

# FIFTY-FOURTH REPORT

## PUBLIC ACCOUNTS COMMITTEE (1980-81)

(SEVENTH LOK SABHA)

**PACKING CHARGES, UNDER-ASSESSMENT  
OF PAPER & PAPER BOARDS, NON-RECEIPT  
OF PROOF OF EXPORT & AERATED WATER**

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



*Presented in Lok Sabha on 30-4-1981  
Laid in Rajya Sabha on 30-4-1981*

**LOK SABHA SECRETARIAT  
NEW DELHI**

*April, 1981/Vaisakha, 1903 (Saka)*

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CORRIGENDA TO FIFTY-FOURTH REPORT OF THE PUBLIC  
ACCOUNTS COMMITTEE (SEVENTH LOK SABHA).

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## PART-II\*

Minutes of sittings of the Committee held on

8-1-1981 (AN)

21-4-1981 (AN)

28-4-1981 (AN)

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

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(1980-81)

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## INTRODUCTION

I, having been authorised by the Public Accounts Committee to submit the report on their behalf, present this Fifty-Fourth Report (Seventh Lok Sabha) on Paragraphs 77(a), 77(b), 78 & 52 of the Report of the Comptroller and Auditor General of India for the year 1978-79, Union Government (Civil), Revenue Receipts, Volume I, Indirect Taxes relating to Union Excise Duties.

2. The Report of the Comptroller and Auditor General of India for the year 1978-79, Union Government (Civil) Revenue Receipts, Volume I, Indirect Taxes, was laid on the Table of the House on 1 July, 1980.

3. In Chapter I of this Report, the Committee have recommended that the Government should examine in depth the issues involved in regard to the inclusion or otherwise of various packing charges in the assessable value of goods.

4. In Chapter II, the Committee have pointed out cases of under-assessments due to non-inclusion of the duty element of wrapping paper in the assessable value of the paper and paper boards cleared.

5. In Chapter III, the Committee have recommended that the Government should take effective measures to ensure that the concession granted for exports under bond is not abused by diversion of duty-free goods for home consumption.

6. In Chapter IV, the Committee have commented on the unintended concessional rate of excise duty on aerated waters availed of by large manufacturers due to defective drafting of exemption notification.

7. The Public Accounts Committee (1980-81) examined paragraphs 77(a), 77(b) & 78 at their sitting held on 8 January, 1981. Written information was obtained from the Ministry on Paragraph 52. The Committee considered and finalised this Report at their sittings held on 21, and 28 April, 1981. The Minutes of sittings of the Committee form Part II\* of the Report. I was authorised by the Committee under proviso to Rule 277(3) of the Rules of Procedure and Conduct

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of Business in Lok Sabha to sign and present this Report on their behalf.

8. A statement containing observations and recommendations of the Committee is appended to this Report (Appendix). For facility of reference these have been printed in thick type in the body of the Report.

9. The Committee would like to express their thanks to the officers of the Ministries of Finance (Department of Revenue) and Law for the cooperation extended by them in giving information to the Committee.

10. The Committee also place on record their appreciation of the assistance rendered to them in the examination of these paragraphs by the Office of the Comptroller and Auditor General of India.

NEW DELHI;  
April 28, 1981  

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Vaisakha 8, 1903 (S)

SATISH AGARWAL,  
*Acting Chairman,*  
*Public Accounts Committee.*

## CHAPTER I

### PACKING CHARGES

#### *Audit Paragraph*

According to section 4(4) (d) (i) of the Central Excises and Salt Act 1944, value in relation to any excisable goods where such goods are delivered at the time of removal in a packed condition, includes the cost of packing except where the packing is of durable nature and is returnable to the assessee. According to the explanation contained therein 'packing' means the wrapper, container, bobbín, pirn, spool, reel or warp beam or any other thing in which or on which the excisable goods are wrapped, contained or wound.

(a) Cigarettes are assessable to duty ad valorem under tariff item 4(II) (2). These are first packed in paper/card board cartons to hold 10, 20, 50 or 160 and then these cartons are covered by paper/card board outers to hold 200, 250 or 500 cigarettes, which are thereafter placed in corrugated fibre board containers.

The assessable value of cigarettes produced by a factory was determined after excluding the cost of corrugated fibre board containers on the ground that these were purchased/supplied by customers and were not essential for the sale of cigarettes.

This was irregular because:

- (i) the Ministry of Law, Justice and Company Affairs had clarified in November 1975 that the value should include the value of packing regardless of whoever had supplied such packing; and
- (ii) the Act does not make any distinction between secondary *i.e.*, non essential and primary packing.

The resultant short levy of duty was of Rs. 4.21 crores during the period November 1976 to November 1977.

The Ministry of Finance have stated (February 1980) that the matter is under examination.

[Paragraph 77(a) of the Report of C&A.G. of India for the year 1978-79—Union Government (Civil) Revenue Receipts—Vol. I—Indirect Taxes.]

1.4. According to Section 4(4) (d) (i) of the Central Excises and Salt Act, 1944, value in relation to any excisable goods, where such goods are delivered at the time of removal in a packed condition, includes the cost of packing except where the packing is of durable nature and is returnable to the assessee. According to the explanations contained therein 'packing' means the wrapper container, bobbin, pirn, spool, reel or warp beam or any other thing in which or on which the excisable goods are wrapped, contained or wound.

1.5. Messrs. Vazir Sultan Tobacco Company Ltd., Hyderabad, manufacturer of cigarettes falling under Central Excise Tariff item 4II (2), initially packed the cigarettes in paper/card board cartons to hold 10, 20, 50 and 100 cigarettes. Thereafter the assessee company covered the aforesaid cartons by paper/card board outers to hold 200, 250 and 500 cigarettes which were finally placed in corrugated fibre board containers. While determining the assessable value of cigarettes, the cost of corrugated fibre board containers was not included on the ground that these were purchased/supplied by the customers and were not essential for the sale of cigarettes.

1.6. The aforesaid revised Section 4 came into force w.e.f. 1-10-1975.

1.7. The Committee wanted to know the reasons for amending Section 4 and the position that obtained after this amendment in regard to the levy of duty on packing charges. The Member (Excise) stated during evidence:

"Initially we were considering that whatever packing is done and when it is bought for, these must be treated as part of the goods and are charged to duty. After the Voltas judgement, there was an observation that the cost of a thing can only be the manufacturing cost and manufacturing profit. Some doubt was thrown as to whether packing which was claimed to be something after the manufacture of the actual commodity could be included. When we amended Section 4 of the Central Excises and Salt Act, we tried to cover this also by making a specific provision regarding the packing. We said that in case of packing, where the goods are delivered at the time of removal if they are in a packed condition, then the value includes the cost of such packing except the cost of the packing which is of a durable nature and is returnable by the buyer to the assessee. This explanation would take care of cases like compressed gas cylinders where the value of the cylinder is far higher than the value of

the gas itself. If the duty were to be assessed on the value of the gas plus cylinder, then it would have been a totally unrealistic amount of duty. So, that was excluded. Apart from that, we tried to cover whatever is removed in packed condition. And, where the packing is paid for, that should be included in the value of the goods. But we were not able to sustain this position in the face of legal challenges the legal pronouncements. It was argued that in the very nature of the excise duty, it is a tax on manufacture and therefore, if we make it payable on packing, it went beyond the stage of manufacture. That provision would be bad. So, in certain cases, because of this definition of excise and because of the interpretation, we have not been able to include the entire cost of packing of what may be called primary or secondary packing."

1.8. The Committee desired to know the details of the advice given by the Ministry of Law, Justice and Company Affairs in November, 1975. In a note, the Ministry of Finance (Deptt. of Revenue) have stated as under:—

"The advice of the Law Ministry dated 15-11-1975 was in respect of inclusion of the cost of durable containers whether supplied by the buyer or not, which are used for packing of goods. A copy of the said advice is enclosed (Appendix I)."

1.9. The advice given by the Ministry of Law, Justice and Company Affairs *inter-alia* stated as under:

"If, therefore, a sale is effected where the durable packing material is supplied by the buyer and hence the material is not returnable to the assessee—the cost of packing is not to be excluded in computing the value, notwithstanding that the assessee the seller, had not incurred the cost of packing.

This might perhaps, be looked upon as an anomaly or contradiction. The basic premise is evaluation of the assessable goods regardless of the question as to who bears what expenditure. Nevertheless, expenditure incurred by the assessee in durable and returnable packing is to be excluded on the ground that the assessee does not actually incur the cost of packing irretrievably. But where such cost is incurred by the buyer, it is to be included."

1.10. Based on the aforesaid advice, the Central Board of Excise and Customs issued a circular on 11-3-1976 wherein they clarified that in regard to the situation where containers are of a durable nature and belong to the buyer, the cost of such containers should be included in the assessable value.

1.11. The Committee found that subsequent to the issue of the aforesaid circular the Central Board of Excise and Customs issued another circular on 12-5-1976. When enquired in regard to the basis for the issue of this later circular, the Member (Excise) stated during evidence:—

“According to the information available in the file, there was a representation to the then Member, Tariff from the cigarette industry when he visited Bombay. After he came back there was a discussion and then these instructions were issued on the basis of the previous advice of the Law Ministry.”

1.12. The Ministry of Finance (Deptt. of Revenue) have furnished a copy of the circular No. 5/76 CEV issued under F.No. 315/22/76-CX.10 dated 12-5-1976 by the C.B.E&C alongwith a copy of the advice tendered by the Ministry of Law, Justice and Company Affairs which is at Appendix II.

1.13. In their reference, the CBE&C had *inter alia* solicited the advice in the light of definition of Section 4(4) (d) (i) of the Act as to whether the cost of unit alone were to be taken or besides such cost, the cost of other packing namely, the cost of wooden boxes, card board cartons, jute cloth, iron strips etc. were all to be included in the assessable value. In their advice, the Ministry of Law, Justice and Company Affairs have stated as under:

“By virtue of clause (d) (i) of sub-section 4 of Section 4 of the Act, the ‘value’ in relation to any excisable goods where the goods are delivered at the time of removal in a packed condition, includes the cost of such packing except the cost of the packing which is of a durable nature and is returnable by the buyer to the assessee. The expression ‘packing’ has been defined by the explanation to mean the wrapper container, etc. in which or on which the excisable goods are wrapped, contained or wound. If there is any other packing apart from the initial packing referred to in the explanation, it would appear to be difficult to say that the cost of such additional packing which is apart from the packing in which

or on which the excisable goods are wrapped, contained or wound, can be included in the assessable value of the excisable goods."

1.14. The Committee noted from the Circular dated 12 May, 1976 that it was issued by the Ministry of Finance (Department of Revenue) after discussion of the matter by their Under Secretary with the Ministry of Law, Justice and Company Affairs. The Committee wanted to know as to why thorough and proper examination of the case was not done by the Ministry of Finance at a higher level before issue of such contradictory circulars. The Finance Secretary stated in evidence:

"I concede that such complicated issues should be considered at a fairly higher level in the Board."

1.15. The Circular issued by the CBE&C on 12-5-1976 contained only the points which were raised by the Collectors and the reply of the Ministry of Law, Justice and Company Affairs. Since Section 4 does not speak of any primary additional or subsidiary packing, the Committee wanted to know as to how these terms were introduced by the Ministry of Finance (Deptt. of Revenue). That Ministry has in a note stated as under:

"Sub-clause (i) of clause (d) of sub-section (4) of Section 4 of the Central Excises and Salt Act, 1944, contains an explanation defining "packing". This sub-clause has to be read as a whole and not by ignoring the Explanation which reads "in this sub-clause, 'packing' means the wrapper, container, bobbin, pirn, spool, reel or warp beam or any other thing in which or on which the excisable goods are wrapped, contained or wound". Instructions were issued in the context of this definition. Words like "initial packing", "additional packing", "subsequent packing", etc. were used only to explain the meaning of this definition".

1.16. Asked whether any guidelines were issued to define the precise scope of the terms. In a note the Ministry of Finance (Department of Revenue) has stated as under:

"The terminology used by this Department and the Ministry of Law to describe the various stages/types of packing were unit packing, initial packing, additional packing subsequent packing, other packing etc. The terminology of "primary" and "secondary" packing did not figure in

these instructions. In the audit objections the terms "primary" and "secondary" packing were used presumably to mean initial packing and additional packing used by the Ministry of Law. In these circumstances, the question of defining the terms "primary" and "secondary" packing has not arisen. Since the instructions issued were descriptive in nature, they would have conveyed the meaning and the distinction sought to be made. No definition of the expression was, therefore, given."

1.17. Enquired if the use of the terms "initial packing" and "subsequent packing" etc. were vague and liable to add to litigation, the Ministry of Finance have in a note stated as under:

"These terms are very clear about the type of packing to be included in the assessable value. They cannot be considered as vague. As regards making the provisions of Section 4 beyond doubt on this point, necessary action can be taken only after the Supreme Court's judgement on the basic question of inclusion of cost of packing whether initial or subsequent—in the assessable value of the goods, is pronounced".

1.18. On 24 May, 1976 a circular was issued under F.No. 315/13/76 CX 10 under which the Collectors were asked to exclude the cost of corrugated fibre Board containers from the excisable value. Asked about the basis for the issue of this circular, the Ministry of Finance (Department of Revenue) have stated as under:

"The instructions of 24th May, 1976 were issued on the representation dated 19th May, 1976 from the Cigarettes Manufacturers Association of India c/o Godfrey Philips India Ltd., Bombay A copy of Association's letter dated 19-5-1976 giving the grounds of representation is enclosed (Appendix III).

1.19. From the information subsequently furnished by the Ministry of Finance (Deptt. of Revenue) the Committee noted that in their circular letter No. 315/13/76-CX. 10/CXI dated 15-7-76 (Appendix IV) the Board further clarified that their instructions dated 12-5-1976 were to be read with other provisions of the Act and that PP. Medicines where packed in foils or bottles will become manufactured only when the medicines have been so foiled or bottled and the cost of containers into which the foiled/bottled medicines are packed will get included in the assessable value. Similarly, in the case of cigarettes, "cigarettes" will be regarded as manufactured



when they have been put into a paper wrapper or aluminium packed paper and are packed into a cardboard cartons of 10's, 20's etc. and the cost of container into which such retail packets of 10's, 20's etc. are contained will under Section 4(4) (d) (i) get included in the assessable value. Asked for the reasons for the issue of these instructions and whether the same superseded the earlier instructions of 24-5-1976, the Ministry of Finance (Department of Revenue) have in a note stated as under:

"Instructions dated 15-7-76 were issued in the context of a reference made by the Collector of Central Excise Hyderabad. These instructions did not supersede the instructions dated 24th May, 1976. This position was clarified *vide* letter F.No. 315/13/75-CX 10 dated 26th August, 1976 (Appendix V)."

1.20. The Committee desired to know the containers the value of which was to be included in the assessable value in the light of Boards instruction dated 15-7-76. In a written note, the Ministry of Finance (Deptt of Revenue) have stated:—

"It was stated in the letter dated 15th July, 1976 that the provisions regarding inclusion of cost of packing in the assessable value of the goods are not to be read in isolation; but should be seen in the context of definition of 'manufacturer' contained in section 2(f) and the charging section, namely, section 3 of the Act. In order to amplify the point, the cases of P or P medicines and cigarettes were also cited.

With particular reference to cigarettes, it was stated that cigarettes will be regarded as manufactured when they have been put into a paper wrapper or aluminium packed paper wrapper and are packed into cardboard cartons of 10's and 20's etc. and the cost of contained into which such retail packets of 10's 20's etc. are contained will under section 4(4) (d) (i) get included in the assessable value".

1.21 The Ministry Finance (Department of Revenue) have also informed the Committee that in their subsequent circular dated 24.9.76 (Appendix VI) they had further clarified that the cost of corrugated fibre container in which paper/card board outers containing cigarettes were delivered would not get included in the value of cigarettes.

1.22 The Committee wanted to know how the Ministry could establish that the containers into which retail packets of 10's and 20's etc. were put constituted initial and not subsequent packing. The Ministry of Finance (Department of Revenue) have in a note explained this: ..

“Provisions of Section 4 regarding inclusion of the cost of packing in the assessable value of the goods, are to be read alongwith Section 2 (f) and Section 3 of the Act. As per definition of ‘manufacture’ in respect of manufactured tobacco (which includes cigarettes) given in section 2(f) any treatment to render the product marketable to the consumer, is a process of manufacture. Since the cigarettes are sold to the consumer in the packings of 10's and 20's packing of cigarettes in 10's and 20's is considered as the adoption of a treatment to render the product (cigarette) marketable to the consumer and hence a process of manufacture. Thus, the process of manufacture of cigarettes is completed, or in other words, the cigarettes are completely manufactured, when they have been packed in 10's and 20's. Hence, in term of Section 4, the initial packing of such completely manufactured cigarettes would be the “outers” in which carton containing 10 or 20 cigarettes are packed.”

1.23 The Committee wanted to know if the bulk drugs which were put into bottles or packed into cartons constituted part of the manufacture. In evidence the Member (Excise) replied in the affirmative. ..

1.24 When enquired whether the cartons into which the cigarettes were put constituted part of the manufacture, the witness replied in the negative.

1.25 Asked as to why cartons were treated as part of the manufacture in case of drugs whereas the cartons containing cigarettes were not so treated, the witness replied:— ..

“About the corrugated fibre board (CFG) container), this was the view of the department taken in consultation with Ministry of Law.”

1.26 Asked if this was the view of the High Court, the witness replied in the negative. When enquired about the rationale for this view, the witness explained:

“So far as patented and proprietary medicines as also cigarettes are concerned, I would draw the hon. Committee’s attention to the definition of manufacture. See Section 2(F) of the Act. It says: “Manufacture” includes any process incidental ancillary to the completion of a manufactured product. In relation to manufactured tobacco, cigarettes come under the definition of manufactured tobacco, it includes labelling or re-labelling of containers and repacking from bulk packs to retail packs or the adoption of any treatment to render the product marketable to the consumer. I will come to the medicines. I shall read the definition in relation to patented or proprietary medicines and in relation to cosmetics and toilet preparations.

“The manufacture includes the conversion of powder into tablets or capsules, labelling or relabelling of containers, repacking etc. so as to render the product marketable to the consumers.

So far as cigarettes are concerned, cigarettes can be marked to the consumer with the packet and the outer wrapper. It can be marketed without corrugated fibre container which is not an essential thing. It is for convenience of transport that it is used.”

1.27 The Committee pointed out that since packing was defined clearly to mean container etc. or any other thing in which goods were wrapped, why the cartons were excluded from being part of the manufacture. The Chairman, CBE&C replied:

“It should be simple but doubts have arisen and matters taken to the court and pronouncements made.”

1.28 The Committee desired to know the decision of the Andhra Pradesh High Court in the case of Indo-National Ltd., Nellore and others in regard to the inclusion of packing charges in the assessable value. The Ministry of Finance have in a note stated as under:

“The question of the A.P. High Court in Indo-National Ltd., Nellore and others was a common judgement of the A.P. High Court in writ petitions No. 5948 of 1975; 819; 1115, 1932, 2194, 2601 and 2602 of 1976; 217 and 218 of 1978.

Indo-National Limited, Nellore Universal Tobacco Company Limited, Hyderabad, Vazir Sultan Tobacco Company Limited, Hyderabad, Union Carbide (India) Limited, Hyderabad and others were the parties who had filed the above writ petitions. In Writ Petition No. 5948/75, the question of inclusion of packing charges in the assessable value of dry cell batteries was involved, the submission being, the cost of display boxes or of the cartons cannot be included in the assessable value of the excisable goods for the reason that the battery cells are neither wrapped nor put in containers and that the packings are used only for purposes of safety in transit and handling.

The department claimed that admittedly the petitioner company employs two types of packing in its factory for the purposes of safety in transit and handling. As the goods are delivered at the time of removal in packed condition and as the packing is not of durable nature and is not returned by the buyer to the assessee the cost of such packing should be included in the value as enacted by section 4(4) (d) (i) of the Act.

M/s. Union Carbide in their writ petition Nos. 2601 and 2602 stated that the batteries manufactured are initially packed in card board cartons, usually 25 batteries per carton. Thereafter, the cartons are placed in wooden boxes to facilitate transport of the goods to the godowns. The petitioner recovered from the wholesalers an extra charge of Rs. 10 per box to cover the cost of this secondary packing in wooden boxes in addition to the sale consideration of the batteries. The petitioners claimed that the cost of secondary packing in wooden boxes which is not included in the price of batteries, but charged separately in the invoices, would not form part of the assessable value.

After going into the various submissions made, the Court held as follows:

“Section 4 (4) (d) (i) while providing for inclusion of the cost of packing in the value of the goods, where the goods are delivered at the time of removal in packed condition permits deduction of the cost of packing from the value if the packing is of a durable nature and is returnable by the buyer to the assessee. In other words, even the cost of

initial or first packing, if it is of a durable nature and returnable by the buyer to the assessee, is liable to be deducted from the value of the goods. It, therefore, follows that the cost of secondary packing of the goods is not liable to be included in the assessable value". Court further held: "Admittedly, the petitioner-company first packs its dry cell batteries in what are known as Display boxes and later in cartons. It is alleged by the petitioner that the dry cell batteries produced are sold just as batteries and are not covered by any kind of wrapper, that the packing in display boxes by the petitioner is only to enable the movement of batteries freely and conveniently and that further packing in cartons by long distance transport is also for safety in transit and handling. It is true that under Section 4(4) (d) it is enacted that where the goods are delivered at the time of removal in a packed condition, the assessable value includes the cost of such packing, except the cost of the packing, which is of a durable nature and is returnable by the buyer to the assessee. The requirement of "durability" of the packing if insisted upon for allowance of the cost of the packing from the assessable value, would render the cost of the packing as an element of manufacturing activity, which it is certainly not. The words 'of a durable nature' occurring in section 4(4)(d)(i) of the Act do not have any significance and cannot be given effect to. In other words, even the cost of initial packing of the excisable goods, if it is returnable by the buyer to the assessee, is liable to be deducted from the value of the goods. It, therefore, follows that the cost of the secondary packing of the goods is not liable to be included in the a.v. The word 'returnable' as distinguished from the word 'returned' employed to Section 4(4) (d) (i) of the Act is of significance. It, therefore, follows that, besides the cost of the cartons in which the display boxes containing the dry cell batteries manufactured by the company are packed, the company is also entitled to the cost of the packing of Display boxes as it is not claimed by the excise authorities that without the display boxes the goods manufactured by the company cannot be consumed or utilised.

We should not, however, be understood as laying down that in every case every packing of the excisable goods is liable to be excluded from the a.v. as there may be cases where without the initial, packing of the excisable

goods the same cannot be consumed or utilised in which case the cost of the initial packing necessarily forms part of the manufacturing cost of the goods.”

The court had also held that even the cost of initial packing will be liable to be excluded in certain circumstances.

The decision of the High Court with regard to the exclusion of the so-called post manufacturing expenses and profits and the initial packing cost of jute bags (in respect of cement) from the assessable value are not acceptable to the Government. Leave to appeal to Supreme Court had also been sought in the matter. The High Court was pleased to hold that “the principle question raised in this batch of writ petitions involve a specific question of law of general importance which requires determination by the Supreme Court, the leave asked for is granted in all the writ petitions.” In view of this, the above judgement has been taken up in appeal to the Supreme Court.”

1.29 Enquired if there were any other Court decision to the effect that the cost of packing constituted manufacturing expenses and as such could not be included in the assessable value. The Ministry of Finance (Deptt. of Revenue) have in a note furnished the following information:

“In the case of M/s. Shree Vallabh Glass Works Limited, the Gujarat High Court *vide* its judgement dated 21-4-1980 has reiterated its position more clearly *viz.* “applying the principle laid down by us in the aforesaid decisions, we are of the opinion that the value of wooden containers into which Petitioners’ glass products are packed, cannot form a part of the value of their glass products. Therefore, the petitioners are not liable to pay excise duty under item 23A on the value of their wooden containers. It does not make any difference whether wooden cases in such cases are purchased from the market or are manufactured by manufacturer himself. In either case they do not form a part of manufacturing process applied to the glass products. The first contention raised by the learned Advocate General is, therefore, upheld.”

In S.C.A. No. 1729/75, Alembic Glass Industries Ltd., Baroda contended before the High Court of Gujarat that “it is not necessary that glass and glassware manufactured by

it should be sold in a packed condition and that packing material is not part of the manufacturing process. In other words...it is not incidental to manufacture.

Quoting the definition of "Manufacture" contained in sub-section 2(f) of the Central Excises and Salt Act, 1944, the court held that this long definition of manufacture "makes it clear beyond any doubt two propositions. Firstly, process of manufacture includes any process incidental or ancillary to the completion of a manufactured product. The second proposition which is made clear is that wherever the Parliament wanted to include in the process of manufacture certain incidental or ancillary processes, it has said so as for example, in sub-clause (i) of clause (f) and in sub-clause (ia) of clauses (f)."

Further the Gujarat High Court quoted with concurrence the observations of the Bombay High Court that packing of glass and glassware is not a process incidental or ancillary to the completion of its manufacture. The cost of packing and packing material cannot, therefore, be included in the value of glass and glassware for the purposes of levy and collection of excise duty. Relying upon the above decision, the High Court pronounced: "this decision makes it clear that in case of glass and glassware, the packing material does not constitute a process incidental or ancillary to the completion of the manufactured product."

1.30. Asked if the aforesaid Court decisions were accepted or the department had gone in appeal the Ministry of Finance (Department of Revenue) have stated in a note as under:

"The department has taken up the judgement of the Gujarat High Court in the Alembic Glass Works, case in appeal. In the judgement, the High Court accepted the argument that duty on packing will not be a duty on manufacture; but will be in the nature of a duty on sale or purchase. The court also accepted the argument that "packing" is not a part of manufacture as defined in section 2(f) of the Central Excises and Salt Act. The court accepted the argument that in the case of glass and glassware, packing material is absolutely independent of the excisable goods. It also quoted with approval the judgement of the Bombay High Court in Ogale Glass Works' case that packing of

glass and glassware is not a process incidental or ancillary to the completion of its manufacture. Another point made in the judgement was that in cases where packing material is supplied by the buyer or is purchased from the market by the manufacturers, a duty of excise will be only in the nature of purchase tax. The court also held, basing the decision on the Supreme Court's judgement in the South Bihar Sugar Mills' case that packing does not bring in to existence any new product. Accordingly, there is no question of manufacture and the collection of duty when goods are packed. Since the judgement was against the advice of the Law Ministry that for the purpose of including the cost of packing in the assessable value, it is irrelevant whether the packing material was supplied by the buyer or not and also since it was against the clear provisions of section 4 of the Act and the Government's stand that packing was not a post manufacturing activity, it was submitted to the High Court that the adverse judgement raises a substantial question of law and leave to appeal was sought. The High Court was pleased to grant leave and accordingly appeal was filed."

1.31. At the instance of the Committee, the Ministry of Finance have furnished the names of the following 8 other cases of assesseees who did not include the cost of corrugated fibre board in the assessable value:

S.No.	Name of the Collectorate	Name of the assessee
1.	Bangalore	India Tobacco Co. Ltd. Bangalore
2.	Bombay I	Camlin Paper Mill Pvt. Ltd.
3.	Chandigarh	J & K Cigarette Ltd. Jammu
4.	Madras	Asia Tobacco Company
5.	Merrut	M/s I.T.C. Ltd. Saharanpur Cigarettes M/s Intenational Tobacco Co. Ltd., Ghaziabad
6.	Calcutta	p(i) India Tobacco Co. Ltd. Calcutta  (ii) Duncan Agro Industries Ltd.
7.	Patna	M/s I.T.C. Monghyr
8.	Guntur	M/s Duncan Agro Industries Ltd.



1.32. Asked about the practice followed in other Collectorates, the Ministry of Finance (Deptt. of Revenue) have informed as follows:

“The cost of the corrugated fibre board is not being included in the assessable value by all the assessee in every collectorate.”

1.33. Asked if the cigarettes manufactured by the assessee referred to in the Audit Paragraph were also sold without corrugated fibre board containers, the Ministry of Finance (Deptt. of Revenue) have in a note stated as under:

“Report received from the Collector concerned shows that the cigarettes manufactured by the assessed are normally not sold without the corrugated fibre board containers.”

1.34. Enquired if it was the common practice with all other cigarette manufacturers the Ministry of Finance (Deptt. of Revenue) have intimated in their note as follows:

“It has been reported by all the Collectors except CCE, Guntur and CCE, calcutta in respect of National Tobacco Company that the cigarettes are normally sold in C.F.C. packing.

In respect of Duncan Tobacco Company Bikkavole (Guntur Collectorate) the practice has been reported to be as follows:

(a) From 1-10-1975 to 25-6-1976

Cigarettes in cartons were cleared from the factory on gate-passes and were packed subsequently into C.F.Cs outside the factory premises by the transport contractors on behalf of the Customers.

(b) From 26-6-1976 to 30-5-1979:

Cartons were packed into C.F.C. containers supplied by the transport contractors on behalf of the customers and C.F.C. packing undertaken in the factory premises.

(c) From 1-6-1979 to date:

Cartons were packed in C.F.Cs in the factory premises (all material belonging to the manufacturer).

135. The Committee wanted to know if any manufacturer had claimed the exclusion of the cost of outers in which cigarette packets of 10's, 20's, 50's or 100's were contained. The Ministry of Finance (Deptt. of Revenue) have in a note stated as under:—

“With the exception of I.T.C. Ltd., Saharanpur, who while including the cost of such outers in the assessable value of the cigarettes, have reserved the right to claim refund of the duty on such outers, the reports received from the Collectors indicate that no claim for exclusion of the cost of outers as ‘secondary’ packing has been made by other cigarette manufacturers. Moreover, in the writ petitions in the High Court, the cigarette manufacturers have not claimed the exclusion of the paper outers from the assessable value.”

136. Enquired if the ITC Saharanpur had preferred any claim for refund, the Ministry of Finance (Deptt. of Revenue) have informed as follows:

“It has been reported by the Collector of Central Excise, Meerut that M/s. I.T.C. Saharanpur has not preferred any formal refund claim so far. However, while forwarding the price lists to the department they have indicated that they reserve their right to claim refund in respect of the duty levied on the value of “outers” which was included in the value of cigarettes. No follow-up action pursuant to the endorsement has, however, been taken by M/s. I.T.C.”.

137. As to the practice followed by the department prior to 12-5-1976 in respect of the inclusion of the cost of packing in the assessable value, the Ministry of Finance (Deptt. of Revenue) have furnished the following information:

“It has been reported that except for cigarette factories located in Chandigarh, Guntur, Baroda and Calcutta Collectorates, the cost of all packings except corrugated fibre board containers was included in the assessable value. In the case of J&K Cigarettes, Beribrahamana, Jammu, the cost of C.F.C. and wooden boxes was included in the assessable value, but on the appeal filed by the assessee, the demands were withdrawn. In respect of Messrs Duncan Tobacco Company Bikkavole (Guntur Collectorate), the cigarettes were not cleared in C.F.C. by the manufacturers and hence

the cost of C.F.C. was not included. However, in some cases supplies were made in C.F.C. to the defence department and the cost of C.F.C. in these cases was included in the assessable value. In case of Golden Tobacco Company, Baroda, the cost of C.F.C. was included upto 20-4-76. Thereafter the assessments made provisionally on value exclusive of the cost of C.F.C. were subsequently finalised and the cost of C.F.C. was not included in the assessable value, Messrs National Tobacco Co. Ltd. Agarpara (Calcutta Collectorate) did not normally supply cigarettes in C.F.C. and therefore, the cost of C.F.C. was not included except in cases of supplies to defence deptt. where the cost of C.F.C. was included."

1.30. The Committee desired to know whether the assessments made prior to 15-7-76 were in conformity with the instructions dated 15-7-76. The Ministry of Finance (Deptt. of Revenue) have in a note stated as under:—

"The assessments made prior to 15-7-76 were in conformity with the instructions dated 15-7-76 in almost all cases except in two cases indicated below:

Name of Collectorate	Name of the assessee	Practice of assessment
(1) Bangalore	M/s. I.T.C., Bangalore	The whole-sale dealers of I.T.C., were treated as 'related persons' by the Collectorate and the price at which these dealers were selling their goods was taken as the assessable value. However, assessment were subsequently made provisional excluding the cost of C.F.C. These provisional assessment were in conformity with the instructions dated 15-7-76. The assessment have not been finalised as the assessee filed a writ in the High Court of Karnataka and obtained a stay order.
(2) Guntur	M/s. Duncan Tobacco Company, Bikkavole	The assessments were in conformity with the Board's instructions of 15-7-76 except in the cases where the supplies were made in C.F.C. and in these cases the cost of C.F.C. was included in the assessable value.

1.39. The Committee desired to know if the concepts of initial, additional and subsequent packings were extended to other commodities also. The Ministry of Finance (Department of Revenue) have in a note stated as under:

"The Boards instructions dated 12.5.76, 15.7.76 and 24.9.76 and the Law Ministry's advice on different dates mentioned earlier apply not only to cigarettes but to other excisable products. However, as has been explained in the Law Ministry advice dated 30-4-76, as per the explanation to clause 4(d)(i) of Sec. 4 it is only the wrapper, container etc., in which or on which the excisable goods are wrapped, contained or wound would come within the meaning of packing. If there is any other packing apart from the initial packing referred to in the explanation, that would constitute additional packing and its cost cannot be included in the assessable value of excisable goods. It was clarified in Board's letter that only the cost of the unit packing alone is to be taken into account and the cost of wooden boxes and cardboard cartons, jute, cloth, iron strips, etc. will have to be excluded. In the case of *Indo-National Co. vs. Union of India*, the Andhra Pradesh High Court also held, after examining Section 4(4)(d) that the cost of secondary packing of the goods was not liable to be included in the assessable value. The cost of the display boxes and cartons used in the packing of dry cell batteries was accordingly held not liable to be included in the assessable value of dry cell batteries. Apart from dry cell batteries other items like China and Porcelain ware, Glassware, Prepared and preserved food, soap, small tools and similar other goods are also packed in fibre board cartons. In all these cases if the packing was not initial but secondary its costs are to be excluded for determining assessable value. However, the matter is one of fact in each case as to whether this packing is primary or secondary. Such cartons can also be primary packing where nothing like the 'outer' as in the case of cigarettes, is used."

1.40. The Committee find that according to Section 4(4)(d)(i) of Central Excise and Salt Act, 1944, where goods are delivered at the time of removal in a packed condition, value includes the cost of such packing except the cost of packing which is of a durable nature and is returnable by the buyer to the assessee. According to the

explanation thereunder 'packing' means the wrapper, container, bobbin, pirn, spool reel or warp beam or any other thing in which or on which the excisable goods are wrapped, contained or wound.

Under Section 2(f) of the Act, 'manufacture' includes any process incidental or ancillary to the completion of a manufactured product and in relation to manufactured tobacco includes the labelling or relabelling of containers or repacking from bulk packs to retail packs or the adoption of any other treatment to render the product marketable to the consumer. Similarly in relation to patent or proprietary medicines, cosmetics and toilet preparations, manufacture includes the conversion of powder into tablets or capsules, the labelling or relabelling of containers intended for consumers and repacking from bulk packs to retail packs or the adoption of other treatment to render the product marketable to the consumer.

1.41. The Board of Central Excise and Customs issued a clarification on 11-3-76 based on the advice of the Ministry of Law, Justice and Company Affairs dated 15-11-1975 that in regard to the situation where containers are of a durable nature and belong to the buyer, the cost of such containers should be included in the assessable value. They further circulated on 12-5-1976 the advice of the Ministry of Law, Justice and Company Affairs dated 30th April, 1976 to the effect that "if there is any other packing apart from the initial packing referred to in the explanation under Section 4(4)(d)(i), it would appear to be difficult to say that the cost of such additional packing which is apart from the packing in which or on which the excisable goods are wrapped, contained or wound, can be included in the assessable value of the excisable goods".

1.42 Again the Board in their Circular dated 15-7-1976 further clarified that their instructions dated 12-5-1976 were to be read with other provisions of the Act and in the case of cigarettes, 'Cigarettes' will be regarded as manufactured when they have been put into a paper wrapper or aluminium packed paper and are packed into card board cartons of 10's, 20's etc. and the cost of container into which such retail packets of 10's, 20's etc. are contained will under section 4(4)(d)(i) get included in the assessable value. In still another circular dated 24-9-76, the Board, however, clarified that the cost of corrugated fibre containers in which paper, card board, outers containing cigarette packets of 10's, 20's, 50's or 100's were delivered would not get included in the assessable value of cigarettes. The Committee are constrained to observe that the most charitable inference that one can draw from the issue of so many conflicting

instructions in such rapid succession over a limited period of under six months is that this important matter was, at no stage, given the serious thought that it deserved.

1.43. The circular dated 12-5-76 was issued by the Central Board of Excise and Customs after discussion by an Under Secretary with the Ministry of Law, Justice and Company Affairs regarding the inclusion of the cost of packing charges in the assessable value. The Finance Secretary conceded during evidence that such complicated issues should be considered at a fairly high level. The Committee consider that the interpretation of the provisions of the Act like the one in question has far reaching effects on revenue and should invariably be subjected to thorough and proper examination by the Government. They accordingly recommend that suitable departmental instructions in this direction may be issued forthwith in order to avoid recurrence of similar instances in future.

1.44. The Committee also learn that on a representation dated 19 May 1976 made by the Cigarette Manufacturers Association, Calcutta, the Board issued yet another circular on 24-5-76 to the effect that corrugated fibre board container is not the type of packing referred to in sub-clause (i) of clause (d) of sub-section (4) of section 4 of the Central Excises and Salt Act, 1944 and hence their cost should not be included in the value of cigarettes. This circular was issued to the field formations within a short period of 5 days after the date of the representation of the Cigarette Manufacturers Association. Strangely enough, this authoritative decision was conveyed by the Board without any consultation with the Ministry of Law, Justice and Company Affairs. The hurried manner in which these instructions were issued by the Board leaves doubt in the mind of the Committee whether these were really based on an objective consideration of the issue on merits.

1.45. The Committee find that the cartons in which bottles of drugs are packed are treated as part of the manufacture and included in the assessable value whereas the cartons in which "cigarettes" are packed do not constitute part of the manufacture and are not liable for inclusion in the assessable value. According to Member (Excise) the cigarettes can be sold without the corrugated fibre container which is not essential to render the product marketable to the consumer. The Committee fail to comprehend the reasons for this differentiation which has resulted in under assessment of the value of cigarettes. They would like the Government to apprise the

**Committee of the detailed reasons for treating the containers on different footing in these two cases.**

1.46. The Committee also find that the relevant provisions of the Central Excises and Salt Act providing for inclusion of the cost of packing in the assessable value make a specific exception only in respect of such packing as is of durable nature and returnable by the buyer to the assessee. The Act makes no distinction as regards 'initial packing', 'additional packing' and 'subsequent packing' etc. Nevertheless, the Ministry of Finance, in their various instructions seem to have adopted these vague and undefined phrases to indicate what should or should not be included in the assessable value. The Committee feel that this has not only resulted in a lot of confusion in the field formations who have actually to apply the relevant provisions of the law, but also encouraged the various cigarette manufacturers to claim exemptions alternatively in respect of corrugated fibre board cartons or, as in the case of the Indian Tobacco Co. Ltd. Saharanpur, corrugated fibre board cartons as well as the outers containing the cigarette packs of 10's, 20's and 50's etc.

In the resultant fluid situation the Committee find that a number of assesseees have taken recourse to courts of Law and various High Courts have given different decisions. While, according to the Andhra Pradesh High Court, the cost of 'primary packing' alone is to be included if it is not returnable by the buyer, according to Gujarat High Court the packing material does not constitute a process incidental or ancillary to the completion of the manufactured product at all. The latter decision is in appeal before the Supreme Court. In order to clear this administrative confusion, and also reduce the plethora of litigation and safeguard revenue, the Committee would recommend that the Government should examine the issues involved in depth to see if the Excise Law can be so amended as to make the position abundantly clear.

## CHAPTER II

### UNDER ASSESSMENT OF PAPER & PAPER BOARDS

#### *Audit Paragraph*

2.1. A factory manufacturing paper and paper boards, used wrapper manufactured by it for packing paper and paper boards. The duty on such paper and paper boards was to be calculated on the total value of the goods including the cost of wrapper. However, the factory excluded from the assessable value the element of duty paid on wrapper paper. This resulted in underassessment of about Rs. 1,02,000 during the period September 1977 to June 1978.

The Ministry of Finance have accepted the objection as substantially, correct (December 1979).

[Paragraph 77(b) of the Report of the C&AG of India for year 1978-79—Union Govt. (Civil)—Revenue Receipts—Vol. I.—Indirect Taxes]

2.2 M/s. Sirpur Paper Mills Limited, Sirpur, Kagaznagar were manufacturing paper, paper boards and also the wrapper paper. The assessee used wrapper paper manufactured by it for packing of paper and paper boards. The duty on such paper and paper boards was calculated on the total value of the goods including the cost of the wrapper paper. But the element of excise duty paid on wrapper paper was excluded while arriving at the assessable value of paper and paper boards though the element of Central Excise duty formed an inseparable part of the cost of the wrapper paper.

2.3. During the scrutiny of sales invoices, gate passes and despatch advices of the assessee in October 1977 and September 1978 it was observed by Audit that the licensee was collecting from the buyers, apart from the sales consideration for the gross value of the paper supplied, Central Excise duty at the rate applicable to the contents and all excise duty on the wrapper.

2.4. According to Section 4(4) (d) (i) of the Central Excises and Salt Act, 1944, value in relation to any exciseable goods where such goods are delivered at the time of removal in a packed condition includes cost of such packing except the cost of packing which is of a durable nature and is returnable to the assessee.



2.5. Under Section 4(4) (d) (ii) of the Act value does not include the amount of the duty of excise, sales tax and other taxes, if any, payable on such goods and, subject to such rules as may be made, the trade discount (such discount not being refundable on any account whatsoever) allowed in accordance with the normal practice of the wholesale trade at the time of removal in respect of such goods sold or contracted for sale.

2.6. No deduction can, however, be claimed/allowed in respect of the element of excise duty, sales tax etc. paid on the raw materials/inputs or the intermediate product utilised in the manufacture of the finished product in question *vide* Ministry of Finance No. 312/1/75-CX 10 dated 8 August, 1975 and 18 September, 1975. For instance, a factory manufacturing paper and paper boards, using wrapper paper manufactured by itself for packing, paper and paper boards, will be required to include the cost of wrapper paper and the amount of excise duty paid thereon, while arriving at the assessable value of paper and paper board.

2.7. In a note the Ministry of Finance (Department of Revenue) have furnished the following information in regard to the tariff item and rate of excise duty on paper, paper boards and wrapper paper:

“Paper, paper boards and wrapper paper are classifiable under item 17 of the Central Excise Tariff. Under this item uncoated and coated printing and writing paper (other than poster paper) are classifiable under sub-item (1) of item 17 and are chargeable to duty at the tariff rate of 25 per cent *ad valorem*. Paper board and all other kinds of paper (including wrapper paper) are classifiable under sub-item 2 of item 17 and are chargeable to duty at the tariff rate of 40 per cent *ad valorem*. However, concessional rates of duty have been prescribed for paper and paper boards *vide* notification 68/76 dated 16 March, 1976 as amended and 278/76 dated 17 November, 1976 and 15/78 dated 24 January, 1978.”

2.8. The Committee wanted to know why the omission regarding non-inclusion of the element of excise duty on wrapper paper in assessable value of paper and paper products in the case of assessee referred to in Audit Para remained undetected by the Department. The Ministry of Finance (Department of Revenue) have in a note stated as under:

“Vide his letter C.No. V/17/8/1/76 MP dated 9-8-76, Collector of Central Excise, Hyderabad had directed that the

wrapping paper should be cleared on payment of duty prior to its use as wrapper, and thereafter the value of such wrapping paper including the duty element should be added to the value of the paper before the assessable value of such paper is determined. It however, appears that the aforesaid instructions of the Collector were lost sight of."

2.9. The Committee wanted to know how and at what stage the implementation of the order was lost sight of. In a note the Ministry of Finance (Department of Revenue) have stated as under:

"Since the assessee had undertaken to follow the procedure as indicated in reply above and the value charged by them was inclusive of the weight/value of wrapper which was not separately shown, it was felt though wrongly that the proper procedure had been followed by the assessee. The instructions came to light only on verification of the invoices by the revenue audit wherein the duty paid on the wrapper paper was charged and collected from the buyers by the assessee in addition to the value charged for the paper."

2.10. Asked about the procedure that is followed in the Office of the Collector of Central Excise to watch compliance with such orders, the Ministry of Finance (Department of Revenue) have explained the position as under:

"Whenever instructions are issued to the subordinate formations, the Collectorate Office insists on acknowledgement of the instructions and wherever its implementation involves revenue implications it also calls for a compliance report from the subordinate formations. In the instant case, the Assistant Collector Warangal conveyed in his letter of 2-9-76 that the instructions of the Collector were being followed."

2.11. Enquired in regard to the background on which the Collector's Order 9-8-76 were issued, the Ministry of Finance (Department of Revenue) have intimated in a note as follows:

"M/s. Sirpur Paper Mills manufacture paper and wrapper paper (packing material). The wrapper paper manufactured by them is used solely in the factory for packing other varieties of paper. Prior to 16-3-76, the duties were levied at specific rates, *ad valorem* duties on paper

were introduced w.e.f. 16-3-76. Prior to 16-3-76, M/s. Sirpur Paper Mills were discharging the duty liability on paper and wrapper paper at specific rates separately. Consequent to introduction of ad valorem duties on paper and paper board it came to the notice of the Board that uniform practice was not being followed in regard to assessment of paper manufactured by Mills for use as wrapper within the Mills. The Collectors were, therefore, asked to intimate the practice followed in their respective Collectorates. It was in this context that Inspector of Central Excise, Sirpur (incharge of the Mills) *vide* his letter dated 27-7-1976 intimated the practice of assessment followed in Sirpur paper Mills to the Collector of Central Excise, Hyderabad. It was reported that the wrapper paper was allowed to be used for packing the paper which was being cleared and the cost of such wrapper paper was being included in the cost of the ultimate paper cleared under ad valorem assessment. This mode of assessment appeared to be incorrect to the Collector Central Excise, Hyderabad and he consequently issued directions to the jurisdictional Assistant Collector *vide* his letter dated the 9th August, 1976."

2.12. Asked if the aforesaid instruction dated 9-8-1976 was issued only in respect of the assessee in question, the Ministry of Finance (Department of Revenue) have in a note, replied in the affirmative and added that at that point of time no other units manufacturing paper were in existence in the Hyderabad Collectorate.

2.13. Enquired in regard to the action taken on the instruction *ibid*, the Ministry of Finance (Department of Revenue) have stated as under:—

"The Collector's instructions of 9-8-1976 were conveyed to the Officer incharge of the mills on 17-8-1976 by the Assistant Collector, Warangal. The assessee objected to the payment of duty separately on the wrapper paper on the ground that it involved double taxation and also opposed to Section 4(1) of the Central Excises and Salt Act, 1944. The Inspector, thereupon, informed the Assistant Collector that he had issued a memorandum to the assessee on 19-8-1976 to clear the wrapper paper separately on payment of duty after getting the price list and the classification list approved by the Assistant Collector IDO, Warangal. The Assistant Collector in his

letter of 2-9-1976 informed the Collectorate Office that he had issued necessary instructions to the Superintendent and Inspector to ensure that the wrapper paper was assessed first separately under T.I. 17(2) before its use as wrapping material for other paper and to take steps, if the assessee failed to do so. The classification and price lists filed by the assessee were also reported to have been approved. The Inspector incharge of the mills conveyed to them the procedure prescribed by the Collector. However, the procedure was reported to have been introduced by the assessee under protest, without prejudice to its claims of refund when the matter was finalised on representation."

2.14. The Committee wanted to know the basis on which the assessable value and the excise duty payable by the assessee company was arrived at. The Ministry of Finance (Department of Revenue) have in a note intimated as under:—

"The assessee declared the normal price of paper/paper boards to include the cost of wrapper paper which had earlier discharged duty liability at the appropriate rate before being used as packing material, without including the element of duty paid on such packing material."

2.15. Enquired if the short levy had since been recovered from the assessee, the Ministry of Finance (Department of Revenue) have stated as under:—

"The amount of Rs. 3,91,091.96 p. demanded in the order (original) No. 5/80 dated 12-4-1980 was not realised as the Central Board of Excise and Customs granted stay of the recovery proceedings in F. No. 194/384/80 A. U. (B) dated 1-1-1981 for a period of two months subject to furnishing the bank guarantee of the equal amount involved. The assessee furnished guarantee for a total amount of Rs. 4,91,897.96 inclusive of penalty of Rs. 1,00,000/- and the bank guarantee is valid upto 7-4-1981."

2.16. The Committee wanted to know the details of similar cases detected in other Collectorates. The Ministry of Finance (Department of Revenue) have furnished a list (Appendix VII) of 12 more assesseees where under-assessments have occurred on the same ground. The amount of under-assessment in the case of 11 assesseees works out to Rs. 73,32,617.53 and in respect of M/s. Rohtas Industries Ltd. Patna the amount has not been indicated.

2.17. Asked about the reasons for the existence of such a large number of cases which involved substantial amount and the steps taken to realise the outstanding dues, the Ministry of Finance (Department of Revenue) have furnished a statement which is at Appendix VIII.

2.18. It is seen from the statement that the amount of under-assessment in respect of Rohtas Industries Ltd. in Patna Collectorate is of the order of Rs. 50,48,153.77. Show cause notice has been issued in this case and the matter is under adjudication. Of the remaining 11 assessees, the position is as follows:—

- (i) recoveries to the tune of Rs. 3,21,353.81 have been effected in 6 cases after reduction of a sum of Rs. 41.5 thousand in appeal by an assessee. (Mysore Paper Mills Ltd. Bhadravati; Everest Paper Mills (P) Ltd. Ganganagar; Amravati Venkatesh Paper Mills Ltd. Saminathpuram; Decor Paper Mills Co. Mudua; Kollerua Paper Mills Ltd. Bommulur Eluru I, Town Range, Penalur Paper Mills Ltd.)
- (ii) demands totalling Rs. 53,87,459.78 have been confirmed in 2 cases and action is being taken to realise the demands; (Titagarh Paper Mill Co. Ltd. A.P.P. Mills, Rajamundri).
- (iii) in one case the demand of Rs. 15,68,744.00 is pending realisation because of the stay granted by the High Court. (Bellarpur Industries, Ltd. Bellarpur).
- (iv) Show cause notices have been issued in two cases where demands of Rs. 13,491.95 have been confirmed. (Mandya National Paper Mills, Bangalore; South India Paper Mills, Namjangud (Mysore).

2.19. According to the instructions of the Ministry of Finance contained in their letter Nos. 312/1/75-CX10 dated 8-8-75 and 13-9-75 no deduction could be claimed or allowed in respect of the element of excise duty, sales tax etc. paid on the raw materials/inputs or the intermediate product utilised in the manufacture of the finished product.

2.20. M/s Sirpur Paper Mills Ltd. Sirpur, Kagaznagar were manufacturing paper, paper boards and also the wrapping paper. The assessee used the wrapper paper manufactured by it for packing of paper and paper boards. The duty on such paper and paper boards was calculated on the total value of the goods including the cost of the wrapping paper but the element of excise duty paid on wrapper paper was not included while arriving at the final assessable value

of paper and paper boards. This resulted in under-assessment of excise duty amounting to Rs. 1.02 lakhs on paper and paper boards cleared by the assessee during September 1977 to June, 1978.

2.21. The Committee are distressed to note that this lapse occurred despite clear instructions issued by the Collector of Excise, Hyderabad on 9-8-1976 to jurisdictional Asstt. Collector, Warangal wherein the former had directed that the value of the wrapping paper including the duty element thereon should be added to the value of the paper before the assessable value of such paper is determined. Surprisingly enough even after the Asstt. Collector Warangal had conveyed in his letter dated 2-9-1976 that the aforesaid instructions were being followed, in actual practice duty element on wrapping paper was not included in the assessable value of paper and paper boards cleared by the factory. No plausible reasons for this lapse except that the instructions were 'lost' sight of are given. According to the Ministry of Finance whenever instructions involving revenue implications are issued to the subordinate formations, the Collectorate Office calls for a compliance report on their implementation. It appears that no such report had been called for by the Collectorate in the case in question. This shows gross failure at various levels in regard to the implementation of the clear-cut instructions and compliance with the set procedure. The Committee take a serious view of this lapse and recommend that the matter may be investigated thoroughly and responsibility fixed for disciplinary action against the officials found responsible for the lapses.

2.22. The Committee find that an amount of Rs. 3,91,891.96 was demanded from the party on 12-9-80 but the same has not been realised due to grant on 1-1-81 of stay of the recovery proceedings by the Central Board of Excise and Customs. The Committee would like to be apprised of the reasons for the grant of stay by the Central Board of Excise and Customs and the present position in regard to the recovery of the amount involved.

2.23. The Committee are concerned to find that besides the assessee referred to in the Audit Paragraph, there are 12 more cases of assesseees where under-assessment to the tune of about Rs. 1.24 crores occurred on the same ground i.e. non-inclusion of the duty element of wrapping paper in the assessable value of the paper and paper boards cleared. From the information made available to the Committee it is seen that a sum of Rs. 3.21 lakhs only has been realised so far from 6 assesseees after reduction of a sum of Rs. 41.5

thousand on appeal by an assessee and a sum of Rs. 1.20 crores is still pending recovery from the remaining 6 assessees. Excepting in one case where the recovery has been held up due to stay granted by the High Court and in a second case where the matter is under adjudication the demands in respect of four others have already been confirmed. Since the amount involved is quite substantial, the Committee recommend that concerted efforts may be made for effecting the recoveries expeditiously.

2.24. As the under-assessments in these cases have occurred in gross violation of the clear-cut instructions in regard to the inclusion of the duty element of wrapping paper in the assessable value of the paper and paper boards cleared, the Committee would like to be apprised of the precise reasons for the lapse in each case. They also desire to be informed of the remedial measures taken by the Department to ensure that similar lapses do not recur in future.

## CHAPTER III

### Audit Paragraph

#### Non receipt of proof of export:

3.1. Under rule 8 of the Central Excise Rules, 1944, read with notifications issued under rule 12 *ibid*, excisable goods can be exported without payment of duty under bond, but the proof of export is required to be furnished to the proper Central Excise officer within five months from the date on which such goods were first cleared for export from the producing factory or such extended period as might be allowed by the Collector of Central Excise in any particular case. The maximum period for submitting proof of export is, however, fixed as two years. According to rule 14-A, an exporter who fails to furnish proof of export within the prescribed period to the satisfaction of the Collector shall upon a written demand forthwith pay the duty leviable on such goods and shall also be liable to pay penalty subject to a maximum of rupees two thousand.

3.2. During test check of excise records in three collectorates, it was noticed by Audit that necessary proof of goods involving duty of Rs. 69,30,182 had not been furnished by four assessees within the stipulated period. In one case, the duty on goods exported by one of the assessees exceeded the amount of bond by Rs. 40,510. In the case of the second assessee, the validity of bonds had expired in a number of cases.

3.3. On the omission being pointed out in audit, the department recovered Rs. 54,794 from one assessee and issued a show-cause notice demanding Rs. 50,22,266 from the second assessee. Report of the action taken against the other two assessees is awaited.

3.4. The Ministry of Finance have confirmed the facts in the case of one assessee. The cases of other three assessees are stated to be under examination.

[Paragraph 78 of the Report of the C&AG of India for the year 1978-79—Union Govt. (Civil) Revenue Receipts, Vol. I, Indirect Taxes.]



3.5. Rule 9 of the Central Excise Rules, 1944, prohibits the removal of excisable goods in or outside the place of their manufacture unless the duty leviable thereon is paid. However, under Rule 13 of the Central Excise Rules, 1944 read with the notifications issued by the Government of India under Rule 12 *ibid*, excisable goods can be exported without payment of duty under a Bond. The exporter may execute a single bond or General bond known as Running Bond. Duty payable on goods removed for export is debited to a Running Bond account. When proof of export is produced, the debit is withdrawn. In such cases, the proof of export is required to be furnished to the proper Central Excise Officer within five months from the date on which goods were first cleared from the producing factory or such extended period as may be allowed by the Collector of Central Excise in any particular case.

3.6. The maximum period for submitting proof of export is, however, fixed as two years. According to Rule 14-A of the Central Excise Rules, 1944, an exporter failing to furnish proof of export within the prescribed period to the satisfaction of the Collector, shall upon a written demand, forthwith pay the duty leviable on goods and shall also be liable to pay penalty subject to a maximum of two thousand rupees.

#### **Procedure for export of goods under bond:**

3.7. The cases or Packages containing the goods should be presented to the proper Excisable Officer at least 24 hours before the intended removal of the goods together with an application for export (AR 4) in quadruplicate. After verifying the particulars in the application and satisfying himself that the goods are identifiable, the proper Excise Officer should seal each package or case. He should then certify on all copies of application that he has (i) examined the consignment indicated therein, (ii) satisfied that the particulars stated in the description are correct, (iii) the owner has entered into a bond under rule 13 of the Central Excise Rules, 1944 and (iv) he has sealed the packages after examination on all copies of AR 4. Thereafter, he should return the duplicate and triplicate copies to the exporter who, after despatching the goods should enter the number and date of railway receipts in those copies and communicate these particulars to the said officer for entry in other copies. Original copy of AR-4 is then sent by the proper officer to the Maritime Collector and the quadruplicate copy is kept by him. The Maritime Collector, on receipt of the original copy of AR 4 from

the Excise Officer, raises necessary debit in the Running Bond Account of the exporter and acknowledges the fact of the receipt of the AR-4 copy to the Range Officer.

3.8. On arrival at the port of export the goods are presented to the Custom Officer alongwith shipping documents and duplicate and triplicate copies of AR-4. The goods are then carefully examined. The Custom Officer after satisfying himself that the consignments are identifiable with the particulars in AR-4, permits export of the goods.

3.9 After shipment of the goods, certificates No. 2 and 3 in AR-4 that the goods have been duly exported indicating the shipping bill number and other particulars of export, are completed. The duplicate copy of AR-4 is collected by the Maritime Collectorate while the triplicate is return to the exporter.

3.10. On shipment of the goods, the exporter files the triplicate copy of AR-4 alongwith the shipment documents with the Maritime Collector who on scrutiny of the AR-4 and tallying the same with the original AR-4 received from the Custom House, affords necessary credit to the Running Bond Account of the exporter.

3.11. The Committee wanted to know what the Running Bond Accounts were, how these were maintained and the checks exercised for their proper maintenance by the various officers of the Department. In a note the Ministry of Finance (Department of Revenue) have stated as under:

"The Running Bond Account is required to be maintained in Form F [Annexure I(aa)]. This Form is designed to show the total value of the bond, debit, as also the value released for export. The Running Bond Account is maintained by the Maritime Collector if the Bond is filed with him and by the Assistant Collector of the factory if the Bond is filed with him. The credit entry in the Bond account is made as soon as the proof of export is furnished. The credit entry is made by the Maritime Collector or by the Assistant Collector of the factory of export depending on where the bond is filed. The officer maintaining the running bond account posts debit/credit entry. The checking of the running bond account is required to be done by the first week of each month. Instructions have been issued in Board's F. No. 206/7/72 CX-6 dated 7-9-1972 [Annexure I(b)] that the internal audit should

audit running bond account in the offices of all the Maritime Collectors to ensure that there are no arrears. The Internal Audit is also required to see whether the proof of export is being sent promptly to the concerned officer of the Collectorate."

3.12. Enquired as to what the proof of export was and whether it was required to be furnished by the exporter after obtaining it from the Maritime Collector or was it sent by the Maritime Collector to the concerned Excise Collectorate, the Ministry of Finance (Department of Revenue) have explained in a note:—

"The proof of export consists of the duplicate copy of AR4/AR 4A bearing a certificate of export by the Customs Officer which is sent by him to the concerned Maritime Collector. In addition the exporter would also require to furnish the triplicate copy of AR4/AR4A returned to him by the Customs Officer containing the certificate of export to the Maritime Collector which also serves as a proof of export. The Maritime Collector on receipt of duplicate and triplicate copies of the AR4/AR4A intimates the Central Excise Officer in charge of the factory in regard to the proof of export being admitted."

3.13. The Audit Paragraph brings to light certain cases in respect of the following 4 units, where goods were removed under Bond for export but proof of export was not furnished with the result that it was not known whether the goods were exported or diverted for home consumption.

"I—M/s Hyderabad Engineering Industries, Balanagar, Hyderabad.

Four cases of non-production of proof of export made in 1973 and 1975 were noticed by Audit. On this being pointed out the Department replied that in two cases the Unit had later produced proof of export and in the other two cases a sum of Rs. 54,794 had been recovered.

II (a)—M/s Binod Mills, Ujjain.

There were 99 cases for export during 1971 to 1973 [1971 (60) 1972 (11) 1973 (28)] involving duty amounting to Rs. 4,06,320 wherein the validity of Bond had expired before the production of proof of export. On this being pointed out by Audit, the Department replied in October 1979 that proof of export in respect of 78 cases involving and amount of Rs. 3,11,428 had been received upto 13-9-79 and such

proof in remaining 21 cases involving Rs. 94,892 was still awaited.

(b) M/s Bhilai Steel Plant, Bhilai.

22 cases of export during 1969 to 1976 involving duty amounting to Rs. 14,46,802 were noticed by Audit wherein proof of export was not produced. On this being pointed out by Audit, the Ministry replied that in respect of consignments exported by the assessee under Bond proof of export had been furnished by them within the prescribed time limit, but there was some delay in receipt of this information from the Maritime Collector. The Ministry further stated that the position was being reviewed and necessary action for realisation of duty, if any, would be taken in all cases where no proof of shipment was forthcoming.

III. M/s Tata Engineering and Locomotive Company Limited, Jamshedpur.

It was noticed by Audit in April, 1973 that proof of export was not furnished even after expiry of two years in respect of the goods removed under bonds for exports involving duty amounting to Rs. 50,22,206."

3.14. Since the running bond accounts were required to be audited by the Internal Audit in accordance with the instructions issued by the C. BE&C on 7-9-72, the Committee wanted to know as to how the non-furnishing of proof of export in the cases pointed out in the Audit Paragraph could not be detected by them. In a note the Ministry of Finance (Deptt. of Revenue) have explained the position as under:

"In respect of the cases pointed out by the Audit in Patna Collectorate it has been reported that all the goods have been either exported or diverted for home consumption after obtaining permission of the proper officer and on payment of duty.

In respect of the cases relating to Indore Collectorate it has been reported that in majority of the cases the goods were exported. However, the Internal Audit Party of the Indore Collectorate while auditing the accounts of the Bhilai Steel Plant, Bhilai and the Range records has taken note of non-receipt of release orders admitting proof of export from Maritime Collector within the stipulated time.

In regard to the cases pertaining to the Hyderabad Collectorate it has been reported by the Collector Central Excise Hyderabad that proof of export was received in respect of all but four cases. Out of these four cases, the time limit for submitting the proof of export had not expired in two cases and in the other two cases the goods were actually exported and the assessee had produced the photostat copies of the shipping bills. The two cases in which the time limit for proof of export had not expired were noticed by the departmental officers themselves and since it was observed that these goods were diverted for home consumption the assessee was required to pay the duty thereon and a penalty of Rs. 250/- was imposed."

3.15. From the information furnished it is seen that the running bond accounts were required to be checked in the first week of every month by the Maritime Collector or Asstt. Collector of factory with whomsoever the bond was filed. The Committee wanted to know whether these checks were carried out in respect of the cases pointed out by the Audit. The Ministry of Finance (Deptt. of Revenue) have in a note stated as under:

"Prior to May 1975, the running bond account was required to be maintained by the Maritime Collectors only. From May 1975 onwards the Range Supdt. was required to maintain an export register containing particulars of all exports made by the assessee from time to time and was required to check this register every month with a view to satisfy himself that all the exports have been made by the assessee within stipulated time. In cases the proof of export had not come within the stipulated time the Range Supdt. was required to enquire from the Maritime Collector if the exports had been made or not and to raise demands if not already done by the Maritime Collector.

In respect of the units involved in the audit para exports mostly relate to the period prior to May 1975 and the concerned Maritime Collectors are Bombay, Calcutta and Visakhapatnam. Maritime Collector, Bombay has intimated that the checking of the running bond account was being done regularly. In the case of Maritime Collectors, Calcutta and Visakhapatnam, it appears that no such check was carried out."

3.16. In a subsequent note, the Ministry of Finance (Deptt. of Revenue) have intimated the following reasons for not having exercised the prescribed checks in the office of Maritime Collectors at Calcutta and Vishakapatnam:—

“Collector, Central Excise Calcutta has reported that the running bond accounts were verified at the time of admitting the proof of export by the supervising officers and the prescribed scale of checks could not be adhered to due to work-load. However, the prescribed checks are being carried out now.

Collector, Central Excise, Guntur has reported that the running bond account could not be checked at Visakhapatnam owing to paucity of staff especially during the period when the shipments of Bhilai Steel Plant were at their peak.”

3.17. The Committee desired to know if the Ministry had enquired into the aforesaid cases to verify whether the goods were actually exported or not. The Ministry of Finance (Deptt. of Revenue) have in a vote stated as under:

“Collector concerned had reported that in majority of the cases, the goods were exported but in some cases the proof of export was wanting, they were ascertaining the factual position from the concerned Maritime Collectors. In a few cases where the goods were diverted for home consumption duty is reported to have been paid.

It has now been reported that the goods involved in the Patna Collectorate have either been duly exported or have been diverted for home consumption after obtaining the permission of the proper officer and on payment of duty thereon.

In respect of Hyderabad Collectorate, in all cases goods had been duly exported except in two cases where the goods were diverted for home consumption on which the duty involved has been recovered from the Assessee.

As regards Indore Collectorate goods have been exported in all cases except seven, in case of Binod Mills, Ujjain and three cases of Bhilai Steel Plant and the matter is under correspondence with the Maritime Collectors.”

3.18. Subsequently in a note the Ministry of Finance (Deptt. of Revenue) have stated as under:

"In respect of exports of Bhilai Steel Plant Bhilai and Binod Mills Ujjain, it has been reported by the jurisdictional Collector of Central Excise that all goods involved in the Audit Para have been duly exported and in case of short-shipments differential duty has been recovered."

3.19. In the case of Tata Engineering and Locomotive Company Ltd., Jamshedpur, the audit raised objection in April, 1973 but the show cause notice for non-submission of proof of export was issued to the assessee in December, 1978. The Committee wanted to know the reasons for the delay of more than 5 years in this case. The Ministry of Finance (Deptt. of Revenue) have stated in a note as under:—

"It has been reported by the Collector concerned that in the Inspection Report of the Audit the particulars regarding AR4s involved were not indicated. Since the number and data of AR4s for which the proof of export were wanting were not available, it took time to ascertain the particulars. As in this case running bond account was being maintained with the Maritime Collector and not with the Jurisdictional Supdt. the particulars could be gathered from the assessee's records only. This led to protracted correspondence upto December, 1978. When the factory failed to produce the upto-date position of outstanding cases of the above mentioned bonds then an offence case was booked with a show cause notice in December, 1978 including all the AR4s and existing bond where proof of export as per factory records were not available and the audit was informed accordingly."

3.20. Enquired as to whether any check was carried out by the departmental officers or the Internal Audit during all these 5 years, the Ministry of Finance (Deptt. of Revenue) have informed in a note:

"Prior to May, 1975 the running bond account was required to be maintained by the Maritime Collectors only. As such the question of carrying out of any check on the running bond account by the Range Officer did not arise. Unfortunately, auditing of Running Bond Accounts in the Maritime Collectorates was not adequately done. Emphasis has now been laid on the importance of audit and supervisory executive checks."

3.21. The Committee wanted to know the reasons for the delay in the receipt of information regarding proof of export by the assessee Bhilai Steel Plant Bhilai from the Maritime Collector. The Ministry of Finance (Deptt. of Revenue) have stated:

“The exports made by Bhilai Steel Plant through Visakhapatnam were quite voluminous. The goods were not exported within the initial stipulated period of four months and extension of time was being sought for. In view of the volume of exports and the difficulty experienced in exporting the goods within the prescribed period of 4 months and produce proof of export within a stipulated period of 5 months from the date of clearance, Bhilai Steel Plant were permitted to export in either circumstances within one year which in exceptional cases could be extended subject to overall limit of two years. In some cases permission for diversion for home consumption on payment of duty was sought for and permitted. Where such permission was accorded, the connected documents had to be sent to the jurisdictional officers for verification and making necessary endorsement of payment of duty on the respective AR/4/AR4As. These factors explain the delay on receipt of information regarding the proof of export.”

3.22. Asked whether Government had made any study to locate the reasons for the delay in the receipt of proof of export for taking remedial action, the Member (Excise) stated in evidence:

“Export takes place earlier and advice is only sent later on. There has not been any loss of duty as such. If the present system has not been working satisfactorily, the Department would take action. Exports had taken place and they are taking place all the time. Only thing is that the intimation regarding the proof of export had not come to the department in time. The delay was considerable in some cases and this was rather unfortunate. But we have also, Sir, as you would appreciate, ensured that this procedure regarding export under bond and payment of duty is followed. As it means an export promotion measure and as it is a part of a scheme, Collectors have been given full discretion in waiving of the formalities under Rule 12 and other rules. This is basically an export promotion measure and we have to allow the continuance of this scheme. We have recently taken steps to tighten the procedure, relating to furnishing of proof



of exports. Sir, as you would appreciate, there are three agencies concerned in this. The whole scheme of such exports is based on the point that there should be absolute co-ordination, absolute inter-relation of checks and the plans should be executed based on their cooperation. Unfortunately there are difficulties in getting these papers, against exports which are taking place from Customs. We know there are difficulties in getting the documents maintenance of bond accounts or to transit the information of the exports to places where factories are situated. The only difficulty is about this intimation and the coordination work between the different collectors and submitting the information. We are endeavouring to see that we get the information. We shall ensure that a system of monitoring this work is evolved. As a matter of fact a point was made out about making out a policy in this regard. We have made some changes under which we have asked the Directors of Inspections to over-see the functioning of the exports under bond scheme. It is mentioned in the Collectors monthly administrative reports and it is seen what are the outstanding bonds and whether the proof of export is being sent in time."

3.23. The Committee wanted to know the position of the law in regard to the obligation on the part of the exporter and department for furnishing the proof of export. The Chairman, C.B.E.&C. has explained in evidence:

"There is something which the exporter has to do and there is also something which the department, i.e. the custom house has to do. Having exported it, the exporter gets his copy of the export document which he brings back, wherever the bond account is kept. In fact that enables him to get what is called provisional credit. That credit is not finalised till the corresponding document from the customs house reaches the factory of origin or wherever his account is kept. As has been admitted, there has been some delay in the passage of documents. In many cases, the delay would not be attributable to the exporter who has done his job, but the final matching would be awaiting the document which comes from the department itself. When we talk of action to be taken, we have to distinguish between technical lapses and other kinds of lapses. There may be delay in producing the document.

In a number of cases, there is no doubt of goods having been shipped, but the proofs have been long in coming. There it would not be appropriate to say that proof was not produced within time and he should pay duty."

3.24. From the information furnished by the Ministry of Finance (Deptt. of Revenue), it is seen that arrears of duty amounted to about 24.00 crores as on 31-3-1979 in the running bond accounts maintained by the various Central Excise and Maritime Collectorates. The Committee wanted to know the reasons for such huge arrears. The Ministry of Finance (Department of Revenue) have in a note stated as under:

"Broadly the reasons for these arrears are non-receipt of proof of export by the jurisdictional officer from the Maritime Collectors and sometimes non-maintenance of upto-date records by the Range Officers. It may, however, be mentioned that these arrears are mostly notional as in most of the cases the goods are exported but there is delay in submission acceptance and communication of proof of export by the assessee and the Department."

3.25. Asked about the steps taken to liquidate these arrears, the Ministry of Finance (Department of Revenue) have stated in a note:—

"Vigorous efforts were made to obtain proof of export from the Maritime Collector and the arrears have been considerably reduced."

3.26. It is seen that out of the arrears of Rs. 24.00 crores, the arrears in Guntur Collectorate alone were Rs. 9.00 crores on 31-3-79. Asked about the present position, the Collector of Central Excise, Guntur stated in evidence:—

"Presently it has come down to Rs. 10 lakhs, involving four cases only. Even those four would have been adjudicated had the party appeared for personal hearing on the 7th. He has sought postponement."

3.27. Asked if the exporters encountered difficulties in furnishing proof of export despite extensions permissible under the rules, the witness stated:

"The exporters submit proof of export within a few days after the shipment takes place. But to produce the AR-4 (A) copy there is some delay because the completion of

shipment formalities takes some time. The vessel may not sail for various reasons. Till the port clearance has been given, AR-4(A) will not be endorsed by the customs authorities. So, between the fact of shipment as known to him and his obtaining the AR-4(A) document from the Customs House, there may be a time lag. He may add a little more delay of his own to the process and submit it to the Maritime Collectorate Office. On receipt of this AR-4(A) document, the Maritime Collectorate Office has to match it with the copy which has to be directly obtained from the Customs House. That takes a little more time. Only after this matching is done, proof of export is reported to the original office. So, this takes a little more time."

3.28. The Committee wanted to know year-wise break-up of the arrears of duty of Rs. 24 crores as on 31-3-79 in respect of exports made under bond. The Ministry of Finance (Department of Revenue) have furnished the information in a statement which is as follows:—

	Rs.
1968-69	68,088.13
1969-70	48,259.18
1970-71	2,02,217.77
1971-72	1,730.18
1972-73	32,42,000.00
1973-74	4,53,636.16
1974-75	4,83,410.00
1975-76	76,48,989.00
1976-77	2,03,67,004.00
1977-78	5,12,69,664.04
1978-79	15,29,34,624.83
	23,67,19,623.29

3.29. Subsequently, in a note furnished in April, 1981, the Ministry of Finance (Department of Revenue) have intimated that the arrears of duty in the various Central Excise and Maritime Collectorates have been reduced to Rs. 3.32 crores.

3.30. About the position of arrears in Bombay Collectorate, the Collector of Central Excise, Bombay replied in evidence:

“Arrears as on 31-3-79 in Maritime Collectorate, Bombay are as follows:

Number of cases: 3295. Duty amount—Rs. 1,02,90,469/-

On 31-12-80, the position is:

Number of cases: 2772. Duty amount—Rs. 18,11,014.32”.

3.31. In the same context, the witness stated:

“There is some delay in the receipt of the proof of export from Customs and in communicating the proof of export to the factories of origin. The reason is that there has been a phenomenal growth of export through Bombay port. I am having accounts of export of more than 6000 exporters with me and more than 1,05,000 of AR4 forms for exports through Bombay. The work has grown so large that it has become difficult to stick to the prescribed time limit.....I have been sending one officer everyday to the Customs House to collect the documents. There is delay in the receipt of documents and there is delay in my office also because of the volume of documents.”

3.32. In order to facilitate exports, the Central Excise Rules permit removal of excisable goods meant for export under bond without payment of duty on the condition that the proof of export should be furnished within 5 months of such removal. The period can be extended by the Collector upto a maximum of 2 years. When the goods are removed from the factory the duty leviable thereon is debited in a running bond account. On receipt of the proof of export this debit is cleared. Failure to furnish proof of export in time attracts liability not only for duty but also penalty.

3.33. The Audit Para reported certain cases in which the proof of export had not been produced and recorded even though the prescribed periods and/or the validity periods of the bonds had expired. Action to recover duty was initiated in these cases only after the omissions were pointed out by Audit.

3.34. On inquiry by the Committee, the Ministry of Finance stated in December 1980 that in all the Collectorates taken together the arrears in running bond accounts amounted to Rs. 24 crores as on 31-3-1979 (Rs. 13.38 crores in the Excise Collectorates and Rs. 10.64 crores in the Maritime Collectorates). From the year-wise break-up of the arrears subsequently furnished by the Ministry the Committee observed that the arrears ranged over a period of more than 10 years.

3.35. These heavy arrears were attributed by the Ministry of Finance mainly to inadequate auditing of running bond accounts in the Maritime Collectorates, delays in receipt of proof of export by the jurisdictional officers from the Maritime Collectorates, delays in transmission of documents by the Customs Department to the Maritime Collectorates, delays in submission of documents by the Exporters to the Maritime Collectorates and non-maintenance of up-to-date records by the Range Officers.

3.36. Surprisingly, however, while the Committee were seized of this matter the Ministry of Finance reported in April 1981 that the arrears had been brought down to Rs. 3.32 crores. In a single Collectorate (Guntur) where the arrears were earlier stated to be Rs. 9 crores the revised figure was Rs. 10 lakhs.

3.37. The Committee cannot but observe that the conclusion is inescapable that the arrears had been allowed to pile up through sheer departmental lethargy. The fact that on the Committee taking up this subject for examination the arrears could be brought down substantially within 3 months is clearly indicative of the fact that the normal working of the department is not what it should be, and important items of work are allowed to fall into heavy arrears through sheer inefficiency and lack of will at all levels.

3.38. In pursuance of earlier recommendations of the Committee in paras 1.145 to 1.148 of their 44th Report (5th Lok Sabha) the Central Board of Excise and Customs had issued instructions in September 1972 to the effect that Internal Audit should audit the running bond accounts in the offices of the Maritime Collectorates by the first week of each month and should see whether the proof of export is being sent promptly to the concerned officers. It is apparent that these instructions were not followed with the result that Internal Audit also did not point out this unnecessary accumulation of arrears. The Committee are constrained to observe that fatuous pleas of excessive work-load, or paucity of staff do not sound convincing after a lapse of so many years; it was for the Board to see that proper

and sufficient staff were made available to ensure compliance with their instructions.

3.39. The Committee take note of the assurance given by the Ministry of Finance that emphasis has now been laid on the importance of audit and supervisory executive checks.. The Committee trust that the assurance will not be belied this time and that the Ministry will really take effective measures to see that this concession extended in the interest of exports is not abused by diversion of duty-free goods for home consumption.

## CHAPTER IV

### AERATED WATERS

#### *Audit Para:*

4.1. According to a notification dated 4th July 1977, aerated waters not containing extracts of cola nuts and falling under tariff item 1D(2) are assessable at concessional rate of 25 per cent *ad valorem*, provided that the said concession shall apply only to the first clearance for home consumption not exceeding 37 lakhs of bottles by or on behalf of a manufacturer from one or more factories during the year 1977-78.

4.2. A unit 'X' producing aerated waters not containing extracts of cola nuts and situated at station 'A' was getting part of its supplies from unit 'Y' situated at another station 'B'. It was noticed (June 1978) in audit that:

- (i) the units 'X' and 'Y' availed of the concessional rate of duty in terms of aforesaid notification of 4th July 1977 on the clearance from the two factories; and
- (ii) the assessable value of the product fixed at station 'B' was found lower than that fixed at station 'A'.

4.3. On this being pointed out by Audit in October 1978, the department accepted the objection and issued (November 1978) to unit 'Y' show cause-cum-demand notice for Rs. 1,08,382 on account of differential duty for the period July 1977 to January 1978. The demand has since been confirmed (April 1979), but the party is stated to have gone in appeal. The amount of underassessment for subsequent period is awaited (July 1979).

The Ministry of Finance have stated (February 1980) that the matter is under examination.

[Paragraph 52 of the Report of the Comptroller and Auditor General of India for the year 1978-79, Union Government (Civil), Revenue Receipts, Volume I, Indirect Taxes]

4.4. Aerated waters were brought under the excise net in 1970. They are covered under tariff item 1D(2). The relevant provisions thereof as they existed from 1977 to 1980 are given below:

Year	Description	Tariff rate	Effective rate
1	2	3	4
1977	Aerated waters, whether or not flavoured or sweetened and whether or not containing fruit juice or fruit pulp.		
	(1) Aerated waters which are only charged with carbon dioxide gas under pressure and which contained no other added ingredient.	25% Adv.	15% Adv.
	(2) All others.	55% Adv.	55% Adv.
			Concessional rate of 25% adv. on first clearance of 50 lakh bottles by or on behalf of a manufacturer, from one or more factories was allowed if the aerated waters did not contain cola Nut extract Notification No. 211/77,
1978	Do.	55% + +50% of basic as spl. duty.	55% + 5% of basic as special duty.
1979	Aerated waters, whether or not flavoured or sweetened and whether or not containing vegetable or fruit juice or fruit pulp.	25% Adv. -5% of basic as special duty.	20% Adv.
	(1) Aerated or waters which are only charged with carbon dioxide gas under pressure and which contain no other added ingredient.		
	(2) All others	60% Adv. +5 of basic as special duty	60% Adv. (with caffeine) 30% adv. if it does not contain caffeine.



1	2	3	4
1980	Aerated waters whether or not flavoured or sweetened and whether or not containing vegetable or fruit juice or fruit pulp.		
	(1) Aerated waters which are only charged with carbon dioxide gas under pressure and which contain no other added ingredient.	25% Adv. + 10% of special duty	20% Adv. + 5% of basic as special duty.
	(2) All others.	60% Adv. + 10% of basic as special duty	40% Adv. + 5% of basic as special duty.

4.5. An exemption notification dated 4th July 1977 was issued under Rule 8(1) of the Central Excise Rules, 1944 exempting "aerated waters not containing extracts of Cola (Kola) nuts, and falling under sub-item (2) of item No. 1D of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944) from so much of the duty of excise leviable thereon as is in excess of twentyfive per cent *ad valorem*. Provided that the exemption contained in this notification shall apply only to the first clearances for home consumption not exceeding fifty lakh bottles, by or on behalf of a manufacturer from one or more factories during any financial year subsequent to 1977-78, and for such clearances not exceeding thirtyseven lakh bottles during the period commencing on the 4th day of July, 1977 and ending on the 31st day of March, 1978".

4.6. The Committee desired to know the purpose of the aforesaid notification granting concessional rate of duty to the manufacturers of aerated waters. The Ministry stated: "As a measure to safeguard the interest of the small scale manufacturers, notification No. 211/77, providing a concessional rate of duty of 25 per cent adv. for the first clearances of 50 lakh bottles by or on behalf of a manufacturer from one or more factories, if the goods did not contain extracts of Coal Nut, was issued".

In reply to another question whether the concession in excise duty given in the aforesaid notification was admissible to big manufacturers such as M/s. Parle who have factories at different places all over the country, the Ministry stated: "In view of the quantity limit prescribed in the notification, big manufacturers would not be eligible for the concession".

4.7. A unit 'X' (M/s. Delhi Bottling Co.) producing aerated waters not containing extracts of cola nuts and situated at Delhi was getting part of its supplies from unit 'Y' (M/s. Meerut Bottling Co.) situated at Meerut. Audit had noticed in June 1978 that (i) the units 'X' and 'Y' availed of the concessional rate of duty in terms of aforesaid notification of 4th July 1977 on the clearance from the two factories; and (ii) the assessable value of the product fixed at Meerut was found lower than that fixed at Delhi.

4.8. The term 'manufacture' and 'manufacturer' have been defined under Section 2(f) of Central Excises & Salt Act, 1944 and is as under:—

- (f) "manufacture" includes any process incidental or ancillary to the completion of a manufactured product; and
- (i) in relation to tobacco includes the preparation of cigarettes, cigars, cheroots, biris, cigarette or pipe or hookah tobacco, chewing tobacco or snuff;
- (ia) in relation to manufactured tobacco, includes the labelling or re-labelling of containers and repacking from bulk packs to retail packs or the adoption of any treatment to render the product marketable to the consumer;
- (ii) in relation to salt, includes collection, removal, preparation, steeping, evaporation, boiling, or any one or more, of these processes, the separation or purification of salt obtained in the manufacture of salt pitre, the separation of salt from earth or other substance so as to produce elementary salt, and the excavation or removal of natural saline deposits or efflorescence.
- (iii) in relation to patent or proprietary medicines as defined in item No. 14E of the First Schedule and in relation to cosmetics and toilet preparations as defined in item No. 14F of that schedule includes the conversion of powder into tablets or capsules, the labelling or re-labelling of containers intended for consumer and re-packing from bulk packs to retail packs or the adoption of any other treatment to render the product marketable to the consumers;
- (iv) in relation to goods comprised in item No. 18A of the First Schedule, includes sizing, beaming, warping, wrapping, winding or reelings or any one or more of these processes, or the conversion of any form of the said goods into another form of such goods;

and the word 'manufacturer' shall be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account."

4.9. Thus the units 'X' and 'Y' fall within the definition of 'manufacturer' as per aforesaid provisions of section 2(f) of the Central Excises and Salt Act, 1944. It was reported to the Audit that unit 'Y' obtained crown corks from unit 'X' and erased the name of unit 'X' therefrom crown use. In this connection, the Committee desired to know as to how it was ensured by the Central Excise Department that such an erasing was actually done by unit 'Y' before using these crown corks. In reply, the Ministry stated: "Meerut Bottling Co. had purchased crown corks from Delhi Bottling Company as a matter of routine. They were short of crown corks. The firm used to erase from such crown corks the name of Delhi Bottling Company before use. It has been reported that aerated waters containing such crown corks were supplied not only to Delhi Bottling Company but to other buyers as well. Obviously such supplies of aerated water to other buyers cannot be with a crown cork containing the name of Delhi Bottling Company. The fact regarding eraser of crown corks was also mentioned in the form IV register (raw material) maintained by the assessee."

4.10. In reply to another query whether this case would not fall in the category of brand names, the Ministry informed the Committee thus: "A view, that use of brand name will make the owner of the brand the manufacturer of the goods, has not been accepted by the various High Courts in the judgments pronounced so far. In respect of aerated water itself a lot of petitions are pending in High Courts. Since the matter is *sub-judice* and not finally determined judicially it is not possible to say at this stage that the case referred to in the Audit para will fall in the category of brand names."

4.11. Subsequently the Ministry informed the Committee on 16th April, 1981 that the issue in the case whether the use of brand name will make the owner of the brand name the manufacturer of the goods which was reported to be pending has been finally heard in the Delhi High Court but the judgment has been reserved and therefore the Department was not in a position to give any further details at that stage.

4.12. When this case was brought to the notice of the Department of Central Excise by Audit in October 1978, the Department accepted the objection and issued to unit 'Y' show cause-*cum*-demand notice in November 1978 for Rs. 1,08,382 on account of different duty for the

period July 1977 to January 1978. The demand was confirmed in April, 1979 but the assessee went in appeal. The present position as indicated by the Ministry in April 1981 is that "the appeal of the Meerut Bottling Company is still pending with Appellate Collector and the demand is under persuasive action". No demand for subsequent period has been raised as the goods supplied to M/s. Delhi Bottling Company were bottled by M/s. Meerut Bottling Company by putting their own crown corks as they had no balance of crown corks of M/s. Delhi Bottling Company after 31st December 1977."

4.13. The Public Accounts Committee while examining paragraph No. 48 of the Report of C&AG for 1975-76 had observed that there was no coordination between various Collectors in regard to the approval of price list of the goods produced in different factories of the manufacturer located in different Collectorate and that the desirability of prescribing a suitable procedure in this behalf should be examined by the Board.

4.14. The Ministry of Finance have intimated that necessary instruction consequent to aforesaid observations of the Public Accounts Committee were issued in November 1978. The instructions *inter alia* provide: "It has been decided that in case of a manufacturer having factories producing goods of the same kind, in different Divisions/Collectorates, the following procedure should be followed with regard to the approval of price-list of such manufacturers:—

- (i) An assessee while furnishing the price-list, should as a separate annexure to the price-list or in the covering letter declare whether he has factories in other Divisions/Collectorates manufacturing the same kind of goods. Details of such goods should be provided together with names and addresses of such factories.
- (ii) If the assessee has such factories elsewhere, he should not be allowed to avail of the facility of clearing the goods without prior approval of the price-list. An amendment to rule 173-C of the Central Excise Rules 1944, has been made under notification No. 194/78-CE dated 3-11-1978 to give effect to this decision. In such cases, the assessment should, as far as possible, be made provisional.
- (iii) The price-list of these goods should be approved by the Assistant Collector concerned in consultation with the Assistant Collector Incharge of the factory nearest to the Head Office of the assessee. (Hereinafter referred to as

focal Assistant Collector). A copy of the price-list filed by the assessee alongwith the verification report should be sent to the focal Assistant Collector for his comments.

- (iv) The focal Assistant Collector should verify the prices with reference to the sale invoices, marketing pattern trade discount allowed, etc. available with the Head Office and give his views regarding the assessable value to the Assistant Collector in whose jurisdiction the other manufacturing units fall.
- (v) The other Assistant Collector, on receipt of the report from the focal Assistant Collector, should re-examine the price list in the light of the views expressed by the focal Assistant Collector and the practice followed in his jurisdiction. Thereafter, he should send his view about the final assessable value which he thinks is appropriate, to the focal Assistant Collector if there is unanimity of views among them without the assessable value of the goods, it can be applied uniformly by an intimation to that effect being given by the focal Assistant Collector to the other Asstt. Collector (s).
- (vi) In case of difference of opinion among the Assistant Collectors, the matter should be immediately brought to the notice of the concerned Collector who should resolve the issue by mutual consultation on priority basis.
- (vii) In case of difference of opinion among the concerned Collectors, the co-ordinating Collector i.e. the Collector having jurisdiction over the factory nearest to the Head Office of the assessee, may take up the matter with the Board.

4.15. The Committee were also informed that in the Collectors' Conference held in Delhi in October 1980 it was suggested that in order to ensure uniformity in practice of assessment pertaining to different factories of the same manufacturers, classification and price-list should be exchanged amongst the concerned officers. This suggestion, the Ministry stated, has been accepted and necessary instructions were issued on 24th November, 1980.

4.16. According to the Ministry of Finance, the exemption notification was intended to safeguard the interest of the "small scale manufacturers" of aerated waters. However, the Committee find that the notification did not, in fact, make any distinction between:

the "small scale manufacturers" and "large manufacturers". It allowed the concessional rate of duty to the first clearance of 37 lakh bottles during the period from 4 July 1977 to 31 March 1978, and 50 lakh bottles during any financial year subsequent to 1977-78, in all cases. The Committee would like to know the circumstances in which the exemption notification was so defectively drafted as to give entirely an-intended concession to large manufacturers as well. The Committee would also like to know full details of the concession actually availed of by large manufacturers under this notification.

4.17. The Committee hope and trust that the Central Board of Excise and Customs would see to it that the instructions issued by it following the observations made by the Public Accounts Committee, while examining para 48 of the Audit report for the year 1975-76 about the co-ordination between the various Collectorates in regard to the approval of price-list of the goods produced in different factories of the same manufacturer located in different Collectorates, would be implemented in letter and spirit in which they have been issued so that there is no loss to the Central revenue.

NEW DELHI;

April 28, 1981

Vaisakha 3, 1903 (S).

SATISH AGARWAL,

*Acting Chairman,*

*Public Accounts Committee.*

## APPENDIX I

(Para 1.8)

Extracts from Notes in the Ministry of Law, Justice & Company Affairs.

Assessment of excise-duty is in relation to the value of excisable goods. Where such goods are delivered at the time of removal in a packed condition, in terms of section 4(4) (d), the value should include the value of packing, regardless of whoever supplies the packing, because the value of packed goods is their value in the unpacked condition plus the cost of packing.

2. This being so, one would hardly expect an exception to the aforesaid rule of evaluation like, for example, where the packing is durable and returnable.

3. However, an exception appears to have been made only in the case where packing is—

(1) of a durable nature; and

(2) returnable to the assessee.

4. The exception means to have been provided, perhaps, with a view to save the element of packing where the same packing cost is incurred by the assessee every time there is a sale. But then, the principle of evaluation of the excisable goods as such, irrespective and regardless of whether the cost was incurred by the assessee or not, enunciated in the earlier portion of the clause would appear to have been ignored in providing the exception.

5. Be that it may, interms of the provision, unless the two aforesaid conditions are satisfied, the packing is not to be excluded, in the computation of the value of assessable goods.

6. If, therefore, a sale is effected where the durable packing material is supplied by the buyer and hence the material is not returnable to the assessee—the cost of packing is not to be excluded in computing the value, notwithstanding that the assessee, the seller, had not incurred the cost of packing.

7. This might perhaps, be looked upon as an anomaly or contradiction. The basic premise is evaluation of the assessable goods regardless of the question as to who bears what expenditure. Nevertheless, expenditure incurred by the assessee in durable and returnable packing is to be excluded on the ground that the assessee does not actually incur the cost of packing irretrievably. But such cost is incurred by the buyer, it is to be included.

Sd/- M. Gouri Shankar  
Deputy Legal, Adviser  
15-11-1975



## APPENDIX II

(Para 1.12)

Central Excise—Valuation under revised section 4—Cost of packing

Reference is invited to point (4) relating to packing charges in M(T)'s record note dated 2-1-76 on his visit to Bombay and a copy of which was sent to Collectors *vide* Board's letter F. No. 315/22/76-CX. 10 dated the 7th January, 1976.

2. On some of the issues relating to packing, instructions have been issued *vide* Board's letter F. No. 315/10/76-CX-10 dated 11-3-76.

3. In their replies on the points referred to in M(T) note referred to above, Collectors have raised the following issues in relation to cost of packing:—

(i) whether the cost of unit packing alone is to be taken or besides such cost, the cost of other packing, namely, the cost of wooden boxes, card board cartons, jute cloth, iron strips etc. will have to be included in value;

(ii) whether value of matters as of latex sponge, would include the cost of cloth cover which under the old section 4 was excluded (*vide* Board's letter No. 24/5/65-CX-2 dated the 14th August, 1968—page 379 CBR Bulletin).

4. The Ministry of Law, Justice and Company Affairs was consulted on the above issues in the light of the definition of packing in section 4(4)(d)(i) of the Act. A copy of their opinion dated 28-4-76 which the Board has accepted is appended for guidance.

(C.B.E.&C., F. No. 315/22/76--CX. 10 dated 12-5-76)  
(Circular letter No. 5/76-C.E.V.)

A copy of Ministry of Law, Justice and Company Affairs (Department of Legal Affairs's) u.o. No. 22720/76/Advice(B) dated 28/30-4-1976.

I had the benefit of discussing this reference with Shri L. C. Mittal, Under Secretary, Deptt. of Revenue and Banking.

2. The following queries have been posed to us for consideration—

- (a) whether under Section 4(4)(d)(i) of the Central Excises and Salt Act, 1944, the cost of the unit packing alone is to be taken or besides such cost, the cost of wooden boxes, card board cartons, jute cloth, iron strips, etc. will also have to be included in value; and
- (b) in the case of mattress of latex foam sponge, the cost of the cloth cover will also have to be included in value.

3. By virtue of clause (d)(i) of sub-section 4 of Section 4 of the Act, the 'value' in relation to any excisable goods where the goods are delivered at the time of removal in a packed condition, includes the cost of such packing except the cost of the packing which is of a durable nature and is returnable by the buyer to the assessee. The expression 'packing' has been defined by the explanation to mean the wrapper container, etc. in which or on which the excisable goods are wrapped, contained or wound. If there is any other packing apart from the initial packing referred to in the explanation, it would appear to be difficult to say that the cost of such additional packing which is apart from the packing in which or on which the excisable goods are wrapped, contained or wound, can be included in the assessable value of the excisable goods. Query at (a) on prepage is answered accordingly.

4. During the course of discussions, Shri L. C. Mittal pointed out that some times the mattresses of latex foam sponge are sold without a cloth cover and some times with a cloth cover. The point raised is as to whether the cost of such cloth cover is to be included in the assessable value of mattresses of latex foam sponge. It would appear to be difficult to say that such cloth cover is either a wrapper or a container or is any other thing in which the mattress is wound. In view thereof, it would not appear to be permissible to include the cost of cloth cover in such a case in the assessable value of mattress of latex foam sponge. Query raised at (b) is answered accordingly."

### APPENDIX III

(Para 1.18)

A copy of C.B.E.&C. F. No. 315|13|76-CX. 10 dated 24.5.1976

A copy of letter dated May 19, 1976 from the Cigarette Manufacturers Association to Member (Tariff) is appended. Corrugated Fibre Board Container referred to therein is not the type of packing referred to in sub-clause (i) of clause (d) of sub-section (4) of Section 4 of the Central Excises and Salt Act, 1944. Attention in this connection is invited to the Board's letter F. No. 315/22/76-CX.10 dated the 12th May, 1976. The cost of such containers should not, therefore, be included in the value of Cigarettes.

Copy of letter dated May 19, 1976 from the Cigarette Manufacturers Association, Calcutta, to Member (Tariff) Central Board of Excise and Customs.

"We are given to understand that thought is being given to resolving the different interpretations by local Excise authorities of the Amendment to Section IV of the Central Excises and Salt Act, 1944.

In this context we wish to bring to your notice that the intention of Local Excise Authorities in certain areas to include the value of corrugated Fibre Board Containers (CFC's) in the excisable cost.

We would like to clarify that cigarettes are packed in paper cardboard packets of 10, 20, 50 or 100 and are subsequently overpacked in paper|cardboard outers of 200, 250 or 500. The cost of such packings is included in the excisable value.

Cigarettes in the above form|forms are thereafter placed in CFC's which are large containers made from 3 ply or 5 ply fibre board. These containers are not an integral or essential requirement for the sale of cigarettes and are used for the sole purpose of protecting cigarettes from any damage that may arise during transportation. Indeed, consumers never purchase cigarettes in CFC's. In fact many wholesale buyers insist on buying in outer wrapping only.

It is, therefore, our submission that the cost of CFC's should be excluded from the excisable value, and we shall be grateful if the local Excise Authorities are intimated in this regard.

## APPENDIX IV

(Para 1.19)

CIRCULAR LETTER NO. 7/76-C.E.V.

F. No. 315/13/76-CX.10/CV.I

Government of India

Central Board of Excise & Customs

New Delhi, the 15th July, 1976

To

All Collectors of Central Excise.

Sub: Valuation under Section 4 of the C.E. & Salt Act, 1944—Cost of packing.

Sir,

I am directed to refer to the Board's letter F.No. 315/22/76-CX. dated the 12th May, 1976 and to say that the advice of the Ministry of Law, Justice & Company Affairs on section 4(4) (d) (i) relating to packing, sent with the above letter, is to be read with the other provisions of the Central Excises & Salt Act, 1944 such as sections 2(d), 2(f) and 3 of the Act. By way of illustration, P.P. Medicine may be taken. Under Section 2(f) of the Central Excises and Salt Act, 1944, the expression 'manufacture' in relation to such medicines includes the conversion of power into tablets or capsules, the labelling or relabelling of containers intended for consumers and repacking from bulk packing to retail packs or the adoption of the any other treatment to render the product marketable to the consumers. Similarly, in relation to manufactured tobacco, e.g. cigarettes, 'manufacture' includes labelling or relabelling of containers and repacking from bulk packs to retail packs or adoption of any treatment to render the product marketable to the consumer. P.P. Medicines, where packed in foils or bottles, will become manufactured only when the medicines have been so foiled or bottled

and the cost of containers into which the foiled/bottled medicines are packed will get included in the assessable value. Similarly, in the case of cigarettes, 'cigarettes' will be regarded as manufactured when they have been put into a cardboard cartons of 10's, 20's etc., and the cost of container into which such retail packets of 10's, 20's etc., are contained will under section 4(4)(d)(i) get included in the assessable value.

Yours faithfully,

Sd/-

(G. S. Maingi),  
Under Secretary

## APPENDIX V

(Para 1.19)

F. No. 315/13/76-CX-10/CX-I

Central Board of Excise & Customs

New Delhi, the 26.8.1976

To

The Collector of Central Excise,  
115, Maharishi Karve Road,  
Bombay-400020

Sub: Valuation under Section 4 of the Central Excises and salt act, 1944, Cost of packing.

Sir,

I am directed to invite attention to your letter F.No. V(30) 119/Misc./75 dated 17th August, 1976 on the above subject.

2. The instructions conveyed *vide* Board's letter F. No. 315/13/76 CX-10 dated 24th May, 1976 were after taking into consideration—

- (1) the provisions of sub-clause (ia) of clause (f) of section 2 of the Central Excises and Salt Act, 1944; and
- (2) the provisions of section 4(4) (d) (i) read with the Explanation therein.

It was on this basis that instructions were conveyed under Board's letter dated 24th May, 1976 that the cost of corrugated fibre containers would not be included in the value of cigarettes.

3. The instructions conveyed *vide* Board's letter F. No. 315/13/76-CX-10/CX-I dated the 15th July, 1976, explained the implications of the provisions of section 4(4) (d) (i) with reference to P or P medicines, Cosmetics, Toilet products etc. The instructions contained in this letter, therefore, cannot have any modifying effect on the instructions issued *vide* Board's letter dated 24th May, 1976 in respect of corrugated fibre containers in which cigarettes are marketed.

Yours faithfully,  
Sd/- L. C. Mittal  
Secretary

**APPENDIX VI**

(Para 1.21)

F. No. 315/13/76-CX-10/CV-I

Government of India

Department of Revenue & Banking

(Revenue Wing)

New Delhi, the 24th September, 1976.

To

All Collectors of Central Excise

Sub: Valuation of excisable goods under Section 4 of the Central Excises & Salt Act, 1944—Cost of packing.

Sir,

I am directed to refer to the instructions contained in Board's letters—

- (a) F.No. 315|22|76-CX.10 dated the 12th May, 1976;
- (b) F.No. 315|13|76-CX.10 dated the 24th May, 1976; and
- (c) F.No. 315|13|76-CX.10|CX.I dated the 15th July, 1976, on the above subject.

2. References have been received from the Collectorates whether the instructions referred to at (c) supersede those referred to at (a) or (b) or both (a) and (b); in para I above.

3. It is clarified that the instructions referred to (a); (b) and (c) in para I above are to be read together. When so read, the position as it emerges with regard to inclusion of cost of packing in the value of excisable goods which are delivered in such packing is as follows:—

- (1) Section 4 is not to be read in isolation but with the other provisions of the Central Excises & Salt Act, 1944, e.g., Sections 2(d), 2(f) and 3 of the Act (of Board's letter F.No. 315/13/76-CX.10/CX.I dated the 15th July, 1976);
- (2) the instructions under Board's letter F.No. 315/22/76-CX.10 dated the 12th May, 1976 explains the effect of

Explanation below Section 4(4)(d)(i), namely, the cost of initial packing and not subsequent packing or packings in which excisable goods may be delivered packed will get included in value of the goods;

- (3) the instructions under Board's letter F.No. 315/13/76-CX. 10 dated the 24th May, 1976 that by reading the instructions referred to at (2) with those referred to at (1) above, the cost of corrugated fibre container in which paper|card board outers containing cigarette packets of 10, 20, 50 or 100 cigarettes are delivered, will not get included in the value of cigarettes.

(CCE Chandigarh only).

(This disposes of your letter D.O.C. No. IV (16)15-Tech|76|60706, dated the 28th August, 1976 to Shri B. R. Reddy, Director, Central Board of Excise and Customs).

Yours faithfully,  
Sd|-

(L. C. Mittal)  
Deputy Secretary.



## APPENDIX VII

(Para 2.16)

Statement showing the details of similar cases as in Audit Para 77(b) of 1978-79

S.No.	Name of the Collectorate	Name of the unit	Period involved	Amount involved	Brief facts of the case taken	and the action
1	2	3	4	5	6	
1.	Bangalore	1. Mandya National Paper Mills, Bangalore	10-3-76 to 28-2-78	Rs. 12,247.08	The amount of the Central Excise duty paid on the wrapper paper was not included in the value of the paper which was packed in wrapper paper. The show cause notices demanding the differential duty have been issued.	
		2. South India Paper Mills, Anjangud	Jan. 1978 to May, 1978	Rs. 1244.87	Do.	
		3. Mysore Paper Mills Ltd. Bhadravati	16-3-76 to 14-8-76	Rs. 1,92,371.74	The amount of Central Excise duty paid on the wrapper paper was not included in the value of paper for which the wrapper paper was used as packing material. Similarly the cost of cores on which the paper was rolled (in respect of paper cleared in reels) was also not included in the assessable value of paper. Necessary show cause notice was issued and the demand for Rs. 1,92,371.74P has been confirmed.	
2.	Calcutta	1. Titagrah Paper Mills Company Ltd.	8-10-77 to 26-10-77	Rs. 3,250.07	The amount of Central Excise duty paid on wrapper paper was not included in the value of paper which was packed in wrapper paper. The necessary show cause notice was issued and the demand for Rs. 3250.07 has been confirmed.	

2.	Do.	8-10-77 to 31-10-77	Rs. 4,205.20	The amount of Central Excise duty paid on wrapper paper was not included in the value of the paper which was packed wrapper paper. The necessary show cause notice has been issued.
2.	Calcutta	1. Everest Paper Mills (Pvt.) Ltd. Ganganagar May, 1979 to December, 1979	Rs. 6,605.15	The amount of Central Excise duty paid on wrapper paper was not included in the value of the paper which was packed in wrapper paper. The necessary show cause notice has been issued.
3.	Madurai	1. Amravati Venkataiah Paper Mills Ltd. Swaminathapuram 16-3-76 to 31-10-76	Rs. 1,23,926.78	The assessee had not included packing charges inclusive of duty on packing wrapper in the assessable value of paper cleared by him during the period 16-3-76 to 31-10-76. Demand for Rs. 1,23,926.78 was confirmed by the jurisdictional Asstt. Collector. On appeal the demand was reduced to Rs. 82,359.39 and the same has been paid by the assessee.
4.	Nagpur	Ballarpur Industries Ltd. Ballarpur 16-3-76 to 30-4-77	Rs. 15,68,744.00	The party has been clearing the paper packed in reams/rolls without including the cost of packing and wrapping paper in the assessable value determined under Section 4(4) (d)(i) of the Central Excise and Salt Act, 1944. Necessary demands were issued. The assessee has filed a writ petition the High Court and has obtained a stay on furnishing of Bank guarantee for Rs. 15 lakhs.
5.	Poona	Decor Paper Mills Company, Mudhwa Sept. 1976 to date	Rs. 3,900.77	Necessary show cause notice has been issued to the assessee.
6.	Guntur	i) A.P.P. Mills Rajamundry 16-3-76 to 30-9-79	Rs. 46,40,594.51	The assessee cleared the paper in packed condition using mill wrapper for packing While determining the duty on paper

1	2	3	4	5	6
					delivered in packed condition they failed to include the cost of packing in the assessable value of paper. Necessary show cause notice have been issue
					Do.
		A.P.P. Mills, Rajasamundri	ii) 1-10-79 to 5-5-80	Rs. 7,39,410.60	
		ii) Kolleru Paper Mills Limited Bommalur Ehuru I, Town Range	16-11-1979 to 29-2-80	Rs. 6,610.44	The assessee did not include the value of the wrapper paper used in packing reels and reems of paper manufactured by them although in the invoices to the customers they have shown that such duty was chargeable. The demand for the amount involved has been confirmed by the Assistant Collector.
7.	Cochin . . . . .	Penalur Paper Mills Limited	January, 1978 to October 78	Rs. 29,506.32	The amount of Central Excise duty paid on the wrapper paper was not included in the value of the paper which was packed in wrapper paper. The show cause notices demanding the differential duty have been issued.
8.	Patna . . . . .	Rohtas Industries Limited	16-3-76 to 23-3-80		Do.

## Appendix VIII

(Para 2.17)

Statement showing cases of under-assessment in various Collectorate in respect of paper and paper board and the present practice of assessment

Name of the Collectorate	Name of the assessee	Reasons for under-assessment and their present position	Present Practice of assessment
Bangalore	(ik) Mandiya National Paper Mills, Bangalore	The jurisdictional Assistant Collector has been directed to expedite the realisation of the dues involved.	The assessments are being done by including element of duty paid on wrapper paper in the assessable value of paper.
Calcutta	(ii) South India Paper Mills Nanjangud, Mysore (iii) Mysore Paper Mills, Bhadravati (i) Titagarh Paper Mills Company, Limited	The amount has been realised on 5-1-81	Do. Do. Do.
	Do.	Demand was confirmed on 5-1-81. All efforts are being made by constant persuasive action to realise the outstanding dues is being made.	Do.

Calcutta	Everest Paper Mills (Private) Ltd. Gangaganagar	The amount has been realised by adjustment in PLA on 6-9-80	The assessments are being done by including element duty paid on wrapper paper in the assessable value of paper.
Madurai	Amravati Venkatswasa Paper Mills Ltd., Swaminathapuram	As already stated the demand has been realised	Packing charges inclusive of duty on wrapper paper is being included in the assessable value.
Nagpur	Ballarpur Industries Ballarpur	The stay granted by the High Court is still in operation and hence demands cannot be realised.	The assessee has filed revised price list with effect from 1-5-77. Their assessments have been brought in line with the provisions of section 4(4) (d) (1)
Poona	Deccan Paper Mills, Pune	The amount has been paid by the assessee on 7.1.81.	Assessments have now been regularised.
Guntur	(i) A.P.P. Mills Rajamundri	Demands have been confirmed by the Assistant Collector.	Assessable value includes cost of packing
	(ii) Killeru Paper Mills, Bom-mulur	The short levy has been paid by the assessee under protest.	Do.
Cochin	Penalur Paper Mills, Limited	The amount has since been recovered.	Penalur Paper Mills continued to collect duty separately on packing paper. Range officer has been asked to raise demands periodically.

1	2	3	4
Patna	Robtas Industries Limited	<p>The amount of under-assessment involved is Rs. 50,48,153.77P. The factory was using mill wrapper as but the cost of mill wrapper was not included in the assessable value of paper in mill paper. Show cause notice issued in regard to the under-assessment and is under adjudication</p>	<p>The value of mill wrapper paper as packing materials is being included in the assessable value with effect from 24-8-80.</p>

## APPENDIX IX

### Conclusions/Recommendations

S.No.	Para No.	Ministry/Department	Conclusions/Recommendations
1	2	3	4
1	1'40	M/o Finance (Deptt. of Revenue)	<p>The Committee find that according to Section 4(4)(d)(i) of the Central Excise and Salt Act, 1944, where goods are delivered at the time of removal in a packed condition, value includes the cost of such packing except the cost of packing which is of a durable nature and is returnable by the buyer to the assessee. According to the explanation thereunder 'packing' means the wrapper, container, bobbin, pirn, spool, reel or wrap beam or any other thing in which or on which the excisable goods are wrapped, contained or wound.</p> <p>Under Section 2(f) of the Act, 'manufacture' includes any process incidental or ancillary to the completion of a manufactured product and in relation to manufactured tobacco includes the labelling or relabelling of containers or repacking from bulk packs to retail packs or the adoption of any other treatment to render the product marketable to the consumer. Similarly in relation to patent or proprietary medicines, cosmetics and toilet preparations, manufacture includes the conversion of powder into tablets or capsules, the labelling or relabelling of containers; intended for consumers and repacking from</p>

1 2 3 4  
 bulk packs to retail packs or the adoption of other treatment to  
 render the product marketable to the consumer.

2 1'41 M/o Finance (Deptt. of Revenue)  
 The Board of Central Excise and Customs issued a clarification on  
 11th March, 1976 based on the advice of the Ministry of Law, Justice  
 and Company Affairs dated 15th November, 1975 that in regard to  
 the situation where containers are of a durable nature and belong  
 to the buyer, the cost of such containers should be included in the  
 assessable value. They further circulated on 12th May, 1976 the  
 advice of the Ministry of Law, Justice and Company Affairs dated  
 30th April, 1976 to the effect that "if there is any other packing  
 apart from the initial packing referred to in the explanation under  
 Section 4(4) (d) (i), it would appear to be difficult to say that the  
 cost of such additional packing which is apart from the packing in  
 which or on which the excisable goods are wrapped, contained or  
 wound, can be included in the assessable value of the excisable  
 goods."

3 1'42 Do.  
 Again the Board in their Circular dated 15th July, 1976 further  
 clarified that their instructions dated 12th May, 1976 were to be read  
 with other provisions of the Act and in the case of cigarettes,  
 'Cigarettes' will be regarded as manufactured when they have been  
 put into a paper wrapper or aluminium packed paper and are packed  
 into card board cartons of 10's, 20's etc. and the cost of container  
 into which such retail packets of 10's, 20's etc. are contained will  
 under section 4(4) (d) (i) get included in the assessable value. In



still another circular dated 24th September, 1976, the Board however clarified that the cost of corrugated fibre containers in which paper, card board, outers containing cigarette packets of 10's, 20's or 100's were delivered would not get included in the assessable value of cigarettes. The Committee are constrained to observe that the most charitable inference that one can draw from the issue of so many conflicting instructions in such rapid succession over a limited period of under six months is that this important matter was, at no stage, given the serious thought that it deserved.

Do.

1' 43

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The circular dated 12th May, 1976 was issued by the Central Board of Excise and Customs after discussion by an Under Secretary with the Ministry of Law, Justice and Company Affairs regarding the inclusion of the cost of packing charges in the assessable value. The Finance Secretary conceded during evidence that such complicated issues should be considered at a fairly high level. The Committee considered that the interpretation of the provisions of the Act like the one in question has far reaching effects on revenue and should invariably be subjected to thorough and proper examination by the Government. They accordingly recommend that suitable departmental instructions in this direction may be issued forthwith in order to avoid recurrence of similar instances in future.

Do.

1' 44

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The Committee also learn that on a representation dated 19th May, 1976 made by the Cigarette Manufacturers Association, Calcutta, the Board issued yet another circular on 24-5-1976 to the

effect that corrugated fibre board container is not the type of packing referred to in sub-clause (i) of clause (d) of sub-section (4) of section 4 of the Central Excises and Salt Act, 1944 and hence their cost should not be included in the value of cigarettes. This circular was issued to the field formations within a short period of 5 days after the date of the representation of the Cigarette Manufacturers Association. Strangely enough, this authoritative decision was conveyed by the Board without any consultation with the Ministry of Law, Justice and Company Affairs. The hurried manner in which these instructions were issued by the Board leaves doubt in the mind of the Committee whether these were really based on an objective consideration of the issue on merits.

6 1 45 M/o Finance (Deptt of Revenue)

The Committee find that the cartons in which bottles of drugs are packed are treated as part of the manufacture and included in the assessable value whereas the cartons in which "cigarettes" are packed do not constitute part of the manufacture and are not liable for inclusion in the assessable value. According to Member (Excise) the cigarettes can be sold without the corrugated fibre container which is not essential to render the product marketable to the consumer. The Committee fail to comprehend the reasons for this differentiation which has resulted in under assessment of the value of cigarettes. They would like the Government to apprise

the Committee of the detailed reasons for treating the containers on different footing in these two cases.

7 1' 46 M/o Finance (Deptt. of Revenue)

The Committee also find that the relevant provisions of the Central Excise and Salt Act providing for inclusion of the cost of packing in the assessable value make a specific exception only in respect of such packing as is of durable nature and returnable by the buyer to the assessee. The Act makes no distinction as regards 'initial packing', 'additional packing', and 'subsequent packing' etc. Nevertheless, the Ministry of Finance, in their various instructions seem to have adopted these vague and undefined phrases to indicate what should or should not be included in the assessable value. The Committee feel that this has not only resulted in a lot of confusion in the field formations who have actually to apply the relevant provisions of the law, but also encouraged the various cigarette manufacturers to claim exemptions alternatively in respect of corrugated fibre board cartons or, as in the case of the Indian Tobacco Co. Ltd., Saharanpur, corrugated fibre board cartons as well as the outers containing the cigarette packs of 10's, 20's and 50's etc.

In the resultant fluid situation the Committee find that a number of assessees have taken recourse to courts of Law and various High Courts have given different decisions. While, according to the Andhra Pradesh High Court, the cost of 'primary packing' alone is to be included if it is not returnable by the buyer, according to Gujarat High Court the packing material does not constitute a

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process incidental or ancillary to the completion of the manufactured product at all. The latter decision is in appeal before the Supreme Court. In order to clear this administrative confusion, and also reduce the plethora of litigation and safeguard revenue, the Committee would recommend that the Government should examine the issues involved in depth to see if the Excise Law can be so amended as to make the position abundantly clear.

8 2 19 M/o Finance (Deptt. of Revenue)

According to the instructions of the Ministry of Finance contained in their letter Nos. 312/1/75-CX10 dated 8-8-75 and 18-9-75 no deduction could be claimed or allowed in respect of the element of excise duty, sales tax etc. paid on the raw materials/inputs or the intermediate product utilised in the manufacture of the finished product.

9 2 20

Do.

M/s. Sirpur Paper Mills Ltd. Sirpur, Kagaznagar were manufacturing paper, paper boards and also the wrapping paper. The assessee used the wrapper paper manufactured by it for packing of paper and paper boards. The duty on such paper and paper boards was calculated on the total value of the goods including the cost of the wrapping paper but the element of excise duty paid on wrapper was not included while arriving at the final assessable value of paper and paper boards. This resulted in under-assessment of excise duty amounting to Rs. 1.02 lakhs on paper and paper boards cleared by the assessee during September, 1977 to June, 1978.

Do.

The Committee are distressed to note that this lapse occurred despite clear instructions issued by the Collector of Excise, Hyderabad on 9-8-1976 to the jurisdictional Asstt. Collector, Warangal where in the former had directed that the value of the wrapping paper including the duty element thereon should be added to the value of the paper before the assessable value of such paper is determined. Surprisingly enough even after the Asstt. Collector, Warangal had conveyed in his letter dated 2-9-1976 that the aforesaid instructions were being followed, in actual practice duty element on wrapping paper was not included in the assessable value of paper and paper boards cleared by the factory. No plausible reasons for this lapse except that the instructions were 'lost' sight of are given. According to the Ministry of Finance whenever instructions involving revenue implications are issued to the subordinate formations, the Collectorate Office calls for a compliance report on their implementation. It appears that no such report had been called for by the Collectorate in the case in question. This shows gross failure at various levels in regard to the implementation of the clear-cut instructions and compliance with the set procedure. The Committee take a serious view of this lapse and recommend that the matter may be investigated thoroughly and responsibility fixed for disciplinary action against the officials found responsible for the lapses.

11 2'22

Do.

The Committee find that an amount of Rs. 3,91,891.96 was demanded from the party on 12-9-80 but the same has not been realised due to grant on 1-1-81 of stay of the recovery proceedings

by the Central Board of Excise and Customs. The Committee would like to be apprised of the reasons for the grant of stay by the Central Board of Excise and Customs and the present position in regard to the recovery of the amount involved.

12 2'23 M/o Finance (Deptt. of Revenue) The Committee are concerned to find that besides the assessee referred to in the Audit Paragraph, there are 12 more cases of assessee where under-assessment to the tune of about Rs. 1.24 crores occurred on the same ground i.e. non-inclusion of the duty element of wrapping paper in the assessable value of the paper and paper boards cleared. From the information made available to the Committee it is seen that a sum of Rs. 3.21 lakhs only has been realised so far from 6 assessee after reduction of a sum of Rs. 41.5 thousand on appeal by an assessee and a sum of Rs. 1.20 crores is still pending recovery from the remaining 6 assessee. Excepting in one case where the recovery has been held up due to stay granted by the High Court and in a second case where the matter is under adjudication the demands in respect of four others have already been confirmed. Since the amount involved is quite substantial, the Committee recommend that concerted efforts may be made for effecting the recoveries expeditiously.

13 2'24 Do.

As the under-assessments in these cases have occurred in gross violation of the clear-cut instructions in regard to the inclusion of the duty element of wrapping paper in the assessable value of the

paper and paper boards cleared, the Committee would like to be apprised of the precise reasons for the lapse in each case. They also desire to be informed of the remedial measures taken by the Department to ensure that similar lapses do not recur in future.

14 3 '32 Do. In order to facilitate exports, the Central Excise Rules permit removal of excisable goods meant for export under bond without payment of duty on the condition that the proof of export should be furnished within 5 months of such removal. The period can be extended by the Collector upto a maximum of 2 years. When the goods are removed from the factory the duty leviable thereon is debited in a running bond account. On receipt of the proof of export this debit is cleared. Failure to furnish proof of export in time attracts liability not only for duty but also penalty.

15 3 '33 Do. The Audit Para reported certain cases in which the proof of export had not been produced and recorded even though the prescribed periods and/or the validity periods of the bonds had expired. Action to recover duty was initiated in these cases only after the omissions were pointed out by Audit.

16 3 '34 Do. On inquiry by the Committee, the Ministry of Finance stated in December, 1980 that in all the Collectorates taken together the arrears in running bond accounts amounted to Rs. 24 crores as on 31-3-1979 (Rs. 13.38 crores in the Excise Collectorates and Rs. 10.64 crores in the Maritime Collectorates). From the year-wise break-up of the arrears subsequently furnished by the Ministry the Commi-

tee observed that the arrears ranged over a period of more than 10 years.

These heavy arrears were attributed by the Ministry of Finance mainly to inadequate auditing of running bond accounts in the Maritime Collectorates, delays in receipt of proof of export by the jurisdictional officers from the Maritime Collectorates, delays in transmission of documents by the Customs Department to the Maritime Collectorates, delays in submission of documents by the Exporters to the Maritime Collectorates and non-maintenance of up-to-date records by the Range Officers.

Surprisingly, however, while the Committee were seized of this matter the Ministry of Finance reported in April, 1981 that the arrears had been brought down to Rs. 3.32 crores. In a single Collectorate (Guntur) where the arrears were earlier stated to be Rs. 9 crores, the revised figure was Rs. 10 lakhs.

The Committee cannot but observe that the conclusion is inescapable that the arrears had been allowed to pile up through sheer departmental lethargy. The fact that on the Committee taking up this subject for examination the arrears could be brought down substantially within 3 months is clearly indicative of the fact that the normal working of the department is not what it should be, and important items of work are allowed to fall into heavy arrears through sheer inefficiency and lack of will at all levels.

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1 2

17 3 35 M/o Finance (Deptt. of Revenue)

Do.

18 3 36

Do.

19 3 37



20 3' 38

Do.

In pursuance of earlier recommendations of the Committee in paras 1.145 to 1.148 of their 44th Report (5th Lok Sabha) the Central Board of Excise and Customs had issued instructions in September, 1972 to the effect that Internal Audit should audit the running bond accounts in the offices of the Maritime Collectorates by the first week of each month and should see whether the proof of export is being sent promptly to the concerned officers. It is apparent that these instructions were not followed with the result that Internal Audit also did not point out this unnecessary accumulation of arrears. The Committee are constrained to observe that fatuous pleas of excessive work-load, or paucity of staff do not sound convincing after a lapse of so many years; it was for the Board to see that proper and sufficient staff were made available to ensure compliance with their instructions.

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21 3' 39

Do.

The Committee take note of the assurance given by the Ministry of Finance that emphasis has now been laid on the importance of audit and supervisory executive checks. The Committee trust that the assurance will not be belied this time and that the Ministry will really take effective measures to see that this concession extended in the interest of exports is not abused by diversion of duty-free goods for home consumption.

22 4' 16

Do.

According to the Ministry of Finance, the exemption notification was intended to safeguard the interest of the "small scale manufacturers" of aerated waters. However, the Committee find that the

notification did not, in fact, make any distinction between the "small scale manufacturers" and "large manufacturers". It allowed the concessional rate of duty to the first clearance of 37 lakh bottles during the period from 4 July, 1977 to 31 March, 1978, and 50 lakh bottles during any financial year subsequent to 1977-78, in all cases. The Committee would like to know the circumstances in which the exemption notification was so defectively drafted as to give an entirely un-intended concession to large manufacturers as well. The Committee would also like to know full details of the concession actually availed of by large manufacturers under this notification.

The Committee hope and trust that the Central Board of Excise and Customs would see to it that the instructions issued by it following the observations made by the Public Accounts Committee while examining para 48 of the Audit report for the year 1975-76 about the co-ordination between the various Collectorates in regard to the approval of price-list of the goods produced in different factories of the same manufacturer located in different Collectorates, would be implemented in letter and spirit in which they have been issued so that there is no loss to the Central revenue.

M/o Finance (Deptt. of Revenue)