 'controlled' and cleared at concessional rates. Similarly, Shiring which, in construction, did not conform to the specifications laid down for "controlled" shirting has been cleared as "controlled". This will amount not only to

contravention of notification S.O. 3656 issued under the Cotton Textile (Control) order, 1948 but also of Central Excise Act and Rules in that there is loss of revenue due to the uncontrolled variety being cleared as "controlled".

3. I am to request you to immediately alert the officers about this possibility. As and when such irregularities are brought to light they should also be immediately reported to the Textile Commissioner for immediate action in addition to action being taken against the licensees for evasion of duty under the Central Excise Law. Past assessments should also be scrutinised and appropriate action taken wherever necessary.

4. The circular letter F. No. 12/66/64-CX-II dated the 21st October, 1964 may be deemed to be modified to the extent indicated above.

5. A report to this Ministry may also be sent regarding the result of the review of past assessments and the action taken on this letter.

Yours faithfully,

Sd/- (DAYA SAGAR)
Under Secretary to the Govt. of India.

APPENDIX XVIII

(*Vide Para* 8.12)

Report of the Directorate of Inspection (Customs & Central Excise)
Directorate of Inspection

Customs & Central Excise.

The matter has been examined in detail. The cases of removal of uncontrolled cloth as controlled fabrics, are few and far, between. In fact, bigger and reputed mills would not resort to clearing uncontrolled varieties as controlled cloth because their cloth has a premium in the market. They can always get better price for their uncontrolled variety of cloth and, therefore, the Central Excise concessional rate of duty would not be to their advantage. The problem may relate to only some stray small units.

2. The existing C.E. supervision over the manufacture and clearance of controlled cloth of cotton fabrics is exercised in Collectorates in terms of Board's letter F. No. 12/66/64-CX-II, dated 21.10.64. Technically ill-equipped as our staff is, it would be unfair to place on them the burden of deciding what is a controlled sort. Moreover, any attempt in the direction may conflict with the Textile Commissioner's authority to issue deviation orders. Therefore, the responsibility in this regard, must be allowed to rest fully with the Textile Commissioner.

3. However, to safeguard our revenue interests it is suggested that the samples of all varieties of controlled cloth should be drawn, sealed and despatched to Textile Commissioner's office in the presence of Central Excise Officer and the results, when received should also be shown to Central Excise Officer. This, it is hoped, would provide for closer supervision by the Central Excise Staff over clearance of controlled varieties of fabrics.

Sd/- Director of Inspection

DS(CX)
DICCF U.O.F.No. 892/16/66 dated 1-4-67

APPENDIX XIX

(*Vide* para 8·13)

Statement showing the malpractices discovered in declaration of Controlled Cloth

Sl. No.	Collectorate	Name of the firm	Period involved	Amount of duty if any involved	Wheher realised if so particulars	Brief reasons for the omission	Whether penality imposed
1	2	3	4	5	6	7	8
1.	Nagpur .	M/s Indore Malwa United Mills Ltd. Indore.	8-10-69 to 13-1-71	5021·60	Paid in S.B.I. Indore on 4-10-73.	Cleared 200864 Sq. Mts. of decontrolled cloth as controlled cloth.	No penatly imposed.
2.		M/s Swadeshi Cotton & Flour Mills, Ltd. Indore.	Aug-Sept. 1970	425·52	Paid in S.B.I. Indore on 20-7-72	Cleared 17021 Sq. Mts. of decontrolled cloth as controlled cloth.	Do.
3.		M/s Nandlal Bhandari Mills, Indore.	27-5-70 to 2-7-70	388·80	Paid in S.B.I. Indore on 26-8-72.	Cleared 15552 Sq. Mts. of decontrolled cloth as controlled cloth.	Do.
4.		M/s Deepchand Mills, Ujjain	April '72 to April '73	3985·08	Not realised.	The Clearances were effected as controlled cloth but on chemical test, they did not conform to the structural specifications laid down by the Textile Commissioner.	Do.
5.		M/s Binod Mills Co. Ltd. Ujjain	March '71 to May '71	2204·77	Not realised.	The clearances of cotton fabrics did not conform to the minimum number of picks as prescribed in table below note 2 to Schedule II to Textile Commissioner's Notification No. TCS/1/20, dated 22-9-49.	No penalty imposed.

1	2	3	4	5	6	7	8
6.	Nagpur— *contd.*	M/s Deepchand Mills Ujjain	Feb '71 to May '71	494·82	Not realised.	The clearances of cotton fabrics did not conform to the minimum number of picks as prescribed in table below note 2 to Schedule II to Textile Commissioner's Notification No. TCS/1/20 dated 22-9-49.	Do.
7.		M/s Hira Mills Ltd. Ujjain .	Sept '73	233·63	Not realisd.	Minimum difference between reads and picks not maintained by the Mills as per the chemical test report.	Do.
8.		M/s R.S.R. Mills Hinganghat	..	315·36	Paid in S.B.II. Hinganghat on 11-9-67.	Cleared 7884 Sq. Mts. of decontrolled cloth as controlled cloth.	Do.
9.		M/s P.C. Mills, Pulgaon .	Oct. '66	20·35	Paid in S.B.I. Wardha on 2-11-67.	Cleared 814 Sq. Mts. of cotton fabrics without opening and repacking.	Do.
10.		M/s J.C. Mills Gwalior .	March '65 to Feb. '68	1831·84	Not realised	Controlled sarees of less than 94 cm. in width were not entitled to concessional rate of C. Ex. duty.	No penalty imposed.
11.		Do. . .	Do.	3898·47	Do.	Do.	Do.
12.		Do.	Do.	942·72	Do.	Do.	Do.
13.		Do.	Do.	10485·03	Do.	Do.	Do.

14.		Do.	March'65 to Feb. '68	13388·67	Not realised.	Printed sarees having warp 22, weft 28, reed 32 and pick 36 were cleared as controlled cloth although it was not in confirmity with the definition of controlled sarees.	Do.
15.		Do.	Do.	5059·22	Do.	Do.	Do.
16.		Do.	Do.	18653·24	Do.	Do.	Do.
17.	West Bengal	M/s Rampooria Cotton Mills Ltd. Serampore Hooghly. £No offence case was bookd against the mills differential duty realised and no penalty imposed.	16-9-67 to 2-12-67	592·11	Differential duty of Rs. 592·11 has been realised against AR-1 No. CE/1227 dt 29-12-67 and adjusted into PLA No. 14/Cloth/65 dt 29-12-67.	Non-controlled variety of cotton fabrics cleared as controlled variety of the same subsequently detected & differential duty charged and realised.	£
18.	Do.	Do.	1-3-65 to 18-9-67	1883·32	Differential duty of Rs. 1,883·32 has been realised against AR-1 No. CE/284 dt. 10-5-69 and Adjusted into P.L.A. No. 14/ cloth/ 55 dt. 10-5-69.	Short width sarees cleared as controlled cloth during the period in have subsequently been detected as non-controlled variety in terms of Tex. Commissioner's Notification No SO. 3656 dt. 13-10-64 and hence differential duty was charged and realised.	Do.

1	2	3	4	5	6	7	8
19.	Madurai	M/s Loyal Textiles Ltd. Kovidapati Tirunelveli Division.	(i) 4-11-65 to 28-4-66	4322·66	Realised under State Bank Challan No. 6 dt. 1-8-73.	(i) Controlled cloth was treated as non-controlled cloth since they were cleared for industrial purposes without stamping the words "for industrial use only—not for sale."	* Information awaited from the Collector.
				*Information awaited from the Collector			
			(ii) 20-12-68 to 4-1-69	4117·07	Realised under State Bank Challan No. 7 dt. 1-8-73.	(ii) Controlled cloth packed prior to 20-12-68 be cleared after 20-12-68 should be treated as non-controlled cloth. These points unfortunately escaped the notice of the officer.	Do.
20.	Bombay	M/s Modern Mills No. 2 Bombay-11 @No penalty imposed on defaulting firms	25-6-66 to 28-12-67	37716·81	A demand for the duty was confirmed both at the original and appellate level but as per the Govt. of India's order No. 1664 of 27-12-73 the demand prior to 20-11-67 was treated as time-barred. However in pursuance to the above revision-	The Mill had cleared long cloth as controlled cloth during the period shown in Col. No. 4. The cloth had answered the description of controlled long cloth as defined by the Tax Commissioner under the Tax control order 1948 and it was stamped as such and presented for assessment as long controlled cloth. As the cloth in question fulfilled the	@

ery order a fresh demand for Rs. 5346·20 was issued and it was honoured by the Mill by paying it under Challan No. 501 27 dt. 19-4-74.

requirements as contained in para 3 of the Ministry's letter F. No. 12/66/64-CX-II of 21-10-64, it was assessed accordingly. Subsequently, it was noticed that most of the cloth in question was supplied by the Mill to Embroidery Manufacturers and as for the Tax. Commissoner's directions, controlled cloth going for manufacture of embroidery is not eligible to be priced stamped for the purpose of the Tax. Control order, mentioned above. As per the Text. Commissioner's directions contained in his circular No. CC/Tech/Pol/15 dated 27-2-65, it is the Mill responsibility to mark the controlled cloth going for industrial use as "For Industrial use—Not for resale" and not to clear controlled cloth. Though the Ministry's letter dt. 21-10-64 was modified by their letter F.No.1/26/66 CX-II dt. 29-4-67 the instructions contained in the letter were in respect of cotton fabrics which did not conform to the specifications laid down by the Text. Commissoner in the Tax-control order.

No penalty imposed.

1	2	3	4	5	6	7	8
						In this particular case, the cloth in question did conform to the specifications for long cloth laid down by the tex. Commissioner. It is only by issue of Notification No. 51/71-CE dt. 15-5-71 that a specific provision has been made that the exemption on the controlled cloth supplied to an Industrial concern is not admissible unless such concern certifies that the cloth will be used exclusively for wholesale purposes and not for any purposes. I may also be stated that in the revisionary order, the Govt. of India hold that the lower levy was on account of this statement by the Mills.	
21	Bombay	M/s Jam Manufacturing Co.	12-1-68 to 13-7-68 There was no irregularity and no case was registered against the mill.	7305·86	The demand was confirmed both at original and appellate level. However, in revisionary order No. 669/73 of 30-4-74 the de-	The cloth involved in this case as controlled drill gone in to the manufacture of umbrellas. The clothin question did answer to the specificatons laid own for drill by the Text Commissioner, marked & stamped	No penalty imposed

					mand was withdrawn as time-barred.	accordingly. The position stated against S. No. 1 applies to this case also.	
22.		M/s Madhusudan Mills Ltd. Worli.	9-11-65	2808·30	Adjusted in P.L.A. at entry No. 55 at entry No. 544 dated 10-12-68.	Duty was immediately recovered on receipt of reference from the Text-Commissioner, Bombay, by the Inspector i/c of the mills.	Do.
23.	Madras	M/s A.F.T. Mills Pondicherry	March'68 to Oct.'68	B.E.D. 533·22	Yes, on 7-5-54 in PLA No. CFI/56 on M/s A.F.T. Mills Ltd. Pondicherry.	The factory cleared the cloth as controlled as per instructions of the Textile Commissioner but subsequently the mills pointed out to the Textile Commissioner that cloth was only uncontrolled. This has been accepted by the Textile Commissioner.	
24.	Kanpur	M/s Modi Cotton Spinning & Weaving Mills, Modinagar.	1969	2419·20	Realised vide T.C. No. 14 dated 30-5-72.	One lot of cotton fabrics was declared as controlled but from the description of No. of reeds & picks it was found to be non-controlled Demand of duty has been confirmed.	Duty already deposited.
25.	Do.	M/s J.K. Cotton Spinning & Weaving Mills, Kanpur. @duty not yet confirmed position is in col. 7.	1-1-69 to 12-4-72	14,35,209·36	..	Case is pending adjudication. The manufacturer had been showing different composition in Central Excise record and different particulars were discovered from their private records.	Case not yet decided

1	2	3	4	5	6	7	8
26.	Kanpur	M/s Athertone West & Co. Ltd.	21-4-72 to 22-12-72	9,585·55	..	Composition of fabric could not be checked at the time of approval of classification list. Show Cause notice has already been issued—Case is pending adjudiatcaion.	Duty not confirmed positi n is in col. 7.
27.	Chandigarh	M/s Bhiwani Textile Mills	1965—1967	885·23	No.	Printed sarees manufactured and cleared as controlled cloth and warp yarn of lesser count than that prescribed by the Textile Commissioner.	No. penalty imposed on the defaulting firms.
28.	Chandigarh—*contd.*	M/s T.I.T. Mill, Bhiwani	1965—1967	3,362·98	No.	Printed sarees manufactued and cleared as controlled cloth at warp yarn of lesser count than that prescribed by the Textile Commissioner.	
29.	Do.	Do.	Do.	3,497·46	No.	Manufacture of sarees of short width than those prescribed by Textile Commissioner.	No penalt imposed on the detaulting firms.
30.	Baroda	Shri Manjushri Textiles, Ahmedabad.	30-10-65 to 30-5-67	400·84	Demand not raised as the records are with the High Court.	Brief reasons could not be made available as the Mills records are in the possession of High Court, Gujarat Ahmedabad in connection with C.B.I. inquiry.	No penalty imposed.
31.	Do.	Do.	Do.	1,052·87	Realised in the month of Feb. '67.	..	
		G. TOTAL		15,83,041·92			

APPENDIX XX

(*Vide Para* 8.4)

F. No. 19/47/69-CX-8

Government of India

Ministry of Finance

(Deptt. of Rev. & Insurance).

New Delhi, the 16th May, 1972.

From

Shri K. L. Mukherji,
Under Secretary.

To

All Collectors of C.E.
All Deputy Collectors of Central Excise.

Sir,

SUBJECT:—*Cotton fabrics controlled cloth—Levy of Central Excise duty—Evolving of a procedure to check malpractices by Textile mills—*

I am directed to enclose herewith a copy of minutes of the discussion held on the 11th April, 1972 with the representatives of the Ministry of Foreign Trade and the Textile Commissioner's Organisation on the question of evolving a procedure to check cases of misdeclaration of non-controlled fabrics as 'controlled' by the textile mills for your information and necessary action. Necessary instructions may please be issued by you to the Central Excise staff on the basis of the decisions as contained in paras 3, 4 and 5 of the minutes for compliance.

The earlier instructions contained in this Ministry's letters F. No. 12/66/64-CX.II dated 21-10-64 and F. No. 1/26/66-CV.II dated 29-4.67 so far as these relate to the checks to be exercised by the Central Excise staff in respect of controlled fabrics may be deemed to have been modified in the context of the decision contained in para 4 of the above said minutes of discussion, that is, it is now a part of the responsibility of the Central Excise officers to draw samples of controlled fabrics for purposes of test in order to ensure that the fabrics conform to the specifications prescribed for controlled fabrics.

2. The receipt of this letter may please be acknowledged.

Yours faithfully,

Sd/- (K. L. Mukherji)
Under Secretary.

APPENDIX XXI

(*Vide* Para 9.5)

No. 5(127)/71-Met-I

Government of India

(Bharat Sarkar)

Ministry of Steel & Mines

(Ispat Aur Khan Mantralaya)

Deptt. of Mines

(Khan Vibhag)

New Delhi, the 18/22.12.71.

To

As per list attached.

SUBJECT:—*Levy of regulatory excise duty on aluminium and its products—Revision of Control Prices.*

Dear Sir,

I am directed to say that with effect from 13*th Dec.*, 1971, *a regulatory duty @ 25 per cent of the basic excise duty* has been imposed *on aluminium and its products.* The Notification fixing the revised prices of aluminium and its products giving effect to the regulatory duty will be issued shortly. Pending issue of the Notification, you may provisionally *add the regulatory duty to the sale prices* fixed *by Govt.*, vide Notification No. S.O. 2035 dt. 24th May, 1971, as amended from time to time.

Yours faithfully,

Sd/-

(M. S. BHATNAGAR)

Under Secretary to the Govt. of India

LIST OF ADDRESSEES

1. M/s India Foils Ltd.
   4, Mangoe Lane (7th Floor),
   Calcutta.
2. M/s Metal Rolling Works Pvt. Ltd,
   104, Sion-Metunga Estate, Sion, Bombay-22.
3. M/s Hooseni Metal Rolling Mill Pvt. Ltd..
   67-68, Narayan Dhuru Street, Bombay-3 DD

4. M/s Barlco Metal Industries Ltd. Gupta Mills Estates, Darukhana, Reay Road P.B. No. 6215, Bombay-10.

5. M/s Mysore Premier Metal Factory,
124, Mint Street,
Madras-1.

6. M/s Rastriya Metal Industries Ltd., Kurla Road,
P.O.J.B. Nagar, Anderi Bombay-59.

7. M/s Shri Mahesh Metal Works, P.O. No. 4, Madan Ganj, Kishan Garh (Rajasthan).

8. M/s Shibu Metal Works,
Jagadhari, Haryana.

9. M/s Naran Lala Metal Works, Near Railway Station Nayasari, Gujarat.

10. M/s Agarwal Metal Works Pvt. Ltd. Rewari, Haryana.

11. M/s Popular Metal Works & Rolling Mills, Sion, Bombay-22.

12. M/s Bombay Metal & Alloys,
Manuacturing Co. (P) Ltd.,
off. Mangzine Street, Near Reay Road Station, Bombay-10.

13. M/s Jeswanlal (1929) Limited, Crown Aluminium House,
23 Braboune Road, Calcutta-1.

14. N. M. Metal Industries,
20, Dedseth. Agiary Lane,
Bombay-2.

15. M/s. Hindustan Metals Works,
Hatras (UP)

APPENDIX XXII

(*Vide* Para 9.6)

No. 5(127) 71-Met-I(i)

Government of India

Ministry of Steel and Mines

(Ispat Aur Khan Mantralaya)

(Deptt. of Mines)

(Khan Vibhag)

New Delhi, the 25/30.3.72.

To

As per list attached.

SUB.: Ievy of regulatory excise duty on aluminium and its products—Revision of Control Prices.

Gentlemen,

I am directed to say that in the Central Budget proposals for 1972-73, the rate of the regulatory duty on Aluminium and its products has with effect from 17-3-72 been increased from 25 per cent to 33⅓ per cent of basic excise duty which is 30 per cent *ad valorem*. There is no special duty on basic excise duty. The Notification fixing the revised prices of aluminium and its products giving effect to the increased regulatory duty will be issued shortly. Pending issue of this Notification you may provisionally add the increased regulatory duty to the sale prices fixed by Government *vide* notification No. S.O. 56(E) dt. 21st Jan., 1972.

Yours faithfully,

(Sd/-

(K. B. SAXENA)

Under Secretary to the Govt. of India.

LIST OF ADDRESSEES

1. M/s India Foils Ltd.,
   4, Mangoo Lane (7th Floor),
   Calcutta.
2. M/s Metal Rolling Works Pvt. Ltd.,
   104, Sion-Metunga Estate, Sion, Bombay-22.
3. M/s Hooseni Metal Rolling Mill Pvt. Ltd.,
   67-68, Narayan Dhuru Street, Bombay-3 DD
4. M/s Barlco Metal Industries Ltd. Gupta Mills Estates, Darukhana, Reay Road P.B. No. 6215, Bombay-10.
5. M/s Mysore premier Metal Factory,
   124, Mint Street,
   Madras-1.
6. M/s Rashtriya Metal Industries Ltd., Kurla Road,
   P.O. J.B. Nagar, Anderi, Bombay-59.
7. M/s Shri Mahesh Metal Works, P.O. No. 4, Madan Ganj, Kishan Garh (Rajasthan).
8. M/s Shibu Metal Works,
   Jagadhari, Haryana.
9. M/s Naran Lala Metal Works, Near Railway Station Naysari, Gujarat.
10. M/s Agarwal Metal Works Pvt. Ltd., Rewari, Haryana.
11. M/s Popular Metal Works & Rolling Mills, Sion, Bombay-22.
12. M/s Bombay Metal & Alloys
    Manufacturing Co. (P) Ltd.,
    off. Mangzine Street. Near Reay Road Station,
    Bombay-10.
13. M/s Jeswanlal (1929) Limited, Crown Aluminium House, 23, Braboune Road, Calcutta-1.
14. N. M. Metal Industries,
    20, Dedseth, Agiary Lane,
    Bombay-2.
15. M/s Hindustan Metals Works,
    Hatras (UP)

APPENDIX XXIII

(*Vide* Para 12.8)

Extract from the speech of Finance Minister made on 29-2-68.

"Representations have also been received from the smaller producers of aluminium that the effect of the Buget proposals of last year has affected their profitability adversely. It is proposed to afford some relief to these smaller producers by reducing the effective duty to the extent of Rs. 150 per tonne; this concession will be available only to those ore-based producers whose clearance of aluminium and products made out of aluminium had not exceeded 12,500 tonnes in the previous financial year. The revenue effect of this concession will be a loss of about Rs. 25 lakhs in a full year.'

APPENDIX XXIV

Conclusions/Recommendations

Sl. No.	Para No.	Ministry concerned	Recommendation
1	2	3	4
1	1·33	Ministry of Finance (Deptt. of Revenue & Banking)	From the information furnished by the Ministry of Finance, the Committee find that as against the Budget estimate of Rs. 2442.75 crores, the actual realisation of union excise duties during the year 1972-73 was Rs. 2326.20 crores, thus indicating a serious shortfall of Rs. 116.55 crores. The Committee were informed that the shortfall was accounted for by (i) decline in realisations *vis-a-vis* estimates from 8 major revenue-yielding items and (ii) higher grants of refunds and drawbacks of the order of Rs. 26.48 crores. As regards the major portion of this shortfall (Rs. 95.52 crores) in respect of 8 major revenue-yielding commodities *viz.* tea, unmanufactured Tobacco, cigarettes, motor spirit, kerosene, furnace oil, aluminium and matches, the Ministry explained that in the case of Tea, injunctions obtained by Tea gardens in 1970, which continued throughout the year 1972-73, adversely affected the revenue realisation. As regards unmanufactured tobacco, the exports had reached an all time high and this factor, coupled with an unprecedented

1	2	3	4

drought, affected the purchasing power of the consumer within the country and thereby resulted in lower realisation. Substantial decline in the clearance of cigarettes and a shift in their production pattern were said to be responsible for lower realisation of revenue in the case of cigarettes. In the case of petroleum products, the actual production in 1972-73 did not come up to the level commensurate with the expected growth rate of 5 per cent and was even less than the production in the previous year, because of repeated shut-down at Cochin refinery and lower imports of crude on account of foreign exchange constraints. In regard to aluminium, the shortfall in production was reported to have been caused by severe power cuts in U.P. and Karnataka, and also labour strike in the Belgaum Aluminium Factory. The production of matches registered marked decline, because of shortage of raw materials like potassium chlorate, wood-splints and veneers as well as such events as strike and lock-out in Wimco Factory at Madras.

The Committee are not convinced by this attempt at explaining away the decline in revenue. It was not alone in the year 1972-73 that there had appeared serious gaps between budget estimates and actual realisation of Union Excise duties. Indeed, in paragraph 1.5 of their 90th Report (1972-73), the Committee had expressed their concern that in respect of some of the commodities the shortfall in actual collection of duties had become a "recurring feature." The

			Ministry of Finance was then asked to adopt all necessary measures to ensure that budget estimates were framed carefully and more realistically in future. In reply, however, the only reply vouchsafed by Government was that the observations of the Committee had been 'noted' (*vide* p. 12 of 98th Action Taken Report of P.A.C.) (5th Lok Sabha). The Committee wish urgently to reiterate that budget estimates should be drawn up cautiously and more realistically so that, as far as possible, there is not much of a gap between expectation and realisation of revenue.
3	1.34	Ministry of Finance (Department of Revenue & Banking)	The Audit Report point out that the refunds exhibited under the minor head—'Miscellaneous' during the years 1970-71 to 1972-73 (1970-71—Rs. 16.44 crores, 1971-72—Rs. 22.15 crores, 1972-73—Rs. 26.54 crores) far exceeded the amount of collection (1970-71—Rs. 2.81 crores, 1971-72—Rs. 1.75 crores, 1972-73—Rs. 4.43 crores). The Ministry's explanation that there being no separate sub-head before 1 April 1974, for drawbacks under Central Excise, drawback sanctioned under that head had to be included under the Minor Head 'Miscellaneous' and shown as 'Refunds' appears to the Committee somewhat bland and by no means satisfactory. The Ministry of Finance, it seems, had issued instructions on 12-4-58 to the Collectors of Customs that the Central Excise portion of the drawback granted should be properly shown in the accounts. Accordingly, these figures were regularly reported to the Accountants General concerned, but in some cases these figures do not

1	2	3	4
			appear to have been included in the departmental returns. Later, the Ministry of Finance issued further instructions on the 3rd January 1970 in consultation with the C&AG to all the Collectors of Central Excise providing for the correct accounting of "Refunds and drawback" under a combined Head "F—Deduct Refunds and drawback with a further breakup under Minor Head such as Basic/ Special Excise Duties. The Committee are surprised that in spite of the instructions issued in April 1958, there had been cases where the figures reported regularly to the Accountants General were not included in the Departmental returns with the result that estimates of Refunds and drawbacks continued to be depressed to that extent and presented a misleading and distorted picture. An analysis of the figures maintained by the Accountants General under "Group Minor Heads" and "Minor Heads" for 1970-71 showed that refunds against "Miscellaneous" Head were higher than the receipts under that head. It showed that the Central Excise portion of drawback was perhaps inadvertently shown against "Miscellaneous" Head in contravention of the instruction of 3rd January 1970. The Committee are constrained to observe that if lapses such as these occur in spite of absolutely clear and categorical instructions, it reveals a sorry state of affairs and detracts from the efficiency of our tax administration. The Committee recommend that responsibility for such lapses may be fixed and proper action taken against persons found guilty of violation of the instructions issued on the subject.

73	1.53	Ministry of Finance (Department of Revenue & Banking)	The Committee find that there was an overall increase of Rs. 177.73 crores in revenue realized during the year 1972-73 as compared to the year 1971-72. Out of this amount, the sum of Rs. 107.38 crores was on account of the introduction of new levies in the Budget of 1972. Government found themselves unable to state how much of the balance of the additional revenue (*viz.* Rs. 70.35 crores) was on account of (1) increase in production and (2) increase in prices, on the ground that in commodities assessed *ad valorem* the increase in production and increase in prices get inter-locked, and their impact cannot be separately identified. The Committee are not convinced of this difficulty. They feel that it is very essential to study the impact of the additional revenue realised in a year over and above the revenues of the preceding year to find out whether and how far the same are attributable to the introduction of new levies, to increase in production or to increase in prices. Such details are required in order that constant vigilance could be maintained on the continuance or otherwise of (an increase or decrease in) the rate of duty levied on various commodities from time to time. The Committee recommend that Government should ensure that such statistics are collected in respect of all the affected commodities and utilised for the regulation of imports in future.
4	1.36	-do-	Another feature which compels attention is the lack of an agency in Government to carry out an analysis of the reasons for the variation between the Budget estimates and the actuals of duty realised from different excisable commodities. The Committee have been informed that the Tax Research Unit has been entrusted with the work

1	2	3	4
			of formulation of Budget estimates for excisable commodities. The Directorate of Statistics and Intelligence assists the Tax Research Unit in its work. The Tax Research Unit collects data not only from the Directorate of Statistics and Intelligence but also from other independent sources and holds Inter-Ministerial meetings every year to keep a watch on the actual trend of revenue realisation. But during evidence when the Committee wanted to know whether any important recommendation of the Tax Research Unit had been implemented, the representative of the Ministry of Finance stated that the Unit was not a full-fledged Directorate concerning itself with the entire gamut of economic operations, but that its scope was "very limited" and it neither engaged in studying price trends nor submitted any report to Government. When the Committee pointed out that excise having become the largest portion of the revenue, there was special need to strengthen research effort in quantity as well as quality, the Secretary, Ministry of Finance deposed, "We could not agree more that the tax research unit has to be strengthend. We would certainly welcome an increase in the strength and improvement of the tax research unit." The Committee, therefore, urge that the said Unit should be adequately equipped for the task of scientifically studying the various aspects of a subject of great importance to revenue and of the expanding and deepening the range and the methodology of research in the field of taxation.

5.	1.37	Ministry of Finance (Department of Revenue & Banking	The Committee note that out of 120 commodities on which excise duties were levied during 1972-73, 7 commodities alone accounted for more than 50 per cent of the total receipts. When the Committee desired to know whether it would be better not to tax commodities with a low revenue yield to avoid disproportionate cost of collection, the Secretary, Ministry of Finance deposed, "As a general rule, I do not think, Government is in a position to forego any revenues at all. The only point to be considered is whether some of these low yielding items are so troublesome in the matter of collecting excise or because collection charge is so high that it is not worthwhile to do so." The Committee would like to draw the attention of Government to paragraph 1.8 of their 83rd Action Taken Report (1972-73) in which the Committee had suggested that the cost of collection of duties on commodities yielding low revenue that are produced by a large number of small units should be computed on some alternative and feasible basis, so that it could be decided whether it was worthwhile taxing them in the normal way. The Committee reiterate their earlier view and recommend that Government should take effective steps to identify commodities which do not yield substantial revenue but involve disproportionate cost of collection.
6.	1.38	-do-	The Committee understand that the Government of India have in July 1976 appointed a Committee with Shri L. K. Jha as its Chairman, to review the existing structure or Indirect taxes—Central, State and Local, and to advise the Government on the measures to be taken in the field. The terms of reference of the said Committee in-

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			clude examination of the structure and levels of excise duties, the impact of these duties on prices and costs, the cumulative effect of such duties, their incidence on various expenditure groups, and the scope for widening the tax base and increasing the elasticity of the system. The Committee trust that this expert body will take note of various recommendations made by this Committee from time to time.
7	1.39	Ministry of Finance (Deptt. of Revenue & Banking)	The Committee find that expenditure on the collection of Union Excise Duties is booked under various heads of account. When the Committee desired to have a break-up of the expenditure on the collection of Union Excise Duties on (i) assessment (ii) preventive functions (iii) audit and inspection and (iv) other expenditure, it was learnt that such a break-up of the expenditure was not available because the expenditure was not booked on a functional basis. In this connection it was stated by Government that in the Collectorates, certain categories of Officers *e.g.* Dy. Collectors, Assistant Collectors, etc. were jointly looking after assessment preventive, audit inspection, as well as other work not directly related to any of these functions. To a query if the cost of collection of excise duties on individual commodities was at all available, the reply came that in the Self-Removal Procedure, separate staff was not earmarked commodity-wise for individual units. The Committee feel that it should not be too difficult for Government to devise a system which may enable them

			to analyse the expenditure on collection of duties not only function-wise but also commodity-wise and intimate the results to the Committee.
8	1·49	-do-	The Committee learn that the scope of evasion is enhanced on account of the complexity of tariff under numerous classifications and sub-classifications. While in the interest of efficient collection of tax on any commodity and the classification and sub-classification in items which have a large number of varieties with not only different forms but also varying prices may not be unavoidable, the Committee stress that the various classifications and sub-classifications adopted for the purpose should be as precise and unambiguous as possible. The Committee are not sure how far the present differentiation of rate structure is such as to rule out the possibility of abuse by unscrupulous manufacturers. The question of rationalisation of the tariff structure, however, is said to be already under examination of Government and changes, wherever necessary, are expected to be made in the tariff after the S.R.P. Committee's Report has been examined. The Committee would like to be informed of the decision taken by Government on the basis of such examination and improvements which are proposed to be effected to check misclassifications and evasion of taxes.
9	2·33	-do-	The Committee regret to note that a public undertaking of the stature of Indian Oil Corporation resorted to debonding of oil tanks in the pre-budget months in the year 1970 to 1973 and derived what may be termed unearned benefit to the tune of Rs. 28,32,734. There had

1	2	3	4
			been 13 cases of such speculative clearance by the Indian Oil Corporation during the aforesaid period and these covered all products, namely, motor spirit, furnace oil, superior kerosene oil. In the instant case, permission for debonding one tank of furnace oil was obtained by Indian Oil Corporation in February 1970 on the ground that the tanks were required for immediate emptying for the realignment of pipelines. The tanks were, however, actually got emptied only in March 1970. Meanwhile, excise duties on these products were enhanced in the Budget of 1970 and the Oil Company derived an unintended and fortuitous benefit of Rs. 4.08 lakhs. Again on 21 February, 1973, the same oil company had one tank of motor spirit debonded with the permission of excise authorities and derived a benefit of Rs. 39,568 on duty increases in the budget that followed. During evidence the Chairman, Indian Oil Corporation himself admitted that "there was a feeling in the organisation that it was not illegal. That is why to show more profit in order to get the organisation running efficiently in my opinion, they did that way." He further added "I personally do not have that feeling." This was why he had directed the Managing Director to stop this practice. The Committee welcome the reactions of the Chairman of the Indian Oil Corporation but at the same time deplore that such basically impermissible practice should have continued for quite some time.
10	2·34	Deptt. of Revenue & Banking	The Committee find that not only the Indian Oil Corporation but also other Oil Companies, *viz.* Burmah Shell, ESSO and Caltex had

			resorted to such debonding in pre-budget months or when changes in duty were about to be made. While in the case of Indian Oil Corporation the amount involved in the debondings under question was only Rs. 39,568, and the total amount between 1970 to 1973 was Rs. 28,32,734, the amount involved during that period in respect of the other three companies (Burmah Shell, ESSO and Caltex) was Rs, 54,76,764. The Committee would like Government to investigate carefully all cases of pre-budget debondings during the last five years and determine whether they involved any lapse and adopt all appropriate measures.
11	2·35	-do-	The Committee find that this mode of debonding oil tanks to avoid payment of higher duty rates subsequently followed by an oil installation was brought to the notice of the Central Board of Excise and Customs as early as August, 1970. It transpires that the Board had not taken adequate steps to prevent debondings of oil tanks just before Budget Day. The Committee would like to put it on record that if adequate steps had been taken the cases of loss of duty through debonding as reported above could have been avoided.
12	2.36	-do-	The Committee note that according to the existing procedure the tanks are debonded immediately on payment of duty on the oil contained therein but there is no compulsion to clear the oil stored in the tanks. They learn also that the period between the dates of debonding and actual clearance ranged upto 4 months. It appears also that most of the companies resorted to debonding on the plea of operational difficulties. The Department, however, seems to have no

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			machinery to make sure that debonding was resorted to for genuine reasons and the gap between debonding and actual clearance was not wide. The Committee consider this very unsatisfactory and wish that strict watch is kept on such debondings so as to ensure that the practice is not abused.
13	2.37	Deptt. of Revenue & Banking	The Committee were informed during evidence that while there was no legal provision to ensure that the time lag between debonding and actual removal was not large and that the Oil Companies might not be deriving fortuitous benefits by speculative debondings, Government were seriously thinking of withdrawing the concession which permits the oil to remain stored in the same tank after payment of duty. The Committee would like to know the action taken by the Government in this regard, since the current position is unsatisfactory.
14	2.38	-do-	The Committee learn that if the rate of duty is increased after such payment and debondings, the Companies are not liable to pay the difference in duty but that they charge the additional levy from the consumer on removal of oil after the enhancement of duty. This results not only in evasion of excise duty at higher rates and profiteering by oil companies but also the defrauding of the consumers. The Committee would like Government to make sure that all such contrived profits are taken fully into account in relevant years for each of the oil companies for the purpose of determining and recovering corporate tax.

15	2·39	-do-	The Committee wanted to know whether the provisions of the rule could be so amended as to protect the consumer's interest and the Secretary, Ministry of Finance stated during evidence: "We will certainly look into it..... We welcome your suggestions. They will certainly be examined." The Committee would like to know the result of the examination made by Government and the action taken or proposed to be taken in the matter.
16	2·40	-do-	The Committee were informed that the provisions of Rule 224(3) of the Central Excise Rules are not invoked before the presentation of the annual budget because the restricted items can be taken as a clue by the trade as items likely to be affected by the Budget. Selective operation of the Rule is considered, therefore, to lead to greater speculation and also to outright evasion. The Committee, however, note that even the non-operation of rule 224(3) has in fact led to speculative activities before the budgetary changes or when change in duty were made. The Committee have already recommended in paragraph 2.29 of their 72nd Report (1968-69) that the powers under Rule 224(3) may be invoked to impose restrictions on the movement of goods in pre-budget months. All that Government pointed out, however, after 9 years is that the Ministry has come to a tentative conclusion that restrictions under Rule 224 (3) are difficult to operate. On the other hand, the Committee observe that on the occasion of the Supplementary Budget presented in July 1974 the Ministry of Finance invoked Rule 224(3), and in spite of difficulties the Ministry had felt that "it was worthwhile." In these circumstances, the Committee do

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			not feel convinced with the argument advanced by the Ministry that the invocation of Rule 224(3) can be taken as a clue by the trade of the items likely to be affected by the Budget. They would like to reiterate their earlier recommendation and stress the desirability of invoking the provisions of Rule 224(3) invariably in respect of all commodities before the presentation of the annual budgets so as to ensure that no scope is left for speculation or manipulation in any particular commodity in anticipation of the Budget.
17	2·41	Deptt. of Revenue & Banking	It is further necessary to re-examine the rationale of proviso to Rule 224(3) of the Central Excise Rules which allows clearance upto 150 per cent of the normal clearance in the month of February. The Ministry of Finance, regrettably were not able to locate the file from which the Amendment under reference was issued. They have merely conjectured that the limit of 150 per cent was probably provided to take care of the vagaries of production (which might be affected by several factors such as strikes, lock-outs, shortage of raw materials, breakdowns etc. during the course of the years) and also to ensure adequate supply of essential goods to the consumers at all times, particularly because there is no provision or grant of relaxation in the sub-Rule. The Committee would recommend the operation of Rule 224(3) to be examined with reference not only to oil but other commodities during the last 3 years and ensure that no scope is left for speculative clearance or fraud.

18	2·42	-do-	The Committee observe that one of the foreign oil companies (*viz.* M/s Caltex Ltd.) applied for permission to debond their oil tank on 1st November, 1973 and were granted the facility on the 2nd November, 1973, *i.e.* a day before the duties on petroleum products were revised. The Ministry could detect the fraud but could only recover the duty that was payable. They have not been able even to recover the penalty as the party is stated to have gone in appeal against the order of the adjudicating officer. The Ministry's contention appears to have been that if the authorities chose to prosecute the fraudulent party first, the relevant papers had to be handed over to an investigating agency first and it would then have been difficult to carry on revenue functions, and that it was therefore preferable to go in for adjudication first in such cases. The Committee are distressed that Government seem not to be armed with prompt and legitimate powers to take action against companies found guilty of such patent frauds. Government could perhaps move on their own to withdraw bonding facilities and should adopt all appropriate measures for the instant recovery of heavy penalties which would be a deterrent to such fraudulent practices.
19	2·43	-do-	The Committee learn from Audit that prosecution has been launched against Caltex Ltd. and would like to be apprised of the results thereof.
20	3·23	-do-	The Committee regret that Government appear not to have been able to appreciate the Audit point of view that since the Board had by an order issued in May 1969, clarified that classification of

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petroleum oils (including intermediate products) was required to be made on the basis of specifications laid down in the Central Excise Rules, the said products which had earlier conformed to the description in tariff Item 11A were to be classified under tariff Item 11. It is clear that duty was therefore payable in the instant case till 17 December, 1970 when full exemption from payment of duty was granted in respect of all petroleum products under tariff items 6 to 11 if used as fuel. The economics of using the intermediate product as a fuel or marketable product are not strictly relevant from the revenue angle, once such product was liable to duty according to classification during the aforesaid period.

The representative of the Ministry of Finance seemed to suggest that since the recovery of duty on fuel oil used by the Refineries would result in increased production cost and eventually affect the revenue from additional excise duty, it was fair that such fuel oil was exempted from excise duty. But when the Committee asked a specific question whether the pricing of petroleum products took into account the fact that the Refineries were using duty free fuel, he mentioned that "since the products used by the Refineries are generally of non-standard specifications and are not in a position to be economically marketed there are no real revenue implications."
If the likely loss of revenue to the extent of Rs. 1,40,32,171, as pointed out in the present case is kept in mind the revenue implications of the case are certainly not inconsequential, as the Finance

			Ministry appears to imagine. The Committee would like this aspect of the use of intermediate product as fuel to be kept seriously in view.
21	3·24	Deptt. of Revenue & Banking	The Committee have a feeling that Government appear at present to be rather complacently expecting that the Refineries would, on their own not use as fuel, products which could give better revenue after certain processing operations. The representative of the Ministry of Finance had stated that in his opinion the economies of the refinery and the overall public interest was not at variance. In spite of it, however, the Committee find that no specific study in depth had been made from the 'revenue' point of view in regard to each of the products allowed exemption from duty, with the result that one cannot be sure if any of such products could not be converted by the refineries into better revenue earning items. The Committee are concerned to learn that different petroleum products are used as fuel in various Refineries in the country. For example, Refineries in Assam are reported to be using as fuel high speed diesel oil which is easily marketable. While agreeing with the Ministry that in the interest of 'operations at optimum levels' and the country's need for different refinery products, certain inevitable streams that throw themselves up in their operations have got to be disposed of and their use as refinery fuel is an easy way of their disposal. the Committee feel that some criteria could be devised so that such products as can be marketed should, in general, not be allowed to be used as fuel. The Committee recommend that

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			the economies of each of the intermediate products used as fuel in the Refineries be examined by experts with a view to ascertaining whether they should be refined or processed for something better than fuel to be consumed. In the context of the present high cost of crude, this issue takes an additional importance and a sound decision would also safeguard the interests of revenue.
22	3·25	Deptt. of Revenue & Banking	The Committee note from the information furnished by Government in regard to the fuel consumed in various refineries and the percentage of fuel losses during the year 1970, 1971, 1972 and 1973, that the percentage of fuel consumption varied from one refinery to another by about 4 per cent to 12.5 per cent. The Committee also learn that a team of Russian experts visiting the various refineries had studied *inter alia* the question of improvement in fuel consumption and of reduction in costs. It appears that they suggested modification in the burners as well as the installation, where necessary, of a new type of burner developed in USSR. The Committee would like to know of the action taken by Government on these suggestions and the results, if any, achieved in fuel efficiency.
23	3·26	-do-	A study conducted by the Ministry of Petroleum and Chemicals reveals that there was a marginal increase in the total consumption of refinery fuel during 1960 to 1972, and that while the amount of loss showed some decline, the trend was still disquieting. The Committee were informed that instructions had been issued to all Indian

			Oil Corporation refineries by the Managing Director (Refineries and Pipelines Division) to effect economy in fuel consumption by improving operations, and that action was also being taken to strengthen the Technical Audit Department in the I.O.C. (Refineries) to tone up such efforts. The Committee would like to know precisely the outcome of these exercises.
24	3.27	-do-	The Committee stress that the feasibility of using coal instead of petroleum-based fuel in the existing Refineries may be systematically examined and where found practicable implemented as per a time bound programme. The Committee would like Government to ensure that in the expansion of existing Refineries and the setting up of new Refineries, coal instead of petroleum-based fuel may be used to the maximum extent possible, so that scarce petroleum stock could be put to best economic use.
25	4.13	-do-	The Committee observe that according to the procedure in vogue raw naptha on removal for use in the manufacture of fertilisers is liable to duty on its quantity as determined on the basis of dip readings of the bonded tanks from which the oil is pumped out. The Committee are distressed to find that Central Excise authorities deviated from this normal procedure, with effect from 30 March, 1971, and the quantity of raw naptha supplied by Indian Oil Corporation, Rajbandh was determined on the basis not of dip readings but of tank wagon measurement in spite of Assistant Collector, Burdwan having been advised on 17 February, 1973 to follow the correct earlier procedure. This resulted in an escapement of duty

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			involving Rs. 9,25,776 for the period from 30 March 1971 to 28 February 1973. The matter was referred by the Assistant Collector of Central Excise and Customs, to the concerned Collector in August, 1971 but the latter replied only in February, 1973 that the duty was to be charged on the basis of tank discharge system and not tank wagon dip system. The Committee deprecate the peculiar dilatoriness of the Collector who took 1½ years to offer this simple clarification. Had the matter been accorded the desired attention and attended to expeditiously, the present short levy could have been avoided. The Committee cannot help expressing their deep dissatisfaction over the perfunctory manner in which this matter was pursued by the local excise officers and the different Collectors. The Committee are not satisfied with the mere warning said to have been issued by the Collectors of Central Excise West Bengal and of Patna to the erring officers.
26	4·14	Deptt. of Revenue & Banking	The Committee understand that the party had gone in appeal against the demand and the same has been rejected. The Committee would like to be apprised of the state of the recovery of the demand.
27	4·15	-do-	The escapement of duty due to the wrong method of measurement adopted by the Central Excise authorities at Rajbandh, as a

			result of which less oil was shown in the tank wagon also raises the question of the whereabouts of the oil which had escaped assessment. According to the dip measurements test, a higher quantity of oil appears to have been removed from the bonded tank. The Committee wish that the whereabouts of the oil which escaped assessment may be investigated and the lapses, if any, either on the part of the excise staff or the staff of the two public undertakings, Indian Oil Corporation and Fertiliser Corporation, be fixed for appropriate action.
28	5·19	-do-	The Committee note that the Government issued two notifications on the 1st March, 1964 regarding the grant of certain exemption/concessions in duty to straw-board, pulp-board and paper-board units. By notification No. 35/64, slab concession rates of duty were levied for the first 2500 metric tons of the straw-board and pulp board cleared by factories in a financial year. This concession was allowed to factories which were working on 9-11-63 in order that any tendency towards fragmentation of existing units could be prevented by the setting up of small-size units which depended mainly on this type of tax differentiation could be discouraged. Through the other notification No. 34/64, Government gave duty relief to new units and also the expanded capacity of older units for a period of 3 years, at 25 per cent, 20 per cent and 15 per cent of duty during the first, second and third year respectively, so that the production of paper and paper boards could be stimulated and self-sufficiency expedited during the Third Five Year Plan.

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			The Committee are concerned to learn that the units in production prior to 9-11-1963 which enjoyed the concession contained in notification No. 35/64 were also allowed the concessions detailed in notification No. 34/64 which were meant primarily to compensate the new comers in the field on account of the higher cost involved in setting up new mills or for the enlargement of their existing capacity. This shows the lack of care on the part of the authorities concerned in not having examined, in the beginning itself, all the aspects of the case, with the result that losses have accrued to Government, because of the unintended benefits to units in production from 9 November, 1963.
29	5·20	Deptt. of Revenue & Banking	The fact that concessions were availed of by certain manufacturers under both the notifications came to the notice of the Government only in the latter half of 1965, and the position could be rectified in 1966, by which time considerable revenue was denied to Government by way of duty. This unintended benefit occurred because at the time of the 1966 Budget this notification was not reviewed. The Committee were earlier given to understand that "during formulation of the budget proposals from year to year tariff rates, both statutory as well as those fixed, under exemption notifications are kept under review with a view to determining whether any changes are necessary or not." [Para 1.80 of 80th Report (Fifth Lok Sabha) refers]. The

			Ministry have now stated that all current exemptions under Rule 8(1) of the Central Excise Rules are not regularly reviewed at the time of every budget. The Committee would like to be informed whether there has been any recent shift in the procedure. The Committee would also invite the attention of the Government to paragraph 1.25 of their 111th Report (4th Lok Sabha) and suggest that all operative exemptions should be invariably reviewed at budget time both from the point of revenue and from the administrative angle, so that any lacunae might be removed and revenue augmented.
30	5.21	-do-	The Committee are distressed that Government have not conducted any study about the impact of the exemption and concessions granted apparently *ad hoc* to the paper industry from time to time. The Committee recommend that before the question of any such exemption/concession is considered there should be a thorough study of the issue and especially of the revenue implications. The Committee also urge that adequate statistics about the impact of such concessions/exemptions are maintained for purposes of such study and of periodic review of the position.
31	5.22	-do-	The Committee would like to draw attention to its recommendation made in para 1.246 of their 111th Report (4th Lok Sabha) to the effect that the Central Board of Excise and Customs should review the existing arrangements for drafting of notifications and entrust work in this regard to officers with a legal background and a thorough understanding of the Central Excise Law. The Ministry

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			of Finance intimated in their Action Taken note on 27 January, 1971 that the question as to how best the existing system could be improved in the light of the observations made by the Public Accounts Committee was being examined in consultation with the Ministry of Law and the decision when arrived at would be intimated to the Committee. The Committee had made the recommendation more than five years' earlier and feel that the mistake of the type noticed in the instant case could have been obviated if their recommendations had been implemented. The Committee desire that conclusive action should be taken on their recommendations without any further delay.
32	6.49	Deptt. of Revenue & Banking	This is a case where a firm was manufacturing crimped yarn of 76,90,100 and 105 deniers but had been clearing it under the nomenclature 76/2, 90/2, 100/2 and 105/2 respectively. Crimping involved stretching the basic single yarn and making it zig-zag with another such yarn and thereafter giving a twist to it. Assessment of Central Excise Duty was made on the basis of single yarn since duty is attracted at the time of manufacture and not clearance. The firm, however, claimed that the assessment should be on the basis of 152, 180, 200 and 210 deniers, respectively, because the higher the deniers the lower was the rate of duty. The claim of the firm was

rejected by the Assistant Collector and, on appeal by the Collector of Central Excise concerned on the ground that:

(i) by their own declaration in the case of sample forwarded for test the deniers were 76,90,100 and 105;

(ii) duty was attracted at the time of manufacture and not clearance;

(iii) crimped yarn fetched higher price;

(iv) the Chemical Examiner's report indicated that the assessment may be made on the basis of single yarn.

The firm thereupon went in revision to the Joint Secretary (RA), Government of India, who in order No. 843 of 1972 allowed the Revision Application. With regard to the point (i) the Revisionary Authority held that "there is no doubt that ordinarily the petitioner's declaration does count, legally it has also to be established whether a tax is due and the conditions for the levy of such tax have been fulfilled". Referring to point (ii), it was pointed out that "it is a well established principle that while legally the goods become liable to duty on production the rules provide that the date of determination of duty is the date of removal of goods from the factory." With regard to point (iii), it was stated "Crimped Yarn" falls under item 18 itself. and is therefore assessable in the same manner as the single straight yarn, at the time of clearance from the factory on the basis of the denier of the yarn in the form it is presented for clearances. As for the argument based on

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			the price factor, even if it were in principle to be correct it will not be correct in law to go behind the intention of a particular tariff item. An assessment can only be based on the language of the tariff as it exists. As regards point (iv) *viz.*, the Chief Chemist's conclusion that in the plied yarn, the denier of basic single yarn is given primary importance and the resultant denier is added only as information in parenthesis, it was stated "it is evident that the conventional description followed in the trade only show the particulars of constituent yarn, the number of filaments and twists etc. ostensibly to help those who manufacture further goods to judge the suitability of the yarn in all its aspects, and it is not the resultant denier of the yarn as such." On the basis of this order the Collector granted a refund of Rs. 1.37 crores for the period from 1 January 1970 to 16 June 1972 which was received by the Company during September/December 1972. The orders of the Revisionary Authority of May 1972 have thrown up a number of important issues which in the opinion of the Committee call for serious attention by Government.
33	6.50	Deptt. of Revenue & Banking	The Company had been pressing for assessment of crimped yarn on the basis of the denierage of the resultant yarn. It is pertinent to recall that on 22 February 1973, the Board clarified to all Col-

lectors of Central Excise that "excise duty is on the production/ manufacture of excisable goods and not on their sale. Since the single filament yarn as such is in a fully manufactured condition and is also marketed as such, it is immaterial for the purpose of levy of excise duty whether it is removed as such outside the factory or taken to another portion of the factory for manufacture of crimped yarn." The Board further clarified that "Under Rule 9(1) of the Central Excise Rules, 1944 no excisable goods shall be removed from any place where they are manufactured whether for consumption or manufacture of any other commodity in or outside such place until the excise duty leviable thereon has been paid at such place."

The Committee feel that an authoritative ruling of the nature issued by the Board in February, 1973 should have in fact been circulated to all concerned much earlier. This would have obviated scope for any misunderstanding of the rate and incidence of duty. At any rate, when Government came to know in May, 1972 that in the revision orders certain interpretation was given in respect of the rate and incidence of excise duty on crimped yarn, this clarification should have been processed and issued in a matter of days rather than taking nine long months over it. This would have made for earlier issue of the notice of recovery of Rs. 4.45 crores from J.K. Synthetics Ltd. in the light of the Government's clarification and there would have been no question of granting the company a gratuitous refund of Rs. 1.37 crores as this would have been adjusted against the larger amount due from the company. The Committee

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			would like this aspect to be thoroughly investigated with a view to fixing responsibility for failure to take conclusive and timely action in 1972 to safeguard public revenue. The Committee would like to be informed of the precise action taken in pursuance of this recommendation.
34	6.51	Deptt. of Revenue & Banking	The Committee also note that J.K. Synthetics Ltd., got a fortuituous benefit of Rs. 1.37 crores by way of refund as the duty paid at the higher rates had already been passed on by the manufacturers to the consumers. The Committee understand from Audit that the Company has not returned the sum of Rs. 1.37 crores as income in the Income Tax Return. This is a serious default, and the Committee wish that the matter is immediately investigated by Government. Action taken against the company to recover the taxes due and impose penalty should be intimated to the Committee within three months. The Committee would also like to know why Government could not recover the amount from the balance lying in credit in the Personal Ledger Account as well as from securities furnished by the J.K. Synthetics Ltd. If this was done, at least part of the amount in arrears could have been recovered.
35	6.52	-do-	The Committee need hardly point out that it is the bounden duty of the Board and the Collectorate of Central Excise and Cus-

			toms to pursue conclusively the question of the recovery of Rs. 4.45 crores for which J.K. Synthetics Ltd., are stated to have obtained a stay order from the High Court. The Committee would like to be informed of the concrete steps taken by the Board/Collectorate in the matter and the progress made in effecting the recovery of Rs. 4.45 crores.
36	6.53	Deptt. of Revenue & Banking	It may be recalled that another company namely Modipon Ltd. manufacturing multiple fold nylon filament yarn (crimped yarn) were paying excise duty on the basis of denier of the basic single yarn. After the revisionary order was passed in the case of J.K. Synthetic Ltd.. Modipon Ltd., approached the Collector of Central Excise, Kanpur to assess their goods also on the basis of this decision. Though this request was not acceded to, Modipon Ltd. have gone in writ petition to the Delhi High Court and got a stay order. Consequent on this, arrears of Rs. 57.48 lakhs are stated to be pending recovery. The Committee stress that early and firm action should be taken to have the stay order vacated and recover the arrears of Rs. 57.48 lakhs.
37	6.54	-do-	Another issue meriting attention is whether the excise duty should bear a relationship to the price fetched by the product. While the Collector and Assistant Collector of Excise took the fact of higher price fetched for crimped yarn as a justification for levy of higher duty as for single yarn, the Joint Secretary (RA) held that "even if it were in principle to be correct it will not be correct in law to go behind the intention of a tariff item". This view

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			appears to be much too narrowly legalistic. If the yarn of a higher denier including crimped yarn carries a higher value there is no reason why it should not be subjected to a higher excise duty rather than a lower rate of duty. The Committee need hardly point out that in equity and in reason the rate of excise duty should be tangibly related to the price of the commodity.
38	6.55	Deptt. of Revenue & Banking	This case also throws up the need for fixing the excise duty on *ad valorem* basis rather than on *ad hoc* basis so that there is a clear rationale for the differential in the levy of duty and there is no scope for technical grounds to be availed of and a lower duty paid even when the price realised per unit is higher. The Committee would like Government to review the existing excise rates in order to place them as far as possible on *ad valorem basis.*
39	6.56	-do-	This case also raises a very fundamental question in regard to the stage where Excise Duty is leviable. Under Section 3 of the Central Excise Act, 1944, liability for excise duty arises as soon as a product is manufactured and becomes identifiable under the relevant tariff description. However, the manner of levy and collection prescribed under Rule 49 of the Central Excise Rules, 1944 provides that duty is chargeable only on the removal of goods from the factory premises or from a place of storage. It means that duty shall not be collected on exciseable goods manufactured in a

factory until they were about to be removed. In other words, Rule 49 does not determine the chargeable duty but allows postponement of the payment of duty till the removal stage.

The Committee feel that the duty becomes chargeable as soon as an exciseable goods was produced and should be realised immediately thereafter irrespective of the fact whether the same are removed immediately or after lapse of some time. While examining Paragraph 25(a) of the Audit Report (Civil) on Revenue Receipts, 1969, the Committee drew the attention of the Government to the Supreme Court judgment in the Union of India *Vs.* Delhi Cloth and General Mills in which the learned Judges had *inter alia* observed that 'Excise duty is on the manufacture of goods and not on the sale'. The Committee in Paragraph 1.217 of their 111th Report (4th Lok Sabha) noted the assurance of the Finance Secretary that legal opinion will be taken on this question and had desired that the matter should be referred to the Ministry of Law immediately and corrective action, as necessary, taken in the light of the opinion. The Committee are unhappy to note that even after the lapse of 7 years, no concrete corrective action has been taken so far with the result that duty due is evaded and unintended advantage derived by manipulating the provisions of Rule 49 as has happened in the instant case. The Committee consider this delay as highly regrettable. They desire that the Government should act with promptness and apprise the Committee of the outcome of the action taken in the matter.

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40	6.57	Deptt. of Revenue & Banking	It is ironical that in case a decision comes to be given on a Revision Application by a Joint Secretary (RA), which, if implemented as in the present case, would result in loss of revenue on an unprecedented scale, Government do not have powers to review such orders and if necessary to revoke them. The representative of the Ministry of Finance agreed during evidence that there was need to have powers to revise, supersede or annul the decisions given by the Joint Secretary (RA) in excise cases. The Committee were informed that this question was under the consideration of Government. The Committee would like to know what follow-up action was taken by Government after realising this predicament as early as in 1972 on account of this judgement. The Committee also desire the Government to examine the feasibility of introducing suitable provision in the relevant Statute to make it obligatory on the part of Revisionary Authority to bring the matter to the notice of the Minister before pronouncing his final order for the refund of the duty already realised.
41	6.58	-do-	This case has given rise to another important issue. The company was represented by an officer, who after his retirement as Collector of Central Excise on 28 February, 1959 had started practising as a Consultant Advisor. The Committee were informed that he was not required to obtain prior permission for this, as Article 531-BB of the Civil Service Regulations imposing restrictions on

the setting up of practice by Revenue Service Officers for a period of two years was notified only on 25 February, 1965. The Committee understand that in their letter dated 31 July 1972, the Customs and Central Excise Bar Association took objection to the retired Customs and Central Excise Officers taking to consultancy work or the work of appearing before the Customs and Central Excise authority. The Association pointed out that these officers are not qualified as advocates and have not obtained a licence from the State Bar Council for practising law. During evidence the Chairman, Central Board of Excise and Customs defended the practice saying that "these officers are available to the various appellants and other trading community much more reasonably and cheaply than the advocates and lawyers who are literally fleecing." A random sampling of the decisions of the Revisionary Authority in cases in which the departmental officers appeared before the authorities on behalf of petitioners has shown that in 12 out of 21 cases appeals were fully or partly accepted. In all these 12 cases, the penalties and fines wherever levied were either remitted in full or substantially reduced. These facts have a certain significance which, if it is not exactly sinister, is not particularly propitious. With all respect to the revisionary authority, any suggestion of the likelihood of their being influenced by the appearance and advocacy before them of former high functionaries in their own line requires to be firmly and in a principled fashion guarded against.

42	6·59	-do-	The Committee find that the Income Tax Act stipulates certain

restrictions on practice by retired Income Tax Officials*. During evidence the Finance Secretary assured the Committee, "We would certainly try to see whether a similar provision should be introduced in the Customs and Excise also'.

The Committee would like Government to take early action at least, as a first step, to make a provision on the same lines as for Income Tax Officers so that the Customs and Excise Officers are not authorised under the law to represent any private party for a period of two years from the date of retirement or resignation.

A better lasting solution to the problems outlined above would seem to lie in the creation of Appellate Tribunals for customs and central excise cases on the model of those set up in the Income Tax department. In this connection the Committee would recall the

*288. Notwithstanding anything contained in this section, if the authorised representative is a person formerly employed as an Income-tax authority, not below the rank of Income-tax Officer, and has retired or resigned from such employment after having served for not less than three years in any capacity under this Act or under the Indian Inoome-tax Act, 1922, from the date of his first employments as such, he shall not be entitled to represent any assessee for a period of two years from the date of his retirement or resignation, as the case may be.

following pertinent observations made by the Supreme Court in the case of Siemens Engineering and Manufacturing Co. of India Ltd., Versus the Union of India and others (Civil Appeal No. T1277 of 1968):—

> "In fact it would be desirable that in cases arising under Customs and Excise laws an independent quasi-judicial tribunal like the Income Tax Appellate Tribunal or the Foreign Exchange Regulation Appellate Board, is set up which would finally dispose of appeals and revision applications under these laws, instead of leaving the determination of such appeals and revisions applications to the Government of India. An independent quasi-judicial tribunal would definitely inspire greater confidence in the public mind."

The Committee also reiterate their own observations in paragraph 1.133 of their 111th Report (4th Lok Sabha)—1969-70, to the effect that "Government should consider the question of setting up an Appellate Tribunal on the Customs and Central Excise side on the lines of Income Tax Appellate Tribunals".

Early decision in the matter and intimation thereof to the Committee is required within six months.

43	7.17	Deptt. of Revenue & Banking	The Committee note that a separate tariff item (item 22-B) for 'textile fabrics impregnated or coated with preparation of Cellulose derivatives or other artificial plastic materials' was introduced for

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the first time *w.e.f.* 1 March 1969. A doubt arose whether 'polythene laminated or coated fabrics' would be covered by the description "impregnated or coated" fabrics. On the analogy of the instructions issued by the Board on 13 September 1969 and the opinion expressed by the Chemical Examiner, Calcutta in regard to 'Jute fabric laminated with polythene film' the local officers classified the product under 19-I(2) as 'Cotton fabrics processed in any manner'. The specific question of the classification of 'polythene film laminated cotton fabric' was however considered further in consultation with the Chief Chemist and a clarification was issued by the Board to all the Collectors on 15 March 1970 confirming that such products were classifiable under item 19-I(2) as 'Cotton fabrics processed in any other manner'.

The Committee are concerned that in spite of the issue of these unambiguous instructions by the Board, the product continued to be classified differently in various Collectorates and this came to the notice of the Board only when a party complained on 8 March 1971 that a product identical to theirs was being classified in one of the Collectorates under item 19-III. Even thereafter, surprisingly, the Board spent nearly a year in ascertaining the practice obtaining in various Collectorates, and advised them on 9 February 1972 to classify such fabrics as "Cotton and impregnated or coated with preparation of Cellulose derivatives" under item 19-III. The re-

			classification order appears to have been issued in April 1972. The Member, Central Board of Customs and Excise admitted during evidence that "there was some delay and this arose out of certain doubts". The Committee regret that this delay accounted for the additional demand for Rs. 1,78,259 for the period 23 July 68 to 8 June 1971 being raised later on, and found unrealisable on account of being time-barred.
44	7.18	Deptt. of Revenue & Banking	The Committee find that there are no standard criteria, precisely formulated, for the classification of different products by the various collectorates. The same product is found sometimes classified differently in various Collectorates in spite of the instructions issued by the Board on 15 March, 1970. The Committee, therefore, recommend that there should normally be a continuous exchange of information between the various Collectorates on important issues relating to classification, levy of duty, assessment etc., and also that the Board should ensure that its instructions are well thought out and precise and its inspecting machinery is strict and efficient.
45	7.19	-Do-	The Committee note that having regard to the recommendations made by them in their 212th Report (5th Lok Sabha), Government have established in June, 1974 a Central Exchange for Assessment Data. The functions of this Central Exchange are broadly to ascertain the diverse practices actually obtaining in regard to classification in various Customs Houses and to bring about uniformity to the extent possible. It may be worth while either to enlarge the scope of this Central Exchange to cover excise or to have a cell

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			exclusively for excise, whichever may be a more effective and economic arrangement. The Committee would like Government to examine this matter and intimate the decision taken and concrete measures initiated with a view to uniformity in the classification of excise matters in the Collectorates.
46	7.20	Deptt. of Revenue & Banking	The Committee note that the offence committed by the party was compounded under Rule 210A for a paltry sum of Rs. 150 only on the consideration that the duty involved was Rs. 1517.14 which works out roughly to 10 per cent. The Committee need hardly point out that the quantum of compounding fee should have been co-related to the offence involved also and not merely the duty involved. As the Assistant Collector did not resort to the other alternative in this judgement of launching prosecution against the party, it is not clear to the Committee as to why a higher amount of fine permissible under the Rules could not be imposed.
47	7.21	-Do-	The S.R.P. procedure was extended to this item with effect from 1 August, 1969 and all offences under this procedure were to be penalised under the provisions of Rule 173-Q which *inter alia* provides for penalty not exceeding 3 times the value of exisable goods or Rs. 5000 whichever is greater. On an enquiry as to why the party was not penalised under Rule 173-Q, the Committee were informed that the Collector did not book any separate offence under S.R.P. "presumably due to the fact that the period was covered by the compounding

			notice served on 27th October, 1969". The Collector did not obtain any legal advice nor did he refer the question to the Board for consideration. Subsequently, at the instance of the Committee, the Ministry of Finance consulted the Ministry of Law and they opined that the manufacturer could have been proceeded against in terms of Rule 173-Q also for the period from 1st August, 1969 onwards when the offence was committed after the introduction of S.R.P. The Committee are of the view that the Collector failed in his responsibility since the neither referred the matter to the Board for advice nor obtained legal opinion before compounding in the office. Any rectificatory steps, if taken, in this regard should be intimated to the Committee.
48	7.22	-Do-	Another interesting aspect of the case is that even after an offence case was booked against the party in March, 1969, it continued to manufacture goods before the receipt of licence. The S.R.P. was introduced for this item with effect from 1 August, 1969. Since the commodity was covered by the S.R.P. provisions both departmental adjudication and prosecution could simultaneously be pursued. Had provisions of 173-Q been applied, the penalty could have been to the extent of three times the value of the offended excisable goods or Rs. 5000, whichever was greater.
49	7.23	-Do-	The Committee note that even though the charge of manufacturing excisable goods without a licence was booked against the party on the 26th March, 1969, the compounding notice was issued only on the 27th October, 1969. It is surprising that the Department took

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			7 months to issue the notice called for under the rules. The Committee feel that the issuance of such notices should invariably be done without delay and would like to know the reasons for the gross delay in the present instance and also the action taken against the defaulting officials.
50	7.24	Deptt. of Revenue & Banking	The Committee are concerned to note that the Government have been put to a substantial loss of Rs. 1,78,259 for the period from 23 January, 1968 to 8th June, 1971. in excise revenue in this case on account of what is called the operation of the time bar. The Appellate Collector has set aside the demand without going into the merits of the case. In regard to similar cases, the Committee in paragraph 19.9 of their 177th Report (5th Lok Sabha) had recommended that the Government should study the reasons for the losses due to the so called 'time-bar' and the reasons for not taking timely action to issue show cause notices/demands. The Committee reiterate the desirability of expediting that study and of remedial measures for avoiding losses in duty solely on the ground of technical lapse of time.
51	7.25	-Do-	The Committee learn that for the demand of Rs. 1,07,957 on account of differential duty for the period from 9 June, 1971 to 30 April, 1972, the party had gone in appeal against the order of the Assistant Collector. The Committee would like to be informed of the decision of the appeal in due course.

52	8.34	-Do-	The Committee note that a scheme of price and production control of cotton fabrics manufactured by textile mills and introduced with effect from 20 October, 1964. The scheme envisaged production of cloth for popular consumption with the prices stamped on it. The role of the Central Excise Officers was then discussed by the then Chairman of the Central Board of Excise and Customs with the Ministry of Finance on the 21st October, 1964. These instructions *inter alia* enjoined on the excise officials that "any irregularity that may come to their notice is required to be promptly reported (under Registered Post) to the Regional Office of the Textile Commissioner under intimation to the Enforcement Branch of the Textile Commissioner's Headquarters at Bombay". While it is true that the excise officers were asked not to enter into a controversy whether a fabric is a shirting, long cloth, dhoti or saree, it was also laid down that "if any Central Excise Officer has information of any malpractice prevailing with regard to price control, he has to pass on the information to the Textile Commission. Besides, the Ministry had specifically stipulated that "the working of the above procedure may be watched and any difficulties found or envisaged to be experienced should be referred to the Ministry demi-officially." When these instructions were issued, there was no concession in excise duty on controlled cloth. In February, 1965, concession in excise duty on controlled cloth was announced and in order to avail themselves of that concession

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			some of the mills wrongly cleared as 'controlled cloth' certain non-controlled varieties of cloth. The Committee feel that the instructions issued in October, 1974, were fairly comprehensive and if the excise officers in the field had maintained the vigilance expected of them they would have pin-pointed the irregularities indulged in by the textile mills in declaring cloth which did not conform to the prescribed definition of controlled cloth for purposes not only of availing themselves of the concessional excise duty but also of notionally showing what was ficticious and false, namely, that they were producing controlled varieties of cloth required for the poorer sections of our people. The Committee cannot also see any reason why the Collectors, who had been asked to keep a careful watch on the working of the procedure and to bring to notice the difficulties found or anticipated, did not discharge this responsibility by bringing to the notice of the Ministry at the earliest the aforementioned malpractices which had crept into the procedure and by which the textile mills were trying not only to pass off cloth which was not in conformity with the definition of controlled cloth but also deprived the exchequer of legitimate excise duties.
35	8.35	Deptt. of Revenue & Banking	It is significant that many of the irregularities mentioned in the detailed statement, furnished by the Ministry at Appendix XIX relate to the period between 1964 and 1967. For instance, Messrs

			Modern Mills No. 2, Bombay, cleared long cloth as controlled cloth between 25th June, 1966 and 28th December, 1967. Subsequently, it was noticed that most of the cloth in question was supplied by the mill to embroidery manufacturers and was no eligible for being treated as controlled cloth or being stamped as such or be allowed the concessional excise duty. The Committee would like to refer in this connection also to their 223rd Report on 'Controlled Cloth' wherein they have brought out how the social purpose underlying the scheme of controlled cloth was not fulfilled because of peculiarly contrived difficulties and deliberately devised malpractices by some textile mills and the trade generally.
54	8.36	-Do-	The Committee find that Government took more than two years after the introduction of the concessional duty on controlled cloth to issue instructions on 29th April, 1967, to alert the Collectors about certain instances where cloth, which did not conform to the specifications of 'controlled' varieties, had been cleared at concessional rates by declaring it as 'controlled' varieties *e.g.* sarees of less than 4.15 metres each in length, shirting which did not conform to the specifications laid down for this purpose, etc. The Collectors were in their turn directed to alert the officers to take suitable action and bring such irregularities promptly to the notice of the Textile Commissioner for immediate action, apart from proceeding against the offenders for evasion of duty under the Central Excise law. The Collectors had also been asked to scrutinise the past assessments and take appropriate action wherever necessary. The Committee

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			find that in spite of the issue of these instructions, conclusive action was not taken by Collectors to review the position and proceed positively against the parties that had evaded the excise duty by wrongfully declaring the cloth as that of a controlled variety. Even now, action has yet to be conclusively taken against 31 mills to recover an amount of over Rs. 15 lakhs due from these mills for having illegally taken advantage of the concession on controlled cloth for varieties which did not conform to that description. Apart from the case of Modern Mills No. 2 Bombay, already mentioned, the Committee take a serious view of another case, that of a leading mill, Messrs J. K. Cotton Spinning and Weaving Mills, Kanpur, against whom there is a claim for Rs. 14.35 lakhs on this account. According to the Ministry, "the manufacturer had been showing different composition in Central Excise records and different particulars were discovered from their private records." The case is stated to be still pending adjudication. The Committee feel that when a mill of the dimension and standing of J. K. Cotton Spinning and Weaving Mills indulge in such fraudulent practice, not only should the amount of excise duty be forthwith recovered in full but further stern action, as admissible under the law, should be taken against the mill, so that it acts as a deterrent to others. The Committee would like to be informed of the action taken in this regard.
55	8.37	Deptt. of Revenue and Banking	The Committee find that there was an interval of nearly five years after the issue of instructions in 1967 when the position was

			stated to have again been reviewed at a meeting held on the 11th April, 1972 between the representatives of the Ministry of Finance (Central Board of Excise and Customs), Ministry of Foreign Trade (now Ministry of Commerce), the Central Revenue controlled laboratories and the Textile Commissioner's organisation. At this meeting it was made clear that "it would not be proper for the Central Excise Officers to completely divest themselves of the responsibility of exercising checks to ensure correctness of their assessments. Thus it would be a part of the responsibility of the Central Excise Officers to draw samples of such cotton fabrics periodically at random and forward the same to the Chemical Examiner for necessary test in order to ensure that the particular fabrics conform to the specifications of controlled fabrics. Any instances of misdeclaration coming to their notice could be brought promptly to the notice of the Textile Commissioner for such remedial action as deemed fit." The Committee have not been informed of the concrete follow-up action taken in pursuance of these instructions though they had asked for this information specifically from the Ministry.
56	8·38	-Do-	The Committee cannot but conclude that the various Departments/Ministries of the Government of India and their field organisations have not acted in an integrated or even a reasonably coordinated manner after the announcement of the scheme for controlled cloth in the interest of the weaker sections of society, with the result that the mills were able to exploit fully the short-

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			comings and loopholes in the government arrangements by not producing the controlled cloth of the requisite quality or quantity and by diverting such cloth to other uses for which it had not been meant.
57	8.39	Deptt. of Revenue and Banking	The Committee have dealt. in their 223rd Report on Controlled Cloth, with these shortcomings which have riddled the scheme from the very inception and defeated the basic and most desirable objective of making available cloth of acceptable quality at controlled prices to the poorer sections of our people. The Committee would like Government not only to fix responsibility for this lack of integrated action but to learn a lesson from these costly and serious lapses. It is of the utmost importance that when a scheme of making available an essential commodity like controlled cloth to the weaker sections of society is conceived, it should be worked out in meticulous detail in consultation with the Ministries/Departments and the field organisations concerned so that no loopholes are left for subverting the scheme or defeating its purpose. The Committee wish that meetings should be held at least once every quarter between the senior representatives of he Ministry of Commerce, the Textile Commissioner's organisation, the Ministry of Finance, Central Excise Officers, Central Revenue control laboratories, etc. in order to critically review the position and devise remedial measures for plugging the loopholes and rectifying shortcomings. The Committee urge that a high-level comprehensive review should be undertaken

			well before the conclusion of the financial year and the finalisation of the budget proposals, so that timely and effective action may be taken to modify and improve the excise structure and its concomitant arrangements and the underlying socio-economic objectives of our tax structure are fulfilled more faithfully.
58	8.40	-Do-	The Committee are perturbed at the considerable delay in raising demands for the differential duty to the extent of Rs. 90,013 in the cases referred to in the Audit paragraph. This lapse was pointed out by Audit as long ago as in April 1968. The demands were, however, raised only in November 1968 (*i.e.* after 7 months) and in September 1969 (*i.e.* after 1 year and 5 months). The result of the delay has been that the cases have been declared time-barred on appeal. The Ministry of Finance have admitted that the Assistant Collector (Audit) wrote a D.O. letter on 18 April 1968 to the Assistant Collector, Hyderabad to take immediate action on the irregularities. They have conceded that had immediate and more careful action been taken on receipt of the aforesaid D.O. letter in April 1968, further erroneous assessments thereafter could have been avoided and demands for the past period issued in the month of May/June 1968. The Committee find a chain of apparent lapses and failure in this case *e.g.* failure to ensure that at least after 18 April 1968 (date of Internal Audit Party's visit) no uncontrolled cloth was cleared as controlled cloth, failure to ensure that demands in respect of erroneous assessment in March—April, 1968 did not get time-barred, failure to report correct position by the Assistant Collector's office to

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			the Collector's office and by the Collector's office to the Board after April 1967 in respect of past clearances, and failure to report the matter to the Textile Commissioner. The Committee are also perturbed that the Collector's office file was destroyed even before its retention period was over. During evidence, the representative of the Ministry of Finance stated: "I am not satisfied with the answer given by the Collector. I am looking into this aspect." From subsequent replies the Committee learn that charge-sheets have been issued against 3 Superintendents of Central Excise and 2 Inspectors. The Committee are of the view that cases such as the present one where delays reduce or limit the prospects of realisation of demands on account of differential duty should be a matter of grave concern to the Government and should be at once probed thoroughly. The Committee desire that the extent of lapses on the part of the supervisory officers, Assistant Collector and Collector should also be determined and appropriate action taken without delay. The Committee would like to be informed soon of the action taken against the defaulting officials.
59	8.41	Deptt. of Revenue and Banking	The Committee learn that a person who "enters any particulars in the Gate Passes which are, or which he has reason to believe to be false" in terms of sub-rule (5) of Rule 52-A of the Central Excise Rules, 1944 is liable to penalty not exceeding one thousand rupees besides the liability for the confiscation of goods. The Committee

			have been informed that orders for the collection of Gate Passes in cases of false declaration by the textile mills had been issued and that show-cause notices were being issued. The Committee would like to be apprised of the outcome of this exercise and the amount actually recovered from the defaulting mills.
60	8.42	-Do-	The Committee take a serious view of the role unhappily played by the Textile Commissioner's organisation. It was clearly the duty of the Textile Commissioner to see that uncontrolled cloth was not declared fraudulently as controlled cloth. The Regional Offices of his organisation are charged with the specific responsibility of carrying out field inspections with a view to enforcing the provisions of the various modifications issued under the Textile Control Orders for regulating the manufacture of the textile mills. As stated in one of the replies furnished by the Ministry, check on "non-stamping or wrong stamping of statutory markings on the controlled and uncontrolled cloth and on the bale containing such cloth" was the clear responsibility of the Textile Commissioner's staff. The Committee cannot, therefore, accept the plea that such irregularities are of a "technical nature which usually occur due to inadvertance." The Committee are surprised that the Ministry of Commerce apparently consider such lapses to be so minor that it was "not worthwhile taking any serious action against the mills in such cases." In the Committee's view, this indifference towards malpractices involving, detriment to the country's revenue and to the poorer consumer of an essential commodities cannot be countenanced. The Com-

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			mittee, therefore, ask for a critical review of the Textile Commissioner's role in this regard. If the Central Excise staff were not considered technically or professionally well equipped to determine whether a particular variety of cloth answered the specifications of controlled cloth or not, it was all the more necessary for the Textile Commissioner to have exercised the necessary check in this direction.
61	8.43	Deptt. of Revenue & Banking	Another distressing feature that has come to surface is that during the period March 1965 and May 1968, the percentage of 'C' forms (wherein Mills submitted particulars of manufacture and the details of price calculations for each controlled variety) checked by the office of the Textile Commissioner was not more than 20 per cent and it was only from May 1968 that all the 'C' forms were subjected to a check. The Committee would like Government to investigate why it was not possible for the Textile Commissioner to conduct a more extensive, if not a 100 per cent check of such forms, because had such a check been exercised, it is more than likely that the scale at which the malpractice of passing off uncontrolled variety of cloth as controlled and availing of concession in excise duty would have been revealed much earlier and provided an earlier opportunity to Government to prevent loss of revenue on this account.
62	9.14	-Do-	The Committee note that the statutory prices of aluminium are fixed by Government under the Aluminium (Control) Order, 1970

These prices are inclusive of duty and the assessable value for purposes of duty is worked out after abatement of duty element included in these prices. The Government of India imposed regulatory duty on aluminium at the rate of 25 per cent of basic duty with effect from 13 December, 1971. The Department of Mines in its letter dated 18 December, 1971 allowed the manufacturers to add this duty to the prices declared under the Aluminium (Control) Order, 1970 till such time as a revised notification inclusive of regulatory duty was issued. The notification including this additional duty was issued on 21 January, 1972. Subsequently under the Finance Act, 1972, special excise duty was abolished and the basic duty was consequently enhanced, resulting in a higher quantum of regulatory duty with effect from 17 March, 1972. The manufacturers were again allowed to add the extra duty to the controlled prices under the Department of Mines letter dated 30 March, 1972 pending issue of revised notification about the sale price. The Order fixing the revised prices consequent on budgetary changes was issued on 2 May, 1972.

A company, Power Cables Ltd., Baroda, had cleared 989.154 tonnes and 752.949 tonnes of aluminium rods respectively during the period from 13 December, 1971 to 20 January, 1972 and from 17 March, 1972 to 1 May, 1972 on payment of central excise duty on the assessable value fixed on the basis of the previous sale prices notified by the Department of Mines without taking note of the regulatory duty enhanced with effect from 13 December, 1971 and

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			30 March, 1972 respectively. However, while working out the assessable values the element of additional regulatory duty was allowed to be abated in full during the aforesaid periods which resulted in the fixation of lower assessable values and consequent under-assessment of duty to the extent of Rs. 110.158. The first increase in regulatory duty with effect from 13 December, 1971 had created doubts in the mind of local excise officials whether regulatory duty was to be included in the sale price or not. The Superintendent concerned sought clarification from the Asstt. Collector, Baroda, on 15 January, 1972 who in turn referred the matter to the Collector on 9 February, 1972 for his orders, in the meantime the assessments were done provisionally. In reply the Collector directed the Assistant Collector on 30 March, 1972 to examine the matter in the context of the notification dated 21 January, 1972 issued by the Department of Mines about revised prices and also asked for report whether the query raised in his letter dated 9 February, 1972 had been resolved or not. Even though the Superintendent of the concerned Collectorate had expressed an opinion on the file that the notification dated 21 January, 1972 issued by the Department of Mines did not apply to the period from 13 December, 1971 to 20 January, 1972, "follow-up action was neither taken by the Assistant Collector of the Division nor by the Superintendent." The matter was allowed to be dragged on until the clarification of the whole position was given by the Central Board of Excise & Customs itself

			in their letter dated 19 August, 1972. Had the Assistant Collector acted with promptness and taken conclusive action to ascertain the correct method of assessment at the time of increases in regulatory duty with effect from 13 December, 1971 and 17 March, 1972, the avoidable under-assessment of Rs. 1,10,158 in revenue could have been avoided. There was evidently considerable delay on the part of the officials of the Collectorate in taking action. The Committee recommend that appropriate action should be taken against those found responsible for the delay.
63	9.15	Deptt. of Revenue & Banking	The Committee have been informed that the under-assessment arose because of the non-receipt by the Collectorate of Baroda of letters dated 18 December, 1971 and 30 March, 1972 issued by the Department of Mines (Appendices XXI & XXII). These letters, were addressed to 15 Units in various Collectorates including one unit (Naran Lal Metal Works, Near Railway Station, Navsari, Gujarat) located in the Baroda Collectorate. It is unfortunate that these were not addressed to the company in question (Power Cables Ltd., Baroda) in Baroda nor copies thereof were endorsed to the Ministry of Finance or any of the Collectorates of Central Excise. The Committee would like Government to investigate as to why the copies of the communications of the Department of Mines having a bearing on controlled prices were not endorsed to the Collectorates of Customs and Central Excise. The Committee recommend that responsibility for this serious lapse should be fixed and appropriate action taken against the defaulting officials.

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64	9·16	Deptt. of Revenue & Banking	The Committee are also of the opinion that the mistake in the instant case could have been avoided if consolidated instructions were issued by Government after consultation between the Department of Mines and the Ministry of Finance (Central Board of Excise & Customs). The Committee desire that in the interest of avoiding loss of revenue and repetition of such cases, Government should advise all the administrative Ministries/Departments concerned to endorse copies of all such instructions/letters to the Ministry of Finance (Central Board of Excise and Customs) and Collectors of Customs and Excise etc. in the interest of ensuring timely action by the concerned authorities.
65	9·17	-do-	The Committee note that Power Cables, Baroda, had filed revised classification lists on both the occasions when the regulatory duty was enhanced. The first list was filed on 25 December, 1971, and the second on 18 March, 1972, which were approved by the Collectorate on 10 January, 1972 and 21 March, 1972 respectively. The Committee need hardly point out that if the Lists were subjected to thorough and proper scrutiny, the under-assessment could have been avoided.
66	9·18	-do-	The Committee also feel that it is not unlikely that similar cases of under-assessment in respect of aluminium manufacturing units could have occurred in other Collectorates as well. The Committee

			would like that all these cases should be reviewed and efforts made to recover the amount after proper assessment.
67	10.19	-do-	The Committee note that Government issued two Notifications on 1 March, 1968, providing certain concessions in excise duties in regard to the assessment of aluminium. By Notification No. 24/68 duty concession of Rs. 27 per M.T. was allowed to firms manufacturing aluminium from ores. The concession was admissible, subject to the fulfilment of the following conditions:— (i) A manufacturer who availed of the concession under another Notification No. 32/68 was not allowed to avail himself of this concessions. (ii) Such aluminium was manufactured by the manufacturer from bauxite or alumina or both; (iii) Clearance of aluminium in whatever form by the said manufacturer during the preceding financial year did not exceed 12,500 metric tonnes. By another Notification No. 32/68 aluminium manufacturers were allowed a duty concession of Rs. 120/- per metric tonne. Government issued orders on 19 March, 1968, stating that the benefit of Notification No. 24/68 was not to be denied to primary ore-based manufacturers who also undertook conversion of duty-paid ingots of outsiders on job basis.

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			The Committee find that during the local audit of Madras Aluminium Co. Mettur Dam, in October, 1968, it was pointed out to the Madras Collectorate of Excise that the concessions under both the notifications should not have been allowed simultaneously to the Company and that the concession allowed under Notification No. 24/68 was not in order. The case was further examined in the light of subsequent clarificatory instructions issued by Government on 9 January, 1969, and it was felt by the Collectorate that as the manufacturer was mainly an ore-based manufacturer, the concession under Notification No. 24/68 only could be allowed and that the concession availed of under Notification No. 32/68 was not correct, but no conclusive action was taken to raise the demand against the Aluminium Company till September, 1972. The mistake in allowing concessional excise duties simultaneously under both the notifications resulted in excise duty to the tune of Rs. 76,344 not being levied in time for the period from 31 March, 1968 to 28 February, 1969. The Committee are concerned at the avoidable delay of over three years in raising the demand for Rs. 76.344 by which time it became time-barrred and could not be recovered. If the demand had been raised when the matter was first taken up by local Audit in October, 1968 instead of entering into a protracted correspondence, revenue of Rs. 76,344 could have been saved.

			The Committee feel that after the objection was raised by local Audit in October, 1968 the mistake could and should have been set right if the Collectorate had taken conclusive action in consultation with the Audit authorities. The Committee desire that responsibility for this unwarranted delay should be fixed and remedial measures taken to obviate such delays in future.
68	10.20	Deptt. of Revenue & Banking	Notification No. 24/68 had a clause to say that the concession would not apply to a party availing itself of the concession under Notification No. 32/68 but there was no corresponding prohibitive clause in Notification No. 32/68. The contention of Government that "an option of availing one or the other of the exemptions could be read into the notification" is not convincing. If the intention was to give option to the manufacturer to choose between either of the two concessions the same should have been specifically provided in the notifications. The clarificatory instructions issued by Government on 19 March, 1968 stating "that manufacturers who were primarily ore-based but who undertook conversion of duty paid ingots from outsiders on job basis should not be denied the concession provided by Notification No. 24/68 dated the 1 March, 1968", also did not fully clear the matter and instead left scope for mis-interpretation of the underlying intention. The Committee are unhappy that Government's Notifications providing for concessions in duty etc. are not very precisely worded as has happened in this case. As already recommended earlier in para

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			5.24, the Committee would like to reiterate the need to exercise greater care in drafting notifications and entrusting the work in this regard to officers with a legal background and a thorough understanding of the Central Excise law.
69	11.15	Deptt. of Revenue & Banking	The Committee find that by a notification dated 6 July, 1968, Aluminium pipes of certain dimensions with wall thickness ranging from 0.050" to 0.058" and used in sprinkler equipment for agricultural irrigation purposes were allowed concessional rate of excise duty. While issuing a revised Notification on 1 March, 1970, to express dimensions of wall thickness in metric units, the dimensions (in inches) were merely described in millimetres without in fact converting them into millimetres. Though this mistake was rectified by issuing a Notification on 1 April, 1972, the delay resulted in a loss of central excise duty to the extent of Rs. 10,56,173 because of incorrect concession during the period 1 March, 1970 to 31 March, 1972, in respect of two units. The representative of the Ministry of Finance averred during evidence that if one went by the "intention" behind the notification issued on 1-4-1972, there was no loss. The Committee feel that in fiscal matters the language of the notification is as important as expressing the intention behind the notification. It is somewhat redeeming that the mistake was noticed by one of the Collectors in whose jurisdiction interestingly enough this kind of tube is not manufactured at all. However, the error was rectified after 2 years. The Chairman of the Board admitted during evidence

"this is a completely mishandled case." As regards the delay of two years in rectification of the mistake, the witness felt "first, there was obviously an error. Secondly, for rectifying the error unduly long time had been taken."

11.16 The Committee note from the chart furnished by Government showing the chronology of events/action taken from the date of issue of the original notification (46/70) on 1-3-70 to the date of the issue of the corrective notification (115/72) on 1-4-72 that avoidable delay had occurred at various stages. The Committee feel that when the mistake was initially brought to the notice of the Board by the Collector of Central Excise, Cochin in September, 1970, the Board should have acted promptly and taken conclusive action quickly. The Committee are distressed at the casual manner in which the case involving revenue implications was allowed to be dragged on under the apprehension that an amending notification may not be effective from the date of the original notification. It is surprising that the routine movement of file without any action from one Section (CX-4) to another (T.R.U.) within the Ministry took 1½ months and reminders were issued after a period of 2 to 6 months. The Committee cannot resist expressing its displeasure over the manner in which this case was processed by the Board. They desire that drastic toning up of the working of the office of the Board of Customs and Central Excise is called for to ensure expeditious disposal of cases at all stages.

70	12·19	-do-	The Committee note that Notification No. 24/68 issued by the Ministry of Finance on 1 March 1968 and amplified by their Notifi-

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cation No. 138/69 dated 13 May, 1969 was meant for giving concession in duty to primary ore-based manufacturers subject to the fulfilment *inter alia* of the condition that "clearances of aluminium in whatever form by the said manufacturers during the preceding financial year did not exceed 12,500 M.T." Explaining the rationale behind this condition it was stated by the Ministry of Finance that the concessions in duty were meant for relatively small ore-based manufacturers to lighten the burden of the excise duty increases made in the Budget proposals of 1967 and it was not intended to deprive them of this concession by including the clearances of products made from duty paid aluminium ingots brought from outside. Madras Aluminium Co. Ltd. Mettur Dam, an ore-based Aluminium manufacturer, was also engaged in the conversion of duty-paid aluminium ingots brought from outside on behalf of outsiders, into wire rods etc. The total clearances of that firm during the year 1968-69 exceeded 12,500 M.T. They were, however, allowed the concessions in duty because of the executive instructions of the Ministry of Finance contained in their letters No. FB2/69/CXI dated 19 March, 1968 and F. 1/33/68-CXI-II dated 9 January, 1969 which provided for the exclusion of the goods produced out of the excise-paid aluminium ingots brought from outside from the prescribed ceiling of 12,500 M.T.

On an enquiry the Committee were informed that the Board was not aware at the time of issue of notification that such, conversion job was being undertaken by the primary manufacturers.

The Committee feel that the Ministry should have carefully gone into the facts, especially when representations on the subject had been received by them from 1967 onwards to ensure that the notification which was issued to give effect to the Finance Minister's announcement in the Budget Speech of February 1968 carried out the intentions unambiguously. In any case it would have been better to clarify the matter through a corrective notification rather than resort to clarificatory instructions so that matters having fiscal implications are dealt with correctly in accordance with statutory requirements. Besides, resort to a general notification under rule 8(1) to cover a particular case, when there is a separate provisions for exemption for particular cases [rule 8(2)], is by no means a proper exercise of statutory powers. In this case, admittedly, the notification was issued for covering the requirements of Madras Aluminium Co. and perhaps also Indian Aluminium Co. and the conditions prescribed were tailored to fit in with those relating to Madras Aluminium Co. In the circumstances the notification should, if at all, have been issued under rule 8(2), provided further that the conditions mentioned in the rule were satisfied. In this connection the Committee would reiterate their earlier recommendation made in paragraph 1.294 of their 111th Report (Fourth Lok Sabha) wherein they had stressed that only an amending notification should be issued as

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			and when it becomes essential to issue a clarification in regard to the contents of the original notification. The Committee trust that this practice would be now invariably followed in future.
71	12·20	Deptt. of Revenue & Banking	For lack of time, the Committee have not been able to examine some of the paragraphs relating to Union Excise Duties included in the Report of the Comptroller & Auditor General of India for the year 1972-73, Union Government (Civil), Revenue Receipts, Volume I, Indirect Taxes. The Committee expect, however, that the Department of Revenue and Banking and the Central Board of Excise and Customs will, in consultation with statutory Audit, take such remedial action as is called for, in those cases.

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