PUBLIC ACCOUNTS COMMITTEE
(1969-70)

(FOURTH LOK SABHA)

HUNDRED AND ELEVENTH REPORT

[Chapter III of Audit Report (Civil) on Revenue Receipts, 1969 relating to Union Excise]

LOK SABHA SECRETARIAT
NEW DELHI

March, 1970/*Chaitra*, 1891 (*Saka*)

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*Ceased to be a member of the Committee with effect from 3-4-70.

INTRODUCTION

I, the Chairman of the Public Accounts Committee, as authorised by the Committee, do present on their behalf this Hundred and Eleventh Report (Fourth Lok Sabha) on Chapter III of Audit Report (Civil) on Revenue Receipts, 1969 relating to Union Excise.

2. The Audit Report (Civil) on Revenue Receipts, 1969 was laid on the Table of the House on the 9th May, 1969. The Committee examined Audit paragraphs relating to Union Excise at their sittings held on the 15th, 17th and 18th December, 1969 (AN). The Committee considered and finalised this Report at their sitting held on the 9th April, 1970 (AN). Minutes of these sittings from part II* of the Report.

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

4. The Committee place on record their appreciation of the assistance rendered to them in the examination of these Accounts by the Comptroller & Auditor General of India.

5. The Committee would also like to express their thanks to the officers of the Ministry of Finance for the cooperation extended by them in giving information to the Committee.

ATAL BIHARI VAJPAYEE,
Chairman
Public Accounts Committee.

NEW DELHI.
April 10, 1970
Chaitra 20, 1892 (*Saka*)

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

I

AUDIT REPORT (CIVIL) ON REVENUE RECEIPTS, 1969

UNION EXCISE

Excise Revenue—Exemptions by the Executive

Audit Paragraph

1.1. The receipts under Union Excise duties during the year 1967-68 were Rs. 1,148.25 crores registering an increase of Rs. 114.48 crores over that of the previous year. The receipts for the last five years along with the corresponding number of commodities on which excise duty was leviable are given below:—

Year.	Receipts under union Excise duties (in crores).	Number of commodities on which the duties were leviable.
	Rs.	
1963-64	729·58	65
1964-65	801·51	66
1965-66	897·92	67
1966-67	1033·77	69
1967-68	1148·25	69

1.2. The realisation of Central Excise duty according to broad categories of assessees during the year 1967-68 is shown below:—

Assessees		Gross revenue* (in crores). Rs.
I. Central Government Departments		
(a) Defence Department	·02	·21
(b) Railways	·01	
(c) Commercial Departments	·13	
(d) Other non-Commercial Departments	·05	
II. State Government Departments		1·58
III. Statutory corporations		173·28
IV. Government Companies.		76·14
V. Others.		888·27
TOTAL		1139·48

*Figures furnished by the Ministry of Finance.

1.3. Of the 59 commodities, the following eleven commodities have each yielded revenue exceeding Rs. 30 crores:

Commodity	(Rupees in crores).
Refined diesel oils.	174·15
Tobacco	154·64
Motorspirit	108·39
Sugar	74·47
Kerosene.	64·14
Iron or steel products.	63·77
Cotton fabrics	50·09
Rayon and synthetic fibres and yarn . . .	40·01
Tyres	37·54
Cotton twist, yarn and thread	36·23
Cement.	32·12

[Paragraphs 18-20 of Audit Report (Civil) on Revenue Receipts, 1969]

1.4. During evidence, the Committee raised the question of exemptions from excise duty given by the Executive. The representatives of the Ministry of Finance and the Central Board of Excise and Customs stated that exemptions given by Government normally fell in two categories. Exemptions falling in the first category were relatable to the kind of raw material used. Under the same tariff item, there could be a number of sub-items using different kinds of raw materials. Within the ceiling fixed by Parliament for the main tariff item, exemptions were given to the sub-items, having regard to their duty bearing capacity. It was stated in illustration that the ceiling rate for nylon yarn laid down in the statute was Rs. 45|- per kg. The effective rates for the various sub-items coming under the afore-mentioned tariff item ranged from Re. 0,60 to Rs. 28.50 per kg. Exemptions falling in the second category were relatable to the size of the production unit. Within the ceiling fixed by Parliament, lower rate was charged on commodities produced by village, cottage and small scale industries.

1.5. Exemptions were generally given on representations from the trade and industry. These were also given at the instance of other Ministries| Departments of Government. Requests for concessions were closely examined and it was "only with great reluctance that Government would give up a source of revenue." The Government agreed to give a concession only when they were con-

vinced that a particular duty would cause undue hardship. Asked whether exemptions were not given under pressure, the representative of the Ministry of Finance stated, "as a general proposition, it is probably true that there is pressure." But, he added, that "in cases where pressure was justified, there could be an arguable case for making an exemption."

1.6. The Committee were given to understand that as on 4-9-1967 there were as many as 636 notifications in force. When the Committee drew the attention of the witness to this fact, the representative of the Board stated: "I certainly agree that the number is too large..... The only explanation is that our economy is in such a stage that all kinds of concessions have to be given to make it possible that the competitive position of various sections is maintained."

1.7. The Committee cited the example of the tariff on cotton fabrics and enquired why Government had by notifications introduced 20 categories of cotton fabrics for assessment and 23 more for exemption, as against 5 categories laid down in the Statutory Tariff. The representative of the Board stated that the complication had arisen because "cotton fabrics" were a specific rated item. The purpose of introducing a wider categorisation was to make the textile tariff as progressive as possible.

1.8. At the instance of the Committee, Government have furnished a list of commodities in respect of which a wider categorisation has been adopted than provided in the statutory tariff. This is reproduced at Appendix I to this Report. It would be seen that the statutory tariff has been elaborated by the executive in as many as 56 cases. Government have stated: "The consideration kept in view may be categorised broadly as follows which, though not exhaustive, are sufficiently illustrative:

(a) To enable that the rates bear an equitable burden depending on quality of the product falling in the same category.

(b) The incidence of duty on products manufactured by the cottage and small sectors is less than on the large and mechanised sectors.

(c) The semi or partially processed stages of goods falling in the same category pay less than on the later stages of processing.

(d) The same category of goods when used for special industrial purposes pay lower duty than when used for other purposes.

(e) Different rates of duty have had to be fixed on intermediate products according to the sector which uses the intermediate product for further manufacture (*e.g.*, 'hank' yarn used by the cotton textile handloom industry.' "

1.9. The Committee desired to know whether in the interest of closer Parliamentary control over taxation, proposals for exemption could not be finalised by the time the Budget is presented and incorporated in the Finance Bill. The representative of the Ministry of Finance stated that the framing of Budget is a "somewhat secret" process and it is not always possible for Government to gather all the information necessary for grant of exemptions by the time the Finance Bill was introduced. The tariff as presented to Parliament with the Budget is, therefore, of necessity a general tariff. Minor nuances necessitating a detailed examination of data regarding various sub-sections of the tariff items are dealt with subsequently by the Executive under delegated powers. The representative of the Board added that where possible exemption notifications were finalised along with the Budget proposals and indicated in the Explanatory Memorandum. In reply to a question, the representative of the Ministry of Finance stated "....I agree that it is desirable that to the maximum extent possible, we incorporate whatever changes we can make in the Finance Bill." But, he aded, there may still be cases which might come up later or require further examination. In reply to a question, the representative of the Board stated that, pursuant to a recommendations of the Public Acounts Committee, every exemption notification issued by Government together with a statement of objects and reasons, was laid before Parliament.

1.10. The Committee enquired whether there were any instances where requests for concessions made on the floor of the House were not acceded to but the same concessions were subsequently given under exemption notifications. The representative of the Board stated: "It is quite possible that at that stage when the Budget is framed.... the Minister might have thought that there was no justification and later on either on account of further representation or further looking into the case they (Government) may have come to the conclusion at the Minister's level that some relief should be given." The Committee asked for detailed information on this point which was promised by the representatives of the Board. The information is awaited.

1.11. The Committee then enquired whether exemptions were also given in favour of individuals|organisations. The representative of the Board stated that on customs side they gave exemptions in favour of organisations|individuals in respect of consumable goods to be used for charitable purposes. They also gave exemption on an *ad hoc* basis to imported equipment to be used for charitable purposes provided free service was rendered to the needy without distinctions of caste or creed. Asked whether such exemptions were made applicable to other individuals|organisations, the witness stated: "Under similar circumstances, we would be prepared to make the exemptions valid for all individuals.

1.12. In reply to a question, the representative of the Board informed the Committee that to make the intention behind the notifications clear, they had, with effect from 1-1-1969, started appending an Explanatory Memorandum to the notifications. In reply to another question, he stated that there was no provision requiring the appending of such a Memorandum under the existing law. But in the Central Excise Bill pending before Parliament, an express provision to this effect had been included. Asked whether the Memoranda at present appended to the Exemption Notifications adequately served the purpose, the witness stated: "If it is the intention of the Public Accounts Committee that we should elaborate the reasons, we shall certainly bear it in mind."

1.13. In para 9.37 of their 44th Report (Third Lok Sabha), the Public Accounts Committee had observed that "a legislature could give retrospective effect to a piece of legislation passed by it, but the Government exercising subordinate and delegated powers cannot make an order with retrospective effect unless that power was expressly conferred by the Statute."

1.14. In paragraph 3.19 of their 24th Report (Fourth Lok Sabha), the Committee, *inter alia*, desired that the question of granting exemptions of duty through Executive Instructions|retrospective notifications may be examined in consultation with the Attorney General of India. The Attorney General has given the following opinion on the question:

Executive Instructions:

"Rule 8(1) gives the Central Government power to exempt excisable goods from the whole or any part of duty and also lays down the manner in which such power can be validly exercised, that is to

say, by notification in the official Gazette. Thus on the face of the Rule the Central Government is not empowered to grant exemption by means of executive instructions."

Retrospective Notification:

"The Legislature may make a law with retrospective effect. A particular provision of a law made by the Legislature may operate retrospectively if the law expressly or by necessary intendment so enacts. A law made by the Legislature may itself further empower subordinate legislation to operate retrospectively. Without such a law no subordinate legislation can have any retrospective effect. The Excise Act empowers the Central Government to make Rules including Rules providing for exempting any goods from the payment of duty under the Act but does not empower the Central Government to make any such Rule with retrospective effect. Tus no notification can be issued by the Central Government under Rule 8(1) with retrospective effect. Nor would Section 25 of the Customs Act, 1962, if made applicable under Section 12 of the Excise Act, empower the Central Government to issue notification with retrospective effect."

1.15. In a note furnished to the Committee, the Ministry have stated as follows:

"It may be stated in this connection that this Ministry is now invariably issuing a notification in the Official Gazette for grant of any exemption under Rule 8(1) of the Central Excise Rules, 1944. The practice of granting exemption, however, small through executive instructions is being avoided. A large number of cases in which exemptions had been granted in the past through executive instructions have since been regularised by issue of formal notifications. There may still be some more such cases. As and when any such case comes to notice, a formal notification will be issued. It is not proposed to seek power in the new Central Excise legislation for granting exemptions through executive instructions. As regards granting of exemptions with retrospective effect, it is proposed to make the necessary provision in the new Central Excise Bill to confer such power on the Central Government in specific terms. During the intervening period, a few cases might arise where retrospective exemption is merited and grave hardship will be caused if such exemption is denied. It is proposed to

grant retrospective exemption in such cases with the approval of the Minister during the short intervening period. It may be recalled that this Ministry has decided to lay all exemption notifications on the Table of the two Houses of Parliament along with an explanatory memorandum giving brief reasons for varying the standard rates of duty. The reasons for granting the exemption with retrospective effect in the few compelling cases that might arise will also be mentioned in the said explanatory memorandum for the information of the Parliament."

1.16. The Committee asked for data about the total number of exemptions given commodity-wise during the last three years. Information has been furnished by Government about the exemptions given in the year 1967 under Rule 8(1) and 8(2) of the Central Excise Rules. This is reproduced at appendix....to this Report. The following is the overall position as brought out in the data furnished;

No. of tariff items covered by exemptions	No. of cases of exemptions allowed under Rule 8(1)		No. of cases of exemption under Rule 8(2)		Total number of exemption
	More than 50% reduction in duty	50% or less	More than 50%	50% or less	
51	185	82	5	1	273

Government have also at the instance of the Committee furnished a detiled statement showing the number of cases in which, during 1967, exemptions were given for various commodities to the extent of more than 50%, between 50 and 75% and 100%. The data on this point is incorporated in Appendix II to this Report. The following table summaries the data:

No. of tariff items covered by exemptions.	No. of cases in which by exemption notifications duty was reduced.		No. of cases in which exemption special orders amounted to		Total exemptions
	by 50% to 75%	75% to 100%	Wholly	50% to 75%	75% to 100
46	34	23	128	1	.. 3

1.17. Government have stated that the exemptions in the foregoing cases were allowed on the following considerations:

"(a) To enable that the rates bear an equitable burden depending on quality of the product falling in the same category.

(b) The incidence of duty on products manufactured by the cottage and small sectors is less than on the large and mechanised sectors.

(c) The semi or partially processed stages of goods falling in the same category pay less than on the letter stages of processing.

(d) The same category of goods when used for special industrial purposes pay lower duty than when used for other purposes.

(e) Different rates of duty have had to be fixed on intermediate products according to the sector which uses the intermediate product for further manufacture (*e.g.*, 'hank yarn used by the cotton textile handloom industry)."

1.18. The Committee asked for information about the monetary effect of exemptions given by Government with retrospective effect. The data given on this point is reproduced below:

Tariff Item	Commodity	No. and date of notification	Brief particulars of exemption.	Extent of exemption	Financial effect.
17	Paper	202/67-CE dated 1-9-67.	Amendment of formal character in respect of earlier notification No. 135/67-CE dated 3-7-67	No effect	
17	Paper	245/67-CE dated 11-11-67	To make the intention clear about the scope of concessions in respect of new units.	50% to 90%	
19	Cotton Fabrics.	192/67-CE dated 9-8-67 read with No. 201/67-CE dated 1-9-67.	To provide relief for processing duty in respect of manually processed fabrics subjected to stentering damping or back filling or padding with the aid of power.	30% to 98%	
26A.	Copper and Copper Alloys.	30/67-CE dated 4-3-67.	To avoid double payment of duty in respect of duty paid copper or copper alloys in any crude form.	100%	Do.

1	2	3	4	5	6
26AA	Iron and Steel Product	160/67-CE; dated 21-7-67	To provide relief in respect of rail and sleeper bars used for railway track	Less than 50%	Do
26B	Zinc	237/67-CE ; dated 28-10-67	Amendment of a formal character in an earlier notification No 135/65-CE dated 20-8-65	No effect	Do.
	Zinc	250/67-CE ; dated 2-12-67	To avoid double payment of duty in respect of paid zinc unwrought	100%	Do

1.19. The Committee enquired whether exemptions had been issued in favour of individuals. Particulars of such cases (in 1967) as given by Government are reproduced below:

S No	No and date of Order	Tariff Item No and commodity	Extent of Exemption	Consideration for grant of exemption	Monetary effect	Remarks
1	F No 7/6/65-CX-III dated 25-5-1967	3 (Tea)	100%	To provide relief on 50 Kgs of tea per year used for experimental purposes in six research centres	Rs 200·00 (Approx)	
2	F. No. 8/51 66-CX III dated 27-7-67.	6 (Motor Spirit-J.P.-fuel).	Do.	To provide relief on JP-4 used for flushing of tank wagons within the refineries at Koyali, Gauhati, Barauni and Cochin.	N.A.	
7	F. No. ; 8/48/66-CX-III dated 30-6-67.	6 (Motor Spirit Ethyl Benzene).	Do.	To provide relief on ethyl benzene used; for research purposes by National Chemical Laboratory, Poona and the Department of Chemical Technology, Bombay University.	N.A.	

1	2	3	4	5	6
4.	F. No. 9/3 dt. CX-III dated 31-3-67.	8 (Refined Diesel oil)	55%	To provide relief on R.D.O. used as fuel for generation of electricity by a State Electricity Board during 31-3-47.	Rs.16·5 lakhs (Approx)
5.	F. No. 8/12 67-CX-III dated 27-4-67	10(Furnace Oil-Hot Heavy Stock)	18%	To replace full exemption by a partial one in respect of additional excise duty (non-recoverable from consumers) on hot heavy stock produced by a private Refinery and sold to a private power station.	N.A.

Government have added: "It may be stated that action to issue a special order under rule 8(2) of Central Excise Rules, 1944, is resorted to in those cases only in which the Central Board of Excise and Customs feels satisfied that circumstances of an exceptional nature exist justifying grant of exemption in favour of individual manufacturers, and that grant of such an exemption does not affect adversely other manufacturers of the same goods."

1.20. The Committee observe that as many as 636 exemption notifications issued by the Central Government Central Board of Excise were in operation in September, 1967. These notifications, covering virtually the entire gamut of excisable commodities, had authorised a substantial departure from the statutory tariff. In a number of cases, they had introduced new categories under the tariff, in the process of spelling out criteria for the grant of exemptions. The tariff relating to cotton fabrics, for example, contained only 5 categories when it was approved Parliament. The effective aparting tariff, however, specific as many as 20 categories eligible for assessment and another 23 eligible for exemption, in an effort to introduce greater progression in the rate structure. It is not only the cotton fabrics tariff that has been elaborated in this fashion; the data furnished to the Committee shows that the statutory tariff in respect of as many as 56 commodities has undergone amplification. These fine distinctions introduced into the statutory tariff have, in the Committee's opinion, complicated the administration of the tariff, making assessments an elaborate and time-consuming process. A number of instances have been given later in this Report where execution notifications have led to protracted delay in finalisation of assessments, with all attendant complications.

1.21. Apart from complicating the tariff, these notifications have been utilised by the executive to extend substantial duty concessions. Taking the notifications issued in the year 1967 alone, the Committee observe that Government the Board issued 273 notifications covering 51 different excisable items, including major revenue yielding commodities like sugar, tobacco, motor spirit, kerosene, iron and steel products, cotton yarn, fabrics etc. As many as 185 (of the 273) notifications gave exemptions ranging from 50 per cent to 100 per cent of the statutory rates of duty. Of these the number of notifications which gave total exemption from tariff rates was 128. The Committee consider it extraordinary that delegated powers given to the executive should have been exercised to render the statutory tariff a nullity in a majority of cases.

1.22. Another aspect of the exemptions is the fact that, in some cases, exemption from duty was given with retrospective effect, even though, as has been pointed out by the Attorney-General, the executive does not at present enjoy this power. The data given to the Committee shows that 7 of the exemption notifications issued in 1967 took retrospective effect. Government have not been able to indicate what these retrospective exemptions cost in 5 of these cases where the exemptions had monetary effect. The Committee can only conclude from this that Government gave exemptions in these cases without even ascertaining what revenue the public exchequer would forgo thereby.

1.23. The Committee find that exemptions have also been given in favour of individual organisations or bodies. Government have stated that such exemptions are given only "when circumstances of an exceptional nature exist." The Committee find from the particulars of these exemptions in 1967 (5 in all) that a State Electricity Board was exempted from duty on refined diesel oil used as fuel for generating electricity. The relief given for four months resulted in Government forgoing revenue to the tune of Rs. 14.5 lakhs (approximately). The Committee would like to be apprised of the considerations that weighed with Government in extending this concession to only one of the many Electricity Boards in the country.

1.24. In the Committee's opinion, the plethora of exemption notifications suggests that exemptions are given by the executive under pressure from concerned interests. Such pressures generate counter-pressures, making it necessary for Government either to modify or amplify the scope of exemptions given. The representative of Ministry of Finance admitted during evidence that "as a general proposition it is probably true that there is pressure", though he added

that "in cases where pressure was justified, there could be an arguable case for making an exemption."

1.25. The Committee feel that the existing position in regard to grant of exemptions by the executive through notifications or special orders leaves a lot to be desired. The Committee recognise that, in administering a fiscal measure, a number of problems are likely to arise and that, of necessity, the executive will have to be given sufficient flexibility by the legislature to facilitate smooth and effective tax administration. At the same time, it is necessary to bear in mind that the power given to the executive to give exemptions is only a form of delegated or subordinate legislation, which should not be so freely used as to vitiate the intentions of the legislature. Against this background, the Committee wish to make the following suggestions:—

(i) All operative exemptions, whether granted by notification or special orders, should be reviewed as an exercise preliminary to their rationalisation.

(ii) Tariff schedules should be left to be framed by Parliament and the tendency to sub-divide the tariff through notifications should be arrested. Parliamentary control in this field is vital, as it provides an opportunity for different shades of representative opinion to influence taxation proposals. The power given to the executive to modify the effect of the statutory tariff should be regulated by well-defined criteria which should, if possible, be written into the Central Excise Bill now before Parliament.

(iii) No exemption should be given without an assessment of its financial implications in so far as they can be determined. The monetary implications of the notifications, where determinable, should also be indicated in the memorandum appended to the notifications at the time they are placed before Parliament.

(iv) All exemptions involving a cent per cent relief from duty should require prior Parliamentary approval. A suitable procedure will have of course to be worked out to cover exigencies which may arise when Parliament is not in session.

(v) Exemptions in favour of individual parties, organisations etc., whether by notification or by special orders, should be avoided, and when absolutely necessary, should be reported to Parliament and a motion moved by the

Executive within a specified time for their consideration, failing which they should lapse.

(vi) The intentions underlying exemption notifications are by and large unexceptionable. They are meant to benefit small-scale units or provide incentive for production of certain items or for the use of a particular raw material in the overall interests of the economy. However, as these exemptions tend to distort the commodity tax pattern, the scope and advisability of grant of these benefits or incentives through non-fiscal devices, such as subsidised supply of raw material, power etc., should first be examined, so that duty exemptions are restricted to the absolute minimum.

1.26. The Public Accounts Committee (1968-69) had been informed during the course of evidence that the question whether Government had necessary powers to convert an ad valorem duty fixed by Parliament under Statute into a specific duty by notification was being referred to the Attorney General for opinion. The representative of the Board informed the Committee that a reference had since been made to the Attorney General. He further stated that since the presentation of the relevant Report of the Public Accounts Committee—72nd Report (Fourth Lok Sabha)—they had stopped the practice of converting *ad valorem* duties into specific

1.27. During his evidence before the Public Accounts Committee (1968-69), the Finance Secretary had agreed to take legal opinion on the question whether a fresh notification would be necessary to maintain a specific duty at the same level in case the *ad valorem* duty, with reference to which the specific duty had been fixed, is enhanced (*vide* para 2.109 of the 72nd Report (Fourth Lok Sabha). In an action taken note furnished to the Committee pursuant to the aforesaid Report, the Ministry of Finance (Department of Revenue and Insurance) had stated as follows:—

"According to the Ministry of Law, if the intention of the Government was to maintain duty at the same rate as specified in the notification, even after Parliament passed the Finance Act, 1967, it was necessary to issue a fresh notification.

1.28. The view expressed by the Ministry of Law has been considered by the Ministry of Finance but it is felt that the operation of the effective rates of duty prescribed by the Central Government under Section 37 of the Central Excises and Salt Act, 1944, need not be construed to be conflicting or inconsistent with the tariff rate of duty prescribed by Parliament under Section 3 of the Act inasmuch as the two sections of the Act specifically provide two distinct fields of operation of the executive and the legislature within the general framework of the Act. Such a conflict or inconsistency may be deemed to arise only in cases where the effective rates of duty fixed by Government earlier happen to be higher than the statutory rates fixed under a Finance Act and it is only in such cases that issue of a fresh notification can be considered necessary. So long as the effective rate of duty fixed by the Government remains within the ceiling rate fixed by the Parliament it is felt that the Government would be well within its competence to maintain the same effective rate as was in force earlier without issuing a fresh notification particularly when they do not consider it necessary to disturb the effective rate fixed earlier.

A suitable provision to specifically cover the point at issue has, however, been made in Clause 29(5), which is now before the Parliament."

1.29. In justification of the foregoing, the representative of the Board stated: "There are hundreds of notifications in the past where *ad valorem* rate was fixed by Parliament and it had by exemption notifications been reduced by us and fixed at a specific rate.....The reason that impelled us to take this view is the administrative difficulty in trying to collect all these notification issued in the past and to have another look at them."

1.30. It is a matter of common knowledge that *'ad valorem'* and specific levies represent two different and distinct types of tax. In one, the duty is related to the value of the product taxed, so as to make the tax progressive, while, in the other, there is a specific rate of duty, regardless of the value of the product. The Committee are therefore doubtful whether the executive can, in exercise of its delegated powers to grant exemptions, convert and 'ad valorem' **into a specific duty. The Committee note that pursuant to a suggestion made by them earlier the matter has been referred to the Attorney-General for an opinion. They would like to be apprised of the outcome of the reference. In the meanwhile, the Committee**

would like Government to compile data about all operating notifications, which have had the effect of converting an 'ad valorem' duty into a specific duty and vice versa.

1.31. As an off-shoot of this issue arises the question whether a notification issued by Government, which substitutes specific rate of duty for an *'ad valorem'* tariff, will continue to be valid, after Parliament has further enhanced the *'ad valorem'* duty originally fixed. The Committee note that the legal opinion on this point, which Government have not accepted, is that under such circumstances, Government will have to issue a fresh notification if the specific rate of duty originally notified by them is to continue. The Committee are not happy that Government have not accepted the legal advice tendered. However, as the basic question of the competence of the executive to substitute a specific for an *'ad valorem'* duty is itself under reference to the Attorney-General, the Committee would not like at this stage to make any observation on this point.

1.32. The Committee desired to know the periods up-to which the Customs Manual, Central Excise Manual and the Indian Customs Tariff had been brought up-to-date in the latest Editions issued by Government. The representative of the Board stated that the Central Excise Tariff was up-to-date as on 15-5-1969 and was made available for sale in August, 1969. The Customs Manual corrected upto 1969, was in the Press and was expected to be ready in January, 1970. In reply to a question he stated that Customs Manual as under circulation at present had been corrected upto 30-6-1965. Pointing to the long delay in bringing up-to-date Editions of Manuals, the Committee desired to know how the assessees were kept informed of the changes in Rules, Tariffs, etc. The representative of the Board stated that whenever there was any change in any provision, detailed instructions were issued to Collectors, who, in turn, issued trade notices. Copies of these trade notices were displayed in the Collectorates and were also sent to the trade associations/federations. Asked whether the existing arrangement was considered to be satisfactory, the Chairman of the Board stated: "It is certainly true that individually the assessee comes to know piecemeal of what is happening. It is painful that there is delay. We are aware of it. But it is due to certain difficulties—that of printing, inadequacy of staff, etc. We are taking steps to remedy both. I have in my mind that the assessee should have consolidated things brought up-to-date more frequently than we have been able to do in the past."

1.33. In reply to a question the witness stated: "I have no doubt in my mind that having too many amendments is undesirable." But he added, "We are sometimes forced to do it."

1.34. In reply to another question, he stated: "I agree that if we could visualise all possibilities and make our rules more exhaustive in the first instance, the need to have too many amendments would be obviated."

1.35. The Central Excise Tariff is a complex tax measure covering a large range of commodities, which attract varying rates of duty levied with reference to a host of criteria. As pointed out by the Committee earlier, the tariff has been further complicated by the executive in the process of administration. It is only therefore fair to the assessees that changes in the tariff effected from time to time, which are notified to them through Trade notices, are consolidated at frequent intervals. Such a consolidated compilation, apart from acting as a facility to the trade, would also aid the work of assessing officers. To facilitate the work of the assessing officers further the departmental manuals should be revised and brought up-to-date at frequent intervals.

Self-Removal Procedure

Introductory.

1.36. The Central Government took over the Central Excise Administration in 1938 and between 1938 and 1943, there was no physical supervision over factories producing excisable goods. The only exception were the factories where raesidential staff was posted. Physical control was introduced under the Central Excise Rules, 1944. These Rules envisage that excisable goods should first be assessed to duty by the proper Central Excise Officer and the duty so assessed should be paid either in cash in a Treasury or adjusted in the personal ledger account of the assessee before the goods are permitted to be cleared from the factory. At the time of clearance of excisable goods, the manufacturers are required to issue a Gate Pass, signed by the owner of the factory and also counter-signed by the proper Central Excise Officer after verifying that the goods to be cleared tally with the description given in the Gate Pass and the duty thereon has been paid. The Rules also provide that, where residential staff is actually available, checks should also be exercised on production, packing and storage of excisable goods.

1.37. In the year 1962, a partial relaxation of the above mentioned procedure was made by introducing 'Audit Type of Control' for a few selected commodities like Iron and Steel Products, Cement etc. The essence of this scheme was that manufacturers could clear the excisable goods without prior assessments by the Central Excise Officers, and without counter signature on the gate pass. This procedure was, however, optional and allowed to be employed in certain selected factories.

1.38. While introducing the Budget for 1968 in the Parliament, the then Deputy Prime Minister and Finance Minister announced that Government had been exercised over the administrative burden on the Excise Department and the complaints of abuse associated with the existing system of physical control. It was announced that Government had decided to extend the system* of Self Assessment by the manufacturers to all manufacturers, big and small, making exceptions in respect of a few excisable commodities only, which presented complications in assessments or where there were substantial movements in bond. The new system presupposed a large measure of trust in the manufacturer their declarations and their accounts. Day to day vertification of clearances by Central Excise Officers was to be dispensed with and replaced by periodical checks of the self-assessed documnts and accounts to ensure that the amounts due to the Government had been properly assessed and paid. This procedure was introduced with effect from 1-6-1968 on a compulsory basis in respect of all excisable commodities except 14.

1.39. As a result of experience gained in working the scheme for about a year with effect from 1-6-1968, the procedure was extended from 1-8-1969 to all excisable commodities except unmanufactured tobacco. The assessee is free to clear the goods from the factory or receive them into the factory or warehouse without asking for physical supervision or verification at any stage from any Central Excise Officer but subject to observance of formalities prescribed in Rules included in Chapter VII-A of the Central Excise Rules, 1944.

In a note on the working of the Self-Removal Procedure, the Ministry have, *inter-alia*, stated:

> "A study has revealed that out of total gross revenue collection of Rs. 1,249 crores during 1968-69 from manufac-

*The salient features of the system are detailed at Appendix III.

tured excisable products, nearly Rs. 749 crores (60 per cent) was collected from 125 factories, which individually pay more than Rs. 1 crore each of revenue per year. Further break up of these factories is given below for information:

Factories paying annual revenue	No.	Revenue in crores of Rs.	Percentage to total revenue of 1,249 Crores.
(a) Exceeding Rs. 10 Crores.	22	431·39	34·5
(b) Exceeding Rs. 5 crores but not exceeding Rss 10 crores	21	115·43	12·5
(c) Exceeding Rs. 2 crores but not exceeding Rs. 5 crores.	26	86·53	7·0
(d) Exceeding Rs. 1 crores but not exceeding Rs. 2 crores.	56	75·95	6·0
TOTAL	125	749·30	60·0

It may be stated that there were in all about 20,000 factories during 1968-69 and out of these 125 factories accounted for a revenue of 60 per cent.

"The revenue and offence position after the introduction of S.R.P. has been particularly kept under close watch. In so far as the impact of S.R.P. on revenue is concerned, statistics about the total revenue receipts for commodities, which were brought within its purview from 1st June, 1968 vis-a-vis the revenue receipts from the commodities for the corresponding period of the previous year are given below:

	(Rupees in crores)
1967-68	538.63
1968-69	596.69

"The above statistics would show an overall increase in the revenue position Revenue realisation themselves are, however, not a clar indicator about the impact of S.R.P. because increase in revenue may be due to a number of factors like natural growth, increase in rates of duty etc. Therefore, a detailed commodity-wise analysis of fluctuation not only of revenue but also of pro-

duction and clearances in the last four years has been undertaken and the results are given in the succeeding paragraph.

"A study about trend of production in the various industries has revealed that out of 59 commodities, which were brought under S.R.P. from 1-6-1968, there has been a substantial increase in production in a large majority of industries, and although there was some shortfall in the case of some of the commodities, the revenue realisation on those very commodities has exhibited an upward trend. The Board are fully alive to the need of studying the impact of S.R.P. on the production and trend of the revenue receipts and have for this purpose asked all Collectors to undertake a study of production and revenue from factories yielding an annual revenue of more than rupees one lakh and comparing the figures for the previous four years. Their reports will be studied by the Board. A similar study in respect of smaller factories is to be undertaken at the level of the Assistant Collector of Central Excise in charge of a Division and their reports will be studied by the Collectors.

"The position in regard to offences detected in 1968 (the first year of introduction of S.R.P.) in respect of the commodities under S.R.P. as compared to previous two years is shown below:

Year	*No. of offences detected*	
1966	3131	
1967	2663	
1968	2990	(Provisional)

"A statement showing the production, clearances and revenue realised commodity-wise from 1964-65 onward is enclosed*. The statement indicates that the S.R.P. has not resulted in any loss of revenue. The overall position for 1968-69 is given below. It may be mentioned that S.R.P. in the first instance was introduced in respect of 59 commodities on 1st June, 1968.

Commodity	SPE	RBE	Departmental figures.;	Percentage increase over mentioned B. E.
Total revenue receipts for 59 commodities under S.R.P.	6,00,39	6,17,56	6,32,90	5·41
For commodities other than those under S.R.P.	6,73,32	6,90,69	6,92,49	2·84
GRAND TOTAL	12,73,71	13,08,25	13,25,39	4·06

*Not printed.

"The above figures show that there has been an average increase of 4.6 per cent over the sanctioned Budget estimates for all commodities and 2.84 per cent in respect of commodities not under SRP. The commodities covered by SRP have registered an increase of 5.41 per cent.

"In respect of S.R.P. commodities taken as a whole, the actual realisation has exceeded the revised estimates even though the revised Budget Estimates were higher than the sanctioned Budget Estimates originally formulated. Since the Budget Estimates already take into account the normal rate of growth expected in exisable commodities, the increase registered clearly indicates that there is no cause for any mis-apprehension about effect of S.R.P. on revenue.

"The enclosed statement of production, clearances and revenue indicates decline in production in respect of 13 commodities to the extent indicated below:

Name of commodity	% of increase or decrease in 1968-69 when compared to 1967-68		
1. Sugar	+27·6	+6·1	—9·4
2. Cigars and Cheroots.	—21·4	—21·1	—8·4
3. V. P.	+6·4	+4·2	+8·9
4. Sodium Silicate.	—5·5	—5·3	—3·4
5. Cosmetics and Toilet preparations.	—3·2	—0·8	+7·5
6. Hair Lotions.	—5·2	+0·1	+4·7
7. Acids.	—8·4	+17·	+12·6
8. Jute Manufactures.	—6·4	+1·1	+45·6
9. Iron in crude form.	+48·9	—30·9	—29·9
10. Tin Plats	+7·6	+8·9	—3·3
11. Footwear	+1·3	—9·6	—11·3
12. Wireless Receiving Sets.	+21·1	+25·7	—2·5
13. Lead.	—20·6	+14·9	+15·0

Out of 13 commodities mentioned above, there are three commodities in which clearances have increased during 1968-69 but revenue has decreased. (Sugar, Tin Plates and Wireless Receiving Sets). There is one case of cosmetics, where clearances during 1968-69 have decreased whereas revenue has incrasd. The follow-

ing figures show the details of quantity cleared and revenue realised in respect of these three commodities:—

Commodity	Year	Duty paid clearances	Percentage rise (+) or fall (—) over previous year	Revenue	Percentage rise (+) or fall(—) over the previous year
		(000) q		(Rs. in lakhs.)	
Sugar . . .	1967-68	21254		7396	
	1968-69	22555	(W)6·1	6304	(—)9·4
		(000) Tonnes.			
Tin-plates . .	1967-68	90		209	
	1968-69	98	(—)8·9	196	(—)3·3
		(000) Nos.			
W. R. sets. . .	1967-68	799		316	
	1968-69	1004	+25.7	308	(—)2·5

Out of the above commodities, which have exhibited a decrease in revenue realisation, in respect of sugar, the rate of duty during 1967-68 was higher till November, 1967, when it was reduced by Rs. 8.35 per quintal. This is the apparent reason for revenue during 1967-68 being more than during 1968-69. Reasons for decline in revenue in the case of wireless receiving sets, tinplates are being enquired into."

"It may further be stated that the effect of S.R.P. on revenue collections is being kept under constant watch and for this purpose a study of production, clearances and revenue of Rs. 1 lakh per annum has been undertaken at Board's level. A similar study for smaller factories has been ordered at the Collectorate level."

Checks against duty evasions under the scheme.

1.40. "The penal provisions under the S.R.P. have been made more stringent to provide for deterrent punishment for deliberate evasion of duty. The penal provisions are contained in Rule 1730 of Chapter VII-A."

"A new rule namely 173Q has been introduced empowering Collectors of Central Excise to nominate an officer (not below the rank of an Assistant Collector to prevent misuse of powers) to determine the normal production of a factory wherever there is a *prima*

facie case of showing low production. In determining normal production all factors such as installed capacity of the factory, raw materials used, labour employed, power consumed and other relevant factors should be taken into consideration. If the shortfall is not accounted for to the satisfaction of the proper officer, he may assess the duty to the best of his judgement after giving the assessee an opportunity of being heard. This is a new provision to check evasion of excise revenue."

"The responsibility of checking whether or not the manufacturers have accounted for all the excisable goods that they have in fact manufactured rests on the Inspection Groups, who carry out inspections of the factories once every half year or at more frequent intervals, if need be. In addition, preventive parties have been further strengthened. At divisional level one Superintendent is in direct charge of preventive work while in the circle, preventive work is directly under the Circle Officer. Instructions have been issued that in order to improve the quality of preventive control, personnel for preventive parties should be very carefully selected. A list of checks which should be exercised by the Preventive Parties has been drawn up and circulated. They may briefly be recapitaulated below:

(i) Checking the removals made by the assessees with the help of octroi records, railway records and road transport agencies' records. Excisable goods found in transit should be traced back to the gate pass issued by the manufacturer. The removals actually made from the factories will be available from the range staff papers.

(ii) Pay surprise visits to the marketing centres, neighbourhood of factories and to the factories, if necessary, for detecting surreptitious removal of goods and other serious breaches of law.

(iii) When visiting a factory by surprise, to physically verify (a) contents of packages and markings of goods in the packing and store-room, and (b) verification of actual stocks in the factories with book balance.

(iv) Surprise raids on suspected units.

Preventive Officers have been specially instructed to collect intelligence by recruiting informers and from competitors of assessees and distributive channels in the wholesale market. Senior Officers like the Assistant Collectors and Superintendent have

instructions to pay their closest personal attention to the performance of Preventive Parties and Inspection Groups to ensure that their checks are fruitful and productive."

1.41. During evidence, the representative of the Board stated that two main considerations had impelled Government to introduce the Self-Removal Procedure. One was the burden cast on Government by staff increases In 1960,. there were only 41 commodities under Central Excise Tariff. The number of commodities under Tariff had now shot to 80. With the efflux of time, the number was bound to increase still further. The other consideration was the abuses which had come to be associated with the old system.

1.42. The Comptroller and Auditor General informed the Committee that he had got a summary inspection of a few units made. According to the results of the inspection, while the scheme did give relief to assessees it led to some delay in payment of duty. There was also not enough advice on classification, particularly in respect of complicated textile items.

1.43. The representative of the Board stated that one of the basic conditions of the Self-Removal Procedure was that duty had to be paid first. Every manufacturer was required to have a deposit account in which the amount of duty had to be debited before goods were cleared. There was a slight relaxation in cases where the number of clearances exceeded 10 to 15 per day. In such cases the manufacturer could debit the total due at the end of the day. He averred that it was a 'very serious offence' under the law to remove excisable goods without prior payment of duty. The penalty for the offence had been enhanced enormously. Not only excisable goods but all the goods lying in the factory including the factory itself, were liable to confiscation. This provision had been inserted in the Finance Bill of last year. The relevant clauses had also been included in the Central Excises Bill pending before Parliament. Even so, the witness promised to have a survey made whether there were any cases of delayed payments.

1.44. As regards difficulties in classification faced by the factories, the representative of the Board stated that before clearing excisable goods, the manufacturer was required to settle the classification with the authorities. At that stage he could get the guidance of the Department for proper classification.

1.45. Comparing the working of the old and new system, the representative of the Board stated: "The earlier system had introduced a complacency in our mind. All did not go well. We were not devoting the same attention to their production and raw material figures. Now, all those things have been set right.... On the whole, we think that the Self-Removal Procedure is certainly a great improvement over the last scheme."

1.46. As regards the impact of the introduction of the new procedure on revenue collections, the Finance Secretary stated: "In June, 1968, S.R.P. was introduced for 39 commodities and extended over other commodities about two months ago. Some of the bigger items came in the later half-textiles, petroleum, paints and varnishes. I would like to say it is a bit too early for us to judge from that angle. There has been increase in collections but one must remember in excise revenue we do get an annual incremnt. I cannot, therefore, straight-away say it is due to SRP that this increase has taken place. Much more specific study is required before we can venture to give you a judgement as to what has been the effect of S.R.P. on collections."

1.47. In reply to another question, the Finance Secretary stated: "I think it would be too early at this stage both for us and, probably, even for the Committee to come to a considered judgement as to whether the scheme is working successfully or not.... It will be necessary to give some trial to the scheme before we come to a considered judgement."

1.48. The Committee drew attention to the observations of the Administrative Reforms Commission Working Group contained in paragraph 3.12 of their Report on Customs and Central Excise Administration:

> "The essence of the new system as we see it, is that the manufacturer commits himself to a particular statement as to each removal of excisable goods from his factory, recorded in prescribed documents in such a manner that it cannot later be altered or manipulated. The Department's hold is on this record so that in case there is any discrepancy between that and any other recorded facts or any facts that physical checks may reveal in respect of any goods, the onus of proving that there has been no evasion is on the manufacturer. In view of this it is necessary to

ensure that appropriate legal provisions exist to transfer the onus on the manufacturer in such circumstances when fraud and evasion appear on the face of the record."

1.49. The Committee enquired whether under the existing law the onus of proving that there had been no evasion of duty was on the manufacturer. In their written reply, the Ministry have stated:

"As regards the query about the onus of proving that there has been no tax evasion, the position is that the assessee files under Rule 173B before removing any excisable goods, a list in the prescribed form containing full description of all excisable goods produced or manufactured by him along with the tariff item or sub-item number and also the rate of duty leviable thereon according to his own judgement. Where goods are assessable *ad valorem*, every assessee judgement. Where goods are assessable ad valorem, every assessee also files under Rule 173C with the proper officer for his approval a price list. The above lists filed by the assessees are approved by the proper officer with such modifications as he considers necessary thereafter one copy is returned to the assessee, who then determines under Rule 173F his liability for the duty due on the excisable goods intended to be removed by him. Every assessee maintains an account current compulsorily under Rule 173G(1) of Central Excise Rules. Prior to S.R.P. maintenance of P.L.A. was optional. The assessee periodically makes credits in the account current by each payment into the treasury or, where so permitted, by sending a cheque or letter of authority for the requisite amount so as to keep the balance in such account current sufficient to cover the duty due on the goods intended to be removed at any time. The assessee pays the duty determined by him for each consignment by debit to such account before removal of the goods. All removals are made under a gate pass or like documents without proper officer's counter-signature. The gate passes show besides other particulars of the consignments, the rate and the amount of duty paid on the goods removed and the time of actual removal of the goods from the factory. Every assessee submits monthly returns with copies of other documents like gate passes, P.L.A. etc. to the proper officer, who exercises checks thereon to check that duty due has been paid on each case.

Although Central Excise Officers no longer make assessments and grant clearances in the new scheme, they can visit the factories for such enquiries as they may deem necessary for approval of lists which are required to be approved under Rule 173B and 173C and for checking assessments and returns or for drawing samples or for any other important purpose. It would thus appear that the onus of proving that the duty has been correctly paid on the goods cleared from the factory is on the manufacturer. However, legally the onus of proving that there has been no tax evasion is not on the assessee in the sense as it is in section 123 of the Customs Act, 1962."

1.50. Pointing out that one of the considerations for introducing the Self-Removal Procedure was to effect savings in the Department on account of staff, the Committee enquired whether this objective had been achieved. The Finance Secretary stated that they were now faced with the problem of surplus staff in the Central Excise Department.

1.51. The Comptroller and Auditor General drew attention to the following provision in the Central Excise Rules:

"Every assessee shall, on demand, produce to Central Excise Officers of the Audit parties deputed by the Collector or the Comptroller and Auditor General, the accounts and records where the same is maintained or prepared in pursuance of these rules or not, for scrutiny of the officers or Audit parties as the case may be."

1.52. The Committee enquired whether a similar provision had been made in the new Central Excise Bill pending before Parliament. In their written reply, the Ministry have stated:

"So far as inspection of accounts by Central Excise Officers is concerned, necessary provision has been made *vide* Clauses 62(d) of the Central Excises Bill, 1969.

As regards inspection of accounts by the Audit parties, attention is invited to Clause 16 of the aforesaid Bill which embodies the essentials of Self-Removal Procedure. Power has been taken to prescribe by rules, conditions for the procedure. Provision for inspection of accounts by the Audit parties will, therefore, be made in the new rules to be framed when the Bill is passed by Parliament."

1.53. In June, 1968, a radical change in the pattern of excise control was made when the system of 'physical control', which had been prevalent since 1944, was replaced by a system of 'control through accounts and preventive checks'. The essence of the new system is "a large measure of trust in the manufacturers, their declarations and their accounts." The physical controls previously exercised over the movement of goods from the production stage till the time they finally left the production units have been dispensed with. The main considerations which impelled Government to introduce this system were the growing administrative burden on the Central Excise Department and complaints of abuses associated with the old system.

1.54. While the Committee appreciate the considerations which have led to the introduction of the new system, they are anxious that the trust reposed in manufacturers and their declarations is not abused, leading to evasion of duty. The Committee hope that Government will not slacken their vigilance and will ensure that the working of the new system is kept under constant watch so that loopholes brought to light by experience are plugged expeditiously.

1.55. Some of the points to which the Committee would lige Government to give particular attention are mentioned below:

(i) The Central Excise Law as it stands now does not throw on the manufacturer the onus of proving that there has been no tax evasion. This was understandable as long as the Department were exercising physical checks on movement of goods, but now that these have been dispensed with, the Committee would like Government to consider the feasibility of introducing a suitable provision on the lines of Section 123 of the Customs Act, 1962 in the Central Excises Bill pending before Parliament.

(ii) Under the existing Central Excise law, an assessee is required to produce on demand to the officers of the Central Excise Department and Audit parties accounts and records maintained by him pursuant to the Act or Rules made thereunder. The Committee observe that, in the Central Excises Bill pending before Parliament, while a provision for inspection of accounts by the Central Excise Officers has been made, there is no provision for inspection of accounts by Audit parties. Government have promised to make a suitable provision in the Rules to be made under

the new Bill, when passed. The Committee would feel happier if a provision to the above effect is made in the Bill itself.

(iii) While the need to safeguard the interests of the exchequer will make it necessary for the Excise Department to require assessees to maintain proper records of production, movement of goods etc., it should be ensured, by periodical review, that any tendency to increase documentation beyond what is really needed is firmly checked.

(iv) During evidence, the Committee gathered that a summary inspection of a few units made by Audit parties had disclosed the following deficiencies in the working of the scheme:

(a) There was some delay in payment of duty.

(b) There was not enough advice on classification particularly in respect of complicated textile items.

As regards (a), the representative of the Central Board of Excise and Customs promised to have a survey made to ascertain whether there were cases of delayed payment of duty. The Committee desire that this should be done at an early date. They would also like to be informed of the results of the survey as also of the remedial measures, if any, taken pursuant thereto. It should be considered whether appropriate penalties should be imposed in such cases.

In regard to (b), the Committee desire that every possible assistance should be provided to assessees to enable them to properly classify their goods.

1.56. From a note furnished by the Ministry, the Committee observe that the total revenue receipts from 59 commodities under the Self-Removal Procedure during 1968-69 exceeded the budget estimates by 5:41 per cent, as against the increase of 2·84 per cent in case of commodities other than those under the S.R.P. The Committee feel that this should not generate a sense of complacency in the Department for the increase in revenue may be the effect of a number of extraneous factors such as natural growth, increase in rates of duty, etc. It would, therefore, be facile to conclude that the increase is attributable to the new system.

1.57. The Committee also observe that in case of three industries, Sugar, Tinplates and Wireless Sets, an increase in clearances has

been accompanied by a decline in revenue. The Committee would like Government to investigate the reasons for this state of affairs.

1.58. **The Committee also find that there has been a sharp decline in the number of offences detected in case of art silk fabrics, aluminium and cosmetics. The number of offences detected in these industries during 1966 was 519, 46 and 49 as against 55, 20 and 18 during 1968. The Committee would like to be assured that this phenomenon is not due to slackening of vigilance by the Central Excise Department.**

Compounded Levy Scheme

1.59. The Committee enquired about the conditions of eligibility for assessment under the compounded levy scheme. The representative of the Board stated that there were two pre-requisites. The first pre-requisite was that the manufacturer should not have any spinning or processing plant. He should have only powerlooms the number of which should not exceed 49. The second pre-requisite was that he should take the specific permission of the Collector to work under the compounded levy scheme and pay the duty in advance in settlement of all dues.

1.60. In a note explaining the rationale underlying the compounded levy scheme, the Ministry of Finance have brought the following position to the notice of the Committee:

> "The Compounded levy system is essentially a simplified procedure designed for collecting excise duty from smaller units. In this procedure the duty liability is usually determined on the basis of the equipment employed or installed for the manufacture of the particular excisable commodity instead of the actual quantity of the goods manufactured or cleared and the owner is permitted to discharge his liability by paying in advance a lump sum computed on their basis. He is also absolved from the obligation of maintaining detailed accounts etc., and is free from the normal excise control.
>
> The need for evolving such a simplified procedure first arose in 1954 when art silk fabrics were brought under excise control. Till that time, except in the case of tobacco, excise duty was levied only on a few selected items of

large scale manufacturers and the administration was comparatively simple in nature. Problems arose when in 1954, industries in the relatively small producing units were brought under excise. This necessitated introduction of tax relief for whole sectors of an industry, as well as extension of excise surveillance in varying degrees over a large number of smaller units. The levy of duty on rayon and artsilk fabrics brought under excise control a large number of small powerloom units. While complete tax relief had to be given to the smallest of the units, a simplified procedure coupled with an element of tax relief had to be devised for those units which were somewhat bigger in size. These units were too small to be able to observe the normal excise procedure. At the same time the cost of maintaining the normal excise control on so many of these units would have been prohibitive. A modus operendi was, therefore, found by the introduction of a simplified procedure commonly known as the compounded levy system.

In 1955 a similar problem but of a bigger magnitude arose when it was decided to withdraw complete exemption of duty enjoyed by the powerloom units manufacturing cotton fabrics. In their case also a compounded levy system based on the average number of looms employed and the number of shifts worked combining an element of tax relief for smaller units had to be devised. In the beginning there was no upper limit on the number of looms employed but subsequently an upper limit was fixed at 300 and in course of time it was reduced to 49 looms. Another basic change was made in 1965 when in the wake of the recommendations of the Powerloom Enquiry Committee, the duty burden to be borne by the powerloom sector was substantially transferred to the yarn stage. The compounded levy rates were substantially reduced and the rates were fixed on the basis of the number of looms installed by or on behalf of any manufacturer instead of the average number of looms employed by him. The reference to the number of shifts was also omitted.

In the course of time it also became necessary to extend the compounded levy system in khandsari sugar, vegetable non-essential oil, silk fabrics, woolen fabrics, electric battery parts, coarse grain, plywood and cotton yarn. The

need for the compounded levy system for vegetable non-essential oils ceased to exist when in 1963 all vegetable non-essential oils other than processed oils were exempted from duty. For similar reasons the compounded levy system for silk fabrics and woollen fabrics became unnecessary. As already mentioned above, in all other cases except cotton yarn the system is essentially meant for smaller units and the rates are linked with the number and type of equipment installed or employed. In the case of cotton yarn the system is essentially meant for facility in payment of yarn duty along with the fabric duty. The rate of the levy is based on the type and quantity of fabric made.

The compounded rates in all cases are revised from time to time and suitable adjustments are made whenever there is any change in the standard rates of duty. In the case of khandsari sugar the rates have been revised and reviewed seven times during the course of last 10 years. In the case of cotton fabrics revision has been done twelve times during the last nearly 15 years."

1.61. The Committee desired to know the ratio of compounded levy to the standard levy. The representative of the Board stated that it ranged from 20 per cent to 75 per cent, the ratio varying from commodity to commodity. The idea was that there must be sufficient incentive to compound the levy. In a note the Ministry of Finance have explained the relationship of compounded levy rates to standard rates in respect of two commodities (khandsari sugar and unprocessed fabrics) as follows:

"In the year 1968-69, there were 1525 khandsari units out of which 1433 worked under the compounded levy procedure and 92 worked under the standard procedure. The factories working under the normal procedure had to pay a rate of duty of Rs. 15 per quintal as basic excise and Rs. 6.50 per quintal (if the factory used sulphitation plant) as additional excise duty and Rs. 2.50 per quintal if it did not employ the sulphitation plant. Since the data is not readily available as to how many khandsari units worked with the aid of sulphitation plants and how many worked without the aid of sulphitation plants, the average standard rate per quintal has been calculated on the basis of total production by the khandsari units working

under normal procedure and total revenue realised from them.

The Khandsari units working under compounded levy are not required to pay any additional excise duty; the composition fee includes additional excise duty and in their case, therefore, the average rate per quintal has been worked out on the basis of total production of khandsari sugar from units working under compounded levy and total revenue realised from them.

Basing our calculation on that, it would appear from statement (vide Appendix IV to this Report) that the proportion of compounded levy to standard rate is about 85 per cent.

The comparative incidence of duty at the effective prescribed rates of duty for unprocessed fabrics for composite mills and the compounded rates prescribed for power loom units has been given (vide Appendix V to this Report). The standard effective rates of duty are prescribed in terms of duty per sq. metre. The compounded levy rates are prescribed per powerloom installed. The same powerloom can be used for manufacturing and type of grey fabrics except those which are liable to *ad valorem* rate of duty. As such the incidence of the compounded levy rate on any category of grey fabrics is necessarily to be worked out assuming that the powerlooms were exclusively used for manufacturing that category of fabric. It may also be added that the powerloom units working under the compounded levy system do not have to pay the additional excise duty in lieu of sales tax and the handloom cess separately."

It was not necessary to undertake representative field studies in respect of commodities coming within the purview of the compounded levy scheme to determine the average production and the standard levy on it, with reference to which the compounded levy could be worked out. The representative of the Board stated, "I would not say any studies have been undertaken. The basic fact is that the compounded levies are fixed because it reduces the work of the administration on the one hand and of the assessee on the other. It is the most simplified system of charging duty because it results in quick disposal. It is a useful suggestion that we should undertake such a study every year in every region regarding every duty.

We can observe that subject to the availability of staff etc., certainly we should have a look at the compounded levy rate off and on to see that they are not bound dwn for all times..... (But they must not be fixed so high that they are not taken advantage of".

1.62. The Committee enquired whether in spite of the compounded levy being quite low in relation to the normal excise levy, a number of small scale units prefered not to opt for the compounded levy scheme because there was scope for evasion under the standard pattern of excise control. The representative of the Board stated that it was not possible to come to any definite conclusion on this issue. There were certain areas where, because of seasonal factors it was not possible for manufacturers to run their units.

1.63. The Committee observe that, in spite of rates under compounded levy schemes being 20 per cent to 75 per cent of the standard excise levy and the facility the schemes offer to assessees through adoption of simplified procedures for assessment, a number of units have not opted for the schemes. This raises a doubt whether some of the units at least have chosen to stay out because the standard pattern of excise control offers scope for evasion of duty. As early as 1963, the Central Excise Reorganisation Committee had drawn attention to this phenomenon. The Committee would like Government to undertake studies on a selective basis for certain commodities to ascertain how far this is prevalent and to take suitable remedial measures.

1.64. There is another important point which has a bearing on the rate structure under the compounded levy schemes. The fact that rates under these schemes vary from 20 per cent to 75 per cent of the standard levy would appear to suggest that they are fixed on an ad hoc basis. The Committee do not consider this satisfactory, as it could cause avoidable loss of revenue to the exchequer. The Committee would suggest that Government should undertake field studies to determine the average production of commodities brought under compounded levy and the standard duty on such production to which the compounded levy should be realistically related. The rates so fixed should be subject to periodical review and in the light of experience they should be suitably revised. The representative of the Central Board of Excise and Customs admitted during evidence that such studies had not been undertaken but would be useful. The Committee would like Government to make a start in

this direction. As the number of commodities subject to compounded levy are few, it should be possible to have the entire gamut of the scheme covered by these studies in a short time.

Delay in revision of tariff value and consequent loss of Revenue
Audit Paragraph

1.65. Copper winding wires were assessed to duty on the basis of tariff values fixed by the Government of India in August, 1965.

Consequent on the devaluation of Indian currency in June, 1966 the prices of copper had gone up as a result of which the selling prices of winding wires were also duly raised. However, till March, 1968 the tariff value remained unchanged resulting in loss of revenue of approximately Rs. 10 lakhs, between July, 1966 and February, 1968 in respect of a few factories alone in one collectorate.

[Paragraph 41(vii) of Audit Report (Civil) on Revenue Receipts, 1969]

1.66. The Committee desired to know the reasons for delay in revision of the tariff values of the winding wires mentioned in the paragraph.

In a written reply, the Ministry have stated:

"Review of the tariff values for winding wires, which were fixed on 21st August, 1965, had in fact been undertaken by the Economic Adviser in January, 1966. In the meanwhile, however, currency was devalued in June, 1966 and in these circumstances the Economic Adviser had to mark time to allow stabilisation in prices which were fluctuating in wake of devaluation. Fresh data was collected after stabilisation in prices and Economic Adviser's proposals for revision of staff values were received by this Ministry at the end of March, 1967, whereafter certain clarifications of his proposals were obtained from him by the middle of July, 1967. The proposals were then scrutinised and it was considered necessary to obtain the following information from the Collectors:—

(a) Wholesale prices of aluminium wires and cables subsequent to the announcement of 1967 budget proposals; and

(b) Wholesale prices of telecommunication wires and cables or contract prices in case bulk of such cables was being supplied on contract prices.

In case of aluminium cables, necessity for a reference to the Collectors arose because of the enhancement of excise duty on aluminium in May, 1967 whereas Economic Adviser's proposals were based on the prices prevalent in the last quarter of 1966. As regards telecommunication cables, the reference was made to the concerned Collectors as the Economic Adviser had expressed his inability to formulate his proposals in the absence of data which had not been made available to him.

After receipt of the required information, this Ministry examined whether the correct way of giving relief to the small scale manufacturers was to reduce the tariff values or to give them an exemption in the rate of duty. The question of decreasing the concession in the tariff values already available to electric wires and cables not manufactured according to any standard specifications was also under consideration. This took some time and after these interlinked matters were decided, revised tariff values were notified on 23rd March, 1968."

1.67. In reply to another question, the Ministry have stated:

"Working of the Government machinery for evaluating the tariff values was reviewed in August, 1969 with a view to expediting and improving the working out of tariff value proposals and it was decided as under:

(i) In future, the necessary data for fixing or revising tariff values would be collected by the Director of Inspection, Customs and Central Excise, who would formulate tentative proposals and then refer the proposals to the Economic Adviser.

(ii) As the Economic Adviser had got a machinery to get intelligence about price trends, it was decided that in case of abnormal price variation in regard to excisable goods assessed on tariff values, he would suitably inform the Director of Inspection so that if a mid-year revision of tariff values was called for it could be undertaken immediately."

1.68. In their 44th Report (Third Lok Sabha), the Public Accounts Committee had recommended that tariff values of commodities for purpose of levy of excise should as far as possible correspond to market prices. This pre-supposed that the Depart-

ment would promptly take cognisance of changes in market values and refix tariff values suitably. The Committee regret to observe that in this case, though there was a rise in the market prices of copper winding wires following devaluation in June, 1966, the tariff values fixed by Government remained unaltered till March, 1968. This resulted in a loss of revenue of about Rs. 10 lakhs in respect of a few factories in one Collectorate alone. In the opinion of the Committee, the period of 21 months taken by Government was inordinate, even after making due allowance for the factors mentioned by Government. The Committee deprecate this delay.— The Central Board of Excise and Customs itself took about a year to come to a decision, even after the Economic Adviser's proposals in this regard were received (in March, 1967). The Government have stated that measures for improving the working of Government machinery for fixation of tariff values have been taken recently. The Committee would like to watch their impact on the efficiency of the Department in this respect.

1.69. The Committee would also like Government to consider whether the responsibility for determination of tariff values should be centralised in one agency of Government, instead of being distributed between two agencies as at present.

Tobacco Tariff

1.70 .The Committee pointed out that the Central Excise Reorganisation Committee had estimated that 60 per cent of the primary executive staff employed in the Central Excise Department was deployed exclusively on tobacco excise work. In recent years, with the extension of excise coverage, it had been assessed that the relative proportion had come down to 25 to 30 per cent. Even then about 3,000 Inspectors and Sub-Inspectors were exclusively engaged in the work. The Committee pointed out that out of a total excise collections of Rs. 1034 crores during 1966-67, tobacco excise accounted for Rs. 126 crores and unmanufactured tobacco for Rs. 63.5 crores. They enquired whether the staff deployed was not disproportionate to the revenue involved. The representative of the Board stated that "roughly 25 per cent—usually low-paid staff" was deployed for tobacco excise work. He added: "We have been gradually diverting staff from Tobacco Excise to other excises..... From 1962 onwards although our excise coverage is going up, we have not had practically any recruitment. We have streamlined control over tobacco and gradually diverted the staff which was deployed on tobacco to other excises. As a matter of fact, in sparse growing areas we have cut down formalities. We have also increased the personal consumption limits, both in terms of area and quantity."

1.71. The Committee were given to understand that the Government of India set up an Expert Committee in June 1956 to review the departmental procedures in force for assessment of duty on tobacco. That took the view that the only acceptable scheme of classification of tobacco for purpose of Central Excise Tariff was the classification "based on physical form". Government accepted this recommendation and modified the tobacco tariff. The existing tobacco tariff is reproduced at Appendix VI to this Report. The Committee observe therefrom that the "physical form" is not the only basis of the Tariff. In certain cases (*Vide* item (5) of the Tariff), the tobacco, chargeable at a lower rate, should be such as is not actually used for manufacture of biris. In other words, a decision on the end-use of tobacco is also one of the ingredients of the tariff.

1.72. The Committee enquired whether the existing tariff combining both the physical form and the end use in the matter of assessment of unmanufactured tobacco was rational and administratively convenient. The representative of the Ministry of Finance stated: "It (the existing tobacco tariff) does cause inconvenience to some extent. But it is not merely from the administrative convenience point but from the point of revenue that we have to consider this. I do not think that one can really say that because of administrative inconvenience, we should give up the present system of levy of duties."

1.73. The Committee enquired whether by limiting the duty to warehouses, the staff employed on the collection of tobacco excise could not be substantially reduced. The representative of the Board stated: ".....The difficulty is that if we did that, the curers will disperse tobacco rather than send it to the warehouse. This matter was considered last year, but we thought that the risk of evasion was much. What we did was that we streamlined the procedure. The control at the grower's stage has been reduced and at the curer's stage also it has been simplified. But we have not given it up. But it is certainly a thing which we consider off and on in terms of expenditure. The staff, that we are deploying for this revenue of 75 crores and odd, does appear out of proportion to the staff that we employ for other manufactured commodities. But these manufactures are produced in definite factories."

1.74. In reply to a question, the witness stated: "We considered that we should hold our hand in the sparse growing areas as there

are heavy pockets in those areas also. Otherwise a lot of tobacco being grown in those concentrations will escape duty. So, the only alternative we could think of was to increase the personal consumption quota from 40 Kg. to 65 Kg. That is how we solved most of the problems and most of the sparse growing areas have gone out of our control but naturally we wanted to keep an eye in the sparse areas."

1.75. The Committee were also apprised of the following position in regard to the tobacco tariff:

(a) The first main division in between tobacco for cigarettes and smoking mixtures and other tobacco. Our tariff makes three further sub-divisions in the tobacco for cigarettes and smoking mixtures (i) flue cured tobacco for cigarettes at Rs. 3.50 per Kg. (ii) non-flue cured tobacco for cigarettes and smoking mixtures at Rs. 2.85 per Kg., and (iii) flue-cured tobacco for smoking mixtures at Rs. 27.50 per Kg. The following table gives some significant features of these three sub-divisions as per the rates applicable during 1966-67:

S. No.	Variety	Tariff Item No.	Rate of duty per Kg.	Whole-sale price (ex-duty) per quintal Rs.	Total excise duty Rs.
1	Flue-cured for cigarettes	4·I(1)	Rs. 3·20+ 20%	200·00 to 440·00	11·55 crores
2	Non-flue-cured for cigarettes and smoking mixtures	4·I(4)	Rs. 2·60+ 20%	50·00 to 260·00	6·93 crores
3	Flue-cured for smoking mixtures	4·I(2)	Rs. 25·00+ 20%	..	0·03 crores

(b) The comparatively high rate of Rs. 27.50 per Kg. duty on flue-cured tobacco for smoking mixtures is compensated by the fact that no duty is levied on the smoking mixtures as is levied on cigarettes. But non-flue-cured tobacco for smoking mixtures escapes with the rate of Rs. 2.85 per Kg. only as the end-product is also not leviable to duty. In this context it is significant that only Rs. 3 lakhs were collected as duty in 1966-67 on flue-cured tobacco used in smoking mixtures. A small difference of 65 NP is maintained between the flue-cured and non-flue-cured tobacco used for cigarettes although both varieties are generally mixed in varying proportions for making cigarettes and further the duty on cigarettes is related to the value so that any progression in incidence as between cheaper

and costlier cigarettes (or cheaper and costlier tobacco used in their manufacture) is more simply and conveniently achieved at that stage. It would therefore be abusable to have a single rate of duty on all tobacco used in the manufacture of cigarettes and smoking mixtures, with some readjustment of duties on cigarettes, if necessary, as a consequence, and a separate duty on smoking mixtures.

(c) The index number of wholesale price in India for week ending 10-8-68 gives the following figures:

Variety	Unit	Price Rs.	Price per quintal Rs.	Duty per quintal Rs.	Ex-duty value Rs.
Leaf Poolah F.A.Q. (Medium)	50 Kg.	340	680	216	464
Leaf Mohihar (Medium) . .	..	590	1,180	216	964
Bidi Tobacco . . .	Quintal	900	900	344	556
Snuff tobacco . . .	225 Kg.	786	349	216	133

(d) The ex-duty price ranges from about Rs. 150/- per quintal to over Rs. 900/- per quintal. One variety of whole leaf tobacco seems to be paying the lower rate of duty although its value is higher than the biri tobacco which pays Rs. 1.28 more per Kg. Even the lower rate of duty on the other hand imposes a much higher *ad valorem* incidence on the cheaper varieties. It is thus clear that the present tariff for non-cigarette tobacco has not achieved proper progression nor are diversion and evasion checked.

(e) Having regard to these considerations and for facility of administration, there may be only two rates of duty for tobacco for other than cigarettes and smoking mixtures—(i) a very low rate for dust, stalks and large stems and (ii) a rate roughly approximate to the weighted average of the existing two rates, applicable to all other tobacco. The small extra burden on the non-biri user of tobacco could be mitigated significantly by the reduced duty on dust, stalks and large stems and also by a more liberal personal consumption allowance which would also simplify excise control in other regards. If a small fall in revenue could be accepted in this sector, considering that with our proposal to have a uniform rate for all tobacco for cigarettes would bring in some additional revenue, the rate of duty could be fixed lower than even the weighted average. Progression could be achieved by having an additional differential

levy on biris sold under brand names, which being produced in large scale establishments should be relatively easier to control.

1.76. The Committee notice that at present the Department employs what has been roughly estimated as 25 per cent of primary excise staff on tobacco work. Considering that out of the total excise revenue of over Rs. 1,100 crores, tobacco excise (manufactured and unmanufactured tobacco put together) accounts for about Rs. 200 crores, the staff employed on this work would appear to be disproportionately high. Nearly 94 per cent of the duty on unmanufactured tobacco is collected at the warehouses. This would indicate that by a judicious rationalisation of checks on growers and curers and intensification of the checks at the revenue yielding points, it might be possible to bring about a reduction in the staff deployed for the work. The Committee would like the matter to be taken up for a detailed study by Government.

1.77. Another point the Committee notice is that the tobacco tariff is at present complicated. This undoubtedly makes its administration difficult. The tariff was rationalised on the basis of the recommendations of an Expert Committee which suggested that the "physical form" of tobacco should form the basis for classification. However, in actual practice, the tariff has come to adopt, apart from the physical form, the 'end-use' criterion also. The end-use criterion will be difficult to apply without ambiguity or dispute. Apart from this, the incidence of duty on various types of tobacco has tended to be rather uneven. The data given in the preceding part of this Section would indicate that the relative incidence of duty on flue-cured tobacco and non-flue cured tobacco for smoking mixtures does not follow a rational pattern. In leaf and biri tobacco, the burden of duty, as between different varieties, shows no correlation to the relative market values of the various grades.

1.78. For the foregoing reason, the Committee feel that it is time that Government made an expert assessment of the tobacco tariff with a view to seeing how best it could be rationalised and the burden of duty on the various varieties made tocorrespond to their value. The Committee suggest that this matter should be examined by a small expert Committee, which should also go into the question of economising on the staff employed for tobacco excise work.

Loss of revenue to operation of time-bar.

Audit Paragraph

1.79. The total amount of revenue foregone by Government due to operation of time-bar in respect of Central Excise assessments during 1967-68 was Rs. 12,60,957 as detailed below:

	No. of cases	Loss of revenue involved
		Rs.
(a) Demands not issued due to operation of time-bar	144	6,75,432
(b) Demands withdrawn due to operation of time-bar	52	5,85,525
	196	12,609,57

[Paragraph 42 of Audit Report (Civil) on Revenue Receipts, 1969]

1.80. The Committee desired to know whether any investigation was made to find out in how many cases the loss of revenue was occasioned by laxity on the part of the departmental officers or collusion or wilful mis-statement on the part of the owner in a note, the Ministry have stated:

"Investigations conducted indicate that in all there were 6 cases where the loss of revenue could be attributed to laxity on the part of Departmental officers.

"Only 1 case has been attributed to collusion or wilful mis-statement on the part of the owner. The Collector concerned has reported that necessary action has been taken against the officer concerned but the details are not available."

1.81. As to the remedial measures taken by Government. The Ministry have stated in their note:

"The Government have undertaken a three-pronged drive to ensure that the intial determination of duty itself is correctly made; but the underpayments or over-payments, if any, made intially are detected well in time, and recoveries|refunds are also made as early as possible; and, that wherever demands have to be issued, they are issued after mature consideration by a senior gazetted officer. In this connection, the following steps have been taken:

(a) Previously, the intial determination of duty used to be made by junior officers of the rank of sub-inspectors

and inspectors, who were posted to the factories. With the extension of self-removal procedure to all manufactured goods, this task has been entrusted to the Superintendent-in-charge of the assessment Range, who is a gazetted officer. The supdt. is required to approve the tariff classification and rate of duty in a classification list and the assessee is required to make payment of duty as per the Superintendent's orders in the classification list.

(b) To ensure that the mistakes, if any, made in the classification list or in day-to-day determination of duty by the assessee are detected well in time, Inspection Groups consisting of selected field staff and headed by a Superintendent have also been constituted. Each factory is required to be inspected by the Inspection Group once in six months by surprise.

(c) In order that the short-payments detcted by the Inspection Groups are recovered well in time, the period of time-bar under rule 10 (which used to be three months) has been extended under rule 173-J to one year in the case of manufactured goods. Correspondingly, the time limit application to refunds in respect of manufactured goods has also been extended to one year.

(d) It has been noticed that officers at lower levels had a tendency of playing safe and issuing demands for duty whenever they felt the slightest doubt. In order to prevent this tendency, rule 10 and 10-A have been modified. Under the new procedure, the demands can be issued only by an Assistant Collector after giving the assessee an opportunity to show cause against the proposed recovery.

(e) There may yet be cases of diverse or erroneous assessment practices in respect of the same goods in the same collectorate or in different collectorates. Two steps have been taken in order to bring uniformity in assessment. In the collectorate, The Assistant Collector (Audit) is required to scrutize the classification lists received by him from different Superintendents and see if different classifications have been made by different officers in respect of the same description of goods. In order to ensure uniformity in assessment practices all over the country, it is proposed to set up a classification and Valuation Cell at the headquarters."

1.82. The Committee note that during the year under report Government had to forgo revenue to the tune of Rs. 12:61 lakhs in 196 cases on account of operation of time-bar. Investigations conducted by Government revealed that in six of these cases, there was laxity on the part of Departmental Officers. The Committee would like suitable action to be taken in these cases against the officials found lax or negligent. In one case, there was collusion|wilful misstatement on the part of the assessee for which action is reported

1.83. The Committee note that the period of time-bar under Rule 10 which used to be three months previously has since been extended to one year. A number of measures have also been taken by Government for the proper determination of duty ab initio and timely detection of mistakes in classification or assessment. The Committee would like to watch the effect of these measures through future Audit Reports.

Arrears of Union Excise Duties

Audit Paragraph

1.84. The total amount of demands outstanding as on 31st March, 1968 in respect of Union Excise duties was Rs. 2129.45 lakhs as given below:

Commodity	Pending for more than one year	Pending for more than a month but not more than a year	TOTAL
1	2	3	4
			(In lakhs of rupees)
Unmanufactured tobacco	297·10	87·18	384·28
Motor spirit	52·48	19·36	71·84
Diesel oils N.O.S.	121·60	4·04	125·64
Furnace Oil	32·67	6·03	38·70
Petroleum Products N.O.S.	20·10	18·85	38·95
Gases	28·60	3·46	32·1
Plastics	98·55	63·30	161·85
Paper	16·09	19·50	35·59
Rayonand Synthetic fibres and yarn . .	318·16	15·06	333·22

assessment disputes which lead to arrears of revenue. The Unit dealing with appeals and revision applications in the Board's/Ministry's office which has been strengthened is expected to expedite the process of recovery of duty. A watch is kept on the Collectorate disposals also. It had been noticed that there was a tendency on the part of junior officers to play safe and to issue demands for duty whenever they felt the slightest doubt. Such demands swelled the total arrears figure, but quite a few of them were ultimately found legally not sustainable. Rules 10 and 19-A have now been amended to the effect that demands can now be issued only after a proper adjudication by the Assistant Collector. This is expected to reduce unjustified demands for duty which lead to arrears of revenue."

1.87. In successive Reports on Customs and Excise, the Committee have been expressing concern over the heavy accumulation of arrears of excise duty. The Committee regret to observe that during the year under report, the position has further deteriorated. The arrears which amounted to Rs. 16:07 crores on 31st March, 1967 rose to Rs. 21:29 crores on 31st March, 1968—an increase of nearly 33 per cent in one year alone. This shows that effective steps have not been taken by the Board pursuant to the repeated exhortations of this Committee to reduce arrears. The Committee feel that Government will have to act with greater vigour if the arrears are to be liquidated at an early date.

1.88. **As in previous years, the largest arrears were accounted for by unmanufactured tobacco (about Rs. 3:84 crores), of which nearly 77 per cent were pending for more than one year. The Committee would like a vigorous drive to be launched for the speedy clearance of these arrears.**

1.89. **In their 72nd Report (Fourth Lok Sabha), the Committee had dealt with the excise arrears amounting to Rs. 3:14 crores on account of glass wool fibre. The Committee were then informed that Government were considering the question of withdrawing the relevant demands, in consultation with the Comptroller and Auditor General. The Committee regret to observe that although a year has elapsed, no decision has yet been taken. The Committee desire that the matter should be settled speedily.**

Loss of revenue due to grant of concessional rates of duty in respect of certain cotton Fabrics treating than incorrectly as "controlled cloth"

1.90. Government in their notification issued in February, 1965 have laid down special concessional rates of duty for certain varieties of cotton fabrics known as "controlled cloth" which answered to then description of "dhoti", "saree", "long cloth," "shirting" or "drill" as defined by the Textile Commissioner under the Cotton Textile (Control) Order, 1948 and for which maximum ex-factory prices had been specified by him under the Order. In pursuance of this Control Order, the Textile Commissioner had notified from time to time definitions of these fabrics, prescribing detailed specifications for each category.

In respect of certain varieties manufactured by a few textile mills, which were not according to the notified definitions, individual deviation orders were issued permitting them to be treated as "control led cloth" on the strength of which the special concession in duty as for "controlled cloth" was allowed by the department. In November, 1967, it was decided by Government that such deviation orders were not valid under the Control Order and that concession as for "controlled cloth" should not be allowed to the fabrics governed by the deviation orders.

The total short levy on such fabrics covered by deviation orders in six collectorates was Rs. 15.41 lakhs out of which recovery of Rs. 7.45 lakhs has become time-barred and demands have been raised for the balance.

[Paragraph 31(a)(ii)(a) of Audit Report (Civil) on Revenue Receipts, 1969].

1.91. The Committee were given to understand by Audit that the deviation orders were issued by the Textile Commissioner under the Cotton Textile Order, 1948 and specified the name of the factory and the particular variety of Cotton Cloth deviating from the prescribed specifications laid down by the Textile Commissioner. The cloth covered by these deviation orders was assessed to concessional rates of duty under the Government's notification issued in February, 1965.

1.92. During evidence, the Committee enquired about the circumstances in which 'Deviation Orders' were issued by the Textile Commissioner. They were informed by the representative of the Ministry of Foreign Trade and Textile Commissioner that the noti-

related primarily to the question of the deviation orders and how they came to be issued." The representative of the Department of Foreign Trade informed the Committee "the decision about the deviation orders was taken with the personal knowledge of the then Commerce Minister. It was unfortunate that the orders were issued in a form which later on was regarded as having affected the legality of the form, and there was nothing wrong with the orders. That is why, on the advice of the Law Ministry, the errata was issued in a proper legal form suggested by the Law Ministry. As to the propriety of the whole thing, it is for the Committee to consider whether they would like the Government to go into the question of the issue of these deviation orders, which were issued with the personal knowledge of the then Commerce Minister."

1.98. **The Committee cannot help expressing a sense of disquiet about the manner in which the scope of the scheme for grant of concessional rates of duty on controlled cloth was extended to cover varieties of cloth which were in fact not controlled cloth at all. This was done through 'deviation orders' which the Textile Commissioner issued from time to time in favour of specific mills to cover particular consignments of cloth produced by them. By virtue of these orders, cloth produced by these mills, though not in conformity with the specifications laid down for controlled cloth, were treated as such and thereby became eligible for concessional rates of duty.**

1.99. **In the opinion of the Committee, the procedure adopted by Government was irregular. Apart from the fact that it resulted in a loss of revenue to the exchequer, through grant of concessional rates of duty, it was also discriminatory, as the deviation orders covered cloth produced by particular mills. The Committee had asked for full particulars of deviation orders in favour of various parties which regrettably have not been furnished by Government. The Committee would like all these particulars to be collected and an independent investigation to be made to determine:**

(i) **whether there were objective and impartial criteria for issue of the 'deviation orders'.**

(ii) **whether, in fact, these criteria were followed while issuing deviation orders.**

(iii) **whether the benefit of deviation orders accrued in actual practice only to a few parties and if so how it occurred.**

(iv) **what other advantages, apart from duty concessions, accrued to mills which were able to market cloth covered**

by these deviation orders as controlled cloth e.g., whether for instance, it provided the Mills an easy market for sub-standard cloth which would otherwise have been difficult to market.

The Committee would like this investigation to be completed within six months and the results to be intimated to them.

1.100. **There is one other point which the Committee wish to mention. The deviation orders were originally held to be beyond the competence of the Textile Commissioner by a Branch Secretariat of the Ministry of Law. When the matter was referred for a second opinion, the Ministry of Law held that the Textile Commissioner was competent to permit deviations and that there was "only a defect in form". Since the defect in form has vitiated the orders, the concession in rates of duty extended on the strength of these orders now lacks legal authority. The Committee note that Government have issued 'errata' to regularise the position, but the Committee are doubtful whether it is in order, by this means, retrospectively to regularise a tax concession. The Committee would like authoritative legal opinion on this point to be taken by Government.**

Loss of revenue due to grant of concessional rates of duty in respect of certain cotton fabrics treating them incorrectly as "controlled cloth"

Audit Paragraph:

1.101. It was noticed in a collectorate that sarees which neither conformed to the definition of "controlled variety" prescribed by the Textile Commissioner nor were covered by his deviation orders were also cleared at the concessional rate of duty during the period from 1st March, 1965 to 25th October, 1967. When the department discovered this in October, 1967. Demand for the differential duty for the period from 26th July, 1967 to 25th October, 1967 was raised. No action was taken to rectify the under-assessment for the period from 1st March, 1965 to 25th July, 1967. On this being pointed out the department levied additional duty of Rs. 2,03,600 for the period in January, 1968.

[Paragraph 31(a)(ii)(b) of Audit Report (Civil) 1969, on Revenue Receipts.].

1.102. **The Committee desired to know the circumstances in which the sarees manufactured by the licensee which neither conformed**

to the definition of "controlled variety" prescribed by the Textile Commissioner nor were covered by his deviation orders were allowed to be cleared at the concessional rate during the period 1st March, 1965 to 20th October, 1967. In a note, the Ministry have stated:

"The sarees manufactured by the licensee, and allowed to be cleared on payment of concessional rates of duty prescribed for controlled varieties of cotton fabrics, were meant for children. These sarees, therefore, were not only of shorter length but of shorter width as well.

To the extent the above sarees were of shorter length the the local Central Excise Officers relied on the declaration made by the manufacturer about such sarees being covered by the description of 'Saree' as prescribed by the Textile Commissioner from time to time. The did so for the reason that according to the instructions issued by this Ministry in Otober, 1964, they were not required to enter into controversy whether the declaration made by the manufacturer was correct or not.

It was only under this Ministry's letter of 29th April, 1967 that the above instructions were modified, and the Collectors of Central Excise were desired *inter alia* to alert the local officers to guard against such cotton fabrics as did not conform to the definition of "controlled cloth", being allowed to be cleared on payment of concessional rates of duty prescribed for such cloth. It was by way of illustration that short length sarees were also mentioned as not qualifying for assessment as "controlled cloth". Subsequently the Central Board of Excise in its letter of 29th July, 1967 informed the Collectors of Central Excise that denial of concessional rates of duty to short-length sarees had been challenged and the matter taken to the court of law by one of the manufacturers, but desired that demand notice should be issued in respect of all those fabrics which did not conform to the prescribed definitions of 'Controlled cloth'.

To the extent the above sarees were of shorter width a deviation order had been issued by the Textile Commissioner on 8th October, 1965."

1.103. As to the latest position of the demands raised against the licensee, the Ministry have stated:

"The position regarding the demands raised against the assessee is as follows:—

Period	Amount of demand raised	Remarks.
1-3-65 to 30-9-1966	Rs. 1,11,341·29	It includes clearances between 1-3-65 to the date ofdeviation order that is 8-10-65. Clarification is being obtained by the Collector from the Textile Commissioner as to whether that order had retrospectiveeffect.
		It also includes some sorts not fully covered by the deviation order. Clarification is being obtained from the Textile Commissioner.
		In the light of Textile Commissioner's clarification the question regarding with drawal of the demand is due to be reviewd.
1-10-66 to 25-7-1967	Rs. 92,274·46;	Covered by the deviation order and the demand has to be withdrawn.
TOTAL .	Rs. 2,03,615·75	
26-7-67 to 25-10-1967	Rs. 45,739·44	Covered by the deviation order and the demand has to be withdrawn.
Grand total Rs	2,49,355·19	

It will be observed that to the extent the sarees in question may be found to be covered by the Delhi High Court* judgment with regard to short length or the deviation order issued by the Textile Commissioner with regard to short width, there has been no less of revenue."

1.104. **The Committee regret that sarees manufactured by the assessee in this case which neither conformed to the specifications of controlled cloth as prescribed by the Textile Commissioner nor were covered by his deviation orders were allowed to be cleared by the Central Excise authorities at the concessional rate. This resulted in a short assessment of duty to the extent of Rs. 1.11 lakhs. It was stated that the Central Excise Officers were, under instructions from Government not to "enter into controversy" about the correctness of declarations made by manufacturers and, therefore, failed to detect that the sarees deviated from the specifications prescribed for controlled cloth. It is regrettable that Government should have issued instructions to the Excise Officers not "to enter into con-**

*According to Audit, the reference to Delhi High Court Judgement does not appear to be quite relevant. This judgement dealt with the length criterion whereas the audit objection was based on the non-fulfilment of width criterion.

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

1.105. The Committee also note that the assessee in this case got duty concessions amounting to Rs. 1.38 lakhs on the strength of deviation orders issued by the Textile Commissioner to cover sarees which were not of the width prescribed for 'controlled cloth'. In an earlier section of this Report, the Committee have suggested a comprehensive investigation of all cases covered by deviation orders. The Committee have also pointed out that in the light of the legal opinion that deviation orders were vitiated by "a defect in form", concessional assessments on the strength of these orders will lack legal validity. The Committee would like to be informed of the action proposed to be taken by Government in the light of this position to validate the concessional assessments in this case.

Sanction of excess rebate under the scheme of incentive for excess sugar production

Audit Paragraph·

1.106. To maximise sugar production during the 1963-64 season the Government of India announced certain rebates in respect of excess production of sugar from the standard duty leviable thereon depending upon the State in which the factory was situated. Under that scheme factories in Maharashtra were allowed a rebate of 50 per cent of excise duty on the quantity of sugar produced during November, 1963 in excess over the basic quantity prescribed. Subsequently in December, 1963, the earlier notification was amended to reduce the concessional rate on the excess production during Novmber, 1963 to 20 per cent.

In the case of one such sugar factory, the rebate in excise duty for the excess production of sugar in November, 1963 was allowed at 50 per cent instead of at 20 per cent, resulting in excess rebate amounting to Rs. 1,94,433.

[Paragraph 22 of Audit Report (Civil) on Revenue Receipts, 1969].

1.107. Tracing the background of the case, the representatives of the Ministry of Finance and the Central Board of Excise and Customs stated that two notifications were issued by Government under Rule 8 of the Central Excise Rules. The first was issued on 21-11-1963 and the second one on 14-12-1963. The object underlying the notifications was to encourage sugar production in view of the scarcity of sugar. The notifications were intended to provide a fiscal incentive to sugar factories to take up crushing earlier and to produce more sugar than they would have normally done. Recovery in the earlier part of the season is normally less than what it is in full season. Therefore, a rebate on duty at a higher rate was made applicable for earlier parts of the season.

1.108. The first notification of November, 1963 covered all the States. However, factories in Madras, Mysore and Kerala were made eligible for a rebate of 50 per cent in respect of production in the crushing season from June to October, 1963. Factories in Maharashtra under this notification qualified for 50 per cent rebate in respect of production in November, 1967. In the Ministry of Food and Agriculture's proposals for the incentive which were considered by the Cabinet, a mention was made that in "factories in the South" crushing season generally started earlier than in the North. While translating the Cabinet's decision in the form of a notification, the expression "South" was interpreted by the Ministry of Finance to mean the States of Madras, Mysore and Kerala. 50 per cent rebate for the crushing done during the period July-October was accordingly allowed to all factories in these States. Subsequently; the Ministry of Food and Agriculture pointed out that the crushing season started earlier, not only in these three States, but also in the States of Andhra Pradesh and Maharashtra. The notification was, accordingly, amended on 14th December, 1963 to include these two States. In terms of this notification, sugar factories in the aforesaid five States (including Andhra Pradesh and Maharashtra) were entitled to 50 per cent rebate for crushing done during the period July—October and 20 per cent for the crushing done thereafter. In the case of the factory mentioned in the Audit paragraph, the rebate admissible for November was 20 per cent in terms of the second notification. However it claimed and was paid rebate at 50 per cent in respect of November production. The witness, however, stated that, although the factory was situated in Maharashtra, its crushing season started from November and not earlier. There were four or five more factories in Maharashtra which similarly had their crushing season commencing from October—November.

1.109. In reply to a question, the Chairman of the Central Board of excess production of sugar from the standard duty levi- was to go in for early crushing of cane. They were talking about the season rather than about States as such". Asked whether the Ministry of Finance showed the draft notification to the Ministry of Food and Agriculture before issue, the representative of the Board replied in the affirmative.

1.110. In reply to another question, the representative of the Board clarified that the notification of November, 1963 did not cover only three Southern States of Madras, Mysore and Kerala, it covered all the States. Only the periods for which a particular rate of concession was available varied from State to State depending upon when the crushing season started in those States. It also sometimes happened, as in the present case, that in different regions of the same State, there were different crushing seasons depending upon regional climatic factors. In reply to a further question, the Finance Secretary stated, "I frankly admit that it was probably an error for us to have specified any State—These vague definitions do not take us anywhere". "I think it might have been better if the notification was limited to mentioning the crushing dates of the factories without mentioning South or North".

1.111. The Committee enquired whether the excess rebate of Rs. 194,433 allowed to the factory mentioned in the Audit paragraph had been recovered. The representative of the Board stated that the contention of the factory was that "they were regulated by the first notification. We (the Ministry) were advised by the Ministry of Law that in law they (the factory) were correct though that was not our intention".

1.112. The Committee understand from Audit that on a reference, the Ministry of Law advised the Ministry of Finance that the Department's case was very weak and they would lose the costs also. Accordingly, the matter was settled out of court, the amount recovered being refunded after the petitioner agreed not to claim costs.

1.113. As to the intention of Government, the Committee understand from Audit that the Board in their letter F. No. 12|44|64-CXIV dated 19-6-64 clarified:

> "The Central Board of Excise and Customs subsequently clarified in their letter F. No. 12|44|64-CXIV dated 19-6-

1964 that mills situated in the States of Maharashtra and Andhra Pradesh were to be allowed rebate to extent of 20 per cent under Notification No. 209|63 dated 19-12-1963, even if they commenced production after 1st November in some years provided they also commenced production during July to October in any previous year, and that such Mills had no option to claim rebate at the rate of 50 per cent under Notification 200|63 dated 20-11-1963".

1.114. The Committee enquired whether there were any cases in the States of Andhra Pradesh and Maharashtra where the factories had paid the differential duty when the rebate for November, 1963 was curtailed. The representative of the Board stated that six factories were affected by the change brought about by the Second Notification. One factory had gone to court and the case had to be compromised. Two other factories had filed appeals and got relief. The remaining three factories did not pursue the claim. The Committee pointed out that those factories which took the matter into court of law got relief whereas those which did not do so, did not get the relief. The representative of the Board stated that once a case was decided in appeal, it was not possible to review it. He stated in this connection that in the existing Central Excise Law, there was no provision for a *suo motu* review. In the Central Excise Bill pending before the Select Committee of Lok Sabha, however a provision to this effect had been included. Asked whether the existing law debarred Government from making *suo motu* refunds, the witness stated that such a refund will be only *ex gratia* which Government, under their inhernt powers, can make. But if this power were to be exercised by Government automatically in every case of over-collection, the limitation provisions of the Act will get nullified. The power has, therefore, to be exercised by Government very judiciously and only in deserving cases. The Committee desired to know the difficulties faced by the Department in making *suo motu* refunds. The witness stated that there were various decisions taken all over the country by various adjudicating and appellate authorities. Review of all cases of possible over-assessments in the light of the decisions will be administratively "an impossible proposition". Further, an excess duty being an indirect tax, its incidence generally got transferred by the time an over-assessment came to notice. He, however, conceded that "if a party comes to us and we find that some grave palpable mistake has been committed we should certainly try to give him *suo motu* refund".

1.115. The Committee drew attention to the following observations of the Supreme Court in the case of Government of India Vs. Narasimhan:

> "We are glad to record the assurance given by the Attorney General that whatever may be the decision in the appeal, the Union of India will refund the amount of tax unauthorisedly recovered by the Assistant Collector of Customs. This was essentially a case in which, when notice was served, the Central Government should instead of relying upon technicialities, have refunded the amount collected. We trust that the Administrative Authorities will act in a manner consistent not with technicialities, but with a broader concept of justice, if a feeling is to be nurtured in the minds of the citizens that the Government, is by and for the people".

1.116. The Committee enquired whether, in the light of the above observations of the Supreme Court, the Board proposed to lay down any guidelines. The representative of the Board stated that the quesetion of laying down suitable guidelines for waiver of time-limit for claiming refunds in appropriate cases was under examination of the Ministry of Finance, in consultation with the Ministry of Law.

1.117. Expressing his views on the subject, the representative of the Ministry of Law stated that strictly speaking a *suo motu* refund was not *ex gratia*. If in case of an excess-levy, an aggrievd party, after pursuing the normal remedies by way of appeal etc., moved a court for writ, there was a probability of the aggrieved party getting a refund. In such a case, Government would not only have to shell out the refund but also pay costs as a penalty.

> "It was, therefore, prudent from the point of view of Government to act honestly and to make the refund of what it got illegally and to which it is not entitled".

1.118. The Committee desired to know the time-limit laid down in the Act for claiming refunds. The witness stated that it used to be three months previously but it would now be one year.

1.119. **The Committee observe that a series of omissions occurred in this case.**

In the first place, the scheme approved by the Cabinet envisaged that sugar factories which commenced crushing early should be encouraged to maximise crushing in the early part of the season. A rebate in excise duty was to be given to these factories if they produced during this season more sugar than they had done previously. However, while notifying the scheme in November, 1962, under the impression that 'factories in the South' commence crushing early, the rebate in duty of 50 per cent for July—October season was made applicable only to factories in Madras, Mysore and Kerala, even though the Cabinet had given no such directive. Andhra Pradesh was not included, but was bracketed with Maharashtra and the rebate of 50 per cent was extended to factories in these States for crushing in November only.

Secondly, after it was pointed out that even factories in these two States (Andhra Pradesh and Maharashtra) commence crushing before November, the notification was amended by Government in December, 1963 to extend 50 per cent rebate for the July—October season to factories in these two States also. With this amendment, Government withdrew the 50 per cent rebate given in the earlier notification to factories in these States for crushing in Novmber. However, one of the factories in these States had claimed rebate for November on the basis of the earlier notification, and the excess payment of Rs. 1·94 lakhs could not be recovered, as it was held that a rebate allowed could not be retrospectively withdrawn.

Thirdly, the retrospective withdrawal of the 50 per cent rebate for November affected not only the foregoing factory but five other factories in Maharashtra and Andhra Pradesh which had done their crushing in October-November. However, only three of the six factories got the rebate, because they had recourse to legal remedies, whereas the other three did not get it.

1.120. The Committee consider it regrettable that Government implemented the scheme of rebates in such a tardy manner. The relevant notifications, though seen by the concerned Ministries before issue, were loosely drafted, and Government also failed to collect adequate data about crushing season in different areas of the country before formulating the scheme. Besides a very fundamental point that a tax benefit or concession could not be withdrawn retrospectively was also overlooked. It is also very anomalous that only three out of six factories entitled to the rebate for November crushing should have got it, while the others were denied the rebate,

simply because they did not have recourse to legal remedies. The Committee feel that Government themselves should have in equity ex gratia allowed the rebate in these three cases. The Committee note that Government are now in the process of formulating general guidelines to regulate the procedure for refund in cases of excess collections of this type. The Committee would like the procedure for this purpose to be finalised early.

Irregular grant of concessions in respect of paper boards

Audit Paragraph

1.121. According to an exemption notification issued by Government in March, 1964 certain varieties of paper boards falling under the tariff item 17 were eligible for slab concessions in respect of clearances during each financial year. As a measure to prevent fragmentation of the units maunfacturing these boards, Government provided in the notification as follows:—

(1) These concessions would be admissible only to manufactures holding Central Excise licence on 9th November, 1963 and would not be available to units set up after that date.

(2) The manufacturer who applies for fresh Central Excise licence on or after 9th November, 1963 would not be eligible for the concession unless he owned the factory for which the licence was applied on 9th November, 1963.

Irregular grant of these concessions was noticed in the following cases:

(1) A paper and straw-board factory, in a collectorate, licensed on 24th April, 1964 was permitted the slab concessions on the owner producing in support of his ownership of the factory on 9th November, 1963 copies of the registration deed of the building and invoices dated 22nd October, 1963 for purchase of machinery. Those invoices, however, were in the name of the National Small Industries Corporation Limited, New Delhi, through whom the machinery was obtained on hire-purchase. Since all the instalments had not been paid under that hire-purchase agreement, ownership of the machinery had not legally passed on to the owner on 9th November, 1963. Besides, production trials were started in the factory only in April, 1964 and

cutting and weighing machines had not been installed till then. Thus on 9th November, 1963, the assessee neither owned the factory nor had the machines and plant been properly erected to constitute a factory. Hence the licensee was not entitled to the concessions.

The irregular concession to the factory resulted in loss of revenue of Rs. 1,04,240 during the period from April, 1964 to June, 1966. The loss of revenue was accepted by the Collector who stated (June, 1968) that since the exemption was granted by him the question of raising any demand to rectify the loss did not arise and that efforts to persuade the licensee to make voluntary payments had failed.

(2) A licensee, in a collectorate, who commenced manufacture of paper boards from December, 1964 applied for the slab concessions in March, 1965, but the request was rejected by the Collector in May, 1965 on the ground that the factory was not completely installed with the machinery and was not capable of producing the boards on the crucial date *viz.* 9th November, 1963. However, on the licensee's appeal the Board ordered that the concession should be allowed. Consequently, refund of duty of Rs. 3,29,693 collected from January, 1965 to April, 1966 was paid to him. Government have stated (December, 1968) *inter alia* that "there being no provision at present for the Government to review such cases", it was not possible for them to go into the merits of the case and necessary powers for review are being taken in the new Central Excise Bill under preparation.

(3) A partnership firm, in a collectorate, running a factory for the manufacture of grey paper boards availing itself of the slab concession was dissolved in July, 1964 and the factory was taken over by a company in October, 1964 and a fresh licence was issued to the company in February, 1965. Since the Company did not own the factory on 9th November, 1963, it was not eligible for the concession, but was allowed the concession incorrectly. In August 1965, realizing the error the department withdrew the concession and raised demand for Rs. 3,12,176 for the differential duty recoverable from October, 1964 to August, 1965. In August, 1967, by issue of a special order under Rule 8(2) of the Central Excise Rules, the Board restored the concession to the company retrospectively from 1st April, 1964. Consequently the demand was withdrawn and refund of duty of Rs. 1,09,627 paid for the period from September, 1965 during which the concession was not allowed initially. Under Rule 8(2), the Board is empowered to issue exemption orders only in circumstances of an exceptional nature.

(4) A partnership firm constituted in February, 1961 was running a factory for the manufacture of paperboards, availing itself of the

concession. One of the partners died in September, 1964 and five others separated themselves from the firm and since there was no clause in the partnership deed to continue the firm in the event of death of a partner, it stood thereby dissolved. A fresh partnership was formed by the remaining partners in November, 1964 to run the factory. Although this firm was legally different from the previous one, fresh licence was not issued to it by the department and the licence held by the previous firm was allowed to be continued with amendment. Under the Central Excise Rules the new firm should have been required to take out fresh licence and the concession disallowed as for new licencees. The incorrect concession granted to the new firm from November, 1964 to February, 1966 was Rs. 1,83,418. Government have stated (December, 1968) that the new firm has been asked to take out fresh licence. Information regarding action taken for rectifying the incorrect grant of concession is awaited (February, 1969).

(5) In a collectorate, a paper-board factory working under a licence issued prior to 9th November, 1963 was purchased by a person in January, 1965 and the factory functioned under a fresh licence and a different name thereafter. As the condition of ownership of the factory on the crucial date viz. 9th November, 1963 was not fulfilled by the licensee, the department disallowed the concession to him, but in appeal, the Board ordered in June, 1966 that the concession should be allowed. Consequently refund of duty of Rs. 2,02,559 recovered in respect of the period from 29th January, 1965 to March, 1966 was paid to him. It was explained by Government that the Board's order-in-appeal was in accordance with a policy decision taken by them in April, 1966 to remove the restriction with regard to ownership for availing of the concession. This decision which was made effective by amending the relevant notification on 30th April, 1966 deleting the ownership clause does not apply to the assessments made prior to that date.

[Paragraph 28(iv) of Audit Report (Civil) on Revenue Receipts 1969]

Case I:

1.122. During evidence, the representative of the Board stated that the details regarding the case given in the Audit paragraph were factually correct. The Board was 'not satisfied' with the way the concession had been given by the Collectorate. Disciplinary action was proposed to be taken against the officials responsible for the lapse.

In a subsequent note, the Ministry have stated:

> "The Deputy Superintendent of Central Excise who was primarily responsible for this, is now dead. Regarding other Supervisory Officers, the possibility as to whether any disciplinary proceedings can be drawn against them is being gone into."

1.123. The representative of the Board informed the Committee that under the exemption notification of March, 1964, substantial concessions were given to small units. Lest the concesionss available to small units should lead to a tendency on the part of big manufacturers to split up their concerns, admissibility of concessions was confined to the small units in actual existence on 9-11-1963. It was not the intention of the Government that the continuing small scale units, on a change of ownership, should cease to have these concessions. True on a change of ownership a continuing unit operated under a new licence, but this by itself did not lead to any fragmentation. It was felt that worded as the aforesaid notification was, it placed more restrictions than originally intended. Some other difficulties were also experienced in its working. The aforesaid notification was, therefore, amended in April, 1966 to allow the concession to all small scale units.

Cases 2 and 5:

1.124. The Committee were given to understand by Audit that the appeal in Case No. 2 was decided by the Board in the light of a policy decision taken on 5-5-1966 granting, inter alia, slab concessions in cases "where firm commitments had been entered into for purchase of machinery equipment, etc., before the crucial date but the actual application for licence to commence production was made only after 9th November, 1963 for various *bona fide* reasons."

1.125. The representative of the Board submitted during evidence that orders had been passed by the Board in both the cases in its quasi-judicial capacity. Referring to these cases, the Committee enquired whether the Board was justified in taking note of a policy decision taken by the executive in April, 1966 while deciding in appeal in a quasi-judicial capacity a case which related to a past period. The Finance Secretary stated, "Some times it is very hard for a person who acts in two capacities—one as the Government and other as Member of the Board—to forget what he is doing in the other capacity. In this case, I would certainly admit that the Board should have taken a decision in its quasi-judicial capacity. There should be no reference at all to whatever Government's way of thinking was

at that particular point of time.....Everything should be done with a judicial mind."

1.126. In reply to a question he stated that in cases where the Board acted in a quasi-judicial capacity, the reviewing power vested with Government. The Secretary to the Government acted as the reviewing authority.

1.127. The Committee enquired whether pursuant to the recommendations of the Public Accounts Committee contained in paragraph 136th Report (Fourth Lok Sabha), Government had taken any steps to separate judiciary from administration in the Central Excise. The representative of the Board stated that in the Central Excise Bill pending before the Select Committee of Lok Sabha, a provision had been made for the creation of posts of appellate Collectors who will deal with appeals.

Case 3:

1.128. The Committee desired to know the circumstances leading to the issue of the special exemption order under Rule 8(2) in this case. In their written reply, the Ministry have stated:

> "Strawboard and pulpboard (including greyboard), falling under sub-item (3) of Item No. 17 of the Central Excise Tariff were allowed slab exemption from duty under this Ministry's Notification No. 35/64-CE dated 1st March 1964. The grant of the concession allowed under this notification was, however, made inapplicable to a manufacturer who applied for a licence on or after 9th November, 1963 unless such a manufacturer could satisfy the Collector of Central Excise:—
>
> (a) that the factory for which the licence was applied for was owned on the 9th day of November, 1963 by the applicant; and
>
> (b) that the applicant and, in the case of partnership any partner thereof had no proprietary interest on or after the said date, in any other concern, producing strawboard (other than corrugated board) and/or pulpboard including greyboard.

The original concern was a partnership concern and having come into existence before the crucial date *i.e.* 9th November, 1963 enjoyed the benefit of the above notification. Subsequently, however, in

October, 1964. one of the partners went out of the business and the concern was reconstituted with the remaining partners into a private limited company.

Although, to begin with, the new concern continued to enjoy the slab concession for sometime, when it was noticed that the concession in question was not applicable to the new concern as it applied for a central excise licence after 9th November, 1963 and did not own the factory on that crucial date as stipulated in clause (3) of the proviso to Notification No. 35|64 dated 1st March, 1964. the Assistant Collector of Central Excise, stopped allowing the concession and issued orders for raising demands for differential duty in respect of the past clearances. The party filed a representation to the Assistant Collector, but the representation was also rejected. Aggrieved by the order of the Assistant Collector, the party went in appeal to the Assistant Collector, the party went in appeal to the Collector of Central Excise Bombay, but since the Collector insisted on a predeposit of the amount of duty due from them, the appellants filed a writ petition with the Bombay High Court.

Meanwhile, it had begun to be appreciated that the intention of denying the benefit of the above notification to units coming into existence on or after 9th November 1963, was to prevent fragmentation of larger units into smaller ones; and that it was not the intention to deny the benefit to units of the above type, which happened to lose the benefit of concession merely because of a change in constituent partners. To quote from a note dated 21st October, 1966, recorded by the then Secretary (Revenue and Insurance). The purpose of fixing a date-line was that new concern should not be set up merely to take advantage of the concession. It was not the intention that existing concern should be denied the concession merely on account of change of ownership.

In fact, with the issue of Notification No. 67|66-CE dated 30th April, 1966, the prohibitory antifragmentation provisions were dispensed with.

During the period prior to the issue of the revised notification the question, however, requiring consideration was, whether the newly constituted concern M|s.....should be denied the benefit of the previous notification and the writ petition filed by them be contested, or, whether they may be allowed the benefit of that notification according to the underlying intention of the Government.

It was decided to give them the benefit of the intention of the Government. After examining the ways and means to give effect to this intention, it was felt that the only feasible way to do so would be invoking the provisions of Rule 8(2) of the Central Excise Rules, 1944, and issue a special exemption order (in August, 1967)."

1.129. The Committee understand from Audit that regarding the retrospective nature of the special order, the opinion of the Ministry of Law, who were consulted in the matter, was as follows:

> "This Ministry has clarified on a number of occasions that unless the power to act retrospectively has been expressly conferred by the Legislature on the executive Government exercising subordinate delegated legislature powers it cannot act retrospectively. All the same notifications operating retrospectively have been issued by the Ministry where the purpose underlying the notifications is to confer a benefit on the persons covered by the notifications. Whether such a notification should be issued in the present case is essentially a matter for an administrative decision."

1.130. Referring to the special order issued by the Board in August, 1967 restoring the concession to the Company retrospectively from 1-4-1964, the Committee desired to know whether the Board was competent to issue the above order with retrospective effect. The representative of the Board stated that according to the opinion given by the Attorney General, an exemption notification cannot be issued with retrospective effect. The Board has accordingly stopped the practice of giving retrospective effect to exemption notifications.

Case 4:

1.131. As regards this case, the Committee understand from Audit that the Ministry of Law were consulted by Government on the point whether the firm would need a fresh licence after the death of one of the partners and re-execution of the partnership deed w.e.f. 2-11-1964 (i.e., subsequent to the crucial date on which an applicant for slab concession should have been in possession of a factory to qualify for the concession). The Ministry of Law advised that "as the partnership firm now carrying on business is not the same as the firm for which licence had been granted earlier, the existing firm should be asked to take out a fresh licence...." Audit have addressed Government to intimate what steps they proposed

to take for recovery of slab concessions which have become inadmissible in the light of this opinion. Government's reply is awaited.

1.132. The Committee cannot help expressing unhappiness over the manner in which Government acted in these cases. An express condition for the grant of slab concession under the Exemption Notification issued in March 1964 was that the assessee should have owned a factory which was in production on the crucial date, i.e., 9th November, 1963. In none of the five cases mentioned in the Audit paragraph was this condition satisfied. Yet the slab concession under the Notification was allowed in all the cases amounting to Rs. 12.42 lakhs. While concession to the first assessee was given by the collectorate, the concession in the second and fifth cases was given by the Board in appeal acting in a quasi-judicial capacity.

Government have admitted that in the first case, decided by the collectorate, the concession was inadmissible and that disciplinary proceedings are being initiated. The Committee would like to be apprised of the action taken in this respect.

1.133. As regards the other two cases (second and fifth cases) the Committee observe that the Board while acting in a quasi-judicial capacity were influenced by a policy decision taken by Government in an executive capacity. The policy decision was to the effect that a unit should be deemed to have qualified for the concession even if it had not commenced production on the crucial date provided firm commitments had been made by it on that date for the purchase of machinery. This represented a major departure from the conditions set forth in the original notification regarding grant of concession. Quite apart from the fact that it was in principle wrong to have allowed this benefit with retrospective effect in only cases which came to the notice of the Board, it was also not appropriate for the Board, while acting in aquasi-judicial capacity, to have taken cognisance of an executive decision which had strictly no bearing on these cases. It was in extenuation urged by the Finance Secretary in evidence that such errors are likely to be made by an official acting in two capacities—administrative as well as appellate. This, in the opinion of the Committee, underscores the need for keeping the judicial and executive wings of the Excise Department separate. In an earlier Report also, the Committee have emphasised this aspect [vide paragraph 1.36 of 36th Report (Fourth Lok Sabha)]. The Committee note that Government have

taken a step in this direction by making a provision in the Central Excise Bill for the creation of posts of appellate collectors. The contemplated arrangement does not cover appeals to be decided at levels higher than that of Collectors. The Committee desire that Government should consider the question of setting up an Appellate Tribunal on the Customs and Central Excise side on the lines of Income-tax Appellate Tribunal. Till this is done, it should be ensured that the Board, while acting as an appellate body, does not allow its judgment to be trammelled by policy decisions taken by it in an executive capacity.

1.134. The Committee are also not happy over the manner in which the Board had acted in the third case mentioned in the Audit paragraph. In this case, the condition of ownership on the crucial date stipulated in the original notification got breached with the transfer of the undertaking to a second party. However, on the ground that transfer of ownership should not act as a bar to the grant of the concession—a decision which represented a departure from the conditions originally set out—the Board gave a concession of over Rs. 4 lakhs to the assessee by issue of a special order with retrospective effect under Rule 8(2) of the Central Excise Rules. Apart from the question that such treatment involved discrimination in favour of the party, the Committee would like to point out that Government had no legal atuhority to issue a special order granting concession with retrospective effect. In fact an opinion to this effect had been given to Government by the Attorney-General himself. The Committee trust that the Government will henceforth strictly ensure that concessions are not illegally given through exemption notification which take effect retrospectively.

1.135. As regards the fourth case, the Committee note that the opinion of the Ministry of Law is that the firm which was in existence on 9th November, 1963 ceased to exist as such with the death of one of the partners of the firm. The Committee would like to be informed about the action Government propose to take in regard to slab concession amounting to Rs. 1:83 lakhs extended to the firm which has become inadmissible in the light of the legal opinion.

1.136. There is a general point arising out of all the foregoing cases which the Committee would like to emphasise. The scheme for grant of slab concessions as originally formulated had a number of drawbacks which came to light in the course of actual implementation. The Committee are prepared to recognise that these drawbacks unless remedied might have frustrated the intention underlying the scheme. But remedial action should not have been taken in a way which benefited only parties who came up before Government by employing legal procedures. Any relaxations or concessions which Government intended to give should have been

publicised and made applicable to others as well specifically to avoid discriminatory treatment. .. ..

Unauthorised concession in respect of Tea Drier Oil

Audit Paragraph

1.137. (a) A variety of mineral oil known as "tea drier oil" answering the tariff description of "diesel oil, not otherwise specified" (tariff item 9) was allowed by Government to be assessed at the lower rate applicable to "furnace oil" (tariff item 10) during the period from December, 1963 to February, 1964 by issue of a notification in December, 1963. The concession was reviewed by Government in December, 1964 and was continued by issue of notifications from time to time. As the mineral oil did not answer the tariff description of furnace oil as laid down by Parliament, the concession allowed under the notifications was irregular. If this concession was given as a matter of public policy, it would have been appropriate to issue a notification under Rule 8 of the Central Excise Rules under the relevant tariff item without relating it to another tariff item. The revenue foregone due to this concession for the period from 30 December, 1963 to 31st March, 1967 was Rs. 2.24 crores.

1.138. (b) It was noticed that even during the periods not covered by the notifications mentioned in sub-para (a) above, the concession was allowed by the department on the basis of executive instructions issued by the Board in May, 1958 and November, 1962. The amount involved in this irregular concession allowed during such periods *viz.*, March, 1965 to November, 1965 and March, 1966 to 22nd July, 1966 in respect of two refineries was Rs. 2.80 crores. The revenue for-gone due to the irregular concession allowed in respect of one of these two refineries from June, 1962 to 29th December, 1963 was Rs. 81.84 lakhs.

[Paragraph 41(ii) (a) & (b)—Audit Report (Civil) on Revenue Receipts, 1969].

1.139. The Committee understood that tea drier oil is manufactured by certain oil refineries in Assam. It is used as external fuel for drier furnances by the Tea Industry. This oil reportedly becomes frozen during winter months, necessitating its blending with lighter fractions to make it usable. The blended oil is apparently akin to diesel oil falling, under Tariff item 9, which reads: 'Diesel oil, not

otherwise specified, and not to furnace oil' which falls under Tariff item 10. The Tea Industry at one stage represented to Government that they were not using this oil in internal combustional engines, as diesel oil is used. They were putting it to the same use as furnace oil. The Industry therefore represented that the Tea drier oil should be assessed as furnace oil. The matter was examined by Government and it was decided that the oil should be assessed as furnace oil. Executive instructions to this effect were issued by the Board in a letter dated 16th May, 1958 and another letter dated 22nd November, 1962. A regular exemption notification was issued for the first time on 30-12-1963. This notification granted exemption to the oil under Tariff Item 9 from so much of the duty of excise as was in excess of the duty leviable under Tariff item 10 (Furnance oil). Notifications were issued every year granting periodic concessions—on 30-12-1968. 5-12-1964, 27-11-1965 and 23-7-1966. However these notifications did not cover the non-winter months during which assessment of the drier oil as furnace oil was made on the basis of the executive instruction of 1958 and 1962.

1.140. In a note submitted to the Committee, the Ministry of Finance have explained the considerations that led to the grant of the concession in the following terms:—

"The concession was first given in May, 1958 to Digboi Refinery of Assam Oil Company and thereafter it was extended in November, 1962 to Gauhati Refinery of Indian Refineries Limited. The following considerations weighed in favour of granting the concession to only the above two refineries at the beginning:—

(i) The product known as "Tea Drier Oil" could not normally be used as Light Diesel Oil (Diesel Oil NOS) because of the high carbon content;

(ii) neither the Digboi Refinery nor the Gauhati Refinery were capable of paying duty at the higher rate applicable to Diesel Oil NOS and then marketing the product as furnace oil; and

(iii) if the oil produced was not assessed and cleared at a rate corresponding to "Furnace Oil" it would have been practically impossible for the above two refineries processing Naharkatya crude of high residue content to operate."

1.141. During evidence, the Finance Secretary admitted that it was a "mistake" to have extended the concessions initially by issuing executive orders (in 1958). Government "should have issued a notification" at that stage. The Committee desired to know unde what tariff item—9 or 10—Tea Drier Oil was classifiable. The repr sentative of the Board stated that, by specifications, Tea Drier oil fell under tariff item 9 in-asmuch as it was less viscous than furnace oil. But it was actually being used by Tea factories as external fuel and not as a fuel for running internal combustion engines. If duty had been levied on Tea Drier Oil at the rate appropriate f r fuel oil for internal combustion engines, tea factories would not have found it possible to use it. Thus, even though Tea Drier Oil fell under tariff item 9, in the notification of December, 1963, it was made exempt from so much of the duty as was in excess of the duty under tariff item 10—furnace oil.

1.142. The Committee enquired why the Board's orders issued in May, 1958 and November, 1962 were not repealed when Exemption Notification was issued in December, 1963. In a written reply, the Ministry have stated:

> "The Board's orders issued in May, 1958 and November, 1962 were not repealed as the notification No. 216|63-CE dated 30-12-1963 prescribed further relaxed specification, during the winter months only and remained operative during the period from 30-12-1963 to 29-2-1964."

1.143. The Committee enquired whether it was legally correct for the Department to have allowed the concessions even during the period not covered by the Exemption Notification merely on the basis of Board's orders issued prior to the issue of these notifications. In their written reply, the Ministry have stated:

> "As the exemption notifications issued from time to time since 30-12-1963 and until the issue of a regular notification remained operative only during the winter months, the concession for the remaining months of the year was regulated in terms of the Board's orders. The orders being in the nature of exemption orders would be deemed to have been issued in exercise of the powers vested in the Board in sub-rule (2) of rule 8 of the Central Excise Rules, 1944 and in this view of the matter the concession granted was legally correct."

1.144. During evidence, the representative of the Board stated, 'I must confess that the whole thing has been done in this particular case in an unorthodox way.....For three months it (Tea Drier Oil) was exempted by a notification whereas for the rest of the year it was covered by Executive Instructions.....It is not fully in keeping with the legal requirements."

1.145. The Committee drew attention to the following advice given by the Ministry of Law on 28-10-1963:

> "We are here concerned with items 9 and 10 of the said Schedule relating to "diesel oil not otherwise specified" and "furnace oil" respectively. In both these items we find detailed specifications of the type of mineral oil coming under each of them. It follows that if any mineral oil is to be assessed at the rate applicable to furnace oil it must conform to the specifications stated under that head in item 10. The proposal in this file is that in respect of furnace oil (so called) produced by the Indian Refineries, the duties chargeable should be as in item 10 although such oil does not satisfy the specification in item 10 and will in fact correspond more approximately to the specifications in item 9. It is quite obvious that as the specifications have been incorporated in the Act itself, we cannot relax or modify the requirements by means of executive orders or even Rules.
>
> The well-known means of getting out of the requirements in the Schedule is to issue an order of exemption under rule 8 by drafting the notification in such a way that it reads as an exemption although in effect a different rate than that specified in the Act would be presecribed. In this particular case I am very doubtful whether even such a notification can be drafted so as to provide that so much of the duty on furnace oil produced by a particular refinery as is in excess of a particular period shall be exempt; this is because the meaning of the expression 'furnace oil' in the said notification will be the meaning given to it under item 10 of the Schedule. However, it is not clear whether the Department is thinking in terms of issuing any such exemption notification.
>
> It appears that in respect of furnace oil produced by Assam Oil Company, Orders were issued in 1958 prescribing a

different specification for furnace oil. For the reasons already given I have doubts about the validity of this exemption. However, as this point has not been referred to me, I do not wish to say anything more."

1.146. The representative of the Board stated that the notification issued by Government on 30-12-1963 was vetted by the Ministry of Law. The witness also stated that while briefs for the use of the Members of the Board for the sittings of the Public Accounts Committee were being prepared, it was decided in view of the contents of the Audit paragraph that a clarification should be sought from the Ministry of Law whether there was any legal infirmity in the notification which gave exemption by relating it to the duty chargeable under another tariff item. A second reference to the Ministry of Law was accordingly made. In their revised opinion, the Ministry of Law had held that there was no legal infirmity in notifying an exemption relating it to the duty chargeable on another item of the tariff. They had also stated that "as the duty payable under this tariff item 10 is always qualified there does not appear to be any difference between specifying a definite amount and indentifving it by reference to the duty leviable under Item 10 of the tariff." In reply to a quesetion from the Committee, it has been stated in a note that while seeking the second opinion, "Law Ministry's attention was not invited to their original opinion." The original opinion was given "at the level of the Deputy Legal Adviser and the later opinion at the level of the Assistant Legal Adviser."

1.147. The Committee were given to understand by Audit that they were not informed of the second reference made by the Board; nor of the revised opinion of the Ministry of Law. The normal practice, established in consultation with the Ministry of Law, was that in cases arising out of Audit objections where a revised opinion of the Ministry of Law was sought, Audit were given an opportunity to present their views, before the revised opinion was given. The representative of the Board stated that after a reference on any point arising out of an Audit objection was made to the Ministry of Law, it was for that Ministry to coordinate and to convene, if necessary, a meeting of the representatives of the relevant Ministry and Audit. In this case, they got the file back from the Ministry of Law with their opinion. Asked why the Board had not endorsed a copy of their reference to Audit, the witness stated, "I must admit that we have failed in not informing the Comptroller and Auditor General." The Finance Secretary added,

"I would accept the Auditor General's advice on this point.....We will certainly follow this procedure (in future)."

1.148. While the Committee recognise that grant of concessional rates of duty to tea drier oil might have been justified, they feel that the procedures adopted by Government for the grant of the concession were thoroughly faulty. The notification issued for this purpose granted exemption to drier oil, which fell under Tariff item No. 9, from so much of the duty as was in excess of the duty leviable under Tariff item 10 which covered oil of another description (furnace oil). This clearly tantamounted to circumventing the tariff classification laid down by Parliament. The Ministry of Law had also at one stage expressed doubt about the validity of an exemption on these lines which led to duty concessions amounting to Rs. 2·24 crores.

1.149. The Committee also observe that duty concessions amounting to over Rs. 3·5 crores in respect of this oil were allowed by the Department on the basis of Executive Instructions issued in May, 1958 and November, 1962. This was irregular. Pursuant to an earlier recommendation of the Committee, the Attorney General has advised Government that they are not empowered to give exemptions by Executive Instructions. The Committee trust that Government will in future take care to ensure that exemptions are given only by the due process of law.

1.150. There is another point the Committee would like to mention. The Board had in this case made a reference to the Ministry of Law for a second opinion without any mention of the earlier opinion given by that Ministry. This the Committee consider wrong in principle. Besides the second opinion, which ran counter to the first opinion, was from an Assistant Legal Adviser, while the first opinion was given by a Deputy Legal Adviser. The Committee would like to impress on Government the need to ensure that where a second legal opinion is sought, it should specifically be sought from an official of a status higher than the official who gave the first opinion. In respect of matters included in the Audit Report, which are likely to come up before the Committee; it should also be ensured that Audit are given an opportunity to present their points of view before an opinion is sought from the Ministry of Law, and are also associated with any inter-Ministerial deliberation that might take place in this connection.

1.151. In the present case the Committee would like Government to seek the opinion of the Attorney-General on the validity of the exemption notifications issued by Government from time to time since 1963. The matter is of substantial importance as it affects the legal validity of duty concessions which amounted to as much as Rs. 2:24 crores.

Under assessment of duty due to improper application of exemption order

Audit Paragraph

1.152. There specific types of waste of rayon yarn, *viz.* "godet waste", "under size cake waste" and "reeling and coning waste" have been partially exempted from payment of duty under notifications issued by Government under tariff item 18 from time to time. In a factory manufacturing rayon and synthetic fibres and yarn, it was noticed that this concession was allowed to other types of yarn wastes as well instead of being limited to only three types mentioned above. It was stated by the department that the concession had been allowed on the basis of executive instructions issued by the Central Board of Excise and Customs on 1st October, 1964.

In the absence of a notification of Government specifically allowing concessional rates of duty for other types of wastes, such an assessment on the basis of executive instructions was not in order. The revenue foregone on this account during the period from 1959 to 1966 was Rs. 2,73,467, of which Rs. 2.27 lakhs (approx.) related to the period prior to 1st October, 1964 when the executive instruction was issued.

[Paragraph 29 of Audit Report (Civil) on Revenue Receipts, 1969].

1.153. The Committee understand from Audit that executive instructions issued by Government on 1-10-1964 were given a legal backing in November, 1967 when Government issued another Notification amending the original notification of 1-3-1959.

1.154. The Committee enquired whether the action of the Board in extending the scope of the concession to other types of rayon wastes by issue of executive instructions was legally correct. In a written reply, the Ministry have stated:

> "While the types of waste specified in this Ministry's Notification No. 26/59-C. E., dated 1-3-1959, were godet waste, undersize cakes waste and reeling and coning waste, the local Central Excise Officers, were required, under Departmental Instructions, to examine carefully all consign-

ments of waste and ensure that the goods sought to be cleared were "waste" in fact. Such waste according to departmental instructions was also described to be such as will ordinarily be a tangled mass of short lengths and not capable of being disentangled without considerable labour.

Issue of executive instructions allowing the benefit of the concessional rates of duty prescribed for the said three types of wastes to be applicable to such wastes also as were of *similar* nature (although known in the trade by different names) and conformed to the description of waste under the departmental instructions did not, in a way, constitute grant of a fresh concession."

1.155. The Committee enquired under what authority the wastes referred to in the audit paragraph were assessed to the concessional rate prior to the issue of the Executive Instructions of 1-10-1964. In their note, the Ministry have stated:—

"The types of wastes specified in the notification operative prior to 11th November, 1967, and other wastes of similar nature known by different names in the trade arise at the different stages of the process of manufacture of rayon yarn. 'Godet waste' pertains to the spinning department; after treatment and 'spinning', wastes occur during the washing and other operations in the 'after treatment department'; and 'coning' and 'reeling' wastes are collected in the 'textile department'. Since the relevant notification provided for concessional assessment of the wastes preceding and following the "after treatment department", and since, "spinning waste" and "after treatment waste" satisfied the criteria of waste as laid down in the departmental instructions and the same on chemical test were declared as "Rayon yarn waste" by the Chemical Examiner, the local Central Excise Officers considered that the benefit of the concessional rates was intended to be applied to these wastes also and allowed concessional assessment prior to 1-10-1964."

1.156. The Committee enquired why, if it was the intention of Government to extend the concession to all types of wastes, Government did not amend the Notification during the period October, 1964 to November, 1967. In their note the Ministry have stated:—

"The executive instruction dated 1-10-1964 whereunder the benefit of the concessional rates of duty prescribed for the three specific types of wastes was allowed to be granted in

respect of other wastes of similar nature, were intended to be reviewed and the Collectors of Central Excise were required to send their reports for that purpose. It was during the course of the review in the light of the Collectors' reports that the need for providing statutory backing to the said instructions happened to be felt in the contest of levy of countervailing duty on the above types of wastes imported into the country, and the notification regularising the executive instructions was issued on 11-11-1967."

1.157. As to the loss of revenue in other Collectorates, the Ministry have stated:—

"The revenue figure has been roughly estimated by the Collectors of Central Excise to be Rs. 77 lakhs. (It is possible that in arriving at this figure, some Collectors may have taken into account the tariff rate of duty."

1.158. **The Committee observe that the exemption notification of 1st March, 1959 gave partial exemption from duty to only three specified types of rayon waste. The Central Excise Department, however, extended the concession to other types of rayon wastes initially because it was felt that it was applicable to these wastes also and after 1st October, 1964 on the basis of Executive Instructions issued by the Board. The result was that the non-exempt types of waste were assessed at concessional rates for a period of over eight years without any legal authority therefor. The amount of revenue foregone by Government during this period was nearly Rs. 80 lakhs.**

1.159. **The Committee are of the view that extension of the scope of any concession given under a notification calls for issue of another notification. The purpose cannot be achieved by issue of executive instructions as was done in this case. The notification should also be issued promptly as concessions can have only prospective effect and a benefit extended cannot be retrospectively enforced even by a notification. The Committee would like Government to ensure strict compliance with these provisions.**

Loss of Revenue due to withdrawal of Supplementary Demands in respect of tobacco

Audit Paragraph

1.160. **Rule 9A of the Central Excise Rules prior to its amendment in December, 1965 provided *inter alia* that the rate of duty applicable to goods was the rate in force on the date of payment of duty. Under Rule 25 *ibid* if a curer of tobacco wishes to clear his**

products on payment of duty, he should apply to the proper officer who will issue a demand notice for the duty due on them, which is to be paid into the treasury within ten days. It was noticed that in a number of cases the duty was not paid by the curers within the stipulated period and due to enhancement in the rates of duties in the interval supplementary demands were issued to them for the differential duty from 1957 to 1965 without ascertaining whether the goods were physically available with the curers. In September, 1965 Government clarified that the supplementary demands were valid only in respect of tobacco that was lying with the curers at the time of issue of the demands and since there was then no means of ascertaining whether the tobacco was available with the curers on the dates of issue of the supplementary demands, all the supplementary demands issued as a result of enhancement in the rate of duty should be withdrawn. The total amount of the supplementary demands thus withdrawn was Rs. 18,22,070. The Ministry have replied that while the major part of tobacco grown in concentrated growing areas finds its way into the warehouses, tobacco grown in sparse growing areas is generally assessed to duty on verification of crop wherever available and by summary assessment where it has already been disposed of by the curer.

[Paragraph 23(i) of Audit Report (Civil) on Revenue Receipts, 1969].

1.161. The Committee were given to understand that according to Rule 19 of the Central Excise Rules unmanufactured tobacco becomes dutiable as soon as it is cured in the curer's premises. The curer can transfer the tobacco non-duty paid to a warehouse, or market his produce himself after payment of duty. In the latter case, the curer is required under Rule 25 of the Central Excise Rules 1944, to apply to the Central Excise Officer who, after necessary checks, delivers the demand for duty (in form DD1) to be paid within ten days from the date of issue of the notice. The duty originally assessed, under DD1, has to be revised in case rates of duty in force undergo a change before the curer pays his duty, in view of the provisions of Rule 9A *ibid* which reads as folows:

> "The rate of duty and the tariff valuation (if any) applicable to goods cleared on payment of duty shall be the rate and valuation (if any) in force on the *date on which duty is paid*, or if the goods are cleared from a factory or warehouse, on the date of the actual removal of such goods from such factory or warehouse."

1.162. The Committee were also given to understand that Rule 9A of the Central Excise Rules was amended by Government by notification on 4th December, 1965 to provide that the rate of

duty applicable to unmanufactured products cleared for home consumption from the premises of the curer shall be the rate in force on the date on which duty is assessed.

1.163. Explaining the circumstances in which the Supplementary Demands referred to in the Audit paragraph were raised, the representative of the Central Board of Excise and Customs stated that these demands related to growers "mostly in sparse growing areas" over which the Department had progressively relaxed control. Under the law, the rate of duty applicable to unmanufactured tobacco was the rate in force on the date of payment of duty. When the Department found that duty had not been paid by the assessees and there was an intervening revision in the rate of duty, they issued a supplemental demand. The process went on for a number of years. It was added:

> "41,956, supplementary demands amounting to Rs. 12,99,453.04 pertaining to the sparse growing areas were withdrawn by the Department pursuant to Government's clarification in September, 1965. (This information does not include the figures in respect of 2 Divisions of a Collectorate and another Collectorate.)".

1.164. The Committee enquired whether the Supplementary Demands mentioned in the Audit paragraph were withdrawn after the due verification of the stock position in each case. The representative of the Board stated that in the sparse growing areas, stocks had not been verified. The Committee asked how it was then presumed that the tobacco was not available with the curers at the time of the issue of Supplementary Demands were raised after one year and tobacco being a perishable commodity, its stocks did not last long.

1.165. To a question from the Committee whether duty was recovered before removal, the witness replied "Not in all these cases". The Committee then drew the attention of the witness to Rule 25 of the Central Excise Rules in terms of which the curer was required to pay the sum on the tobacco to be cleared within 10 days of the date of the demand notice. They enquired what action was taken by the Department against those curers who did not pay up the sum within the prescribed time-limit of 10 days. The witness stated that the time-limit for payment laid down in the Rule was 10 days with a grace period of 10 days. In actual practice, the Department waited till the next year's crop was ready in the case of petty cultivators. It was added:

> "Most of the defaulters are very petty, poor and casual cultivators. They consume or sell off their produce without payment of duty. They do not have any excisable goods which may be attached. It is just not possible to

initiate prosecutions against these petty cultivators, who run into thousands. Efforts are, therefore, made to recover the dues through persuation, through realisation esquads employed, specially for the purpose, and, in the end, through certificate action for realisation of dues as arrears of land revenue through the District Revenue authorities."

1.166. The Committee desired to know the checks exercised by the Department to prevent removal of tobacco without cover of transport documents issued by the Central Excise Department. The witness stated that the question of removal of tobacco under cover of transport documents would arise only if the curers were to transport their produce. In sparse growing areas where the tobacco was meant for consumption, the question of transport did not arise. Asked whether the duty was recovered before consumption in these areas. The witness stated: "Not in all cases". Further asked whether there were no authorised removals of tobacco from the curers premises in these areas, the witness stated that small quantities were taken to mandis and disposed of there surreptitiously.

1.167. In reply to a question, the representative of the Board stated that out of a total revenue of Rs. 75.42 crores from unmanufactured tobacco, Rs. 71 crores was collected through warehouses. Most of the produce in concentrated growing areas was taken to warehouses and deposited there. In these areas, the Department had full control and the stocks were duly verified. The curers were required to dispose of tobacco by the 30th June.

1.168. The Committee observe that on a reference by the Ministry of Finance, the Ministry of Law have given the following opinion on the scope of Rule 9-A *vis-a-vis* the outstanding Supplementary Demands:

"Rule 9A of the Central Excise Rules would appear to deal with the rate of duty and tariff valuation in respect of, *inter alia*, goods, cleared on payment of duty. The rate of duty chargeable would be the rate prevailing on the date of payment of duty. The existence of goods would appear to be a necessary condition to the clearance thereof, for, if the goods do not exist, there could be no question of their clearance.

.....It is doubtful whether in a case where goods are consumed or disposed of without payment of excise duty payable in respect of these goods, resort could be had to Rule 9A much less so as to recover the excise duty at the rate prevailing on the date of payment of recovery."

1.169. The Committee also understand from Audit that periodical verification of stocks lying with the curers was a part of the control system and the Range Officer was supposed to exercise physical checks periodically. Government have however stated in a note:

"Verification of stock in curer's premises is generally done twice; once, at the time of obtaining annual return, and, again at the time of final accounting of the crop. Annual return is generally taken immediately after harvest and in any case within a month of the harvest. The date for final accounting is fixed by the Collectors giving sufficient time to the curers to dispose of their produce in accordance with the provisions of Rule 24 of the Central Excise Rules, 1944. Demands in form D.D.1 are issued, on oral request, generally at the time of furnishing annual return or at the time of final accounting. The curers are then required to pay the duty within 10 days. However, some curers do not pay the amount demanded and either consume or dispose of the tobacco. Administratively, it is impossible for Central Excise Officers to visit each curer again after 10 days, to ensure that all tobacco assessed for every petty holdings, scattered over large and interior areas of the country is physically checked after 10 days to attach it for non-payment of duty. The cost of collection in such cases would not be commensurate with the revenue to be collected."

1.170. **The Committee consider it regrettable that over a period of 8 years from 1957 to 1965, the Department should have continued to raise supplemental demands on curers of tobacco, without ascertaining whether the goods which constituted the prime security for the duty were actually in the possession of curers or not. The demands which aggregated Rs. 18.22 lakhs were ultimately withdrawn as a result of a legal opinion that in the absence of any proof that the goods were in the possession of assessment at the time of preferring the claims, the claims would not be sustainable.**

1.171. **It has been stated by Government that most of these claims related to petty growers in sparse growing areas, where it would not have been feasible for the Excise Department to have exercised checks except at huge cost to the exchequer. If so, the Committee fail to understand why the demands were raised at all. It is also beyond the Committee's comprehension as to why the demands were raised in a number of cases a year after the original demands were raised when it should have been apparent to the Department that the stocks of the commodity which was perishable would not have been available with the curers.**

1.172. The Committee get the impression that hardly any checks were exercised by the officers concerned. The supplemental demands arose, because under the law as it stood, the liability of the curers for duty was to be fixed with reference to the date on which duty was actually paid. Every successive increase in duty therefore raised the curers' liability for so long as the duty originally demanded remained unpaid. The fact that the goods did not exist when supplemental demands were raised would indicate that the curers removed the tobacco, without paying even the duty that was originally demanded. Removal of goods without payment of duty is a punishable offence under the Central Excise and Salt Act. It is not clear how the Department allowed this to take place in such a large number of cases without having recourse to a court of law.

1.173. Physical verification of stocks with curers is a part of the Department's control system. The fact that in a number of cases goods were removed without payments of duty would indicate that there was laxity in supervision and control in this respect.

1.174. The Committee would like Government to investigate thoroughly the circumstances that led to the withdrawal of these demands and to fix responsibility for the laxity in supervision which made it possible for the curers to remove the tobacco without payment of duty.

Loss of Revenue due to inadequacies of bonds

Audit Paragraph:

1.175. Under para 137(b) of the Tobacco Excise Manual licensees of warehouses having a floor area upto 5,000 sq. ft. are required to execute a bond for Rs. 2,000 or for such smaller sum as the Circle Officer considers will cover the duty on the tobacco normally to be stored in the warehouse.

In the course of audit of tobacco ranges in one collectorate it was noticed that excise duty of Rs. 3,03,003 had remained unrealised in respect of 11 licensees against whom certificate action had been instituted. In all these cases the bond amounts were inadequate to cover the duty liability involved. A substantial portion of duty forgone could have been recovered had fresh bond or additional security as provided in Rule 140 of the Central Excise Rules been demanded.

[Paragraph 23(ii) of Audit Report (Civil) on Revenue Receipts, 1969].

1.176. At the instance of the Committee, the Ministry have furnished the following statement regarding the values prescribed for

security bonds in respect of warehouses storing unmanufactured tobacco other than flue cured:

(a) Not exceeding 5,000 sq. ft.	Rs. 2,000 or such smaller sum as the Circle Officer considers will cover the duty on the tobacco normally to be stocked.
(b) Exceeding 5,000 sq. ft. and not exceeding 10,000 sq. ft.	Rs. 5,000
(c) Exceeding 10,000 sq. ft. the amount fixed for (b) plus, for every additional 10,000 sq. ft. or part thereof.	Rs. 3,000

For warehouses storing flue-cured tobacco, these amounts are doubled.

1.177. During evidence, the Committee were informed by the representatives of the Central Board of Excise and Customs that the values of security bonds in respect of unmanufactured tobacco were fixed in 1943 when the Excise duty on tobacco was first levied. The rate of excise duty then was one anna per pound. (The rate of excise duty had since gone upto Rs 2 per kg.). As to the basis for the fixation of values of security bonds, it was stated that their rate was related to the floor area taken by a licensee in the warehouse and not to the amount of duty due from him. The idea underlying the security bonds was to have some "moral check" on the licensee. It was not to be treated as the sole means of realising dues from the defaulting licensees. For realising outstandings from the licensees, resort was had to the recovery provisions of the Central Excise Law. In the last resort certificate action was instituted. It was also stated that the number of licensees who had to be proceeded against in terms of the security bonds was very small. Out of a total of about 14,000 licensees only 15 licensees (including one surety) were proceeded against in 1968.

1.178. Pointing out that the rate of excise duty on unmanufatcured tobacco had increased by about 16 times since it was first levied in 1943, the Committee enquired whether the question of revision of values of security bonds was considered by the Department. The representative of the Board stated, "....There are two aspects. One is that these bond amounts were fixed in 1943 and it is time to revise. That we are considering—the revision of the bond amount. The second point is whether they should be linked

with the amount of duty involved. Right from the beginning they have not been linked up with the amount of duty involved for various reasons and even now when we revise this bond amount we will certainly push it up but it will still continue to have a kind of moral binding."

1.179. It was further stated that one of the considerations for not revising the values of security bonds was that most of the licensees—10,000 out of a total of about 14,000 odd—were petty dealers. Quite a number of them found it difficult to deposit even the sum of Rs. 2,000. The witness in this connection also referred to the following observations of the Central Excise Reorganisation Committee contained in paragraph 20 of their Report:

> "As the framework of the rules and procedures makes the goods themselves the principal security for the duty which has to be paid before they go into home consumption and goods are not allowed to be delivered except for re-warehousing of export until all charges recoverable have been paid, excise bonds are at best a formality both in their form and effect specially as in most cases they are executed for amounts much smaller than those which must be involved in any large scale frauds or defaults. Statistics show that of some eighty thousand bonds in existence, 68 alone were pressed into suit over a two year period and led to a recovery of about Rs. 37,000. Their execution, custody and drawal and disbursement of interest on securities deposited and annual verification of the solvency of sureties for all personal surety bonds involves, however, a volume of work which is not inconsiderable but which does not in our view yield commensurate revenue gains".

1.180. In reply to a question, the witness stated, "I personally feel that for the bigger manufacturers the amount (of security bonds) should be stepped up".

1.181. The Committee enquired whether the Collectors of Central Excise ensure that fresh bonds under the proviso to Rule 140 of the Central Excise Rules were demanded in all cases where the existing

bonds are found to be inadequate. In their written reply, the Ministry have stated:

> "Fresh bonds under the proviso to Rule 140 of the Central Excise Rules, 1944 are demanded in all cases where the existing bonds are found to be inadequate. Every year at the time of renewal of warehouse licences, the adequacy and solvency of the sureties and obligors of the bonds are verified by the officers concerned.
>
> "Number of cases in which fresh bonds were demanded by the Collectors of Central Excise under the proviso of Rule 140 during the year 1967-68 and 1968-69 are as under:
>
> | | |
> |---|---|
> | 1967-68 | 176 |
> | 1968-69 | 193 |
>
> (Information for one Division is yet to be received)".

1.182. In reply to a question, whether the amount of surety bond was invariably deposited by the licensees, the representative of the Board stated, "In certain cases they do. In other case somebody else stands surety".

1.183. In a subsequent note, the Ministry have stated that 164 licensees in 1967-68 and 25 licensees in 1968-69 had not deposited the security bonds.

1.184. The Committee then desired to know the checks against evasion of duty on goods stored in warehouses. The representatives of the Board stated that goods could not be removed from a warehouse except on a transport permit for which the licensee had to apply in a prescribed form—Form AR-3. Besides, there was a double lock in public warehouses. As a result the number of cases of evasion of duty in respect of goods stored in warehouses was very small.

1.185. In reply to a further question the witness stated that the demands for Rs. 3,03,003 referred to in the Audit paragraph had not yet been written off. In some cases certificate action had been instituted and the outstandings realised. In other cases, the parties had gone to courts.

1.186. The Committee understand from Audit that the details of the 11 cases mentioned in the Audit paragraph were as follows:

S. No.	Name of the Party	No. of certificate cases	Amount of arrears as on 31-3-68	Amount realised by the certificate officer but not yet credited under II-Union Excise Duties
1	2	3	4	5
	M/s			
1	Party No. 1	3	7,055·44	Nil
2	Party No. 2	2	5,233·67	Nil
3	Party No. 3	1	29,082·69	Nil
4	Party No. 4	4	10,513·13	Nil
5	Party No. 5	2	21,421·60	Nil
6	Party No. 6	1	7,302·19	Rs. 1,703·75
7	Party No. 7	1	61,07·57	Nil
8	Party No. 8	1	33,938·56	Nil
9	Party No. 9	2	10,963·71	Rs. 9,963·71
10	Party No. 10	1	1,14,993·90	Nil
11	Party No. 11	1	1,423·63	Rs. 250
	11 licensees	19	Rs. 3,03,003	Rs. 11,917·46

1.187. The Committee note that the value of security bonds to be furnished by licensees of tobacco warehouses was fixed in 1943 when the rate of excise duty on tobacco was one anna per pound. The rate of duty on tobacco now is more than 16 times the original rate but the bond values remain unchanged. Rule 140 of the Central Excise Rules empowers the Collectors of Central Excise to demand fresh bonds where the existing bonds do not provide adequate cover but these powers do not appear to have been sufficiently used. While the Committee appreciate that bonds are not to be treated as the sole means of insurance against default by licensees, they do feel that their value should be so fixed that they have some deterrent effect. It was argued before the Committee that the Central Excise law provides a number of remedies against defaulters, but the details of recoveries in the 11 cases mentioned in the Audit paragraph given in the preceding section of the report would show

that, even by resort to certificate action, the Department could realise less than Rs. 12,000 out of dues aggregating over Rs. 3 lakhs in these cases. One of the main problems in tobacco excise on which the Committee have expressed concern time and again is the heavy accumulation of arrears, a sizeable part of which has been abandoned every year due to licensees becoming untraceable. Larger bond values would therefore to some extent not only provide more funds for recovery but may also serve as a deterrent against default. The Committee desire that the Government should take necessary steps for the upward revision of values of security bonds so that they are relatable to the duty that could be realised rather than the floor area.

Loss of Revenue due to misclassification of mineral oil

Audit Paragraph

1.188. Minerals oil having a flame height of eighteen millimetres or more and used as illuminant is leviable to duty under tariff item 7 and mineral oil having flashing point above 76° F and flame height of ten millimetres or more but less than eighteen millimetres is leviable to duty under tariff item 8. The oils falling under tariff item 8 are not generally used as illuminants.

Under notification issued on 20th April, 1961, as amended from time to time, Government laid down concessional rate of basic excise duty in respect of mineral oil produced in the areas of Assam and Bihar provided such oil conformed to certain specifications, one of which was that the flame height of the oil must not be less than 13 millimetres. The notification did not expressly mention the item under which such mineral oil was classifiable, but on the basis of flame height and flashing point it was classifiable under tariff item 8. It was, however, noticed that such oils which had a flame height of 13 to 14 millimetres and flashing point above 76° F were classified under tariff item 7. The misclassification resulted in loss of revenue of Rs. 67,80,918 in respect of mineral oils produced in two refineries during the period from November, 1962 to June, 1966.

[Paragraph 41 (iii) of Audit Report (Civil) on Revenue Receipts, 1969].

1.189. The Committee desired to know the considerations on which concession in duty was granted to the mineral oil in question. In a written reply, the Ministry of Finance have stated:

> "While kerosene produced by M/s. Burma-Shell, Esso and Caltex refineries, who use mainly imported crude oil, satisfied the specification prescribed in Notification No. 63/61-CE dated 18-3-1961 as amended by Notification No. 101/61-CE dated 20-4-1961 and was thus entitled to partial exemption from duty embodied therein, inferior kerosene produced by Digboi Refinery could not come up to those specifications on account of the waxy nature of indigenous Assam Crude Oil processed by the refinery and was not hence eligible for the concession. To enable refineries located in the State of Assam and processing indigenous Crude Oil into inferior kerosene, being entitled to the concession the relaxed specifications for this oil were prescribed *vide* Notification No. 102/61-CE dated 20-4-1961."

1.190. During evidence, the Finance Secretary stated that the mineral oil in question "was much nearer and used primarily as inferior kerosene."

1.191. The Committee enquired under what tariff item, the mineral oil in question was classifiable and under what tariff item the exemption notification was issued. The representative of the Board stated that the particular mineral was classifiable under Tariff item 8—(refined diesel oil), but it was exempt from so much of the duty as was in excess of the duty leviable under Tariff item 7. The notification, however, did not refer to any tariff item—7 and 8. The Committee referred to the following opinion given by the Ministry of Law on 23-10-1968:

> "A notification of exemption issued in exercise of relevant power has necessarily to be related to specific tariff items. In the nature of things, there cannot be an exemption notification which cannot fit in with any tariff item."

1.192. The Committee enquired whether the Board had accepted the advice of the Ministry of Law that exemption should be related to a specific tariff item. The representative of the Board replied in the affirmative.

1.193. The Committee understood from Audit that special and regulatory duties were leviable in respect of oil falling under tariff item 8, in addition to additional and basic duties leviable under item 7 and 8. In the exemption notification of 1961, there was no mention that the mineral oil in question was exempted from special and regulatory duties leviable under tariff item 8. The Committee enquired why, if it was the intention of Government to exempt the oil in question from special and regulatory duties a reference was not made to them in the exemption notification. The representative of the Board stated that it was a 'Technical Omission'."

1.194. The Committee then enquired whether a concession allowed with reference to a particular region was legally correct. The Finance Secretary stated that in an opinion expressed in 1968, the Ministry of Law had *inter alia* stated:

> "An exemption can be issued with reference to a particular locality provided the differentiation in the matter of localities is based on rational considerations relevant to the object in view."

1.195. The Committee enquired whether the notification under reference indicated the considerations on which it was based. The Finance Secretary stated, "I cannot say that. Normally notifications are set out in few words. Whether a notification should set out the rationale.....is certainly a point to be considered."

1.196. The Committee enquired whether Government had ascertained that the oil in question was not being used in diesel engines. The representative of the Board stated that some investigations had been made by the Collector. According to his Report, there was no misuse of Inferior Kerosene oil as High Speed Diesel Oil. The Committee drew attention of the representatives of the Ministry and the Board to two letters from the field offices to the Board which *inter alia* read as follows:

> (1) "As the stuff is capable of being misused as HSD an enquiry was instituted. It has come to light that inferior kerosene is supplied in bulk to major petrol pumps not only at Gauhati but also to Jalpaiguri, Siliguri, Dalgaon etc.....The owners of HSD and petrol pumps sell it to truck drivers and diesel engine owners for use as HSD."

preceding financial year were to pay duty at the lowest rate viz., Rs. 3.75 per grosss boxes of 50 matches. Eighteen match factories in a collectorate which commenced production after 1st April, 1964 were categorised under the lowest category in terms of the notification, treating the output of the previous year as "not exceeding 75 million matches". Since the notification would apply only in the case of factories which had some output during the preceding financial year and not to new factories, it was pointed out that these factories would not be eligible for the concession in under the notification. The short assessment due to the incorrect application of concessional rates works out to Rs. 6,33,287 during the period 1964—67 in respect of four collectorates out of which a sum of Rs. 15,485 has been recovered in one Collectorate.

[Paragraph 39 of Audit Report (Civil) on Revenue Receipts, 1969].

1.204. The Committee understand that the notification issued in April, 1964 prescribed concessional rates of duty on the following scale:

Category (1)	Specification of Matches (2)	Rate (3)
		(Per gross of 50 matches)
		Rs.
A	Matches cleared for home consumption from a factory the output of which in the preceding financial year exceeded 4,000 million matches	4·60
B	Matches cleared for home consumption from a factory the output of which in the preceding financial year exceeded 500 million matches but did not exceed 4,000 million matches .	4·40
C	Matches cleared for home consumption from a factory the output of which in the preceding financial year exceeded 75 million matches but did not exceed 500 million matches . . .	4·10
D	Matches cleared for home consumption from a factory the output of which in the preceding financial year did not exceed 75 million matches.	3·75

1.205. The Committee desired to know whether at the time of issuing. The Notification in April, 1964, it was the intention of Government to allow the concessional rates even during the first year production. In a written reply, the Ministry have stated:

> "The intention of the Government was not to debar the factories which had no output during the base year from the scope of exemption notification in question".

1.206. The Committee desired to know the number of factories which were denied the concession during the first year of production during the period 1964-65 to 1966-67. In their written reply, the Ministry have stated:

"Information collected from fourteen Collectorates is indicated below:—

No. of factories denied concession

1964-65	1965-66	1966-67
57	12	15

Two other Collectorates have reported that 31 factories were denied the concession during the period, but the year-wise break-up is not available'.

1.207. In reply to another question, the Ministry have stated:

"The whole pattern of duty on matches was revised in 1967 when the 1964 notification was superseded by Notification No. 115/67-CE dated 8-6-67 which in turn was also superseded by Notification No. 162/67-CE, dated these 21st July, 1967 which does not make any stipulation regarding the production in any base year for the purpose of entitlement to the concessional rates of duty".

1.208. **The Committee consider it unfortunate that the notification in this case was so ambiguously drafted as to offer scope for differential treatment. The notification prescribed concessional rates of duty on a slab basis with reference to the output of the factories in the preceding financial year. However it contained no specific provision in regard to newly established factories which naturally could had no production in the 'preceding financial year'. The result was that while 18 new factories (mentioned in the Audit paragraph) were deemed eligible for the concessional rates of duty in one Collectorate, 115 other new factories were denied this concession in 16 other Collectorates.**

1.209. **The Committee trust that Government will ensure in the interests of uniform treatment of assessees that notifications precisely translate Government's intention.**

Incorrect levy of duty in respect of Glycerine

Audit Paragraph:

1.210. Glycerine became assessable to Central Excise duty under tariff item 14C from 1st March, 1961. In August, 1961, the then Central Board of Revenue issued instructions that glycerine at the crude stage should be considered as "manufactured" and that duty should be levied at that stage. However, on the ground that most of the crude was cleared after refining, it was also ordered that duty should be collected at the refining stage. As a result of these orders there was short levy of duty to the extent of Rs. 2,12,946 for the period upto 31st August, 1965 in respect of two factories in one collectorate.

[Paragraph 25(a) of Audit Report (Civil) on Revenue Receipts, 1969].

1.211. During evidence the representatives of the Central Board of Excise and Customs stated that glycerine was any product which was commercially known as glycerine and which generally contained 80 per cent or more of glycer oil. The following were the marketable forms of glycerine: (i) crude glycerine (ii) commercially pure glycerine, and (iii) further purified B.P. Grade-medicinal glycerine.

1.212. The Committee desired to know at waht stage duty was leviable on glycerine. The representatives of the Central Board of Excise and Customs stated that duty became leviable as soon as an excisable commodity was manufactured. In terms of Section 3 of the Act, duty was to be levied and collected in such manner as may be prescribed. The manner of levy and collection had been prescribed under the Central Excise Rules. These Rules—particularly Rule 49—provided that duty was chargeable only on the removal of goods from the factory premises or from a place of storage. This Rule expressly laid down that duty 'shall not be collected' on excisable goods manufactured in a factory until they were about to be removed. Thus, although a commodity became liable to duty on manufacture in the factory, the duty was charged only when it was about to be removed. Elucidating his point, the witness stated that duty on glycerine became leviable as soon as crude glycerine—a marketable form of glycerine—was manufactured. If it was cleared

at that stage, duty will be charged at that stage. But if crude glycerine was further refined and removed at the refined stage, duty will be charged at the refined stage—that is on the actual quantity of refined glycerine cleared as such. Thus, if 10 tonnes of crude glycerine, on further processing, were reduced into 9 tonnes of refined glycerine at which stage the removal took place, duty will be charged on 9 tonnes of refined glycerine actually cleared; no duty will be charged on one tonne lost, in further processing. The only condition was that under Rule 160, the assessee had to account for the lost quantity to the satisfaction of the proper officer.

1.213. The Committee drew attention to the Supreme Court judgement in the Union of India *Vs.* Delhi Cloth and General Mills in which while examining the legality of the imposition of excise duty on the manufacture of "Refined Oil" from raw oil, the learned judges had, *inter alia,* observed as follows: "Excise duty is on the manufacture of goods and not on the sale".

1.214. The representative of the Ministry of Law expressed the view that the duty was attracted on production but the collection was postponed till the removal stage. The charge was on production.

1.215. Audit expressed the view that Rule 49 referred to by the representative of the Board only specified the stage at which the duty was to be paid. The duty, however, became chargeable as soon as crude glycerine—a marketable form of glycerine—was produced. Rule 49 did not determine the chargeable duty, it only postponed the payment till the removal stage. The Finance Secretary promised to look into the matter further in consultation with the Ministry of Law and Audit.

1.216. **In the opinion of the Committee, this case raises a very fundamental question, namely at what stage Central Excise duty is leviable on a commodity like glycerine. The representatives of the Central Board of Excise and Customs stated that, though crude glycerine is a marketable commodity, it will not attract duty as such, if it was used for refining and production of excisable products like pure glycerine. Under Section 3 of the Central Excise Act, 1944, liability for excise duty, however, arises as soon as a product is manufactured and becomes identifiable under the relevant tariff description. The relevant tariff item 14C in this case simply reads "glycerine" and does not differentiate between the various categories of glycerine.**

1.217. **The Committee note that assurance of the Finance Secretary that legal opinion will be taken on this question and desire that the matter should be referred to the Ministry of Law immediately and corrective action, as necessary, taken in the light of the opinion.**

Incorrect levy of duty in respect of Glycerine

Audit Paragraph:

1.218. In the case of manufacture of medicinal glycerine from commercial glycerine duty was leviable at the first stage as glycerine under tariff item 14C and again at the second stage as "Patent or Proprietary medicines" under tariff item 14E if the medicinal glycerine satisfied the tariff definition under that item.

It was noticed in one factory that the glycerine used in the manufacture of medicinal glycerine was not levied to duty under tariff item 14C and duty levied only on the medicinal glycerine under tariff item 14E resulting in loss of revenue of Rs. 30,490. In another factory duty was being levied at both the stages, but on the basis of orders passed by Government in June, 1967 on revision petition of the licensee, duty of Rs. 17,248 paid under tariff item 14E from April, 1962 to July, 1965 was refunded to the licensee.

In the absence of a notification under Rule 8(1) of the Central Excise Rules exempting raw glycerine used in the manufacture of medicinal glycerine from payment of duty, the collection of duty at only one of the two stages was incorrect and had resulted in loss of revenue of Rs. 47,738 in the two cases mentioned above.

[Paragraph 25(b) of Audit Report (Civil) on Revenue Receipts 1969].

1.219. Explaining the background of the case, the representative of the Central Board of Excise and Customs stated that according to an earlier opinion of the Ministry of Law glycerine was glycerine whether bottled or B.P. Grade and was, therefore, not to be assessed as a "patent and proprietary medicine". On this basis Government issued instrutcions, by way of a tariff ruling on 28th December, 1966 that duty on glycerine should be levied only once under tariff item 14C (glycerine) and no further duty should be levied at a subsequent stage under tariff item 14E ("Patent and Proprietary Medicines"). The Ministry of Law reconsidered the matter and gave a

revised opinion in November, 1969 to the effect that if a product falling under a particular tariff item, after a certain stage of refining or processing fell under another tariff item also, it become liable to duty under both the tariff items. Glycerine which fell under tariff item 14C, after being further refined, bottled and labelled fell under tariff item 14F—patent and proprietary medicines. Thus, medicinal glycerine bottled and labelled, became liable to duty twice—under tariff item 14C as glycerine and under tariff item 14E as a patent and proprietary medicne. As Government's intention, however, was to charge duty on glycerine at the stage a notification was issued by the Government in June, 1969—restricting the levy to duty payable as glycerine under tariff item 14C.

1.220. The Committee enquired why, after the revised opinion of the Ministry of Law became available in November, 1968, Government took seven months to issue the exemption notification. In a written reply, the Ministry have stated:

> "The reasons for the delay of 7 months are as follows: Before implementing the decision, after the receipt of Law Ministry's opinion, it was considered necessary to examine if the concession should be extended to other similar items *viz.* Castor-oil, Oxygen and Zinc Oxide of IP|BP|USP grades assessable as distinct product and again under tariff item No. 14E. It was also necessary to ensure that the duties on the end product as patent and proprietary medicines should always be in excess of the set off admissible. Accordingly, reports were called for from the Collectors of Central Excise in regard to price of product chargeable on *ad valorem* basis. The required information was received from the Collectors in February, 1969, whereafter a Summary of the case was then put up to the Minister (R&E) who approved the proposal after discussion with the officials concerned on 17-6-69. Thereafter, the exemption notification was drafted and got vetted by the Ministry of Law on 7-6-1969 and was issued in the Gazette of Inida dated 21-6-1969".

1.221. The Committee desired to know the total loss of revenue in all the Collectorates on account of short-levy prior to the issue of the exemption notification of June, 1969. In their written reply, the Ministry have stated:

> "Information so far received from twelve Collectorates indicates that there has been no loss of revenue in this regard.

Information from other five Collectorates is awaited and the same will be furnished as soon as it is received".

1.222. During evidence, the representative of the Board stated that as the intention all along was to charge duty only at one stage, the loss could be treated only as national.

1.223. **The Committee consider it unfortunate that, due to a wrong opinion expressed by the Ministry of Law, medicinal glycerine prepared out of commercial glycerine was deemed non-excisable, though, in fact, it was liable to excise duty. It took nearly two years, after instructions restricting levy of duty were issued, for Government to ascertain the correct position in law, i.e. that commercial glycerine used for preparation of medicinal glycerine was liable to tax both as commercial and medicinal glycerine. An exemption notification was thereafter issued for exempting medicinal glycerine, on the ground that it was not Government's intention to tax it. Till the notification was issued, medicinal glycerine enjoyed an exemption from tax which had not legal basis.**

1.224. **The Committee further note that, though the Ministry of Law gave their revised opinion on the duty liability of medicinal glycerine in November, 1968, the Ministry of Finance issued an exemption notification only in June, 1969—i.e. after the lapse of about 7 months. The delay lacked justification particularly after February, 1969 by which time the Board had all the material it had called for from the Collectorates for the purpose of issuing the notification. The Committee would like to emphasise the need for prompt action by Government in cases of this kind, particularly as they have a bearing on the legality of Government action.**

Audit Paragraph:

Under-assessment in respect of packing and wrapping paper used for packing newsprint:

1.225. The former Central Board of Revenue issued executive instructions in September, 1955, that packing and wrapping paper should be charged to duty at the same rate as the paper packed in such wrapping paper. Printing and writing paper used in the publication of daily newspapers and conforming to certain specifications was assessable to duty at the concessional rate of 5 paise per kg. upto 20th July, 1967 and thereafter were fully exempted from duty from 28th February, 1965 if used in the printing of newspapers.

It was noticed in a collectorate that the packing paper used to wrap such printing and writing paper was also assessed to duty at the concessional or nil rate of duty on the strength of the Board's executive instructions. As the levy at the concessional or nil rate of duty was conditional on the paper being actually used for printing of newspapers and as the wrapping paper was not being put to such end use, it was pointed out in January, 1966 that the wrapping paper was not eligible for these concessions. This was subsequently upheld by the Board in their revised instructions of June, 1967, wherein they have stated that the exemption under the notification of 28th February, 1965 is conditional on such paper being used in the printing of dailies.

The under-assessment in respect of such packing paper in this collectorate and in six other collectorates was Rs. 7.01 lakhs from November, 1962 to March, 1968. Out of this a sum of Rs. 530 has been recovered in one collectorate, and a demand for Rs. 7,300 raised in another collectorate had to be withdrawn due to operation of time bar.

[Paragraph 28(iii) of Audit Report (Civil), 1969, on Revenue Receipt]

1.226. Explaining the circumstances in which the under-assessment of Rs. 7.01 lakhs had taken place, the representative of the Central Board of Excise and Customs stated that Executive, Instructions had been issued by the former Central Board of Revenue in September, 1955 that packing and wrapping paper should be charged to duty at the same rate as the paper packed in such wrapping paper. When subsequently exemptions were given to certain varieties of printing paper, if used in the printing of newspapers, the general instructions issued by the erstwhile Central Board of Revenue in 1955 continued to be followed by all the Collectorates with the result that the wrapping paper used for wrapping newsprint etc. continued to be assessed at concessional or nil rates. When this practice came to notice of the Board they considered the matter and decided that in such cases of conditional exemptions, wrapping paper should be assessed separately as wrapping paper. Clarificatory instructions to this effect were consequently issued in June, 1967.

1.227. The Committee enquired why the Board's orders of September, 1955 were not reviewed when the exemption notification in respect of paper used for printing of newspapers was issued in February, 1965, particularly as the exemption notification had made

the exemption conditional paper being used in the printing of dailies. In a written reply, the Ministry of Finance has stated:

> "It may be stated that the validity of the executive instructions contained in the Central Board of Excise and Customs letter F. No. 9|19|55|-CX. MII dated 16-9-1955 hanppened to be examined in 1961, and revised instructions were issued to the effect that wrapping paper used for packing of printing and writing paper, other sorts, should be assessed to duty at the appropriate rate, applicable to wrapping paper. These instructions were, however, represented by the trade to entail accounting difficulties and on re-consideration of the matter, *status quo* ante was restored. In allowing the position as per the executive instructions of September, 1955 to be continued, the view taken was that ordinary packing should pay the same rate as for the goods packed. In other words, packing material, was consider to become an integral part of the goods to be packed. This view held the field even after 1965 Budget changes, and the need for reconsidering the same did not araise till a doubt was raised by local audit authorities in 1966".

1.228. During evidence, the representative of the Board stated: "I do not know whether instructions issued in 1967 were the proper ones. I feel perhaps we were a little ill-advised to issue those instructions because (they) can land us into many other complications....it is generally the pratice that the thing in which you wrap or otherwise contain a product is also charged the same rate of duty as the thing wrapped. For instance, if cotton is packed in wooden boxes, we charge the whole lot as one".

1.229. As to the present position regarding rectification|recovery of the total short-assessment of Rs. 7.01 lakhs, the representative of the Board stated an amount of Rs. 73,062 had since been recovered. About Rs. 5.85 lakhs had become time-barred and a demand of Rs. 44,540 was in dispute. The party's representation against the demand was under-consideration.

1.230. The Committee pointed out that Audit had raised the objection in June 1966 but the Board issued the clarificatory instructions only in June, 1967. The Committee enquired why it took the Board one year to clarify the position to departmental officers after

Audit had pointed out the irregularity. In their written reply, the Ministry have stated:

> "It may be stated that reconsideration of the position was done in pursuance of a reference dated 12-8-1966 received from the Collector of Central Excise, Cochin. (It is possible that the need for this reference had been felt by the Collector on account of objection raised by the local audit authorities sometime earlier)—Thereafter action was taken to ascertain the actual position obtaining in other Collectorates. Also, the question of issuing an exemption notification under Rule 8(1) was examined. It was on account of these factors that revised instructions could not be issued earlier than 9-6-1967".

1.231. The Committee also learnt from Audit that the draft paragraph had been sent to the Ministry on 28-12-1968 but no reply had so far been received. In extenuation; the Finance Secretary stated "we are an all-India Organisation, especially dealing with matters of excise, income-tax and customs, it is not a self-contained Ministry". In reply to a question, he added: "I can assure that we will shorten the time as far as possible".

1.232. **The Committee regret that packing and wrapping paper used for packing newsprint were assessed to duty on a concessional or nil rate basis, though this was incorrect in terms of the Board's orders on the subject. The resultant loss of revenue to Government was Rs. 7.01 lakhs. The Committee would like Government to investigate the circumstances under which the wrong assessments occurred and to fix responsibility therefor.**

1.233. **It was stated before the Committee by the representative of the Central Board of Excise and Customs that Government were "ill-advised" to issue orders which precluded assessment of wrapping and packing paper on the same basis as the newsprint wrapped in such paper, as the principle followed by Government in such cases is to charge containers the same rate of duty as the contents. If this is so, the Committee are not able to understand why the Board's instructions on the subject have so far been allowed to stand.**

1.234. **The Committee would also like to point out that an omission on the part of the Board also contributed to the mistakes which occurred in this case. According to executive instructions issued by the Board in September 1955, wrapping paper was to be assessed to duty at the same rate as paper packed in such wrapping paper.**

The exemption notification issued by the Board in February 1965 wrappinin favour of newsprint brought about a change in this position, in as much as the exemption was made conditional on the paper being actually used for purpose of printing. As wrapping paper was not capable of being so used, it could no longer be assessed at the same rate as newsprint, on the basis of the instructions of the Board of September 1955. The Board should have therefore reviewed these instructions and suitably instructed the field offices, which they failed to do.

1.235. **The Committee also note that after Audit pointed out the irregularity in June, 1966, the Board took one year to issue the necessary clarification. The Committee consider the delay as highly regrettable. As they have repeatedly urged, Government should act with promptness in matters which affect Government revenues under-assessment of wrapper paper used in real cases:**

Audit Paragraph:

1.236. Reel cores used in some paper mills to prepare paper rolls were made of wrapper paper liable to excise duty at 35 paise per kg. (basic) plus 20 per cent (Special excise duty). The reel cores were used for winding writing paper which was assessable to duty at the rate of 22 paise per kg. plus special excise duty of 20 per cent of basic duty upto 29th February, 1964 and at the rate of 22 paise per kg. thereafter. The wrapper paper used in the manufacture of reel cores was incorrectly assessed to duty at the same lower rates as the writing paper. As a result of assessment of the wrapper paper at the lower rates of duty applicable to the paper wound on it, a sum of Rs. 21,325 had been short collected for the period from March, 1963 to February, 1966 in three collectorates, out of which sum of Rs. 9,458 has been realised in two collectorates.

[Paragraph 28(ii) of Audit Report (Civil) on Revenue Receipts, 1969].

1.237. The Committee desired to know the present position regarding the recovery of the tax short levied. In a note the Ministry of Finance have stated:

> "The under-assessment of Rs. 21,325|- reported in the Audit paragraph pertains to the following factories, namely:—
>
> (i) Rs. 157.00 in respect of Assessee No. 1 in Bangalore Collectorate.
>
> (ii) Rs. 4,301.00 in respect of Assessee No. 2 in Calcutta and Orissa Collectorate.

(iii) Rs. 2, 180.58 in respect of Assessee No. 3 in Nagpur Collectorate.

(iv) Rs. 6,063.00 in respect of Assessee No. 4 in Calcutta and Orissa Collectorate.

(v) Rs. 1,876.60 in respect of Assessee No. 5 in Calcutta and Orissa Collectorate; and

(vi) Rs. 1746.60 in respect of Assessee No. 6 in Calcutta and Orissa Collectorate.

The position in respect of realisation of the alleged short assessment is as follows:—

(i) The sum of Rs. 5,157.00 pertaining to Assessee No. 1 in Bangalore Collectorate has been realised.

(ii) The sum of Rs. 4,301.00 in respect of Assessee No. 2 in Calcutta and Orissa Collectorate had been realised, but on appeal, the Deputy Collector of Central Excise, Cuttack, held it to be time barred, under Rule 10, and the money was, therefore, refunded to the party.

(iii) Regarding the sum of Rs. 2,180.58 in respect of Assessee No. 3 in Nagpur Collectorate (according to the Collector, the correct amount is Rs. 2,134.23 paise), the order of the Superintendent for raising the demand was contested in appeal by the party before the Collector of Central Excise, Nagpur, who upheld the appeal on ground of time barred.

In respect of the firms mentioned at serial Nos (iv), (v) and (vi), no demands were raised. It has been argued by the Collector of Central Excise of Calcutta and Orissa that, actually, there has been no under-assessment inasmuch as the duty realised from reel cores was much more than the duty which would have been due if the assessment had been made, as contended by the Audit, as 'wrapping paper'. The reasons advanced by the Collector in this connection are quoted below:—

(a) During March, 1963 to February, 1966, Assessee No. 4, Orissa consumed approximately 656 M. Tonnes of papers. Duty on 500 m. t. of paper at the rate of 35 paise per Kg. comes to Rs. 1,75,000 (basic) and Rs. 35,000 (special).

Total duty realised on 656 M. T. of reel cores on the other hand is Rs. 2,19,490 (basic) and Rs. 40,940 (Special).

(b) In manufacturing reel cores, sodium silicate to the extent of 40 per cent of the total weight is used and the rest 60 per cent of the total weight is the paper. On a scrutiny of records of Assessee Nos. 5 and 6 who manufacture reel cores in their factory, it has been ascertained that total weight of reel cores cleared from those two factories during the period from March, 1963 to February 1966 was 149854.20 kg. in the manufacture of which 59941.68 kg. of sodium silicate and rest 89912.52 kg. of paper was used. Had this entire quantity of paper been charged to duty at the rate of 35 paise per kg. as contended by the Audit, a total duty amounting to Rs. 37763.26 (basic Rs. 31469.38 paise plus special Rs. 6293.38 paise) would have been realised. But actually, the entire quantity of reel crores was charged to duty amounting to Rs. 56,823.08, the reel cores were not only charged at the rate of 15 paise or 22 paise per kg., but also at the rate of 50 paise and 35 paise per kg. because of the assessment at the rate of duty of the paper reeled thereupon. Hence, it is obvious that there has been no loss of revenue as alleged by Audit by resorting to assessment on the total weight of the reel cores and at the rate of duty applicable to the paper reeled and actually there has been excess realisation to the extent of Rs. 19,059.82 paise in the two factories mentioned above.

It may also be mentioned that even if the demands had been raised for these short assessments, these would, perhaps, have attracted the time bar. Also, if the assessment on the entire quantity of reel cores had been made at the rate of wrapping paper, the realisation would have been lesser than the existing one".

1.238. As regards the steps taken by Government to obviate the recurrence of the type of mistake pointed out in the Audit paragraph, the Ministry of Finance have state:

"The instructions have aleady been issued vide Central Board of Excise and Customs letter F. No. 8/132/65-CX-VI dated 3-1-1966 addressed to all Collectors of Central Excise wherein it has been pointed out to the Collectors that the correct procedure would be to use duty-paid wrapping paper for production of reel cores; this procedure is now being followed in the Collectorates".

1.239. The Committee observe that wrapping paper used in the manufacture of reel cores was erroneously assessed to duty at the same rate as writing paper would on reel cores. While the Committee note that the correct procedure for assessment is now being followed in all the Collectorates, they would like to point out that the mistake occurred in as many as six Collectorates. This case as well as to the case of assessment of wrapping paper mentioned elsewhere in this Report, points to the need for clear-cut instructions to Collectorates in the matter of assessment whenever containers and contents are assessable at different rates of duty.

Double concession given for paper boards cleared in the year 1963-64.

Audit Paragraph:

1.240. Under notifications issued by Government in April, 1960 and March, 1963, pulp board, not otherwise specified, and straw board other than corrugated board were allowed slab concessions upto a limit of 3000 metric tonnes each in respect of clearances for home consumption during each financial year. These notifications were superseded by a notification issued on 1st March, 1964 under which all pulp boards and straw boards were allowed slab concessions upto a reduced consolidated limit of 2,500 metric tonnes from the financial year beginning from 1st April, 1964 and concession for a quantity of 200 metric tonnes was laid down for clearances during March, 1964. As the notification omitted to stipulate that the manufacturer who had already availed of the full slab concessions under the earlier notifications would not again be eligible for the additional concession of 200 metric tonnes, during March, 1964, the additional concession was given even to such units. The extra concession thus given to three units in two collectorates during the year 1963-64 was Rs. 66,000.

(Paragraph 28(i) of Audit Report (Civil) on Revenue Receipts, 1969).

1.241. The Committee desired to know the intention underlying the issue of notification of 1-3-1964. They wanted to know in particular the considerations for allowing the concession of 200 metric tonnes during March, 1964. They informed that prior to the issue of this notification the slab concession was available only to small

scale manufacturers who did not produce more than 5,000 tonnes of strawboard and paperboard per annum. One of the big manufacturers who was not under this scheme entitled to the concession, filed a writ in November, 1963. Though the writ was dismissed, the court, which went into the merits of the case, made an observation which indicated that the scheme involved certain hardships for some manufacturers. Following this the Strawboard Manufacturers. Association submitted a memorandum to the Minister. The whole question was, therefore, examined by Government, which thereafter issued notification in March, 1964, superseding the two previous notifications in a note, the implifications of the notifications have been explained by the Ministry of Finance at greater length as follows:

"Before March, 1964, the effective rates had been prescribed for strawboard and pulpboard under separate notifications. In the scheme of exemption in force at that time, a unit producing over 5,000 tonnes of all types of paper and board per annum was not entitled to any concession either on its production of strawboard or pulpboard. A unit with annual production of less than 5,000 tonnes of all types of paper and paper board, if it produced strawboard or pulpboard, was entitled to clear the same at lower concessional rates upto a quantity of 3,000 tonnes per annum. This placed the bigger units, producing more than 5,000 tonnes of all types of paper and board, at a disadvantage which was considered to be more than the advantage which accured to them due to the economics of large-scale production. The whole matter was examined early in 1964 and it was decided that, instead of treating strawboard and pulpboard separately for the purpose of exemption, the two should be taken together and the notifications in existence were revised suitably so that, instead of two separate concessions for strawboard and pulpboard, the concession could be earned jointly for both, and, simultaneously, the extent of concessions was also reduced. The revised rates were given effect to from March 1, 1964, as part of Budget proposals for that year, by issue of notification No. 35/64-CE dated 1-3-1964. The above background explains the circumstances which necessitated the issue of notification No. 35/64 dated 1-3-1964, which not only supersedded the earlier notifications: but was also in the nature of a new concession applicable equally to strawboard and mills as well as to categories and classes of

manufacturers not earlier eligible for the concession or eligible for a different quantum of benefit. Since the revised notification was not in fact a continuation of the earlier concessions under two notifications and was effective for a financial year, it became necessary to make a provision for clearances to be effected during March, 1964 for the financial year ending 1963-64. This provision was made by prescribing, separately, concessions for a quantity roughly approximating to 1|12th of the total quantity alowed to be cleared at concessional rates of duty during a financial year, for the month of March, 1964 only. There was no intention to make any discrimination between those who had availed of the concession allowed under the notifications in force during the period prior to 1st March, 1964 to the full extent under both the notifications in force, and others who had availed of the concession only to a limited extent under one or both the notifications. It will also be appreciated that the concession in respect of clearances of strawboards and mill effected during March, 1964 was legally available in terms of Table 2 of Notification No. 35|36 dated 1st March, 1964 to all manufacturers producing paper boards irrespective of the fact whether or not they had been availing the slab concession earlier during the financial year 1963-64 in terms of the superseded notifications. While so liberating the concession, it would not have been equitable to deny the benefit for the month of March, 1964 to the smaller sector when allowing it to all the large units on the ground that some or all the small units had availed of the benefits under the pre-existing notifications which were superseded by the revised notification of 1st March, 1964".

1.242. During evidence, the representative of the Board clarified that the concession applied to all the units old as well as new. In reply to anothed question, he stated that the concession given by the notification of March, 1964 was an "altogether new concession", not a continuance of the old one. The Committee enquired why the manufacturers who had already availed of the full slab concessions under the earlier notifications were allowed the additional concession of 200 metric tones during March, 1964. The representative of the Board while admitting that some parties might have been benefited by the provisions of the substitute notification of March, 1964 stated that some other parties, who had only partly availed of the concession under the earlier notifications, might have stood to lose.

1.243. In reply to a question, the Finance Secretary stated, "I would agree that it might have been better if we had said (in the notification) that anyone who had already fully availed of the concession upto 3,000 tonnes would not get this additional concession at this stage".

1.244. The Committee desired to know the arrangements in the Office of the Board of Central Excise and Customs for drafting notifications under the Central Excise Act and Rules. The representative of the Board stated that no exemption notification could issue unless the prior approval of the Minister thereto had been obtained. The Minister's orders were translated in the form of draft notifications by the officers of the Board who usually had some experience in drawing up notifications. There was, however, no legal cell in the Board for drafting notifications. The draft notifications after being drawn up by the officers concerned were put up to higher officers for approval. Thereafter they were sent to the Ministry of Law for vetting from the legal aspect. While simple notifications were referred to the Ministry of Law at Deputy Secretary's level, complicated notifications were referred at Joint Secretary's or even higher level. While forwarding the draft notifications to the Ministry of Law for vetting, original files were also normally sent.

1.245. **The Committee regret that due to a failure to draft notification correctly, certain parties in two collectorates got an unintended concession in excise duty to the extent of Rs. 66,000. The notification which was issued in March, 1964 was intended to rationalise certain slab concessions allowed to manufacturers of pulp and straw boards. Prior to March, 1964 such concessions were available only to manufacturers producing 5,000 tonnes or less, the concession being limited to the first 3,000 tonnes of production in a year. The notification issued in March, 1964 extended the scope of the concessions to all manufacturers without regard to their scale of production, but limited the concessions to the first 2,500 tonnes of production in a year. As the notification became operative in March, 1964, the concession available for that one month in the financial year was worked out pro rata as 200 tonnes. However, due to a failure to spoil out the rationale behind this concession for 200 tonnes for March, 1964, certain manufacturers were able to claim it in addition to the full benefit of slab concession of 3,000 metric tonnes enjoyed by them under the old scheme. The Finance Secretary himself admitted that the notification of 1st March, 1964 could have been better worded in this regard.**

1.246. The committee would like to impress on Government the need to exercise greater care in drafting notifications so that they do not leave loopholes which would adversely affect the financial interests of Government. The Committee also desire that the Board should review the existing arrangements for drafting of notifications. The work in this regard should be entrusted to officers with a legal background and a thorough understanding of the Central Excise Law.

Loss of Revenue in respect of hair belting yarn:

Audit Paragrah:

1.247. Hair belting yarn is assessable as woollen yarn under tariff item 18B(1) as clarified by the Board in November, 1962. In this order the Board clarified that since hair-belting yarn was manufactured in the same manner as "worsted yarn", assessment of the former should be made on the same basis as that of the latter under sub-item (I) of tariff item 18B.

In a factory manufacturing hair-belting yarn under the description of "grey belting yarn and union belting yarn", it was noticed that duty was levied on such yarn, not as worsted yarn, but as "others" under sub-item (2) of tariff item 18B at lower rate for the period from 1st March, 1961 to 8th January, 1963. Subsequently, differential duty was realised by the department with effect from the date of issue of the Board's clarificatory orders, i.e., November, 1962, holding that the order of the Board was in the nature of tariff ruling and hence enforceable from the date of issue of the order.

Hair-belting yarn belonged to the category of worsted yarn *ab initio* and the Board's order only reiterated this position. This order, being a clarificatory one, should apply to all clearances from 1st March, 1961, i.e., the date of imposition of duty. Non-realisation of duty for the period from 1st March, 1961 to 6th November, 1962, had resulted in loss of revenue of about Rs. 2,96,461. Government stated (October, 1968) that the matter was under investigation to determine the actual loss of revenue and to fix responsibility.

[Paragraph 30 of Audit Report (Civil), 1969 on Revenue Receipts].

1.248. The Committee were given to understand by Audit that "woollen yarn, all sorts" became excisable for the first time under Tariff item 18B with effect from 1st March, 1961 under two categories, *viz.*, "worsted yarn" and "others", the former being subjected to higher duty than the latter.

1.249. The Committee desired to know the circumstances in which the hair belting yarn was under-assessed by the Department by treating it under the category of other yarn. In a written reply, the Ministry of Finance have stated as follows:—

"M/s..... were producing three varieties of hair belting yarn, *viz.*, grey belting yarn, union belting yarn and dyed belting yarn. They intimated the local Central Excise Office on 8th March, 1961 the varieties of woollen yarns produced by them and declared these yarns as assessable to duty under the category of 'others'.

The Local Central Excise Office had drawn samples of various varieties of yarn and sent them to the Deputy Chief Chemist, Calcutta on 6th March, 1961. While in respect of union belting yarn, the Chemical Examiner gave the finding that it was woollen yarn other than worsted, no opinion was, unfortunately, communicated in regard to the other varieties of fabrics. A remark was, however, found written on the original copy of the Test Memo "party may be asked to show the demonstration". The Assistant Collector of the jurisdiction, however, classified grey belting yarn as 'woollen yarn other than worsted' on 25th April, 1961. The reasons as to how this classification was made by the Assistant Collector are not clear; he has presumably done it because of mis-interpretation. The samples of different varieties of yarn were again drawn on 16th May, 1961, but the results of the test were not communicated to the Local Central Excise Office.

In the absence of the results of the chemical test and in view of the fact that the classification of grey belting yarn was done by the Assistant Collector, the yarns continued to be assessed as 'others' till the receipt of the Board's instructions dated 7th November, 1962".

1.250. During evidence, the representative of the Board stated that the first set of instructions defining 'worsted yarn' were issued by the Board on 28th May, 1961. The subsequent instructions of 7th November, 1962 issued by the Board were pursuant to representations received from certain associations. There was no delay on the part of the Board in this case.

1.251. The witness further stated that they had checked up and no case of a similar nature had come to notice in any other Collectorate. Nor had a further case of this nature been noticed in the relevant Collectorate, after the issue of November 7, 1962 instructions.

1.252. The Committee were informed by Audit that the matter was being investigated further by the Ministry to determine the actual loss of revenue and to fix responsibility. The Committee enquired about the results of investigations. In a note, the Ministry have stated:

> "The amount of actual loss of revenue involved due to the alleged under-assessment has been ascertained to be Rs. 2,89,082.73. The question whether any disciplinary action is called for, is being examined."

1.253. The Committee desired to know the arrangements for determining assessable values in respect of commodities subject to duty on *ad valorem* basis. The representative of the Board stated that so far as tariff values were concerned these were fixed by Government. In cases where tariff values were not fixed, assessable values were determined by Assessing Officers of the Central Excise Department. Prior to June 1, 1968, assessable values were determined by Inspectors. The work of classification and verification of values has since been entrusted to Superintendents of Central Excise who were Class II Gazetted Officers. Values were initially declared by manufacturers. Thereafter, the Assessing Officers made market enquiries and verified the values shown in manufacturers' invoices with the customers. After the Assessing Officers were satisfied that proper discounts had been given and proper entries made, they finalised the assessable values. There were also arrangements for review of values determined by Assessing Officers. In each Collectorate, there was an Assistant Collector to whom all assessment documents and classification lists were submitted. After verifying the lists submitted by different ranges, he enforced uniformity. To bring about uniformity in the matter of classification and valuation in all the Collectorates, the Board was thinking of setting up a kind of Central Exchange of Classifications and Valuations.

1.254. The Committee note that Government suffered a loss of Rs. 2.89 lakhs in this case due to a failure to classify the item properly which resulted in an under-assessment of duty. The chemical examiner attached to the Department was asked to undertake an examination of samples in order to determine the nature of the item

but a complete report on the test was not sent by him at any stage. The Committee note that the question whether disciplinary action is called for in this case is under consideration of Government. The Committee would like to be informed of the results of Government's examination.

1.255. **The Committee note that to bring about uniformity in the matter of classification and valuation in all the Collectorates, the Department propose to set up an organisation for a Central Exchange of Classifications and control. The Committee hope that this would help to resolve the difficulties of the Excise Department in classifying items for purposes of assessment. It would be necessary to ensure that the Central Exchange keeps in close and constant touch with the field offices and regularly issues guidelines to them in the matter of proper classification of items.**

Loss of Revenue due to incorrect application of exemption formula

Audit Paragraph

1.256. Under a notification issued in 1956 woollen fabrics produced in four of the total number of powerlooms engaged by or on behalf of the same person in one or more factories in which not less than five powerlooms in all are installed are exempted from payment of excise duty. In a case where two mills worked under the same management, the department had allowed exemption of duty on the production of eight looms instead of four, which resulted in a short levy of Rs. 71,882.

The error was noticed by the department in October, 1959 and a demand was raised in March, 1960 for the amount short assessed. The management paid the demand in July, 1960 under protest and preferred an appeal on the ground that differential duty was payable by them only for a period of 3 months prior to the date of the demand under Rule 10 of the Central Excise Rules. This appeal was rejected by the Collector of Central Excise but on a revision petition to the Government of India, the assessee was allowed in January, 1962 a refund of Rs. 67,181.

This loss of revenue could have been avoided if the formula prescribing the exemption had been correctly applied by the department in the first instance. Further, had the department taken

immediate remedial action in October, 1959 when the mistake came to light instead of postponing the same till March, 1960, the refund of at least a sum of Rs. 20,144 could have been avoided.

[Paragraph 31(b) of Audit Report (Civil) on Revenue Receipts, 1969.]

1.257. According to a note furnished by the Ministry, the concession was being allowed from 10-12-1956. The mistake was detected by the Collectorate's Internal Audit Party on* 5-12-1959 (not in October, 1959, as mentioned in the Audit paragraph).

1.258. As to the circumstances in which the concession for eight looms instead of four looms was allowed to the firm in question, the Ministry have stated as follows in a note:

> "During the period relevant to para 31(b) of the Audit Report (Civil) on Revenue Receipts, 1969, woollen fabrics manufactured by or on behalf of the same person in one or more factories in which not less than 5 powerlooms in all are installed were exempt from so much of the duty leviable thereon as is equal to an amount determined by the application of the formula prescribed in this Ministry's Notification No. CER-8(16)|56 dated 26-5-1956.
>
> M|s. (the assessee) had two factories, one at Bangalore City proper and the other at Hebbal, with 183 and 61 looms respectively. In their case the total number of powerlooms should have been taken into account and then their duty liability computed in terms of the aforesaid Notification. Instead, based on an incorrect interpretation of the said notification the benefit of exemption happened to be allowed by the local Central Excise Officers in respect of both the factories separately."

1.259. The Committee desired to know the reasons for delay in issuing the demands. In their written reply, the Ministry have stated:

> "After the mistake being pointed out on 6-12-1959, a Show Cause Notice was issued to the Mills so as to give them an opportunity to explain their stand. An appealable order was passed thereafter by the Assistant Collector of Central Excise concerned on 1-3-1960 and differential duty was demanded on 8-3-1960."

*According to Audit, this does not appear to be correct. The mistake was detected by internal audit party in October, 1959. The Collector, C. E., Bangalore instructed the Assistant Collector to issue demand in his letter dated 5-12-59.

1.260. In reply to another question, the Ministry have stated that "no review appears to have been made" to find out whether there were other similar under-assessments in the relevant Collectorate or other Collectorates.

1.261. **The Committee note that, in terms of the exemption notification issued in this case, an assessee was entitled to exemption from duty on so much of woollen cloth produced as was attributable to four powerlooms in all. Due, however, to a failure to apply the notification correctly, the assessing officer gave exemption to an assessee who owned two units on the production of eight powerlooms at the rate of four for each production unit. This resulted in an under-assessment of Rs. 71,882.. The error came to notice in *December, 1959. The Department, however, took four months to raise the demand, with the result that ultimately only a small amount of Rs. 4,701 could be recovered. The Committee would like Government to investigate why prompt action was not taken.**

Under-assessment due to non-inclusion of the weight of value in cement bags:

Audit Paragraph:

1.262. According to the Central Excise Tariff duty on jute products is leviable on the basis of actual weight. However the assessment is made on the basis of "contract weight" which is followed by the jute trade. The contract weight is a predetermined weight based on certain standard specification. From a table containing predetermined weights of standard size and other details of the jute products the weight of jute product of any given size and type is calculated. While calculating the contract weight of the cement bags, the standard weight relevant to the specification and type of the bag including the weight of the inside patch valve is to be arrived at.

In the course of local audit of a few jute mills, manufacturing cement bags it was noticed that the weight of the jute cloth utilised in the manufacture of the valves contained in the cement bags had not been taken into account, while arriving at the contract weight resulting in under-declaration of the weight of the cement bags and consequential under-assessment of Central excise duty.

This having been pointed out, the department raised demands for Rs. 1,00,112 on this account, for clearances of bags since inception of Central excise duty to Sep., 1965 and they have since been realised.

[Paragraph 32 of Audit Report (Civil), 1969, on Revenue Receipts.]

*October, 1959, according to Audit.

1.263. The Committee desired to know whether any investigation was made to find out how the error was not detected by the Internal Audit Department. In a written reply, the Ministry of Finance have stated:

> "The circumstances which led to the error remaining undetected were got enquired into by the Directorate of Inspection (Customs and Central Ercise) and the enquiry revealed that a percentage check weightment of cement bags was being undertaken by the Central Excise Officers but since the difference found on check-weightment was within the tolerance limit, there was no possibility of detecting any misdeclaration on the part of the jute mills where the weight of the packet valves was excluded in the contract weight".

1.264. The Committee enquired whether assessments in similar cases had been reviewed and if so, what was the total loss of revenue due to the short levy. In their note, the Ministry have stated:

> "In those case in which the weight specification indicated in the relevant contract documents did not mention that the weight of patch valve was included, action was taken to demand the due amount of Central Excise duty. The particulars of the demands are as under:—

No.	Name of the Party	Amount of duty Demanded	Amount of duty realised	Remarks
1	2	3	4	5
		Rs.	Rs.	
1	M/s.....	5669·57	574·75	A demand for Rs. 5669·57 was raised and realised from the party. The party filed revision application and the Government of India, Ministry of Finance in their revision order modified the appeallate order to the extent of limitation prescribed under rule 10 of the Central Excise Rules, 1944. In puruanace of the said revision order, the appellant was granted refund of Rs. 5094·82 out of Rs. 5669·57 demandee and realised.

1	2	3	4	5
		Rs.	Rs.	
2	M/s.....	96027·49	Nil	Initially a demand for Rs. 76172·35 covering the period from 24-4-62 to 30-9-65 was raised. This was followed by a set of two more demands amounting to Rs. 19855·14 for the period from 1-10-65 to 9-6-66. The party filed a suit in the High Court at Calcutta against the demands and the case is now *sub-judice*.
3	M/s.....	94442·15	93025·53	An amount of Rs. 94442·15 was demanded and realised from the party. The party subsequently lodged a refund claim for Rs. 1416·62 being the special excise duty @ 10% of the basic duty charged in the demand notice for the period from 4-9-62 to 28-2-63 when there was no levy of such duty The claim was admitted and the amount of Rs. 1416·62 was refunded out of Rs. 94442·15 realised."

1.265. As to the measures taken by Government to avoid recurrence of such cases, the Ministry have stated that instructions were issued by the Board under its letter F. No. 6|13|66-CX II, dated 7-4-1967. These *inter alia* read as fololws:—

"(i) manufacturers should be required to declare at the time of presenting the above type of bags for assessment as to whether the contract weight in respect thereof included the weight of patch valves also;

(ii) if it is declared to be so, and a suitable endorsement is made by them on the relevant A.R.I., there is no objection to assessment being made on the basis of contract weight but a certificate should be appended to A.R.I. by the assessing officer to the effect that he has examined the specification list|contract and satisfied himself that the weight of the patch valve has been duly declared in the contract weight by the manufacturer;

(iii) the factory officer should, where the contract weight is declared to include the weight of the patch valve, also obtain relevant extracts of the actual contract and verify it with the original contract. Thereafter he may file the extract after recording a certificate thereon "verified with the original";

(iv) if it is not declared to be so, assessment shall be done on actual weight basis; and

(v) supervising officers should check the endorsement made by the manufacturers and certificate recorded by the assessing officer to satisfy themselves that the contract weight of the above goods is inclusive of the weight of the patch valves."

1.266. **The Committee note that due to an omission to take into account the weight of inside patch valves of jute cloth, while arriving at the contract weight of cement bags for purpose of assessment of excise duty, Government lost revenue to the extent of Rs. 5,095 in one case. Also demands for Rs. 96,027 raised by the Department on this account in another case are pending, as the matter is sub-judice before the Calcutta High Court. The Committee would like to await the decision of the High Court in the matter.**

1.267. **The Committee note that to obviate the recurrence of such cases, the Board have issued necessary instructions to formations. The Committee trust that the Board will ensure that these instructions are strictly complied with.**

Under-assessment due to incorrect application of rates.

Audit Paragraph:

1.268. A limited concern which was running a powerloom factory and paying duty under the compounded levy scheme, was dissolved in August, 1964. The factory was taken over by a partnership firm from 1st September, 1964. Consequently, the Central Excise licence held by the concern became invalid. The newly formed partnership firm, however, did not take out a fresh licence till 5th March, 1968 but continued to pay duty at the compounded levy rates from 1st September, 1964 on the basis of licence held by the previous owner. As the partnership firm was not holding a valid licence under the Central Excise Law from 1st September, 1964 it was not eligible for the benefit of compounded levy scheme from that date and the firm's production from 1st September, 1964 to 4th March, 1968 should

have been assessed to duty under the normal procedure. The under-assessment during the period was Rs. 2,09,829. No action has been taken to rectify the under-assessment (February, 1969).

Mention was made of a similar irregularity in para 27(c) of Audit Report, 1967, involving an under-assessment of Rs. 7.82 lakhs. The Ministry have stated (October, 1968) that no demands could be raised due to operation of time-bar.

[Paragraph 31(a)(i)—Audit Report (Civil) on Revenue Receipts, 1969].

1.269. According to the provisions of Rule 178(3) of Central Excise Rules, where a licensee transfers his business to another person the transferee shall obtain a fresh licence and the original licence would stand cancelled from the date of such transfer.

1.270. The Committee understood from Audit that in the case referred to in paragraph 27(c) of the Audit Report, 1967 the Ministry of Law had held that holding of a valid Central Excise licence was a necessary precondition for availing of the benefit of the compounded levy scheme.

1.271. In a note furnished to the Committee, the Ministry have stated:

> "The new partnership firm was formed with effect from 1st September, 1964. This firm, however, continued to work under the old licence which was also renewed for the years 1965, 1966 and 1967. Since the old licence thus continued to be operative the benefit of compounded levy scheme also continued to be enjoyed by the new concern".

1.272. The Committee desired to know whether the Central Excise Officers had brought to the notice of the partnership firm the need for taking out a fresh licence when they took over the factory in September, 1964. The representative of the Board stated that this was not done. The Department did not take notice of the transfer from the limited company to the partnership firm.

1.273. In reply to a question, he stated that it was a case of only a technical lapse, for, had the partnership firm asked for a licence, it would have been given to them. The firm had been proceeded against for not having obtained a valid licence. In reply to another question whether there was under-assessment in this case. The

witness stated, Strictly speaking 'yes'. If it is treated as a technical lapse, it is 'No'.

1.274. As to the remedial measures, the representative of the Board stated that they had issued detailed instructions that at the time of issue of a fresh licence or renewal of an old licence it should be seen whether there had been any change in the Constitution of the firm.

1.275. While the Committee recognise that the firm in this case might have on merits been eligible for assessment under the compounded levy scheme, they would like to point out that it did not qualify for assessment under the scheme till March, 1968 when it acquired a valid excise licence. It is strange that the Central Excise authorities, who renewed the licence of the firm on three occasion, between September, 1964 and March, 1968, failed to recognise that it was not a valid licence. This is not the first occasion a lapse of this kind has occurred. The Committee would like Government to ensure that Central Excise Authorities pay due attention to procedural requirements of this kind in the course of their work, as they have a bearing on the legality of assessments.

Loss of revenue due to grant of inadmissible discounts

Audit Paragraph

1.276. A licensee manufacturing chinaware and porcelainware from October, 1962 was selling these goods through distributors and recognized stockists. The value for the purpose of assessment of these goods was approved in December, 1964 by the department under section 4 of the Central Excises Act on the basis of the listed prices of the stockists. While determining the value deductions were allowed on carriage discount and bonus discounts by the department. The direct carriage discount was in consideration of collection of goods direct from the factory and the bonus discount was allowed on the basis of off-take by the wholesale dealers and was paid at the end of the year. Both these discounts thus relate to the marketing operations and have no relation to the determination of the value under section 4. The grant of these inadmissible discounts resulted in short assesment of duty of Rs. 1.32 lakhs from October, 1962 to May, 1965. The Ministry have stated (March, 1967) that the circumstances in which the deductions were made are being verified.

[Paragraph 33 of Audit Report (Civil) on Revenue Receipts, 1969.]

1.277. According to Section 4 of the Central Excise Act, the value for the purpose of assessment should be determined with reference to the wholesale prices prevalent in the nearest wholesale market and for this purpose prices charged by a seller to a purchaser due to special relationship with him or on fulfilment of specific conditions under a contract are to be ignored. From the prices deductions can be allowed for trade discount.

1.278. The Committee desired to know the action taken by the Ministry on the objection raised in audit regarding allowance of carriage and bonus discounts. In a written reply, the Ministry have stated:—

> "The Collector has ruled in his order-in-appeal that the assessable value in respect of the products of the appellant, should be the ruling list price at which the goods are sold by them to their distributors and sub-distributors plus 3 per cent (advertisement charges collected)."

1.279. The Committee note that under Section 4 of the Central Excises Act, the assessable value is to be determined with reference to wholesale prices in the nearest wholesale market, ignoring deductions on account of special relationship between the seller and purchaser or deductions on account of fulfilment of specific conditions under a contract. In the present case, however, the stockists prices to dealers were taken as the basis for assessment, from which deductions were allowed on account of carriage and bonus discounts, both of which related to marketing operations. While deciding the case in appeal, the Collector made the prices charged by the manufacturer to the distributors and sub-distributors the basis for determination of value.

1.280. The Committee desire that, while determining values of excisable commodities for the purpose of assessment, Government should invariably ensure that these are in strict conformity with the provisions of Section 4 and that any deduction not permissible under that Section is not allowed.

Incorrect stage of accounting of cotton fabrics

Audit Paragraph

1.281. Under section 3 of the Central Excises and Salt Act, goods are liable to duty as soon as they are manufactured. Under the

Central Excise Rules, every licensee of excisable goods has to maintain a production account showing the excisable goods manufactured by him daily, quantity of goods deposited by him in the bonded store room and goods removed after payment of duty. In textile mills, manufacturing cotton fabrics there was no uniformity regarding the stage at which the production was recorded in the statutory production register. Some mills were accounting for the production at the "off-loom stage", i.e., as soon as the fabrics came out of the looms and some mills at the "finished stage", i.e., after the fabrics had undergone the subsequent processes. A sub-committee was constituted by Government in 1959 to examine, among other things, the accounting procedure followed by the textile industry and to recommend the stage at which accounting should commence. In its recommendation made in February, 1960 the sub-committee after taking note of the divergent practices in maintenance of production registers in various textile units, recommended that the production account should be maintained at the off-loom stage for the following reasons:—

(1) It would be in conformity with the principle that accounting should commence from the stage where the charge to excise duty arises;

(2) It would facilitate correlation of the fabrics produced from the off-loom stage to the finished stage;

(3) It would provide for cross check or verification with the private accounts maintained by the mills.

However, Government issued instruction in July, 1965 permitting the mills to maintain accounts at the finished stage or off-loom stage according to their option.

The practice of maintaining account in the mills at the finished stage which has been allowed to be continued, has resulted in postponing bringing into account the excisable fabrics until they are subjected to all processes. Thus considerable quantity of cloth which has been woven on the looms but not subjected to further processing has remained outside the statutory account of production involving risk to revenue. In the absence of any account showing the quantity of cloth at the loom-stage, it was not verifiable in audit whether the entire quantity was ultimately brought in the production register in such mills and cleared on payment of duty.

[Paragraph 41(v) of Audit Report (Civil) on Revenue Receipts, 1969]

1.282. The Committee desired to know why Government did not accept the recommendations of the Sub-Committee for maintenance of production accounts at off-loom stage in all the mills. In a written reply, the Ministry have stated:

> "The Sub-Committee had recommended maintenance of accounts right from the off-loom stage. On practical considerations, however, it was decided not to disturb the *status quo*. In this context, it is of relevance to observe that R.G.I. accounts maintained on the basis of off-loom yardage remain a purely nominal and theoretical account as it is difficult to correlate it with the E.B. 4 accounts which are based on the dimensions of the cloth after processing and finishing.
>
> The variations between the two are so substantial that it is not possible to connect the two, particularly so because production is a continuous operation and cloth at various stages of processing remains in different departments. However, it was felt that if the mills were prepared to maintain accounts at the off-loom stage, there could be no objection from our point of view to the same being done. In the matter of deciding upon the stage at which accounting of excisable goods should be done, practical considerations and convenience of the trade are taken into account, provided of course there is no undue risks."

1.283. The Committee desired to know the number of mills in which production was accounted for (a) at the off-loom stage and (b) at the finished stage. In their reply, the Ministry have stated:

> "The information so far received from the Collectors of Central Excise is as under:
>
> (a) Number of mills in which production of cotton fabrics is accounted for at the off-loom stage: 180;
>
> (b) Number of mills in which production of cotton fabrics is accounted for at the finished stage: 75".

1.284. The Committee desired to have an approximate idea of the duty lost by Government in respect of cloth accounted for at the finished stage. In their note, the Ministry have stated as follows:

> "No possible loss of duty could be determined in respect of

cloth accounted for at the finished stage because the production of off-loom stage is grey cloth whereas cloth accounted for in R.G.1 at the finished stage is processed fabrics chargeable to different rates of duty according to the processes undergone."

1.285. The Committee desired to know the checks exercised to ensure that cloth was not removed unauthorisedly before it entered the production account. In their note the Ministry have stated:

"Prior to the introduction of self-removal procedure in respect of cotton fabrics from 1st August, 1969, there was physical control and the staff incharge of the factories were responsible for the supervision at the manufacturing as well as packing and folding stages. Hence there was no scope for removal of cloth unauthorisedly before it was properly accounted for. After 1st August, 1969, under the S.R.P., reliance has to be put on the accounts maintained by the mills. Necessary checks are now exercised by the Inspection groups who audit the accounts thoroughly for each factory once in six months. Preventive staff of the circle, division and the collectorate, also exercise the check through checks in transit, surprise visit to factories etc."

1.286. The Committee learnt from Audit that they had been informed by the Ministry that the requirement of keeping production account at off-loom stage would be kept in view while introducing self removal procedure. The Committee enquired whether, after the introduction of self-removal procedure in respect of cotton fabrics from 1st August, 1969, necessary accounts of production at off-looms stage were being maintained. In their reply, the Ministry have stated:

"Some of the factories are still maintaining the account of production of cotton fabrics at the off-loom stage, after the introduction of self removal procedure from 1st August, 1969 for cotton fabrics. The question whether it will be legally correct and would be in keeping with the spirit of self removal procedure and practicable to compel the mills to maintain accounts at off-loom stage, is already under examination."

1.287. **The Committee feel that it is not only necessary but also desirable that production records in respect of cotton fabrics are maintained at the off-loom stage. The necessity arises out of the provisions of the Central Excise Act and rules thereunder. These**

require a licensee to maintain an account of excisable goods produced by him. As cotton fabrics become excisable the moment they are produced as such out of the looms, a production account at the off-loom stage is a legal requirement. Apart from this consideration, it also appears desirable that accounts are maintained at the off-loom stage, as it would make for effective control over the fabric from the grey stage to the final stage of processing and finishing.

1.288. The Committee note that a Textile Sub-Committee appointed by Government which went into this question recommended the maintenance of production accounts by mills at off-loom stage. The Sub-Committee considered such an arrangement legal as well as logical. But Government did not accept their recommendation on practical considerations having regard to "the convenience of the trade". The Committee are not convinced by this argument, for, they find that about three fourths of the number of mills maintain accounts at the off-loom stage. It does not therefore seem unreasonable to require the remaining one-fourth to do likewise.

1.289. The Committee note that the question whether it would be practicable to cast an obligation on the mills to maintain accounts at the off-loom stage is under consideration of Government. As the matter is of importance from the point of view of ensuring accountability of excisable goods, the Committee desire that an early decision should be taken in the matter.

Revenue forgone by Executive Instructions of Government

Audit Paragraph

1.290. Under the orders in force upto 27th February, 1965, unprocessed cotton fabrics manufactured in units with less than five installed powerlooms were exempt from payment of duty. The exemption was not applicable to those manufacturers who commenced production of the said fabrics for the first time on or after 1st April, 1961 by acquiring powerlooms from other persons who were or had been licensees of powerloom factories.

In the course of audit of factories in one collectorate, it was noticed that no excise duty was levied on cotton fabrics cleared from the factories which had changed ownership as well as commenced production after 1st April, 1961. Non-levy of exercise duty was stated to be in accordance with instructions issued by Government in December, 1963 directing that *status quo* should be maintained in respect of cases where the provisions in this regard were not enforced earlier.

This resulted in loss of revenue of Rs. 4,00,652 during the period from 1st July, 1962 to 27th February, 1965.

[Paragraph 41 (iv) of Audit Report (Civil) on Revenue Receipts, 1969.]

1.291. The Committee desired to know the rationale behind the provisions of the notifications excluding from the scope of the exemption scheme those powerloom units which commenced production on or after 1st April, 1961 by acquiring looms from those who were or had been Central Excise licences. In a written reply, the Ministry of Finance have stated:

> "Full exemption in respect of Central Excise duty leviable on cotton fabrics produced by powerloom units with less than 5 powerlooms, and sliding slab rates of compounded duty in respect of units with more than 4 powerlooms, as obtaining during the period from 1955 to 1960, had led to such large scale fragmentation and it was considered necessary take some steps to check the same. With that object in view, anti-fragmentation provisions were inserted in the relevant notifications then in force on 26th November, 1960. The anti-fragmentation provision read as under:
>
> "provided that this exemption shall not be applicable to a manufacturer who commences production of the said fabrics for the first time on or after the 1st December, 1960 by acquiring powerlooms from any other person who is or has been a licensee of powerloom factory".
>
> The above provision and similar provisions in some other notifications got inadvertently omitted at the time of 1961 Budget changes. While reintroducing the above provision on 1st April, 1961 it was not possible to give retrospective effect to the same and this explains the rationale behind the provisions of the notification excluding from the scope of the exemption scheme those powerloom units which commenced production on or after 1st April, 1961 by acquiring looms from those who were or had been Central Excise licensees."

1.292. The Committee desired to know the authority for the issue of instructions of December, 1963. In their written reply, the Ministry have stated:

> "The intention behind the anti-fragmentation provision referred to was to check fragmentation of larger powerloom units

into small units with the object of taking advantage of the duty exemption. In those cases, therefore, where a rightful heir of the deceased licensee inherited the factory, or the whole factory was transferred from one person to another either by sale or by lease, it was felt that no fragmentation was involved, and it would not be in accord with the intention of the Government to deny the benefit of the above exemption. At the time of issuing executive instructions to the above effect, it was not appreciated that the same were not in accord with the letter of the law."

1.293. The Committee understand from audit that the Ministry of Law who were consulted gave the opinion that all the four cases attracted the anti-fragmentation condition laid down in the notification. The Ministry of Finance had, however, earlier issued instructions (under their No. F.44|16|6-CXI dated 5th September, 1961) to the effect that so long as the entire set of powerlooms was taken over by a new owner enhanced duty should not be charged. After receipt of the Law Ministry's advice, the Ministry of Finance thought it unfair to disturb the existing practice and subsequently in their letter (F. No. 39|97|62-CVI dated 2nd December, 1963) instructed that where the benefit of exemption had been allowed the *status quo* should not be disturbed.

1.294. **The Committee note that an exemption from duty was allowed by Government to certain small scale units manufacturing unprocessed cotton fabrics. The exemption notification contained restrictive stipulations which were calculated to check fragmentation of larger units into small units with the object of taking advantage of the duty exemption. The notification was unfortunately so worded as to deny the concession even where a rightful heir of a deceased licensee inherited the factory or where the whol factory was transferred by sale or lease not involving any fragmentation. This shows that due care and forethought were not exercised while drawing up the notification. Even if the initial error had been made, the Committee feel that subsequently, when Government realised that the notification was more restrictive than they had intended, they should have amended it by another notification. Government, however, tried to achieve this object by issuing Executive Instructions. Apart from lacking the due sanction of law, their instructions became discriminatory in effect as they covered only cases where the benefit of exemption had been given. The Committee deprecate this. They trust that Government will take care to avoid such mistakes in future.**

Loss of revenue due to incorrect assessment of tin plates and sheets:

Audit Paragraph:

1.295. Excise duty on tin plates and tinned sheets is Rs. 375 per metric tonne under tariff item 28. By issue of a notification in February, 1965 (as amended in May 1965) Government gave certain concessions in the rates of duty if the tin plates or sheets were manufactured from duty paid steel plates or sheets. A factory in a collectorate was manufacturing tin plates and sheets and the goods were assessed to duty at the concessional rates, although proof of payment of duty on the steel plates and sheets used in their manufacture was not produced. On 13th October, 1965 the department, realising the error, raised a demand for the period of preceding three months for the differential duty of Rs. 2.94 lakhs. The differential duty recoverable for the period from March, 1965 to 12th July, 1965 falling prior to the period of three months, for which no demand has been raised, is Rs. 8.54 lakhs. The omission to raise the demand for this period was brought to the notice of the department in April, 1966 and the departmental reply is awaited (August, 1968).

The factory has since closed down and the plants are stated to have been removed.

[Paragraph 36 of Audit Report (Civil), 1969, on Revenue Receipts.]

1.296. The Committee were given to understand that "a small amount" had been recovered from the party in this case by adjustment from certain refund claims of the party and that the rest was in arrears as the party had filed a writ in the Calcutta High Court.

1.297. As to the latest position of the case, the Ministry have stated as follows in a written reply:

> "The application filed by M|s. ..... the petitioners, for extension of the order of interim injunction granted in their favour earlier by the High Court and the Department's application for vacating the said interim injunction were heard on 8th October, 1969 and it was ordered by the High Court that M|s. ..... should furnish security in the sum of rupees eleven lakhs to the satisfaction of the Registrar, Appellate Side of the Court within three weeks from the date of reopening of the Court, i.e., 18th November, 1969, failing which the order of injunction would stand vacated. M|s. ..... however, obtained extension upto 9th January, 1970 for furnishing the securities. They

did not furnish the security but filed an appeal before the Appeal Bench of the High Court against the order dated 8th October,, 1969. They have also filed an applicatoin for stay of operation of the said order, pending decision of the Appeal. The Department has filed an affidavit in opposition against the said stay application and the matter is appearing in the Daily List of cases for hearing and is likely to come up for hearing shortly."

1.298. The Committee note that, as against a demand of Rs. 2.94 lakhs raised by the Department for the period 13th July, 1965 to 12th October, 1965, only "a small amount" has been recovered by adjustment from refund claims of the party. The recovery of the balance is pending as the party has filed a writ in the Calcutta High Court. The Committee would like to be apprised of the outcome of these proceedings.

1.299. The Committee would like Government to investigate why demands for Rs. 8.54 lakhs representing the differential payable for the period March, 1965 to 12th July, 1965 were not raised.

Non-levy of duty on skulls

Audit Paragraph

1.300. Steel melting scraps are assessable to Central excise duty under tariff item 26 with effect from 1st March, 1964. In a collectorate, a factory cleared skulls obtained in the process of manufacture of steel in gots without payment of duty. The amount of duty not charged came to Rs. 67,569 for the period between 1st March, 1964 and 4th July, 1966. Particulars of recovery of the amount are awaited.

[Paragraph 34 of Audit Report (Civil) on Revenue Receipts, 1969.]

1.301. The Committee understand that "skulls" constitute a variety of steel melting scrap produced in the course of manufacture of steel ingots and castings.

1.302. The Committee gathered from Audit that the Deputy Controller of Iron and Steel, Calcutta had confirmed on 13th September, 1965 to the Excise Department that the product was melting scrap and assessable to duty as such. No action was however taken to raise the demands till Audit pointed out the omission on 16th November, 1966. The Committee desired to know what action was taken by the Department on the above Report of the Deputy Controller of

Iron and Steel. In a written reply, the Ministry of Finance have stated:

> "On receipt of the report dated 13th September, 1965 from the Deputy Controller of Iron and Steel, Calcutta, the Superintendent of Central Excise having jurisdiction over the factory, issued instructions on 20th September, 1965 to the Deputy Superintendent of Central Excise in-charge of the factory that the contention of the factory that skull scrap was not dutiable, was not correct."

1.303. In reply to another question, the Ministry have stated in their note:

> "The Collector of Central Excise, Calcutta & Orissa, was asked to fix the responsibility at the Sector|Range level for the lapse in issuing demands immediately. While the Deputy Superintendent of Central Excise then in-charge of the factory has since retired, charges have been framed against the concerned Inspector of Central Excise."

1.304. As regards the recovery of the demand, the Ministry have stated:

> "The Collector of Central Excise, Calcutta and Orissa has informed that M|s. (licensee) has not extended the Bank Guarantee. The Central Government Counsel has confirmed on 3rd March, 1970 that the order of interim injunction stands vacated. The Assistant Collector concerned has been directed to enforce the demands.

1.305. In reply to another written question, the Ministry have stated that the skull scrap was not cleared from factory from 5th July, 1966 and was being remelted in the factory.

1.306. The Committee find that the Department acted in a very liesurely manner in this case. There was an omission in the first instance to charge the product to duty which became leviable with effect from 1st March, 1964. The Deputy Controller of Iron and Steel had, in reply to a reference from the Department pointed out in September, 1965 that the product was steel melting scrap and was accessable to duty as much. However, no step was taken by the Department to raise the demand for a period of nearly 14 months, when Audit pointed out the omission.

1.307. The Committee note that the officer concerned has since retired from service and charges have been framed against the concerned Inspector of Central Excise. The Committee would like to be informed of the outcome of the disciplinary proceedings. The Committee also note that the relevant demand for Rs. 67,569 has not yet been realised. The Committee desire that vigorous steps should be taken to recover this amount.

Loss of revenue arising from duty free removal of samples for trade purposes.

Audit Paragraph

1.308. Under the Central Excise and Salt Act and Rules made thereunder, excise duty is payable on all goods as set forth in the First Schedule to the Act except where the Government of India by notification in the official gazette authorises exemption from duty. The Central Board of excise and Customs are not competent to permit duty free clearances of excisable goods by executive instructions

It was, however, noticed that a number of excisable commodities in the shape of samples for trade purposes were removed free of duty under certain executive instructions of the Board. The duty foregone by Government in respect of samples of cotton fabrics alone, was Rs. 9,93,455 from April, 1965 to March, 1967 in five collectorates.

[Paragraph 41(vi) of Audit Report (Civil) on Revenue Receipts, 1969].

1.309. In a note furnished to the Committee, the Ministry have stated:

> "The executive instructions that the samples of cotton fabrics, conforming to certain dimensional limitations, removed from the factory for trade, governmental or test purposes need not be subjected to Central Excise duty, were originally issued as early as in 1949. Subsequent instructions were issued under letter F. No. 1|167|58-CX.II dated 21st September, 1959, wherein the size of the samples of cotton fabrics drawn for test purposes was specified to be not exceeding 1 yard in length by full width. Again in F. No. 35|45|61|CX.II dated 20th July, 1961, the size of the samples meant for home and overseas markets was specified to be not exceeding half a metre and one metre by full width, respectively".

1.310. The Ministry have further stated in their note:

"The issue of the omnibus notification is under examination".

1.311. This is yet another of a number of cases which have come to the Committee's notice, where Government had given concessions in excise duty through Executive Instructions. The Ministry have now stated that the question of issuing an omnibus notification is under examination of Government. As the concessions given by Government do not have a statutory backing, the Committee desire that this should be done without any further delay.

Non-levy of duty on Aluminium Ingots.

Audit Paragraph

1.312. Excise duty on aluminium was imposed with effect from 1st March, 1960. Aluminium ingots produced out of old aluminium scrap or scrap obtained from virgin metal on which appropriate excise duty has been paid is exempt from payment of excise duty leviable thereon.

It was noticed that in a few factories, manufacturing aluminium ingots, no duty was levied on the aluminium ingots made out of aluminium dross on which excise duty had not been paid.

The department has issued demands for Rs. 42,272 out of which Rs. 2,375 have been realised (February, 1969).

[Paragraph 35 of Audit Report (Civil) on Revenue Receipts, 1969]

1.313. The Committee desired to know the period over which Aluminium Ingots were cleared by the factories mentioned in the Audit paragraph without payment of duty and the dates on which the Department first came to know the clearance of ingots by the factories. In a written reply, the Ministry stated:

"The Audit paragraph relates to three factories. The required information is given below:

Name of Factory 1.	Period during which ingots were cleared without payment of duty 2.	Date(s) when Department first came to know the clearance of ingots by factory (ies) 3.
1. Factory No. 1	25-11-1961 to 28-2-1964	27-8-1964

1.	2.	3.
2. Factory No. 2	17-7-1963 to 31-12-1964	1-11-1964
3. Factory No. 3	22-3-1961 to 28-2-1963 and 17-7-1963 to 17-2-1965	18-12-1965

1.314. The Committee were given to understand that demands for the above clearance were issued on various dates from December, 1965 to January, 1967. The Committee desired to know the reasons for delay in issuing the demands. In their written reply the Ministry stated as follows:

> "In fact, there was no delay in one of the cases (case No. 2), as a demand was raised on factory as early as 23th December, 1964 after scrutiny of relevant records and the collection of required data. There was, however, some delay in issuing the demands in other cases due to the fact that detailed particulars|statistics had to be collected from different sources to find out if the aluminium dross used by the factories in question was duty paid or non-duty paid and thereafter the quantity of aluminium recovered from dross had to be determined for calculating the amount of duty to be demanded."

1.315. The Committee enquired whether a review had been made to find out whether similar omissions had not occurred in other Collectorates. In their written reply, the Ministry stated:

> "No review as such has been made. It may, however, be stated that aluminium ingots produced out of dross or skimmings of aluminium have since been exempted from the whole of the duty of excise leviable thereon under Government of India Notification No. 194|68-Central Excise, dated 23rd November, 1968."

1.316. As to the latest position regarding recovery, the Ministry stated as follows:

> "It may at the very outset be relevant to maintain that the amount shown in the Audit Para, viz., Rs. 42,272, though

based on the figures furnished by the Ministry in the comments at the draft para stage, is not correct. The correct amount of duty involved is Rs. 44,350.56 demanded, a sum of Rs. 4,505.24 has already been recovered and necessary action for realisation of the balance is in progress."

1.317. **The Committee are surprised to find that it took the Department one to four years to find out that the assessees involved in this case had cleared aluminium ingots without payment of duty. There was a further delay in raising demands for duty. Government have stated that the demands could be raised, only after ascertaining that duty had not been paid on the dross which constituted the raw material for the ingots, but it is clear that the Excise Department did not show due vigilance. The Committee hope that action will be taken by Government to ensure that these instances do not recur.**

1.318. **The Committee note that out of a total demand of Rs. 44,350 in the above cases, a sum of 4,505 only has so far been recovered. The Committee desire that vigorous steps should be taken to recover the balance.**

Shortage in the stock of dutiable parts of refrigerators.

Audit Paragraph

1.319. According to the Central Excise Rules, stock-taking of excisable goods should be conducted every year and action taken in respect of shortages and excesses noticed.

In respect of a factory manufacturing refrigerators and component parts it was noticed that no stock-taking of component parts was done from 1962 and that no proper accounts were maintained for the parts taken to assembling unit. At the instance of audit, a special stock-taking was conducted in June, 1967 which revealed shortages and excesses in certain excisable parts. The duty involved on the shortages noticed works out to Rs. 1,55,457 approximately. The department has since issued a show cause notice for the shortages of evaporators, cabinets and compressors to the licensee (September, 1967) and the case is pending with the Collector (February, 1968). Penal action for the excesses noticed after investigation has also been initiated by the department (February, 1968).

[Paragraph 37 of Audit Report (Civil) on Revenue Receipts, 1969]

1.320. The Committee desired to know why no stock-taking was done in the factory every year, as required under the rules. In a written reply, the Ministry have stated:

> "Yearly stock-taking of dutiable parts of refrigerators was not done under the mistaken impression that such stock-taking is to be confined only to fully manufactured refrigerators and not to component parts. This was a large for which explanation of the officers concerned has already been called for."

1.321. Under Rule 53 of Central Excise Rules, the manufacturers are required to maintain daily stock accounts showing daily production and clearance of excisable goods. The Committee enquired whether the accounts relating to component parts, which are excisable goods, were properly maintained as required by Rule 53 and further whether these are checked by a departmental officer daily or periodically. In their written reply, the Ministry have stated:

> "The factory was maintaining the daily stock accounts for the parts and complete refrigerators in independent registers. Both registers were being checked for arithmetical accuracy but no correlation of issues of spare parts with the finished refrigerators was undertaken. Action against the officers responsible for the lapse is being taken by the collector."

1.322. The Committee enquired on how many occasions the Internal Audit Department reviewed the accounts of the factories during 1962 to June, 1967 and whether they pointed out the irregularities in accounts and omission to conduct annual stock taking. In their written reply, the Ministry have stated:

> "During the period 1962 to June, 1967 the internal audit party audited the accounts of the factory only once in June, 1963. They did not point out the omission to conduct annual stock taking of parts of refrigerators. Nor it is reported that any discrepancy in accounts was pointed out by them."

1.323. The Committee desired to know the present position of the case. In their written reply, the Ministry have stated:

> "The factory has not so far honoured the demands raised on 2nd April, 1969 but have gone in appeal against the order

of the Collector imposing penalty and duty. The appeal is pending with the Board."

1.324. In reply to another question regarding the reasons for excesses, the Ministry have stated:

"Excess in stock was not noticed at the time of annual stock-taking; the excess was discovered by verification of the accounts of the Parts of Refrigerators. In other words the factory had accounted for more parts than noted in accounts. These excesses are attributable to the failure of the factory to take into account as opening balance the pre-excise (Pre 1962) stock of parts and to the parts (1/10 H.P. Compressors) received under proforma credit from another factory. These excesses in parts of refrigerators are reported to have been either cleared on payment of duty or consumed in the manufacture of refrigerators and thus stand regularised."

1.325. **The Committee are unhappy over the lapses revealed in** this case. **Under Rule 223A of the Central Excise Rules, stock-taking of excisable goods is required to be conducted by the Department at least once in every year. However, in the case of the factory in question, no stock-taking was done for a period of nearly** five years **(1962-66). Further, though daily stock accounts of the** parts **and complete refrigerators maintained by the manufacturer** were **being checked by the Central Excise officials, no efforts were** made by **them to correlate the issues of spare parts with the production** of **finished refrigerators. This indicates that the scrutiny of** the accounts **of the factory exercised by Departmental officials was** perfunctory. **The Committee feel that the Department should take** a serious **notice of such lapses.**

1.326. **Another regrettable feature of the case is the fact that no** effective **internal audit was conducted. During the period 1962 to** June, **1967, the internal audit party audited the accounts of the** factory **only once in June, 1963. They did not point out either the** omission **to conduct the annual stock-taking of parts or the discrepancies in the accounts. The Committee trust that, pursuant to** the recommendations **of the Committee in an earlier Report [Cf.** paragraph **of 95th Report (Fourth Lok Sabha)], Government will** take necessary **steps to strengthen the Internal Audit Organisation** not only **in terms of numbers but also in respect of quality of work** by streamlining **its functions and procedures.**

1.327. The Committee note that the demand for Rs. 1,55,457 raised by the Department has not yet been recovered as an appeal filed by the assessee is pending with the Board. The Committee would like to be informed of the decision of the Board.

Over-assessment of mill board and straw board owing to denial of adequate concession:

Audit Paragraph:

1.328. By issuing of a notification in April, 1966 Government prescribed slab exemptions in respect of straw board and mill board subject to certain conditions specified in the notification. The conditions *inter alia* prescribed that in respect of mill board the process of drying of the wet board should be carried out without the aid of the same machine on which the board is formed. This condition was withdrawn from 19th September, 1966 and as a result, machine-dried mill board was also eligible for assessment at the revised concessional rate from that day provided it satisfied the specifications enjoyed in reply the relevant notification.

It was, however, noticed that the quantities of such paper boards cleared by the manufacturer on payment of duty at the tariff rates during the period from 30th April, 1966 to 18th September, 1966 were also taken into account in arriving at the quantity of mill board and straw board qualifying for assessment at the concessional rates although these were not treated as mill boards for the purpose of assessment in terms of the earlier notification of April, 1966.

The inclusion of the quantities of such paper boards cleared during 30th April, 1966 to 18th September, 1966 was irregular and resulted in over-assessment of Rs. 1,27,517.

[Paragraph 40 of Audit Report (Civil), 1969 on Revenue Receipts]

1.329. The Committee learnt from Audit that the Ministry in their reply to the Audit paragraph, sent to them on 5th July, 1968, had stated that the appeal for refund of the duty excess-paid filed by the manufacturer was rejected by the Collector at the appellate stage and hence they would not comment upon the merits of the case.

1.330. In reply to a written question the Ministry have stated that no review was made by the Department to find out whether

there had been similar over-assessments in other collectorates. The Ministry have further stated that such a review was being made now, the results of which would be communicated to the Committee in due course.

1.331. The Committee observe that due to an error on the part of the Department in determining the quantities of paper board cleared at concessional rates by an assessee, there was an over-assessment to the tune of Rs. 1,27,517. The Committee note that Government are now conducting a review to find out whether there have been similar over-assessments in other Collectorates. The Committee would like to await the results of this review. They would have felt happier if Government had initiated this action soon after the Audit paragraph was sent to them in July, 1968.

Non-levy of duty on Oxygen

Audit Paragraph:

1.332. Oxygen is assessable under tariff item 14H (i) at 10 per cent on tariff values fixed by Government from 24th April, 1962. It was noticed in December, 1963 that in an iron and steel factory demand had been raised by the Department in August, 1963 for Rs. 5.92 lakhs for oxygen supplied by the Factory from 24th April, 1962 to 30th June, 1963 and that no demand had been raised for the gas supplied from July, 1963 onwards. When the non-levy of duty from July, 1963 was pointed out in December, 1963 a revised demand for Rs. 7.00 lakhs was raised (October, 1964) for the period from April, 1962 to February, 1964. Particulars of recovery are awaited (August, 1968).

(Paragraph 27 of Audit Report (Civil) on Revenue Receipts, 1969)

1.333. The Committee were given to understand that Central Excise duty was levied on oxygen for the first time with effect from 24th April, 1962. By a notification issued on 24th November, 1962, it was totally exempted from duty if it was used directly for manufacture of steel on 1st March, 1964, a general notification was issued exempting oxygen from the whole of the duty of excise leviable thereon.

1.334. During evidence, the representative of the Central Board of Excise and Customs stated that although oxygen was liable to duty, the quantity used directly for the manufacture of steel was

exempt from duty. In the initial stages, the factory in question did not have a flow meter to indicate what quantity was used in the direct manufacture of steel and what quantity was used for other purposes. The flow meter was installed later on. Although it was difficult to find out the quantity used for purposes other than the direct manufacture of steel, to safeguard revenue interests, demand was issued for the total quantity of oxygen consumed in the factory. The factory went in appeal and the case became subjudice. The Collector consulted the Deputy Chief Chemist who had inspected the factory and submitted his report. According to him up-to a certain level it was possible to determine the ratio between the two, but beyond that the position was not clear. The appeal had not been yet decided and the dues recovered.

1.335. In a written note subsequently furnished to the Committee, the Ministry have stated: "The appeal has not so far been decided because the report of the Deputy Chief Chemist on the quantity deemed to have been used for two purposes reportedly has been furnished only in January, 1970". The Committee enquired when the Department first came to know that the licensee was using oxygen for purposes other than the manufacture of iron and steel and when it first raised the demand for the quantity so used. In a written reply, the Ministry have stated:

> "Soon after the levy of central excise duty on gases from 24th April, 1968, the Joint Secretary during the course of his tour to Patna Collectorate desired that a study should be undertaken on the total intake of oxygen gas by the (assessee), and its consumption for various purposes in the factory. The results of this study were received by the Board in the middle of July, 1962. The study revealed that oxygen was being used by the Co. not only for manufacture of steel but also for purposes unconnected with the manufacture of steel, for example, in welding shops, breaking of skull etc. Orders were accordingly issued on 18th August, 1962 that duty free use of oxygen gas was not permissible for purposes other than use in the manufacture of steel. The Department may, therefore, be regarded as having come to know that oxygen was being used by the assessee for other than the manufacture of Iron and Steel sometime in July-August, 1962. The demand was first raised on 27th August, 1963 in respect of the period 24th April, 1962 to 30th June, 1963 only

after the factory furnished figures of oxygen gas consumed during this period. As there was no device to measure the quantity of gas directly used in the manufacture of steel and that used for other purposes, the demand related to the entire quantity of gas used in the factory".

1.336. The Committee pointed out that non-levy of duty from July, 1963 onwards was pointed out by Audit in December, 1963 but the demand notice was issued by the Department only in October, 1964, that is, after a time-lag of about ten months. The Committee desired to know the reasons for the delay in issuing the demand notice. In their written reply, the Ministry of Finance have stated:

"The demand raised on 27th August, 1963 was found to be incorrect and a fresh demand for higher amount in lieu of the earlier demand covering the period 2nd April, 1962 to 29th February, 1964 was issued on 24th October, 1964. The reason why the revised demand could not be issued earlier was the non-availability of figures of oxygen gas used (a) directly in the manufacture of steel and (b) for other purposes. The factory management could not supply the data required by the Central Excise Department."

1.337. **The Committee regret to observe that although four and a half years have elapsed since a revised demand for Rs. 7 lakhs was raised by the Department in this case, the question of tax liability still remains indeterminate, for want of a decision on the extent of assessee's entitlement to exemption. The Committee desire that the matter should be settled expeditiously.**

The Committee also observe that there was a regrettables delay in raising the revised demand in this case. The Committee trust that the Department will take care to avoid such delays in future.

NEW DELHI;
April 10, 1970;
Chaitra 20, 1892 (*Saka*).

ATAL BIHARI VAJPAYEE,
Chairman,
Public Accounts Committee.

APPENDIX I

(See paragraph 108 of the Report)

Statement showing the Commodities in respect of which wider categorisation than what it is under the tariff has been adopted under Notifications.

Tariff Item No.	Commodity	Nature of wider categorisation
1	Sugar . . .	For Khandseri sugar, compounded levy scheme has been introduced, the rates depending upon the type and size of centrifugal used.
1A	Confectionary	
1B	Prepared or reserved Foods	
2	Coffee	
3	Tea	
4	Tobacco	
6	Motor Spirit	
7	Kerosene	
8	Refined Diesel Oil and Vaporising Oils	
1C	Furnace Oil	
11	Asphalt, Bitumen and Tar.	
11	Petroleum Products N.O.S.	
12	Vegetable Non-essential Oils	
13	Paints and Varnishes	
14B	Caustic Soda	
14D	Synthetic organic Dye Stuff	
14DD	Synthetic Organic Products	
14E	Patent or proprietory Medicines	
14G	Nitric, Hydrochloric and Sulphuric Acid	
14HH	Fertilizers	
15	Soap	
15A	Plastics	
15AA	Organic Surface Active Agents	
15B	Cellophane	
16	Tyres	
16A	Rubber Products	

Tariff Item No.	Commodity	Nature of wider Categorisation
16B	Plywood	
17	Paper	
18	Rayon Yarn	
18A	Cotton Yarn	
18B	Woollen Yarn	
19	Cotton Fabrics	
20	Silk Fabrics	
21	Woollen Fabrics	
22	Rayon or Artificial Fabrics	
22A	Jute Manufactures	
23A	Glass and Glassware	
23B	Chinaware and Porcelainware	
23C	Asbestos Cement Products	
26	Steel Ingots	
26AA	Iron and Steel Products	
27	Aluminium	
29	Internal Combustion Engines	
29A	Refrigerating and Air Conditioning Appliances and Machinery.	
30	Electric Motors	
31	Electric Batteries	
32	Electric Lighting Bulbs	
33B	Electric Wires and Cables	
33C	Domestic Electrical Appliances not elsewhere specified.	
34	Motor Vehicles	
36	Footwear	
37	Cinematograph Films	
37A	Gramophones and parts thereof	
38	Matches	
40	Steel Furniture.	

APPENDIX II

(See paragraph 1.16 of the Report)

Number of cases in which exemptions were given by Government to the extent of 50 per cent to 75 per cent, 75 per cent to 100 per cent and 100 per cent during the year, 1967

Sl. No.	Tariff Item No. & Commodity	Number of exemption notification issued by the Central Govt. allowing reduction in duty to the extent of			Number of special orders issued by the Central Board of Excise & Customs allowing reduction in duty to the extent of		
		50% to 75%	75% to 100%	Wholly	50% to 75%	75% to 100%	Wholly
1	2	3	4	5	6	7	8
1.	1-*Sugar*	2	..	1	..	..	..
2.	3-*Tea*	1	..	7	..	..	1
3.	4-*Tobacco*	1	..	*	..	..	..
4.	6-*Motor Spirit*	4	3	3	..	..	.
5	7-*Kerosene*	..	..	1	..	..	..
6.	8-*Refined Diesel Oil*	..	2	2	1	..	..
7.	9-*D.O. (N.O.S.)*	2	..	2	..	..	..
8.	10-*Furnace Oil*	1	..	2	..	..	..
9.	11A-*Petroleum Products N.O.S.*	..	..	1	?	..	..
10.	13-*Vegetable Products*	1	..	2	..	..	..
11.	14-*Paints & Varnishes*	1	..	3	..	..	..
12.	14D-*Synthetic organic dye*	..	..	2	..	..	..
13.	14E *Patent or Propriatory Medicians*	1	..	7	..	..	..
14.	146-*Acids*	..	..	1	..	..	..
15.	15-*Soap*	..	..	1	..	..	..
16.	15A *Plastics*	..	..	2	..	..	..
17.	15B-*Cellohone*	..	..	1	..	..	..
18.	16-*Tyres*	1	..	3	..	..	..
19.	16A-*Rubber Products*	..	..	4	..	..	..

1	2	3	4	5	6	7	8
20.	16B—Plywood	1	..	2	..	..	..
21.	17—Paper	10	1	8	..	..	..
22.	18—Rayon Yarn	..	12	3	..	..	..
23.	18A—Cotton Yarn	2	2	3	..	..	..
24.	18B—Wollen Yarn	1	..	1	..	..	..
25.	19—Cotton Fabrics	2	..	13	..	..	..
26.	21—Woollen Fabrics	..	..	6	..	..	..
27.	22—Rayon or Art Silk Fabrics	..	—	1	..	..	..
28.	22A—Jute Manufactures	..	..	3	..	..	..
29.	23—Cement	..	..	4	..	..	..
30.	23A—Glass & Glass Ware	..	..	2	..	..	..
31.	23B—Chinaware Procelainware	..	..	1	..	..	..
32.	25—Iron in any Crude Form	..	..	1	..	..	..
33.	26A—Copper & Copper alloys	..	..	3	..	..	..
34.	26AA—Iron or Steel Products	..	1	3	..	..	..
35.	26B—Zinc	..	..	2	..	..	..
36.	27—Aluminium	1	1	8	..	..	..
37.	28—Tin Plates	..		3	..	..	..
38.	29—I.C. Engines	..	..	1	..	..	..
39.	30—Electric Motor	..	..	1	..	..	..
40.	32—Electric lighting bulbs	..	..	1	..	..	..
41.	33A—Wireless receiving sets	2	..	1	..	..	..
42.	33B—Electric Wire Cables	..	..	1	..	..	..
43.	36—Footwear	..	..	6	..	..	..

1	2	3	4	5	6	7	8
44.	37—Cinematograph Films . . .	..	..	2	..	..	..
45.	37A—Gramophone & Part thereof . .	1	..	..	..	.	..
46.	38—Matches . .	..	..	1	..	.	..

APPENDIX III

(*See* paragraph 1.38 of the Report)

Salient features of Self Removal Procedure

1. All manufacturers are required to submit under Rule 173B classification lists of all excisable goods produced in their factories to the Superintendent of Central Excise incharge of their range for his prior approval. This classification list contains the description of each product along with the item No. of the Central Excise Tariff which applies to it, particulars of exemption notification applicable, if any, and the rate of duty leviable thereon. The Superintendent of Central Excise incharge of the range has to approve this list and to return one copy to the assessee for his guidance. Disputed orders of the Superintendent are appealable. Similarly, the manufacturers also file with the Superintendent incharge of their range for his prior approval a list of prices of goods, which are assessable to duty *ad valorem* (Rule 173C).

2. After the classification and price lists have been approved as above, the manufacturer himself determines his liability under Rule 173F for the duty due on the excisable goods intended to be removed under each gate pass and cannot remove such goods unless he has paid the duty so determined. Procedure to be followed by an assessee for payment of duty and clearance of his goods is laid down in Rule 173G. Every assessee pays duty compulsorily through a Personal Ledger Account, in which he periodically makes credit entries after cash payment of the amount into the Treasury or after sending a cheque or letter of authority to the Chief Accounts Officer of the Department so as to keep the balance in such account current sufficient to cover the duty due on the goods intended to be removed at any time. The assessee pays the duty determined by him for each consignment by debit to such account current before removal of the goods.

3. The manufacturer also submits a monthly return to the Superintendent incharge of his Range along with copies of gate passes and P.L.A. The range staff checks the accuracy of duty in respect of each gate pass and ensures that it has been correctly paid. The range staff also visits factories for drawing surples of goods for test, according to prescribed figures, where the rate of duty depends

on the Chemical and Physical properties of the goods. The range staff can also visit factories for any other important investigations in connection with verification of classification|price lists, clearing of returns etc.

4. In addition to the checks, which are exercised in the range as stated above, production, clearances, raw material accounts and other accounts of the manufacturers are checked periodically, once every half year or so by a party of officers known as Inspection Groups. These Officers visit the factories for examination of records. In addition to the half yearly visits mentioned above, inspection groups are also expected to pay a short surprise visit to each factory once a year for the purpose of authenticating their records and conducting stock challenges.

5. In addition to Assessment Ranges and Inspection Groups, which exercise documentary checks on the duty paid by the factories and on their production and clearances separate preventive and intelligence teams have been constituted, which work independently of the above units to exercise preventive and intelligence checks. As a part of the checks which they exercise, these teams pay surprise visits either to the factories or to the marketing centres to detect surreptitious removals. They also visit the Octroi Posts and Railway Stations to examine their records in order to see that movements of excisable goods are properly accounted for by assessees. They also exercise checks on goods in transit, visit factories by surprise to verify their accounts and stocks and also make surprise raids on suspected units.

6. Simultaneously, with the grant of a full freedom to the manufacturers to clear their goods at their convenience without any physical supervision by any Central Excise Officer whatsoever subject to observance of the prescribed procedure, penal provisions have been made more deterrent. The maximum penalty that can now be imposed has been raised from Rs. 2000|- to an amount not exceeding three times the value of the excisable goods in respect of which any contravention under S.R.P. Rules has been committed or Rs. 5000|-, whichever is greater. Provision for confiscation of goods has also been made more stringent in so far as it now provides for confiscation of—

(i) any land, building, plant, machinery, materials conveyance, animal or any other thing used in connection with the manufacture, production, storage, removal or disposal of such goods, and

(ii) all excisable goods on such land or in such building or produced or manufactured with such plant, machinery, materials or thing.

7. In addition to the above provisions for imposing a deterrent punishment for deliberately evading payment of duty, Collectors of Central Excise have also been delegated powers under rule 173E to nominate an Officer not below the rank of an Asstt. Collector to determine the 'normal production' of a factory. After taking into account all factors such as installed capacity of the factory, raw materials used, labour employed, power consumed etc., if a factory's production during any time is found to be below the 'norm' arrived at, the assessee may be called upon to explain any short-fall in production during any time as compared to the norm. If the short-fall is not accounted for to the satisfaction of the proper Officer, the Said officer may assess the duty thereon to the best of his judgment after giving the assessee an opportunity of being heard.

8. The production of a factory, which may once be determined in the manner indicated in the preceding paragraph may be revised later by the proper officer after further enquiry that may be considered necessary if reasonable grounds exist to show that any factor affecting the production of such factory has undergone a material change.

9. Physical Supervision has been withdrawn w.e.f. 1st August, 1969 from removals and receipts in bond, removal for destruction of goods unfit for consumption, receipts of duty-paid damaged goods for reprocessing or repair and receipts of duty paid raw materials or components under proforma credit scheme. In place of physical supervision, selective checks by Central Excise Officers at random have been introduced and in order that they may be carried out, an obligation has been cast under Rules 173K, 173L and 173N on the assessee of informing the proper officer the particulars of the goods received and the date of receipt. This information is required to be furnished within 24 hours of the receipt of the goods. So far as destruction is concerned, information about the quantity of goods and the proposed date of their destruction has to be supplied seven days in advance under rule 56A as modified by Rules 173K, Rule 149 as amended by Rule 173N and Rule 195 as amended by Rule 173P. The period of 24 hours and seven days for giving prior information will enable necessary verification to be conducted by the proper officer in respect of goods received or proposed to be destroyed.

Instructions have also been issued that all cases of destruction involving remission of revenue over Rs. 1,000|- each should be personally verified and supervised by the Superintendent Incharge verified and supervised by the Superintendent Incharge of the Range.

10. Physical Supervision in respect of exporters has been retained with the difference that an exporter has been given the option either to avail of the existing procedure of getting his goods examined and sealed by the Central Excise Officers as at present or alternatively he can despatch the goods directly to the port of export without any such supervision, in which case the goods for export will be examined by the Customs officer at the port. Exporters, who intend to have the goods examined by the Central Excise Officer have to pay necessary supervision charges. A provision has been made in sub-rule (3) of Rule 185 amended by rule 1730 for authentication by the proper officer of export documents like the gate pass and AR4|AR4A.

APPENDIX IV

(*See* paragraph 1·61 of the Report)

Statement showing Proportion of compounded Levy to standard rate in respect of Khandsari Sugar.

Standard rate				*Compounded levy*	
	Basic	*Additional*	*Total*		
	(Rs. Per Quintal)				
1 Khandsari Sugar produced with the aid of sulphitation	15	6·50	21·50		
2 Khandsari produced without the aid of sulphitation	15	2·50	17·50		
(a) Total production in 1968-69			22,202 Quintals.	(a) Total production in 1968-69	931223 Qtls.
(b) Total Revenue realised in 1968-69			Rs. 416631·00	(b) Total revenue realised in 1968-69	Rs. 1,48,86,000
(c) Average realisation in 1968-69			Rs. 18·76 per Qtls.	(c) Average realisation in 1968-69	Rs. 15·99 per Qtl.
			Proportion of Compounded levy to standard rate		—85% approximately.

APPENDIX V

(*See* paragraph 1·61 of the Report)

Statement showing Fabric Stage Incidence of basic Central Excise duty per Square Metre of cotton Fabrics (unprocessed) from 28-2-65 todate.

(In Paise Per square Metre)

Period/ Year	Category	At tariff rates prescribed under the First Schedule to the Central Excise and Salt Act, 1944	At effective rates prescribed for composite Mills.	At compounded rates prescribed for powerloom units		
				Units with 1—4 looms	Units with 5—24 looms	Units with 24—49 looms
1965-66	Superfine	80·00	22·0	0·16	0·48	0·96
	Fine	80·00	16·0	0·14	0·42	0·83
	Medium A	60·00	5·0 (2·5)	0·12	0·36	0·71
	Medium-B	60·00	3·0 (1·5)	0·10	0·31	0·62
	Coarse	60·00	1·0 (0·5)	0·09	0·28	0.55
1966-67	Superfine	80·00	22·0	—No Change		
	Fine	80·00	16·0			
	Medium A	60·00	5·0 (2·5)			
	Medium B	60·00	3·0(1·5)			
	Coarse	60·00	1·0(0·5)			
1967-68 (from) 26-5-67)	Superfine	80·00	12·0	—No change—		
	Fine	80·00	10·0			
	Medium-A	60·00	5·0(nil)			
	Medium-B	60·00	3·0 (nil)			
	Coarse	60·00	1·0 (nil)			
From 1-3-68	Superfine	80·00	7·0	—No change		
	Fine	80·00	6·0			
	Medium-A	60·00	5·0 (nil)			
	Medium-B	60·00	3·0 (nil)			
	Coarse	60·00	1·0 (nil)			
From 2-5-68	Superfine	80·00	7·0	—No change		
	Fine	80·00	6·0			
	Medium-A	60·00	2·5			
	Medium-B	60·00	1·5 (nil)			
	Coarse	60·00	1·0 (nil)			
From 1-3-69	Superfine	80·00	7·0	0·32	0·96	1·92
	Fine	80·00	6·0	0.28	0·84	1·66
	Medium-A	60·00	nil.	0·24	0·72	1·42
	Medium-B	60·00	nil.	0·20	0·62	1·24
	Coarse	60·00	nil.	0·18	0·54	1·10

NOTE 1. The figures in brackets relate to controlled varieties of the fabrics.

2. In addition to the rates indicated in column 4, cotton fabrics produced by composite mills are also liable to pay additional excise duty (in lieu of Sales Tax) and handloom cess.

APPENDIX VI

(See paragraph 1.71 of the report)

Effective rates of Excise Duty in respect of unmanufactured tobacco

(*Tariff Item No.* 4-1)

Unmanufactured Tobacco	Upto 23-4-62		24-4-62 to 28-2-63		1-3-63 to 28-2-66			1-3-66 to 31-3-67		
	Basic	Addl.	Basic	Additional	Basic	Special	Addl.	Basic	Special	Addl.
1. If flue cured and used in the manufacture of cigarettes	2·50	.	2·60	..	2·60	20% of B.E.D.	..	3·20	20% of B.E.D.	..
2. if flue cured and used for the manufacture of smoking mixture for pipes and cigarettes	16·50	1·10	16·90	1·10	16·90	Do.	1·10	25·00	Do.	1·10
3. (*a*) if flue cured and not otherwise specified	2·20	0·44	2·25	0·44	2·25	Do.	0·44	2·25	Do.	0·44
(*b*) if flue cured and not actually used for the manufacture of (a) cigarettes or (b) smoking mixtures for pipes and cigarettes or (c) biris (*i*) stems larger than 6·35 mm in size	1·14	0·06	1·20	0·06	1·60	Do.	0·06	1·60	Do.	0·06
(*ii*) dust of tobacco (which passes through a sieve having not less than 25 uniform apertures per linear inch and made of 27 S.W.G. wire having a diameter of 0·417 mm w.e.f. 1-3-63)	1·14	0·06	1·20	0·06	1·20	Do.	0·06	1·20	Do.	0·06

Unmanufactured Tobacco	Upto 23-4-62		24-4-62 to 28-2-63		1-3-63 to 28-2-66			1-3-66 to 31-3-67		
	Basic	Addl.	Basic	Additional	Basic	Special	Addl.	Basic	Special	Addl.
(iii) granule (rawa) of Tobacco capable of passing through a sieve made of wire not finer than 24 S.W.G. (0·5588 mm diameter) and containing not less than 18 uniform circular or square aper tures per linear distance w.e.f. 24-4-62) . .	1·14	0·06	DELETED							
4. if other than flue cured and used for the manufacture of (a) Cigarettes or (b) smoking mixtures for pipes and cigarettes .	2·00	..	2·05	.	2·05	20% of B.E.D.	..	2·60	20% of B.E.D.	..
5. if other than flue cured and not actually used for the manufacture of (a) Cigarettes, or (b) Smoking mixtures for pipes and cigarettes, or (c) biris.										
(i) Stems of tobacco larger than 6·35 mm in size. .	1·14	0·06	1·20	0·06	1·60	Do.	0·06	1·60	Do.	0·06
(ii) Dust of tobacco, (which passes through a sieve having not less than 25 uniform apertures per linear inch and made of 27 S.W.G. wire having a diameter of 0·417 mm. w.e.f. 1-3-63) .	1·14	0·06	1·20	0·06	1·20	Do.	0·06	1·20	Do.	0·06

B.E.D. Basic Excise Duty

(iii) granule (rawa) of tobacco capable of passing through a sieve made of wire not finer than 24 S.W.G. (0·5588 mm. diameter) and containing not less than 18 uniform circular or square apertures per linear distance of 25·4 mm. (Deleted w.e.f. 24-4-62 . . .	1·14	0·06	DELETED							
(iv) Tobacco cured in whole leaf form and packed or tied in bundles, hanks or bunches or in the form of twists or coils . .	1·14	0·06	1·20	0·06	1·60	Do.	0·06	1·60	Do.	0·06
Explanation:—Such varieties of unmanufactured tobacco used in the manufacture of biris as the Central Govt. by Notification in the Official Gazette specifies in this behalf shall not be deemed to fall within this sub-item but shall be deemed to be unmanufactured tobacco, not otherwise specified within the meaning of sub-item (6).										
6. if other than flue cured and not otherwise specified . .	2·20	0·44	2·25	0·44	2·25	20% of B.E.D.	0·44	2·25	20% of B.E.D.	0·44
7. if used for agricultural purposes	..	..	..	..	..	..	..	..	..	..
8. Stalks	0·22	0·02	0·22	0·02	0·22	Do.	0·02	0·22	20% of B.E.D.	0·02

APPENDIX VII

SUMMARY OF MAIN CONCLUSIONS|RECOMMENDATIONS

S. No.	Para No.	Ministry/Department	Conclusions Recommendations
1	2	3	4
1	1·20	Finance	The Committee observe that as many as 636 exemption notifications issued by the Central Government|Central Board of Excise were in operation in September, 1967. These notifications, covering virtually the entire gamut of excisable commodities, had authorised a substantial departure from the statutory tariff. In a number of cases, they had introduced new categories under the tariff, in the process of spelling out criteria for the grant of exemptions. The tariff relating to cotton fabrics, for example, contained only 5 categories when it was approved by Parliament. The effectiv eoperating tariff, however, specifies as many as 20 categories eligible for assessment and another 23 eligible for exemption, in an effort to introduce greater progression in the rate structure. It is not only the cotton fabrics tariff that has been elaborated in this fashion; the data furnished to the Committee shows that the statutory tariff in respect of as many as 56 commodities has undergone amplification. These fine distinctions introduced into the statutory tariff have, in the Committee's opinion, complicated the administration of the tariff, making assessments an elaborate and time-consuming process. A number of instances have been given later in this Report where exemption notifications have

			led to protracted delay in finalisation of assessments, with all attendant complications.
2	1.21	—Do—	Apart from complicating the tariff, these notifications have been utilised by the executive to extend substantial dutv concessions. Taking the notifications issued in the year 1967 alone, the Committee observe that Government|the Board issued 273 notifications covering 51 different excisable items, including major revenue yielding commodities like sugar, tobacco, motor spirit, kerosene, iron and steel products, cotton yarn, fabrics etc. As many as 185 (of the 273) notifications gave exemptions ranging from 50 per cent to 100 per cent of the statutory rates of duty. Of these the number of notifications which gave total exemption from tariff rates was 128. The Committee consider it extraordinary that delegated powers given to the executive should have been exercised to render the statutory tariff a nullity in a majority of cases.
3	1.22	—Do—	Another aspect of the exemptions is the fact that, in some cases, exemption from duty was given with retrospective effect, though, as has been pointed out by the Attorney-General, the executive does not at present enjoy this power. The data given to the Committee shows that 7 of the exemption notifications issued in 1967 took retrospective effect. Government have not been able to indicate what these retrospective exemptions cost in 5 of these cases where the exemptions had monetary effect. The Committee can only conclude from this that Government gave exemptions in these cases without even ascertaining what revenue the public exchequer would forge thereby.

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4	1·23	Finance	The Committee find that exemptions have also been given in favour of individual organisations or bodies. Government have stated that such exemptions are given only "when circumstances of an exceptional nature exist." The Committee find from the particulars of these exemptions in 1967 (5 in all) that a State Electricity Board was exempted from duty on refined diesel oil used as fuel for generating electricity. The relief given for four months resulted in Government forgoing revenue to the tune of Rs. 14.5 lakhs (approximately). The Committee would like to be apprised of the considerations that weighed with Government in extending this concession to only one of the many Electricity Boards in the country.
5	1·24	—Do—	In the Committee's opinion, the plethora of exemption notifications suggests that exemptions are given by the executive under pressure from concerned interests. Such pressures generate counter-pressures, making it necessary for Government either to modify or amplify the scope of exemptions given. The representative of Ministry of Finance admitted during evidence that "as a general proposition it is probably true that there is pressure", though he added that "in cases where pressure was justified, there could be an arguable case for making an exemption."
6	1·25	—Do—	The Committee feel that the existing position in regard to grant of exemptions by the executive through notifications or special orders

leaves a lot to be desired. The Committee recognise that, in administering a fiscal measure, a number of problems are likely to arise and that, of necessity, the executive will have to be given sufficient flexibility by the legislature to facilitate smooth and effective tax administration. At the same time, it is necessary to bear in mind that the power given to the executive to give exemptions is only a form of delegated or subordinate legislation, which should not be so freely used as to vitiate the intentions of the legislature. Against this background, the Committee wish to make the following suggestions:

(i) All operative exemptions, whether granted by notification or special orders, should be reviewed as an exercise preliminary to their rationalisation.

(ii) Tariff schedules should be left to be framed by Parliament and the tendency to sub-divide the tariff through notifications should be arrested. Parliamentary control in this field is vital, as it provides an opportunity for different shades of representative opinion to influence taxation proposals. The power given to the executive to modify the effect of the statutory tariff should be regulated by well-defined criteria which should, if possible, be written into the Central Excise Bill now before Parliament.

(iii) No exemption should be given without an assessment of its financial implications in so far as they can be determined. The monetary implications of the notifications,

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			where determinable, should also be indicated in the memorandum appended to the notifications at the time they are placed before Parliament.
			(iv) All exemptions involving a cent per cent relief from duty should require prior Parliamentary approval. A suitable procedure will have of course to be worked out to cover exigencies which may arise when Parliament is not in session.
			(v) Exemptions in favour of individual parties, organisations etc., whether by notification or by special orders, should be avoided, and when absolutely necessary, should be reported to Parliament and a motion moved by the Executive within a specified time for their consideration, failing which they should lapse.
			(vi) The intentions underlying exemption notifications are by and large unexceptionable. They are meant to benefit small-scale units or provide incentive for production of certain items or for the use of a particular raw material in the overall interests of the economy. However, as these exemptions tend to distort the commodity tax pattern, the scope and advisability of grant of these benefits or incen-

			tives through non-fiscal devises, such as subsidised supply of raw material, power etc., should first be examined, so that duty exemptions are restricted to the absolute minimum.
7	1·30	Finance	It is a matter of common nowledge that *'ad valorem'* and specific levies represent two different and distinct types of tax. In one, the duty is related to the value of the product taxed, so as to make the tax progressive, while, in the other, there is a specific rate of duty, regardless of the value of the product. The Committee are therefore doubtful whether the executive can, in exercise of its delegated powers to grant exemptions, convert an *'ad valorem'* into a specific duty. The Committee note that pursuant to a suggestion made by them earlier the matter has been referred to the Attorney-General for an opinion. They would like to be apprised of the outcome of the reference. In the meanwhile, the Committee would like Government to compile data about all operating notifications, which have had the effect of converting an *ad valorem* duty into a specific duty and *vice versa*.
8	1·31	—Do—	As an off-shoot of this issue arises the question whether a notification issued by Government, which substitutes specific rate of duty for an *ad valorem* tariff, will continue to be valid, after Parliament has further enhanced the *ad valorem* duty originally fixed. The Committee note that the legal opinion on this point, which Government have not accepted, is that under such circumstances, Government will have to issue a fresh notification if the specific rate of duty

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			originally notified by them is to continue. The Committee are not happy that Government have not accepted the legal advice tendered. However, as the basic question of the competence of the executive to substitute a specific for an *ad valorem* duty is itself under reference to the Attorney-General, the Committee would not like at this stage to make any observation on this point.
9	1·35	Finance	The Central Excise Tariff is a complex tax measure covering a large range of commodities, which attract varying rates of duty levied with reference to a host of criteria. As pointed out by the Committee earlier, the tariff has been further complicated by the executive in the process of administration. It is only therefore fair to the assessees that changes in the tariff effected from time to time, which are notified to them through Trade notices, are consolidated at frequent intervals. Such a consolidated compilation, apart from acting as a facility to the trade, would also aid the work of assessing officers. To facilitate the work of the assessing officers further the departmental manuals should be revised and brought up-to-date at frequent intervals.
10	1·53	—Do—	In June, 1968, a radical change in the pattern of excise control was made when the system of 'physical control', which had been prevalent since 1944, was replaced by a system of 'control through

accounts and preventive checks'. The essence of the new system is 'a large measure of trust in the manufacturers, their declarations and their accounts." The physical controls previously exercised over the movement of goods from the production stage till the time they finally left the production units have been dispensed with. The main considerations which impelled Government to introduce this system were the growing administrative burden on the Central Excise Department and complaints of abuses associated with the old system.

11 1.54 —Do— While the Committee appreciate the considerations which have led to the introduction of the new system, they are anxious that the trust reposed in manufacturers and their declarations is not abused, leading to evasion of duty. The Committee hope that Government will not slacken their vigilance and will ensure that the working of the new system is kept under constant watch so that loopholes brought to light by experience are plugged expeditiously.

12 1.55 —Do— Some of the points to which the Committee would like Government to give particular attention are mentioned below:

(i) The Central Excise Law as it stands now does not throw on the manufacturer the onus of proving that there has been no tax evasion. This was understandable as long as the Department were exercising physical checks on movement of goods, but now that these have been dispensed with, the Committee would like Government to consider

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			the feasibility of introducing a suitable provision on the lines of Section 123 of the Customs Act, 1962 in the Central Excises Bill pending before Parliament.
			(ii) Under the existing Central Excise law, an assessee is required to produce on demand to the officers of the Central Excise Department and Audit parties accounts and records maintained by him pursuant to the Act or Rules made thereunder. The Committee observe that, in the Central Excises Bill pending before Parliament, while a provision for inspection of accounts by the Central Excise Officers has been made, there is no provision for inspection of accounts by Audit parties. Government have promised to make a suitable provision in the Rules to be made under the new Bill, when passed. The Committee would feel happier if a provision to the above effect is made in the Bill itself.
			(iii) While the need to safeguard the interests of the exchequer will make it necessary for the Excise Department to require assessees to maintain proper records of production, movement of goods etc., it should be ensured, by periodical review, that any tendency to increase documentation beyond what is really needed is firmly checked.

(iv) During evidence, the Committee gathered that a summary inspection of a few units made by Audit parties had disclosed the following deficiencies in the working of the scheme:

(a) There was some delay in payment of duty.

(b) There was not enough advice on classification particularly in respect of complicated textile items.

As regards (a), the representative of the Central Board of Excise and Customs promised to have a survey made to ascertain whether there were cases of delayed payment of duty. The Committee desire that this should be done at an early date. They would also like to be informed of the results of the survey as also of the remedial measures, if any, taken pursuant thereto. It should be considered whether appropriate penalties should be imposed in such cases.

In regard to (b), the Committee desire that every possible assistance should be provided to assessees to enable them properly to classify their goods.

13	1.56	Finance	From a note furnished by the Ministry, the Committee observe that the total revenue receipts from 59 commodities under the Self-Removal Procedure during 1968-69 exceeded the budget estimates by 5.41 per cent, as against the increase of 2.84 per cent in case of commodities other than those under the S.R.P. The Committee feel that this should not generate a sense of complacency in

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			the Department for the increase in revenue may be the effect of a number of extraneous factors such as natural growth, increase in rates of duty, etc. It would, therefore, be facile to conclude that the increase is attributable to the new system.
14	1.57	Finance	The Committee also observe that in case of three industries, Sugar, Tinplates and Wireless Sets, an increase in clearances has been accompanied by a decline in revenue. The Committee would like Government to investigate the reasons for this state of affairs.
15	1.58	—Do—	The Committee also find that there has been a sharp decline in the number of offences detected in case of art silk fabrics, aluminium and cosmetics. The number of offences detected in these industries during 1966 was 519, 46 and 49 as against 55, 20 and 18 during 1968. The Committee with like to be assured that this phenomenon is not due to slackening of vigilance by the Central Excise Department.
16	1·63	—Do—	The Committee observe that, in spite of rates under compounded levy schemes being 20 per cent to 75 per cent of the standard excise levy and the facility the schemes offer to assesses through adoption of simplified procedures for assessment, a number of units have not opted for the schemes. This raises a doubt whether some

of the units at least have chosen to stay out because the standard pattern of excise control offers scope for evasion of duty. As early as 1963, the Central Excise Reorganisation Committee had drawn attention to this phenomenon. The Committee would like Government to undertake studies on a selective basis for certain commodities to ascertain how far this is prevalent and to take suitable remedial measures.

17. 1.64 —do— There is another important point which has a bearing on the rate structure under the compounded levy schemes. The fact that rates under these schemes vary from 20 per cent to 75 per cent of the standard levy would appear to suggest that they are fixed on an *ad hoc* basis. The Committee do not consider this satisfactory, as it could cause avoidable loss of revenue to the exchequer. The Committee would suggest that Government should undertake field studies to determine the average production of commodities brought under compounded levy and the standard duty on such production to which the compounded levy should be realistically related. The rates so fixed should be subject to periodical review and in the light of experience they should be suitably revised. The representative of the Central Board of Excise and Customs admitted during evidence that such studies had not been undertaken but would be useful. The Committee would like Government to make a start in this direction. As the number of commodities subject to compounded levy are few, it should be possible to have the entire gamut of the scheme covered by these studies in a short time.

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18	1.68	Finance	In their 44th Report (Third Lok Sabha), the Public Accounts Committee had recommended that tariff values of commodities for purpose of levy of excise should as far as possible correspond to market prices. This pre-supposed that the Department would promptly take cognisance of changes in market values and refix tariff values suitably. The Committee regret to observe that in this case, though there was a rise in the market prices of copper winding wires following devaluation in June, 1966, the tariff values fixed by Government remained unaltered till March, 1968. This resulted in a loss of revenue of about Rs. 10 lakhs in respect of a few factories in one Collectorate alone. In the opinion of the Committee, the period of 21 months taken by Government was inordinate, even after making due allowance for the factors mentioned by Government. The Committee deprecate this delay. The Central Board of Excise and Customs itself took about a year to come to a decision, even after the Economic Adviser's proposals in this regard were received (in March, 1967). Government have stated that measures for improving the working of Government machinery for fixation of tariff value have been taken recently. The Committee would like to watch their impact on the efficiency of the Department in this respect.
19	1.69	—Do—	The Committee would also like Government to consider whether the responsibility for determination of tariff values should be centralised in one agency of Government, instead of being distributed between two agencies as at present.

20	1.76	—Do—	The Committee notice that at present the Department employs what has been roughly estimated as 25 per cent of primary excise staff on tobacco work. Considering that out of the total excise revenue of over Rs. 1,100 crores, tobacco excise (manufactured and unmanufactured tobacco put together) accounts for about Rs. 200 crores, the staff employed on this work would appear to be disproportionately high. Nearly 94 per cent of the duty on unmanufactured tobacco is collected at the warehouses. This would indicate that by a judicious rationalisation of checks on growers and curers and intensification of the checks at the revenue yielding points, it might be possible to bring about a reduction in the staff deployed for the work. The Committee would like the matter to be taken up for a detailed study by Government.
21	1.77	—Do—	Another point the Committee notice is that the tobacco tariff is at present complicated. This undoubtedly makes its administration difficult. The tariff was rationalised on the basis of the recommendations of an Expert Committee which suggested that the "physical form" of tobacco should form the basis for classification. However, in actual practice, the tariff has come to adopt, apart from the physical form, the 'end-use' criterion also. The end-use criterion will be difficult to apply without ambiguity or dispute. Apart from this, the incidence of duty on various types of tobacco has tended to be rather uneven. The data given in the preceding part of this Section would indicate that the relative incidence of duty on flue-cured tobacco and non-flue cured tobacco for smoking mixtures does not follow a rational pattern. In leaf and biri tobacco, the burden

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			of duty, as between different varieties, shows no correlation to the relative market values of the various grades.
22	1.78	Finance	For the reasons mentioned in the foregoing paragraph, the Committee feel that it is time that Government made an expert assessment of the tobacco tariff with a view to seeing how best it could be rationalised and the burden of duty on the various varieties made to correspond to their value. The Committee suggest that this matter should be examined by a small expert Committee, which should also go into the question of economising on the staff employed for tobacco excise work.
23	1.82	—Do—	The Committee note that during the year under report Government had to forgo revenue to the tune of Rs. 12.61 lakhs in 196 cases on account of operation of time-bar. Investigations conducted by Government revealed that in six of these cases, there was laxity on the part of Departmental Officers. The Committee would like suitable action to be taken in these cases against the officials found lax or negligent. In one case, there was collusion/wilful misstatement on the part of the assessee for which action is reported to have been taken.
24	1.83	—Do—	The Committee note that the period of time-bar under Rule 10 which used to be three months previously has since been extended

			to one year. A number of measures have also been taken by Government for the proper determination of duty *ab initio* and timely detection of mistakes in classification or assessment. The Committee would like to watch the effect of these measures through future Audit Reports.
25	1.87	—Do—	In successive Reports on Customs and Excise, the Committee have been expressing concern over the heavy accumulation of arrears of excise duty. The Committee regret to observe that during the year under report, the position has further deteriorated. The arrears which amounted to Rs. 16.07 crores on 31st March, 1967 rose to Rs. 21.29 crores on 31st March 1968—an increase of nearly 33 per cent in one year alone. This shows that effective steps have not been taken by the Board pursuant to the repeated exhortations of this Committee to reduce arrears. The Committee feel that Government will have to act with greater vigour if the arrears are to be liquidated at an early date.
26	1.88	—Do—	As in previous years, the largest arrears were accounted for by unmanufactured tobacco (about Rs. 3.84 crores), of which nearly 77 per cent were pending for more than one year. The Committee would like a vigorous drive to be launched for the speedy clearance of these arrears.
27	1.89	—Do—	In their 72nd Report (Fourth Lok Sabha), the Committee had dealt with the excise arrears amounting to Rs. 3.14 crores on account

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			of glass wool fibre. The Committee were then informed that Government were considering the question of withdrawing the relevant demands, in consultation with the Comptroller and Auditor General. The Committee regret to observe that although a year has elapsed no decision has yet been taken. The Committee desire that the matter should be settled speedily.
28	1.98	Finance Foreign Trade	The Committee cannot help expressing a sense of disquiet about the manner in which the scope of the scheme for grant of concessional rates of duty on controlled cloth was extended to cover varieties of Cloth which were in fact not controlled cloth at all. This was done through 'deviation orders' which the Textile Commissioner issued from time to time in favour of specific mills to cover particular consignments of cloth produced by them. By virtue of these orders, cloth produced by these mills, though not in conformity with the specifications laid down for controlled cloth, were treated as such and thereby became eligible for concessional rates of duty.
29		Do	In the opinion of the Committee, the procedure adopted by Government was irregular. Apart from the fact that it resulted in a loss of revenue to the exchequer, through grant of concessional rates of duty, it was also discriminatory, as the deviation orders covered cloth produced by particular mills. The Committee had asked for full particulars of deviation orders issued in favour of various parties which regrettably have not been furnished by Government.

The Committee would like all these particulars to be collected and an independent investigation to be made to determine:

(i) Whether there were objective and impartial criteria for issue of the 'deviation orders'.

(ii) whether, in fact, these criteria were followed while issuing deviation orders.

(iii) whether the benefit of deviation orders accrued in actual practice only to a few parties and if so how it occurred.

(iv) what other advantages, apart from duty concessions, accrued to mills which were able to market cloth covered by these deviation orders as controlled cloth e.g., whether, for instance, it provided the Mills an easy market for sub-standard cloth which would otherwise have been difficult to market.

The Committee would like this investigation to be completed within six months and the results to be intimated to them.

30 1.100 Fi ance Foreign Trade

There is one other point which the Committee wish to mention. The deviation orders were originally held to be beyond the competence of the Textile Commissioner by a Branch Secretariat of the Ministry of Law. When the matter was referred for a second opinion, the Ministry of Law held that the Textile Commissioner was competent to permit deviations and that there was "only a defect

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			in form". Since the defect in form has vitiated the orders, the concession in rates of duty extended on the strength of these orders now lacks legal authority. The Committee note that Government have issued 'errata' to regularise the position, but the Committee are doubtful whether it is in order, by this means, retrospectively to regularise a tax concession. The Committee would like authoritative legal opinion on this point to be taken by Government.
31	1.104	Finance	The Committee regret that sarees manufactured by the assessee in this case which neither conformed to the specifications of controlled cloth as prescribed by the Textile Commissioner nor were covered by his deviation orders were allowed to be cleared by the Central Excise authorities at the concessional rate. This resulted in a short assessment of duty to the extent of Rs. 1.11 lakhs. It was stated that the Central Excise Officers were under instructions from Government, not to "enter into controversy" about the correctness of declarations made by manufacturers and, therefore, failed to detect that the sarees deviated from the specifications prescribed for controlled cloth. It is regrettable that Government should have issued instructions to the Excise Officers not "to enter into controversy whether the declaration made by the manufacturer was correct or not". These instructions were liable to be construed as a directive to ignore even wrong declarations by manufacturers for the purpose of claiming duty concessions. The fact that Govern-

			ment themselves after 2½ years of issue of these instructions, had to direct the assessing officers to be alert against mills clearing fabrics not constituting 'controlled cloth' on payment of concessional rates of duty applicable to such cloth shows that the original instructions issued by Government were ill-advised.
32	I 105	Finance Foreign Trade	The Committee also note that the assessee in this case got duty concessions amounting to Rs. 1.38 lakhs on the strength of deviation orders issued by the Textile Commissioner to cover sarees which were not of the width prescribed for 'controlled cloth'. In an earlier section of this Report, the Committee have suggested a comprehensive investigation of all cases covered by deviation orders. The Committee have also pointed out that in the light of the legal opinion that deviation orders were vitiated by "a defect in form", concessional assessments on the strength of these orders will lack legal validity. The Committee would like to be informed of the action proposed to be taken by Government in the light of this position to validate the concessional assessments in this case.
33	I 119	Finance	The Committee observe that a series of omissions occurred in this case. In the first place, the scheme approved by the Cabinet envisaged that sugar factories which commenced crushing early should be encouraged to maximise crushing in the early part of the season. A rebate in excise duty was to be given to these factories if they

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produced during this season more sugar than they had done previously. However, while notifying the scheme in November, 1963, under the impression that 'factories in the South' commence crushing early, the rebate in duty of 50 per cent for July—October season was made applicable only to factories in Madras, Mysore and Kerala, even though the Cabinet had given no such directive. Andhra Pradesh was not included, but was bracketed with Maharashtra and the rebate of 50 per cent was extended to factories in these States for crushing in November only.

Secondly, after it was pointed out that even factories in these two States (Andhra Pradesh and Maharashtra) commence crushing before November the notification was amended by Government in December, 1963 to extend 50 per cent rebate for the July—October season to factories in these two States also. With this amendment, Government withdrew the 50 per cent rebate given in the earlier notition to factories in these States for crushing in Novmber. However, one of the factories in these States had claimed rebate for November on the basis of the earlier notification, and the excess payment of Rs. 1.94 lakhs could not be recovered, as it was held that a rebate allowed could not be retrospectively withdrawn.

Thirdly, the retrospective withdrawal of the 50 per cent rebate for November affected not only the foregoing factory but five other

			factories in Maharashtra and Andhra Pradesh which had done their crushing in October-November. However, only three of the six factories got the rebate, because they had recourse to legal remedies, whereas the other three did not get it.
34	1.120	Finance	The Committee consider it regrettable that Government implemented the scheme of rebates in such a tardy manner. The relevant notifications, though seen by the concerned Ministries before issue, were loosely drafted, and Government also failed to collect adequate data about crushing season in different areas of the country before formulating the scheme. Besides a very fundamental point that a tax benefit or concession could not be withdrawn retrospectively was also overlooked. It is also very anomalous that only three out of six factories entitled to the rebate for November crushing should have got it, while the others were denied the rebate, simply because they did not have recourse to legal remedies. The Committee feel that Government themselves should have in equity *ex gratia* allowed the rebate in these three cases. The Committee note that Government are now in the process of formulating general guidelines to regulate the procedure for refund in cases of excess collections of this type. The Committee would like the procedure for this purpose to be finalised early.

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35	1 132	Finance	The Committee cannot help expressing unhappiness over the manner in which Government acted in these cases. An express condition for the grant of slab concession under the Exemption Notification issued in March 1964 was that the assessee should have owned a factory which was in production on the crucial date *i.e.*, 9th November, 1963. In none of the five cases mentioned in the Audit paragraph was this condition satisfied. Yet the slab concession under the Notification was allowed in all the cases amounting to Rs. 12:42 lakhs. While concession to the first assessee was given by the collectorate, the concession in the second and fifth cases was given by the Board in appeal acting in a quasi-judicial capacity. Government have admitted that in the first case, decided by the collectorate, the concession was inadmissible and that disciplinary proceedings are being initiated. The Committee would like to be apprised of the action taken in this respect.
36	1.133	Do	As regard the other two cases (second and fifth cases) the Committee observe that the Board while acting in a quasi-judicial capacity were influenced by a policy decision taken by Government in an executive capacity. The policy decision was to the effect that a unit should be deemed to have qualified for the concession even if it had not commenced production on the crucial date provided firm commitments had been made by it on that date for the purchase of machinery. This represented a major departure from the condi-

tions set forth in the original notification regarding grant of concession. Quite apart from the fact that it was in principle wrong to have allowed this benefit with retrospective effect in only cases which came to the notice of the Board, it was also not appropriate for the Board, while acting in a quasi-judicial capacity, to have taken cognisance of an executive decision which had strictly no bearing on these cases. It was in extenuation urged by the Finance Secretary in evidence that such errors are likely to be made by an official acting in two capacities—administrative as well as appellate. This, in the opinion of the Committee, underscores the need for keeping the judicial and executive wings of the Excise Department separate. In an earlier Report also, the Committee have emphasised this aspect vide paragraph 1:36 of 36th Report (Fourth Lok Sabha). The Committee note that Government have taken a step in this direction by making a provision in the Central Excise Bill for the creation of posts of appellate collectors. "The contemplated arrangements does not cover appeals to be decided at levels higher than that of Collectors. The Committee desire that Government should consider the question of setting up an Appellate Tribunal on the Customs and Central Excise side on the lines of Income-tax Appellate Tribunals. Till this is done, it should be ensured that the Board, while acting as an appellate body, does not allow its judgment to be trammelled by policy decisions taken by it in an executive capacity."

37	1.134	Do	The Committee are also not happy over the manner in which the Board had acted in the third case mentioned in the Audit paragraph. In this case, the condition of ownership on the crucial date

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			stipulated in the original notification got breached with the transfer of the undertaking to a second party. However, on the ground that transfer of ownership should not act as a bar to the grant of the concession—a decision which represented a departure from the conditions originally set out—the Board gave a concession of over Rs. 4 lakhs to the assessee by issue of a special order with retrospective effect under Rule 8(2) of the Central Excise Rules. Apart from the question that such treatment involved discrimination in favour of the party, the Committee would like to point out that Government had no legal authority to issue a special order granting concession with retrospective effect. In fact an opinion to this effect had been given to Government by the Attorney-General himself. The Committee trust that the Government will henceforth strictly ensure that concessions are not illegally given through exemption notification which take effect retrospectively.
38	1.135	Finance	As regards the fourth case, the Committee note that the opinion of the Ministry of Law is that the firm which was in existence on 9th November, 1963 ceased to exist as such with the death of one of the partners of the firm. The Committee would like to be informed about the action Government propose to take in regard to slab concession amounting to Rs. 1:83 lakhs extended to the firm which has become inadmissible in the light of the legal opinion.

39	1.136	Do	There is a general point arising out of all the foregoing cases which the Committee would like to emphasise. The scheme for grant of slab concessions as originally formulated had a number of drawbacks which came to light in the course of actual implementation. The Committee are prepared to recognise that these drawbacks unless remedied might have frustrated the intention underlying the scheme. But remedial action should not have been taken in a way which benefited only parties who came up before Government by employing legal procedures. Any relaxations or concessions which Government intended to give should have been publicised and made applicable to others as well specifically to avoid discriminatory treatment.
40	1.148	Do	While the Committee recognise that grant of concessional rates of duty to tea drier oil might have been justified, they feel that the procedures adopted by Government for the grant of the concession were thoroughly faulty. The notification issued for this purpose granted exemption to drier oil, which fell under Tariff item No. 9, from so much of the duty as was in excess of the duty leviable under Tariff item 10 which covered oil of another description (furnace oil). This clearly tantamounted to circumventing the tariff classification laid down by Parliament. The Ministry of Law had also at one stage expressed doubt about the validity of an exemption on these lines which led to duty concessions amounting to Rs. 2.24 crores.
41	1.149	Do	The Committee also observe that duty concessions amounting to over Rs. 3.5 crores in respect of this oil were allowed by the

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			Department on the basis of Executive Instructions issued in May, 1958 and November, 1962. This was irregular. Pursuant to an earlier recommendation of the Committee, the Attorney General has advised Government that they are not empowered to give exemptions by Executive Instructions. The Committee trust that Government will in future take care to ensure that exemptions are given only by the due process of law.
42	1.150	Finance, Law—Other Ministries	There is another point the Committee would like to mention The Board had in this case made a reference to the Ministry of Law for a second opinion without any mention of the earlier opinion given by that Ministry. This the Committee consider wrong in principle. Besides the second opinion, which ran counter to the first opinion, was from an Assistant Legal Adviser, while the first opinion was given by a Deputy Legal Adviser. The Committee would like to impress on Government the need to ensure that where a second legal opinion is sought, it should specifically be sought from an official of a status higher than the official who gave the first opinion. In respect of matters included in the Audit Report, which are likely to come up before the Committee; it should also be ensured that Audit are given an opportunity to present their points of view before an opinion is sought from the Ministry of Law, and are associated with any inter-Ministerial deliberation that might take place in this Connection.

43	1·151	Finance	In the present case the Committee would like Government to seek the opinion of the Attorney-General on the validity of the exemption nomination issued by Government from time to time since 1963. The matter is of substantial importance as it affects the legal validity of duty concessions which amounted to as much as Rs. 2:24 crores.
44	1·158	Do	The Committee observe that the exemption notification of 1st March, 1959 gave partial exemption from duty to only three specified types of rayon waste. The Central Excise Department, however, extended the concession to other types of rayon wastes initially because it was felt that it was applicable to these wastes also and after 1st October, 1964 on the basis of Executive Instructions issued by the Board. The result was that the non-exempt types of waste were assessed at concessional rates for a period of over eight years without any legal authority therefor. The amount of revenue forgone by Government during this period was nearly Rs. 30 lakhs.
45	1·159	Do	The Committee are of the view that extension of the scope of any concession given under a notification calls for issue of another notification. The purpose cannot be achieved by issue of executive instructions as was done in this case. The notification should also be issued promptly as concessions can have only prospective effect and a benefit extended cannot be retrospectively enforced even by a notification. The Committee would like Government to ensure strict compliance with these provisions.

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46	1.170	Finance	The Committee consider it regrettable that over a period of 8 years from 1957 to 1965. the Department should have continued to raise supplemental demands on curers of tobacco, without ascertaining whether the goods which constituted the prime security for the duty were actually in the possession of curers or not. The demands which aggregated Rs. 18.22 lakhs were ultimately withdrawn as a result of a legal opinion that in the absence of any proof that the goods were in the possession of assessment at the time of preferring the claims, the claims would not be sustainable.
47	1·171	Do	It has been stated by Government that most of these claims related to petty growers in sparse growing areas, where it would not have been feasible for the Excise Department to have exercised checks except at huge cost to the exchequer. If so, the Committee fail to understand why the demands were raised at all. It is also beyond the Committee's comprehension as to why the demands were raised in a number of cases a year after the original demands were raised when it should have been apparent to the Department that the stocks of the commodity which was perishable would not have been available with the curers.
48	1·172	Do	The Committee get the impression that hardly any checks were exercised by the officers concerned. The supplemental demands arose, because under the law as it stood, the liability of

			the curers for duty was to be fixed with reference to the date on which duty was actually paid. Every successive increase in duty therefore raised the curers' liability for so long as the duty originally demanded remained unpaid. The fact that the goods did not exist when supplemental demands were raised would indicate that the curers removed the tobacco, without paying even the duty that was originally demanded. Removal of goods without payment of duty is a punishable offence under the Central Excise and Salt Act. It is not clear how the Department allowed this to take place in such a large number of cases without having recourse to a court of law.
49	1 173	Do	Physical verification of stocks with curers is a part of the Department's control system. The fact that in a number of cases goods were removed without payments of duty would indicate that there was laxity in supervision and control in this respect.
50	1.174	Do	The Committee would like Government to investigate thoroughly the circumstances that led to the withdrawal of these demands and to fix responsibility for the laxity in supervision which made it possible for the curers to remove the tobacco without payment of duty.
51	1.187	Do	The Committee note that the value of security bonds to be furnished by licensees of tobacco warehouses was fixed in 1943 when the rate of excise duty on tobacco was one anna per pound. The rate of duty on tobacco now is more than 16 times the original rate but the bond values remain unchanged. Rule 140 of the Central Excise Rules empowers the Collectors of Central Excise to demand

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			fresh bonds where the existing bonds do not provide adequate cover, but these powers do not appear to have been sufficiently used. While the Committee appreciate that bonds are not to be treated as the sole means of insurance against default by licensees, they do feel that their value should be so fixed that they have some deterrent effect. It was argued before the Committee that the Central Excise law provides a number of remedies against defaulters, but the details of recoveries in the 11 cases mentioned in the Audit paragraph given in the preceding section of this Report would show that, even by resort to certificate action, the Department could realise less than Rs. 12,000 out of dues aggregating over Rs. 3 lakhs in these cases. One of the main problems in tobacco excise on which the Committee have expressed concern time and again is the heavy accumulation of arrears, a sizeable part of which has been abandoned every year due to licensees becoming untraceable. Large bond values would therefore to some extent not only provide more funds for recovery but may also serve as a detterent against default. The Committee desire that the Government should take necessary steps for the upward revision of values of security bonds so that they are relatable to the duty that could be realised rather than the floor area.
52	1·200	Finance	The Committee observe that the exemption orders issued in this case had a number of flaws. In the first place, the exemption

			order, which covered one category of mineral oil, did not specify the tariff item to which the exemption related. The legal opinion is that "in the nature of things, there cannot be an exemption notification which cannot fit in with any tariff item." The Committee further observe that there was also an omission to exempt the oil in question from special and regulatory duties which it attracted by virtue of the fact it was a category of mineral oil normally subject to such duties under the Excise Tariff. The Committee trust Government will ensure that omissions of this nature do not recur.
53	I 201	Do	A special aspect of the exemption notification in this case was that it was confined to mineral oil produced in a particular geographical area. According to the advice of the Ministry of Law, an exemption of this nature can be issued "provided the differentiation in the matter of localities is based on rational considerations relevant to the object in view". In order that the legality of these notifications is not challenged on grounds that they entail discrimination, the Committee feel that Government should explain the rationale under-lying such exemptions in an explanatory Memorandum to the notifications.
54	I·202	Do	On the question of merits of exemption given in this case, the Committee note that the mineral oil in question was classifiable as refined diesel oil under Tariff Item 8, on the basis of its characteristics. The duty was however assessed as for kerosene,

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			which is an illuminant falling under Tariff Item 7. The consideration for exemption was that the oil was mainly used as an illuminant. The Committee feel that before giving the exemption, Government should have ascertained whether, either by itself or in adulteration with any other fractions the oil was capable of being used for any of the purposes for which refined diesel oil could be used. The Committee note that scientific investigation is now being conducted by the Ministry of Petroleum and Chemicals to ascertain whether and to what extent kerosene is being used as a substitute for refined diesel oil and whether any de-naturant colouring material could be the purposes for which refined diesel oil could be used. The Committee trust that the above investigation will be completed at an early date and necessary correctives applied so that the object underlying the exemption is not defeated.
55	1.208	Finance	The Committee consider it unfortunate that the notification in this case was so ambiguously drafted as to offer scope for differential treatment. The notification prescribed concessional rates of duty on a slab basis with reference to the output of the factories in the preceding financial year. However it contained no specific provision in regard to newly established factories which naturally could have had no production in the 'preceding financial year'. The result was that while 18 new factories (mentioned in the Audit paragraph) were deemed eligible for the concessional rates of duty in one Collec-

			torate, 115 other new factories were denied this concession in 16 other Collectorates.
56	1·209	Do	The Committee trust that Government will ensure in the interests of uniform treatment of assessees that notifications precisely translate Government's intention.
57	1·216	Do	In the opinion of the Committee, this case raises a very fundamental question, namely at what stage Central Excise duty is leviable on a commodity like glycerine. The representatives of the Central Board of Excise and Customs stated that, though crude glycerine is a marketable commodity, it will not attract duty as such, if it was used for refining and production of excisable products like pure glycerine. Under Section 3 of the Central Excise Act. 1944, liability for excise duty, however, arises as soon as a product is manufactured and becomes identifiable under the relevant tariff description. The relevant tariff item 14C in this case simply reads "glycerine" and does not differentiate between the various categories of glycerine.
58	1·217	Finance / Law	The Committee note the assurance of the Finance Secretary that legal opinion will be taken on this question and desire that the matter should be referred to the Ministry of Law immediately and corrective action, as necessary, taken in the light of the opinion.
59	1·223	Finance	The Committee consider it unfortunate that, due to a wrong opinion expressed by the Ministry of Law, medicinal glycerine prepared out of commercial glycerine was deemed non-excisable, though, in point of fact, it was liable to excise duty. It took nearly

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			two years, after instructions restricting levy of duty were issued, for Government to ascertain the correct position in law, i.e. that commercial glycerine used for preparation of medicinal glycerine was liable to tax both as commercial and medicinal glycerine. An exemption notification was thereafter issued for exempting medicinal glycerine, on the ground that it was not Government's intention to tax it. Till the notification was issued medicinal glycerine enjoyed an exemption from tax which had no legal basis.
60	1.224	Finance	The Committee further note that though the Ministry of Law gave their revised opinion on the duty liability of medicinal glycerine in November, 1968, the Ministry of Finance issued an exemption notification only in June, 1969—i.e. after the lapse of about 7 months. The delay lacked justification particularly after February, 1969 by which time the Board had all the material it had called for from the Collectorates for the purpose of issuing the notification. The Committee would like to emphasise the need for prompt action by Government in cases of this kind, particularly as they have a bearing on the legality of Government action.
61	1.232	—Do—	The Committee regret that packing and wrapping paper used for packing newsprint were assessed to duty on a concessional or nil rate basis, though this was incorrect in terms of the Board's orders on the subject. The resultant loss of revenue to Government

			was Rs. 7.01 lakhs. The Committee would like Government to investigate the circumstances under which the wrong assessments occurred and to fix responsibility therefor.
62	1.232 1.233	—Do—	It was stated before the Committee by the representative of the Central Board of Excise and Customs that Government were "ill-advised" to issue orders which precluded assessment of wrapping and packing paper on the same basis as the newsprint wrapped in such paper, as the principle followed by Government in such cases is to charge containers the same rate of duty as the contents. If this is so, the Committee are not able to understand why the Board's instructions on the subject have so far been allowed to stand.
63	1.234	—Do—	The Committee would also like to point out that an omission on the part of the Board also contributed to the mistakes which occurred in this case. According to executive instructions issued by the Board in September 1955, wrapping paper was to be assessed to duty at the same rate as paper packed in such wrapping paper. The exemption notification issued by the Board in February 1965 in favour of newsprint brought about a change in this position, in as much as the exemption was made conditional on the paper being actually used for purpose of printing. As wrapping paper was not capable of being so used, it could no longer be assessed at the same rate as newsprint, on the basis of the instructions of the Board of September 1955. The Board should have therefore reviewed these instructions and suitably instructed the field offices, which they failed to do.

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64	1.235	Finance	The Committee also note that after Audit pointed out the irregularity in June, 1966, the Board took one year to issue the necessary clarification. The Committee consider the delay as highly regrettable. As they have repeatedly urged, Government should act with promptness in matters which affect Government revenues.
65	1.239	—Do—	The Committee observe that wrapping paper used in the manufacture of reel cores was erroneously assessed to duty at the same rate as writing paper would on reel cores. While the Committee note that the correct procedure for assessment is now being followed in all the Collectorates, they would like to point out that as well as the case of assessment of wrapping paper mentioned the mistake occurred in as many as six Collectorates. This case elsewhere in this Report, points to the need for clear-cut instructions to Collectorates in the matter of assessment whenever containers and contents are assessable at different rates of duty.
65	1.245	—Do—	The Committee regret that due to a failure to draft notification correctly, certain parties in two collectorates got an unintended concession in excise duty to the extent of Rs. 66,000. The notification which was issued in March, 1964 was intended to rationalise certain slab concessions allowed to manufacturers of pulp and straw boards. Prior to March, 1964 such concessions were available only

			to manufacturers producing 5,000 tonnes or less, the concession being limited to the first 3,000 tonnes of production in a year. The notification issued in March, 1964 extended the scope of the concessions to all manufacturers without regard to their scale of production, but limited the concessions to the first 2,500 tonnes of production in a year. As the notification became operative in March, 1964, the concession available for that one month in the financial year was worked out *pro rata* as 200 tonnes. However, due to a failure to spoil out the rationale behind this concession for 200 tonnes for March, 1964, certain manufacturers were able to claim it in addition to the full benefit of slab concession of 3,000 metric tonnes enjoyed by them under the old scheme. The Finance Secretary himself admitted that the notification of 1st March, 1964 could have been better worded in this regard.
67	1.246	—Do—	The Committee would like to impress on Government the need to exercise greater care in drafting notifications so that they do not leave loopholes which would adversely affect the financial interests of Government. The Committee also desire that the Board should review the existing arrangements for drafting of notifications. The work in this regard should be entrusted to officers with a legal background and a thorough understanding of the Central Excise Law.
68	1.254	—Do—	The Committee note that Government suffered a loss of Rs. 2.89 lakhs in this case due to a failure to classify the item properly which resulted in an under-assessment of duty. The chemical examiner attached to the Department was asked to undertake an examination of samples in order to determine the nature of the item.

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			but a complete report on the test was not sent by him at any stage. The Committee note that the question whether disciplinary action is called for in this case is under consideration of Government. The Committee would like to be informed of the results of Government's examination.
69	1.255	Finance	The Committee note that to bring about uniformity in the matter of classification and valuation in all the Collectorates, the Department propose to set up an organisation for a Central Exchange of Classifications and Control. The Committee hope that this would help to resolve the difficulties of the Excise Department in classifying items for purposes of assessment. It would be necessary to ensure that the Central Exchange keeps in close and constant touch with the field offices and regularly issues guidelines to them in the matter of proper classification of items.
70	1.261	—o—	The Committee note that, in terms of the exemption notification issued in this case, an assessee was entitled to exemption from duty on so much of woollen cloth produced as was attributable to four powerlooms in all. Due, however, to a failure to apply the notification correctly, the assessing officer gave exemption to an assessee who owned two units on the production of eight powerlooms at the rate of four for each production unit. This resulted in an under-assessment of Rs. 71,882. The error came to notice in December, 1959. The Department, however, took four months to raise the

			demand, with the result that ultimately only a small amount of Rs. 4,701 could be recovered. The Committee would like Government to investigate why prompt action was not taken.
71	1.266	—Do—	The Committee note that due to an omission to take into account the weight of inside patch valves of jute cloth, while arriving at the contract weight of cement bags for purpose of assessment of excise duty, Government lost revenue to the extent of Rs. 5,095 in one case. Also demands for Rs. 96,027 raised by the Department on this account in another case are pending, as the matter is *sub-judice* before the Calcutta High Court. The Committee would like to await the decision of the High Court in the matter.
72	1.267	—Do—	The Committee note that to obviate the recurrence of such cases, the Board have issued necessary instructions to formations. The Committee trust that the Board will ensure that these instructions are strictly complied with.
73	1.275	—Do—	While the Committee recognise that the firm in this case might have on merits been eligible for assessment under the compounded levy scheme, they would like to point out that it did not qualify for assessment under the scheme till March, 1968 when it acquired a valid excise licence. It is strange that the Central Excise authorities, who renewed the licence of the firm on three occasions between September, 1964 and March, 1968, failed to recognise that it was not a valid licence. This is not the first occasion a lapse of this kind has occurred. The Committee would like Government to ensure that Central Excise Authorities pay due attention to procedural

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			requirements of this kind in the course of their work, as they have a bearing on the legality of assessments.
74	1·279	Finance	The Committee note that under Section 4 of the Central Excises Act, the assessable value is to be determined with reference to whole-sale prices in the nearest whole-sale market, ignoring deductions on account of special relationship between the seller and purchaser or deductions on account of fulfilment of specific conditions under a contract. In the present case, however, the stockists' prices to dealers were taken as the basis for assessment, from which deductions were allowed on account of carriage and bonus discounts, both of which related to marketing operations. While deciding the case in appeal, the Collector made the prices charged by the manufacturer to the distributors and sub-distributors the basis for determination of value.
75	1.280	—Do—	The Committee desire that, while determining values of excisable commodities for the purpose of the assessment, Government should invariably ensure that these are in strict conformity with the provisions of Section 4 and that any deduction not permissible under that Section is not allowed.
76	1.287	—Do—	The Committee feel that it is not only necessary but also desirable that production records in respect of cotton fabrics are maintained at the off-loom stage. The necessity arises out of the provi-

			sions of the Central Excise Act and rules thereunder. These require a licensee to maintain an account of excisable goods produced by him. As cotton fabrics become excisable the moment they are produced as such out of the looms, a production accounts at the off-loom stage is a legal requirement. Apart from this consideration, it also appears desirable that accounts are maintained at the off-loom stage, as it would make for effective control over the fabric from the grey stage to the final stage of processing and finishing.
77	1·288	—Do—	The Committee note that a Textile Sub-Committee appointed by Government which went into this question recommended the maintenance of production accounts by mills at off-loom stage. The Sub-Committee considered such an arrangement legal as well as logical. But Government did not accept their recommendation on practical considerations having regard to "the convenience of the trade". The Committee are not convinced by this argument, for, they find that about three fourths of the number of mills maintain accounts at the off-loom stage. It does not therefore seem unreasonable to require the remaining one-fourth to do likewise.
78	1·289	—Do—	The Committee note that the question whether it would be practicable to cast an obligation on the mills to maintain accounts at the off-loom stage is under consideration of Government. As the matter is of importance from the point of view of ensuring accountability of excisable goods, the Committee desire that an early decision should be taken in the matter.

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79	1·294	Finance	The Committee note that an exemption from duty was allowed by Government to certain small-scale units manufacturing unprocessed cotton fabrics. The exemption notification contained restrictive stipulations which were calculated to check fragmentation of larger units into small units with the object of taking advantage of the duty exemption. The notification was unfortunately so worded as to deny the concession even where a rightful heir of a decreased licensee inherited the factory or where the whole factory was transferred by sale or lease not involving any fragmentation. This shows that due care and forethought were not exercised while drawing up the notification. Even if the initial error had been made, the Committee feel that subsequently, when Government realised that the notification was more restrictive than they had intended, they should have amended it by another notification. Government, however, tried to achieve this object by issuing Executive Instructions. Apart from lacking the due sanction of law, their instructions became discriminatory in effect as they covered only cases where the benefit of exemption had been given. The Committee deprecate this. They trust that Government will take care to avoid such mistake in future.
80	1·298	—Do—	The Committee note that, as against a demand of Rs. 2.94 lakhs raised by the Department for the period 13th July, 1965 to 12th October, 1965, only "a small amount" has been recovered by adjust-

			ment from refund claims of the party. The recovery of the balance is pending as the party has filed a writ in the Calcutta High Court. The Committee would like to be apprised of the outcome of these proceedings.
* 81	1.299	—Do—	The Committee would like Government to investigate why demands for Rs. 8.54 lakhs representing the differential payable for the period March, 1965 to 12th July, 1965 were not raised.
82	1·306	—Do—	The Committee find that the Department acted in a very liesurely manner in this case. There was an omission in the first instance to charge the product to duty which became leviable with effect from 1st March, 1964. The Deputy Controller of Iron and Steel had, in reply to a reference from the Department pointed out in September, 1965 that the product was steel melting scrap and was assessable to duty as such. However, no step was taken by the Department to raise the demand for a period of nearly 14 months, when Audit pointed out the omission.
83	1.307	—Do—	The Committee note that the officer concerned has since retired from service and charges have been framed against the concerned Inspector of Central Excise. The Committee would like to be informed of the outcome of the disciplinary proceedings. The Committee also note that the relevant demand for Rs. 67,569 has not yet been realised. The Committee desire that vigorous steps should be taken to recover this amount.

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84	1.311	Finance	This is yet another of a number of cases which have come to the Committee's notice, where Government had given concessions in excise duty through Executive Instructions. The Ministry have now stated that the question of issuing an omnibus notification is under examination of Government. As the concessions given by Government do not have a statutory backing, the Committee desire that this should be done without any further delay.
85	1.317	—Do—	The Committee are surprised to find that it took the Department one to four years to find out that the assessees involved in this case had cleared aluminium ingots without payment of duty. There was a further delay in raising demands for duty. Government have stated that the demands could be raised, only after ascertaining that duty had not been paid on the dross which constituted the raw material for the ingots, but it is clear that the Excise Department did not show due vigilance. The Committee hope that action will be taken by Government to ensure that these instances do not recur.
86	1.318	—Do—	The Committee note that out of a total demand of Rs. 44,350 in the above cases, a sum of Rs. 4,505 only has so far been recovered. The Committee desire that vigorous steps should be taken to recover the balance.
87	1.325	—Do—	The Committee are unhappy over the lapses revealed in this case. Under Rule 223A of the Central Excise Rules, stock-taking of ex-

cisable goods is required to be conducted by the Department at least once in every year. However, in the case of the factory in question, no stock-taking was done for a period of nearly five years (1962-66). Further, though daily stock accounts of the parts and complete refrigerators maintained by the manufacturer were being checked by the Central Excise officials, no efforts were made by them to correlate the issues of spare parts with the production of finished refrigerators. This indicates that the scrutiny of the accounts of the factory exercised by Departmental officials was perfunctory. The Committee feel that the Department should take a serious notice of such lapses.

88 1.326 —Do— Another regrettabde feature of the case is the fact that no effective internal audit was conducted. During the period 1962 to June, 1967, the internal audit party audited the accounts of the factory any once in June, 1963. They did not point out either the omission to conduct the annual stock-taking of parts or the discrepancies in the accounts. The Committee trust that, pursuant to the recommendaions of the Committee in an earlier Report (Cf. paragraph of 95th Report (Fourth Lok Sabha), Government will take necessary steps to strengthen the Internal Audit Organisation not only in terms of numbers but also in respect of quality of work by streamlining its functions and procedures.

89 1·329 —Do— The Committee note that the demand for Rs. 1,55,457 raised by the Department has not yet been recovered as an appeal filed by the assessee is pending with the Board. The Committee would like to be informed of the decision of the Board.

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90	1·331	Finance	The Committee observe that due to an error on the part of the Department in determining the quanties of paper board cleared at concessional rates by an assessee, there was an over-assessment to the tune of Rs. 1,27,517. The Committee note that Government are now conducting a review to find out whether there have been similar over-assessments in other Collectorates. The Committee would like to await the results of this review. They would have felt happier if Government had intiated this action soon after the Audit paragraph was sent to them in July, 1968.
91	1·337	—Do—	The Committee regret to observe that although four and a half years have elapsed since a revised demand for Rs. 7 lakhs was raised by the Department in this case, the question of tax liability still remains indeterminate, for want of a decision on the extent of assessee's entitlement to exemption. The Committee desire that the matter should be seted expeditiously. The Committee also observe that there was a regrettable delay in raising the revised demand in this case. The Committee trust that the Department will take care to avoid such delays in future.

GMGIPND—34'AIIILS—29-4-70—1250.