P.A.C. No. 594

PUBLIC ACCOUNTS COMMITTEE (1977-78)

(SIXTH LOK SABHA)

FIFTY-FIFTH REPORT

UNION EXCISE DUTIES

MINISTRY OF FINANCE (DEPARTMENT OF REVENUE)

[Paragraphs 33, 42, 43, 45 and 50 of the Report of. the Comptroller and Auditor General of India for the year 1974-75, Union Government (Civil), Revenue Receipts, Volume I, Indirect Taxes]

Presented to Lok Sabha on 23-12-1977
Laid in Rajya Sabha on 23-12-1977

LOK SABHA SECRETARIAT
NEW DELHI

December, 1977 / Agrahayana, 1899 (S)

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(1977-78)

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2. Shri H. G. Paranjpe—*Chief Financial Committee Officer.*
3. Shri T. R. Ghai—*Sr. Financial Committee Officer.*

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*Elected w.e.f. 23 November, 1977 vice *Sarvashri* Sheo Narain and Jagdambi Prasad Yadav ceased to be Members of the Committee on their appointment as Ministers of State.

INTRODUCTION

I, the Chairman of the Public Accounts Committee, as authorised by the Committee, do present on their behalf this Fifty-Fifth Report of the Public Accounts Committee (Sixth Lok Sabha) on paragraphs 33, 42, 43, 45 and 50 of the Report of the Comptroller and Auditor General of India for the year 1974-75, Union Government (Civil), Revenue Receipts, Volume I, Indirect Taxes relating to Union Excise Duties.

2. The Report of the Comptroller and Auditor General of India for the year 1974-75, Union Government (Civil), Revenue Receipts, Volume I, Indirect Taxes was laid on the Table of the House on 14 May 1976. The Public Accounts Committee (1976-77) examined these paragraphs at their sittings held on 28 and 29 December 1976, but could not finalise this Report on account of dissolution of the Lok Sabha on 18 January, 1977. The Public Accounts Committee (1977-78) considered and finalised this Report at their sitting held on 8 December, 1977 based on the evidence taken and further written information furnished by the Ministry of Finance (Department of Revenue). The Minutes of the sittings form Part II* of the Report.

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

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

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

6. The Committee would also like to express their thanks to the officers of the Ministry of Finance (Department of Revenue), Ministry of Home Affairs, Department of Industrial Development, Ministry of Chemicals and Fertilisers, Department of Economic Affairs, Ministry of Commerce, Ministry of Agriculture and Irrigation and Ministry of Law, Justice and Company Affairs for the cooperation extended by them in giving information to the Committee.

NEW DELHI;
December 9, 1977.
Agrahayana 28, 1899 (S).

C. M. STEPHEN,
Chairman.
PUBLIC ACCOUNTS COMMITTEE.

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

REPORT

MATCHES

Audit Paragraph

1.1 Matches, falling under tariff item 38, are assessable to central excise duty on the basis of the following slab rates:—

Clearances during the financial year	Rate of duty
(i) Not exceeding 75 million matches . . .	Rs. 3·75 per gross
(ii) Exceeding 75 million but not exceeding 100 million matches.	Rs. 3·75 per gross up to 75 million and Rs. 4·30 per gross in excess of 75 million up to 100 million.
(iii) Exceeding 100 million matches . . .	Rs. 4·30 per gross on the entire quantity cleared.

1.2. This commodity also came under 'Self Removal Procedure' along with many other commodities in June, 1966. Apart from a few major units, matches are produced in a number of small or medium-sized units. The wide demand for the article and the nature of the units producing it make it particularly prone to evasion of duty, and as the instances cited below show, the introduction of Self Removal Procedure for this commodity appears in a way to have helped such evasion:—

(a) Potassium chlorate is one of the principal ingredients for the manufacture of safety matches. The match industry generally account for the quantities of chlorate issued to them direct by the chlorate manufacturers or through various dealers. On a study undertaken by audit during November-December, 1974 correlating quantities of potassium chlorate supplied to the match industry by the manufacturers directly or through their dealers, the following irregularities came to notice:—

(i) **In two collectorates, a quantity of 11,79,795 kgs. of potassium chlorate stated to have been issued to the match industry through the various dealers was not brought to account by the match units during the period of 1968—73. This quantity of potassium chlorate was capable of producing 1,47,437 gross boxes of matches involving a duty of Rs. 5.53 crores.**

(ii) In one of the collectorates, a quantity 11,765 kgs. of potassium chlorate issued to 27 match units during 1971—73 was not brought to account by the match industry involving a revenue loss of Rs. 5.62 lakhs.

The Ministry of Finance have stated that during the period 1969 to 1971 there was some laxity in the control over the distribution of chlorate by dealers which rendered possible malpractices such as the dealers entering in their books certain quantities as sold to certain match units, but diverting the quantities to other uses. In that context the Ministry have referred to instructions issued by the Home Ministry for tightening up control over distribution of chlorate, requiring endorsement of the purchasers in their books to confirm the actual receipt of chlorate. The Ministry have added that in the absence of any evidence to prove that these quantities were actually received by the match factories, no charge can lie against the match factories in regard to manufacture of matches from the quantities of chlorate and their removal without payment of duty.

As regards sub para (ii), the Ministry of Finance have stated that in one unit, proceedings were initiated and a penalty of Rs. 250 was imposed in June, 1975. The demand is pending realisation. In respect of other units, receipts of chlorate are reported to have been accounted for in subsequent periods.

These replies show that with the introduction of SRP, excise control on match factories was not adequate and even though there were malpractices in distribution of chlorate during 1969—71, no positive steps were taken to prevent abuses in the match industry.

(iii) A Research Institute produced and supplied 4050 kgs. of potassium chlorate and supplied it to five match factories in a collectorate between March and December, 1974. It was noticed in audit that two factories (out of the five) did not account for 2050 kgs. of the chlorate. Further scrutiny showed that one of the match factories wrote to the Research Institute in May, 1974 that since their holding capacity of chlorate under the Arms Act would be exceeded if 2000 kgs. was supplied, further supplies might be made to the Director of the factory who was also a chlorate dealer. The 2050 kgs. of chlorate was capable of producing matches on which excise duty of Rs. 98, 243 could have been levied.

The Ministry replied that the quantity of 2000 kgs. was duly accounted for by the chlorate dealer. The reply does not show whether the chlorate was sold by the dealer again and if so, proper receipts were traced in match factories. As for the balance of 50 kgs. of chlorate relating to the second factory, the Ministry stated that this was transferred to another factory without making proper entry in its books.

(b) A comparison of potassium chlorate consumed *vis-a-vis* the quantity of matches produced by a factory during the period June, 1968 to January, 1970 when Self Removal Procedure applied, with the corresponding figures of consumption of chlorate and production of matches during the period June, 1967 to May, 1968, when Self Removal Procedure was not introduced, disclosed that there was a heavy shortfall in production of matches recorded during the period when Self Removal Procedure was in vogue. On this being pointed out in audit in February, 1970, the department, after investigation, fixed the shortage in production as 10,431 gross match boxes and raised a demand for Rs. 44,853 against the licensee. The department also imposed a penalty of Rs. 250 on the licensee.

The Ministry of Finance, while admitting facts of the case, stated that the Appellate Collector in his order of November, 1974, had set aside the original order of the Assistant Collector.

(c) Matches of the type known as 'Bengal lights' have also to be taken into account wherever a factory produces and clears both safety matches as well as 'Bengal lights' for the purpose of arriving at the prescribed ceiling.

1.3. It was, however, noticed that two factories situated in two different collectorates paid duty between 1968-69 and 1974-75 at the lower rate of Rs. 3.75 per gross even though the total clearances including those of 'Bengal lights' exceeded the limit of 100 million. Omission to apply the rate of Rs. 4.30 per gross resulted in underassessment of excise duty of Rs. 50,586. This was pointed out in audit in August and October, 1971. A demand for Rs. 11,456 for the years 1968-69 and 1969-70 was raised in respect of one of the factories. After an appellate order was passed in this case applying Rule 10 of the Central Excise Rules, the case was reviewed by the Government of India. The appellate order was modified and a fresh demand for Rs. 5728 was issued in December, 1974, which is pending recovery.

1.4. Regarding the other factory, the Ministry of Finance have stated that the question of inclusion or otherwise of 'Bengal lights' in the clearances, is being further examined in consultation with the Ministry of Law, Justice and Company Affairs, Delhi.

[Para 33 of the Report of the Comptroller and Auditor General of India for the year 1974-75, Union Government (Civil), Vol. I, Indirect Taxes-Union Excise Duties]

I—Introduction of SRP System in Matches and its subsequent removal

1.5. The Committee desired to know when the Self Removal Procedure was introduced in respect of Matches and the details of the procedure which existed for the assessment of duty on matches prior to the introduction of that procedure. The Department of Revenue and Banking have in a written note, stated as under:—

"The Self Removal Procedure in respect of matches was introduced along with some 59 commodities with effect from 1-6-68. The system of banderolling of matches was, however, discontinued only with effect from 1-10-68. Prior to the introduction of Self Removal Procedure, physical control over production and clearance so far as Matches are concerned, extended to (i) manufacture of composition for match heads, (ii) production of finished matches, and (iii) banderolling and removal of finished goods on payment of duty.

Composition of Match Heads

The manufacturer was required to give notice of his intention to begin, stop or resume such manufacture and declare his premises, maintain accounts showing quantities of goods manufactured and manner in which they were sold or disposed of. Where the composition for match heads was obtained from a licensed manufacturer or importer of such goods an indent was required to be prepared duly countersigned by the proper officer. The Supplier was required to return one copy to the Officer with an endorsement stating the quantity actually supplied. Each consignment was required to be produced before the Officer concerned at the receiving factory and if the quantity received differed from the quantity stated in the supplier's endorsement the discrepancy was required to be explained by the supplier. The purchaser was required to maintain a correct daily account in form R.G. 2 of such goods. The damaged composition for match heads were required to be destroyed in the presence of an excise officer.

As a measure of further safeguard, the account of consumption of potassium chlorate for manufacture of matches based on the type of splints used and method of dipping adopted was required to be checked periodically by the Central Excise Officers concerned. Likewise accounts of raw materials such as wax and sulphur used in the manufacture of matches were required to be checked and a correlation of the quantities of these chemicals consumed with quantities of matches manufactured was required to be attempted through physical verification of such materials and matches produced.

Production of finished matches

Immediately after matches were finished, i.e. as soon as splints had been dipped they were required to be put into boxes or booklets duly banderolled and closed in packets or cases. The Central Excise Officer was required to ensure that labels and banderols were properly affixed to boxes or booklets of matches and that the retail price was duly marked thereon.

The average number of matches contained in box or booklet was required to be verified by taking samples consisting of at least on box or booklet from every 10 gross thereof. On the result of this sampling the duty payable was required to be assessed.

After the finished matches were packed in boxes or booklets they were required to be banderolled unless intended for export, and presented to the Central Excise Officer with an application in Form A.R.2 for removal of banderolled matches from the finishing rooms to the store room. The Officer was required to conduct necessary checks to satisfy himself that they contained not more than the maximum number of matches and thereafter the A.R.2 application was endorsed to enable the manufacturer to deposit the matches in the bonded store room. A monthly check of the stock of matches in the factory and store room was also required to be conducted by the proper Central Excise Officer.

Banderolling

Banderolling was required for matches cleared for home consumption only and not for those intended for export.

All banderols were required to be procured from a Government Treasury on cash payment or on credit, after executing a trust receipt and a bond in proper form. The proper Officer after due inquiry was required to authorise the issue of banderols to the factory. The licensee was required to account for all his banderols whether procured for cash or credit and keep them in a secure place within the factory premises so that they could be inspected at any time by any officer and the proper Officer was required to examine the stock on the last working day of each month, check the balance and record the result in a register.

Removal of matches from the Store-room

No matches could be removed from a store room unless they were covered by an application in Form A.R.1 countersinged by the Officer at the factory. Such applications in Form A.R.1 were required to be presented at least one hour before the manufacturer desired to remove the goods, accompanied by a Treasury Receipt showing the price paid for banderols. The duty liability of goods presented for clearance and other particulars were endorsed on the obverse of the Treasury Receipt. If banderols were purchased on credit the price of banderols was required to be paid into the Treasury or adjusted by making a debit entry in the account current. After payment of duty matches could be delivered from a factory at any time during the hours of 6 A.M. to 6 P.M. except on Sundays and Public Holidays but such removal could be permitted on payment of overtime fees."

1.6. In a written note, the Department of Revenue and Banking have intimated as under the circumstances which led to the introduction of S.R.P.:—

"While introducing the budget for 1968 in Parliament the then Deputy Prime Minister observed as under:—

'For some time past I have been exercised over the administrative burden on the excise department and the complaints of abuse associated with the existing system of physical control. I have accordingly decided to extend the system of self-assessment by the manufacturers, to

all manufacturers, big and small, making exception in respect of a few excisable commodities only which present complications is assessment or where there is substantial movement in bond. A large measure of trust will thus be placed in the manufacturers, their declarations and their accounts. Day to day verification of clearances by Central Excise Officers will be dispensed with and replaced by periodical check of the self-assessed documents and accounts to ensure that the amounts due to Gove. have been properly assessed and paid. This change in procedure will, however, necessitate certain essential revenue safeguards. To this end, the penal provisions for unauthorised removal of goods or other contraventions of the rules and regulations with intent to evade payment of duty are proposed to be made more stringent.'

1.7. As observed from above, two criteria kept in mind for non-selection of commodities for SRP were (i) complication in assessment and (ii) where there was substantial in-bond movement. Accordingly, the self removal procedure was extended to all excisable commodities with effect from 1-6-68, except 14. As a result of experience gained in working of the scheme in about a year, the procedure was extended from 1-8-1969 to all the then excisable commodities except unmanufactured tobacco.

(ii) Initially a few commodities were left out which presented complications in assessment (Khandsari sugar, paints and varnishes, paper, cotton yarn, cotton fabrics, jute manufacturers) or where there was substantial movement in bond (like petroleum products). The procedure was, however, extended to these commodities also with effect from 1-8-69.

Every year, when new commodities were brought within the excise net, they were kept under physical control for some time and the self removal procedure was extended to them after the officers the trade had gained some experience of the new commodities.

(iii) The size of the units or the way a particular unit was managed or controlled was not considered relevant for extending SRP. Once the SRP was extended to a particular commodity, all manufacturers of the said commodity came under the self removal procedure.

1.8. In regard to the checks exercised by the preventive parties and the Inspection Group under S.R.P., the Department of Revenue and Banking have stated as under in a written note—

"(1) *Preventive parties*—The following checks were specified for the guidance of the officers:—

(i) Checking the removals made by the assessees with the help of octroi records, railway records and road transport agencies records. The excisable goods found and checked in the transit were to be traced to the gate pass issued by the manufacturer.

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

(iii) Physical verification by surprise checks of the contents of the packages or markings on the packings, and also of the goods in store-room by paying surprise visits to the factory.

(iv) Verification by surprise of actual stock in the factory with the book balance.

(v) Surprise raids on the suspect units.

The methods enumerated above were to be adopted depending on the type of information available with the officers or the checks required to be exercised. They do not constitute an exhaustive list. It was also stressed that preventive activities had assumed far greater importance with SRP. Than those had under physical control. For this purpose, strengthening of the preventive organisation both qualitatively and quantitatively was emphasised. Stress was also laid on the selection of the right type of persons for preventive work.

(2) *Inspection Groups*

The main function entrusted to Inspection Groups was to carry out scrutiny of records, returns etc. by visiting a factory periodically or by surprise. A detailed scrutiny of the assessee's accounts to see that all excisable goods produced had been duly accounted for and appropriate duty had been paid on all such goods removed from the factory, was to be made. The officers were also required to check not only the accounts maintained by the assessee

for Central Excise purposes, but also their private accounts; and the returns which the assessee might be submitting to other Govt. departments, to their bankers or Directors etc. Within the amount of the two types of checks indicated above, the Inspection Group Officers could scrutinise raw material accounts and take into consideration the power consumed or labour employed or other factors of production. Co-ordination with other departments was also indicated as a means of verifying the correctness of the production record."

1.9. The Committee wanted to know when the authorities came to know about the position concerning offences in the working of S.R.P. in respect of matches and the remedial measures that they took in the matter. The Chairman, Central Board of Excise and Customs, has stated during evidence:—

"The position with regard to matches, as I said, became known fairly early that it was not working well and as far as I can say from memory, the matter was brought to the notice of the higher authorities and the remedial measures were taken with a view to eliminating this and making a change.. .... Having regard to the fact that there is a very small number of producers in this industry, we introduced physical control. I do not think we know of any other procedure."

1.10. The Committee wanted to know why the S.R.P. system had not worked effectively in respect of matches. The Chairman, Central Board of excise and Customs, has replied during evidence:—

"Problems of evasion are much more in the case of any industry where the production units are small ones scattered over a large number of places into small hamlets etc. because it becomes difficult to have effective control there. If, on the top of that, you introduce SRP, the position becomes worse. I would say that the position regarding matches was particularly bad because the rate of duty is very high and the production is in small units."

II: Introducation and discontinuance of banderolling system.

1.11. The Committee wanted to know the details of the banderolling system and the reasons for its introduction and discontinuance

in respect of matches. The Department of Revenue and Banking have, in a written note, stated as under:—

"The system of banderolling of Matches was introduced simultaneously when the excise duty on Matches was introduced in the year 1934-35. Till 31-3-38, the administration of Matches Excise was in the hands of the State Governments and from 1-4-38, the Govt. of India took over administration of this excise. Under the banderolling system, each box or booklet of matches issued from a factory for home consumption must bear a banderol of a value appropriate to the rate of duty. Immediately after matches have been produced i.e. as soon as splints have been dipped into the composition for match heads, they are required to be put in boxes or booklets which in turn are required to be banderolled. Banderols are paper bands or strips printed at the Security Press, Nasik. They are supplied by the Security Press, Nasik to Government treasuries in accordance with rules framed for the purpose which are incorporated in the Treasury Rules. Broadly, the essential provisions of these rules are—

(i) that a consolidated forecast of requirements for the next year should be sent to the Controller of Stamps, Nasik Road, nor later than 15th June each year;

(ii) that quarterly indents for replenishment of banderols must be prepared by Treasury Officers, and sent to the Asstt. Collector of Central Excise concerned, who is required to complete certain columns, countersign the indents and pass them on to the Controller of Stamps;

(iii) that all treasuries and sub-treasuries are treated as local or branch depots for custody and sale of banderols and treasuries are treated as *ex-officio* venders;

(iv) that banderols will be sold by local and branch depots to owners of match factories licensed by the Central Excise Department, in accordance with the instructions issued by the Central Government.

Ordinarily banderols can be purchased from the treasuries only against payment of their price in cash. Where, however, a licensee wished to avoid locking up his money by purchasing pre-paid banderols, the rules provide for credit facilities being grantd to him so that he could obtain and stock banderols without pavment of their price. The duty in such cases is collected by requiring the licensee to pay, prior to removal of matches, the cost of

credit banderols affixed to such matches. For obtaining banderols on credit licensees are required to execute a Trust Receipt in Form B-3 (T.R) and a bond in Form B-3 (Sec. 3) or (sur) of which particulars are sent to the Treasury Officer concerned. If the rate of duty on matches is enhanced and the licensee has a stock of banderol of a lower value, such benderols could also be permitted, to be used on payment of differential duty in cash.

With effect from 1-6-1968, a major change in the procedure for collection of excise duty was introduced. This system, commonly know as Self Removal Procedure (S.R.P.) meant reposing greater trust in the manufacturers. S.R.P. was, *inter alia*, applied to 'matches' also with effect from 1-6-1968 Concept of a rigorous control associated with banderolling of matches was out of tune with the concept of self-removal procedure. Apart from this, it was also observed from a number of cases of forging of banderols that 'banderolling' had not proved to be 'foolproof' as it was thought to be. In addition to the above, Security Press, Nasik, was not able to undertake printing of banderols because of increase in other security items of work. It was also felt that the system of banderolling was proving quite expensive in as much as expenditure on printing, distribution etc. was estimated to be about Rs. 80 lacs per annum apart from the estimated Rs. 25 lacs spent by the industry by way of wages on pasting the banderols. Having regard to all those factors, a decision was taken in September, 1968 with the approval of the then Deputy Prime Minister for discontinuing the banderolling system with effect from 1-10-1968."

1.12. The Committee referred to the Report for 1973-74 of the Khadi and Village Industries Commission where in the re-introduction of the banderolling system was recommended and wanted to know whether it was brought into operation. The Chairman, Central Board of Excise and Customs, has replied during evidence:—

"Yes, it has been there for quite some time now. The S.R.P. was removed even earlier."

1.13. The S.R.P. Review Committee in their Special Report on Matches had observed as follows:—

"The actual extent of underbooking can only be a matter of conjecture. Having regard to the rates of growth in production and clearances in the non-power operated sector

in the pre-S.R.P. period, we feel we shall not be erring on the high side if we assume that production of matches in the three year period viz. 1969, 1970 and 1971 should have registered an increase of 25 per cent over the preceding three years. On this assumption and applying the lowest rate of duty (of Rs. 3.75 per gross boxes) the evasion would be of the order of about Rs. 6.00 crores for 3 years of Rs. 2.0 crores per annum. All the empirical evidence goes to show that evasion is on the increase and must be appreciably larger today than might be indicated by the three-year average, viz. Rs. 2 crores, pertaining to the immediate post S.R.P. period."

1.14. Drawing attention to the reported observation of Shri Akbar Hyderi, Chairman, WIMCO and President of the Sivakasi Chamber of Commerce (quoted in the aforesaid Special Report) according to which the extent of evasion of duty was between Rs. 2 to 3 crores per year, the Committee wanted to know why despite these revelations there was a sense of complacency of the part of the Government. The Chairman Central Board of Excise and Customs, has replied during evidence:—

"I would submit that there is absolutely no sense of complacency. In fact, we were ourselves getting very much concerned about evasion duty in respect of matches, but I would not go so much by Akbar Hyderi's statement. I would merely say that Mr. Akbar Hyderi's firm is in competition with the non-power operated sector. I would always rely upon independent evidence a little more than the evidence of the competitors."

1.15. When asked whether the evasion referred to by Mr. Akbar Hyderi was in regard to non-power sector, the Chairman, Central Board of Excise and Customs, has replied:—

"He was clearly referring to non-power-operated factories. The power-operated factories are his own. Leaving Mr. Akbar Hyderi's statement apart—he happens to be the Chairman of the power-operated factories which was competing with non-power-operated—I would place a great reliance upon Sivakasi Chamber of Commerce. They are the people who are interested in ensuring that the non-power-operated factories come up properly, that unhealthy competition resulting from evasion of excise duty is checked. Apart from that, our own Collectors were also feeling very uneasy about the evasion of duty from

matches which was taking place. That is why, the SRP Committee was requested, as a special case, to send a report with regard to matches earlier than even their general report, and they sent an interim report....I can tell you with the full sense of responsibility that everybody in the Department was deeply concerned about evasion in the match industry and we made a special request to the SRP Committee, because orders to introduce SRP had come from the then Finance Minister; it was announced on the floor of the House and a Committee had been appointed to look into it. Therefore, we could not take precipitate action until the Committee also agreed with us, 'Yes; evasion is taking place'. As soon as the Committee said that, we took action immediately. There has been no sense of complacency. We were keen to do something. The process of receiving the report had to take its own time."

1.16. The Department of Revenue and Banking have in a written note intimated that according to the report of SRP, the number of registered offences in respect of matches during 1965 to 1967 was 142.

1.17. The Committee wanted to know whether any analysis has been made in regard to those 142 offence cases to find out the sources of evasion. The Chairman, Central Board of Excise and Customs, has stated during evidence:—

"Really speaking, it is not that there are different types of evasion. Ultimately it is this, they remove the goods with out payment of duty, the same gate pass is used more than once, sometimes they do not take gate pass and just remove it."

1.18. Asked how the loophole has been plugged, the witness has stated:—

"By introducing banderols.... We think it is an effective check, but unfortunately there is no dearth of manipulators. We have had cases even of forged banderols being found out. Those people have been arrested and we are prosecuting them."

III. Evasion of duty by match factories due to improper accountal of use of Potassium Chlorate.

1.19. It is seen from the Audit Paragraph that a quantity of 11,79,795 Kg. of potassium chlorate issued to mach industry through the

various dealers was not brought to account by the match units in two Collectorates during the year 1968—73. This quantity of potassium chlorate was capable of producing 1,47,47,437 gross boxes of matches involving a duty of Rs. 5.53 crores. The Committee wanted to know whether instances of similar type were there in other Collectorates also. The Member (Excise) has stated during evidence:

> "The maximum number of small factories is concentrated in a few Collectorates. In Madras and Madurai it is the maximum and it is there to some extent in Cochin and Hyderabad. In fact, the two Collectorates covered by the Audit para represent a large proportion of the small match manufacturing units....The whole objection has arisen because it has not been possible to keep an exact track of the disposal of potassium chlorate sold by the dealers. There is the Arms Act under which a certain control is expected to be exercised and it may be that in different States different degrees of control are there. The fact that Madras and Madurai have not been able to keep a proper check need not lead us to the presumption that in other States also it is so."

1.20. Asked whether any investigations were made in the matter. The Chairman, Central Board of Excise and Customs, has stated during evidence:

> "This is a very serious matter. This is not disappearance from the factories but from the dealers. That is what we were trying to explain that some cases have been taken to courts to prosecute those dealers. The match factories said, 'We never received them'."

1.21. Explaining the position in this connection the Additional Secretary, Ministry of Home Affairs, has stated:

> "We are getting this point checked up. But I find from the audit report in the Addl. Accountant General's statement that after the 1972 instructions, suddenly the consumption of this in factories came down from 5.41.000 to 2.41.000 indicating *prima facie* that the instructions did have effect. So far as these 11 lakhs are concerned, we have already asked the TN Government through CID to inquire into it."

1.22. Giving the details of the cases where potassium chlorate disappeared from the dealers and the action taken in the matter,

the Ministry of Home Affairs have stated in a written note, as under:

"On 25-4-77 the A.G. Madras intimated to the Government of Tamil Nadu the details of 8 dealers in Madras and Madurai Collectorates who sold 11,79,795 Kgs. of Potassium Chlorate whose receipt was not acknowledged by match factories and also details of 27 dealers whose total sale of 1,86,640 Kgs. indicated a shortage of 11,765 Kgs. These discrepancies were noticed by the A.G. Madras and reported to the Excise Department. The details are shown in Appendices I and II.

The particulars of cases mentioned in Appendices I and II, it has been intimated by the State Government, had not been brought to their notice earlier. The Government of Tamil Nadu are now consulting the District authorities concerned to consider the possibility of launching prosecutions in these cases.

The State Governments and Union Territories have been asked on 5-5-77 to inspect the books of all dealers and factory depots to identify the dealers who are not maintaining proper records or who are not selling potassium chlorate in accordance with the provisions of the Arms Act, 1959 and Arms Rules, 1962."

1.23. The Committee referred to the case of a factory quoted at page 42 of the Audit Report wherein heavy shortfall in the production of matches disproportionate to the consumption of potassium chlorate was noticed and wanted full details of the case. The Department of Revenue and Banking have, in a written note, stated as under:—

"The unit in question is M|s. Pathrakali Match Works, Elayirampannai. The factual position stated in the audit para was broadly correct. By an order dated 20-11-74 the Appellate Collector, Madras, had set aside the original order observing that the charges were not based on sufficient and convincing grounds and at the most could only be considered to be based on presumption.

This unit, as reported by the Collector of Central Excise, Madurai supplied 57,385 gross match boxes with WIMCO labels to M|s. Wimco of Madras during the period January 1971 to June 1972."

1.24. In this case on being pointed out in Audit in February 1970, the Department after investigation found no shortage in production as 10431 gross match boxes and raise a demand for Rs. 44853 against the licence. The Department also imposed a penalty of Rs. 250 on the licencee. The Appellate Collector in his order of November 1974 had however set aside the original order of the Assistant Collector. Asked to explain the circumstances, the Chairman, Central Board of Excise and Customs, has replied during evidence:

> "The whole case was built up on the basis that a particular quantity of potassium chlorate having been used, a particular quantity of matches should have been produced. When you are working on such suppositions, it is one thing to ask for duty to be paid and it is another thing to impose a penalty. Possibly, the imposition of this penalty of Rs. 250 was also uncalled for. As the Appellate Collector observed, he set aside even the demand for duty. As I mentioned earlier, the ratio of use of potassium chlorate for match production ranges from 5 to 9. It is such a wide range. In that range, for any appellate body to go and say that they should have produced so many matches would be a little too much. This is what the Appellate Collector did. If you go to recover duty or impose penalty on the basis of such type of a demand which does not have a proper quasi-judicial basis, this would be the only thing that can be expected."

1.25. The Committee's attention was also drawn to the following observation of the S.R.P. Review Committee in their special report on the Match Industry:

> "We have already referred to the intensification of preventive activity by the authorities. Some of the ensuing results may be briefly mentioned. In the Madurai Collectorate, the number of offence cases relating to matches which was 236 for the three-years, period 1965—67 rose to 827 for the three years 1968-70 which followed the discontinuance of banderols. In Hyderabad the corresponding figures for the two periods are 24 and 228, respectively. In this context the Collector of Central Excise, Madurai, has brought to our notice the following interesting facts. According to the books of two stockists of potassium chlorate in Virudhanagar and Madurai as much as

370,975 Kgs. of that chemical was sold to certain match manufacturers in the Madurai Collectorate over a period of 12 months. But this was found not to have been accounted for by factories concerned. The units denied having purchased or received the quantities shown to have been sold to them. This quantity it was stated, is capable of producing 46,37,188 gross boxes on which the duty liability would be of the order of approximately Rs. 2 crores. Some of the offence cases detected have revealed suppressing of production of matches on a fairly large scale, in one case the quantity surreptitiously cleared was 60802 gross boxes involving a duty liability of Rs. 2,61,448 60: in another 220 Kilogrammes of potassium chlorate was found concealed in the residence of a manufacturer and incriminating documents seized from him revealed duty evasion of Rs. 75,250|—, while in yet another case the producer fraudulently manipulated a second credit of the same amount paid on an earlier date in his Personal Ledger Account."

1.26. The Committee wanted to know the formula prescribed for the consumption of potassium chlorate in the manufacture of matches and the safeguards provided to ensure that the actual production corresponds to the production worked out on the basis of the formula. The Department of Revenue and Banking have, in a written note, state as under:—

"Under the S.R.P. in terms of rule 173-D of the Central Excise Rules, 1944 a manufacturer was required to furnish the information regarding the principal raw material used in the manufacture of excisable goods. In respect of the matches, the principal raw material prescribed was potassium chlorate.

In the case of mechanised match factories like WIMCO, the consumption of potassium chlorate for production of 100 gross boxes of matches packed in 50s is about 6 Kgs. In the non-mechanised sector, the consumption varies widely from 6 Kgs. to 14 Kgs. per 100 gross boxes of matches of 50s. Studies had been conducted at various times but it had not been found possible to arrive at a uniform ratio between the consumption of the potassium chlorate and the production of matches in case of non-mechanised sector. Samples from match factories were drawn for chemical test to ascertain potassium chlorate

content. The Chemical Examiner, Customs House, Madras, stated that while sample can be tested for such purpose, there would be wide variations in chlorate composition of match heads, efficiency of operation etc. He further stated that weight of match heads per box of 50 sticks was also not uniform and wide variations had been noticed in samples received for test and chlorate composition of match heads will vary from factory to factory and batch to batch. He further stated that such wide variations were inevitable and more pronounced in the case of cottage industry and opined that no limit can be fixed for percentage variations of chlorate content of matches and each case has to be decided on merits. Since the consumption of potassium chlorate varies from factory to factory and in the same factory from season to season depending on various factors, like quality and size of the stick, method of dipping of match heads, the efficiency of labour, climatic condition and the availability of raw materials, no formula has been prescribed for the consumption of potassium chlorate in the manfacture of matches. However, as a guideline the Directorate of Inspection, Customs and Central Excise had suggested a ceiling limit of 5 to 9 Kgs. of potassium chlorate for 100 gross of 50 matches. To check the raw material accounts, the Department had prescribed the maintenance of accounts for potassium chlorate, this raw material account could not be of much furnished by the manufacturer of Matches. This record was required to be checked by the Supervisory Officers, Inspection Groups and Statutory Audit. In view, however, of the wide range in the ratio of consumption of potassium chlorate, this raw material account could not be of much value. With the re-introduction of physical control, maintenance of the account of raw material (potassium chlorate) has been dispensed with."

1.27. The Committee referred to page 685 of the Bulletin of Central Board of Revenue wherein the consumption of potassium chlorate was stated to be 5 kg. to 9 kg. per hundred gross of 50 matches per box. They wanted to know whether on that basis it was ascertained that the supply of potassium chlorate had brought the required production. The Chairman, Central Board of Excise and Customs, has replied during evidence:

"The range is so wide. It is between 5 and 9 Kgs. That means, if a person produces 9, he can say 5."

1.28. Asked if there was any difficulty in having account in respect of power operated factories, the witness has stated:

> "In so far as power operating factories are concerned, I can assure you that we have had no intelligence of our own with regard to any evasion in appreciable scale."

1.29. On an enquiry whether the quantity of potassium chlorate supplied to Wimco had matched with the required production of matches, the witness has replied:

> "Our experience is that their figures do not differ widely. It comes to between 6 and 7 Kgs. per 100 gross of boxes."

1.30. The Committee wanted to know whether the fomula evolved for the consumption of potassium chlorate in the production of matches was working satisfactorily. The Chairman, Central Board of Excise and Customs, has replied during evidence:

> "In so far as the question of the formula is concerned, our test has shown that it could be anything from 5 to 9 Kg. This itself will show that the variation can be 80 per cent more. I personally would not go by any formula where the variation can be from 5 to 9. What conclusions can one draw from that? I do not have a case where the production of matches was below 5 or above 9. The range itself is so wide that it cannot be really a guiding factor."

1.31. Asked how the allocation of the stuff to Wimco and non-power operated sector is computed to ensure that there was no excess production on which duty could be evaded, the witness has replied:

> "So far as small factories are concerned, the variations is from 5 to 9 Kg. In so far as VIMCO is concerned, we go by the standard of 6 to 7 kg., which is a very narrow margin. They have to be within this limit."

1.32. The Committee wanted to know the criteria to determine the requirements of potassium chlorate for match industry. The Chairman Central Board of Excise and Customs, has replied during evidence:

> "In so far as the needs of the power operated sector are concerned, it would be legitimate to presume that the use of potassium chlorate would have, more or less, a constant relationship to the production of boxes. But in so far as the other sector is concerned I think, it cannot be inferred that the consumption of potassium chlorate for a given volume of production would remain the same or constant.

It depends on the skill of the person, the quality of the matches, and even to some extent the availability of potassium chlorate. If he is not getting the supply, he will use a little less and let it go, whereas conditions in the power operated sector are different."

1.33. Explaining the details of the checks exercised over the consumption and accountal of potassium chlorate the Department of Revenue and Banking have, in a written note, stated as under:

"During the period when Self Removal Procedure was applicable to Match Excise, the manufacturers of matches were required under rule 173-D of the Central Excise Rules, 1944, to furnish the information on the principal raw materials and the quantity of such material required for the manufacture of a unit quantity of such excisable goods. In case of matches, potassium chlorate was notified as the principal raw material. The manufacturers of matches were required to maintain a record in Form-IV showing the quantity of potassium chlorate received, the quantity used in the manufacture of excisable goods, the quantity used for the manufacture of non-excisable goods, if any, and disposal as such. This register was checked by the Inspection Group, the Statutory Audit and the Supervising Officers. The Officers had also been instructed to carry out experiments to see that the quantity of matches manufactured out of a unit quantity of potassium chlorate used so as to determine the norms of production but due to a large variation from factory to factory and in the same factory from season to season, depending on various factors like the quality and size of stick, efficiency of the labour, quality of matches and the availability of potassium chlorate, no norms could be fixed. In view of the wide variations in the consumption of potassium chlorate, it has not been found possible to make any close correlation between the quantity of matches manufactured. Accordingly, after the re-introduction of physical control and banderolling manufacturers are not required to submit returns to the Central Excise Department of Potassium chlorate used by them."

1.34. The Committee wanted to know the authorities who were responsible to ensure the proper accountal of the consumption of potassium chlorate by the match factories. The Chairman, Central Board of Excise and Customs, has replied during evidence:

"In so far as the match factories are concerned, it is certainly the duty of the Central excise officers to ensure that there is proper accountal of the potassium chlorate which is received by a match factory and how it is disposed of. The period referred to in the Audit para is before the strict instructions or the Home Ministry orders. In so far as the dealers distributing potassium chlorate is concerned the Central Excise authorities have no control over them. They are not excisable and no revenue is involved. In so far as the match factories are concerned, certainly I would agree with you that it is the responsibility of the Central Excise officials to have an accountal of the potassium chlorate. That is one of the records they maintain and the officers are required to see it. But here the match factory says 'we have never received it' and the dealers were saying they have supplied it to the match factory. There may be some cases where the match factories have received it and they were telling a lie, but the real villain of the piece is the dealer in potassium chlorate."

1.35. The Committee wanted to know whether Wimco had the monopoly in the business of potassium chlorate. The Chairman, Central Board of Excise and Customs, has replied during evidence:

"So far as potassium chlorate is concerned, WIMCO continues to be the predominant supplier of potassium chlorate in the country."

1.36. Asked in regard to the control exercised by the Central Excise authorities in regard to the potassium chlorate supplied by Wimco to dealers. The witness has stated:

"The Central Excise is concerned with regard to the match factories and the accountability of potassium chlorate in those match factories. To the extent WIMCO sells potassium chlorate to their dealers and what those potassium chlorate dealers do with that, the Central Excise Officers do not have any authority to do anything in regard to that."

1.37. The Committee wanted to know the obligation of Wimco in law to account for proper distribution of the potassium chlorate manufactured by them. The Additional Secretary, Ministry of Home Affairs, has replied during evidence:

> "The manufacturing licence requires that they can sell potassium chlorate which is an ingredient of ammunition to a person who has a licence. They are what are called the dealers' licences. The requirements is that within the quantity fixed which can be kept by a dealer, they can sell it and that is to be accounted for. The District Magistrate and the Supdt. of Police of the district in which the dealer is there have to be immediately informed about it. The unit is supplying potassium chlorate has also to be mentioned. Subject to these intimations, they can supply potassium chlorate within the quantity which is fixed in the dealers' licence. The dealers, in turn, have to sell to the consumers who also have the consumers' licence and the consumer can also purchase only upto that much quantity which is mentioned in the licence."

1.38. The Committee wanted to know the action taken against Wimco and others for the non-accountal of the potassium chlorate referred to in the Audit Paragraph. The Additional Secretary, Ministry of Home Affairs, has stated during evidence:

> "As far as the Home Ministry is concerned, we have immediately asked the State authorities to initiate detailed enquiry into it. It will take some time to find out what has exactly happened. I can only mention that whenever some of the points were brought to their notice, to that extent, some action was taken. As regards the Bharat Traders, there was a prosecution launched. Our information from the district authorities and the State Government is that the court decision is awaited. The licence has been suspended. About Alexander case, his licence has been suspended. He was prosecuted but acquitted by the lower court. The appeal is pending before the High Court. In another case also, the licence has been cancelled as far back as in 1971. In the case of Krishna match works, he was prosecuted but was released on admission of the offence. We are getting the case further looked into as to why his licence should not be cancelled. We have asked the State authorities to look into it. As regards the Gudyatham case, he was also prosecuted. In his case it ended in an

acquittal. The State Government has informed that the suspension of his licence, was later revoked on his acquittal. On that point, we have yet to get full details as to how it ended in an acquittal. We have collected this much information."

1.39. At the instance of the Committee, the Ministry of Home Affairs have in a written note furnished the latest position in regard to the investigations made against the various dealers who were proceeded against due to non-accountal of potassium chlorate, which is reproduced below:

"Following Action was taken against dealers in Potassium Chlorate who failed to maintain proper accounts of sales:

(i) Wimco Agents, Gudiyatham.

(ii) Thiru V. P. Chockalingam, Gudiyatham.

The agent of the Western India Match Company at Gudiyatham, and Shri V. P. Chocklingam of Gudiyatham, did not maintain proper accounts of sales of potassium chlorate made after 29-7-72. A case under Section 25(1)(m) and 30 of the Arms Act, 1959 was filed against them in the Court of Judicial First Class Magistrate, Vellore, in CC. Nos. 66/74 and 67/74 respectively.

Both the cases ended in acquittal on 9-8-74 on the ground that the prosecution had not established any incriminating evidence against the accused. The District Revenue Officer, Vellore, suspended their licences with effect from 27-6-1975.

But subsequently on the basis of representation by match manufacturers, and on the recommendation of the District Revenue Office of North Arcot, the Board af Revenue (Land Revenue), Tamil Nadu Government instructed the District Revenue Officer North Arcot, to revoke the orders suspending the licences.

(iii) Bharat Traders, Madurai—I.

(iv) Shri M. Alexander, Virudhunagar.

Shri Nalinisekharan, Proprietor of Bharat Traders, Madurai and holder of licence No. 1/66 in form XIII of the Arms Act, 1959, did not observe condition No. 10 of the licence and sold Potassium Chlorate indiscriminately and thereby contravened the provisions of section 25 (1)(c) and (m) of Arms Act, 1959. The District Revenue Officer, Madurai suspended his licence and also refused his application for its renewal. For offences committed under Section 25(1) (c) and (m) of the Arms Act (i.e. for sale of Potassium

Chlorate to unauthorised persons during 1969-71 in violation of conditions 7 and 10 of licence in form No. XIII) a case (C. No. 2183|75 CC No. 273|76) was filed in the court of Judicial First Class Magistrate II, Madurai, on 11-7-76. The trial of the case has been completed and the case has been reserved for judgement.

Shri M. Alexander, Virudhunagar committed an offence similar to that of Bharat Traders. His licence was suspended by the Collector of Ramanathapuram and the Government of Tamil Nadu instructed the collector, Ramanathapuram on 27-7-72 to prosecute him under Section 25(1) (a) (c) and (m) of the Arms Act. A case in C.C. No. 11|73 was filed in the Court of Additional First Class Magistrate, Virudhunagar, for offences under Sections 25(1) (a) and (m) and 30 of the Arms Act. The case ended in acquittal on 11-9-73. The Government of Tamil Nadu instructed the public prosecutor, Madras on 27-12-73 to prefer an appeal in the High Court Madras, against the aforesaid acquittal. The appeal in C.A.No. 111|74 filed in the High Court, Madras, is still pending.

(v) *Sivagami Chemicals, Sivakasi.*

The licence of M/s. Sivagami Chemicals, Sivakasi was cancelled on 20-2-1971. The licensee was not prosecuted. The licensee discontinued business and left Sivakasi. The Accounts of the Company could not therefore be verified in time."

IV. Control over consumption and distribution of Potassium Chlorate

1.40. It is seen from Audit paragraph that a Research Institute had supplied 2050 kg. of potassium chlorate between March and December, 1974, out of which 2000 kgs. were sold to the Director of a factory who was also a chlorate dealer. The Committee wanted to know the name of the Director and whether he was an authorised dealer. The Member (Excise) has replied during evidence:

"We had asked the Collector to let us know the actual position. He has reported that the verification was made from the invoices and it was found that they were sold to one Mr. Arunachalam who was an authorised dealer in potassium chlorate."

1.41. Asked to whom the dealer could sell the potassium cholrate, the witness has replied:—

> "Generally, to a match factory or anybody else who has a licence from the District Magistrate....Possibly, for agricultural uses, upto a certain quantity, up to 5 kgs., no licence need be shown. Actually this has been one of the loopholes so far as the control is concerned. About the other quantity, the Collector has reported that the disposal of this quantity has been properly accounted for in his records."

1.42. When enquired about the disposal of the balance of 50 kgs., the witness has stated:

> "That appears to have been properly transferred. This was sold to Brilliant Match Works, Sivakasi, who transferred it to Suganthi Match Works. They did not make a proper entry in their books. The Suganthi Match Works has accounted for it."

1.43. Since this instance involved a basic issue, the Committee wanted to know the system for the control and distribution of potassium chlorate. The Department of Revenue and Banking have in a written note stated:—

> "The D.G.T.D. have stated that there is no set system which exists for the control and distribution of potassium chlorate; however, this being an explosive item there are certain standards required for its storage facilities by the individual factories."

1.44. Explaining the administration for the control and distribution of potassium chlorate, the Department of Revenue and Banking have stated in a written note as follows:—

> "Potassium Chlorate attracts the provisions of the Indian Arms Act, 1959 and the Indian Arms Rules, 1962. The State Government administers the above Laws/Rules. The District Revenue Officer is the licensing authority for the dealers and actual consumers of chlorate. Quantitative restrictions are imposed on potassium chlorate (a) at any time; and (b) for the entire year in respect of the maximum dealable quantity. Registers are prescribed to record the day to day distribution of chlorate and to indicate the stock position. At the time of renewal of licenses, the previous years' performance is to be recorded in the renewal application. The State Government authorities viz., Tehsildars, Circle Inspectors of Police, District Fire Officers

and Health Inspectors are the Officers authorised to inspect the stock and account of the chlorate held by the dealers and consumers. The Central Excise Department itself has not been entrusted under law with powers for the control or distribution of potassium chlorate."

1.45. In the Audit paragraph it was pointed out that the Ministry of Finance have themselves stated that during the period 1969 to 1971 there was some laxity in the control over the distribution of potassium chlorate which rendered possible malpractices such as dealers entering in their books certain quantities as sold to certain match units but diverting the quantities to other uses and their removal without payment of duty. The Committee wanted to know the reasons therefor. The Additional Secretary, Ministry of Home Affairs, has stated during evidence:—

"Since 1967—69 there were a number of occasions when some of the extremist elements were using bomb. We set up a study team to find out the leakage of potassium chlorate because this was the ingredient which was found in some of the bombs. In that connection, a very wide ranging study of the various usages etc. of this material was undertaken. In the context of that, it was found that even in the case of match factories which are also substantial users of potassium chlorate, there were certain elements through whom leakage could take place. Potassium chlorate under the Indian Arms Act has been declared to be one of the ingredients of ammunition which requires except in certain quantities which are exempted, a licence or manufacture, for possession and for transport. At all stages, there has to be a licence. Without that, they cannot move it. Yet because of this particular chemical being one of the compounds which is so extensively used in the industry, certain leakages were possible. It is in this context that we had issued certain instructions in August, 1972 bringing to the notice of the State Governments this point of leakage particularly in the sector of match factories. We had issued fairly detailed instructions as to control, regulation and supervision that ought to be carried out."

1.46. The Ministry of Home Affairs have, in a written note, intimated that the following instructions were conveyed by them to State Governments on 30-8-72:—

"(a) All cases of manipulation of the potassium chlorate accounts coming to the notice of Excise Officers would in future be reported to local police for investigation. Dis-

trict authorities should pursue such investigations vigorously.

(b) The question of fixing norms for consumption of Potassium Chlorate is under the active consideration of the Central Board of Excise and Customs. While this is being done, the State Governments should issue instructions to the district authorities that they should ask the manufacturers of matches in their respective jurisdictions to furnish them with periodic statements showing the quantities of potassium chlorate consumed per 100 gross-match-boxes produced (each match box containing 50 match sticks) and if the consumption is found to be far in excess of 8 kgs. per 100 gross match boxes, say 10 kgs. or above, the district authorities should arrange to obtain samples of manufactured matches from the trade and get the Potassium Chlorate contents determined through the Forensic Science Laboratories.

(c) If the difference between actual potassium chlorate content of match and the reported consumption is found to be wide, the concerned match manufacturer should be called upon to explain it and if he does not furnish a satisfactory explanation, further steps should be considered against him, including suspension/evocation of licence for possession of Potassium Chlorate."

1.47. The Committee wanted to know the impact of the instructions on the consumption of potassium chlorate issued by the Ministry of Home Affairs in 1972. The Additional Secretary, Ministry of Home Affairs, has stated during evidence:—

"From 421,000 kg. and 517,000 kg. it came down to 246,000 kg. immediately after the issue of these instructions. This indicates the effectiveness of the instructions."

1.48. The Committee wanted to know whether any control was exercised on the distribution of potassium chlorate. The representative of the Ministry of Chemicals and Fertilisers has stated during evidence:—

"Under the Industries (Development and Regulation) Act, there is no distribution control exercised on potassium chlorate."

Asked whether the imported potassium chlorate is distributed by Wimco, the witness has replied:—

"Potassium chlorate which is imported is not distributed by Wimco. Wimco distributes its own production after meeting its requirements."

1.49. The Committee wanted to know whether Wimco was largely in control both in the matter of production and distribution of potassium chlorate. The representative of the Directorate General of Technical Development has replied during evidence:

"In market distribution, they have only 2,000 tonnes."

1.50. The Committee wanted to know whether there has been complaint against the manufacturing units of Wimco or its licences dealers against diversion of potassium chlorate for uses other than the manufacture of matches and the action taken in the matter. The Additional Secretary, Ministry of Home Affairs, has stated during evidence: —

"We have not received any complaint about the licensee. I would not be able to vouchsafe for this. There may have been or may not have been any complaint."

1.51. The Ministry of Home Affairs have, in a written note, stated the position as under:—

"M/s. Wimco manufacture Potassium Chlorate at the factory in Thana District in Maharashtra. The Government of Maharashtra have reported that no complaints against the manufacturing unit of Wimco or its licensed dealers in regard to diversion of potassium chlorate were received by the Police and no offences were registered."

1.52. Explaining the procedure for distribution of potassium chlorate to small scale units, the Joint Secretary, Department of Industrial Development has stated during evidence:—

"The distribution of this raw material to the small scale units is carried on through the State Directors of Industries and he would have no direct knowledge of what is happening at the State level. From our records, we uderstand that the imported potassium chlorate was distributed by STC to the State Directors of Industries through whom it was distributed to the Registered small scale units. Normally we should know about the small scale units supplying to WIMCO. But unless there is any specific instance brought to our notice, we cannot do anything in the matter."

1.53. Asked if there was a fool-proof method to ensure that the small scale units properly accounted for the quantity of the material received by them in their production, the witness has replied:

> "I would not claim that any particular machinery is foolproof. In this case, we are not directly in the picture. The quantity imported by the STC is distributed through the State Directors of Industries to the small-scale units which are registered with the State Directorates."

1.54. The witness has also stated that the State Directors of Industries are charged with the responsibility of proper distribution of the substance to the registered units within the State.

1.55. The Committee wanted to know if there was no need for co-ordination between the Ministry of Home Affairs and the Central Excise to regulate the activities of the licensees to manufacturers, dealers and consumers of potassium chlorate since it was not controlled and regulated for distribution by any Act. The Chairman, Central Board of Excise and Customs, has stated during evidence:—

> "We would wholeheartedly agree that there is certainly need for complete coordination. In fact, we have been working in co-ordination. When we came to know of certain things, we ourselves, and the Home Ministry on their own part also, tried to look into the matter. They had a study constituted and instructions were issued for tightening up. I would like to submit that this was done in 1972, which is earlier than Audit pointing out this matter. We are grateful to Audit that they have pointed this out, so that the Committee is also looking into the matter, but I would submit that none of these things indicates any lack of co-ordination between Home and ourselves. In fact, we have been working in complete co-ordination with each other."

1.56. The Committee desired to know the parties who were responsible for the malpractices in the distribution of potassium chlorate. The Chairman, Central Board of Excise and Customs, stated during evidence:—

> "These malpractices were being indulged in by dealers of potassium chlorate."

1.57. The Committee wanted to know whether it was not the responsibility of the Central Excise Department to find out those responsible for malpractices since local production by registered

factories was licensed by the District Collector. The Chairman, Central Board of Excise and Customs, has replied during evidence:—

"If it is the responsibility of the district authorities to distribute potassium chlorate, it would be too much to ask the Central Excise to intervene in the matter."

1.58. Asked if it was not the primary concern of the Department of Revenue and Banking to ensure that the collection of revenues were maximised and a sensitive item like potassium chlorate was not directed for utilisation in a wrong fashion, the Chairman, Central Board of Excise and Customs, has replied:—

"The moment it came to our notice, we decided to prosecute the match factories. Then it came out that the dealers are at fault. It is in the court of law that the factories took the plea that it is the mischief of the dealers."

1.59. The Committee wanted to know whether the distribution of potassium chlorate could not be done only through the Excise Department. The Chairman, Central Board of Excise and Customs, has replied during evidence:

"So far as the question of distribution of potassium chlorate is concerned, this is not needed only by the match industry. This is needed by certain other industries also. There is already a mechanism of the district authorities and the district police working under the overall directions of the Ministry of Home Affairs to keep control over the distribution of potassium chlorate. If I may submit, in my opinion, in the case of potassium chlorate, equally important, if not more important, is the factor that this thing should not go into undesirable hands. Therefore, for the Excise Department to have requested that it might be taken off the hands of the district police and district authorities and the Ministry of Home Affairs, who are the real custodians of the country's security from all internal and external dangers would, in my opinion, have been a wrong step."

1.60. The Committee desired to know whether it was expedient to arrange direct distribution of potassium chlorate to the consuming units by the elimination of the middle men altogether to safeguard the broader interests of the country and assist the collection of revenue. The Additional Secretary Ministry of Home Affairs, has stated:—

"We are concerned with the licensing of the dealers. We have not given thought to the elimination of the dealers because

this is a commodity which has a widespread industrial use even in certain small places. Perhaps complete elimination of dealers would cause quite a bit of difficulties."

1.61. The Committee were informed that there were very few producers of potassium chlorate, of which there were four big producers and some small ones. Noting this position, the Committee wanted to know whether the distribution of potassium chlorate by the producers to the match industry could not be done in a better foolproof fashion to avoid the loopholes which existed due to operation of the middle men. The Additional Secretary, Ministry of Home Affairs, has replied during evidence:—

"We would consider this suggestion."

1.62. Adding in this connection, the Chairman, Central Board of Excise and Customs, has stated during evidence:—

"With regard to your suggestion that the middlemen, the dealers, might be eliminated as far as practicable particularly for this industry, we would pursue and examine this. One *prima facie* feels that to the extent we can possibly get rid of some middlemen, the chances of malpractices might decrease. But there may be various other aspects of this question, which will have to be gone into in the Ministry of Home Affairs. We would certainly give our earnest consideration to this."

1.63. Giving details in regard to the manufacturers and dealers of potassium chlorate and their views for the elumination of middlemen, the Ministry of Home Affairs have stated in a written note as under:—

"The five manufacturers of potassium chlorate sell their product ex-factory or through dealers as shown below:—

Total in 1974, 1975 *and* 1976 (*M. Tonnes*)

	Quantity manufactured	Qty. used to manufacture match boxes	Sales Ex-Factory	Sales through dealers	Total Sales
WIMCO	9955·000	5461·100	620·433	3955·500	4575·933
Mettur Chemicals	1195·970	..	1091·330	86·050	1177·380
Pandyan Chemicals	1559·170	..	1238·110	72·200	1310·310
TCM Kundara	2506·170	..	1360·300	944·000	2304·300
TCM Kalamcarey	2724·100	..	2724·300	—	2724·300
	17940·340	5461·100	7034·473	5057·750	12092·223

The above data have been received from the concerned State governments. The reported sales made during 1974, 1975 and 1976 presumably fall into account of the opening balances for respective years.

2. The percentage of total sales to total production during 1974—76 (Three years) as well as sale made ex-factory or through dealers *vide* para 1 is as below:—

	Sales Ex-Factory	Saled through dealers	Total Sales
WIMCO	6·23	39·73	45·97
Mettur Chemicals	91·25	7·19	98·45
Pandyan Chemicals	79·41	4·63	84·04
TCM Kundara	54·28	37·67	91·95
TCM Kalamessrey	100·01	- -	100·01

Although the dealers handle on an average 28.19 per cent of total production, the sales by M/s. Mettur Chemicals and Pandyan Chemicals through dealers is very small as compared with M/s. WIMCO of Maharashtra and TCM Company of Kerala.

There are 63 private dealers in potassium chlorate in Tamil Nadu. At 35 places there is one private dealer each. The remaining 28 private dealers are located at six out of 10 places of major consumption of potassium chlorate where the manufacturers have factory depots.

The private dealers, wherever located, obtain their requirements from factory depots or from the manufacturers ex-factory for sale to consumers. The existence of large number of factory depots at major places of consumption indicates that the major consumers obtain their requirements of potassium chlorate from the factory depots.

The small units in the State who are being encouraged to develop industry, have to resort to purchases from dealers as they are able to obtain credit facilities from this source whereas purchases from factory depots or the manufacturers directly require cash payment. For this main reason, the Government of Tamil Nadu have expressed the view that no useful purpose is likely to be served in eliminating dealers.

Instructions have been issued to State Governments (Appendix III) to adopt specific measures for exercising control on the sale, purchase and use of potassium chlorate. It has been suggested to States that *inter alia* the private dealers connected with the manufacture of match boxes, fireworks or explosives may be eliminated. Accordingly it is felt that the elimination of private dealers totally need not be pursued at this stage and the efficacy of the measures now taken may be watched."

1.64. The Committee wanted to know the checks prescribed to ensure that the potassium chlorate issued for the manufacture of matches was not diverted for other uses. The Department of Revenue and Banking have in a written note stated as under:

"The requirement of potassium chlorate by the match manufacturing units is computed by the licensing authority (State Government) which fixes the quota for a specific period. The quota is fixed with reference to the requirement for the manufacture of matches only so as to minimise the possibility of diversion to other uses. Quarterly verification of stock and accounts by the Police is another check against diversion from the Central Excise side, physical control has been reimposed and banderolling enforced with effect from 1-10-75. The checks made by the Central Excise Department are basically with the object of checking whether all the matches made in a factory have been duly brought to Central Excise account."

1.65. The Committee wanted to know how the leakage of raw material was being resorted to by match factories. The Additional Secretary, Ministry of Home Affairs, has replied during evidence:

"The sources of leakages are two-fold. It was noticed that the match factories in order to save excise duty showed less receipt than they had actually received. And the other was between the dealer who sells it to the match factories and the receipt, there is some malpractice. When we issued these instructions, it had some immediate effect."

V—Bengal Lights

1.66. From the Audit Paragraph, the Committee noted that matches of the type known as 'Bengal lights' were also to be taken into account wherever a factory produced and cleared both safety matches as well as 'Bengal lights' for the purpose of arriving at the

prescribed ceiling. Two factories situated in two different Collectorates paid duty between 1968-69 and 1974-75 at the lower rate of Rs. 3.75 per gross even though the total clearances including those of 'Bengal lights' exceeded the limit of 100 million. The Committee wanted to know the names of these two factories and the action taken for the recovery of the amount on account of under-assessment. The Member (Excise) has replied during evidence:—

> "One is the Arumugam Match Works in Madurai Collectorate. Here, the case was detected by an inspection group of the Collectorate, and not as a result of the audit paragraph. A demand was raised for Rs. 17,176/-. This was quashed by the Appellate Collector and in review a fresh demand for Rs. 5,728/- was made. According to information available with me, this payment is still pending recovery."

1.67. When asked about the other unit of Shanmugha Match Works, Pondicherry, the Member (Excise) has stated:—

> "Since the question of interpretation of law was raised this is under examination in consultation with the Law Ministry."

VI—Evasion of Excise Duty by Mechanised Sector

1.68. It was brought to the notice of the Committee that bigger units deliberately resorted to fragmentation into smaller units to avoid payment of duty. Another evil was that bigger units formed out their production to small scale producers. Audit pointed out that even the WIMCO seemed to have indulged in this by getting WIMCO Matches manufactured by the small units paying duty at Rs. 3.75 per gross though the labels affixed bore the make of WIMCO.

1.69. The Committee wanted to know the total production of matches in both the mechanised and non-mechanised sectors from 1969-70 onwards The Chairman, Central Board of Excise and Customs, has given the following figures which show an increase in

Year	Total Production
1969-70	62·7 million gross boxes
1970-71	68·3 " " "
1971-72	67·8 " " "
1972-73	63·3 " " "
1973-74	71·1 " " "
1974-75	76·9 " " "
1975-76	78·3 " " "

At the instance of the Committee, the Department of Revenue and Banking have furnished in a written note the following information regarding the excise duty realisation for corresponding years and the percentage of revenue increase:—

Year	Revenue (Rs. crores)
1969-70	27·38
1970-71	28·48
1971-72	29·47
1972-73	26·85
1973-74	30·61
1974-75	32·59
1975-76	33·00

Revenue realised during 1975-76 exceeded the revenue realised in 1969-70 by about 20.5 per cent."

1.70. The Committee wanted to know the installed capacity of Wimco in their individual units. The Joint Secretary, Department of Industrial Development, has replied during evidence:—

> "These figures are in million boxes per annum; approved capacity, Ambarnath Unit 756, Madras Unit 965; Calcutta Unit 936. Kletterbuck Ganj 1297, Dubri 1046, totalling 5,000."

1.71. Giving the total capacity utilisation, the witness has stated:—

> "The figures are: 1975—3,734, 1974—4,368 and 1973—4,253."

1.72. When asked for the reasons for the lower capacity utilisation, the witness has explained:—

> "There are two main reasons: One is, at least two, if not three, of their factories had power cut, and the other is, growth of the small scale sector."

1.73. Supplementing further, in this connection, the representative of the Directorate General of Technical Development has stated:—

> "One of the reasons for the lower capacity utilisation in WIMCO in addition to what my colleague has mentioned, is timber shortage. They are bringing timber all the way from

Andamans and it is not coming in the quantities they require. There has been some difficulty in the movement of timber from State to State. For example, they were taking timber from the State of Karnataka for feeding their factory at Ambarnath. The rise of the small scale industry has also hurt them because, in marketing, the small scale industry is now much stronger than it used to be six or seven years ago."

The Committee were informed during evidence that the entire production of matches in the non-power sector was concentrated in the two Collectorates of Madras and Madurai. The Committee wanted to know whether it was possible to exercise even greater control because of such concentration. The Chairman, Central Board of Excise and Customs, has replied during evidence:—

"I would agree with you that if the production is in one area it becomes easier to control it, but these are small factories spread over the whole area."

1.74. The Committee wanted to know the details about the role of Wimco in the matter of production of matches. The Chairman, Central Board of Excise and Customs has replied during evidence:—

"It is a public limited company. We are told that it is a subsidiary of the Swedish Match Company which holds about 54 per cent of the shares of this company. There are five match factories located at Ambarnath, Bareilly Madras, Calcutta and Dhubri. Of course, in addition to that, they have certain other units, like, wood and splints division at Port Blair, a potassium chlorate factory at Bombay, a paper mill at Calcutta and other small factories producing industrial salt at Madras and other places.

In the year 1974, the sales of matches of this factory were of the order of Rs. 38.07 crores which constituted about 92.6 per cent of the total sales of that company. They are selling other products. It is 92.6 per cent of their total sales. In the year 1975, the sales of matches were of the order of Rs. 36.67 crores."

1.75. Adding in this connection, the Member (Excise) has stated:—

"We have figures separately for the power-operated sector which means the WIMCO and the non-power-operated sector which comprised other manufacturers."

1.76. The witness has given the following figures:—

(Figures in thousand gross boxes)

	"Power-operated sector	Non-power operated sector
1969-70	31,953	30,350
1970-71	32,552	33,331
1971-72	32,415	35,412
1972-73	29,094	33,801
1973-74	31,137	39,613
1974-75	29,541	46,967
1975-76	25,258	52,772."

1.77. When asked about the share of WIMCO in so far as the power sector's production was concerned, the Chairman, Central Board of Excise and Customs, has stated:—

"They are the only one."

1.78. The Committee wanted to know whether non-power operated organisations produced matches for Wimco. The Chairman, Central Board of Excise and Customs, has replied during evidence:—

> "It appears that they do make purchases of matches produced by the non-power operated sector under their quality control instructions."

1.79. The Committee wanted to know whether WIMCO had split up its units to restrict its production up to 75 million sticks in order to avail of the concessional rates of duty. The Chairman, Central Board of Excise and Customs has stated during evidence:—

> "It was brought to our notice that WIMCO was purchasing certain products made by the non-power operating factories which had been producing in accordance with the quality control measures introduced by the WIMCO but this system was abolished some time in 1973."

1.80. Asked whether WIMCO had purchased matches from small units after payment of duty at Rs. 3.75 per gross, but recovered duty at Rs. 4.30 per gross from the consumers, the witness has stated:—

> "WIMCO was purchasing some products from the smaller units..... now, this happened during the period, I am told,

when one of the five units of WIMCO was on prolonged strike....In between the two periods, this particular thing happened, *viz.*, they purchased matches manufactured by others, and sold them under their own label."

1.81. In regard to the enquiry whether the affixing of their own labels by WIMCO on match boxes purchased from other sources was permissible under the rules, the witness has replied:—

"It so happened that at that particular time, it was permissible according to the exact phraseology of the notification. When we pointed this out to the Law Ministry they said that we should amend the notification. We did it."

1.82. Asked whether before the issue of the amending notification, the Government had not visualised the scope of such manipulation by Wimco, the witness has replied:—

"I admit that this meant that Wimco, even though ultimately they sold certain things under their own name and label, paid duty which was less, because of the fact that legally these matches had been produced by smaller units. This particular type of situation was not visualised when the earlier notifications were issued years ago in June 1967. For years there was no misuse. It so happened that a situation arose. There was, to our mind, an avoidance. We issued a notification amending it."

1.83. When enquired whether Wimco obtained any permission for such purchases, the witness has stated:—

"No permission is required. No permission was asked for or given....Once the duty has been paid for the goods they can be purchased by anybody."

1.84. The Committee desired to know whether a manufacturer could sell goods by affixing label of a higher excise rate after purchasing them by paying lower rate of excise duty, the Chairman, Central Board of Excise and Customs, has replied:—

"This was the position obtaining earlier, under the earlier notification. This particular notification has a particular clause. It was introduced later. At that particular time the clause was not there. They took advantage of it. We have plugged the loophole."

1.85. At the instance of the Committee, Department of Revenue and Banking have in a written note intimated as under:—

> "It has been stated by Wimco that they did not keep separate account of profits on account of matches purchased by them for the small scale manufacturers. They have further intimated they had not purchased any matches for resale since 1973."

1.86. The Committee desired to know if the purchase of matches by Wimco for marketing under their brand names, was permissible under the rules. In a written note the Department of Revenue and Banking have intimated as under:—

> "Messrs Wimco had given 'No objection' Certificate to the small scale manufacturers to use their brand names and on production, the goods were cleared on payment of duty at the concessional rate by the actual manufacturer with the brand names of Messrs Wimco, as approved by the Central Excise Officers. The name of the factory which manufactured the matches was also inscribed in legible character in the language of the place wherein the manufacture took place. In view of the advice of Ministry of Law, there was nothing in law to prevent Messrs Wimco from purchasing the matches produced and cleared by the units in the small scale sector at the lower concessional rate of duty and bearing the type of labels described above."

1.87. The Committee wanted to know whether the Department had raised a demand of Rs. 1.05 crores on Wimco as differential duty on the matches purchased by them from other manufacturers of non-power sector and marketed under their brand names. The Department of Revenue and Banking have in a written note stated as under:—

> "The Collector of Central Excise, Madras has reported that no demand to the extent of the demand of Rs. 1.05 crores has been raised against the match factories in his Collectorate."

1.88. The Committee drew attention to Rule 71(3) of the Central Excise Rules which required that "every packet, box or booklet or manufacture label affixed thereon shall bear in clearly discernible characters the name of the factory or the distinguishing mark which may take the form of the special design whereby the origin of the

matches can be traced and specimens of such labels shall be submitted to the Collector for his approval and record before they are brought into use" and enquired whether Wimco by affixing its label on matches manufactured in other factories had ensured correct compliance with this rule. The Member (Excise) has stated during evidence:—

> "We have some information on this. It appears that Wimco supplied labels which were basically similar to their labels but the monogram of WIMCO itself was not on them. Apart from that the name of the factory which produced the matches was shown on the label. The question arose whether this was legal in terms of Rule 71(3) and we consulted the Ministry of Law... The Law Ministry's advice was given on 11 February 1972. They say: Rule 71 (3) of the Central Excise Rules requires that the manufacturers' label should be affixed on every packet, box and booklet of matches and that the label should bear in clearly discernible characters the name of the factory by a distinguishing Mark whereby the origin of the matches can be traced. No doubt, the specimens of the labels are to be submitted to the Collector for his approval and record. But, if the labels serve the purpose of tracing the origin of the matches without difficulty, it would not be open to the Collector to refuse permission....It is noticed from the Collector's report that the monogram of WIMCO has been removed from the labels used by match factories other than WIMCO itself. It would also appear that the name of the factory which manufactured the matches is inscribed in legible characters in the language of the place wherein the manufacture takes place. If that is so, the Collector would not be within his rights in refusing to grant the necessary approval."

1.89. The Committee desired to know whether the practice of Wimco was subject to any objection by the Ministry of Industrial Development. The Joint Secretary, Department of Industrial Development has stated during evidence:—

> "I do not think the Ministry of Industrial Development would directly come into the picture in the case of a commercial transaction between a small scale unit and a manufacturing company. If a small scale unit was to manufacture some matches and pass it on to WIMCO under some arrangement; which is legal, probably it is not open to contest."

1.90. When asked as to how was it ensured that the industries of a certain character are not utilised by the Wimco to its advantage, the witness has replied:—

> "Frankly, I think a large number of small scale units not only in this industry but in several other industries do manufacture under licence or other arrangements whole or some parts of the products for major industries. Possibly many of the small units have their living thereby."

1.91. On an enquiry as to why Wimco was not proceeded against, the witness has replied:—

> "The question of proceeding against does not arise. By this arrangement they are not violating any law."

1.92. The Committee desired to know whether the Government should not try to rectify this situation whereby the interests of a foreign monopoly company were being served at the cost of small scale units. The witness has stated:—

> "I must confess that it does not strike us in that way. Probably we will like this matter to be further looked into and I would like to bring it to the notice of our Secretary as well as the Minister."

1.93. Explaining the position about complaints against WIMCO against purchase of products from small scale units, the Joint Secretary, Department of Industrial Development, has stated:—

> "We do not know the precise nature of complaints . . . I understand from the Directorate of Small Scale Industries that the MRTP Commission is *suo moto* conducting an enquiry into this matter on receipt of some information and that the enquiry is still going on. It has not been concluded."

1.94. At the instance of the Committee, the Department of Industrial Development have stated in a written note as under:—

> "Ministry of Law, Justice and Company Affairs (Department of Company Affairs) have informed that the M.R.T.P. Commission instituted two enquiries on 11th October, 1973 under Section 37 of the MRTP Act, 1969, against WIMCO Ltd.—One on a complaint under Section 10(a)(i) by Sivakasi Chamber of Match Industries and the other in exercise of its *suo moto* powers under Section 10(a) (iv) of the Act. According to information received from the Commission, the proceedings in both these inquiries are at final stage of pleadings."

1.95. The Committee desired to know the safeguards which were provided to the small scale industries engaged in the manufacture of matches against exploitation by bigger units like Wimco and whether the same were considered foolproof against all possible manipulations. The Department of Industrial Development have in a written note intimated as under:—

> "The excise relief to the non-mechanised sector itself is a safeguard against exploitation by large units. Besides under the existing Industrial Licensing Policy, safety matches have been statutorily reserved for exclusive development in the small scale sector and as such, no fresh capacity either by setting up new units or by the existing units can now be effected in the large sector. Moreover, there are certain provisions under the MRTP Act also which could act as a safeguard against exploitation of small scale units by the large scale sector."

VII—Import of Potassium Chlorate

1.96. The Committee wanted to know the names of the principal producers and importers of potassium chlorate. The Ministry of Finance have in a written note stated as under:—

> "The DGTD have stated that there are four potassium chlorate manufacturers in the country. Details are as follows:
>
> (i) M/s. Pendyan Chemicals Ltd., Madras.
>
> (ii) M/s. Mettur Chemical & Industrial Corporation Ltd.; Mettur Dam-2, Tamil Nadu (Head Office 2, Salem, Tamil Nadu).
>
> (iii) M/s. Travancore Chemical Manufacturing Co. Ltd., PB No. 19, Alwaye, South Railway, Kerala.
>
> (iv) M/s. Wimco Ltd., Ambarnath, Calcutta.
>
> If the item is to be imported on account of some scarcity during a particular year, the item is normally imported through S.T.C. In 1975, some potassium chlorate was imported through S.T.C."

1.97. Asked about the details of the import of potassium chlorate, the representative of the Ministry of Petroleum and Chemicals has stated:—

> "Imports have been made in the past to supplement the domestic production. In 1973-74, the imports were of the order

of 40 kilograms; in 1974-75, they were 408 tonnes; in 1975-76 (April—Dec. 75), they were 445 tonnes."

1.98. In regard to the enquiry for the small quantity imported in the year 1973-74, the witness has replied:—

"This year there has been no need to import. The production has gone up."

1.99. Explaining the position, the representative of the Directorate General of Technical Development has stated during evidence:—

"In the previous years, the quantity imported was nil. 40 Kgs. must have been some sample etc. But the real imports through the S.T.C. were the last two quantities."

1.100. The Committee wanted to know the uses to which potassium chlorate was put, the witness has stated:—

"This is used as an oxidising agent in explosives, in textile fabrics, medicines, dyes, disinfectants, bleaching, etc., besides match manufacture."

1.101. The witness has further added that the exact purpose of our imports was mainly for the manufacture of safety matches.

1.102. Elucidating further the position in this connection the representative of the Directorate General of Technical Development, has stated during evidence:—

"These imports were through the State Trading Corporation at the specific request. This was done because we received representations from the small scale industry associations that they were finding it difficult to get their requirements of potassium chlorate and therefore the DGTD came into the picture. At that time the import policy for certain chemicals was framed. So, we cleared these chemicals through the STC for distribution who in turn distributed them only through the State Director of Industries to the various units. WIMCO did not get an ounce of it because their own quota was just sufficient to meet their demands."

1.103. At the instance of the Committee, the Ministry of Chemicals and Fertilisers have furnished in writing a note stating the names of the countries from where potassium chlorate was imported

by India since 1969-70 including its quantity and details of the imports made from a Swedish company which had links with WIMCO.

Details of imports of Potassium Chlorate from 1969-70 onwards including its quantity and the names of the exporting countries.

	Quantity	Value
1969-70		
German DRP	85,000 Kg.	Rs. 1,73,570/-
1970-71		
Canada	1,01,725 Kg.	Rs. 6,64,444/-
France	508 Kg	Rs. 2,908/-
U.S.A.	2,540 Kg.	Rs. 1,795/-
TOTAL	1,04,773 Kg.	Rs. 6,85,283/-
1971-72	—Nil—	
1972-73	—Nil—	
1973-74		
German FRP	40 Kg.	Rs. 521/-
1974-75		
German DRP	2,35,000 Kg.	Rs. 14,57,000/-
Spain	1,73,000 Kg.	Rs. 6,75,271/-
TOTAL	4,08,000 Kg.	Rs. 21,32,271/-
1975-76		
Taiwan	1,19,000 Kg.	Rs. 6,34,061/-
German DRP	2,20,000 Kg.	Rs. 13,64,000/-
German FRP	1,00,100 Kg.	Rs. 1,59,282/-
Sweden	5,900 Kg.	Rs. 32,778/-
TOTAL	4,45,000 Kg.	Rs. 35,93,121/-

1.104. Regarding the fact of import from Sweden the Ministry have stated that it has been now ascertained that an import of a quantity of 5900 Kg. of Potassium Chlorate during 1975-76 from Sweden was made by M/s. Pioneer Match Works, Sivakasi.

1.105. The name of the exporting party is Alby Klorate AB, Avesta, Sweden which is owned by Swedish Match Company who are WIMCO's major shareholders.

1.106. The Committee wanted to know the production figures of potassium chlorate. The representative of the Ministry of Petroleum and Chemicals has stated:

> "In the year 1973 the production was 5,485 tonnes; in 1974 it was 5,517 tonnes; in 1975 it has gone up to 6,257; and in 1976 we expect it to be about 6,000 tonnes again. In the past the production has gone up. In 1967 it was only around 4,000 tonnes."

1.107. Asked about the installed capacity and production of potassium chlorate from time to time, the witness has stated:—

> "The installed capacity at present is 7,999 tonnes. One of the units with an installed capacity of 1,825 tonnes has come up only in the year 1975. Till 1974 the installed capacity was less—it was about 6,000 tonnes... In 1970 the installed capacity was 6,174 tonnes, and the production was 5,325 tonnes."

1.108. Explaining the position further, the representative of the Directorate General of Technical Development, has stated during evidence:—

> "One factory has just gone into production in the last year. In the previous years, the capacity was only 6,000 tonnes, out of which 4,200 tonnes belongs to WIMCO and the balance to other small units."

1.109. The Committee wanted to know whether the Government had estimated the optimum requirements of potassium chlorate for meeting the demand of the match manufacturers and whether the internal production was sufficient to meet these requirements. The representative of the Directorate General of Technical Development has stated during evidence:—

> "In 1974-75, the total production of matches was known to be 11,000 million boxes and the potassium chlorate produced in the country to the extent of 6,800 tonnes was sufficient to produce this much quantity of matches. Now, keeping in view the growth of the match industry as an article of common consumption, we have licensed the additional capacity partly by expansion of the existing unit excluding the WIMCO and partly by having new units in

Southern India because the major areas for potassium chlorate are in Southern India."

1.110. The Committee find that the physical control introduced over the match factories in the year 1948 provided for the posting of Supervisory Officer to make a complete survey of the premises, random checks of the several processes including a check on the sticks filled in match boxes, check of wastages in the process of manufacturing, destruction and sale of damaged splints, Veneers etc., transfer of matches from finishing rooms to bonded store rooms and clearances therefrom. This physical control continued to be exercised till 1 June, 1968 when the system of self-assessment by manufacturers otherwise known as 'Self-Removal Procedure' was introduced. This system, inter alia placed a large measure of trust in the manufacturers, their declarations and their accounts. It also dispensed with the day to day verification of clearances by the Central Excise Officers and replaced it by periodical check to ensure that the amounts due to Government have been properly assessed and paid. But at the same time, it was contemplated, as seen from the Finance Minister's budget speech, to safeguard government revenues and for that purpose the penal provisions for unauthorised removal of goods or other contravention of rules and regulations with intent to evade duty, were to be made more stringent.

1.111. The Committee regret to observe that the experience gained after introduction of SRP revealed that the trust reposed in the manufacturers was belied and that there were large-scale evasion of duty in matches. This was highlighted by the S.R.P. Review Committee who in para 12 of their Report had, inter alia, stated that "we have evidence before us which indicates that in many places and on a fairly extensive scale, matches are selling at prices which are lower than the cost of products-cum-duty. This obviously would not be possible unless duty was evaded." The Committee learnt during the evidence that Audit also conducted some studies regarding the impact of Self-Removal Procedure which indicated the possibility of large scale evasion of duty and this was brought to the notice of the Board in June 1971. Chairman, Central Board of Customs and Excise also admitted before the Committee that "with regard to matches it became known fairly early that it was not working well" and that he had brought to the notice of higher authorities. Apprehending large leakage of revenue attributable to the S.R.P. and based on the observation of the S.R.P. Review Committee, the Government rescinded Self-Removal Procedure in respect of matches and introduced physical control in October 1972. It is regrettable that Government had to wait till 1972 to reintroduce physical control over match industry despite early indication of

avoidance of duty on matches. The Committee would like to know how the physical control over matches introduced since October 1972 has helped in achieving the desired objective and has helped in plugging all the loopholes available for manipulations in evasion of duty.

1112. The Committee learn that the system of banderolling of matches was in vogue until 1-10-1968 when it was discontinued following the introduction of Self-Removal Procedure to this commodity w.e.f. 1-6-1968. Under this system, each box or booklet of matches issued from a factory for home consumption bears a banderol of a value appropriate to the rate of duty.

1.113. The main considerations which led to the discontinuance of this system were:

(i) concept of a rigorous control associated with banderolling of matches was out of tune with the concept of Self-Removal Procedure;

(ii) due to a number of cases of forging of bandrols the system had not proved to be 'foolproof'.

(iii) the Security Press, Nasik was not able to undertake printing of banderols because of increase in other security items of work; and

(iv) it was proving quite expensive in as much as expenditure on printing, distribution etc. was estimated to be Rs. 80 lakhs per annum apart from the estimated Rs. 25 lakhs spent by the industry by way of wages on pasting the banderols.

1.114. Experience, however, proved that the discontinuance of banderolling had also helped in the clandestine removal of matches and consequent evasion of duty. The Self-Removal Procedure Committee in para 27 of their Report, therefore, recommended that banderolling of matches is by far the most effective revenue safeguard and should be re-introduced as early as possible. The banderolling was accordingly reintroduced in the non-power sector w.e.f. 1-10-75 and in respect of power operated sector in stages and factorwise i.e., from 16-1-1976 in factories located in Madras and Callcutta, from 16-2-1976 in the factory located in Ambernath and from 16-3-1976 in the factories located in Bareilly and Dhubri. The Committee hope that the system is working satisfactorily and the Department is not encountered with any of the difficulty which led to the discontinuance of this system w.e.f. 1-10-1968.

1.115. The Committee find that different type of methods are employed by the manufacturers to evade duty. These include, inter alia, the removal of goods without payment of duty, use of the same gate pass on more than one occasion, removal of goods without gate pass and use of forged banderoles. The Committee would desire that in the light of the experience gained, the Government should evolve a foolproof system which should ensure effective check against all possible manipulations.

1.116. The Committee find that a quantity of 11,79,795 kgs. of potassium chlorate issued to match industry through various dealers was not brought to account by match units in Madras and Madurai Collectorates during the years 1968—73 which if used in match industry was capable of a revenue yield of Rs. 5.53 crores. The Ministry of Finance have stated that it was not possible to keep an exact track of the disposal of potassium chlorate by the dealers. The Committee are distressed to learn that such serious matter had not received the attention of the State Government because the Excise Department had not intimated to State Government earlier. Only on 5-5-1977 the Home Ministry had asked the State Government and Union Territories to inspect the books of all dealers and factory depots to identify the dealers who were not maintaining proper records or who were not selling potassium chlorate in accordance with the provisions of the Arms Act, 1959, and Army Rules, 1962.

1.117. The Committee have been informed that the Government of Tamil Nadu has initiated action against the 8 dealers in Madras and Madurai Collectorates who sold 11,79,795 kgs. of potassium chlorate during 1968—78 but where receipt was not acknowledged by match factories and against 27 other dealers whose total sales indicated a shortage of 11,765 kgs. of potassium chlorate. The Committee would like to be apprised of the details of the prosecution launched and/or penalty imposed against these dealers.

1.118. The Committee apprehend that the non-accountal of such huge quantities is, in all possibility, the outcome of the laxity or lapse on the part of the officers authorised to conduct inspections of the accounts of the dealers. The Committee would therefore like to know the details of the inspections which were required to be conducted and those which were actually done by the concerned officers. They would also like the Department to fix responsibility for appropriate action against the defaulters, under intimation to them.

1.119. The Committee find that there were a number of dealers who were found to have been responsible for the non-accountal of

the potassium chlorate sold by them. The trial in the case of Bharat Traders, Madurai is reported to have been completed and the case has been reserved for judgment. In respect of Shri M. Alexandar, Virudhunagar, the appeal is said to be pending in the High Court, Madras. The Committee would like to be apprised of the final outcome in both these cases.

1.120. A comparison of potassium chlorate consumed vis-a-vis the quantity of matches produced by a factory during the period June, 1968 to January, 1970 when S.R.P. applied with the corresponding figures of consumption of chlorate and production of matches during June, 1967 to May, 1968 when S.R.P. was not introduced had disclosed that there was a heavy shortfall in production of matches. The Ministry of Finance have stated that as the consumption of potassium chlorate varies from factory to factory and in the same factory from season to season depending on various factors, like the quality and size of the stick, method of dipping of match heads, the efficiency of labour, climatic conditions and the availability of raw materials, no formula has been prescribed for the consumption of potassium chlorate in the manufacture of matches. The Directorate of Inspection, Customs and Excise, however, prescribed a ceiling limit of 5 to 9 kgs. of potassium chlorate for 100 gross of 50 matches in the year 1972. The Committee have been informed that the consumption of potassium chlorate is about 6 kgs. for production of 100 gross boxes of matches packed in 50s in the mechanised sector but it varies widely from 6 kgs. to 14 kgs. in the non-mechanised sector. During evidence, the Chairman, CBE&C has candidly admitted, "The range itself is so wide that it cannot be really a guiding factor." The Committee are perturbed to note the wide range prescribed for the consumption of potassium chlorate in the manufacture of matches which leaves considerable scope for leakage of potassium chlorate for other purposes. The Committee desire that the Department should, on the basis of the experience gained over a number of years, evolve a scientific ratio for the consumption of the potassium chlorate so as to ensure that the actual production of matches corresponds to the production worked out on the basis of that formula.

.1.121. The Committee find that the potassium chlorate is distributed to the consuming units through middlemen who are licensed dealers of the material. There are at present five manufacturers of this material in the country and the dealers handle on an average 28.19 per cent of their total production. There have been instances where these dealers were found to have indulged in malpractices whereby they showed in their accounts certain quantities of potassium

chlorate as having been sold to certain match units which it was subsequently found the latter never received. The Committee feel that the loopholes which exist at present due to the operation of the middlemen can be possible plugged if the potassium chlorate is distributed directly by the producers to the match industry. They would, therefore, desire the Department to consider the feasibility of the elimination of the dealers in so far as the distribution of potassium chlorate to match industry is concerned.

1.122. The Committee find that potassium chlorate upto 5 kgs. can be sold by a dealer to anyone who needs it for agricultural purposes without showing any licence issued by the District Magistrate. The possibility of this quantity procured for agricultural purposes for diversion to other uses including that of manufacture of explosives etc. cannot be ruled out. The Committee, therefore, recommend that the sale of potassium chlorate should not be permitted without a valid licence issued by the authorised District authority.

1.123. The Committee learn that potassium chlorate attracts the provisions of Indian Arms Act, 1959 and the Indian Arms Rules, 1962. The District Revenue Officer is the licensing authority for the dealers and actual consumers of chlorate. Quantitative restrictions are imposed on potassium chlorate (i) at any time and (ii) for the entire year in respect of the maximum dealable quantity. Registers are prescribed to record the day to day distribution of chlorate and to indicate the stock position. The State Government authorities viz., Tehsildars, Circle inspectors of Police, District Fire Officers and Health Officers are the officers authorised to inspect the stock and account of the chlorate held by the dealers and consumers. The Committee find that there was laxity of control over the distribution of potassium chlorate during the years 1969—71 when some dealers entered in their books certain quantities as having been sold to match units but actually diverted the same to other uses without payment of duty. The Additioal Secretary, Ministry of Home Affairs, while admitting this manipulation stated during evidence that "because of this particular chemical being one of the compounds which is so extensively used in the industry, certain leakages were possible." The Committee have not been able to assess the reasons for such manipulations especially when the district authorities were required to inspect the stock and account of the chlorate held by the dealers and consumers. They, therefore, desire the Department to make thorough investigations with a view to ascertain the precise reason responsible for such manipulation. A probe may also be made to find out if there was any failure on the

part of the officers to conduct the required inspections of the stock and account of the dealers at the prescribed periods in order to fix responsibility for lapses.

1.124. The Committee are surprised to note that there is no control over the distribution of potassium chlorate under the Industries (Development and Regulation) Act. It is an explosive material and there should be some legal provision to provide for statutory control over its distribution to avoid all possible chances of its diversion for wrongful purposes. The Committee desire that the matter may be examined in depth.

1.125. The Committee find that the question, whether the matches of the type known as 'Bengal Lights' are also to be included in the total production of a factory which produced and cleared both safety matches as well as Bengal Lights, for the purpose of arriving at the prescribed ceiling to levy excise duty, is still under examination in consultation with the Ministry of Law. The Committee would like the Department to pursue the matter vigorously and apprise the Committee of the decision arrived at in the matter.

1.126. The Committee note that Wimco had been procuring the supply of matches from the non-power operated factories in accordance with their quality control. They had given 'No Objection Certificate' to the Small Scale manufacturers to use their brand names and on production, the goods were cleared on payment of duty at the concessional rate by the actual manufacturers with the brand name of Messrs Wimco as approved by the Central Excise Officers. The name of the factory which manufactured the matches was also inscribed in legible character in the language of the place wherein the manufacture took place. Wimco recovered duty @ Rs. 4.30 per gross from the consumer whereas duty was paid by them @ Rs. 3.75 per gross on matches manufactured by the small units. They continued this practice upto 1973 as thereafter no purchases have been made by them from small scale manufacturers for resale. On being enquired whether any permission was obtained by Wimco for making such purchases, the Chairman, Central Board of Excise and Customs had deposed during evidence: "No permission is required. No permission was asked for or given. Once the duty has been paid for the goods, they can be purchased by any body." The Department of Revenue have also stated that "in view of the advice of the Ministry of Law, there was no law preventing M/s. Wimco purchasing the matches produced and cleared by the units in the small scale sector at the lower concessional rate of duty. The Committee are surprised at the way Wimco was allowed to reap unintended benefits by paying lower rate of excise duty to Government

and charging higher rate from the consumers thus defrauding the National Exchequer of the legitimate dues. It is pertinent to note in this connection that Wimco also had not kept separate account of profit, account of matches etc. purchased by them from small scale manufacturers. Charged as it is with the responsibility for the collection of duty, the Central Board of Excise and Customs should have visualised this type of situation at the time of issue of their notification in June 1967 and should have left no scope for any manipulation of the type as has been resorted to in the instant case. The Committee understand that since 1973 the notification permitting the use of Wimco label by small scale producers has been rescinded. The Committee would like the Department to assess the loss of duty to Government due to such manipulations by Wimco prior to 1973. The Committee are also not sure whether the practice adopted by Wimco, apart from having led to loss of revenue to the Government has had any detrimental effect on the growth of Small Scale and Cottage Industry in the field of manufacture of matches. The Committee would like to have a report on this aspect also.

1.127 The Committee also learn that the Monopolies and Restrictive Trade Practices Commission is conducting inquiries against Wimco on complaints made by Sivakasi Chamber of Match Industries in regard to the purchase of products by them from small scale units. The Committee would like to be apprised of the findings of the Commission in due course.

1.128 While on the one hand Wimco has been exploiting the small scale producers, the Committee find that they have not been producing to the full capacity themselves as would be evident from the following figures: (total capacity 5,000 million boxes capacity utilised 1973-74—4368 million boxes 1975—3734 million boxes). The Ministry of Industry have given some reasons for under-utilisation. The Committee, however, do not feel convinced of those explanations. It requires to be explained how despite the claim of Wimco to have stopped utilisation of small scale producers for manufacture of their products, their capacity utilisation instead of showing increase has shown decrease after 1973.

1.129. This is also clear from the comparative statement of production of power operated sector vis-avis non-power operated sector (Wimco are the only unit in power operator sector). The Committee, therefore, like a thorough probe in the matter.

1.130. The Committee are perturbed to note that a foreign monopoly concern like Wimco has been able to promote its interests at

the cost of small scale units by purchasing matches manufactured by the latter. The Committee feel that some rectificatory steps should be taken by Government to curb such practices in future. During evidence, the Chairman, CBE & C had assured the Committee that "probably we will like this matter to be further looked into and I would like to bring it to the notice of our Secretary as well as Minister." The Committee desire this matter to be examined speedily and the outcome reported to the Committee.

1.131. The Committee find that the quantities of potassium chlorate imported during the years 1973-74, 1974-75 and 1975-76 were of the order of 40 kilograms, 408 tonnes and 445 tonnes respectively. The reasons for the phenomenal increase in the quantity of import from 40 kilograms in 1973-74 to 408 tonnes in 1974-75 and 445 tonnes in 1975-76 are not comprehensible to the Committee. They would like to be apprised of the reasons therefor.

AERATED WATERS

Audit paragraph

2.1. Aerated waters commonly known as "soft drinks", were first brought under excise from 1st March, 1969 under the tariff item 1 B. Effected from 1st March, 1970, a distinct item 1 D, was created in the tariff for "aerated waters, whether or not flavoured or sweetened and whether or not containing vegetable or fruit juice or fruit pulp". The rate of duty was fixed at 10 per cent *ad valorem*. By virtue of a notification dated 1st March, 1970, duty under this item became leviable only if the aerated waters—

(i) were sold under a brand name, *i.e.*, a name or a registered trade mark under the Trade and Merchandise Marks Act 1958; and

(ii) in or in relation to the manufacture of which any proces is ordinary carried on with the aid of power.

2.2. With effect from 17th March, 1972 the tariff rate of duty on aerated waters was enhanced to 20 per cent *ad valorem*. By issue of a notification on 17th March, 1972, the effective rate of duty of 10 per cent *ad valorem* was retained in respect of aerated waters other than those in the manufacture of which blended flavouring concentrates in any form were used.

2.3. The enhancement of the rate of duty and the conditional duty exemptions had the result of encouraging manufacturers in one collectorate to avoid duty on aerated waters produced by them. Out of 17 units engaged in the manufacture of aerated waters in two collectorates paying duty of Rs. 11.90 lakhs in 1970-71 and Rs. 14.13 lakhs in 1971-72, 13 units owned by two manufacturers sought exemption from levy of duty in March-April, 1972 by de-registering their brand names. These units, however, continued to produce and sell their products under the same names even after de-registration. As a consequence, duty to the extent of Rs. 25.91 lakhs for the period from 1st April, 1972 to 31st December, 1973 was avoided.

2.4. The notification dated 1st March, 1970 was amended on 1st March, 1974, dispensing with the criterion of registration of brand names for levy of duty. An auxillary duty of 50 per cent of basic excise duty was also levied with effect from 1st March, 1974. Consequently, the 13 units which out of excise control from March-April,

1972, were brought again under excise. In May, 1974, the Government exempted aerated waters from central excise levy, if—

(i) in or in relation to the manufacture of which no process is ordinarily carried on with the aid of power;

(ii) in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power, the total equivalent of power so used by or on behalf of a amanufacturer in one or more factories does not exceed 10 Horse Power.

2.5. The two manufacturers, referred to above, re-arranged their manufacturing operations as under:—

2.6. One manufacturer having seven factories spread over two collectorates and marketing his aerated waters under a common brand name was paying duty in respect of one factory only, where power equivalent to 130 HP was used, and took away the remaining six units from excise control by disconnecting power used therein for manufacture.

2.7. The other manufacturer having ten factories spread over two collectorates and marketing his aerated waters under the same brand name paid excise duty for aerated waters manufactured and cleared from one factory only, although the aggregate power used by him in all his ten factories exeeded 10 H.P.

2.8. In terms of the notification of May 1974, the sum total of power used by these manufacturers in all their units being in excess of 10 HP for each manufacturer, the aerated waters manufactured in all their units should have been charged to duty. Omission to do so resulted in escapement of duty amounting to Rs. 8.62 lakhs on products manufactured in units which went out of excise control.

2.9. The paragraph was sent to the Ministry of Finance in October, 1975 and their reply is awaited (February, 1976).

[Paragraph 42 of the Report of the Comptroller & Auditor General of India for the year 1974-75—Union Govt. (Civil) Vol. I, Indirect Taxes—Union Excise Duties].

2.10. Two leading manufacturers of aerated waters in Madras and Madurai Collectorates, namely M/s Kali Aerated Water Works Ltd., Virudhunagar and M/s Vincent & Co. (P.) Ltd., Trichy and having 17 units under them were marketing their produce under the brand names 'Kali Mark' and 'Vincents' respectively. These units had paid a duty of Rs. 11.70 lakhs in 1970-71 and Rs.

14.33 lakhs in 1971-72. However, M/s. Kali Aerated Waters got their trade name de-registered on 25th March, 1972 and M/s. Vincent & Co. on 22nd April, 1972. Resultantly thirteen out of 17 units referred to above went out of excise control from March/April, 1972. Even though de-registered, these manufacturers continued to produce and sell their products under the same name thus resulting in the escapement of duty amounting to Rs. 25.91 lakhs, during the period from 1st April 1972 to 31st December, 1973.

2.11. When from 1st March, 1974, the Government dispensed with the criterion of registration of trade names, etc. 13 units of the two manufacturers which had gone out of the excise net in March-April, 1972 were brought under excise not again from the same date. However, with the issue of notification No. 82/74 dated 1st May, 1974, the position was reversed again. As stated already the notification provided exemption from duty for aerated waters in relation to the manufacture of which the total power employed by a manufacturer in one or more factories did not exceeded 10 H.P. After the issue of this notification dated 1st May, 1974, the two manufacturers re-arranged their manufacturing operation as below:

(ii) M/s Kali Aerated Waters having seven factories spread over two collectorates and marketing their aerated waters under a common brand name were paying excise duty in respect of one factory only out of seven where the total horse power used by the manufacturers exceeded 130 H. P. Thus, as the total horse power used by the manufacturers exceeded 130 H.P., they were liable to pay duty in respect of the clearances effected in the other six units also where no power was used at all. In respect of these six units, an amount of Rs. 5,63,808 (approx.) of duty for the period from May, 1974 to March 1975 was recoverable from the manufacturers.

(ii) The other manufacturers M/s. Vincent & Co. having ten factories spread over 2 collectorates and marketing their aerated waters under the same brand name paid excise duty for aerated waters manufactured and cleared from one factory alone although the aggregate power used by them in all their 10 factories exceeded 10 H.P. The approximate duty thus not recovered in respect of the other units of the manufacturers amounted to Rs. 2,97,840 for the period from May, 1974 to March, 1975.

2.12. The omissions to charge duty from all these units using power in excess of 10 H.P. for manufacture of aerated waters had thus resulted in the escapement of duty amounting to Rs. 8.62 lakhs (approx.) during the period May, 1974 to March, 1975.

2.13. The Committee wanted to know the total number of units of aerated water in the organised sector and their total production. The Joint Secreary, Department of Industrial Development, has replied during evidence:

> "There are 34 units engaged in the manufacture of soft drinks in the organised sector as on date. 21 are those of the Coca-Cola, that is Indian bottlers enfranchised by the Coca-Cola Export Corporation and Production for the three years are: 1975—730 million bottles; 1974—631 million bottles and 1973—987 million bottles."

2.14. Subsequently the Department of Revenue and Banking have furnished in a written note on the names of the units which are borne on the books of D.G.T.D. and their brand names which are reproduced in Appendix IV.

2.15. The Committee wanted to know the total number of units which produced aerated waters as on 1-3-1970 and the number amongst them which had brand names. The Department of Revenue & Banking have furnished, in a written note a statement containing these details which is reproduced in Appendix V.

2.16. The Committee noted that duty on aerated waters was made effectived w.e.f. 1-3-1970 subject, *inter alia,* to the condition that the acrated waters were sold under a brand name. The Committee wanted to know when the process of de-registration of the brand name had started. The Officer on Special Duty, Department of Revenue and Banking has stated during evidence:

> "Upto 1972, to our knowledge nobody de-registered. On 25 March 1972, one manufacturer—Kali Aerated Water Company—de-registered and in April 1972, another maufacturer—M/s. Vincent & Company Private Ltd.—also deregistered. This was reported to us by the Collector on 18th, May, 1972."

2.17. The Committee desired to know about the total number of manufacturers who de-registered their brand-names after they were brought under excise w.e.f. 1-3-1970 and the number of units which went out of the purview of the excise levy by de-registration. The Department of Revenue & Banking have, in a written note, stated as under:

> "In addition to the two manufacturers referred to in the Audit para, 14 manufacturers had got these brand names deregistered after they were brought under excise control

on or after 1-3-70. Of them 12 units went out of excise control."

2.18. In regard to the reasons advanced by the manufacturers in support of their request for de-registration, the Department of Revenue & Banking have intimated in a written note:

"In respect of the 4 manufacturers who got their brand names de-registered after they were brought under excise control on or after 1-3-1970, it has been reported by the concerned Collectors, except for the Collector of Central Excise, Poona, that none of the licenses intimated the reasons for de-registration of their brand names either immediately before availing the benefit of the concessional rates or after actual de-registration.

The Collector of Central Excise, Poona, has reported that the relevant files of the concerned offices for the year 1970 dealing with the matter of de-registration etc. are not available and, therefore, it is not possible to indicate the reasons attributed by the party for de-registration either immediately before availing themselves of the benefit of the concessional rate or after actual de-registration."

2.19. When enquired about the action taken by the Government on receipt of information about the de-registration of M/s Kali Aerated Water Company and Vincent and Company (Private) Limited, the Officer on Special Duty, Department of Revenue and Banking has replied:—

"In this case, when the Collector of Central Excise, Madurai, reported about the de-registration of these two companies, the matter was reported to the Director of Inspection to study whether this is a widespread disease. The Director, after enquiries, reported that in his view there was no need to amend the notification of 1st March, 1970. In fact, from this point a review was made and it was decided that the time was not ripe for a change."

2.20. Giving the reasons for the decision, the Chairman, Central Board of Excise and Customs, has stated:—

"Reports were called for from all the Collectors of Central Excise.....All the Collectors except of Allahabad, Kanpur.....reported no manufacturer of aerated water has got the brand name de-registered.... to escape payment of duty.... The Collector of Madras reported two manufacturers, Kali and Vincent...."

Then comes the operative portion:

> "From the above it will be seen that there is no marked tendency to de-register brand names.... in our view, therefore, there does not appear to be any need to amend Notification No. 18/70 dated 1-3-72."

2.21. When asked whether the above report was agreed to by the Ministry, the Chairman, Central Board of Excise and Customs, has replied in the affirmative.

2.22. The Committee wanted to know when was the position reviewed. The Chairman, Central Board of Excise and Customs, has replied:—

> "After about 8 months, it was felt that we should have a further review of the position."

2.23. Asked if the decision taken earlier was not ill-advised, the witness has stated:—

> "You will notice that the Director's report was that there was no racket. He said that there was no 'marked tendency'. I would agree with you that if it is noticed that this is becoming a land slide, certainly we will have to take action."

2.24. Asked if without a registered brand name, the manufacturer could continue to market his goods with that name on a large scale, the Chairman, Central Board of Excise and Customs, has replied:—

> "The rationale is that after de-registering the brand name, anybody can use the same brand and name. So, if you are not registered, then somebody else can make use of that.... A producer takes a calculated risk in de-registering his brand name. And producer worth his name who values his brand name will not de-register it. I say it with full authority that Coca-Cola will not de-register its brand name even if you pay them a crore of rupees. If Vincent and Vimto, for instance, were popular and they had registered their brand names, it prevented persons from producing the same thing and putting the labels with the same names. But immediately the brand is de-registered, anybody can go and call their products as Vincent and Vimto and Vincent cannot go and file any suit, against any person because it has been de-registered. Therefore, in the opinion of the Government, no reputed manufacturer will

de-register his brand-name because the latter has a lot of goodwill."

2.25. The Committee asked as to how the Companies were allowed to evade duty to the tune of lakhs of rupees by de-registration. The Chairman, Central Board of Excise and Customs, has stated:—

"This will not be evasion but this will be avoidance."

2.26. Asked if it was not the responsibility of the Department to plug loopholes for the avoidance of duty, the witness has stated:—

"It is my duty to advise the Minister to plug avoidance also. But the avoidance cannot be punished. Avoidance can be plugged for future by amending the law."

2.27. The Committee asked if the Department did not anticipate that on de-registration the manufacturers would make large amount of money by avoiding payment of excise duty. The Chairman, Central Board of Excise and Customs, has replied:—

"Government has to take a calculated risk to reduce its administrative responsibilities. A person who de-registers runs the risk of a competitor coming into the field, using the same brand and putting it out as his product, in which case it will not be possible for the former to take any legal action; but if it is registered, he can take legal action. That is why we felt that this was a good-enough protection. And you will appreciate that it is so. That it was an effective check, is proved by the fact that till 1972-73 when the rate of duty was raised to 20 per cent—on a 10 per cent rate no single person de-registered because everybody felt it was not worth it; but when we raised it to 20 per cent some marginal manufacturers felt that it was worth it and took the risk. For the government, the alternatives were that either it had to spread its net very wide and waste a lot of money and effort to collect money from very small manufacturers. Otherwise we had to take a view and determine things, and see that only registered brand-names would have to pay the duty."

2.28. The Committee desired to know whether it was not the duty of the Department to keep a watch on the avoidance of duty consequent on certain exemptions in duty which could lead to malpractices. The Chairman, Central Board of Excise and Customs, has replied during evidence:—

"In so far as avoidance of tax is concerned, I wonder whether it came to your notice that even during the last meeting

of the Customs and Excise Advisory Committee, I requested the trade and industry to bring to our notice instances of avoidance, apart from evasion, because there is unfair competition between honest tax-payers and those who are avoiding it. It is not that I do not have my own sources. I do get information and wherever necessary, corrective action is taken. The only thing on which I crave your indulgence is, in so far as avoidance is concerned, merely because I am losing some lakhs of rupees, apparently does not mean that I must go and make a change in the system, because it is inherent in any system of giving facility, giving encouragement to small producers."

2.29. Asked if the action taken by the Government in March, 1974 to amend the notification issued earlier was justified, the witness has replied:—

"In 1974 Government, I think inadvisedly, said 'it does not matter, even if it is not registered'. Within a couple of months the Government had to retreat. It was such an ill-advised step that the Government had to take back the notification and introduce another criterion, which is also getting avoidance. In any system of excise taxation, if you want to keep your administrative costs within certain limits and if you want that the small producer should not be harassed, you will have to lay down a criterion for judging the small producer, marginal producer and things like that. There will be people who will go round it legally. This is like what happens in the case of income-tax day in and day out."

2.30. At the instance of the Committee the Department of Revenue and Banking have furnished in a written note the following figures of the revenue collected from aerated waters during the period 1972-73 to 1976-77:—

(Rs. Crores)

Year	Basic duty	Aux. duty	Total
1972-73	6·35	Nil	6·35
1973-74	5·49	0·29	5·78
1974-75	5·53	2·77	8·30
1975-76	5·92	2·61	8·53
1976-77	9·16	0·17	9·33
(April to October Provisional)			

2.31. Giving the reasons for the declining trend in revenue realisation of basic duty after 1972-73 and the action taken to avert this trend, the Department of Revenue and Banking have stated:—

> "It will be seen from above that revenue from basic duty showed a decline in the year 1973-74 as compared with the year 1972-73. Thereafter there has been a slight increase each year in the basic duty collected on this item. If auxiliary duty is taken into account, it is found that the realisation has been on the upward from 1973-74 onwards.
>
> Apart from adjustments in the rate of duty, in order to see that units did not avoid duty by de-registering brand names and continuing to use them, Notification No. 18/70, dated 1-3-70 was amended by Notification No. 20/74 dated 1-3-74 which barred exemption where a mark, brand name etc. was used, whether registered or not.
>
> In order that exemption might not be available to a manufacturer having several factories and using a small quantum of power in each. Notification No. 82/74 dated 1-5-74 was issued in supersession of Notification No. 18/70 dated 1-3-70, barring the exemption where the total equivalent of power used in such factories came to 10 H.P. or more."

2.32. The Committee wanted to know the purpose for which exemptions were granted from payment of duty on 12 May, 1974. The Chairman, Central Board of Excise and Customs, has replied during evidence:

> "Sometimes the government gives exemption on account of administrative reasons or on account of reasons to give encouragement to cottage and small scale sector."

2.33. The Department of Revenue and Banking were asked to indicate the objective for the issue of exemption notification dated 1-5-74 and whether the same was achieved. In a written note, the Department have stated as under:

> "It is confirmed that the objective of the exemption dated 1-5-1974 was to give relief of duty to the small units which were brought under excise levy due to the revised criterion in the Budget of 1974 and at the same time to ensure that the organised sectors would be in the dutiable category. Unfortunately it would be seen from the figures supplied that the production of aerated waters in unorganised sector had declined in 1974-75 (195000 thousand bottles) *vis-a-vis* 1973-74 (258257 thousand bottles)."

2.34. The Ministry have explained the reason for non-fulfilment of objectives as follows:—

"From the statistics available with the Department and indicated in the enclosed Appendix VI, it may be observed that the effect of the exemption appears to have been nullified by other factors. This was a period which witnessed a great spurt in prices. The all-commodities index of whole-sale price rose from 188.4 in 1971-72 to 207.1 in 1972-73, 254.2 in 1973-74 and 313.8 in 1974-75. This all-round rise in the prices might have had a deleterious effect on the consumption and consequently on the production of aerated waters in the organised and unorganised sectors. The prices of two important ingredients, namely, carbon-dioxide and sugar also showed a sharp rise as may be seen from the following table:

"Base 1961-62—100

	Sugar	Carbon-dioxide
1971-72	170·5	226·2
1972-73	210·4	234·8
1973-74	216·8	245·5
1974-75	240·8	302 8"

2.35. The Committee wanted to know the precautions which were taken by the Department at the time of the imposition of duty to ensure that there was no avoidance or evasion. The Chairman, Central Board of Excise and Customs, has replied during evidence:—

"All possible aspects are taken into consideration whenever an exemption criterion is laid down. We are almost if I may say, so certain that some marginal units will try to go below or beyond the level or go beyond that particular notification in order to avoid the payment of duties. This is inherent in any system of exemption on small units. Supposing you go and say that up to 5 workers you will exempt, then those units which are employing 6 or 7 workers would say that they would reduce the number to 5 workers in order to get the exemption. Again when you lay down the criterion of registered brand marks, people will start de-registering the brand marks and would say that they had de-registered. So, a certain amount of deliberate avoidance of taxes would always be there in such cases."

2.36. The Committee wanted to know the reasons which led to the change in 1974 of the notification issued earlier The Chairman, Central Board of Excise and Customs, has replied during evidence:—

"What had happened was that the earlier exemption was granted on the basis that a person who does not have a registered mark will be exempted up to 1972, there was hardly any attempt to de-register the trade marks. But, later on, gradually, as time passed, we found, in April, 1973, that there was a marked tendency to de-register the trade marks. There was a report from the Collector of Central Excise, Bombay, intimating that this was happening. At the time of the Budget, the Finance Minister changed the basis of the exemption from registered mark to any brand or name which indicates a connection between the manufacturer and the product. When this happened, every manufacturer of aerated waters came under excise levy, however, small he was because, under the Prevention of Food Adulteration Act, every manufacturer of aerated waters had to indicate on the bottle as to who is the manufacturer. This was clearly an unanticipated thing. It was not intended to bring within the purview of the excise net small manufacturers. There was a lot of agitation about this from the small manufacturers. The Members of Parliament also raised this question on the floor of the House. Therefore, finally, when this matter was considered sometime in May at the time of passing the Budget, it was decided by the Finance Minister that the criterion for exemption may be changed from registered trade mark to units which use up to 10 H.P. collectively in all the factories. If a person has more than one factory, it will be totalled up. As long as the person used up to 10 H.P. in the production of aerated waters, he will be exempt."

2.37. The Committee drew attention to the following instances referred to in the Audit Paragraph:—

"One manufacturer having 7 factories spread over two collectorates and marketing his aerated waters under a common brand name was paying duty in respect of one factory only where power equivalent to 130 H.P. was used and took away the remaining six units from excise control by disconnecting power used therein for manufacture.

The other manufacturer having 10 factories spread over two collectorates and marketing his aerated water under the

same brand name paid excise duty for aerated waters manufactured and completed from one factory only although an agregate power used by him in all his 10 factories exceeded 10 H.P."

2.38. They wanted to know how the manufacturers took their 15 factories out of the excise control. The Chairman, Central Board of Excise and Customs, has replied:—

"What has happened in these two cases is that these two particular manufacturers disconnected power from other units and since those units became non-power operated units, they came within the exemption... So far as the non-power operated factory is concerned, all along that was exempted and even under the new notification which was issued on 1st May, 1974. All that was sought to be done was to club together the power used in the case of power-operated factories. The exemption which was available earlier to non-power operated factories continued as such."

2.39. The Committee wanted to know whether in respect of any particular manufacturer which had a number of units spread over different collectorates, the total consumption in different collectorates or the consumption in one unit in one collectorate was taken into account for the purpose of calculation of total horse power. The Chairman, Central Board of Excise and Customs, has replied:—

"From the notification, it is clear that it will be the totality of HP used throughout the country by or on behalf of a particular manufacturer. But this is confined only to the power operated factories and where a factory is non-power operated, irrespective of who owns it, it goes into the separate exempted category."

2.40. The Committee wanted to know why the power used for pumping water to overhead tanks was not counted against the total power supply available to an aerated water manufacturing installation. The Chairman, Central Board of Excise and Customs, has replied:—

"You have to look at the Notification. It says:

'Provided that in or in relation to the manfacture of such aerated waters, no process is ordinarily carried on with the aid of powder.'

What has been reported is that power was used in these cases for filling the overhead tanks with water. In big buildings

and hotels, you will find a pump being used to push the water up to the overhead tank. That was what was done. From the overhead tank, water came with the force of gravity for cleaning and other purposes."

2.41. The Committee drew attention to the speech of the Finance Minister in Parliament made on 30-4-74 wherein he had stated that—

"In the light of the various representations received and studies made, I propose to give suitable relief to the small units by exempting aerated waters produced with the aid of power where the extent of power used by or on behalf of a manufacturer in one or more factories does not exceed 10 H.P., in replacement of the existing exemption."

and wanted to know how could the big manufacturers like Vincent came under the concept of small units because of their total production. The Chairman, Central Board of Excise and Customs, has replied:—

"In these matters, when we get some doubt, we go to the Ministry of law and consult them... I would like to clearly one point. It has been further reported that this particular water which came from the overhead tank was not the water which went into the bottle; this water was used only for cleaning and other purposes."

2.42. The Committee wanted to know the names of all the manufacturers who evaded duty, on the plea of running non-power operated factories but were using power for pumping water to the overhead tanks which they claimed was meant for cleaning of the bottles only and the action taken in the matter.

2.43. The Department of Revenue and Banking have in a written note furnished details of the cases where duty was evaded indicating *inter-alia* the names of the manufacturers, the amount of duty involved and the latest position of the action taken, which are reproduced as Appendix VII.

2.44. The Committee wanted to know the *modus operandi* in regard to the evasion of taxes. The Chairman, Central Board of Excise and Customs, has replied during evidence:—

"In so far as the *modus operandi* of evasion is concerned, this is, by and large, the same in respect of all commodities. They will clear the goods without showing the same in their records as having been produced. Either they might surreptitiously clear them without any documents, or they

might come and use the gate pass twice or even thrice. Then, there is the other method. If the duty is on *ad valorem* basis they might under value the goods. These are the usual types of *modus operandi* used by the people.

Our checks are that we have preventive parties to see that these things do not happen. They have to ensure whether the goods are covered by proper documents etc."

2.45. When asked whether the Departmental Officers were helping the manufacturers in the evasion of duty, the Chairman, Central Board of Excise and Customs has replied:—

"We have compulsorily retired a large number of persons, even apart from exemplary punishments awarded otherwise."

2.46. The Committee wanted to know the names, designations and the details of the punishment awarded to the persons against whom charges were proved for indulgence in malpractices in respect of "Aerated Waters". The Department of Revenue and Banking have stated in a written note that:—

"Information on the above aspect was called for from all the Collectors. No such case has been reported by any Collector."

2.47. The Committee find that by virtue of a notification dated 1-3-1970 duty under Item ID i.e., "aerated waters whether or not flavoured or sweetened and whether or not containing vegetable or fruit juice or fruit pulp" became leviable only if the aerated waters (i) were sold under a brand name i.e., a name or a registered trade mark under the Trade and Merchandise Marks Act 1958 and (ii) in or in relation to the manufacture of which any process is ordinarly carried on with the aid of power. With effect from 17 March, 1972 the tariff rate of duty on aerated waters was enhanced. Consequent upon such enhancement, taking advantage of the conditional exemption granted to un-registered aerated waters, the manufacturers in one Collectorate avoided paying duty completely. In other Collectorate out of 17 Units engaged in the manufacture of aerated waters paying duty of Rs. 11.90 lakhs in 1970-71 and Rs. 14-13 lakhs in 1971-72, 13 units sought exemption from payment of duty in March-April, 1972 by de-registering their brand names, although these units continued to produce and sell their products under the same name even after de-registration resulting in a loss of revenue to the extent of Rs. 22.91 lakhs during the priod April, 1972 to December, 1972.

2.48. The Committee are surprised to learn that although upon the Collector of Central Excise Madurai informing that 2 companies in his jurisdiction had de-registered, the Directorate of inspection was asked to study whether this was a widespread disease, he reported that it was not so and the Board of Central Excise and Customs also agreed with his report. This decision of the Board had, however, again to be revised by them after 8 months leading finally to completely dispensing with the criterion of registration of brand names for levy of duty, in March 1974. The Committee are not convinced with the arguments given by the Chairman of the Central Board of Excise that they had completely done away with the criterion of registration because in their opinion no registered manufacturer could have de-registered his brand name because he had a lot of goodwill. The Committee feel that if the avoidance of duty pointed out by the Audit in the case of 2 Collectorates alone is any indication, the total avoidance of duty in all the collectorates taken together must be considerable. In fact, the Secretary, Ministry of Finance, had himself conceded that "in 1974 Government, I think, unadvisedly, said 'it does not matter, even if it is not registered'. Within a couple of months the Government had to retreat. It was such an ill-advised step that the Government had to take back the notification and introduce another criteria".

2.49. The Committee have been informed that besides M|s. Kali Aerated Waters Works Ltd., Virudhunagar and Vincent & Co. (P) Ltd,. Trichy, 14 other manufacturers of aerated waters got their brand names de-registered after they were brought under excise control on or after 1.3.1970. It is distressing to note that none of these manufacturer licensees advanced any reasons for the de-registration of their brand names immediately before availing the benefit of concessional rates or after actual de-registration. If such reasons were given, it would have perhaps enabled the Department to ascertain their genuineness and ensure that the manufacturers were restrained from manipulations to avoid or evade the duty realisable from them. The Committee, therefore, desire that the Department should arm itself with the powers, if it does not have already, to make it obligatory for the manufacturer licensees to give cogent and precise reasons in support of their request for de-registration.

2.50. The Committee find that the Government issued another notification on 1-5-1974 to grant exemption to aerated waters from central excise levy if—

(i) in or in relation to the manufacture of which no process is ordinarily carried on with the aid of power;

(ii) in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power, theb total equivalent of power so used by or on behalf of a manufacturer in one or more factories do not exceed 10 House Power.

2.51. The objective of this notification was to afford relief to the small scale units which were brought under excise levy due to revised criterion introduced by notification dated 1-3-74 dispensing with the criterion of brand name for levy of duty in vogue earlier. The Committee, however, find that the production of aerated water in the unorganised sector instead of increasing had declined from 258257000 bottles in 1973-74 to 195000000 bottles in the year 1974-75.

2.52. The Committee note that after the issue of notification dated 1-5-74, two leading manufacturers of aerated waters in Madras and Madurai Collectorates re-arranged their manufacturing operations in a most clever manner so as to avoid payment of duty. M|s. Kali Aerated Waters had seven factories spread over two Collectorates and marketed their aerated waters under a common brand name but paid excise duty in respect of one factory only out of seven. The other manufacturer, Vinsent & Co. (P) Ltd., had ten factories spread over two Collectorate and marketed their aerated water under the same brand names but paid excise duty for acrated waters manufactured and cleared from one factory. Explaining the background, the Chairman, Central Board of Excise and Customs, stated during evidence, "What has happened in these two cases is that these two particular manufacturers disconnected power from other units and since those units became non-power operated units, they came within the exemption....."

2.53. The Committee have been informed that the approximate amount of duty avoided by the former manufacturer was Rs. 5,63,808 and that by the latter Rs. 2,97,840 for the periods from May, 1974 to March, 1975. The Committee are distressed to note that in his case adequate steps had not been taken to ensure that the ill-conceived benefit was not reaped by unscruplous manufacturers. The Committee feel that as an agency entrusted with the collection of excise duty, the Central Board of Excise and Customs should have exercised greater vigilance and taken corrective steps in time to ensure that such undue advantage did not become available by manipulations.

2.54. The Committee have also not been able to understand the logic behind the fixation of the ceiling of 10 H. P. in respect of power

used by or on behalf of a manufacturer in one or more factories, producing aerated waters. They would like to know the detailed reasons which led the Department to restrict the consumption of horse power at that stage.

2.55. The Committee are astonished to note that the power used for pumping water to overhead tanks is not counted against the total power supply available to an aerated manufacturing installation. This water is supposed to be meant for cleaning and other similar purposes. The Committee would like to know the precautions which have been taken by the Department to ensure that the power used for filling up the overhead tanks by those manufacturers of aerated water who have disconnected power supply in order to claim exemption from excise levy, is not diverted surreptitiously in any process for the manufacture of aerated waters.

2.56. The Committee find that the revenue realised from basic duty on aerated waters in the year 1972-73 was Rs. 6.35 crores. It declined to Rs. 5.49 crores in the year 1973-74, Rs. 5.53 crores in the year 1974-75 and Rs. 5.92 crores in the year 1975-76. With the consistent increase in the standard of living of the people and constant increase in the off-take of consumer's goods, the Committee are led to believe that the consumption of aerated waters should have also increased from time to time. This should have resulted in consequent increase in the total revenue realisations on aerated waters which has, on the contrary, shown persistent decline. The Committee cannot comprehend the reasons for the declining trend in the revenue realised on aerated waters and suspect that it could be due to large scale evasion or avoidance of duty. The Chairman, CBEC had assured the Committee that all possible precautions were taken at the time of any exemption being granted to ensure that there was no avoidance or evasion but he had also conceded that "Certain amount of deliberate avoidance of taxes would always be there in such cases". The Committee would like to impress that the checks exercised by the Department should be strengthened to ensure that the actual production of each unit is not varied by the manufacturer for the avoidance of the duty due.

2.57. The Committee find from the information furnished by the Department that a number of manufacturers have evaded duty on aerated water to the tune of lakhs of rupees on one ground or the other. For example, M|s. Mamata Drinks and Industries Ltd., Bhubaneshwar evaded duty of Rs. 1,72,012 by claiming inadmissible exemption; M|s Bleak Diamond Beverages, Calcutta evaded duty of

Rs. 3,72,401 by removing goods under fake gate passes; M|s. Kanpur Bottling Co. and Jai Hind Bottling Co. of Kanpur evaded duty of Rs 35,21,418 and Rs. 5,10,954 respectively by selling goods at lower prices and M|s. Agra Beverages Co. (P) Ltd. evaded duty of Rs. 17,85,014 by inflating the transport charges. They understand that demands have been raised against these manufacturers and the duty amounts are at various stages of realisation. The Committee desire that concerted efforts may be made to expedite the realisations and would like to be apprised of the state of recoveries in due course.

UNDER-ASSESSMENT OF TEA—ALL VARIETIES

Audit Paragraph

3.1. Tea classified under tariff item 3, is assessable to duty at specific rates. By a notification issued in May, 1970, tea-growing areas in India have been divided into five zones for the purpose of levy of duty on loose tea and different rates of duty ranging from 25 paise to Rs. 1.50 per Kg. were fixed for the tea grown in different zones. These rates were revised from 1st March, 1975, *inter alia* increasing the lowest rate applicable to zone I from 25 paise to 40 paise per Kg.

3.2. Between 1972 and 1974, 100 tea factories spread over four ranges in a collectorate filed several batches of writ petitions in a High Court challenging the validity of the notification issed in May 1970 and the levy of duty on zonal basis, as discriminatory and illegal. Pending decision on the writ petitions, interim orders of the High Court were obtained by the petitioners between September, 1972 to October, 1974 for payment of duty at different rates ranging from 15 paise to 55 paise per Kg., which were lower than that applicable under the notification. The following irregularities were noticed on audit:—

(a) Subsequent to the filing of the writ petitions in High Court, two factories did not pay any duty on the clearances of tea, all varieties, except package tea and instant tea, during the period from May to October, 1972. On the High Court fixing the rate of duty payable by them as 15 paise per Kg. on 28th September, 1972, they started paying duty from November, 1972 only. Duty due on the clearances made between may and October, 1972 at 15 paise per Kg. amounting to Rs. 1,38,662 was not demanded by the department.

(b) After the increase in the lowest rate from 1st March, 1975, the factories continued to pay duty at the rates originally fixed by the court. The department, however, did not move the High Court for enhancing the duty rates fixed in the context of changes. Consequently 72 factories are paying duty at rates lower than the lowest rate of 40 paise per Kg. applicable to Zone I from 1st March, 1975. The differential duty due in respect of these factories for the period from 1st March, 1975 to 31st May, 1975 amounted to Rs. 8,38,278.

3.3. The paragraph was sent to the Ministry of Finance in October 1975; reply is awaited (February 1976).

[Paragraph 43 of the Report of the Comptroller & Auditor General of India for the year 1974-75, Union Government (Civil), Vol. I, Indirect Taxes (Union Excise Duties)]

(i) *Facts of the case*

3.4. The Zonal Classification is authorised by Rule 96F introduced by Notification No. 100 dated 28 September, 1958 in the Central Excise Rules, which is reproduced below:—

> "96F. *Fixation of areas for purpose of Excise Duty*: Having regard to the weighed average sale price in the internal and export auctions of tea in India, the Central Government may by notification in the official Gazette from time to time group areas into Zones for the purpose of assessment of tea produced in such areas."

3.5. The first such Zonal grouping was done by a notification dated 28th September, 1958. By another notification issued on 17 January 1959 certain amendments were made resulting in re-adjustments. Notification on 31st December, 1960 superseded earlier notifications and all tea producing areas were divided into four zones. By notification of 24-4-1962 in all five zones were created. By a notification dated 28th October 1967 a further redistribution of areas under various zones was made.

3.6 Notification of 1st May 1970 superseded the earlier ones by which a consolidated re-description of different zones was given. Other notifications issued from time to time merely dealt with effective rates of duty payable by the various zones.

3.7. The rates of duties applicable to different zones from 24-4-1962 are tabulated below:

	From 24-4-62	From 18-11-63	From 26-5-67	From 1-5-70	From 1-3-75	From 16-3-76
Zone I . . .	15 P Tea	15 P 10 P (Green Tea)	25 P	25 P	40 P	40 P
Zone II . . .	25 P	25 P	40 P	50 P	60 P	60 P
Zone III . . .	30 P	30 P	50 P	150 P	140 P	125 P
Zone IV . . .	35 P	35 P	55 P	100 P	110 P	110 P
Zone V . . .	45 P	45 P	65 P	115 P	130 P	130 P

It would be seen that the rates of duty were in ascending order from Zone I to Zone V till 1970 when the rates for Zone III were put at the highest. By the Budget of 1976, Zone III now bears duty of Rs. 1.25 per Kg. while Zones IV and V bear Rs. 1.10 and Rs. 1.30 per Kg. respectively."

3.8. The Committee understand from Audit that between 1972 and 1974, a number of tea factories in Madras Central Excise Collectorate filed in Madras High Court several batches of writ petitions challenging the validity of the notification issued in May, 70 and the levy of duty on Zonal basis as discriminatory and illegal. Pending disposal of these writ petitions, interim orders were obtained by the factories for payment of duty at certain stipulated rates.

3.9. The rate fixed by High Court in their orders of 8-3-73 was less than the minimum rate of 25 P. per Kg. applicable to Zone I in respect of five factories and in other cases lower than the effective rates vide statement below:

Name of factory	Range	Zone	Rate of duty fixed by Court	Rate of duty as per notification
1. Sholayar Tea factory	Valparai MOR	II	15 Paise	50 Paise per Kg.
2. Halayar Tea factory	„	II	„	„ „ „
3. New House Tea Factory	Gudalur MOR	I	„	25 Paise per Kg.
4. Glen Vans Tea Factory.	„	I	„	„ „ „ „
5. Nitan Tea Factory .	Coonoor	IV	20 Paise	Re. 1/- per Kg.
6. Pariside Tea Factory	Manjoor MOR	IV	35 Paise	Re. 1/- per Kg.
7. Coonoor Tea Estates	Coonoor MOR	IV	35 Paise	Re. 1/- per Kg.
8. Kotagiri Tea Factory	„	IV	55 Paise	Re. 1/- per Kg.
9. Tatappallam Tea Factory	„	IV	55 Paise	Re. 1/- per Kg.

3.10. Further certain anomalies also arose as a result of the court orders, namely two factories (Sholayar Tea Factory and Kallayar Tea Factory) after filing writ petition did not pay duty from May, 1972. When the court fixed the rate of duty at 15 P per Kg. on 28th September 1972, the two factories started paying this duty from 1st November, 1972. Duty for the period May, 1972 to October, 1972 was pending realisation till October 1975. Audit has estimated that the duty payable if the rate of 15 paise per Kg. fixed by the Court was adopted would have been Rs. 82,452.60 in respect of Sholayar factory and Rs. 56,209.65 in respect of Kallayar Tea Factory (Total

Rs. 1,38,662.25):. However if the minimum rate of 25 paise per Kg. was adopted the duty payable would work out to Rs. 1,37,421/- and Rs. 92,662.75 respectively.

(ii) *Rationale of Zonal classification.*

3.11. Explaining the historical background about the levy of excise duty on tea, the Chairman, Tea Board, has stated during evidence:

> "Tea came for the first time under Excise in 1944. From 1944 to 1957 we had uniform rate of excise duty. We faced competition in world market for different types of tea largely common tea. In 1958, considering previous export and future prospects this zonal system was thought of. This is the historical background."

3.12. In regard to the rationale for the introduction of the system of zonal classification, the Department of Revenue and Banking, have stated, in a written note, as under:

> "While formulating its policy for providing the relief to Indian teas, specially common teas with the object that producers of common teas should sell their merchandise at remunerative prices, without at the same time jeopardizing the interests of the producers of tea in predominantly quality areas the Central Government carefully examined the various schemes submitted by the Tea Board and the several Trade Associations and came to the conclusion that the different tea producing areas, each having peculiar charactristics of its own might be grouped into different zones, and while grouping areas into zones, the weighted average sale price in internal and export auctions of tea held in India should be taken into consideration. The Central Government further considered that necessary relief could be granted by adopting a taxation policy envisaging alteration of duties of Customs and Excise on tea and at the same time introducing differential rates of excise duty on tea produced in the various tea plantation areas of India. Such relief would not adversely affect the interest of the producers of tea in predominantly quality areas. It was felt that such a policy would improve the competitive position of Indian tea specially common teas, in the foreign markets and would thereby improve the foreign earnings of the country.

In adopting a workable and administratively feasible method grouping the various tea producing areas into different zones, the Central Government took due cognizance of the fact that the tea producing areas in India were known to the trade to have been divided into certain plantation districts, depending roughly on the homogenous conditions which in their turn denoted soil, altitude, rainfall and such like conditions which are conductive to and/or determining factors of production in an agrobased industry. In selecting the areas for the purpose of ascertaining the weighted average sale price with a view to grouping areas into zones, the Central Government took into consideration the tabulation of the plantation districts in terms of well demarcated Adminisrative/Revenue units as prepared by the Tea Board. The policy adopted by the Central Government in the selection of areas for the purpose aforesaid, was to express various plantation districts within the framework of the Administrative/Revenue units and to go down to units smaller than Administrative/Revenue units and in cases where it was considered necessary to do so in view of the peculiar characteristics of the smaller Administrative/Revenue units and for just and equitable reasons. Thus the zonal classification was introduced on the basis of recommendation of the Ministry of Foreign Trade and Tea Board to give relief to tea industry."

3.13. The basis on which the tea factories were divided into zones for the purpose of levy of excise duty and the consideration on which the rates of duty for the tea produced in each zone were fixed have been explained by the Department of Revenue and Banking as under:

"The grouping of the tea growing areas into zones for the purpose of levy is done on the advice of the Ministry of Commerce who do so in consultation with the Tea Board. Broadly speaking, such classification is done having regard to the weighted average sale price in the internal and export auctions of tea in India in accordance with the provisions of rule 96F of the Central Excise Rules, 1944. In the matter of fixation of effective rates of duty due consideration is given to the following aspects, namely, the competitive position of the common teas in the internal and external market, the need for encouragement of

exports as also the regulation of internal consumption in the case of better quality teas.

3.14. The Committee wanted to know the best method to assess the value of tea on most equitable basis. The Chairman, Central Board of Excise and Customs, has stated during evidence:

> "The assessment of a commodity like tea presents insuperable difficulties if one were to think that the assessment should be very very equitble. The most equitable method of assessment, one could possibly say, is as written in the text books as *ad valorem* system. But here we have hundreds of factories and they are producing various qualities of tea which only a tea taster can say what exactly is the quality and what price it should fetch. It would be impossible for the Department to accurately determine the value of what is coming out of a factory."

3.15. Asked if the zones were divided on the basis of quality of tea for the purpose of determination of the rates of duty, the witness has stated:

> "It woull be good if we classify tea according to the price. Assessment on that aspect alone would be rather difficult and the next best is this. We take the geographical position of the tea gardens. There are certain inherent advantages and disadvantages. Darjeeling tea has certain special characteristics, certain aroma about it. Same with tea of Upper Assam. Same with Nilgiris tea. Darjeeling produces costliest tea. But because of the height, the production per hectare is much lower."

3.16. On being enquired whether there could be uniform pattern of tea within each zone, the Secretary, Ministry of Finance, has replied:

> "There has to be some sort of compromise and by and lare you have to be fair and equitable to the extent possible in the face of severe limitations and constraints. Any taxation that we adopt has to fit in and be compatible with existing operating conditions prevailing there. Tea is one of the commodities where large number of varieties and differences exist. You have CTC tea; you have orthodex tea and tea of different grades."

3.17. The Committee further desired to know that when it is so difficult to categorise tea correctly, how the zonal division is made. To this, the Secretary, Ministry of Finance has stated:

> "This is something which has been done in consultation with the Commerce Ministry. They are directly concerned with tea. One aspect is the price that is obtained for different grades of tea. Then the other aspect is the per acre yield of tea gardens. Third one is the cost of production and the price of inputs going into it."

3.18. The Committee have been informed that both common and good quality of tea are grown in all regions. Normally the rate of excise levy on common tea is lower while it is higher in case of good quality tea. The Committee wanted to know how the zonal system was considered to be better when both the varieties of common and un-common tea were produced in the same zone. The Chairman, Tea Board, has stated during evidence:

> "Although administratively Darjeeling is one, for the purpose of paying excise duty we have divided it into two zones. They are Zone-I and Zone-III. It may be that common tea is produced wihin the same administrative district but it would be treated as a different zone. For instance, Siliguri sub-division and Kalimpong sub-division and one or two Estates of Kurseong sub-division have been put under I Zone; the hill areas of Darjeeling sub-division are placed in Zone III. The point made is taken care of even where the common tea is produced that must have a separate rate though they may be within the same administrative zone.... In Zone III where Darjeeling has been placed, every tea garden there has necessarily to pay the same rate of excise duty while in southern Kurseong sub-division, if the tea garden happens to be in Kalimpong and Terai, then they pay the lower rate of duty."

3.19. Explaining the position about the price fetched, the witness has stated:

> "On an average, Darjeeling tea gets a better price than Assam tea."

3.20. The Committee wanted to know the criteria for the categorisation of quality tea when the tastes of the people in different

parts of the country differed widely. The Chairman, Tea Board, has replied:

> "I may tell you that this is a baffling problem. Therefore we take the quality as reflected in the price. We take that as our basis. We are taking the best out of the bad situation."

3.21. The Committee wanted to know whether the zonal classification undergoes a charge if the experience of the Department so warrants. The Chairman, Tea Board, has repiled, "Yes, Sir."

322. The Committee wanted to know if the Government had come across any cases where fortuitous benefits had accrued to factories as a result of the zonal classification and rates of duty depending on the zone. The Department of Revenue and Banking have in a written note stated as under:

> "In Madras Colloectorate, the factories situated in Zone-I pay duty at 40 paise per Kg. *vis-a-vis* the rate of Rs. 1.10 per Kg. payable by factories in Zone IV. There is no marked difference in the prices of the tea manufactured in Zone-I and Zone-IV. Further, some factories in Zone-IV started bringing green leaf from Zone-I and clearing the tea made out of such green leaf at the rate of duty of 40 paise per Kg. applicable to Zone-I. Even though there is no marked difference between the prices of tea manufactured in Zone-I and in Zone IV, the incidence of duty on tea manufactured in Zone IV is more by 70 paise per Kg.
>
> The Collectorate of Central Excise, Shillong has also reported that zonal classification and rates of duty depending on zones have afforded some benefit to the factories falling in Zone II as compared to the factories in Zone-V. Factories in Zone-II derive the benefit of duty relief by 70 paise per Kg. as compared to the duty paid by the factories in Zone-V though in some cases there is not much difference in the price of tea grown in Zone-II and in Zone-V gardens.
>
> This cannot perhaps exactly be dalled a fortuitous benefit since the duty was paid at the rates fixed for each zone under the notification. Therefore the extent of the benefit does not arise.
>
> No action can be taken as the zonal system of assessment on tea is provided in the Central Excise Tariff and has been held valid by the Calcutta High Court."

(iv) *Realisation of arrears*

3.23. Asked when the fact about the payment of duty at lower than the lowest rate of 40 paise per Kg. came to the notice of the Government, the Department of Revenue and Banking have stated in a written note:

> "The first writ petition No. 913/72 was filed by M|s. Shollayar and Kallayar Tea Estates in Madras High Court. The High Court passed an *ex parte* order on 28-4-72 staying the implementation of the provisions of the notification No. 90|70 dated 1-5-70. This interim stay order had the effect directing the Government not to collect any duty on the tea manufactured and cleared by the said manufacturers pending the final orders on the writ petition. The Deputy Legal Adviser, Madras was addressed on 8-5-72 to enter appearance on behalf of the department and take sufficient time for filing the counter-affidavit with a copy to the Central Government standing counsel. The Ministry were also informed about the interim stay granted by the Madras High Court and the proposed action being taken in filing the direction petition to get the stay order reversed. The direction petition was filed in the High Court by the Central Government Standing Counsel on 16-6-72 and the Court finally passed orders on 29-9-72 amending their original stay and directed the writ petitioners to pay duty at 15 paise per Kg. Thus, the Department had the knowledge that the High Court had directed the payment of duty at a rate lesser than the rate of 40 paise per Kg. in their various stay orders."

3.24. Explaining the action taken by the Government for the realisation of duty at lower rate with retrospective effect, the Department of Revenue and Banking have stated in a written note:

> "On receipt of the Court's order dated 29-9-72 on the direction petition filed by the department demands amounting to Rs. 1,38,662/- were issued on the Shollayar and Kallayar Tea Estates. However, when the Department tried to enforce these demands the petitioners objeced and came up with the plea that the court's order dated 29-9-72 were only prospective and should therefore take effect only from 29-9-72. The Central Government Standing Counsel was consulted in the matter by the staff of the Legal Section of Madras Collectorate and he appears to have advised that the demands could not be enforced without obtaining a clarificatory order from the High

Court itself. The Deputy Legal Adviser, Law Ministry, was therefore, addressed by Collector of Madras in his office letter No. F. No. VIII|17|36|72-LG dated 16-3-73 and letter of even number dated 18-10-73 to instruct the CGSC to approach the Court for getting clarification from the High Court further collection of duty from these two factories at least at 15 p. kg. for the period from 1-5-72 to 31-10-72. The Deputy Legal Adviser then instructed the CGSC in his letters dated 27-3-73 and 24-10-73 to take immediate action in the matter. However, the CGSC did not move the court for this purpose as he seems to have orally advised that the vacation bench comprising Justices Ramamurthy and Raghavan who had passed the original stay order dated 28-4-72 was no more sitting or constituted again and the interim order passed by one bench of judges could not be modified and interim by another bench and the whole matter could be taken up with the High Court only after a counter-affidavit was filed in the Court."

3.25. The Committee have noted from the audit paragraph that the lowest rate of duty applicable to zone I was increased from 25 paise to 40 paise per Kg. with effect from 1 March 1975 but 72 tea factories were allowed to pay duty with effect from 1 March 1975 at the rates originally fixed by the Court. The Committee wanted to know the reasons therefor. The Member (Excise) has replied during evidence:

"With regard to the question of enhancement of the rate fixed by the High Court in the first instance we asked the Central Government standing councel for his advice. He said unless we file a counter-affidavit the High Court is not likely to entertain the request."

3.26. Questioned as to why the Government took such a long time in filing the counter-affidavit, the Member (Excise) has stated:

"The counter-affidavit has since been filed. It was necessary for the Collector at Madras to consult the Collector at Calcutta and also the Chairman, Tea Board."

3.27. Explaining the position further, the Department of Revenue and Banking have stated in a written note as under:

"A batch of 91 writ petitions was filed by the Tea Estates in the High Court of Madras and the stakes involved were

very high. As the filing of writ petitions in the Madras High Court was a sequel to the similar writ petitions filed earlier in the Calcutta High Court, the counter-affidavit had to be prepared with great care in consultation with the various agencies referred to earlier as directed by the Ministry."

3.28. The Committee wanted to know the final outcome of the case in the court of law and the position about the recovery of the arrears, the Member (Excise) has replied during evidence:

"On August 2, 1976, the Madras High Court passed a judgement allowing us to recover full duty according to the tariff in future cases and allowing us to recover the arrears in instalments."

3.29. When enquired whether the collection of duty was continued at the rate of 15 paise instead of 40 paise raised with effect from 1 March 1975, the Member (Excise) has replied:

"Since August, 1976 we are collecting full rate. With regard to the earlier period we are collecting the arrears."

3.30. In regard to the realisation of the differential duty in the cases mentioned in the Audit Para the Deptt. of Revenue and Banking have intimated in a written note the position as on 23-3-77, as under:—

Total amount of arrears due	Amount realised	Balance amount yet to be realised
Rs. 3,74,07,063·23	Rs. 78,44,120·67	Rs. 2,95,62,942·56

3.31. During the course of their tour to the Eastern Zone in October 1977, the Study Group II of the P.A.C. were informed by the Collector of West Bengal that the Zonal classification of Tea gardens was also challenged in the Court of Law at Calcutta by the owners of the tea estates of West Bengal Collectorate. They filed petitions under Article 226 of the Constitution challenging the validity of the zonal classification and the vires of Rules 96F of the Central Excise Rules, 1944 and various notification issued since 1958 classifying different producing areas into different zones. After prolonged hearing the case was decided by the Calcutta High Court in 1974 in favour of the Government.

3.32. After the decision, instructions were issued to the concerned formations for initiating steps for realisation of arrears of Central Excise duty in accordance with law. Some of the owners of the tea estates approached the Collector and|or Central Board of Excise & Customs for the extra legal facility of paying the admitted arrear dues in instalments. In consideration of their submissions the Collector and|or Central Board of Excise and Customs allowed them to pay the arrears of Central Excise duty in certain instalments. Not content with the terms of instalments and still desiring to have easier term for payment of arrear of Central Excise duty and|or to delay the realisation thereof, some of the owners of the tea estates in West Bengal Collectorate filed second series of writ petitions under Article 226 of the Constitution before the Hon'ble High Court challenging *inter alia* the department's competence to enforce the machinery provisions of law for securing the realisation of excise duty and the vires of section 11 of the Central Excise & Salt Act, 1944, Some of the owners of the tea estates under West Bengal Collectorate without applying for the facility of instalment payment straightway filed such writ petitions before the Calcutta High Court.

3.33. The petitioners in the second series of writ petitions were successful in obtaining *ex-parte* rules as also *ad interim* orders of injunction restraining the department not to enfore the machinery provisions of law for realisation of arrears of Central Excise duty and at the same time allowing the peitioners to pay the arrears of Central Excise duty in liberal terms extending to years. Applications for variation of the *ad interim* orders of injunction granted *ex-parte* had been filed by the Department in majority of the cases and some such variation applications had already been decided by the Hon'ble High Court vacating *ad interim* orders of injunction or enforcing stricter terms for payment of arrears of Central Excise duty. Every effort was being made for early disposal of the rules and vacation of the *ad interim* orders of injunction issued by the Hon'ble Court restraining the department not to enforce machinery provisions of law for securing realisation of arrear Central Excise duty.

3.34. The Study Group were further told that in the decided case pertaining to the first series of writ petitions by the owners of various tea estates in West Bengal Collectorate, which include the second series of writ petitions, a sum of Rs. 5,63,89,190.19 paise accumulated as arrears. Against the said sum realisation upto August, 1977, amounted to Rs. 3,98,31,905.15 paise. There was therefore, a balance of Rs. 1,65,67,285.04 towards Central Excise

duty in arrears. Against the undecided cases in the first series of writ petitions there was an accumulation of Rs. 50,98,374.21 paise as arrears.

3.35. The Committee wanted to know whether the Government had moved the Calcutta High Court to demand securities to safeguard revenues when the writ was pending. The Department of Revenue and Banking have in a written note stated as under:—

> "It has been ascertained from the Collector of Central Excise, West Bengal that the *ad-interim* injunctions were issued *ex-parte* in almost all these cases in the series of writ petitions challenging the validity of zonal classifications issued thereunder since 1958. Those cases were defended in consultation with the Branch Secretariat of the Ministry of Law and Justice at Calcutta and it took about a year to find out the line of defence. During the pendency of the writs and at the argument stage, the counsel for the Department tried to move the Court for securities and in a number of cases, the High Court was pleased to order the deposit of securities by the petitioners with the Registrar Original side/Appellate side."

(IV) Concessions to Weaker and Cooperative Factories

3.36. The Committee wanted to know the details of the tariff concessions given to weaker .and cooperative tea .factories etc. The Member (Excise) has replied during evidence:

> "Those factories whose selling price was less than Rs. 5 were allowed a concession upto only 70 p. duty. That was in 1970. This has by law been continued from time to time. It is now available upto 31 March 1970. Now it has been raised to 80 p. and the selling price would be Rs. 6.60. The relevant notification says:
>
> 'The Central Government hereby exempts tea falling under sub-item 1 of this item cleared from the factory during the period commencing from 1st July 1975 and ending with 31 March 1977 from so much of duty of excise leviable thereon as in excess of 80 p. per kg. subject to the condition that the manufacturer claiming such exemption furnishes proof to the satisfaction of the Assistant Collector, Central Excise, having jurisdiction in the public auctions held at Amritsar, Calcutta, Cochin, Gauhati, Coonoor and London during the period commencing from 1 April, 1972 and ending with 31 March 1975, a quantity of loose tea (being loose tea manu-

factured in the factory) which is not less than 50 per cent of the quantity of loose tea manufactured in the factory..... during the said period of three years has been sold and that an average price of less than Rs. 6.60 per kg. had been realised for all loose tea."

In the case of bought leaf factories, there is a further concession that this Rs. 6.60 need not be in respect of only of sales in the tea auctions but also in respect of any sales."

3.37. Explaining the objects for providing concessions in excise duty to tea factories, the Department of Revenue and Banking have stated in a written note, as under:

"The object of providing concession in excise duty to tea factories was the need for curbing internal consumption of quality teas, the need for protecting the interest of producers of common tea located in Zones I and II, the need for protecting the interest of tea estates classified as weak or sick tea estates in the predominantly quality areas zones III, IV and V and the need for raising resources to meet the social and economic commitments of the Central Government."

3.38. In regard to the justification for the continuance of the concession, the Department of Revenue and Banking have stated in a written note that:

"The concession to weaker tea gardens had been reviewed year after year and continued upto 31-3-1977 as the weaker gardens were found to be in a disadvantageous position. The concession has, however, been discontinued with effect from 1-4-1977 as the realisation of price on tea for the weaker gardens had shown an upward trend."

3.39. Explaining the procedure for the administration of this concession specially in the matter of verification of eligibility prices etc., the Department of Revenue and Banking have in a written note stated as under:

"Regarding the admissibility of concession, the factories have to fulfil certain conditions stipulated in the Central Excise notification No. 161/75 dated 1-7-75 as amended. The licensees are required to furnish the total quantity of loose tea produced in their factory during the period from 1-4-72 to 31-3-75 and also the quantity sold during the above period in the specified public auction centres as well as in the private sale so that it can be verified by the Central Excise Department whether the conditions of having sold not less than 50 per cent. of the quantity

of loose tea produced in the factory during the said period of three years and having realised an average price of less than Rs. 6.60 per kg. have been satisfied. The sale particulars are verified by the Superintendents with the invoices and sale notes issued by the auctioners and he arrives at the total price realised for the quantities sold in the auctions. In the case of bought leaf factories to become eligible for the concessions the factory should have purchased not less than 2/3rd of its green leaf from the outside sellers during the financial year 1963-64 and also in the financial year preceding that in which duty is levied. The average price fetched for the tea sold in all markets by a factory during the period from 1-4-72 to 31-3-1975 is less than Rs. 6.60 per kg. After a thorough check and verification of details of sales, invoice etc. and based on the certificates issued by the tea auctioners in respect of tea sold in auction through them, the average price of tea sold is calculated. While calculating the average price, basic excise duty, and sales taxes are deducted. If the price criterion is satisfied, then only the concession is granted by the Assistant Collector concerned."

3.40. When enquired if the Government came across any case of evasion of duty as a result of these concessions, the Department of Revenue and Banking have in a written note intimated as follows:—

"The Collectors of Central Excise, Kanpur, West Bengal, Madurai, Bangalore, Chandigarh, Shillong, Madras and Cochin who have practically most of the loose tea factories of the country in their jurisdiction were addressed to find out cases of evasion of duty as a result of these concessions. It is reported by all these Collectors that no such evasion had come to their notice."

(V) **Concessions to tea gardens placed in specially disadvantageous position**

3.41. When the Study Group II of the Public Accounts Committee visited Darjeeling in October 1977, it was represented to them by the Darjeeling Branch of the Indian Tea Association that on account of low yield of quality tea in high altitude in Darjeeling Hill district the cost of production was comparatively very high and consequently tax burden was high. In this connection the Committee observed from the following note submitted by the West Bengal Excise Collectorate that representations were also in the past made by them to Government and the Central Government felt inclined to consider the cases of Darjeeling Tea:

"The trade associations and the tea estates of Darjeeling Hill District were not satisfied with the Zonal grouping done in 1958 inasmuch as the said tea estates of the said hill district were placed

in Zone-III along with the three administrative districts of Assam in North Eastern India, namely, districts of Darrang, Lakshimpur and Sibsagar and the District of Nilgiri (excluding Gudalur Taluka) in the State of Madras in Southern India. Sometime in October, 1958, Indian Tea Association, requested the Central Government to lessen the added burden of Excise duty on Darjeeling Tea. Individual representations also revealed that 40 per cent of the gardens of Darjeeling were running at a loss. The Bengal National Chamber of Commerce and Industry represented to the Central Government to the effect that the quantum of relief then prevailing was much too inadequate. It was, however, stated by the said Chamber of Commerce that the Division of the tea-growing areas into zones with different scales of duties for each zone appeared to be sound in principles, subject to any change that might have to be made in the actual delimitation of a particular zone. In this context, the Central Government was inclined to consider the case for Darjeeling teas. The Darjeeling teas had a popular reputation for good quality and exceptionally high prices."

3.42. The following further observations in the note submitted by the Excise Collectorate, West Bengal, would indicate that in consideration of the representation of the Darjeeling Hill District, Government had given some relief to Darjeeling teas by further realigning the zone-III in 1962:

"Prior to 1962 Zone IIIA covered the areas under the district of Darjeeling (comprising the Sadar Sub-Division and the Kurseong Sub-Division excluding the areas in J. L. Nos. 31 and 22 of Kurseong Police Station of Kurseong Sub-Division) and the district of Nilgiris excluding Kudalur Taluka in Madras State. In 1962 there was a suggestion from the Tea Board for reduction in the rate of excise duty payable on tea produced in Darjeeling area in consideration of the low yield and high cost of production there. Though these factors were kept in view while delimiting the zones, it was felt that there was some force in the contention of the Tea Board. While fixing the new rates it was accordingly decided to give an additional relief to Darjeeling Teas. Relying upon the aforesaid suggestion and taking into consideration the weighted average sale price of teas produced in those areas as well as other factors governing the economic condition of the tea industry, including the factors of yield per hectare and cost of production in Nilgiris and in Darjeeling, the areas under Zone III-A were by a notification, namely No. 23/62 dated April 24, 1962 split into two different zones viz. Zone III and Zone IV attracting different rates of duty."

3.43. The Darjeeling Branch of the Indian Tea Association had also made the following representations to the Study Group:—

(i) Reduction to NIL of the excise duty on tea in the Darjeeling district until the average yield rises to 1000 kg. per hectare;

(ii) Increase the replanting and replacement subsidy to reflect the loss of crop during a longer gestation period and the higher cost of Rs. 40,000 per hectare in this district. The subsidy element may be computed at 50 per cent of the value of crop loss plus 1/3 the cost of replanting.

(iii) Provide a cash subsidy for rejuvenation pruning at 50 per cent of the cost.

(iv) Provide a cash subsidy for infilling at 50 per cent of the cost.

(v) Carry out a survey of available land suitable for tea cultivation in the district and assist extension by providing loans of Rs. 20,000 per hectare at the current Board rates of interest.

(vi) Suspend the West Bengal Calcutta Entry Tax on Darjeeling tea until the yield levels reach 1000 kg.

3.44. The Committee find that the Government by issue of notification No. 38/70 dated 1-3-70 raised the excise duty on tea produced in Zones II, III, IV and V from 40 paise to 50 paise, 50 paise to Rs. 1.50 paise, 55 paise to Rs. 1.00 and 65 paise to Rs. 1.15 paise respectively. There was no increase in the rate of excise duty in respect of tea produced in Zone I. Certain tea factories in the Madras Collectorate filed writ petitions in the High Court challenging the validity of the notification and the levy of duty on zonal basis, as discriminatory and illegal. Pending decision on the writ petitions, interim orders fo the High Court were obtained by the petitioners between September 1972 to October 1974 for payment of duty at different rates ranging from 15 paise to 55 paise per kg. which were lower than that applicable under the notification. After protracted litigation the Madras High Court passed a judgment on 2nd August 1976 allowing the Department to recover full duty according to the tariff in future cases and to recover the arrears in instalments. According to the position as on 23-3-77 intimated by the Department of Revenue and Banking, arrears of Rs. 3,74,07,063.23 had accumulated on account of differential duty. Of this amount Rs. 78,44,120.67 paise have been realised and a balance of Rs. 2,95,62,942.56 is yet to be realised from the various tea factories. The Committee find that the amount due is still substantial. They desire that efforts should be intensified to expedite the recovery of the balance amount.

3.45. The Committee also understand that similar writ petitions were filed in the Calcutta High Court. On decided cases of writ petitions a sum of Rs. 5,63,89,190.19 had accumulated as arrears towards Central Excise

duty out of which Rs. 3,98,21,805.15 paise have been realised upto August 1977 leaving a balance of Rs. 1,65,67,385.04 paise. A sum of Rs. 50,98,374.21 paise has also accumulated as arrears against the undecided cases. The Committee would like the Department to make concerted efforts and take all possible steps for the recovery of the unrealised amount and also for getting the pending cases expedited in the Court of Law. From the facts brought to the notice the Committee are not fully convinced that the case was pursued in Madras High Court with the swiftness it deserved particularly when large revenues were involved.

3.46. The Committee find that Rule 96F of the Central Excise Rules authorises the Government to group areas into zones for the purposes of assessment of tea produced in such areas. The grouping of areas into zones for the purposes of levy is done on the advice of the Ministry of Commerce who do so in consultation with the tea industry and having regard to the weighted average sale price in the internal and export auctions of tea in India. The competitive position of the common teas in the internal and external market, the need for encouragement of exports and also the regulation of internal consumption in the case of better quality teas are the main guiding factors which are taken into consideration in the matter of fixation of effective rates of duty. The tea gardens were classified in different zones first in 1958 and thereafter subsequently in 1959, 1960, 1962, 1967 and the latest in 1970. All other notifications merely dealt with effective rates of duty payable by the various zones. During evidence the Chairman, CBE&C had informed the Committee that the Zonal Classification undergoes a change as and when it is so considered necessary in the light of the experience gained by the Department. The Committee feel that in view of the various anomalies appearing in the Zonal Classification and the complaints about difficulties in administering the Zonal Classification strictly, Government should review the classification made in 1970

3.47. The Committee are unhappy to note that certain tea factories are reaping unintended benefits as a result of the existing Zonal Classification. For example, according to Government's own reply there was no marked difference in the prices of tea manufactured in Zone I and Zone IV (Zone I pay duty at 40 paise per kg. vis-a-vis the rate of Rs. 1.10 per kg. payable by factories in Zone IV) in Madras Collectorate. Some factories in Zone IV brought green leaf from Zone I and got the tea cleared made out of such green leaf at the rate of 40 paise applicable to Zone I. Likewise in Shillong Collectorate some factories in Zone II derived unwarranted benefits compared to the factories in Zone V. There is not much of difference in the price of tea grown in Zone II and in Zone V gardens and the factories in Zone II derive the benefit of duty relief by 70 paise per kg. as compared to the duty paid by the factories in Zone V. The Committee are unable to

understand why the Department has failed to prevent the accrual of such unintended benefits now reaped by tea factories in the Madras and Shillong Collectorates. They recommend that the Department should move swiftly in this direction and devise suitable machinery within the existing Zonal Classification, till that is changed, so that loss of revenue does not recur. The Committee would also like to know the machinery available with the Government to watch the functioning of the Zonal Classification of tea gardens and whether the same is fool-proof to plug all possible loopholes. They would also like to know the periodicity and intervals when statistics and reports about the functioning of such system have been collected by the Department during the last 2 years.

3.48. The Committee find from the representation made by the Darjeeling Branch of the Indian Tea Association to their Study Group during the course of their recent visit to the Eastern Zone that on account of low yield of quality tea in high altitude in Darjeeling Hill District, the cost of production of tea at that place was comparatively higher with the resultant higher burden of excise duty. In fact, on the same ground the Association had sought some special concession from the Government as early as in October 1958 to lessen the added burden of excise duty on tea. The Government subsequently did give some relief to Darjeeling tea in the form of re-alignment of Zone III. The Committee, however, observe that the Darjeeling Branch of the Indian Tea Association are not satisfied by the existing classification of zones and desire some more concessions inter alia reduction of excise duty on tea produced in the Darjeeling District to NIL until the average yield rise to 1000 kg. per hectare. The Committee would like the Government to examine the matter alongwith similarly disadvantageously situated gardens in other areas so as to see whether further concessions can be given to the Darjeeling Hill District, provided that the tea produced in these gardens is sold in Indian auction centres and not exported out of the country on consignment basis.

TOBACCO

Loss of revenue in low yield cases of tobacco

Audit Paragraph

4.1. According to the provisions of the 'Tobacco Excise Manual' and supplementary instructions issued by Collector Central Excise, whenever any damage to tobacco crop is caused by natural calamity, the central excise officer should proceed immediately to ascertain the extent of damage. He should also enquire immediately into any individual applications from growers informing him of such damage and record an estimate of the reduced yield. Enquiries regarding failure of crops should, as far as possible, be done in the presence of the grower and independent witnesses, if readily available on the spot. The instructions also provide that prompt investigations should be made then and there, if the annual returns of actual yield (which should be obtained as soon as the crop has been cured) show variations with the estimates of the yields expected. The final accounting of tobacco in a season should generally be completed by the end of August following.

4.2. Delayed investigations would not enable the officers to assess the extent of damage, if any, and consequential loss of revenue and in cases of non-investigation the department would not be in a position to satisfy itself of the correctness of the yield.

4.3. A test check of records of seven, out of 46 ranges, in a collectorate relating to the years 1968-69 to 1972-73, revealed that out of a total number of 2479 such cases, only 77 cases (3.1 per cent) were investigated within the prescribed period. Out of the remaining 2402 cases, 62 cases (2.6 per cent) were investigated within one year after the completion of the final accounting of the crop season, 597 cases (24.7 per cent) were investigated with delays ranging from one to four years thereafter and 1743 cases (72.7 per cent) were yet to be investigated in September, 1974. In all the five seasons taken together, against an estimated yield of 75,69,789 kgs., the actual yield in these 2402 cases worked out to 49,29,821 kgs., resulting in a shortfall of 26,39,968 kgs., the percentage of shortfall being 34.9.

4.4. These seven ranges comprised 31 sector. The table below shows the number of sectors where investigations were not at all done in any of these cases of reduced yield.

TABLE

Season	No. of sectors in which investigations were not done in any individual case	Nol of cases of reduced yield in those sectors
1968-69	10	202
1969-70	11	288
1970-71	11	143
1971-72	14	85
1972-73	15	117
TOTAL		835

4.5. In 313 of the 835 cases the duty forgone comes to Rs. 17,66,202.

4.6. The total duty effect of the shortfall in yield of 26,39,968 kgs. in the 2402 cases which were either not investigated or investigated long after the disposal of the harvested tobacco during the years 1968-69 to 1972-73 amounted to Rs. 91,08,870 (calculated at the lower rate applicable to tobacco, not otherwise specified). Similar information in respect of all the collectorates is awaited.

4.7. In another range where a grower-cum-curer accounted for 4289 kgs. of Virginia flue-cured tobacco as against the estimated quantity of 8206 kgs. in 1969-70 season, investigation into the low yield by the field officer revealed that the grower raised a good crop, and the officer recommended summary assessment under the rules. No action was taken on the officer's report. This was brought to the notice of the department by audit in November, 1972. The low yield was accepted by the Superintendent of the range in November, 1973 on the basis, as reported, of enquiries "by contacting the local people". The revenue involved in this case amounted to Rs 13,475.

4.8. Reply of the Ministry of Finance to whom the paragraph was sent in September, 1975 is awaited (February, 1976).

[Paragraph 45 of the Report of the Comptroller and Auditor General of India for the year 1974-75—Union Government (Civil)—Vol. I—Indirect Taxes]

4.9. The "Manual of Departmental Instructions on Tobacco Excise" sets out the guidelines and instructions for the Central Excise Officers. There are four stages of work to be done by officers during the crop season, namely:

Registration—recording of area under cultivation.
Crop Survey—recording conditi on of crop.
Verification of cured tobacco.
Disposal—Accounting disposal of cured tobacco.

4.10. Para 75 of the Manual required officers to visit systematically all villages and obtain declarations, oral or in writing, of the land planted and of the estimated weight of tobacco grown (cured). The grower has also to indicate whether cultivation takes place in any other range. Para 76 requires that Collector may in his discretion require the Inspector or any other Central Excise Officer to verify the growers' declaration with village revenue records and such other independent records as may be available. Further the Central Excis Officers are required to verify the growers' estimate of tobacco yield and record in column 12 of the Survey Book the yield as expected by the officer after proper examination on the lines indicated in the Manual. The estimated yield should be compared with the actual yield obtained by the grower in the previous year and also the average yield in the preceding season. Comparison should be made with the triennial average yield obtained by the grower and also crop cutting experiments may be undertaken when so directed by the Collector.

4.11. Under Para 78 of the Manual, whenever any damage to crop is caused by natural calamities such as hailstrom, pest cyclone or flood, etc., the Range Officer is required to make a sample check of the extent of damage in the affected area. Under Para 84, the Range Officer is also required to investigate into the shortfall in yields as compared to the yield earlier recorded in column 12 of the Survey Book. Under Para 84-A the Superintendent and Assistant Collector are expected to check critically all oral declarations and returns and test check the investigations done by the Range Officer. They should ensure that the Range Staff have conducted test weightment of those cases suspected of misdeclarations. The departmental instructions are thus elaborate to watch against evasion of duty by under-declaration of the yield. Such under-declarations can be detected only when a comparison with estimated yield shows low yields.

4.12. The supplementary instructions issued by the Collectors of Hyderabad and Guntur enjoin that prompt investigations should be made then and there if the Annual returns of actual yield (which should be obtained as soon as the crop has been cured) show variations with the estimates of the yield expected. The delayed investigations may not enable the officers to judi-

ciously assess the extent of damage, if any, and the consequential loss of revenue. In the case of non-investigation promptly, the department would not be in a position to verify correct reduced yields with the passage of time.

(i) **Investigation into variation between estimated yield and actual yield**

4.13. The Committee wanted to know the reasons for the actual yields of tobacco being less than the estimated yields in respect of 2402 cases referred to in Audit paragraph. The Chairman, Central Board of Excise and Customs, has stated during evidence:—

> "The very basis on which this thing has been done is not correct. The Collector's orders were for comparing the actual yield with the crop survey. Crop survey, means that visually the cultivators' crop is surveyed. That comparison should be reasonable and could give the estimate of what is going to come but if you compare the actual yield with the three years average of the entire village then I am afraid this particular stipulation which was put down by the Collector was completely unrealistic and uncalled for."

4.14. On being asked as to why investigations could not be carried out in respect of 177 cases of low yield, the Member (Excise) has stated during evidence:—

> "As regards these 177 cases the Collector said that they could not be investigated because the growers were not traceable..... As has been pointed out by the Audit these cases were not investigated immediately after the occurrence but some time later. At that time these growers were not available there. They might have gone somewhere else. Further, all the growers are are not the owners of the plots."

4.15. Explaining the time when the cases of low yield came to their notice, the Department of Revenue and Banking have stated in a written note:

> "These were cases of variation between the estimated cured weight of the variety of tobacco to be grown and/or cured submitted at the time of registration of land and the net quantity of cured product declared (annual return) which were noticed at the time of obtaining the annual returns from the grower curer as well as the time of carrying out the checks prescribed under Para 87-A of the Tobacco Excise Manual."

4.16. The Committee wanted to know when the investigations were made in these cases and whether there was any time gap between the periods

when the low yield was reported and the investigations were started. The Department of Revenue and Banking have stated in a written note as under:—

"It is reported by the Collector concerned that in all cases of low yield, investigations were generally commenced from the time of obtaining the annual returns and only 177 cases were left uninvestigated as the growers could not be contacted inspite of repeated visits to the concerned villages. It has also been reported that in case of V.F.C. tobacco many growers come from outside jurisdiction of the Range and leave the place after marketing the tobacco grown and cured by them. In this types of cases, the local officers find it difficult to contact them for finalising the action relating to low yield. It is further reported that even out of 177 cases referred to in this point, in 53 cases necessary investigations have since been conducted and the annual returns declared|submitted by the curers have been accepted by the competent officers. The Collector has reported that all out efforts are being made to finalise the rest of the cases.

The time gap between the period when the low yields were noticed and their actual dates of completion of investigation could be taken as from September, following the season upto the date of actual completion of investigations. Accordingly in these 177 cases, the time lag arose from September, 1969 to date. Though it is not possible to say when the investigation was initiated in each and every individual case, the time gap between the period when the low yields were noticed, as explained above and their actual dates of completion of investigation is indicated below :

Period when the low yields were noticed	No. of cases noticed	No. of cases where investigation was completed between July 1976 and March 1977	No. of cases where investigation is yet to be conducted
September, 1969 . . .	11	Nil	11
September, 1970 . . .	50	Nil	50
September, 1971 . . .	12	6	6
September, 1972 . . .	27	9	18
September, 1973 . .	77	38	39
TOTAL . . .	177	53	124

It may be added that the 177 cases involved here constitute about 7 per cent only of the total number of low yield cases (2402 cases) under consideration."

4.17. Explaining the reasons for the delay in the investigations, the Department of Revenue and Banking have stated:—

> "The procedure for curing and accounting of VFC tobacco is different from the normal method of curing of IAC tobacco. In view of the same, the annual return of VFC tobacco is obtained only after the disposal of tobacco and that too at the Range Headquarter and the low yield investigation also, if found necessary, has to commence only thereafter i.e. at the end of the marketing season. In this context, it may be mentioned that many of the low yield cases involved in the para relate only to complete the accounting of tobacco according to time sche- the field officers are required to obtain the annual returns and to cmoplete the accounting of tobacco according to time schedule, besides taking up investigation of low yield cases, it may not be possible for them to investigate into all the low yield cases then and there, especially in view of the fact that it would depend upon thea vailability of growers|curers in the villages. As a matter of fact it is reported that there was delay in investigation of all the 177 cases mainly due to the inability of officers to contact the growers inspite of repeated visits to the concerned villages."

4.18. In regards to the measures taken by Government to ensure the availability of the grower for investigations, the Department of Revenue and Banking have stated:

> "It has been reported by the Collector that it is generally by means of oral intimation that the presence of grower/ curer is ensured at the time of investigation. In case specific legal authority has to be invoked, Section 14 of the Central Excises and Salt Act can be resorted to."

4.19. Explaining the reasons for the delay in respect of the entire 2,402 cases of low yield, the Department of Revenue and Banking have stated as under:

> "The reasons for the delay in respect of 177 cases broadly holds good in respect of the entire 2,402 cases of low yields. In addition, the Collector has also reported that in the MOR set up the basic officers, namely, Inspectors, are rotated from one sector to another normally at the end of the accounting seasons. At the time when the investigations of low yield cases which could not be attended earlier specially the cases of V.F.C. tobacco, are to be taken up, the same officer may not be available

in the concerned sector. The new officers who come on rotation have to complete the work of co-relation of transport documents with the quantity declared in the annual returns for the previous season and also simultaneously to take up the work of registration of the land for cultivation of tobacco for the ensuing season. Naturally, some time may lapse before the new officers are in a position to visit the villages to locate the plots, contact the growers/curers for the completion of the pending cases of low yield investigations. Inspite of this, it is reported that in respect of Indian air cured tobacco low yield investigation, if any, is usually taken up then and there for ascertaining the genuineness. One more reason which is thought to have contributed to the delay in investigation was that the annual returns in respect of VFC tobacco, to which category most of the 2,402 cases referred to in the point fall, are obtained at the Range headquarters without visiting the concerned villages with consequent inherent delay in visiting and contacting the concerned growers in different villages for investigation of low yield cases.

In view of the above facts the Collector has reported that there has been no lapse on the part of the officers."

(ii) Follow up action after audit

4.20. The Committee desired to know the position of 1742 cases of low yield which were to be investigated in September, 1974. The Member (Excise) has stated during evidence:

"The other cases according to the Collector were investigated and they were satisfied that these were genuine low yield cases. Now, Sir, I would like to say that the whole basis of the audit para is the Survey Book which is the basic document for recording production of tobacco which is given here on page 223 of the Tobacco Excise Manual. It is a comprehensive document and it clearly lays down the different stages of the growing of tobacco. It falls into four parts. Part I is the land entry. Then there is part II about crop survey. Part III is about annual return and Part IV is regarding accounting. The land entry in part I is what is entered at the earliest stage when the Excise Officer goes to the field possibly just after transplantation of the plant in order to record as to what is the quantity of tobacco which might be grown.

Sir, if you read the language of column 7 it is in the future tense. It talks about the 'expected' yield. As to how this is to be calculated detailed instructions were issued by the Collector. These instructions say that this was to be done on the basis of an overall formula; that has nothing to do with the actual crop . . . . It has to be done on the basis of what was called triennial average of the village—for the past three years."

4.21. Explaining the details about the position regarding crop survey which obtained before and after the issue of instructions on 21 May, 1968, the Member (Excise) has stated during evidence:—

"Before these instructions of 1968, crop survey was a very important part of the duties of the department. It was done on quite an extensive scale. In fact, according to the instructions in the manual, before modification, crop survey should be made in every village. This is para 76(a) (ii) which relates to crop survey in 100 per cent of the plots registered. So before the modifications, there was a system of intensive crop survey as a result of which after the crops had grown to a reasonable height, where a legitimate expectation could be realised. this could be brought into account in part II of the book. Later on the actual declaration made is in part III.

The basic comparison should be between the Part II and III entries. After 21 May, 1968 according to instructions, they diluted this substantially and said it is not necessary to visit each lot separately for crop survey as a matter of routine. A percentage check of 10 per cent of registered plots would be adequate and both land entry and crop survey should be done simultaneously. So that afterwards, the percentage of actual crop survey declined very much; it is only in 10 per cent of cases. What was available in every case was the Part I figure.

We have tried to explain that the Part I forecast or whatever one calls it was based on the average for the entire village for the past three years of the area expected to be cultivated by the grower. That would not give a reasonably correct index of what an individual grower might actually grow."

4.22. The Committee wanted to know whether any investigations were made to find out the reasons for the fall both in production

and revenue after the instructions issued in May, 1968. The Member (Excise) has stated:—

"When we saw the audit para—a crore of rupees is not a small amount—we went into the matter fairly thoroughly trying to find out what had gone wrong and how. This was one thing that came to our notice that to the extent that it is based on a comparison between the Part I—forecast, and Part III—return, this sort of wide variation was explicable and possible. But we took out at random 60 of these cases which figured in the audit report. We tried to see in how many of these a crop survey was also conducted and whether, where it was conducted, there was that kind of wide variation between the estimate from the crop survey and what was shown in the actual return. We found that the variation in those cases where the crop survey was there to afford a reasonable estimate, in those cases the variation was very much less than that between the Part I—forecast, and Part III—return. So the more thorough the crop survey was—it was one out of 9 or ten—the closer was the figure to the actual return. This possibly was not appreciated even by the collectorate in taking out low yield cases as requiring investigation on the basis of a wide variation between the Part I figure and the Part III figure. After 1968, during the material period covered by the audit paragraph, the crop survey was very much lessened and to the extent that one could compare the annual returns with the crop survey figure the variations or discrepancies are very considerably less."

4.23. Asked about the action taken in respect of various cases of low yield pointed out by Audit and accepted by the Department, the witness has replied:—

"If I may give an example, it will depend, to a great extent, on the person who made the Part I estimate and the conditions which prevailed in the village. We have picked out two survey books. One covered one particular village. There were 86 growers, 8 were cases of high yield, 77 of low yield, 1 neither low nor high. The total forecast was about 2 lakh kg. and the actual yield was 1,32,000 kg. Conversely we took another village where there were 65 growers. Here the number of cases of low yield was 3, high yield 61 and 1 according to forecast. Total estimated yield 2.37,000, actual 3,67,000. On this very erratic basis, it is difficult to draw any conclusion."

4.24. Explaining the position in regard to the shortfall of 26,39,968 kgs. in the yield of tobacco referred to in the Audit paragraph, the witness has stated:—

> "This total figure of 26 lakh kg. discrepancy in the audit para is rightly calculated, but on the basis of the difference between Part I estimate and Part III return, where crop survey was done, we found it less, and even if a notional calculation of diversion of leakage is to be made, it would not be correct to go on the basis of this 26 lakh figure.
>
> I may add that in fact, we have got some figures for the entire Guntur Collectorate for 3 years showing what was the Part I estimate and what was the Part III return. In every case we find the total yield was appreciably more than what was given in Part I."

4.25. The Committee wanted to know how the cases of low yield were ascertained after two or three years of the crop season without working out the average which could be estimated as a reasonable yield. The Member (Excise) has stated during evidence:—

> "Low yield was the difference between what was reasonably to be expected and what was actually shown in the return; there was no absolute standard. Certain departmental instructions were issued to the respective collectors about the methods they should follow by counting the number of plants in some cases or other methods to know what could reasonably be expected and also having regard to the condition of the crop. They were asked to express it in terms of 100 paise: if he called it 80 paise, it meant that it was slightly lower than what was expected."

4.26. Elucidating the position in this connection, the Chairman, Central Board of Excise and Customs, has stated:—

> "While we have, I think, candidly admitted before the committee our own unhappiness at the leakage that has taken place with regard to this particular collectorate, I have one or two general observations to make. In this collectorate, they produce what they call Virginia tobacco which is used in cigarette factories. There is hardly any evasion worth the name in so far as this kind of tobacco is concerned because the price that the grower gets by selling this tobacco to the cigarette factory is very much higher than the price that is offered for hooka or bidi or chewing tobacco. So, the leakages in the case of virginia flue cured

tobacco are minimal. Secondly, even if one were to go by the comparison with the three years average it would be legitimate for me to point out for your consideration; why take only the cases in which the actual yield is lower than the three years average; there are innumerable cases in which it is higher than the three years average."

4.27. When asked whether the present system for the assessment of the yield was satisfactory, the Chairman, Central Board of Excise and Customs, has replied:—

"I would agree that in so far as excise control is concerned, this should not be based on statistical averages and things like that; it should be based on physical control over the yield."

(iii) Check on production of unmanufactured tobacco

4.28. The Committee wanted to know whether any check was exercised by the Excise Department on the production of tobacco. The Chairman, Central Board of Excise and Customs, has stated during evidence:—

"Our officers go to the different fields. Whenever they see that the crop is going down as compared to the average of the last years, they look into it."

4.29. The Committee wanted to know whether the instructions contained in Para 70 on page 38 of the Tobacco Excise Duty Manual to the effect that the range officers must conduct checks of at least 10 per cent of the registered plots were being followed by the Department. The Chairman, Central Board of Excise and Custom, has stated during evidence:—

"Broadly these checks remain the same but the intensity of the checks has been considerably reduced after the Finance Minister's direction... Like SRP in regard to manufactured goods, in regard to tobacco also there was a direction from the Minister with regard to the way the tobacco excise was to be administered. This is what the then Finance Minister said on the floor of the House during his Budget speech on 29-2-1968:—

'I have also reviewed the existing system of control on the tobacco growers for the purpose of levying excise duty on unmanufactured tobacco. Steps are being taken by which the need for the excise officers to contact the growers will be considerably reduced. Excise on sparse-growing areas is also being simplified.'

So, by and large, along with the introduction of SRP in the case of excisable goods, the procedure in regard to control over tobacco growing was also sought to be based more and more on reliance being placed on the growers..... Detailed instructions were issued by the Government on 21-5-68 (Appendix I) in pursuance of Finance Minister's directions."

4.30. The witness has also informed the Committee that the manual instructions got superseded automatically when the Finance Minister gave a direction and added:—

"The Tobacco Excise Manual is a compendium of departmental instructions. These are not rules."

4.31. Asked if the instructions in the manual framed after long cogitation could be changed drastically even to the extent of detriment to revenue, the witness has replied:—

"This was in the generality of the situations in which the Finance Minister was having a new approach to the problem and he wanted to put more and more reliance upon the tax payer. It was in this context that the contact of the Excise Officers with the growers was reduced....This particular announcement was made by the Finance Minister on the floor of Parliament itself."

4.32. In regard to the enquiry whether the instructions dated 21 May 1968 issued by the Ministry had brought about inefficiency or given encouragement to negligence and evasion of duty, the witness has stated:—

"I would say that the trust that was placed has not been justified."

4.33. The Committee wanted to know whether the reduction in checks had proved detrimental to revenues. The Chairman, Central Board of Excise and Customs has stated:—

"It appears to us as also to the Expert Committee which the Government had appointed that the relaxation in the checks has possibly resulted in some leakage of the revenue."

4.34. The Committee drew attention to the following contents of the Report of the Tobacco Excise Tariff Committee:—

Para 20: 'We have seen that since 1967-68 the duty-paid clearances of un-manufactured tobacco are more or less stag-

nant at about 280 mn. Kg. per annum. In other words, according to these statistics, during this period there has been almost no growth in the consumption of tobacco in the country although in the earlier 5 year period the duty-paid clearances indicate a growth of about 16.6 per cent. On the other hand a sample survey conducted by the Department at the instance of the Committee has indicated that out of 5935 consumers of tobacco covered by the survey, as many as 1031 had taken to tobacco consumption in one form or the other during the 5 year period ending 1973 thus indicating an increase of 22.3 per cent in the number of tobacco consumers during this period. This gives a possible estimate of the illicit tobacco passing into consumption without payment of any duty whatsoever.'

Para 21: 'In reply to a specific question regarding the availability of unaccounted for illicit-tobacco in the market, included in the Questionnaire issued by the Committee, the majority opinion of the trade (54 per cent) and a large number of departmental officers (40 per cent) have expressed the view that there is fairly large-scale evasion of duty in almost all areas. The extent of such evasion has been estimated by them from 20 per cent to 60 per cent in the important growing areas like Gujarat, Karnataka, Tamil Nadu, Bihar and U.P.'

Pages 282-283 *Vol. I*: 'In the case of tobacco however it is our belief that the degree of evasion has substantially increased in the more recent years. This is particularly because of —to use their words—'slack non-existent or dishonest supervision', which, we fear, has been progressively increasing and thereby lessening the fear of detection or the dread of what the punishment might be.'

and wanted to know the reaction of the Government in regard to the evasion of duty. The Chairman, Central Board of Excise and Customs has replied:—

"We are very much perturbed over it. One may not agree with the committee with regard to the extent of evasion or so, but certainly we are also of the view that there has been considerable evasion."

4.35. The Committee referred to the instructions issued by the Government on 29 January 1973 which squarely placed the responsibility on the Collectors for the check in regard to growers' declara-

tions and wanted to know whether that responsibility was fully discharged. The Chairman, Central Board of Excise and Customs, has stated during evidence:—

> "The point is that when the staff gets reduced, in percentages also that gets reduced. The instructions given in general are that they cannot contact the growers. That should be reduced."

Asked in regard to the percentage of such a reduction, the witness has replied:—

> "It was 75 per cent."

4.36. Explaining the details of reduction in the deployment of staff, the witness has stated:—

> "All further recruitments in respect of increase in excise was stopped completely. The staff were taken away from certain areas and brought to the central points. There was a sea-change....In our view the control and supervision was considerably relaxed and my personal feeling is: this did lead to abuse."

4.37. The Committee wanted to know whether the existing obligation of 10 per cent check of the registered plots was considered adequate to check evasion of duty. In a written note the Department of Revenue and Banking have stated as under:

> "Reports received so far from 12 Collectorates reveal that the instruction regarding check of at least 10 per cent of the plots registered for cultivation of tobacco is complied with and on the whole found to be adequate. However the Government are in agreement with the recommendations of the Tobacco Excise Tariff Committee contained in para 15.22 of Vol. I of their report that 60 to 70 per cent of the total area under tobacco should be check measured every year in each range."

4.38. In regard to the enquiry whether the areas of cultivation of individual holders were checked or verified by the Department with revenue records, the Department of Revenue and Banking have stated in a written note:

> "According to para 76(a) of the Tobacco Excise Manual it is left to the discretion of the Collector to require the Inspector or any other Central Excise Officers in the Collectorate or in any specified area of the Collectorate, to verify

the growers' declarations with village Revenue records and such other independent records as may be available, where ever possible or considered necessary."

4.39. When asked in regard to the position of verification in different Collectorates, the Department of Revenue and Banking have stated in a written note:

"It is reported that in the majority of the Collectorates, the areas declared by the growers are not verified with the revenue records either because the records are incomplete or the land is not recorded in the name of the grower who cultivates tobacco. In Hyderabad, Ahmedabad and Calcutta Collectorates, such verification has been attempted."

4.40. In a written notoe, the Department of Revenue and Banking have furnished the following details regarding the cases where verification was made during the year 1974-75, variations noticed and action taken by the Department:

"From the reports of the 11 Collectors received so far, it is seen that the verification was attempted in the following Collectorates. The number of cases in which verification was done and the number of cases where variations were noticed are given below:

Collectorate	No. of cases where verification was done	No. of cases where variations were noticed
Hyderabad	10 cases	One case. Case registered under rule 15 of Central Excise Rules, 1944.
Calcutta	2 cases	Nil
Ahmedabad	All cases (Exact number being ascertained)	A 'few' cases (exact number being ascertained). In these cases variations due to part cultivation of plots were noticed. The areas were surveyed and suitable corrections made."

4.41. The Committee wanted to know whether on account of lower deployment of staff after May 1968 the cost of collection of duty on tobacco had gone down. The Member (Excise) has stated during evidence:

"I have got the figures taken from the Tobacco Excise Committee's report for 1972-73, where they have said that the

cost of collection on unmanufactured tobacco other than cigarette tobacco was 7.85 per cent; the overall average cost of collection of Central excise comes to about 0.7 per cent. It is certainly higher."

4.42. The Committee wanted a table showing the cost of collection of tobacco as compared to its revenue and other leading agricultural commodities for each of the financial years from 1969-70 to 1975-76. The Department of Revenue and Banking have in a written note stated:

"An attempt has been made to collect the particulars regarding cost of collection from the field formations and those are still under compilation with the Statistics and Intelligence Directorate of this Department. However, it is felt that the cost of collection as reported by the Tobacco Excise Tariff Committee in their report in Volume I can be relied upon for the correctness, though the particulars are available only for one year, *i.e.*, 1972-73.

The extract taken from the above said report is given below:

Cost of collection of tobacco Excise duty (All India) 1972-73

Cost of conection as percentage of revenue			Revenue from unmanufactured tabacco (other than cigarette tobacco)
Unmanufactured tobacco (other than cigarettes)	Cigarettes and cigarettes tobacco	TOTAL Tobacco varieties	Rs. (000)
1.85	0.028	1.8	65,25,25

It is seen from this table that all India percentage cost of collection of revenue from unmanufactured tobacco, excluding cigarette tobacco, is about 7.9 per cent and for cigarettes and cigarette tobacco about 0.03 per cent. For the purpose of this study cigarette tobacco has been clubbed with cigarettes because both the cigarette factories and tobacco warehouses attached to them are working under the Self Removal Procedure as opposed to the physical control applied to other unmanufactured tobacco. However, if all unmanufactured tobacco is treated as one, the

cost of collection would come down to about 5.5 per cent. assuming that the cost of collection of cigarette tobacco is 50 per cent of the total cost incurred on collecting tobacco and cigarette excise duty from cigarette factories and tobacco warehouses attached to these. The figure for all tobacco and manufactured cigarettes taken together works out to about 1.8 per cent."

Evasion of duty by tobacco growers

4.43. The Committee wanted to know the stage at which excise duty was charged from the cultivator of tobacco. The Chairman, Central Board of Excise and Customs, has stated during evidence:

"In the case of tobacco, the position is different from the case of factory goods. In the case of factory goods, we charge the duty when the goods are removed from the factory. In the case of tobacco, we do not force a person to pay the duty. Mostly, they are small growers. It moves in bonds after production and harvesting. Then, there is the curing of tobacco. After the curing of tobacco, the tobacco is purchased by the warehouse dealers. It can remain there for a specified period."

4.44. When asked whether the cultivator had to pay duty after he had delivered the goods to the warehouse dealer, the witness has clarified:

"If the cultivator sells to a warehouse licence, he does not have to pay any duty. But if he tries to dispose of tobacco to the consumer, then he will have to pay the duty."

4.45. Explaining the position in regard to the maintenance of records of the cultivators, the witness has started:

"In the case of big cultivators, they have to give written declarations. In the case of small ones, our officer goes and talks to them and finds out the position. He records it in the survey book and he takes the thumb impression of the cultivator."

4.46. The Committee desired to know how the Department kept itself informed about the sale of tobacco by the cultivators. The Chairman, Central Board of Excise and Customs as stated:

"There is an elaborate system of transfer documents and sale notes prescribed under the law. Broadly, the position is that if a warehouse dealer is purchasing tobacco, he moves

the tobacco on his documents and this becomes known as warehouse tobacco. On the other hand, if a cultivator is a small one and he does not want to wait for the warehouse dealer and he wants to dispose of tobacco straightway to a licensee dealing in duty-paid goods, he can do that and collect the money in which case he himself becomes liable to pay the duty."

4.47. Asked about the Department's experience in regard to the collection of duty from small cultivators, the witness has replied:

"The experience about the small cultivators is, the smaller the cultivator, the greater the difficulty in realising the duty. In the case of small cultivators, really speaking, they have various urgent needs to fulfil. Probably whatever money a small cultivator gets by way of sale, he spends away that money in fulfilling those needs. The recovery of arrears of tax becomes quite a problem."

4.48. The Committee wanted to know the action taken by the Government on the various recommendations contained in the Report of the Tobacco Excise Tariff Committee to plug loopholes for evasion of duty on unmanufactured tobacco. The Department of Revenue and Banking have, in a written note, stated as under:

"(i) *Intensification of check-weighment etc.*

The Committee had recommended that 60 to 70 per cent of the total area under tobacco should be check-measured every year and that at least 70 to 75 per cent of the tobacco produced should be physically weighed. Collectors were directed on 11-5-76 to take steps for actual weighment of the cured produce on a much more intensive scale, to intensify surprise checks on goods in transit etc.

(ii) *Period of warehousing of tobacco without payment of duty.*

The Committee recommended that the normal period allowed for storage in a warehouse (which previously was three years, with a provision for further extension by one year by the Collector) should be reduced to two years in the normal course, with a provision for further extension by one year by the Collector and beyond this by the Central Board of Excise and Customs.

Government accepted this recommendation with the modification that the Collector can permit extension by one year in the case of air cured tobacco and more than one year

in the case of flue cured tobacco. The board can allow further extensions depending on the circumstances of each case."

(iii) *Movement of non-duty paid tobacco from one warehouse to another.*

The Committee recommended that such inter-warehouse movements might be restricted to two after the initial warehousing.

Government accepted this recommendation in principle, but, in order to avoid hardship, excluded from the two (subsequently increased to three) movements all movements prior to redrying (in the case of flue cured tobacco) and also movements for special processing, agmarking etc.

(iv) *Use of TP 3 Transport Certificates for transport of tobacco from curer's premises to warehouses.*

The Committe recommended the reduction of the period of validity of such transport certificates, to sunset of the day of issue in case of transport by mechanised vehicles (as against 2 days previously) and until sunset of the day of the following in other cases (as against the sunset of the fourth day previously).

This recommendation was found acceptable, but in the light of experience it was considered necessary to allow six hours (12 hours for Virginia tobacco) from the time of issue; but not beyond midnight of the date of issue. Subsequently a graduated scale depending on the type of tobacco, nature of transport, distance to be travelled, existence of firms etc. has been introduced under notification No. 60/77-CE. dated 12-4-77.

(v) *Use of sale notes for transport of duty paid tobacco.*

The Committee had recommended tightening up in this regard, the period of validity being reduced the quantity to be transported (without a permit in form TP. 1 from a Central Excise Officer) being reduced from 10 to 2-1|2 quintals, and certain additional particulars being shown in the sale notes.

Action on these lines has also been taken by the Government."

Concession granted to small cultivators.

4.49. The Committee wanted to know the concessions granted to small cultivators. The Chairman, Central Board of Excise and Customs, has stated during evidence:

> "In the case of tobacco, unlike in the case of some other manufactured commodities, there is no exemption as such but there are various concessions which have been given. For instance, there is some personal consumption allowance; whatever is consumed by the cultivator's own family and by the labourers is exempted—just like a railway man travelling on his own railway. Secondly, in the case of hilly and jungle areas where the yield will be very small and where the areas will be remote, so long as the tobacco is consumed within the same hilly or jungle area, there is no duty. We also have a sort of system whereby in certain areas there is greater control while in certain other there is less control so that we don't waste man-power unnecessarily.... The reason for this sort of special treatment is that the rate of excise duty on tobacco is very high and if we give exemption, however, small the exemption may be, there will be very great misuse of the exemption."

4.50. In a written note, the Department of Revenue and Banking have intimated that the following concession/exemptions from excise duty are granted to small cultivators of tobacco:

> "The concessions/exemptions from excise duty to small cultivators of tobacco are granted under rules 15 and 16 of the Central Excise Rules. Under rule 15 a grower who intends to cultivate less than 5 hectares of tobacco can furnish the declarations of land for growing tobacco to the proper officer orally. For sparse growing areas, Collectors are empowered to notify such areas in their jurisdiction in terms of which no declaration at all in regard to cultivation of tobacco by a cultivator for areas less than 12 acres is called for. Under rule 16, a curer who intends to cure less than 40 quintals of tobacco during the year may furnish particulars to the officers orally. Further, in respect of sparse growing areas and in respect of such varieties of tobacco as may be notified by the Collector, no declaration need be furnished by a curer if he intends to cure a qutntity of 60 kg. or less."

4.51. The provisions of the "Tobacco Excise Manual" and supplementary instructions issued by the Collector of Central Excise Col-

lectorate covered in the Audit paragraph, inter alia, prescribes that prompt investigations should be made then and there, if the annual returns of actual yield of tobacco (which should be obtained as soon as the crop has been cured) show variations with the estimates of the yields expected. Further the final accounting of tobacco in a season should generally be completed by the end of August following. The Committee are surprised to note the glaring deviations from this prescribed procedure, as highlighted in the Audit paragraph on the basis of the test check of records of seven out of 46 ranges in a collectorate relating to the years 1968-69 to 1972-73. These test checks revealed that out of a total of 2479 low yield cases, only 77 cases (3.1 per cent) were investigated within the prescribed period. As regards the remaining 2102 cases, only 62 cases (2.6 per cent) were investigated within one year after the completion of the final accounting of the crop season, 597 cases (24.7 per cent) were investigated with delays ranging from one to four years thereafter. Till September 1974, the balance 1743 cases (72.7 per cent) remained completely uninvestigated. The routine and half-hearted investigation into these cases is reported to have continued thereafter and till date as many as 124 cases are still to be investigated. The Committee strongly deprecate the lack of seriousness on the part of Government in conducting investigations into these cases involving a shortfall of 26,39,968 kgs. of tobacco with duty content of Rs. 91,08,870 (calculated at the lower rate applicable to tobacco, not otherwise specified).

4.52. The Committee observe that there is a difference of opinion with regard to the computation of loss as a result of delay in investigation of damage to crops. The Board of Central Excise and Customs have contended that a comparison of actual yield with the three years average of the entire village was wrong. The correct basis would have been to confine the actual yield with the crop survey. They have further contended that if the annual yield during the period covered by Audit was compared with the crop survey figure the variations or discrepancies would be very much less. But at the same time the Board have expressed their unhappiness over the loss in realisation of revenue. They had also verified the statements in the Audit para when it was sent to them for factual verification. The Committee feel that no room should be left for doubt in this regard and the system of computation of loss should be devised in consultation with Audit.

4.53. The Committee feel that the delayed investigations are bound to adversely effect a judicious assessment of the extent of damage, if any, and the consequential loss of revenue. As such, they doubt the summary outcome of the belated investigations into

as many as 1566 cases, to the effect that these were all genuine low yield cases. On the analogy of the loss of duty amounting to Rs. 17,66,202 forgone in the case of just 313 non-investigated cases, as worked out by Audit and the duty amount of Rs. 91,08,870 involving 2402 cases in 7 out of 46 ranges in a Collectorate, such figures in respect of all other collectorates may obviously be of very high order, involving huge loss to the Exchequer. Keeping in view the seriousness of the problem and in the interest of timely and due realisation of duty, the Committee strongly urge upon the Government to investigate thoroughly the reasons for slow pace of investigations into these cases with a view to fixing responsibility and taking suitable remedial measures in that behalf. The Committee would like to know the outcome of the investigations and the remedial measures taken.

4.54. The Committee note that the instructions issued on 21 May 1968, with regard to the excise control over grower/curer of unmanufactured tobacco inter alia provided "A percentage check of 10 per cent of the plots registered should be adequate for the purpose of estimation." The Committee feel that this relaxation in excise control has largely accentuated the tendency for evasion of duty in the recent years. This is adequately proved by the following majority opinion of the tobacco trade (54 per cent) and a large number of departmental officers (40 per cent) given in reply to a questionnaire issued by the Tobacco Excise Tariff Committee:

> "....there is fairly large-scale evasion of duty in almost all areas. The extent of such evasion has been estimated by them from 20 per cent to 60 per cent in the important growing areas like Gujarat, Karnataka, Tamil Nadu, Bihar and U.P."

The following observations of the Tobacco Tariff Committee made on pages 282-283 of their Report are also very relevant in this behalf:—

> "In the case of tobacco however it is our belief that the degree of evasion has substantially increased in the more recent years. This is particularly because of—to use their words —'slack, non-existent or dishonest supervision', which, we fear, has been progressively increasing and thereby lessening the fear of detection or the dread of what the punishment might be."

4.55. The Chairman, Central Board of Excise and Customs admitted before the Committee during evidence that "Broadly these checks remain the same but the intensity of the checks has been

considerably reduced after the Finance Minister's direction .... we are also of the view that there has been considerable evasion." The trend of evasion very clearly proves that the instructions issued on 21-5-1968 were basically incorrect. Even the Tobacco Excise Tariff Committee have recommended that 60 to 70 per cent of the total area under tobacco should be check-measured every year in each range. The Committee fail to understand why the instructions issued on 21-5-1968 were not reviewed thereafter keeping in view the extent of evasion and the aforesaid recommendation of the Tobacco Excise Tariff Committee. The Committee recommend that the question of evasion of excise duty on tobacco should be examined throughly and urgently particularly in the light of recommendations made by the Tobacco Excise Tariff Committee and to take suitable remedial measures including the tightening of the administrative machinery for collection of excise duty in the field and plugging all leakages of revenue. The Committee would like to know the outcome of this investigation and the remedial measures taken.

4.56. The Committee note that the Government have accepted certain recommendations made by the Tobacco Excise Tariff Committee to check evasion of duty on unmanufactured tobacco either with some modification or in principle. For example, in respect of the period of warehousing of tobacco without payment of duty, the Expert Committee had recommended that the normal period allowed for storage (which was previously three years with a provision for further extension by the Collector) should be reduced to two years in the normal course with a provision for further extension by one year by the Collector and beyond this by the Central Board of Excise and Customs but the Government have decided that the Collector can permit extension by one year in the case of air cured tobacco and more than one year in the case of flue cured tobacco with further extensions to be granted by the Board. The Committee are not in favour of giving discretionary powers to the Collectors. They would, therefore, like the position to be reviewed.

COSMETICS AND TOILET PREPARATIONS.

Audit Paragraph

5.1. A factory manufacturing, *inter alia*, "Vaseline Hair Tonic" classified it as a "toilet preparation" under tariff item 14F and was paying duty thereon at 25 per cent *ad valorem* from 1967. The item "perfumed hair oil", was specifically inserted in the tariff with effect from 29th May, 1971. When this specific insertion came, the licensee preferred a claim in August, 1971 for refund of Rs. 7.78 lakhs paid by him prior to that date treating it erroneously as a "toilet preparation".

5.2. The refund allowed by the department was, however, restricted to the duty paid for a period of one year preceding the date of claim and the claim for the earlier period was rejected as time-barred. However, on appeal, the Appellate Collector, in September, 1973, allowed the entire claim, holding that since the product was non-excisable, the normal time limit of one year prescribed in the Rules would not apply. Even granting that the article did not fall under excise prior to 29th May, 1971 the refund of Rs. 1,38,290 relating to the period prior to August, 1968 is barred by limitation and is extra-legal. The refund also resulted in a fortuitous benefit to the manufacturer to the tune of Rs. 7.78 lakhs, since the manufacturer would have already collected the duty from dealers/customers.

5.3. The Ministry of Finance have stated that duty prior to 29th May, 1971 was collected from the manufacturer erroneously owing to misconception. They have added that the branch secretariat of the Ministry of Law had stated that though bstrictly the party would be entitled to refund of duty only for a period of three years from the date of original payment, it would be in equitable for the Government to stand on such a 'technicality' and refuse payment of the amount employing defence of bar of limitation. In this case, however, as the manufacturer paid the amount without protest, he would have passed on the duty to the consumers and hence it would not have inequitable, if refund of the amount collected earlier to the period of limitation had refused.

[Paragraps 50 of the Report of the Comptroller and Auditor General of India for the year 1974-75—Union Government (Civil—Vol. I—Indirect Taxes.]

5.4. A firm in Madras (M/s. Chesbrough Ponds Inc.) was manufacturing, *inter alia*, 'Vaseline Hair Tonic' from 1967 on which the manufacturer paid Central Excise duty at 25 per cent *ad valorem* by treating the product as 'Toilet preparation'. However, when 'perfumed hair oils' were brought within the purview of item No. 14F by introduction of a separate sub-item ii(b) from 29 May, 1971 through Finance Act, 1971, the assessee filed a revised classification list for 'vaseline hair tonic' and contended further that no excise duty was leviable on this products prior to 29 May, 1971. The reference of the company dated 10 June, 1971 is as under:—

"We have been manufacturing vaseline hair tonic in which the word 'vaseline' represents the Trade Mark. The product, is only perfumed hair oil.

When the Central excise duty was originally imposed on cosmetics, the department have classified it as a toilet preparation, assessing the duty according. We presumed that this was under the excise tariff and were accordingly paying duty based on the approval of the classification by the department.

However, in the Central Finance Budget announced on 28th May, 1971, perfumed hair oil has been specifically included as a separate item under the main heading of preparations for the care of the hair with unit rate of duty different from hair lotions, creams and pomades. This actually pre-supposes the fact that perfumed hair oils were not coming under the purview of central excise so far. As a matter of fact, we also understand that such perfumed hair oils have not been brought under the central excise levy till now in the case of factories manufacturing the same.

It is our belief that we have been all along paying duty for the above product, *viz.*, 'vaseline', 'hair tonic classified erroneously as cosmetics and toilet preparations at the rate of 25 per *ad valorem* plus 20 per cent S.E.D. whereas no excise duty is leviable on this product. Hence we propose to submit our refund claim separately for the amount paid so far.

In view of the above we are enclosing herewith the revised classification of our 'vaseline' hair tonic at the rate of 10 per cent A.V. which we request you to approve at the earliest opportunity."

5.5. Subsequently the manufacturing Company filed a claim on 19 August, 1971 for refund of Rs. 7,78,171 paid as duty for the period 21-10-1967 to 275-71 as per details below:—

	Rs.
21-10-67 to 5-12-67	14,273
7-12-67 to 12-3-70	5,72,023
19-8-70 to 27-5-71	1,91,875
	7,78,171

5.6. Initially the Department allowed the claim on 28 March 1973 from 19 August 1970 only holding that for the earlier period the claim was time-barred under Rule 11. On an appeal preferred by the manufacturer to the Appellate Collector of Central Excise, Madras the refund claim was allowed in full by his order dated 17 September, 1973 holding that since the product was not at all excisable prior to 29-5-71, Rule 11 would not apply. Accordingly the entire claim of Rs. 7,78, 171 was paid in full on the following dates.:—

	Rs.
-4-73	1,91,875
4-3-74	5,72,023
29-7-74	14,273
	7,78,171

5.7. The Committte wanted to know the reasons for the classification of the good "hair oil" perfumed under tariff item 14F prior 29 May, 1971. In a written note, the Department of Revenue and Banking, have intimated as under:—

'Tariff Item No. 14-F which covers 'Cosmetics and Toilet Preparations' was inserted in the Central Excise Tariff as a part of 1961 Budget. The levy was initially restricted to the products, *viz.*, (i) Face cream and snow, (ii) Face Powder, (iii) Talcum Powder and (iv) Hair lotion, cream and pomade.

Under the Finance Bill, 1964, the following changes were made in this item to broaden the definition:—

(a) Sub-items (i) and (iii) were replaced by the following:—

(i) Preparations for the care of skin including beauty creams, vanishing creams, cold creams, make-up

creams, cleansing creams, skin foods and tonics, face powders, toilet powders and talcum powder.

(b) Sub-item (iv) was renumbered as sub-item (ii).

It has been reported by the Collector of Central Excise, Madras that M|s. Chesbrough Ponds Inc. started their manufacturing operations in the Madras Collectorate on 21-10-1967. It was assumed at that time both by the manufacturers and by the Department that duty on Vaseline Hair Tonic was payable under item 14F relating to "Cosmetics and Toilet Preparations', as it then stood. It is reported that on the application of the Self Removal Procedure to Item 14F, the manufacturers filed a classification list soon after 1-6-1968 in which the company itself classified this product under Item 14F (ii)."

5.8. When asked as to why the duty was paid or charged by the Department on an item which was not assessible to duty, the witness has stated:—

"It was a common error, I believe, on the part of the assessee as well as the Department to have assessed it to duty.... It was presumed by both that the Vaseline Hair tonic was covered by the description 'hair lotion'. If the words, hair oils, were there, there was no difficulty."

5.9. The Committee wanted to know why the manufacturer did not dispute the classification prior to 29th May, 1971. The Secretary, Ministry of Finance, has explained during evidence:—

"In the Finance Act, 1971 this new item was brought in and it was said in clear specific terms that the following items will be liable to tax, viz., preparations for the care of the hair—(a) hair lotion, creams and pomade, (b) perfumed hair oil, (c) shampoos.

This particular addition has to be considered with the earlier definition. The only common item was hair lotion and pomade. Government in their wisdom introduced this hair oil in conjunction with the earlier wording—hair lotion and pomade. Once that happened it automatically followed that the term perfumed hair oil was distinct from hair lotion, cream and pomade. The moment this particular addition was made the Company was clever enough to say that they were paying on items which were not taxable."

5.10. The Committee wanted to know whether samples are drawn before deciding upon the classification and, if so, when was the sample drawn and tested in this case. The Department of Revenue and Banking have, in a written note, stated:—

> "Under rule 173B of the Central Excise Rules, 1944 every assessee has to file with the proper officer a list showing *inter alia* the full description of all excisable goods manufactured by him, and item number and sub-item, if any of the Central Excise Tariff. Sub-item (2) *ibid* provides that 'The proper officer shall, after such inquiry as he deems fit, approve the list with such modifications as are considered necessary....' For this purpose samples are normally drawn by the Officers in cases where classification of the product cannot be resorted to on visual examination or where the product, though identifiable on visual examination, could fall under more than one tariff item, depending upon subtle distinctions. In the instant case it is reported by the Collector that the product was not tested before 29-5-1971. It is reported that on 23-6-1971 the Range Supdt. drew a sample of Vaseline hair tonic and Chemical Examiner confirming *vide* his test Report dated 23-7-1971, that the product was assessable as 'perfumed hair oil'."

5.11. The Committee wanted to know when did the party prefer its claim for refund and what was the decision taken on that claim. The Department of Revenue and Banking have, in a written note, stated:—

> "M/s. Chesebrough Ponds Inc., Madras filed applications for refund on 18-8-1971, 22-10-1971 and 31-1-1972. The Assistant Collector of Central Excise concerned, disposed of the claim for refund by deciding that the product was not excisable prior to 29-5-1971, but that the claim for refund was covered by the limitation under rule 11 read with rule 173-J of the Central Excise Rules, 1944. Accordingly he granted the refund only for the amount of duty paid by the party during the period 19-8-70 to 18-8-1971 and the claim for the balance rejected."

5.12. The Committee wanted to know what were the grounds of appeal by the party before the Appellate Collector. The Department of Revenue and Banking have, in a written note, stated:—

> "The party preferred the appeal to the Appellate Collector, Madras on 16-4-73 and claimed the entire amount of the

duty paid by them prior to 29-5-1971 on the following grounds:—

(i) that the product 'Vaseline Hair Tonic' was not excisable prior to 29-5-71;

(ii) that payment of duty was made on a mistake of Law. When the goods were not excisable, any collection of duty of Central Excise on such goods would have necessarily to be refunded;

(iii) that the period of limitation prescribed under Rule 11 read with Rule 173-J would not apply and only the general limitation prescribed under the limitations Act *viz.*, period of 3 years from the date of their coming to know that they had unknowingly paid such duty not due to the Government would hold good; and

(iv) that they had preferred their claim well within the general limit of 3 years and there had been no lapse or delay."

5.13. When asked about the opinion given by the Madras Branch of the Ministry of Law and Justice, the Secretary, Ministry of Law and Justice, has stated during evidence:—

"I will read the note. It says:

'We may agree that it is not rule 11 read with rule 173-J of the Central Excise Rules that would apply in this case. It would be the ordinary law of limitation that would apply. As such, strictly speaking, the party would be entitled to refund of the yearly payments, only for a period of 3 years from the date of the original payment if a claim for recovery is made by a civil suit. However, it would be thoroughly inequitable for the Government to stand on such technicality and refuse payment of the amount employing the defence of bar of limitation. Duty was levied by the Government and was paid by the party under mistake. As this was not an excisable item Government have no right to collect duty. Retention of the money thus illegally levied especially when the party is pressing for its return may not be morally justifiable. The observations of the Supreme Court and the High Court of Madras in similar cases (referred to in the above note) should be taken as providing the necessary guidance to the department in this behalf for returning the entire amount paid by the party.'"

5.14. It is understood from Audit that the Central Board of Excise and Customs had in their letter No. 1719/63 CXIV dated 27-5-63 clarified that "Rule 11 applies in those cases where the payment is made through inadvertance, error or misconstruction which can be attributed to the party concerned". Also the Board had earlier circulated the following note of the Ministry of Law with their Circular No. 25-1-67-CX-VI dated 21 March, 1969:—

> "Where certain amount is illegally collected as a levy under the Central Excise Act, the position of that Act regarding refunds would not be attracted. The period of limitation in respect of such collections under the Limitation Act is three years from the date when money is received."

5.15. The aforesaid position is stated to have been reiterated in another Circular issued by the Board on 8 May, 1973 with which the following extract from the note dated 19 October, 1972 of the Ministry of Law was circulated:—

> "As held by the Supreme Court in Venkata Subha Rao *Vs.* State A. P. so far as a claim for recovery of tax illegally collected is concerned, the authorities are fairly uniform that the period of limitation for a suit making such claim is governed by Art. 62 of the Limitation Act, 1908 new Art. 24 of 1963 Act."

5.16. The Committee wanted to know whether the Appellate Collector of Madras was aware of the aforesaid opinion of the Ministry of Law. The Department of Revenue and Banking have, in a written note, stated:—

> "The Appellate Collector of Central Excise, Madras was aware of the opinion of the Ministry of Law and Justice dated 19-10-1972."

5.17. In regard to the enquiry whether the opinion of the Ministry of Law dated 19 October, 1972 was specifically brought to the notice of the Additional Legal Adviser, Madras when a reference was made to him for giving his opinion on the appeal, the Department of Revenue and Banking, have, in a written note, stated:—

> "It has been seen from the note in which the reference was made to the Additional Legal Adviser, Government of India, Madras, by the Collectorate, that the same was not specifically brought to the notice of the Additional Legal Adviser, Madras."

5.18. The Committee wanted to know whether the decision of the Appellate Authority was in conformity with opinion of the Law

Ministry dated 19 October, 1972. The Department of Revenue and Banking have, in a writtern note, intimated as under:—

> "To the extent that the Appellate Collector sanctioned refund for a period beyond 3 years from the date of payment of the money, the Appellate Collector's decision does not appear to be in accordance with the aforesaid opinion of the Ministry of Law."

5.19. Asked if the Appellate order was considered for review by the Central Board of Excise and Customs, the Department of Revenue and Banking have stated in a written note that—

> "The order of the Appellate Collector of Central Excise, Madras was not suggested for review."

5.20. It is seen from Audit Paragraph that the refund of Rs. 1,38,290.00 relating to the period prior to August, 1968 was barred by limitation and was extra-legal even while conceding that the article did not fall under excise prior to 29 May, 1971. The Committee desired to know the views of the Department. The Chairman, Central Board of Excise and Customs, has stated during evidence:—

> "Personally I agree with Audit view-point."

5.21. Asked if the Appellate Collector was justified in making a payment of refund for period which was barred by limitation of 3 years, the witness has replied:—

> "In my opinion that action on the part of the Appellate Collector was wrong."

5.22. Explaining the legal position in this connection, the Secretary, Ministry of Law and Justice, has stated:—

> "So far as the strict legal position is concerned they have stated that it is not legally claimable. It is stated that the duty was collected whereas in law you are not entitled to collect it. It is not really Government money which they can lawfully recover. Time and again courts have observed that Government should not stand on mere technicalities. That is to say, if the claim is otherwise in order, only the plea of limitation should not be taken."

5.23. The Committee wanted to know the views of the Ministry of Law and Justice on the opinion given by the Madras Branch of the Ministry of Law and Justice. The Secretary, Ministry of Law and Justice, has stated:—

> "This is a duty collected without the authority of law. Because of the limitation period, should it be refunded or

not? That is the point. The proposition is that it is not excisable. The duty has been paid by the assessee whether he has paid it from his own pocket or after collecting from the customers; the duty is refundable to him."

5.24. Adding in this connection, the Chairman, Central Board of Excise and Customs, has stated:—

"I would like to explain the position in two parts—one is: where some refund has got to be given legally, that is, we cannot keep the money with us legally, the man merely has got to go to the High Court to get the refund. As regards the second part, namely, whether it would be one of equity, our view is that in so far as refund is concerned and where an application for it was made within three years that was not barred by the period of limitation. Therefore, it was legally due to the man even though it meant any windfall benefit to him. We have no option but to legally pay it to him."

5.25. Since the manufacturer would have collected the duty from dealers/Customers the Committee wanted to know how far the grant of the refund which gave double benefit to the manufacturer was justified. The Chairman, Central Board of Excise and Customs, has stated during evidence:—

"Suppose the interpretation goes against them. We recover the money, but they cannot recover it from the purchasers. When it is a question of limitation and when a person has the legal right to claim refund, I am afraid, it will not be possible for the Department to refuse to pay the refund on the ground that this is going to be a two-fold benefit."

5.26. The Committee wanted to know whether in the reference made to the Ministry of Law it was made clear that the concerned party had already secured from their dealers and customers the money which was claimed for refund. The Secretary, Ministry of Law, has stated during evidence:—

"From the referring note it does not appear....".

5.27. Asked if it was not necessary to go through the whole thing when a reference was examined by the Ministry of Law, the witness has replied:—

"It was open to the officer concerned to comment in more details."

5.28. The Committee wanted to know whether the refund allowed to the manufacturer was reflected by him in the income-tax return and duly taxed. The Chairman, Central Board of Excise and Customs, has stated during evidence:—

"We advised specifically the Income-tax authorities about it."

5.29. In a written reply, the Department of Revenue and Banking have stated as under:—

"It has been ascertained and reported by the Collector that the refund allowed to the party was reflected in the Company's Income-tax return and duly taxed."

5.30. The Committee noted that the grant of refund had resulted in unintended benefit to the manufacturer. They wanted to know the remedial measures taken by Government in this regard. The Chairman, Central Board of Excise and Customs, has stated during evidence:—

"Sir, this question of finding out a way by which this windfall benefits and undue hardships could be avoided has been causing concern to this Committee as well as to us. That is why, Sir, you will find in the indirect taxes the Government tries to lay down a period of limitation which is even less than the normal period of limitation laid down under the Limitation Act. In the Customs Act we have laid down a period of six months only both for purposes of recovery of tax due to the Government as well as for purposes of refunds to the parties even though they may be legally due because we feel beyond a particular period it really means either it will be a windfall benefit to the party if a refund is given or it will be a hardship to him if we go and recover the amount. The limitation provide under the Central Excise Act is one year but it so happens that when it is ruled that a particular thing is not excisable at all then the Law, Ministry's opinion has been that if a thing is not excisable then the Central Excise Act does not come into play. Then you go by the normal. On this particular point when we are revising the Central Excise Law we would be consulting the Ministry of Law and we would be thinking over it as to whether we can do something to avoid these unintended benefits and cases of hardship beyond a particular period."

5.31. The Committee are perturbed to note that the refund of the amount of Rs. 7.78 lakhs to a manufacturer, who had paid excise duty in good faith in respect of a commodity which he erroneously considered as excisable, had resulted in a fortuitous benefit to him. Since the amount would have been already collected by the manufacturer from the consumers in the form of duty, it appears inequitable that while the burden of excise duty should have been borne by the consumers, the benefit of refund should accrue to the manufacturers. It has to be noted that recoveries from or refunds made to manufacturers at a later date, will have no effect on the burden of consumers who have to bear the incidence of duty.

5.32. The Public Accounts Committee in paragraph 2.92 of their 72nd Report (4th Lok Sabha) had recommended that if it was legally permissible to retain such excess collections which should more appropriately form part of the Government revenue, Government could with advantage consider making such funds available to a Government research organisation working for the benefit of industry and trade. In the Action Taken Note dated 28-11-69, the Committee were informed that the acceptance of the recommendation would involve a Statutory Change in the Central Excise Law. The Chairman, Central Board of Excise and Customs, had assured the Committee during evidence that "when we are revising the Central Excise Law we would be consulting the Ministry of Law and we would be thinking over it as to whether we can do something to avoid these unintended benefits and cases of hardship beyond a particular period." The Committee would like to know the outcome of these exercises and be apprised of the latest position obtaining in this behalf.

5.33. The Committee note that under Rule 173B of the Central Excise Rules, 1944 every assessee has to file with the proper officer a list showing inter alia the full description of all excisable goods manufactured by him and item number and sub-item, if any, of the Central Excise Tariff. Sub-item (2) of the same Rule provides that "the proper officer shall, after such inquiry as he deems fit, approve the list with such modifications as are considered necessary...." The Committee have been informed that for this purpose the samples are drawn by the officers in cases where classification of the product cannot be resorted to on visual examination or where the product, though identifiable on visual examination could fall under more than one tariff item, depending upon subtle distinctions. The product in this case was not tested before 29 May 1971, i.e. the date from which "perfumed hair oils" were brought within the purview of item 14F by introduction of a separate sub-item ii(b) through Finance Act, 1971. The Committee feel that

had the sample been tested initially at the time of the submission of the classification list by the manufacturer, the fact about its being non-excisable would have been known and the manufacturer would not have reaped an unintended benefit to the tune of Rs. 7.8 lakhs. The Committee accordingly recommend that suitable provision may be made in the rules which should make it obligatory for the concerned authorities to draw samples for test invariably in all cases immediately after the receipt of the lists showing the description of the excisable goods to be manufactured.

5.34. The Committee note that the Ministry of Law in 1969 had opined that "where certain amount is illegally collected as a levy under the Central Excise Act, the position of that Act regarding refunds would not be attracted. The period of limitation in respect of such collections under the Limitation Act is three years from the date when money is received." Subsequently, in their note dated 19th October 1972, the Ministry of Law had stated that "As held by the Supreme Court in Venkata Subha Rao Vs. State of A.P. so far as a claim for recovery of tax illegally collected is concerned, the authorities are fairly uniform that the period of limitation for a suit making such claim is governed by Art. 62 of the Limitation Act, 1908 now Art. 24 of 1963 Act."

5.35. The manufacturer had filed an appeal for the refund of the entire amount paid by him for the period with effect from 21 October 1967 to 27 May, 1971 which extended beyond the period of limitation of 3 years provided for in the Limitation Act. The Department of Revenue and Banking have admitted that the opinion of the Ministry of Law dated 19 October 1972 was not specifically brought to the notice of the Additional Legal Adviser, Madras when a reference was made to him for giving his opinion on the appeal. The Committee feel that had this been done the advice given by the Additional Legal Adviser, Madras would not have been, in all probability, at variance with the advice of the Ministry of Law dated 19 October 1972. The Committee would like that responsibility for this lapse should be fixed for appropriate action against the defaulters.

5.36. The Committee have been informed that "to the extent that the Appellate Collector sanctioned refund for a period beyond 3 years from the date of payment of the money, the Appellate Collector's decision does not appear to be in accordance with the aforesaid opinion of the Ministry of Law." According to Section 36(2) of the Central Excise and Salt Act, 1944, the Central Government is empowered to review of its own the decision of the Appellate Collector. The Committee have, however, been informed that "the

order of the Appellate Collector was not suggested for review". When the Chairman, Central Board of Excise and Customs, himself felt that "the action on the part of the Appellate Collector was wrong", the Committee fail to understand what prevented the authorities from subjecting the decision of the Appellate Collector to a review by the Government. The Committee are firmly of the opinion that the review of the decision by the Government would have, in all fairness, led the Government to set aside the order for the refund of the money to the extent it pertained to the period beyond that stipulated in the Limitation Act. The Committee would, therefore, like to be apprised of the detailed reasons for the non-review of the decision of the Appellate Collector by the Government.

NEW DELHI.
dated 9 December, 1977.
28 *Agrahayana*, 1899 (*S*).

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

APPENDIX I

(*Vide* Para 1.22)

Details of the cases in which 11·79 *Lakhs Kgs. of Potassium Chlorate disappeared from the dealers.*

Sl. No.	Name of the dealer	Year	Chlorate received and sold in retail to match factories	From whom received
	(*a*) *Madras Collectorate*			
1.	Shri V. P. Chockalingam Gudiyatham	1972	59,750	WIMCO
2.	Xa-yarrar Chemicals Govindappa Naicken St. Madras-1	1971	1,86,900	WIMCO
			2,180	others
		1972	1,50,550	WIMCO
			30,015	others
3.	Murali Manohar Guptha Madras-1	1971	10,550	WIMCO
		1972	1,31,200	WIMCO
4.	Seth Shcnonarayan and sons Madras-1.	1971	49,200	WIMCO
		1972	25,400	WIMCO
5.	R. Lakshmanan, Wall Tax Road, Madras-3.	1972	2,100	WIMCO
	(*b*) *Madurai Collctorate,*			
6.	Bharat Traders, Madurai	1971	1,24,250	WIMCO
			750	TCM(ALWAYE)
7.	M. Alexander, Virudhunagar	1969	6,600	TCM, Alwaye
				WIMCO
		1971	2,53,750	WIMCO
8.	Sivagami Chemicals Supplies, Sivakasi	1969	11,050	WIMCO
		1970	87,100	WIMCO
		1971	48,450	WIMCO
	TOTAL		11,79,795	

APPENDIX II

(*Vide* Para 1.92)

Details of cases in which 11,765 Kgs. of Potassium Chlorate issued to Match Units was not accounted for

Sl. No.	Name of the factory	Quantity supplied as per dealers	Quantity actually accounted in Kgs.	Shortage	Remarks Name of dealer and period
1	2	3	4	5	6
1.	Jayakar Match Works, Srivilliputhur	7050	6950	100	WIMCO 1973
2.	Sri Annamalayar Match Works, Sivakasi, (in correct closing Balance in form IV)	5400	4400	1000	Mettur Chemicals 1971
3.	The Pioneer Match Works, Sivakasi	13400	13200	200	TCM 1973
4.	Kamal Match Works, Chengamalapatti	1400	1350	50	TCM 1972
5.	Sankar Match Works, Tiruthangal	6350	6300	50	WIMCO 1972
6.	The Bably Match Industries, Sivakasi	7400	7300	100	WIMCO 1972
7.	Imperial Match Works, Sivakasi	1100	1050	50	TCM 1973
		1650	1550	100	TCM 1973
8.	South India Lucifer Match Co., Sivakasi	850	600	250	TCM 1973
9.	The Champion Match Industries, Sivakasi	30200	29700	300	WIMCO 1972
		1090	940	150	TCM 1973
10.	Aruna Match Factory, Sivakasi	4500	4300	200	WIMCO 1973
11.	Srivalli Match Industries, Anayoor, Sivakasi	875	825	50	WIMCO 1973
12.	Saraswathi Match Works, Arupankudam	6400	6350	50	WIMCO 1973
13.	Murthy Match Works, Sivakasi	3600	3550	50	WIMCO 1973
	C/F	91265	88365	2900	

1	2	3	4	5	6	
	B/F	91265	88365	2900		
14.	Asia Match Co. (P) Ltd., A. Unit, Anayur, Sivakasi.	3150	3100	50	TCM	1973
15.	Arasan Match Works, Sivakasi	18150	17300	850	TCM	1973
16.	Vespa Match Industries, Thiruthangal . . .	1150	1050	100	TCM	1973
17.	Universal Match Works, Sivakasi	2550	1400	1150	TCM	1973
18.	Lion Match Factory, Lingapuram, Sivakasi.	4350	4250	100	TCM	1973
19.	Sri Arunachalam Match Industries, Perapatti.	1900	1850	50	TCM	1973
20.	Star Match Factory, Koilpatti (10/72 purchase found in purchase ledger not accounted in form IV)	17500	17000	500	TCM	1972
21.	Lotus Match Works, Sivakasi (@ as per purchase ledger in 9/73 for 2450 Kgs. only 1250 Kgs. was accounted)	21750	20550	1200	WIMCO	1973
22.	Sri Ranganathan Match Industries, Sattur . .	14150	13650	500	TCM	1972
23.	Ajanatha Match Industries, Sattur	175	70	105	TCM	1973
24.	Sri Sankareswari Match Factory, Sattur . . .	50	20	30	TCM	1973
25.	Babu Match Works, Sattur	150	70	80	TCM	1973
26.	Balaji Match Industries, Sattur	6450	6200	250	WIMCO	1973
27.	National Match Works, Sivakasi	3900	Nil	3900	WIMCO	1972
	TOTAL SHORTAGE	186640	174875	11765		

APPENDIX III

Summary of important instructions issued regarding sale purchase use and manufacture of Potassium Chlorate

(*Vide* Para 1.63).

1. All private dealers of potassium Chlorate, including factory depots of manufacturers, should be required to obtain a licence in form II for acquisition and possession for sale.

2. In all Form II Licenses, the entry below Col. 4 should indicate the quantity authorised to be acquired in a year. The present practice of indicating the quantity authorised to be purchased on "at a time" basis should be discontinued forthwith.

3. Factory depots and dealers should be given licenses for sale in Form XIII and not Form XI.

4. The quantities of potassium Chlorate acquired for sale by factory depots or dealers from time to time against the annual ceiling permitted to be acquired should be required to be endorsed on the licenses at the source from which potassium chlorate is acquired. Thus the licenses of factory depots should be required to be endorsed by the manufacturers and the licences of dealers should be required to be endorsed by factory depots or manufacturers (in case of ex-factory purchases).

5. The annual quota to be authorised to factory depots or private dealers for acquisition and possession for purposes of sale should be fixed on the basis of *bona fide* sales during 1976 as verified during inspections *vide* wireless message No. 12/70/76-GPA. V. dated 5-5-1977.

6. The annual quota of consumers holding licenses in Form II or Form XI should be fixed in exact multiples of standard packings supplied by manufacturers (it has been suggested separately that manufacturers should be required to supply potassium chlorate in packings of 50 kgs. 25 kgs and 10 kgs).

7. For consumers holding licenses in Form II or XI whose annual quota is less than the standard packings, the State Government may specifically authorise a restricted number of dealers at or near the

place of use to sell potassium chlorate in small quantities. Every dealer should not be authorised to make sales in loose quantities.

8. Licenses in Form XIII for sale of potassium chlorate should not be issued to any person or persons who own or are partners of are employed by the manufacturers of match boxes, or explosives or fire works, etc.

9. Every factory depot and private dealer in potassium chlorate, holding a licence in form XIII, should be required to sell potassium chlorate after duly verifying the licence for acquisition in Form II or Form XI held by the purchaser and after making entry therein indicating the quantity sold and the date of sale. It should be the responsibility of the Factory Depots or the dealers to ensure that the quantity authorised to be purchased per annum is not exceeded even if the licensed purchasers acquire their requirements from more than one source.

10. The particulars of Form II or Form XI licenses as well as "No Objection Certificates" obtained by the purchasers for transportation should be entered on the cash memos or bills for sale and written acknowledgement should be obtained by factory depots and dealers from the purchasers on their cash memos or bills in token of acknowledgement of receipt of potassium chlorate sold. Wherever necessary, it should be the responsibility of the factory depots and dealers to established identity of the purchaser before selling him potassium chlorate.

11. Manufacturers of match boxes may be instructed to apply for fixation of their annual requirement of Potassium Chlorate and for this purpose the applications should be accompanied by statements duly attested by excise staff, indicating actual production of match boxes during the past five years.

12. The quantity of potassium chlorate required by these units may be determined in relation to average production of match boxes during the last five years, or the maximum production in any one of these five years, which ever is more.

13. The quantity of potassium chlorate required by each match manufacturing unit may be determined tentatively @ 7 kgs. per 100 gross match boxes (each match box containing 50 sticks).

14. Manufacturing units should be required to purchase Potassium Chlorate in complete packings supplied by manufacturers.

15. Match manufacturing units should be issued licences in Form XI for conversion of Potassium Chlorate and all other purposes such

as sale, or keep for sale etc. etc. should be deleted from the heading of the licence as well as heading of Col. 6. The sale or supply of potassium chlorate by one licensed match manufacturer to another should be completely barred and entry in Colums 4, 5 and 7 shoud be NIL.

16. In cases in which the annual quota of Potassium Chlorate vide 13 above works out to a multiple of standard packing plus a fraction, the exact multiple of standard packing should be prescribed as the annual quota pending revision of quota for manufacture of match boxes which would entitle the manufacturers of match boxes purchase exact number of boxes or bags of potassium chlorate as supplied by manufacturers of potassium chlorate.

17. Application for renewal of licenses in Form XI for conversion of potassium Chlorate should be required to be accompanied by statements indicating the quantities of potassium chlorate purchased during the previous calendar year, the number of grosses of match boxes actually manufactured and rate of comsumption of potassium chlorate per 100 gross match boxes. These statements should be required to be countersigned by the Collector of Excise or his staff authorised to do so.

18. The licensing authorities should arrange for inspection of the records of match manufacturing units at least once in three months to verify that potassium chlorate purchased is endorsed on Form XI licences and duly accounted for in relevant records and also to ensure that quarterly statements of consumption of potassium chlorate have been got verified by manufacturers from the Excise department.

19. It should be the responsibility of licensing authorities to initiate prosecution proceedings in all cases where it is found that the manufacturers of match boxes have either maintained incorrect record or have manipulated entries in books or if there is any suspicion that they have acquired potassium chlorate in excess of annual licenced quota or have misused the acquired quantity or have violated any instructions of the State Government or any conditions of the licence or any provisions of the Arms Act, 1959 or Arms Rules 1962.

20. Apart from use in the manufacture of match boxes potassium chlorate is also used considerably in manufacture of fire works, explosive, drugs medicines, textile industry, etc. The use of potassium chlorate by such industries, where located should be subject to checks, controls and inspections as suggested in the case of manu-

facturers of match boxes after fixing annual quota of potassium chlorate on merits.

21. The licensing authorities should review immediately the quantity authorised to be manufactured in the existing licences in the light of actual production during the past 3 or 5 years and revised annual quota may be fixed in nearest hundreds (m. tonnes) on the basis of average production or the highest figure of production in any one year, whichever is more. The quantity authorised to be manufactured in the licence should be subject to periodical review in the light of actual production or requirement.

22. Potassium chlorate manufactured should be required to be sold or kept for sale in approved packings of 50 kgs., 25 kgs and 10 kgs. The number of bags etc. of 50 kgs, or 25 kgs or 10 kgs required may be left to be determined by the manufacturers according to actual need of customers.

APPENDIX IV

(Vide para 2·14)

Soft Drink Units Borne on the Books of D.G.T.D. with their Brand Names

Sl. No.	Name of the manufacturer	Location	Brand Names			
1	2	3	4			
1	M/s. Pure Drinks (New Delhi) P. Ltd.	New Delhi	Coca-Cola,		Coke,	Fanta
2	M/s. Pure Drinks Pvt. Ltd.	Bombay	,,	,,	,,	,,
3	M/s. Pure Drinks Pvt. Ltd.	Calcutta	,,	,,	,,	,,
4	M/s. Southern Bottlers Pvt. Ltd.	Madras	,,	,,	,,	,,
5	M/s. Punjab Beverages	Chandigarh	,,	,,	,,	,,
6	M/s. Kanpur Beverages Pvt. Ltd.	Kanpur	,,	,,	,,	,,
7	M/s. Soft Beverages Pvt. Ltd.	Madurai	,,	,,	,,	,,
8	M/s. Universal Drinks Pvt. Ltd.	Nagpur	,,	,,	,,	,,
9	M/s. Beverages & Food Pvt. Ltd.	Gauhati	,,	,,	,,	,,
10	M/s. Poona Beverages Pvt. Ltd.	Poona	,,	,,	,,	,,
11	M/s. Agra Beverages Corporation	Agra	,,	,,	,,	,,
12	M/s. Sri Krishna Bottlers Pvt. Ltd.	Secounderabad	,,	,,	,,	,,
13	M/s. Pure Beverages Ltd.	Ahmedabad	,,	,,	,,	,,
14	M/s. Tripti Drinks Private Ltd.	Cuttack	,,	,	,,	,,
15	M/s. Steel City Beverages Pvt. Ltd.	Jamshedpur	,,	,,	,,	,,
16	M/s. Jai Drinks Pvt. Ltd.	Jaipur	,,	,,	,,	,,
17	M/s. Prem Nath Monga Bottlers Pvt. Ltd.	Meerut	,,	,,	,,	,,
18	M/s. Sanghi Beverages Pvt. Ltd.	Indore	,,	,,	,,	,,

1	2	3	4
19	M/s. Saurashtra Bottling Company . . .	Rajkot .	Coca Cola, Coke, Fanta
20	M/s. Bangalore Soft Drinks Pvt. Ltd. . . .	Bangalore	„ „ „ „
21	M/s. Parle Beverages Ltd. .	Bombay .	Gold Spot Rim-Zim Limca
22	M/s. Delhi Bottling Company	Delhi .	„ „ „ „
23	M/s. J. B. Bottling Company .	Delhi	J. B. Rose, J. B. Pinas, J. B. Orange etc.
24	M/s. Premier Aerated Water Factory . . .	Bombay	Premier
25	M/s. Turf Aerated Waters Pvt. Ltd. . . .	Bombay	Turf
26	M/s. Brandon & Co. Pvt. Ltd. . . .	Bombay	Brandon
27	M/s. Duke & Sons Pvt. Ltd. .	Bombay	Duke's Orange, Cola
28	M/s. Rogers & Co. Ltd. .	Bombay .	Roger
29	M/s. Kali Aerated Water Works . . .	Virudhunagar	Kali
30	M/s. Vincent & Co. .	Trichinopoly	Vincent
31	Sri Mappilai Vinayagar Aerated Water Factory	Madurai .	Mappilai Vinayagar
32	M/s. Spencer Aerated Water Factory . . .	Calcutta	Spencer Special
33	M/s. Spencer & Co. .	Madras .	Spencer's
34	M/s. Pataliputra Drinks Ltd.	Patna .	Coca-Cola, Fanta, Coke (Yet to commence production).

APPENDIX V

Statement showing the Collectorate-wise number of units producing aerated water as on 1-3-1970.

S. No.	Collectorate		Total number of units		Remarks
			which produced bottling aerated water	Number of units who had brand names.	
1	C.C.E.	Allahabad . . .	2	1	
2	,,	Bombay . . .	14	5	
3	,,	West Bengal (Calcutta) .	2	NIL	
4	,,	Delhi . . .	3	3	
5	,,	Madras . . .	8	8	
6	,,	Shillong . . .	1	1	
7	,,	Baroda . . .	51	7	
8	,,	Hyderabad . . .	9	9	
9	,,	Guntur . . .	6	6	
10	,,	Bangalore . . .	11	7	
11	,,	Poona . . .	13	7	
12	,,	Nagpur . . .	16	11	
13	,,	Patna . . .	3	3	
14	,,	Jaipur . . .	2	2	
15	,,	Cochin . . .	4	1	
16	,,	Calcutta . . .	15	15	
17	,,	Kanpur . . .	4	4	
18	,,	Chandigarh . . .	9	2	
19	,,	Goa . . .	4	4	
20	,,	Madurai . . .	9	8	
			186	104	

N.B. The figures of Baroda & Calcutta Collectorates pertain to the erstwhile Collectorates and include the position of the present Ahmedabad and Bhubaneswar Collectorates.

APPENDIX VI

(*Vide* para 2·34)

Statement showing the category-wise revenue realisedan d productiun in respect of units producing bottling aerated water during the years 1971-72,to 1974-75

Year	Organised Sector		Unorganised Sector	
	Revenue realisation Rs. (000)	Production Bottles (000)	Revenue realisation Rs. (000)	Production bottles (000)
1971-72	27389	888960	6897	254959
1972-73	49279	808799	12711	272462
1973-74	42445	739584	12365	258257
1974-75	43055	663645	12386	195000

APPENDIX VII

[Vide Para 2.43]

Statement showing the details of cases where duty was evaded on aerated water

S. No.	Collector	Cases of evasion of duty recorded/noticed			
		Name of manufacturers	Amount of duty involved	Period	Brief facts of the case and action taken
1	2	3	4	5	6
1	Bhubaneswar	(i) M/s. Mamata Drinks Industries Ltd.	Rs. 1,72,012·50	Oct. 75 to April, 76	The firm claimed in admissible examption and stopped payment of duty by declaring that they have reduced their H.P. below 10 H.P. The Department rejected their plea for exemption since the firm manufactur's aerated water from blended flavoured concentrates by Parle's Export (P) Ltd., and bottles and markets the product in the brand name of Parle's (*viz.*, Gold Spot, Limca, Kismet etc.).) Accordingly, a demand for duty was raised. It is reported that the party has filed a writ on the Orissa High Court.

		(ii) M/s. Tripty Drinks, Cuttack	361·09	18-9-71	The firm removed 832 bottles of Fanta without payment of duty and the same was detected on 18-9-71. Case adjudicated departmentally during June, 1972. Penalty of Rs. 500/- imposed on the party besides duty of Rs 361·09.
2	Calcutta	2 Cases of M/s. Bleak Diamond Beverages	3,72,401·28	Dec. 73	The party had removed goods under fake gate passes. The offence relates to the period from Dec., 73 to 6-12-75. One case has since been adjudicated and the other is awaiting adjudication. Show cause notice has been issued to the licensee. The case is in the process of adjudication.
3	Kanpur	(i) M/s. Kanpur Bottling Co., Kanpur	9,450·00	1974	It is reported that 3,000 crates of aerated water were seized as the same were being transported without a gate pass. It is also reported that the case has been adjudicated and a penalty of Rs. 100/- was imposed in addition to demanding duty. *It has not yet been realised.*
		(ii) M/s. Kanpur Bottling Co., Kanpur	1,584·00	1975	It is reported that 600 crates of aerated water were seized as they were being transported without a gate pass. It is also reported that the case has been adjudicated and a penalty of Rs. 100/- was imposed In addition to demanding duty. *It has not yet been realised.*
		(iii) M/s. Meerut Bottlers Pvt. Ltd.	1,123·00	1976	204 crates of Soda, Limca, Gold Spot and Kismet were being cleared without a gate pass. In addition 70 crates and some bottles were not properly accounted for.

1	2	3	4	5	6
			Rs.		Duty of Rs.699 in respect of seized goods was realised on 13-10-76. The case is under process of adjudication.
		(iv) M/s. Kanpur Bottling Co.	35,21,418·95	1971—73	The firm evaded duty by selling goods at lower prices through related persons. Show cause notice issued. Case is under adjudication.
		(v) M/s. Jai Hind Bottling Co.	5,10,954·48	1970—73	Do.
		(vi) M/s Prem Nath Monga Bottlers (P) Ltd.	7,01,975·13	1973—75	The firm evaded duty by not including the equalised freight etc. In the assessable value show cause notice issued. Demand of duty confined and appealable order issued.
		(vii) M/s. Agra Beverages Corpn. (P) Ltd.	17,85,014·30	Do.	The firm evaded duty by inflating the transport charges and selling goods through related persons. Show gause notice issued. The case is under process of adjudication.
4	Jaipur	(i) M/s. Jaipur Bottling Co. .	136·40	1970	Non-maintenance of records properly. Personal penalty Rs. 50/- imposed and duty also demand d.
		(ii) M/s. Jai Drinks (P) Ltd.	20·00	Do.	The case in brief was regarding improper maintenance of records. It is also reported that goods valued Rs. 200/- were seized and redemption fine Rs. 50/-. Personal penalty Rs. 50/- imposed. Duty also demanded.
		(iii) M/s. Jai Drinks (P) Ltd.	2,160·00	1975	Taking clearance without sufficient balance in PLA. Case compounded for Rs. 100/- and duty also demanded.

		(*iv*)	M/s. Jaipur Bottling Co.	2,835.70	1973	Goods worth Rs. 4299/- seized on account of removal without payment of duty, non-accountal of production and clearance on invalid gate pass. Case is yet to be adjudicated.
5	Madurai . . .	(*i*)	M/s. Madurai Soft Drinks (P) Ltd.	67·10	25-1-73	Case of transport of 42 crates of aerated waters without any transport documents. Penalty of Rs. 250/-. Redemption fine Rs. 300/- on goods and redemption fine Rs. 250/- on vehicle imposed.
		(*ii*)	Do.	26,947·70	9-5-73	Illicit removal of 450 crates of aerated waters. Penalty Rs. 10,000/-. Penalty on driver and cleaner Rs. 700/-. Redemption fine on goods Rs. 5,000/- and redemption fine on vehicle Rs. 2500/- imposed.
		(*iii*)	Do.	113·79	7-8-73	Clearance of goods without sufficient PLA balance. Penalty Rs. 50/- imposed.
		(*iv*)	Do.	699·19	7-8-73	Clearance of aerated waters, duty on which is Rs. 699·19 without sufficient balance in PLA. Penalty of Rs. 100/- imposed.
		(*v*)	M/s. Madurai Soft Beverages (P) Ltd.	941·60	28-2-74	Transport of aerated waters on the midnight of 27/28-2-74 on an invalid gate pass in respect of 550 crates of Aerated Waters. Penalty of Rs. 750/- and Redemption fine Rs. 1000/- imposed.
		(*vi*)	M/s. Mappillai Vinayagar Aerated Water Inds.	626·51	Do.	Removal of 194 crates of aerated waters at 10 p.m. on 28-2-74 after budget announcement. Penalty Rs. 250/-. Redemption fine on goods Rs. 500/- RF on vehicle Rs. 750/- imposed. Duty also demanded.

1	2	3	4	5	6
			Rs.		
	Madurai	(*vii*) M/s. Mappillai Vinavagar A.W.	479·19	1-3-74	Failure to take out a licence and production of 4725 bottles of aerated waters. Redemption fine Rs. 400/- imposed and duty also demanded.
	Do.	(*viii*) M/s. Kali A.W. Works	1,347·35	Do.	Failure to take out a licence and production of 4725 bottles of aerated waters. Penalty Rs. 150/- and redemption fine of Rs. 500 /- imposed. Duty also demanded.
	Do.	(*ix*) M/s. Madurai Soft Drinks (P) Ltd.	781·69	17-8-73	Clearance of Aerated Waters with no sufficient balance in PLA, irregular maintenance of accounts, GP 1 PLA and incorrect determination of duty. Case is pending for adjudication.
	Do.	(*x*) M/s. Soft Beverages (P) Ltd.	9,692·41	29-7-74	Suppression of production of 8864 crates and 16 bottles of aerated waters. Penalty Rs. 5,000/- imposed. Party went in appeal to the Board and who remitted D.P. and confirmed the duty.
		(*xi*) Do.	1399·86	14-11-74	Cleared 462 crates and duty not debited in PLA by the time the Inspection Group visted the factory while goods left the factory. Penalty Rs. 100 imposed.
		(*xii*) M/s. Madurai Soft Drinks (P) Ltd.	Nil	23-11-76	Clearances exceeded during the special budget period beyond the quantity fixed. Case is pending adjudication.
6	Goa	(*i*) M/s. Fabril Gasosa Borim	494·34	1972	Overdrawal in PLA. Personal penalty Rs. 250 imposed.

	(*ii*) M/s. Goa Bottling Margo	681·47	Do.	Overdrawal in PLA. Personal penalty Rs. 100/- imposed.
	(*iii*) Do.	1,764·65	1973	Non-maintenance of proper stock accounts Penalty Rs. 250/- imposed.
	(*iv*) M/s. Simoon Bottling	131·40	1974	Non-maintenance of proper stock account personal penalty Rs. 250/- imposed.
	(*v*) M/s. Regal Bottling Inds.	38·70	Do.	Manufacture and removal of goods without Central Excise licence. Compounding fee Rs. 100/- Redemption fine for vehicle Rs. 100/- imposed.
	(*vi*) M/s. Crunet Beverages	97·88	1975	Removal of goods without gate pass. Redemption fine Rs. 100/- Penalty Rs. 50/- imposed.
	(*vii*) Ms. Fabril Gasosa	3656.82	1976	Overdrawal in P L A Penalty Rs. 100/- imposed.
6 Goa	(*viii*) M/s. Real Drinks	125·62	1976	Overdrawal in PLA Penalty Rs. 500/- imposed.
	(*ix*) M/s. Goa Bottling	144·00	Do.	Non-maintenance of proper stock account. Penalty Rs. 100/- imposed.
	(*x*) M/s. Fabril Gasosa	1778·58	Do.	Overdrawal in PLA . Penalty Rs. 100/- imposed.
7 Guntur	(*i*) M/s. A. R. Raju & Bros.	530·19	4-7-72	Non-accountal of 8820 bottles in R.G. 1 on 4-7-72. Penalty Rs. 150/- & Redemption fine Rs. 150/- imposed.
	(*ii*) Do.	8,688·91	being ascertained	Clearance without sufficient balance in PLA. Penalty Rs. 150/- imposed.
	(*iii*) M/s. Vijayawada Bottling Co.	Nil	Do.	Removal of goods without balance in PLA D.P. Rs. 50/- imposed.
	(*iv*) Do.	294·36	Do.	Contravention of rule 173-H. Penalty of Rs. 500/- imposed.

1	2	3	4	5	6
			Rs.		
7	Guntur--contd	(v) M/s Vijyawada Bottling Co.	335·57	being ascertained	Failure to make entries in RG-1. Penalty of Rs. 250/- imposed.
		(vi) Do.	Nil	Do.	Improper maintenance of account. Penalty Rs. 250/- imposed.
8	Hyderabad	(i) Shri Krishna Bottlers Ltd.	239·00	20-10-71	Removal without payment of duty. Penalty of Rs. 100/- imposed.
		(ii) Do.	212·00	7-12-71	Removal without payment of duty. Penalty of Rs. 150/- imposed.
		(iii) Do.	88·10	20-4-72	Removal without payment of duty. Penalty of Rs. 20/- imposed.
		(iv) M/s. Khan Bahadur Alladin & Co.	69·00	20-9-74	Selling of goods in excess of the approved assessable value. Penalty of Rs. 100/- imposed.
9	Shillong	M/s. Beverages Food Products, Noonmati, Gauhati	14424·14 (Aux. Duty)	1-3-74 to 21-3-74	Goods removed by the assessee without payment of Aux. duty imposed with effect from 1-3-74. Ajudicated by Assistant Collector under his order dated 18-12-74. Penalty of Rs. 200/- Aux. duty due was paid by the assessee.
		Do.	Basic duty Rs.82364·46 Aux. duty 41182·23	1-8-75 to 7-8-75	Removal of goods without payment of duty. Adjudicated by the Collector under his order dated 2-6-76. Penalty Rs. 500/- imposed. Duty payable was paid by the assessee.
		Do.	3103·66	July 71 & Sept. 71	Clearance of goods against debit balance in PLA. Adjudicated by the Assistant

				20-7-71, 16-9-71, 21-9-71, & 25-9-71)	Collector on 26-7-72. Penalty Rs. 100/- paid.
		Do.	251.94	(Sept., 74) 21-9-74, 24-9-74 & 25-9-74	Clearance of goods against debit balance in PLA. Adjudicated by the Assistant Collector *vide* his order dated 19-11-75. Penalty Rs. 250/- imposed.
		Do.	373.20 Aux. 2922.55	12-8-74 to 26-8-74	Clearance of goods against debit balance in PLA. Adjudicated by the Assistant Collector *vide* his order dated 30-8-75. Penalty Rs. 100/- paid.
		Do.	260.35	14-12-71 & 17-12-71	Clearance of goods against debit balance in PLA. Adjudicated by the Assistant Collector *vide* his order dated 31-1-73. Penalty Rs. 100/- paid.
		Do.	14696.42 (Basic) 7389.72 (Aux.)	7-11-75	Clearance of goods against debit balance in PLA. Adjudicated by the Collector *vide* his order dated 8-7-76. Penalty Rs. 5000/- paid. Duty payable paid by the assessee.
10. Bangalore	M/s. Bangalore Soft Drinks Pvt. Ltd.		11,543.70	27-4-71	Removal of goods without debiting the duty in PLA. Penalty Rs. 50/- imposed.
		Do.	3,090.00	28-4-71	Removal of goods without debiting the duty in the PLA. Penalty Rs. 50/- imposed.
	M/s. Spancer & Co. Ltd., Bangalore		Nil	10-8-73	R.G.-1 Account not posted and duty not debited in PLA. Penalty Rs. 100/- imposed.

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			Rs.		
		M/s. Bangalore Bottling Co. (Pvt.) Ltd.	Nil	25-1-74	Clearance without gate pass and payment of duty. Penalty Rs. 100/- and redemption fine Rs. 50/- imposed.
		M/s. Spencer & Co. Ltd. Bangalore	Nil	5-4-76	Non-accounting of production in R.G. 1 and not debiting duty in the PLA. Case pending decision.
	Baroda.	M/s. Rajmahal Aerated Water factory, Surat	14·70	During April, 1974	168 bottles were removed without payment of duty. Rs. 5/- was imposed as fine. No penalty was imposed.
12.	Chandigarh	M/s. Amritsar Bottling Co.	86·59	1971	Case decided by Dy. Collector P. P. Rs. 350/- & R.F. Rs. 150/- imposed.
		Do.	Nil	1974	Case decided by A.C. P.P. Rs. 250/- imposed.
		Do.	Nil	1975	Case decided by Supdt. P.P. Rs. 50/- imposed.
		Do.	720	1975	Case decided by Supdt. P.P. Rs. 100/- imposed & R.F. Rs. 500/- imposed.
		Do.	..	1976	Case decided by Supdt. PP Rs. 100/- imposed (In respect of all the above cases the facts of the cases are being ascertained from Collector).

13. Bombay	NIL ..	
14. Allahabad		
15. Ahmedabad . . .		
16. West Bengal		
17. Patna		
18. Delhi		
19. Cochin		
20. Nagpur		
21. Poona		
22. Madras		

APPENDIX VIII

Conclusions/Recommendations

S. No.	Para No. of Report	Ministry/ Deptt.	Recommendation
1	2	3	4
1	1.110	Ministry of Finance (Deptt. of Revenue)	The Committee find that the physical control introduced over the match factories in the year 1943 provided for the posting of Supervisory Officer to make a complete survey of the premises, random checks of the several processes including a check on the sticks filled in match boxes, check of wastages in the process of manufacturing, destruction and sale of damaged splints, Veneers etc. transfer of matches from finishing rooms to bonded store rooms and clearances therefrom. This physical control continued to be exercised till 1 June 1968 when the system of self-assessment by manufacturers otherwise known as 'Self-Removal Procedure' was introduced. This system, *inter alia* placed a large measure of trust in the manufacturers, their declarations and their accounts. It also dispensed with the day to day verification of clearances by the Central Excise Officers and replaced it by periodical check to ensure that the amounts due to Government have been properly assessed and paid. But at the same time, it was contemplated, as seen from the Finance Minister's budget speech, to safeguard government revenues and for that purpose the penal provisions for unauthorised

removal of goods or other contravention of rules and regulations with intent to evade duty, were to be made more stringent.

2 1.111 -do- The Committee regret to observe that the experience gaind after introduction of SRP revealed that the trust reposed in the manufacturers was belived and that there were large-scale evasion of duty in matters. This was highlighted by the S.R.P. Review Committee who in para 12 of their Report had, *inter alia*, stated that "we have evidence before us which indicates that in many places and on a fairly extensive scale, matches are selling at prices which are lower than the cost of products-*cum*-duty. This obviously would not be possible unless duty was evaded." The Committee learnt during the evidence that Audit also conducted some studies regarding the impact of Self Removal Procedure which indicated the possibility of large scale evasion of duty and this was brought to the notice of the Board in June 1971. Chairman, Central Board of Customs and Excise also admitted before the Committee that "with regard to matches it became known fairly early that it was not working well" and that he had brought to the notice of higher authorities. Apprehending large leakage of revenue attributable to the S.R.P. and based on the observations of the S.R.P. Review Committee, the Government rescinded Self-Removal Procedure in respect of matches and introduced physical control in October 1972. It is regrettable that Government had to wait till 1972 to reintroduce physical control over match industry despite early indication of avoidance of duty on matches. The Committee, would like to know how the physical control over matches introduced since October 1972 has helped in achieving

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			the desired objective and has helped in plugging all the loopholes available for manipulations in evasion of duty.
3	1.112	Ministry of Finance (Deptt. of Revenue)	The Committee learnt that the system of banderolling of matches was in vogue until 1-10-1968 when it was discontinued following the introduction of Self Removal Procedure to this commodity w.e.f. 1-6-1968. Under this system, each box or booklet of matches issued from a factory for home consumption bears a bandrol of a value appropriate to the rate of duty.
4	1.113	-do-	The main considerations which led to discontinuance of this system were: (i) concept of a rigorous control associated with bandrolling of matches was out of tune with the concept of Self Removal Procedure. (ii) due to a number of cases of forging of bandrols the system had not proved to be 'foolproof'. (iii) the Security Press, Nasik was not able to undertake printing of bandrols because of increase in other security items of work, and

			(iv) it was proving quite expensive in as much as expenditure on printing, distribution etc. was estimated to be Rs. 80 lakhs per annum apart from the estimated Rs. 25 lakhs spent by the industry by way of wages on pasting the banderols.
5	1.114	Ministry of Finance (Deptt. of Revenue)	Experience, however, proved that the discontinuance of banderolling had also helped in the clandestine removal of matches and consequent evasion of duty. The Self Removal procedure Committee in para 27 of their Report, therefore, recommended that banderolling of matches is by far the most effective revenue safeguard and should be re-introduced as early as possible. The banderolling was accordingly reintroduced in the non-power sector w.e.f. 1-10-1975 and in respect of power operated sector in stages and factorywise i.e. from 16-1-1976 in factories located in Madras and Calcutta, from 16-2-1976 in the factory located in Ambernath and from 16-3-76 in the factories located in Bareilly and Dhubri. The Committee hope that the system is working satisfactorily and the Department is not encountered with any of the difficulty which led to the discontinuance of this system w.e.f. 1-10-1968.
6	1.115	-do-	The Committee find that different type of methods are employed by the manufacturers to evade duty. These include, *inter alia*, the removal of goods without payment of duty, use of the same gate pass on more than one occasion, removal of goods without gate pass and use of forged banderols. The Committee would desire that in the light of the experience gained, the Government should evolve a foolproof system which should ensure effective check against all possible manipulations.

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7	1.116	Ministry of Finance (Deptt. of Revenue) (ii) Ministry of Home Affairs	The Committee find that a quantity of 11,79,795 kgs. of potassium chlorate issued to match industry through various dealers was not brought to account by mach units in Madras and Madurai Collectorates during the years 1968—73 which if used in match industry was capable of a revenue yield of Rs. 5.53 crores. The Ministry of Finance have stated that it was not possible to keep an exact track of the disposal of potassium chlorate by the dealers. The Committee are distressed to learn that such serious matter had not received the attention of the State Government because the Excise Department had not intimated to State Government earlier. Only on 5-5-1977 the Home Ministry had asked the State Government and Union Territories to inspect the books of all dealers and factory depots to identify the dealers who were not maintaining proper records or who were not selling potassium chlorate in accordance with the provisions of the Arms Act, 1959, and Army Rules, 1962.
8	1.117	-do-	The Committee have been informed that the Government of Tamil Nadu has initiated action against the 8 dealers in Madras and Madurai Collectorates who sold 11.79,795 kgs. of Potassium Chlorate during 1968—73 but where receipt was not acknowledged by match factories and against 27 other dealers whose total sales indicated a shortage of 11,765 kgs. of potassium chlorate. The Committee would like to be apprised of the details of the prosecution launched and/or penalty imposed against these dealers.
9	1.118	-do-	The Committee apprehend that the non-accountal of such huge quantities is, in all possibility, the outcome of the laxity or lapse on the part of the officers authorised to conduct inspections of the accounts of the dealers.

			The Committee would therefore like to know the details of the inspections which were required to be conducted and those which were actually done by the concerned officers. They would also like the Department to fix responsibility for appropriate action against the defaulters, under intimation to them.
10	1.119	-do-	The Committee find that there were a number of dealers who were found to have been responsible for the non-accountal of the potassium chlorate sold by them. The trial in the case of Bharat Traders, Madurai is reported to have been completed and the case has been reserved for judgement. In respect of Shri M. Alexandar, Virudhanagar, the appeal is said to be pending in the High Court, Madras. The Committee would like to be apprised of the final outcome in both these cases.
11	1.120	Ministry of Finance (Deptt. of Revenue)	A comparison of potassium chlorate consumed vis-a-vis the quantity of matches produced by a factory during the period June 1968 to January 1970 when S.R.P. applied with the corresponding figures of consumption of chlorate and production of matches during June 1967 to May 1968 when S.R.P. was not introduced had disclosed that there was a heavy shortfall in production of matches. The Ministry of Finance have stated that as the consumption of potassium chlorate varies from factory to factory and in the same factory from season to season depending on various factors, like the quality and size of the stick, method of dipping of match heads, the efficiency of labour, climatic conditions and the availability of raw materials, no formula has been prescribed for the consumption of potassium chlorate in the manufacture of matches. The Directorate of Inspection, Customs and

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			Excise, however, prescribed a ceiling limit of 5 to 9 kgs. of potassium chlorate for 100 gross of 50 matches in the year 1972. The Committee have been informed that the consumption of potassium chlorate is about 6 kg. for production of 100 gross boxes of matches packed in 50s in the mechanised sector but it varies widely from 6 kgs. to 14 kgs. in the non-mechanised sector. During evidence, the Chairman, CBE&C has candidly admitted, "The range itself is so wide that it cannot be really a guiding factor." The Committee are perturbed to note the wide range prescribed for the consumption of potassium chlorate in the manufacture of matches which leaves considerable scope for leakage of potassium chlorate for other purposes. The Committee desire that the Department should, on the basis of the experience gained over a number of years, evolve a scientific ratio for the consumption of the potassium chlorate so as to ensure that the actual production of matches corresponds to the production worked out on the basis of that formula.
12	1.121	Ministry of Home Affairs	The Committee find that the potassium chlorate is distributed to the consuming units through middlemen who are licensed dealers of the material. There are at present five manufacturers of this material in the country and the dealers handle on an average 28.19 per cent of their total production. There have been instances where these dealers were found to have indulged in malpractices whereby they showed in their accounts certain quantities of potassium chlorate as having been sold to certain match units which it was subsequently found the latter never received. The Committee feel that

			the loopholes which exist at present due to the operation of the middlemen can be possibly plugged if the potassium chlorate is distributed directly by the producers to the match industry. They would, therefore, desire the Department to consider the feasibility of the elimination of the dealers in so far as the distribution of potassium cholrate to match industry is concerned.
13	1.122	-do-	The Committee find that potassium chlorate upto 5 kgs. can be sold by a dealer to anyone who needs it for agricultural purposes without showing any licence issued by the District Magistrate. The possibility of this quantity procured for agricultural purposes for diversion to other uses including that of manufacture of explosives etc. cannot be ruled out. The Committee, therefore, recommend that the sale of potassium chlorate should not be permitted without a valid licence issued by the authorised District authority.
14	1.123	-do-	The Committee learn that potassium chlorate attracts the provisions of Indian Arms Act, 1959 and the Indian Arms Rules, 1962. The District Revenue Officer is the licensing authority for the dealers and actual consumers of chlorate. Quantitative restrictions are imposed on potassium chlorate (i) at any time and (ii) for the entire year in respect of the maximum dealable quantity. Registers are prescribed to record the day to day distribution of chlorate and to indicate the stock position. The State Government authorities *viz.* Tehsildras, Circle Inspectors of Police, District Fire Officers and Health Officers are the officers authorised to inspect the stock and account of the chlorate held by the dealers and consumers. The Committee find that there was laxity of control over the distribution of potassium chlorate during the years 1969—71 when some dealers entered in their books

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			certain quantities as having been sold to match units but auctually diverted the same to other uses without payment of duty. The Additional Secretary, Ministry of Home Affairs, while admitting this manipulation stated during evidence that "because of this particular chemical being one of the compound which is so extensively used in the industry, certain leakages were possible." The Committee have not been able to assess the reasons for such manipulations especially when the district authorities were required to inspect the stock and account of the chlorate held by the dealers and consumers. They, therefore, desire the Department to make thorough investigations with a view to ascertain the precise reasons responsible for such manipulations. A probe may also be made to find out if there was any failure on the part of the officers to conduct the required inspections of the stock and account of the dealers at the prescribed periods in order to fix responsibility for lapses.
15	1.124	Ministry of Industry (Deptt. of Industrial Development)	The Committee are surprised to note that there is no control over the distribution of potassium chlorate under the Industries (Development and Regulation) Act. It is an explosive material and there should be some legal provision to provide for statutory control over its distribution to avoid all possible chances of its diversion for wrongful purposes. The Committee desire that the matter may be examined in depth.
16	1.125	M|o Finance (Deptt. of Revenue)	The Committee find that the question whether the matches of the type known as 'Bengal Lights' are also to be included in the total production of a

			factory which produced and cleared both safety matches as well as Benagi Lights, for the purpose of arriving at the prescribed ceiling to levy excise duty, is still under examination in consultation with the Ministry of Law. The Committee would like the Department to pursue the matter vigorously and apprise the Committee of the decision arrived at in the matter.
17	1.126	-do-	The Committee note that Wimco had been procuring the supply of matches from the non-power operated factories in accordance with their quality control. They had given 'No Objection Certificate' to the Small Scale manufacturers to use their brand names and on production, the goods were cleared on payment of duty at the concessional rate by the actual manufacturers with the brand name of Messrs Wimco as approved by the Central Excise Officers. The name of the factory which manufactured the matches was also inscribed in legible character in the language of the place wherein the manufacture took place. Wimco recovered duty @ Rs. 4.30 per gross from the consumer whereas duty was paid by them @ Rs. 3.75 per gross on matches manufactured by the small-units. They continued this practice upto 1973 as thereafter no purchases have been made by them from small scale manufacturers for resale. On being enquired whether any permission was obtained by Wimco for making such purchases, the Chairman, Central Board of Excise and Customs had deposed during evidence: "No permission is required. No permission was asked for or given. Once the duty has been paid for the goods, they can be purchased by any body." The Department of Revenue have also stated that "in view of the advice of the Ministry of Law, there was no law preventing M|s. Wimco purchasing the matches produced and cleared by the units in the small scale sector at the lower concessional rate of duty. The Committee are

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			surprised at the way Wimco was allowed to reap unintended benefits by paying lower rate of excise duty to Government and charging higher rate from the consumers thus defrauding the National Exchequer of their legitimate dues. It is pertinent to note in this connection that WIMCO also had not kept separate account of profit, account of matches etc., purchased by them from small scale manufacturers. Charged as it is with the responsibility for the collection of duty, the Central Board of Excise and Customs should have visualised this type of situation at the time of issue of their notification in June 1967 and should have left no scope for any manipulation of the type as has been resorted to in the instant case. The Committee understand that since 1973 the notification permitting the use of WIMCO label by small scale producers has been rescinded. The Committee would like the Department to assess the loss of duty to Government due to such manipulations by WIMCO prior to 1973. The Committee are also not sure whether the practice adopted by WIMCO. apart from having led to loss of revenue to the Government has had any detrimental effect on the growth of Small Scale and Cottage Industry in the field of manufacture of matches. The Committee would like to have a report on this aspect also.
18	1.127	Ministry of Law, Justice & Company Affairs	The Committee also learn that the Monopolies and Restrictive Trade Practices Commission is conducting inquiries against WIMCO on complaints made by Sivakasi Chamber of Match Industries in regard to the purchase of products by them from small scale units. The Committee would like to be apprised of the findings of the Commission in due course.

19	1.128	Ministry of Industry (Deptt. of Industrial Development)	While on the one hand WIMCO has been exploiting the small scale producers, the Committee find that they have not been producing to the full capacity themselves as would be evident from the following figures: (total capacity 5,000 million boxes capacity utilised 1973-74—4368 million boxes/1975—3734) million boxes. The Ministry of Industry have given some reasons for under-utilisation. The Committee, however, do not feel convinced of those explanations. It requires to be explained how despite the claim of WIMCO to have stopped utilisation of small scale producers for manufacture of their products, their capacity utilisation instead of showing increase has shown decrease after 1973.
20	1.129	-do-	This is also clear from the comparative statement of production of power operated sector *vis-a-vis* non-power operated sector (WIMCO are the only unit in power operated sector). The Committee therefore, like a thorough probe in the matter.
21	1.130	Ministry of Finance (Deptt. of Revenue)	The Committee are perturbed to note that a foreign monopoly concern like WIMCO has been able to promote its interests at the cost of small scale units by purchasing matches manufactured by the latter. The Committee feel that some rectificatory steps should be taken by Government to curb such practices in future. During evidence, the Chairman, CBE&C had assured the Committee that "probably we will like this matter to be further looked into and I would like to bring it to the notice of our Secretary as well as Minister." The Committee desire this matter to be examined speedily and the outcome reported to the Committee.
22	1.131	Ministry of Petroleum & Chemicals	The Committee find that the quantities of potassium chlorate imported during the years 1973-74, 1974-75 and 1975-76 were of the order of 40

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			kilograms, 408 tonnes and 445 tonnes respectively. The reasons for the phenomenal increase in the quantity of import from 40 kilograms in 1973-74 to 408 tonnes in 1974-75 and 445 tonnes in 1975-76 are not comprehensible to the Committee. They would like to be apprised of the reasons therefor.
23	2.47	Ministry of Finance (Deptt. of Revenue)	The Committee find that by virtue of a notification dated 1-3-1970 duty under Item ID i.e. "aerated waters whether or not flavoured or sweetened and whether or not containing vegetable or fruit juice or fruit pulp" became leviable only if the aerated waters (i) were sold under a brand name i.e. a name or a registered trade mark under the Trade and Merchandise Marks Act 1958 and (ii) in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power. With effect from 17 March, 1972 the tariff rate of duty on aerated waters was enhanced. Consequent upon such enhancement, taking advantage of the conditional exemption granted to un-registered, aerated waters, the manufacturers in one Collectorate avoided paying duty completely. In other Collectorate out of 17 Units engaged in the manufacture of aerated waters paying duty of Rs. 11.90 lakhs in 1970-71 and Rs. 14.13 lakhs in 1971-72, 13 units sought exemption from payment of duty in March-April 1972 by de-registering their Brand Names, although these units continued to produce and sell their products under the same name even after de-registration resulting in a loss of revenue to the extent of Rs. 22.91 lakhs during the period April 1972 to December, 1972.

24	2.48	-do-	The Committee are surprised to learn that although upon the Collector of Central Excise Madurai informing that 2 companies in his jurisdiction had de-registered, the Directorate of inspection was asked to study whether this was a widespread disease, he reported that it was not so and the Board of Central Excise and Customs also agreed with his report. This decision of the Board had, however, again to be revised by them after 8 months leading finally to completely dispensing with the criterion of registration of brand names for levy of duty, in March 1974. The Committee are not convinced with the arguments given by the Chairman of the Central Board of Excise that they had completely done away with the criterion of registration because in their opinion no registered manufacturer could have de-registered his brand name because he had a lot of goodwill. The Committee feel that if the avoidance of duty pointed out by the Audit in the case of 2 Collectorates alone is any indication, the total avoidance of duty in all the collectorates taken together must be considerable. In fact, the Secretary, Ministry of Finance, had himself conceded that "in 1974 Government, I think unadvisedly, said 'it does not matter, even if it is not registered'. Within a couple of months the Government had to retreat. It was such an ill-advised step that the Government had to take back the notification and introduce another criteria".
25	2.49	-do-	The Committee have been informed that besides M/s. Kali Aerated Waters Ltd., Virudhunagar and Vincent & Co. (P) Ltd., Trichy, 14 other manufacturers of aerated waters got their brand names de-registered after they were brought under excise control on or after 1-3-1970. It is distressing to note that none of these manufacturer licensees advanced any

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			reasons for the de-registration of their brand names immediately before availing the benefit of concessional rates or after actual de-registration. If such reasons were given, it would have perhaps enabled the Department to ascertain their genuineness and ensure that the manufacturers were restrained from manipulation to avoid or evade the duty realisable from them. The Committee, therefore, desire that the Department should arm itself with the powers, if it does not have already, to make it obligatory for the manufacturer licensees to give cogent and precise reasons in support of their request for de-registration.
26	2.50	Ministry of Finance (Deptt. of Revenue)	The Committee find that the Government issued another notification on 1-5-1974 to grant exemption to aerated waters from central excise levy if— (i) in or in relation to the manufacture of which no process is ordinarily carried on with the aid of power; (ii) in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power, the total equivalent of power so used by or on behalf of a manufacturer in one or more factories do not exceed 10 Horse Power.
27	2.51	-do-	The objective of this notification was to afford relief to the small scale units which were brought under excise levy due to revised criterion introduced by notification dated 1-3-74 dispensing with the criterion of brand name for levy of duty in vogue earlier. The Committee, however, find that

			ing had declined from 258257000 bottles in 1973-74 to 195000000 bottles ing had declined from 258257000 bottles in 1973-74 to 19500000 bottles in the year 1974-75.
28	2.52	-do-	The Committee note that after the issue of notification dated 1-5-74, two leading manufacturers of aerated waters in Madras and Madurai Collectorates re-arranged their manufacturing operations in a most clever manner so as to avoid payment of duty. M/s. Kali Aerated Waters had seven factories spread over two Collectorates and marketed their aerated waters under a common brand name but paid excise duty in respect of one factory only out of seven. The other manufacturer, Vincent & Co. (P) Ltd. had ten factories spread over two Collectorates and marketed their aerated waters under the same brand name but paid excise duty for aerated waters manufactured and cleared from one factory. Explaining the background, the Chairman, Central Board of Excise and Customs, stated during evidence, "What has happened in these two cases is that these two particular manufacturers disconnected power from other units and since those units became non-power operated units, they came within the exemption...."
29	2.53	-do-	The Committee have been informed that the approximate amount of duty avoided by the former manufacturer was Rs. 5,63,808 and that by the latter Rs. 2,97,840 for the periods from May, 1974 to March, 1975. The Committee are distressed to note that in this case adequate steps had not been taken to ensure that the ill-conceived benefit was not reaped by unscrupulous manufacturers. The Committee feel that as an agency entrusted with the collection of excise duty, the Central Board of Excise and Customs

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			should have exercised greater vigilance and taken corrective steps in time to ensure that such undue advantage did not become available by manipulations.
30	2.54	Ministry of Finance (Deptt. of Revenue)	The Committee have also not been able to understand the logic behind the fixation of the ceiling to 10 H.P. in respect of power used by or on behalf of a manufacturer in one or more factories, producing aerated waters. They would like to know the detailed reasons which led the Department to restrict the consumption of horse power at that stage.
31	2.55	-do-	The Committee are astonished to note that the power used for pumping water to overhead tanks is not counted against the total power supply available to an aerated manufacturing installation. This water is supposed to be meant for cleaning and other similar purposes. The Committee would like to know the precautions which have been taken by the Department to ensure that the power used for filling up the overhead tanks by those manufacturers of aerated water who have disconnected power supply in order to claim exemption from excise levy, is not diverted surreptitiously in any process for the manufacture of aerated waters.
32	2.56	-do-	The Committee find that the revenue realised from basic duty on aerated waters in the year 1972-73 was Rs. 6.35 crores. It declined to Rs. 5.49 crores in the year 1973-74, Rs. 5.53 crores in the year 1974-75 and Rs. 5.92 crores in the year 1975-76. With the consistent increase in the standard of living of the people and constant increase in the off-take

of consumer's goods, the Committee are led to believe that the consumption of aerated waters should have also increased from time to time. This should have resulted in consequent increase in the total revenue realisations on aerated waters which has, on the contrary, shown persistent decline. The Committee cannot comprehend the reasons for the declining trend in the revenue realised on aerated waters and suspect that it could be due to large scale evasion or avoidance of duty. The Chairman, CBEC had assured the Committee that all possible precautions were taken at the time of any exemption being granted to ensure that there was no avoidance or evasion but he had also conceded that "Certain amount of deliberate avoidance of taxes would always be there in such cases". The Committee would like to impress that the checks exercised by the Department should be strengthened to ensure that the actual production of each unit is not varied by the manufacturer for the avoidance of the duty due.

38	2.87	-do-	The Committee find from the information furnished by the Department that a number of manufacturers have evaded duty on aerated water to the tune of lakhs of rupees on one ground or the other. For example M/s. Mamata Drinks and Industries Ltd., Bhubaneshwar evaded duty of Rs. 1,72,012 by claiming inadmissible exemption: M/s. Bleak Diamond Beverages, Calcutta evaded duty of Rs. 3,72,401 by removing goods under fake gate passes; M/s. Kanpur Bottling Co. and Jai Hind Bottling Co. of Kanpur evaded duty of Rs. 35,21,418 and Rs. 5,10,954 respectively by selling goods at lower prices and M/s Agra Beverages Co. (P) Ltd. evaded duty of Rs. 17,85,014 by inflating the transport charges. They understand that demands have been raised against these manufacturers and the

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			duty amounts are at various stages of realisation. The Committee desire that concerted efforts may be made to expedite the realisations and would like to be apprised of the State of recoveries in due course.
34	3.44	Ministry of Finance (Deptt. of Revenue)	The Committee find that the Government by issue of notification No. 38/70 dated 1-3-70 raised the excise duty on tea produced in Zones II, III, IV and V from 40 paise to 50 paise, 50 paise to Rs. 1.50 paise, 55 paise to Re. 1.00 and 65 paise to Rs. 1.15 paise respectively. There was no increase in the rate of excise duty in respect of tea produced in Zone-I. Certain tea factories in the Madras Collectorate filed writ petitions in the High Court challenging the validity of the notification and the levy of duty on Zonal basis, as discriminatory and illegal. Pending decision on that writ petitions,, interim orders of the High Court were obtained by the petitioners between September 1972 to October 1974 for payment of duty at different rates ranging from 15 paise to 55 paise per kg. which were lower than that applicable under the notification. After protracted litigation the Madras High Court passed a judgment on 2nd August 1976 allowing the Department to recover full duty according to the tariff in future cases and to recover the arrears in instalments. According to the position as on 23-3-77 intimated by the Department of Revenue and Banking, arrears of Rs. 3,74,07,063.23 had accumulated on account of differential duty. Of this amount Rs. 78,44,120.67 paise have been realised and a balance of Rs. 2,95,62,942.56 is yet to be realised from the various tea factories. The Committee find that the amount due is still substantial. They desire that efforts should be intensified to expedite the recovery of the balance amount.

35	3.45	-do-	The Committee also understand that similar writ petitions were filed in the Calcutta H gh Court. On decided cases of writ petitions a sum of Rs. 5,63,89,190.19 had accumulated as arrears towards Central Excise duty out of which Rs. 3,98,21,805.15 paise have been realised up to August 1977 leaving a balance of Rs. 1,65,67,385.04 paise. A sum of Rs. 50,98,374.21 paise has also accumulated as arrears against the undecided cases. The Committee would like the Department to make concerted efforts and take all possible steps for the recovery of the unrealised amount and also for getting the pending cases expedited in the Court of Law. From the facts brought to the notice the Committee are not fully convinced that the case was pursued in Madras High Court with the swiftness it deserved particularly when large revenues were involved.
36	3.46	-do-	The Committee find that Rule 96F of the Central Excise Rules autorises the Government to group areas into zones for the purposes of assessment of tea produced in such areas. The grouping of areas into zones for the purposes of levy is done on the advice of the Ministry of Commerce who do so in consultation with the Tea and having regard to the weighted average sale price in the internal and export auctions of tea in India. The competitive position of the common teas in the internal and external market, the need for encouragement of exports and also the regulation of internal consumption in the case of better quality teas are the main guiding factors which are taken into consideration in the matter of fixation of effective rates of duty. The tea gardens were classified in different zones first in 1958 and thereafter subsequently in 1959, 1960, 1962, 1967 and the latest in 1970. All other notifications merely deal with effective rates of duty payable by the various zones. During evidence the Chairman, CBE&C had

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			informed the Committee that the Zonal Classification undergoes a change as and when it is so considered necessary in the light of the experience gained by the Department. The Committee feel that in view of the various anomalies appearing in the Zonal Classification and the complaints about difficulties in administering the zonal classification strictly, Government should review the classification made in 1970.
37	3.47	(i) Ministry of Finance (Deptt. of Revenue) (ii) Ministry of Commerce	The Committee are unhappy to note that certain tea factories are reaping unintended benefits as a result of the existing zonal classification. For example, according to Government's own reply there was no marked difference in the prices of tea manufactured in Zone I and Zone IV (Zone I pay duty at 40 paise per kg. *vis-a-vis* the rate of Rs. 1.10 per kg. payable by factories in Zone IV) in Madras Collectorate. Some factories in Zone IV brought green leaf from Zone I and got the tea cleared made out of such green leaf at the rate of 40 paise applicable to Zone I. Likewise in Shillong Collectorate some factories in Zone II derived unwarranted benefits compared to the factories in Zone V. There is not much of difference in the price of tea grown in zone II and in Zone V gardens and the factories in Zone II derive the benefit of duty relief by 70 paise per kg. as compared to the duty paid by the factories in Zone V. The Committee are unable to understand why the Department has failed to prevent the accrual of such unintended benefits now reaped by tea factories in the Madras and Shillong Collectorates. They recommend that the Department should move swiftly in this direction and devise suitable machinery within the existing zonal

			classification, till that is changed, so that loss of revenue does not recur. The Committee would also like to know the machinery available with the Government to watch the functioning of the zonal classification of tea gardens and whether the same is fool-proof to plug all possible loopholes. They would also like to know the periodicity and intervals when statistics and reports about the functioning of such system have been collected by the Department during the last 2 years.
38	3.48	-do-	The Committee find from the representation made by the Darjeeling Branch of the Indian Tea Association to their Study Group during the course of their recent visit to the Eastern Zone that on account of low yield to quality tea in high altitude in Darjeeling Hill District, the cost of production of tea at that place was comparatively higher with the resultant higher burden of excise duty. In fact, on the same ground the Association had sought some special concession from the Government as early as in October 1958 to lessen the added burden of excise duty on tea. The Government subsequently did give some relief to Darjeeling tea in the form of realignment of Zone III. The Committee, however, observe that the Darjeeling Branch of the Indian Tea Association are not satisfied by the existing classification of zones and desire some more concessions *inter alia* reduction of excise duty on tea produced in the Darjeeling District to NIL until the average yield rise to 1000 kg. per hectare. The Committee would like the Government to examine the matter alongwith similarly disadvantageously situated gardens in other areas so as to see whether further concessions can be given to the Darjeeling Hill District, provided that the tea produced in these gardens is sold in Indian auction centres and not exported out of the country on consignment basis.

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39	4.51	Ministry of Finance (Deptt. of Revenue)	The provisions of the "Tobacco Excise Manual" and supplementary instructions issued by the Collector of Central Excise Collectorate covered in the Audit paragraph, *inter alia,* prescribes that prompt investigations should be made then and there, if the annual returns of actual yield of tobacco (which should be obtained as soon as the crop has been cured) show variations with the estimates of the yields expected. Further, the final accounting of tobacco in a season should generally be completed by the end of August following. The Committee are surprised to note the glaring deviations from this prescribed procedure, as highlighted in the Audit paragraph on the basis of the test check of records of seven out of 46 ranges in a collectorate relating to the years 1968-69 to 1972-73. These test checks revealed that out of a total of 2479 low yield cases, only 77 cases (3.1 per cent) were investigated within the prescribed period. As regards the remaining 2402 cases, only 62 cases (2.6 per cent were investigated within one year after the completion of the final accounting of the crop season, 597 cases (24.7 per cent) were investigated with delays ranging from one to four years thereafter. Till September 1974, the balance 1743 cases (72.7 per cent) remained completely uninvestigated. The routine and half-hearted investigation into these cases is reported to have continued thereafter and till date as many as 124 cases are still to be investigated. The Committee strongly deprecate the lack of seriousness on the part of Government in conducting investigations into these cases involving a shortfall of 26,39,968 kgs. of tobacco with duty content of Rs. 91,08,870 (calculated at the lower rate applicable to tobacco, not otherwise specified)

40	4.52	-do-	The Committee observe that there is a difference of opinion with regard to the computation of loss as a result of delay in investigation of damage to crops. The Board of Central Excise and Customs have contended that a comparison of actual yield with the three years avcrage of the entire village was wrong. The correct basis would have been to confine the actual yield with the crop survey. They have further contended that if the annual yield during the period covered by Audit was compared with the crop survey figure the variations or discrepancies would be very much less. But at the same time the Board have expressed their unhappiness over the loss in realisation of revenue. They had also verified the statements in the Audit para when it was sent to them for factual verification. The Committee feel that no room should be left for doubt in this regard and the system of computation of loss should be devised in consultation with Audit.
41	4.53	-do-	The Committee feel that the delayed investigations are bound to adversely affect a judicious assessment of the extent of damage, if any, and the consequential loss of revenue. As such, they doubt the summary outcome of the belated investigations into as many as 1566 cases ,to the effect that these were all genuine low yield cases. On the analogy of the loss of duty amounting to Rs. 17,66,202 foregone in the case of just 313 non-investigated cases, as worked out by Audit and the duty amount of Rs. 91,08,870 involving 2402 cases in 7 out of 46 ranges in a Collectorate, such figures in respect of all other collectorate may obviously be of very high order, involving huge loss to the Exchequer. Keeping in view the seriousness of the problem and in the interest of timely and due realisation of duty, the Committee strongly urge upon the Government to investigate thoroughly

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			the reasons for slow pace of investigation into these cases with a view to fixing responsibility and taking suitable remedial measures in that behalf. The Committee would like to know the outcome of the investigations and the remedial measures taken.
42	4.54	Ministry of Finance (Deptt. of Revenue)	The Committee note that the instructions issued on 21 May 1968, with regard to the excise control over grower/curer of unmanufactured tobacco *inter alia* provided "A percentage check of 10 per cent of the plots registered should be adequate for the purpose of estimation." The Committee feel that this relaxation in excise control has largely accentuated the tendency for evasion of duty in the recent years. This is adequately proved by the following majority opinion of the tobacco trade (54 per cent) and a large number of departmental officers (40 per cent) given in reply to a questionnaire issued by the Tobacco Excise Tariff Committee: "……there is fairly large-scale evasion of duty in almost all areas. The extent of such evasion has been estimated by them from 20 per cent to 60 per cent in the important growing areas like Gujarat, Karnataka, Tamil Nadu, Bihar and U.P." The following observations of the Tobacco Tariff Committee made on pages 282-283 of their Report are also very relevant in this behalf:— "In the case of tobacco however, it is our belief that the degree of evasion has substantially increased in the more recent years. This is particularly because of—to use their words—slack, non-existent or dishonest supervision which, we fear, has been

			progressively increasing and thereby lessening the fear of detection or the dread of what the punishment might be."
43	4.55	-do-	The Chairman, Central Board of Excise and Customs admitted before the Committee during evidence that "Broadly these checks remain the same but the intensity of the checks has been considerably reduced after the Finance Minister's direction....we are also of the view that there has been considerable evasion." The trend of evasion very clearly proves that the instructions issued on 21-5-1968 were basically incorrect. Even the Tobacco Excise Tariff Commitee have recommended that 60 to 70 per cent of the total area under tobacco should be check measured every year in each range. The Committee fail to understand why the instructions issued on 21-5-1968 were not reviewed thereafter keeping in view the extent of evasion and the aforesaid recommendation of the Tobacco Excise Tariff Committee. The Committee recommend that the question of evasion of excise duty on tobacco should be examined thoroughly and urgently particularly in the light of recommendations made by the Tobacco Excise Tariff Committee and to take suitable remedial measures including the tightening of the administrative machinery for collection of excise duty in the field and plugging all leakages of revenue. The Committee would like to know the outcome of this investigation and the remedial measures taken.
44	4.56	-do-	The Committee note that the Government have accepted certain recommendations made by the Tobacco Excise Tariff Committee to check evasion of duty on unmanufactured tobacco either with some modification or in principle. For example, in respect of the period of warehousing of tobacco without payment of duty, the Expert Committee had recommended that the

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			normal period allowed for storage (which was previously three years with a provision for further extension by the Collector) should be reduced to two years in the normal course with a provision for further extension by one year by the Collector and beyond this by the Central Board of Excise and Customs but the Government have decided that the Collector can permit extension by one year in the case of air cured tobacco and more than one year in the case of flue cured tobacco with further extensions to be granted by the Board. The Committee are not in favour of giving discretionary powers to the Collectors. They would, therefore, like the position to be reviewed.
45	5.31	Ministry of Finance (Deptt. of Revenue)	The Committee are perturbed to note that the refund of the amount of Rs. 7.78 lakhs to a manufacturer, who had paid excise duty in good faith in respect of a commodity which he erroneously considered as excisable had resulted in a fortuitous benefit to him. Since the amount would have been already collected by the manufacturer from the consumers in the form of duty, it appears inequitable that while the burden of excise duty should have been borne by the consumers, the benefit of refund should accrue to the manufacturers. It has to be noted that recoveries from or refunds made to manufacturers at a later date, will have no effect on the burden of consumers who have to bear the incidence of duty.
46	5.32	-do-	The Public Accounts Committee in paragraph 2.92 of their 72nd Report (4th Lok Sabha) had recommended that if it was legally permissible to retain such excess collections which should more appropriately form

			part of the Government revenue. Government could with advantage consider making such funds available to a Government research organisation working for the benefit of industry and trade. In the Action Taken Note dated 28-11-69, the Committee were informed that the acceptance of the recommendation would involve a Statutory Change in the Central Excise Law. The Chairman, Central Board of Excise and Customs, had assured the Committee during evidence that "when we are revising the Central Excise Law we would be consulting the Ministry of Law and we would be thinking over it as to whether we can do something to avoid these unintended benefits and cases of hardship beyond a particular period." The Committee would like to know the outcome of these exercises and be apprised of the latest position obtaining in this behalf.
47	5.33	-do-	The Committee note that under Rule 173B of the Central Excise Rules, 1944 every assessee has to file with the proper officer a list showing *inter alia* the full description of all excisable goods manufactured by him and item number and sub-item, if any, of the Central Excise Tariff. Sub-item (2) of the same Rule provides that "the proper officer shall, after such inquiry as he deems fit, approve the list with such modifications as are considered necessary....". The Committee have been informed that for this purpose the samples are drawn by the officers in cases where classification of the product cannot be resorted to on visual examination or where the product, though identifiable on visual examination could fall under more than one tariff item, depending upon subtle distinctions. The product in this case was not tested before 29 May, 1971, *i.e.* the date from which "perfumed hair oils" were brought within the purview of item 14F by introduction of a separate sub-item ii(b) through Finance Act, 1971.

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			The Committee feel that had the sample been tested initially at the time of the submission of the classification list by the manufacturer, the fact about its being non-excisable would have been known and the manufacturer would not have reaped an unintended benefit to the tune of Rs. 7.8 lakhs. The Committee accordingly recommend that suitable provision may be made in the rules which should make it obligatory for the concerned authorities to draw samples for test invariably in all cases immediately after the receipt of the lists showing the description of the excisable goods to be manufactured.
48	5.34	Ministry of Finance (Deptt. of Revenue)	The Committee note that the Ministry of Law in 1969 had opined that "where certain amount is illegally collected as a levy under the Central Excise Act, the position of that Act regarding refunds would not be attracted. The period of limitation in respect of such collections under the Limitation Act is three years from the date when money is received." Subsequently, in their note dated 19 October, 1972, the Ministry of Law had stated that "As held by the Supreme Court in Venkata Subba Rao *Vs.* State of A.P. so far as a claim for recovery of tax illegally collected is concerned, the authorities are fairly uniform that the period of limitation for a suit making such claim is governed by Art. 62 of the Limitation Act, 1908 now Art. 24 of 2963 Act.".
49	5.35	-do-	The manufacturer had filed an appeal for the refund of the entire amount paid by him for the period with effect from 21 October 1967 to

			27 May, 1971 which extended beyond the period of limitation of 3 years provided for in the Limitation Act. The Department of Revenue and Banking have admitted that the opinion of the Ministry of Law dated 19 October 1972 was not specifically brought to the notice of the Additional Legal Adviser, Mardas when a reference was made to him for giving his opinion on the appeal. The Committee feel that had this been done, the advice given by the Additional Legal Adviser, Madras would not have been, in all probability, at variance with the advice of the Ministry of Law dated 19 October 1972. The Committee would like that responsibility for this lapse should be fixed for appropriate action against the defaulters.
50	5.36	-do-	The Committee have been informed that "to the extent that the Appellate Collector sanctioned refund for a period beyond 3 years from the date of payment of the money, the Appellate Collector's decision does not appear to be in accordance with the aforesaid opinion of the Ministry of Law." According to Section 36(2) of the Central Excise and Salt Act, 1944, the Central Government is empowered to review of its own the decision of the Appellate Collector. The Committee have, however, been informed that "the order of the Appellate Collector was not suggested for review". When the Chairman, Central Board of Excise and Customs, himself felt that "the action on the part of the Appellate Collector was wrong", the Committee fail to understand what prevented the authorities from subjecting the decision of the Appellate Collector to a review by the Government. The Committee are firmly of the opinion that the review of the decision by the Government would have, in all fairness, led the

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			Government to set aside the order for the refund of the money to the extent it pertained to the period beyond that stipulated in the Limitation Act. The Committee would, therefore, like to be apprised of the detailed reasons for the non-review of the decision of the Appellate Collector by the Government.

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