HUNDRED AND SIXTIETH REPORT

PUBLIC ACCOUNTS COMMITTEE (1982-83)

(SEVENTH LOK SABHA)

UNION EXCISE DUTIES

MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

Presented to Lok Sabha on 29-4-1983

Laid in Rajya Sabha on 29-4-1983

LOK SABHA SECRETARIAT
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Page	Para	Line	For	Read
2	1.4	7	1939	1979
5	2.5	1	classify	classify
6	2.10	6	leackage	leakage
8	3.9	Last but one	wilh	with
9	3.11	5	Add 'for' after the word 'use'	
10	3.14	5	Petroteum	Petroleum
18	4.5	2	matteris	matter is
20	4.9	3	Committed	Committee
20	4.12	1	9.12	4.12
20	4.12	9	officers	officer
21	4.13	last line	determiment	detriment
22	5.1	last but third line	bencfit	benefit
26	6.5	6	delete the words 'made by	charge'
28	7.3	4	in	is
36	9.1	8	unkeep	upkeep
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57	5.8	1	unhpapy	unhappy
58	7.6	5 from below	amonnt	amount
60	8.14	5	low	law
62	9.7	2	afforesaid	aforesaid

CONTENTS

PART—II*

Minutes of the sitting of the Public Accounts Committee held on 27 April, 1983. . .

APPENDICES

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

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(1982-83)

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INTRODUCTION

I, the Chairman of the Public Accounts Committee do present on their behalf, this One Hundred and Sixtieth Report of the Public Accounts Committee (Seventh Lok Sabha) paragraphs 2.09(c), 2.11, 2.53, (f), 2.24, 2.47, 2.51, 2.58, 2.61, 2.74 and 2.76 of the Report of the C & AG of India for the year 1980-81, 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 1980-81, Union Government (Civil) Revenue Receipts, Volume I--Indirect Taxes was laid on the Table of the House on 31 March, 1982.

3. Committee considered and finalised this Report at their sitting held on 27 April, 1983. The minutes of the sitting of the Committee, form Part II of the Report.

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

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

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

NEW DELHI ;
April 28, 1983
Vaisakha 8, 1905(s)

SATISH AGARWAL
Chairman
Public Accounts Committee.

*Not Appended

INTRODUCTORY

The report of the Comptroller and Auditor General of India for the year 1980-81 Union Government (Civil) Revenue Receipts, Volume I-Indirect Taxes was laid on the Table of the House on 31 March 1982. Chapter II of the report relating to Union Excise Duties contains 80 paragraphs comprising 139 sub-paragraphs.

The Committee selected 3 of these sub-paragraphs for seeking detailed information, both written and oral, from the Ministry of Finance. In the past, the Committee's attention has been mainly confined to the paragraphs so selected. For the remaining paragraphs, the Committee's practice has been to make a general recommendation exhorting Government to take suitable action in these cases as well. However, since last year, making a major departure from the past practice, the Committee has been calling for written replies to all paragraphs not selected for detailed examination.

The Ministry of Finance have sent written replies to all non-selected sub-paragraphs and also detailed information on some of them where oral evidence could not be taken due to paucity of time. After considering the replies, the Committee have made specific suggestions/recommendations in respect of a few cases which have been dealt with in the chapters that follow.

REPORT

UNION EXCISE DUTIES

CHAPTER I

Exemptions from duty allowed to manufacturer producing for another manufacturer

Audit Paragraph

1.1 A unit munufacturing electric fans under two brand names during 1979-80 paid duty in respect of one brand meant for exclusive supply to another party and availed of exemption from duty in respect of the other brand on the ground that the aggregate value of clearances of this brand did not exceed Rs. 15 lakhs during the preceding financial year 1978-79. As affixing the Customer's brand name on some of the fans would not make the customers the manufacturer of the products the clearances of both the brands exceeded the prescribed limit. Irregular exemption thus availed of amounted to Rs. 40,605 for the period April 1979 to December 1979. On this being pointed out in audit, the department confirmed the facts as substantially correct (December 1980).

1.2 The Ministry of Finance have stated (December 1981) that the matter is under examination.

[Paragraph 2.09(e) of the Report of the Comptroller and Auditor General of India for the year 1980-81, Union Government (Civil) Revenue Receipts, Volume-I Indirect Taxes]

1.3 The Ministry of Finance stated (May 1982) that the matter relating to availing of irregular exemption was under examination.

1.4 As pointed out by Audit, during the year 1978-79, the unit in

question cleared electric fans valuing Rs. 27,06,787 as detailed below :

(i) Under Bajaj brand name — 6011 fans valuing Rs. 22,03,587

(ii) Under Vansal brand name - — 1225 fans valuing Rs. 5,03,200

The unit paid duty on Bajaj fans (manufactured for another unit) but cleared 554 Vansal brand exhaust fans valuing Rs. 2,70,700 upto December 1989 without payment of duty (amounting to Rs. 40,605) on the plea that the value of clearances of Vansal brand fans during the preceding financial year had not exceeded the prescribed limit of Rs. 15 lakhs. The value of clearances of Bajaj fans was not included in arriving at this limit of Rs. 15 lakhs.

1.5 The Ministry of Finance (Department of Revenue) in its letter of 23rd May 1978 (Appendix I), issued in consultation with the Ministry of Law, had clarified that a loan licensee (the person lending his brand name in this case) might be treated as a manufacturer within the meaning of section 2(f) of the Central Excises and Salt Act 1944. Further, the value of goods cleared by the principal manufacturer (such as the assessee in this case) on behalf of his loan licensee need not take into account by him for the purpose of determining his eligibility for the said exemption. The loan licensee will be eligible for the said exemption. separately and these clearances will be taken into account in his case in order to see that his clearances do not exceed the limits prescribed in notification No. 71/78 dated 1st March, 1978.

1.6 The High Courts of Gujarat and Allahabad had held* that mere affixation of the trade mark of the customer would not make the customer a manufacturer of the said goods. The Government is understood to have filed appeals in the Supreme Courts against the judgements. The Ministry of Finance (Department of Revenue) in their circular letter of 14th May 1982 (Appendix II) issued clarification in this regard to their field offices. The clarification in effect reversed the Ministry's decision of 23rd May 1978 and was as follows :

(*) Cibatul Ltd. Vs. Union of India and others [1978 ELT (J 68) Gujarat]

Hind Lamps Ltd. Vs. Union of India and others [1978 ELT (J 78) Allahabad]

Philips India Ltd. and others Vs. Union of India and others (1980 ELT 263) Allahabad

"Under Notification Nos. 71/78 CE dated 1.3.78 and No. 80/80 CE dated 19.6.80 (as it existed prior to its amendment by notification No. 73/81 CE dated 25.3.81), the benefit of the concession is to be given to clearances for home consumption by or on behalf of a manufacturer from one or more factories. Therefore, the clearances by the principal manufacturer (factory owner) even if they are on behalf of a loan licensee will have to be reckoned for the purpose of determining the principal manufacturer factory owner's eligibility to the benefits under these notifications. On the other hand, the clearances made by the principal manufacturer on his own account cannot be clubbed with the clearances made by or on behalf of the loan licensee for the purpose of determining the latter's eligibility to the benefits of these notifications."

1.7 The Committee find that till May 1982, the Ministry had held that the clearances on behalf of the loan licensee are not to be taken into account for the purpose of calculating the limit for the eligibility of the manufacturer to the exemption. Thereafter, the Ministry of Fianance clarified that such clearances should also be taken into account in arriving at the limit.

1.8 The Committee would like to be apprised of the considerations which weighed with the Government for the reversal of their earlier decision and also of the precise reasons which prevented them from taking such a decision earlier.

CHAPTER II

Delays in taking action on audit objections

Audit Paragraph

2.1 In para 38 of the Report of the Comptroller and Auditor General of India on Revenue Receipts (Volume I, Indirect Taxes) for the year 1978-79, a case of non-levy of duty on dipping solution manufactured and internally used by a tyre factory was reported. The Ministry of Finance in that case had admitted the facts as substantially correct.

2.2 Another leading tyre factory in a collectorate manufactured resorcinol formaldehyde solution by reacting exercinol and formal dehyde is the presence of caustic soda solution and used it internally as a dipping solution for rayon, nylon, and other cords. Although the chemical reports indicated that the samples of the product (drawn in May 1976 and July 1979) were synthetic resins of phenolic/phenol formaldehyde type, no steps were taken to classify the product under tariff item 15A(1) (i) and to realise duty accordingly.

2.3 On the omissions being pointed out in audit (March 1977 and March 1980) the department stated (January 1981 and March 1981) that a show cause cum demand notice for Rs. 1.93 crores covering the period 27 November, 1975 to 26 November, 1980 had been issued to the licensee (November 1980) and added that the matter was under the process of adjudication. Further developments are awaited.

2.4 While not admitting the audit objection, the Ministry of Finance have stated (December, 1981) that the matter was already under examinatton with the department as a result of which it was decided that resorcinol formaldehyde solution was liable to duty as resin under tariff item 15A. It was further stated that a show cause notice demanding duty of Rs. 1.93 crores had been issued which was under the process of adjudication.

2.5 The fact, however, remains that no action was taken to clasify the goods correctly on the basis of the opinion of the Chemical Examiner inspite of the Ministry having accepted the similar objection in December 1979.

[Paragraph 2.11 of the Report of the Comptroller and Auditor General of India for the year 1980-81 Union Government (Civil) Revenue Receipts Volume-I—Indirect Taxes.]

2.6 Under a notification issued in June 1977 as amended, set off of duty paid on goods falling under tarriff item 68 (inputs) used in the manufacture of other excisable goods is admissible to a manufacturer on furnishing a statement to the department showing the quantity of inputs used in the manufacture of every unit of the said goods.

2.7 A factory in a collectorate, manufacturing rayon yarn and tyre yarn from pulp falling under tariff item 68 claimed set off under the above notification by submitting data regarding consumption of pulp per kilogram of yarn as per consumption for the year 1976. It was noticed in audit that the consumption of pulp was substantially reduced from February 1978 onwards but the licensee continued to claim set off according to the data submitted initially. On this being pointed out Audit, the Department issued a show cause cum demand notice for Rs. 4,74,714 for the period February 1978 to January 1979.

2.8 The Ministry of Finance have stated (December 1981) that the matter is under examination.

[Paragraph 2.53(f) of the Report of the Comptroller and Auditor General of India for the year 1980-81 Union Government (Civil) Revenue Receipts Vol. I—Indirect Taxes].

2.9 In regard to the action taken with reference to the afore-mentioned audit paragraph 2.11, the Ministry of Finance in its note dated 26 May 1982 stated :

"The audit objection was not admitted by the Ministry as the matter was within the knowledge of the Department. The question of taking any corrective action, therefore, does not arise."

2.10 The Committee note that the Board of Central Excise & Customs had taken a decision to the effect that resorcinol formaldehyde

solution was liable to duty as resin under tariff item 15A and it was conveyed to the field only on 14th November, 1980 when tariff advice No. 71/80 was issued. The samples for chemical examination were taken in May 1976 and July 1979 and audit objections on non-levy of duty were raised in March 1977 and March 1980. The Committee are perturbed to observe that the department was aware of the suspected leackage of revenue from May 1976 onwards but it took them 4 years to take a decision for which the Ministry of Finance have not given any plausible explanation. The Committee would like to be apprised of the precise reasons for such deplorable delay. The Committee would also like to be apprised of the details regarding monitoring done by the Board of Central Excise and Customs to follow up audit objections pointing out leakage of revenue and the precise reasons for not resolving the ambiguities within 6 months or at the most one year through discussion in Tariff Conference of Collectors, tripartite meetings with the Ministry of Law and by decisions at the level of the Board of Excise and Customs.

2.11. On the action taken with reference to audit paragraph 2.53 (f) the Ministry of Finance in its note dated 26 May 1982 informed the Committee as follows :

> "The matter is being examined and the Ministry's comments will follow shortly."

2.12 The Committee are surprised to find that the Ministry of Finance have not been able to furnish their final reply in the matter relating to audit paragraph 2.53(f), although audit objection was sent to the Department concerned as early as in July 1980. Even after a lapse of two years the matter is stated to be still under examination. The Committee would like to be apprised of the reasons for such delay and would urge upon the Government to finalise the matter expeditiously and furnish their final reply without much delay.

CHAPTER III

Irregular grant of exemption from Excise duty

Audit Paragrah

3.1 Fertiliser was first brought under excisenet from 1 March 1969 under tariff item 14 HH.

3.2 A fertiliser company in a collectorate manufactured ammonium chloride of high technical purity (99.8 per cent) intended for use as an industrial chemical. This was manufactured out of raw naphtha (tariff item 6) which enjoyed a concessional rate of duty (5 per cent *ad valorem* as against tariff rate of Rs. 620 per kilolitre as on 1 March 1969) if used in the manufacture of fertiliser. As the ammonium chloride in this case was not used as a fertiliser, the raw naphtha used in its manufacture was not eligible for the concessional rate of duty. The department therefore, raised demands for differential duty amounting to Rs. 1,09,28,247 for the period 1967-68 to 31 December 1971 on 20 March 1969 and 13 March 1972. The Company contended that ammonium chloride was a fertiliser and the concessional rate of duty on raw naphtha was, therefore, admissible. The company's appeal was rejected by the appellate authority in November 1973. The company represented to the Government for *ex-gratia* relief from the differential duty. The representation is still pending with the Government.

3.3 In April 1974, the company intimated to the department that they proposed to boost production from 1974-75, and in order to market the excess production of ammonium chloride as a fertiliser requested its reclassification as a fertiliser. The reclassification was approved by the department from July 1974.

3.4 It was noticed in audit that there was neither any excess production nor any change in the quality of the product or its popular

usage. A major portion of the product (81 per cent) was actually sold to industrial consumers. The reclassification of the product as fertiliser was therefore, not in order. The inadmissible concession in duly or raw naphtha used in the manufacture of ammonium chloride from 6 July, 1974 to 31 March, 1981 amounted to Rs. 1,09,47,349.

3.5 Further, ammonium chloride used for industrial purposes which was not covered under tariff item 14 HH became assessable to duty under tariff item 68 from 1 March, 1975. No duty was, however, charged thereon. This resulted in non-levy of duty amounting to Rs. 43,75,078 for the period 1 March, 1975 to 31 March, 1981.

3.6 The points were brought to the notice of the department in August 1976. The department did not accept the objection (July 1981). In reply to a statement of facts issued on 8 May 1981, however, the department stated (July 1981) that the short-levy of duty on raw naphtha falling under tariff item 6 and used in the manufacture of ammonium-chloride was Rs. 1,55,39,227 and non-levy of duty on ammonium chloride under tariff item 68 was Rs. 43,98,813 and added that a show cause notice had been issued. Further progress is awaited.

3.7 The Ministry of Finance have stated (December 1981) that the matter is under examination.

(Paragraph 2.24 of the report of Comptroller and Auditor General of India for the year 1980-81, Union Government (Civil), Revenue Receipts, Volume—I—Indirect Taxes).

3.8 In regard to the action taken later with reference to the above Audit Paragraph, the Ministry of Finance stated.

> "The assessee is reported to have filed a writ petition in the high Court of Kerala and the matter has therefore become sub judice. No comments can be offered at this stage."

3.9 The Committee find that excise duty became leviable on fertilisers with effect from 1 March 1969, under tariff item 14 HH. On Ammonium Chloride used for industrial purposes (not as fertiliser) duty under tariff item 61 became leviable with effect from 1 March, 1975. Raw naphtha is assessable to duty under tariff item 6 as Motor Spirit,

Government under notification No. 187/61-CE dated 23 December, 1961 exempted raw naphtha from excise duty in excess of 5 per cent *ad valorem* provided it was proved to the satisfaction of the Collector (Assistant Collector with effect from 30. July, 1977) that

(i) such raw naphtha was intended for use in the manufacture of fertiliser ; and

(Ii) the procedure set out in Chapter X of the Central Excise Rules, 1944 was followed.

3.10 Chapter X of the Central Excise Rules, 1944 provides for a procedure in relation to removal and storage of excisable goods that are cleared at a concessional rate of excise duty for special industrial purpose.

3.11 The Committee also find that M/s. Fertiliser and Chemicals Travancore Ltd., Udyogmandal Eloor (FACT) manufacturer of fertilisers, manufactured chemical grade ammonium chloride. The ammonium chloride was manufactured out of raw naphtha obtained at concessional rate of duty for use the manufacture of fertiliser. No duty on ammonium chloride cleared was paid by the unit till 25 September 1969 or after 6 October, 1969. Demand for the duty for the period from 1 March, 1969 to 24 September, 1969 raised on 29 September 1969 was contested by the company on the ground that the ammonium chloride manufactured by them was of high technical purity intended for use as industrial chemical ; it was not used as fertiliser ; nor did it fall under the purview of the Fertiliser Control Order ; and as such the product was not excisable. On 17 August, 1970 the Collector directed that the demand should be withdrawn as the levy of duty on ammonium chloride, which was marketed as chemical, was ab-initio void, Accordingly the demand was withdrawn and the duty of Rs. 31,825.03 collected on clearances made during the period 25 September, 1969 to 6 October, 1969 was refunded to the manufacturer.

3.12 It has been brought to the notice of the Committee that since the ammonium chloride produced by the company was not used as fertiliser, the raw naphtha used in its manufacture was not eligible for concessional rate of duty. Demands amounting to Rs. 1,09,28,247.47 as duty payable on raw naphtha cleared during the years 1967 to 1971 were

issued on 20 March, 1969 and 13 March' 1972. Demands for clearances during subsequent periods were also raised. Thereupon the company changed its earlier stand and argued that the ammonium chloride produced by them was fertiliser and only concessional duty was leviable on raw naphtha used in its manufacture. There contention was that even though the ammonium chloride produced by them conformed to the ISI specification for technical grade ammonium chloride and practically the entire production was marketed as technical grade for industrial purposes, the product was fertiliser as per item 14 HH of Central Excise Tariff and as per the Fertiliser Control Order 1957. The Appellate Collector disagreed with these contentions and held that applying the test of marketability and popular usage, the product manufuctured and marketed was not fertiliser. The appeal was, accordingly, rejected on 9 November 1973.

3.13 In April 1974, the company informed the Department that they proposed to boost production from 1974-75, and in order to market the excess production of ammonium chloride as a fertiliser requested for its reclassification as a fertiliser. The reclassification was approved by the Department on clearances made from July, 1974.

3.14. Asked about the steps taken by the Department to recover the dues when the appeal of the assessee was rejected by the appellate authority in 1973, the Ministry of Finance (Department of Revenue) stated :

"The Ministry of Petroteum and Chemicals, vide their letter dated 15 September, 1975, requested the Finance Ministry to instruct the local Central Excise authorities of stay the recovery of the amount in question. The Department of Chemicals and Ferrilisers, in their further communication dated 27 September, 1975, requested the Finance Ministry that both on facts and equity there is a good case for reconsideration of the decision taken by the Ministry of Finance (Department of Revenue) Pending which the recovery of the demand may not be enforced. The Finance Ministry stayed the recovery initially upto 31 May, 1976 *vide* their letter dated 2 December, 1975 on the ground that it would be necessary to go into the details of the case more thoroughly before any final decision can be taken on the

requests of M/s. FACT for withdrawal of demands for differential duty. The stay of recovery was further extended upto 31 July, 1976. The matter was further discussed by the then Finance Secretary with the then Member (Tariff) the then, Secretary, Ministry of Petroleum and the representatives of M/s. FACT on 16 August, 1976. Finance Secretary felt that we would not stand on the technicalities and evolve a solution to the issues. The demand could not, therefore, perhaps be enforced as the matter was being discussed at the Secretaries level of the Government of India."

3.15 In response to a further query why duty was not collected on the ammonium chloride leading to loss of revenue of Rs. 44 lakhs, the Ministry of Finance (Department of Revenue) have stated :

"From 5 July 1974, ammonium chloride was classified as a fertiliser and was subjected to duty under tariff item No. 14 HH. It is this classification of ammonium chloride as a fertiliser which is disputed. Since the assessee company have used concessional rated raw naphtha received under Notification No. 187/61 for the manufacture of non-fertiliser ammonium chloride till 5 July 1974 there is a differential duty involvement on such raw naphtha. So also is the case with the later period since the classification of the ammonium chloride from 5 July 1974 as a fertiliser has been disputed. Collector of Central Excise, Cochin, has reported that the type of ammonium chloride manufactured by the assessee unit is not a fertiliser but only a chemical for industrial use."

3.16 The Committee inquired about the purity of ammonium chloride used for industrial purpose and that used as fertilisers and the price differential. The Ministry of Finance stated :

"The Indian Standards Institution has published two specifications for Ammonium Chloride. I.S.S. 1113 deals with ammonium chloride of technical and pure grade and I.S.S. 1114 with the fertiliser grade. A technical grade Ammonium Chloride is used in the Soda Ash industry, fermentation soldering, galvanizing, and tinning trade. Pure grade type I is used in batteries

and pure grade type II is used in Cosmetic industry. The special requirement for dry cell manufacture is that ammonium chloride should be free from copper, cobalt, nickel, aresnic and antimony. The assessee company produces ammonium chloride of one purity only, *viz.* 99.8%. It is used both for fertilizer purposes and industrial purposes. However, depending on the class of consumer, like agriculturists or Industrialists, the assessee was charging Rs. 160 to Rs. 270 additionally during the year 1975 to 1980 from Industrial users. From 10 June 1980 there is no difference in price charged from the two types of buyers. From 1 March 1969 to 5 July 1974 ammonium chloride manufactured by the assessee was classified as non-fertiliser. From 6 July 1974, it has been classified as fertiliser falling under tariff item 14 HH. The classification was not based on the nature of use by the customers to whom the product was sold. The marking and marketing of the product as fertiliser was the criteria for determining the classification."

3.17 The Committee desired to know the details of production of ammonium chloride by the assessee company and the production in the country as also the quantity of ammonium chloride imported during the year 1967-68 to 1980-81. The Ministry of Finance (Department of Revenue) stated :

"Year	Production by assessee (FACT)	Production in the country	Imports
	in thousand tonnes)		
1967-68	5.6	25.3	47.6
1968-69	6.4	26.6	77.6
1969-70	9.0	24.9	nil
1970-71	9.4	34.4	nil
1971-72	10.0	32.0	nil
1972-73	8.0	30.0	nil
1973-74	9.0	32.0	nil
1974-75	9.0	27.0	nil

1	2	3	4
1975-76	7.0	27.0	nil
1976-77	6.0	27.0	nil
1977-78	7.0	27.0	nil
1978-79	7.0	24.4	nil
1979-80	9.0	12.5	nil
1980-81	11.0	21.6	nil"

3.18 Asked about the percentage of production in India sold to the customers who were clearly industrial users, the Ministry of Finance (Department of Revenue) informed the Committee that the information was being collected. However, the Ministry stated that the following were the major buyers of ammonium chloride manufactured by the assessee during the said years :

(i) Union Carbide (India) Ltd.

(ii) Toshiba Anand Batteries Ltd.

(iii) Telecom Factory, Jabalpur

(iv) TISCO Ltd.

(v) Geep Industries.

(vi) Fertiliser dealers in Vellore and Katpadi region and also in fertiliser mixing centres.

3.19 It has also been brought to the notice of the Committee that besides FACT, M/s. Hari Fertilisers Ltd. Varanasi and M/s. Kothari (Madras) Ltd., Tamil Nadu, also manufactured Ammonium Chloride. M/s. Hari Fertiliser did not use raw Naptha in its manufacture. M/s. Kothari used Ammonia brought from M/s. Madras Fertilisers Ltd. As for FACT all the Ammonium Chloride was produced from Raw Naphtha.

3.20 The Committee are at a loss to understand that when the marking and marketing of a product as fertiliser was the criteria for determining its classification, why the grade of ammonium chloride which is marketed as chemical was not taken to fall outside the scope of tariff

item 14 HH. The test of marketability and popular usage or common parlance is undisputably the real criterian for classifying a product. Collectors and Assistant Collectors of Central Excise, are expected to make market enquiries and their field staff, who assist them, had also held the product to be other than fertiliser. The Committee is, therefore, unable to appreciate how the Ministry of Finance agreed to the wrong classification of technical grade ammonium chloride as fertiliser, setting aside the well established principles of classification. If the Ministry wanted the exempt, in public interest, even technical grade ammonium chloride from duty or allow concessional duty on raw naphtha used in manufacture of technical grade ammonium chloride, it could have done so without doing violence to well established principles of classification. In the circumstances, the Committee cannot escape the conclusion that the action taken by the Ministry of Finance was most extraordinary.

3.21 The Committee observe that the assessee unit has been producing ammonium chloride of purity 99.8 per cent which is of technical grade as per Indian Standards Specifications 1113. The Collector of Central Excise, Cochin, had also reported that the ammonium chloride manufactured by the unit is not fertiliser but only meant for chemical or industrial use. The Company proposed to boost production from 1974-75 in order to market the excess production of ammonium chloride as fertiliser and so the unit requested for reclassification of product as fertiliser. The reclassification was approved by the Department from 6 July 1974. In spite of all this the production of ammonium chloride by the unit declined from 1974-75 onwards and at best was static. The Committee cannot but conclude that the Ministry did not care to ascertain what percentage of the ammonium chloride produced by the assessee was in fact used as fertiliser, over the years before approving the reclassification of the product as fertiliser.

3.22 The Committee find that in its Annual Review for 1975-76 on production and consumption of fertiliser, (Table 3, 5. 6, 9 and 24) the Fertiliser Association of India stated :

"(i) 2 units in FACT Alwaye (Kerala) are producing Ammonium Chloride of technical grade.

(ii) The licensed capacity existing on 1 April 1976 was :

(a) 24,750 tonnes of ammonium chloride (25% N) in FACT Alwaye, and

(b) 40,000 tonnes of Ammonium chloride (25% N) in New Central Jute Mills Co. Ltd., Varanasi.

(Apparently there was then no other unit in India having capacity licensed for producing Ammonium Chloride).

(iii) The production of fertiliser grade Ammonium Chloride (25% N) was all in Uttar Pradesh and production yearwise as follows :

1971-72	18	thousand tonnes
1972-73	14	,, ,,
1973-74	14	,, ,,
1974-75	10	,, ,,
1975-76	15	,, ,,
1976-77	16	,, ,,

The production at FACT Alwaye is not meant for agricultural purposes.

(vi) The distribution of Ammonium Chloride (25% N) as fertiliser in India was as follows :

(in thousand tonnes)

	1971-72	72-73	73-74	74-75	75-76
Andhra Pradesh	1	—	—	9	—
Gujarat	1	—	—	—	—
Madhya Pradesh	1	—	—	—	—
Uttar Pradesh	12	10	8	6	10
Haryana	—	—	1	—	—
Punjab	—	—	—	8	—
Bihar	2	3	4	7	2
Others	3	1	1	—	—
TOTAL	20	14	14	30	12"

3.23 The Committee note that the department had raised demand on 29 September, 1969, treating the product of FACT as fertiliser but the same was withdrawn because the Collector of Central Excise, Cochin, had held on 17 August 1970 that the levy of duty on ammonium chloride, which is marketed as chemical, was *ab initio* void. The Company's claim that their product was fertiliser was rejected by the appellate authority on 9 November 1973. The Committee are distressed to observe that despite the above facts, the Ministry of Finance agreed to the reclassification of ammonium chloride as fertiliser with effect from 6 July 1974. The Committee would like the Ministry to enquire into the matter and apprise the Committee of the reasons for approving such reclassification.

3,24 The Committee observe that M/s. Fertiliser and Chemical Travancore Limited had been obtaining raw naphtha since 1967 at concessional rate under notification No. 187/61 CE dated 23 December 1961 subject to the condition that it was proved to the satisfaction of the Collector of Central Excise (Assistant Collector with effect from 30 July 1977) that (i) such raw naphtha was intended for use in the manufacture of fertiliser; and (ii) the procedure set out in Chapter X of the Central Excise Rules, 1944, was followed. The Committee are surprised to find that though the unit produced and marketed only chemical or technical grade ammonium chloride and produced no fertiliser grade, it was permitted to bring in raw naphtha at concessional rate on the plea that it was used in the production of fertiliser, resulting in short levy of duty amounting to Rs. 1.99 crores.

3.25 The Committee are distressed to note that for over 5 years, the Ministry of Finance had taken no action on the audit observations and only in 1981 after the audit paragraph was included in the Report of C & AG for 1980-81 that the demands were raised by the Department. These demands are stated to be the subject matter of a writ petition filed recently. The Committee recommend that the Government should enquire into the reasons for inaction by the Ministry of Finance prior to the raising of the demand in 1981 and fix the responsibility for loss of revenue which will arise on account of clearances made in the past without raising protective demands even if the decision of the court were to go in favour of revenue. The Committee would like to be apprised of the results of the investigation and action taken against the guilty persons.

CHAPTER IV

Incorrect Grant of Exemptions

Audit Paragraph :

4.1 By notification dated 3 May 1969 as amended, patent or proprietary medicines containing one or more of the ingredients specified in the schedule attached thereto, are exempt from duty in excess of 2.5 per cent *ad valorem*, provided that if any ingredient in the medicine is not specified, it must be pharmaceutical necessity which is therapeutically inert and does not interfere with the therapeutic or prophylactic activity of the ingredient specified in that schedule.

4.2 In a collectorate a case of under-assessment of medicine namely flagyl 200 mg. and flagyl 400 mg. which contained an ingredient which was neither specified in the schedule nor fell under the category of pharmaceutical necessity as mentioned in the aforesaid notification was noticed. On this being pointed out by Audit (September 1980), the department intimated (July 1981) that show cause notice for Rs. 27,10,713 for the period April 1979 to March 1981 for recovery of differential duty had been served on the manufacturer (April 1981). Further developments are awaited.

4,3 The Ministry of Finance have stated (November 1981) that the matter is under examination.

4.4 The exemption available under the aforesaid notification was extended to 'Amezole' tablets containing specified drug 'Metronidazole'. During audit, it was seen that this medicine contained calcium carbonate and magnesium carbonate also, which are described as *antacides* and laxatives and are thus not inert therapeutically. Therefore 'Amezole' tablets are not entitled to the concessional rate of duty at 2.5 per cent *ad valorem*. On this being pointed out by Audit in May 1980 the department referred

the matter to the Drug Controller. Further progress in the matter is awaited. Under-assessment for the two years 1978-79 and 1979-80 worked out to Rs. 3,35,110.

4.5 The Ministry of Finance have stated (December, 1981) that the matteris under examination.

[Paragraph 2.47 of the Report of the Comptroller and Auditor General of India for the year 1980-81 Union Government (Civil), Revenue Receipts, Volume—I, Indirect Taxes.]

4.6 Asked about the criterion for selecting ingredients to exempt them from duty, the Ministry of Finance has stated that while selecting ingredients for inclusion in the schedule attached to the exemption notification it was kept in view as to whether the medicines containing the said ingredients were of life saving nature or were capable of being used in the treatment of highly infectious and widely prevalent diseases and whether in the light of the nature and use or the medicines there was a need for making it available at reduced prices within the reach of the common man. The selection was not influenced by whether the ingredient was indigenous or imported. The use of other than selected ingredients having therapeutic value in combination with selected ingredients needed to be prevented from becoming entitled to exemption.

4.7 In this connection, the Ministry of Finance stated further that the ingredients used in manufacture of "Amezole 400 mg." were the following: —

(i) Metronidazole IP	60,000
(ii) Magnesium Carbonate IP	15,000
(iii) Calcium Carbonate IP	7,500
(iv) Sugar Powered	3,000
(v) NS Starch Supra	0,100
(vi) Starch IP	3,170
(vii) Gum Acacia IP	3,000
(viii) Water	3,30,000
(ix) Sodium CMC USP	1,500

(x) Dried Starch IP	1,000
(xi) Magnesium Staerate BP	0,230

The ingredients at Serial Nos. (ii) to (xi) above were claimed to be either pharmaceutical necessity or therapeutically inert.

4.8 The Committee enquired as to how the departmental excise officers satisfied themselves that only the ingredients specified in the schedule had been used and no other ingredient which was not pharmaceutically necessary or was not therapeutically inert or prophylectically inactive had been used. The Ministry of Finance stated in a note as follows :—

"(1) According to Section 8 and 16 read with the second schedule to the Drugs and Cosmetics Act 1940, a manufacturer of Patent and proprietary medicines is required to display the formula of list of ingredients in the prescribed manner on the lable or container of the medicines. Such label or container is approved by the jurisdictional Director in the Drugs Control Administration. On the basis of the information given on the label or container, the Central Excise Officer is able to know whether only the ingredients specified in the notification have been used. Further detailed accounts have to be maintained by the manufacturers of Patent and Proprietary medicines in respect of each raw material received in the factory and utilised in the manufacture of medicines. They have to maintain and prepare batch reports before the commencement of batch production. The batch report gives a clear picture of the raw materials used and quantity used. Laboratory test reports are available in respect of each batch. The assessing officer can check from the accounts and the test reports by reference to the label or container that the ingredients used in the medicines are only the approved ones. In case of any doubt, the matter is referred to Central Excise Chemical Laboratory or Drug Control Administration who advise the Central Excise Officers.

(ii) In order to know whether a non-specified ingredient is pharmaceutically necessary, therapeutically inert or prophylectically inactive the declaration given by the manufacturer to the Drug Control Administration about the ingredients used and their

pharmaceutical necessity can be referred to. In case of doubt, samples are sent to the Central Excise Laboratory and the Advice of the Drug Control Administration is obtained."

4.9 The Committee find that the Ministry of Finance has not so far (April, 1983) intimated the number of drugs and formulations produced in the country and the number of manufacturers involved. The Committed however find that the Drugs Controller of India had 30 Officers in the country to whom references could be made by the Excise Officers. The designation and the address of officers are given in *Appendix III.*

4.10 The Committee enquired the normal time taken by the Drugs Controllor to give an opinion when a reference was made to him and to indicate a figure based on records. The Ministry could not furnish the requisite information.

4.11 To another query, the Ministry of Finance has stated in a note that in interpreting the notification, the adjudicating officer had to use his own judgement. He could not subordinate his judgement to that of the Drugs Controller. The opinion of the Drugs Controller could be used by the Adjudicating officer as a technical opinion rendered by a competent technical authority. If the opinion of the Drugs Controller was not *prima facie* correct, or if the manufacturer produced contrary evidence which was more plausible, the Adjudicating Officer had to take an independent decision without sub-ordinating his judgement to that of the Drugs Controller.

4.12 The Committee is distressed to find that the Department of Revenue has no information regarding the magnitude of the impact made by the exemption notification as the Ministry is neither aware of the number of units manufacturiug patent and proprietory medicines to which the exemption orders apply, nor of the number of medicines involved. The Department has also not realised that the administrative arrangements, necessitated by the exemption notification in question, are extremely difficult to work in practice, given the level of academic knowledge in excise officers who do not specialise in pharmaceutical area. The Committee are of the view that the harassment total would be caused to manufactures in their administering the kind or exemption notification will be very pronounced. It is impractical to expect the excise officer to detect cases of use of therapeutically active ingredients or use of pharmaceuti-

eally non-necessary ingredicnts but having therapeutic value, in additiou to approved ingredients.

4.13 The Committee is not convinced of the argument advanced by the department that if the exemption is allowed so long as the approved idgredient is used in the formulation, the exemption notification could be misused. The Committee would urge upon the Ministry to furnish the wanting data referred to in paragraphs 4.9 and 4.10 above to them. The Committee would also like the Ministry to take a more realistic look at the size of impart which the exemption notification has and also to consider in consultation with the Drugs Controller whether the risk to revenue is more to be feared by amendment of the notification or by its continuance without its administration in reality. The Committee are of the view that so long as the specified ingredients are used in the formulations, the exemption should be allowed irrespective of whether any other ingredients are used. The community of druggists and formulators will only run the risk of cancellation of the exemption notification if they misuse it to the deteriment of citizens' health or in defrauding revenue.

CHAPTER V

Irregularity in grant of refund under prolonged examination

Audit Paragraph

5.1 Under a notification dated 25 February 1976, if a sugar factory commenced production for the first time on or after 1 April 1974, its production in excess of thirty five per cent in a sugar year was exempt from payment of duty of excise and additional duty of excise in excess of duty calculated at 15 per cent and 5 per cent respectively on the basis of the price fixed by Government under sub-section 3C of Section 3 of the Essential Commodities Act, 1955, subject to the production of a certificate from the Directorate of Sugar and Vanaspati regarding eligibility of the mill to avail of the said exemption. Under the proviso to the aforesaid notification, a mill entitled to the said exemption was not eligible to the benefit of the concessional rate of duty on levy sugar prescribed in a notification of 15 December 1973. Thus 35 per cent of the sugar produced in a year by a sugar factory availing of the benefit of notification of 25 February 1976 was assessable to duty at full tariff rate. On the decontrol of sugar, notification of 25 February 1976 was rescined on 16 August 1978.

5.2 During audit, it was noticed (March 1979) that a factory started production of sugar for the first time on 19 November, 1975 and was entitled to the concession under notification dated 25 February 1976 during 1975-76 and 1976-77 seasons. Due to the late receipt of eligibility certificate from the Directorate of Sugar and Vanaspati for the years 1975-76 and 1976-77, the factory continued to clear sugar for 1975-76 and 1976-77 seasons, on payment of duty at full tariff rate in respect of free sale sugar and at concessional rates applicable to levy sugar till December 1977. The refund claim of the factory amounting to Rs. 64,39,721 in respect of duty paid in excess of 15 per cent plus 5 per cent of levy prices in respect of the entire clearances from the beginning

till November 1977 being the quantity of sugar produced during 1975-76 and 1976-77 was allowed by the department on 22 August 1978 without taking into account the obligation to pay duty at full tariff rate on 35 per cent and at the rate of 15 per cent plus 5 per cent on 65 per cent of sugar cleared till 15 August 1978. This resulted in excess grant of refund amounting to Rs. 22,25,255.

5.3 The audit objection was communicated to the department on 11 September 1979 and the issue was also referred to the Ministry of Finance in April 1981. The Ministry stated in June 1981 that the matter was under examination in consultation with the Ministry of Law.

5.4 The Ministry of Finance have intimated (January 1982) that the matter is under examination.

[Paragraph 2.51 of the Report of the Comptroller and Auditor (General of India for the yeat 1980-81, Union Government (Civil) Revenue Receipts, Volume-I, Indirect Taxes.].

5.5 In regard to the action taken with reference to the audit paragraph, the Ministry of Finance in its note of 26th May 1982 have stated as follows :

"The matter is being examined and Ministry's comments will follow shortly."

5.6 The Committee find that a rebate scheme with a view to maximising production of sugar was first introduced in the year 1959-60 and was being continued from year to year with certain modifications except that in the years 1961-62, 1962-63, 1968-69 and 1970-71, it was not in operation.

5.7 The Committee learn that the audit paragraph related to M/s. Kisan Sahkari Chini Mills Ltd., Kaimganj, Distt. Farrukhabad in Uttar Pradesh, which started production of sugar for the first time on 19 November 1975 and was eligible for concessional rate of duty in respect of their production in excess of 35 per cent, under notification No. 35/76 dated 25 February 1976 during the 1975-76 and 1976-77 seasons. The factory was granted eligibility certificate by the Directorate of Sugar and Vanaspati for the years 1975-76 and 1976-77 *vide* its letters dated 26 May 1977 and 23 September 1977. Pending receipt of the eligibility certificate the factory continued to pay duty at the normal tariff rates. Subse-

quently, the assessee submitted a refund claim amounting to Rs. 64,39,721 in respect of duty paid in excess of 15 per cent and 5 per cent of the levy price on the entire clearance of sugar made from the beginning of production till November 1977 instead of claiming refund only on quantity of sugar cleared in excess of 35 per cent of clearance. This resulted in excess refund of Rs. 28,25,255.

5.8 The Committee are unhappy to note that the points raised in the above Audit Paragraph which was sent to the Ministry of Finance in August 1981 are still under examination of the Ministry. The Committee would like the Ministry of Finance to investigate the reasons for this inordinate delay and apprise the Committee of the results thereof. The Committee would also like the Ministry to finalise the examination of the points raised in Audit Para without further delay.

CHAPTER VI

Liability of manufactured excisable goods not cleared, to new duties of the nature of excise when imposed

Audit Paragraph

6.1 Section 3(1) of the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 provides for levy and collection of duty from 4 October 1978 at the rate of 10 per cent of the total amount of duty chargeable under the Central Excises and Salt Act, 1944 on goods mentioned in the Schedule to the Act. Government in telex of 3 October 1978 clarified that being a new impost the levy would not be attracted on goods in fully manufactured condition and in stock with the manufacturers as on the midnight of 3 and 4 October 1978. Since this levy was not related either to the production or manufacture of goods but was related to their assessment to central excise duty, all goods were liable to pay additional duty on the stock held on 3/4 October, 1978.

6.2 It was, however, noticed in audit that in nine units under three collectorates additional duty was not collected on stock of such goods held on 3/4 October 1978 and cleared by them thereafter. This resulted in under assessment of Rs. 40.52 lakhs. In the case of one unit show cause cum demand notices for Rs. 4.09 lakhs had been issued which were in the process of adjudication. In reply to the audit observations the Department stated that the matter had been referred to the Government as the non levy of duty was based on their instructions of 3 October, 1978.

The Ministry of Finance have stated (December 1981) that the matter is under examinaion.

[Paragraph 2.58 of the Report of the Comptroller and Auditor General of India for the year 1980-81, Union Government (Civil) Revenue Receipts, Volume-I, Indirect Taxes.]

6.3 In their reply to the audit paragraph, the Ministry of Finance stated in its note of 26 May, 1982 as follows :

"The matter is being examined in consultation with the Ministry of Law and the Ministry's further comments will follow shortly."

6.4 The Committee find that the Collector of Central Excise, Bombay, in a letter dated 5 April 1979 (*Appendix IV*) made a reference to the Department of Revenue (Tax Research Unit , New Delhi, seeking clarification on whether the Additional duties of excise would be a new impost or addition to the quantum of excise duty to which textile and textile articles were already subject.

6.5 The Committee is surprised to learn that even after a lapse of 4 years, the Ministry of Finance has not been able to furnish a final reply to a reference made to it in April 1979 by the Audit. The reference in question relates to the point in whether duties of the nature of excise when imposed are to be construted as mere changes in quantum of excise duty made by changes or new additions in the budget, (which was the view advanced by the Collector and Audit) or the impost is to be viewed as a new duty of different nature altogether.

6.6 The Committee recommend that in the interest of revenue and with a view to obviating such cases involving loss of revenue, the Board of Central Excise and Customs should arrange to have monthly meetings with the Ministry of Law to settle all legal issues having revenue implications. Where the revenue is likely to suffer, due to ambiguity in legal interpretations, they should be remedied by amending the law without delay. The Committee would like to be informed to the legal advise in the matter without delay which should also take into account the various relevant pronouncements of the Supreme Court and the High Courts.

CHAPTER VII

Addition to price excluded from value for purposes of levy of excise duty.

Audit Paragraph

7.1 According to Section 4 of the Central Excises and Salt Act 1944, where duty of excise is chargeable on any excisable goods with reference to value, such value shall be the price at which such goods are ordinarily sold in the course of wholesale trade. Where such goods are sold at different prices to different classes of buyers, each such price shall be deemed to be the price charged in the course of wholesale trade.

7.2 A manufacturer of asbestos cement products who declared his wholesale prices for delivery at destination, collected from a class of buyers, in addition to the declared price, one per cent of the invoiced amounts to cover transit risks such as breakage losses and theft. As the prices declared were for delivery at destination, the additional collection made should have been included in the assessable value.

On this being pointed out in audit in October, 1976, the department issued show cause notices to the licensee in February 1977, April 1977 and May 1977 which was realised by way of debt to the Personal Ledger Account in January 1981.

7.3 During the audit of the same unit in October, 1979 it was again noticed that the manufacturer had collected Rs. 6,49,553 during the period August 1978 to August 1979, as one per cent addition in respect of supplies made to Government departments/public sector undertakings but had not paid duty on the additional amount so collected although the collector had also issued orders in August 1978 in the earlier case that these additional collections should form part of the assessable value. When omission to collect duty was again pointed out, the department issued three show cause notices to the licensee in July, 1980, for the

period October 1976 to March 1980, and three demands for differential duty were served on the licensee in May 1981, June 1981 and July 1981 amounting to Rs. 2.17 lakhs. Action for the period subsequent to March 1980, in awaited.

7.4 While not admitting the objection, the Ministry of Finance have stated (December 1981) that one per cent amount was recovered by the manufacturer for covering transit risk at special request in some cases and that this amount did not form part of the assessable value. The fact, however, remains that when different prices are charged in the invoices from different buyers, the price charged from each class of buyers has to be taken as the normal price.

[Paragraph 2.61(d) of the Report of the Comptroller and Auditor General of India for the year 1980-81 Union Government (Civil) Revenue Receipts Volume-I, Indirect Taxes]

7.5 In reply to the audit objection, the Ministry of Finance in its note of 26 May 1982 has stated as follows :

> "Audit objection was not admitted by the Ministry and hence the question of taking any corrective action does not arise."

7.6 The Committee observe that the collector had issued orders in August 1978 that the addition to price stated to be on account of breakage should form part of the assessable value. The show cause notices for the differential duty as a result of the addition to price raising the assessable value, were however, issued in July 1980 after the mistake was pointed out in audit in October 1979. Subsequently, in December, 1981 the Ministry of Finance held that 1 per cent addition to price charged by the supplier was for covering transit risk and was at special request in some cases and as such it was not obligatory on the buyers to pay this amount on all the sales made by the manufacturer and so they did not form part of normal price. The Ministry of Finance has not stated any reason why the class of public sector/Government buyers is not to be treated as a separate class and why the addition to price should not be included in the assessable value.

7.7 The Committee also find that the goods were not insured by the manufacturer supplier with any insurance company and breakage charges were being charged at 1 per cent as per agreements for supply with

Government department. The manufacturer pleaded before the Appellate Collector that he incurred loss on account of breakages of more than 1 per cent.

7.8 The Committee would like the Ministry of Finance to examine with reference to the legal position existing after nationalisation of general insurance, as to how far such self insurance schemes adopted by manufacturers can legally allow of such post manufacturing addition to sale price which will not be includible in the excisable value. The Committee would also like the Ministry to examine whether in the event of such self insurance being a legal addition to the price, whether the class of buyers from whom the manufacturer realises an addition to sale price would form a separate class in respect of whom a separate normal price would be determinable. The Committee would like to be informed of results of the examination made by the Ministry in the matter.

CHAPTER VIII

Large amounts of revenue locked up in provisional assessments

Audit Paragraph

8.1 Rule 9 B of the Central Excise Rules, 1944 provides for provisional assessments to duty being made in certain circumstances stated therein, *viz.*, pending the production of any documents, furnishing of any information or completion of any test or enquiry etc. There is no statutory time limit fixed for finalisation of provisional assessment cases. This was commented upon in para 28 (iii) of the Report of the Comptroller and Auditor General of India on Revenue Receipts for the year 1969-70. The Public Accounts Committee (Fifth Lok Sabha) in para 1.231 of their 44th Report observed that provisional assessments should be reduced to the absolute minimum particularly after the introduction of Self Removal Procedure under which approval of classification and prices is a pre-condition for clearance of goods. The Central Board of Excise and Customs issued instructions in March 1976 to the effect that provisional assessments, both on account of classification and valuation should be finalised normally within a period of three months and in any case not later than six months. These orders were reiterated in subsequent instructions issued in October 1980.

8.2 A review of the provisional assessment cases in various collectorates disclosed that at the end of December 1980, 2,629 cases involving duty of over Rs. 144.21 crores in 17 collectorates (for which information was received) were pending finalisation. Of these 2,006 cases had been pending for more than six months.

8.3. It was also noticed that in a collectorate out of two cases involving revenue of Rs. 9 crores pertaining to two fertiliser units, one case had been pending for over 6 years.

8.4. The department intimated (June 1980) that finalisation of assessment of fertilisers cleared upto the end of September 1975 had been pending receipt of orders of Government on a revision petition filed by the assessee and that action was in progress for finalising the assessments from October 1975.

8.5 In another collectorate a case involving duty of over Rs. 22 crores pending since 1976 was stated to be under review by the Central Board of Excise and Customs.

8.6 The Ministry of Finance have stated (December 1981) that the matter regarding delays in the finalisation of provisional assessments in various collectorates is under examination in consultation with Directorate of Inspection Customs and Central Excise.

[Paragraph 2.74 of the Report of C&AG of India for the year 1980-81, Union Government (Civil) Revenue Receipts, Volume-I, Indirect Taxes]

8.7 In regard to action taken on the audit paragraph, the Ministry of Finance in a written note has stated :

> "The report of the Director of Inspection, Customs and Central Excise is awaited."

8.8 The Committee learn that Rule 9-B of the Central Excise Rules, 1944 provides for assessment being done provisionally pending production of any documents or receipt of any information or before completion of any test or enquiry, etc. There is no statutory time limit on the finalisation of provisional assessment. The Ministry of Finance, however, informed the Committee that under the executive instructions issued by the Central Board of Excise and Customs (Appendix V) provisional assessment should normally be finalised within a period of three months and in any case not later than six months. However, in the case of provisional approval of price list for the goods consumed captively, time limit ran from the close of the factory's accounting year. The Ministry also stated that though there was no specific provision or instruction in this regard, the proper officer can finalise the provisional assessment in his best judgement in all cases of provisional assessment.

8.9 The Committee desired to know the following information in respect of each collectorate separately and separately for units under Self-Removal Procedure and those under the Physical Control Scheme.

(i) the number of assessees/licensees paying excise duty under self-removal procedure and under physical control scheme.

(ii) the number of excise licences issued provisionally, price list of valuation approved provisionally, classifications approved provisionally, demand notices issued provisionally and proforma credit or set off allowed provisionally.

811 The Ministry has not so far furnished the above information save in respect of a few collectorates.

8.12 The Committee also desired to have the following information :

(i) the number of demand notices under the appeal with higher departmental authorities/judicial authorities (separately in respect of demand notices where duty had been paid and where duty had not been paid).

(ii) in how many of such cases the demands were the result of provisional assessment.

(iii) the amount of revenue involved in the non-finalisation of the assessments.

The Ministry of Finance have not so far furnished the requisite information relating to most of the Collectorates.

8.11 The following information indicating the amount of revenue which had not been realised because of provisional assessment being done, has been furnished by the Ministry of Finance in respect of 11 collectorates :

Name of Collectorate	Number of provisional assessment cases	Amount of revenue outstanding for recovery
1	2	3
1. Bangalore	—	2,21,00,000
2. Baroda	2	58,438

1	2	3
3. Bhuvneshwar	15	9,74,149
4. Cochin	7	14,56,03,293
5. Goa	7	6,65,72,401
6. Hyderabad	—	14,88,00,000
7. Kanpur	14	62,66,893
8. Madras	7	33,99,90,044
9. Meerut	—	89,26,00,000
10. Nagpur	7	31,92,634
11. Pune	130	19,58,000
Total	189	1,62,81,15,852"

8.13 The Committee find that the Directorate of O & M had analysed the reasons for the pendency of provisional assessment as followes :

(i) *Non cooperation by the assessee*

The assessees do not produce the selling invoices and other documents on the pretext or the other.

(ii) *Escalation clauses in contracts for supply*

In some cases where the assessees enter into contract for supply of certain excisable goods over a period of time at a contracted price, a price escalation clause is included in the contract. In such cases duty is assessed and paid provisionally during the currency of the contract.

(iii) *Cases in appeal*

Where the assessees dispute classification or valuation and feel aggrieved by the orders of the Assistant Collectors they appeal to the Appellate Collector. Simultaneously they request for provisional assessment on the basis of classification or value declared by them, which is acceded to.

(iv) *Cases pending before High Courts and Supreme Court*

In cases pending before High Court or Supreme Court the request

for provisional assessment is accepted by the Department even when the Court has not issued any direction to that effect.

(v) *Pending Audit objections*

Assessments are done provisionally in cases where audit has raised queries, even though the Board have issued executive instructions outlining the procedure to be adopted for dealing with audit objections and have advised that assessments should not be done provisionally in such cases.

(vi) *Reference to higher authorities*

In some cases, provisional assessments are resorted to by assessing officers on the plea that reference have been made to the higher authorities seeking classifications and orders.

(vii) *Non-receipt of Chemical examiner's report*

Provisional assessments are also done on the ground that the chemical examiner's report has not been received. In some cases the test results had not been received even after six months to one year of taking of samples for examination.

8.14 The Committee are perturbed to note that the number of provisional assessments is on the increase and the amount of revenue to be received by Government as on 31 March 1982 amounted to, over Rs. 162 crores. The major factors, as identified by the O & M Directorate of the Department, indicate that decision making and administrative effort is avoided by taking recourse to the path of least resistence offered by provisional assessment. The Committee is of the view that unless it is statutorily provided that the provisional assessment will become final within one year, of the original date of provisional assessment, the path of least resistance will continue to be used by assessing officers in more and more cases and demanded by assessees increasingly under constraints of litigations and to the deteriment of revenue.

8.15 The Committee would, therefore, urge that a statutory time limit of one year be prescribed for finalisation of the provisional assessment, after which such provisional assessments should be deemed to have

become final. The only exceptions to be allowed statutorily should be in cases where a suit is in progress in a regular court of law or where on an application made by the department to an Appellate Collector or to the Tribunal the Department has been allowed extension of statutory time limit by the appellate Collector or Tribunal. The Statute should also separately allow for supplementary duty being demanded within 12 months in cases where escalation clauses are involved or valuation or price is changed by the manufacturer, 12 months being allowed to the department from the date of the clause being invoked or valuation or price changed or the date of notice of the same to the assessing officer by the licencee, whichever is later ?

8.16 The Committee would also like the Ministry of Finance to furnish the complete information referred to in paragraphs 8.9 and 8.10 above without further delay. The Committee cannot help observe that the absence of such information with the Ministry and delay in its collection from its field offices show how poorly provisional assessments are followed up at all levels in the department.

CHAPTER IX

Delay in submission of monthly returns and reconciliation of revenue receipts

Audit Paragraph

9.1 Under the Central Excise Rules, 1944, assessees are required to keep an Account Current with the Chief Accounts Officer of the Collectorate concerned to pay duties on the excisable goods. It is the direct responsibility of the manufacturer to see that there is adequate balance in the Account Current (Personal Ledger Account) to cover the duty due on the goods intended to be removed. The Chief Accounts Officer at the collectorate headquarters and the Range Officers in the field offices have to exercise the prescribed checks to ensure the proper unkeep and maintenance of the personal ledger accounts of the assessees. The role and functions of the Chief Accounts officer essentially consist in ensuring independently that the duties paid by the licensee through the personal ledger account from time to time have, in fact. been properly credited into the Government account and that there are no overdrawals. Prior to 1 April, 1977, completion of PLA files was done in the office of the Chief Accounts Officer with the help of revenue records received from the Range Officers and the documents received directly from the Treasury Officers.

9.2 Consequent on the departmentalisation of receipt accounts with effect from 1 April, 1977 the collection of revenue has been entrusted to the nominated public sector banks. The focal point banks are required to furnish daily scrolls with challans to the Pay & Accounts Officer of the department who furnish monthly compiled figures to the Chief Accounts Officer concerned. Under this revised scheme each Range Officer is required to send a monthly return to the Chief Accounts Officer showing details of payment by the assessee in the PLA duly supported by the quadruplicate copies of the paid challans (which should be certified as

checked and compared with the copies of challans received with the assessment documents). PLA files in the Chief Accounts Office have to be completed on receipt of the monthly returns and reconciliation of departmental figures with those booked by the Pay & Accounts Offices done in accordinance with the instructions contained in Chapter XII of the Manual for Collection of Revenue & Payments of Refunds etc. The unreconciled items i.e. particulars of challans which remain unticked either in the monthly statements of the Range Officers or in the compilation sheets of the Pay & Accounts Officers are entered in a 'Check Register of Tax Revenue Receipt' to enable detection of fraudulent challans etc. and prompt settlement of all outstanding items by correspondence with the Range Officer and/or the concerned focal point bank.

9.3 In the course of audit of Chief Accounts Officers of the collectorates it was noticed that PLA files were not complete for want of monthly returns from the Range Offices. The matter was, therefore, taken up with the Central Board of Excise and Customs in April, 1980. In the demi-official circular letter dated 22 July, 1980 addressed to all Collectors of Central Excise, the Board emphasized the need for early reconciliation of revenue receipts by the Chief Accounts Officers/Range Officers so that the assessees might not exploit the situation to their advantage. In spite of these instructions, the reconciliation work in most of the collectorates continues to be in arrears while in six collectorates the work has either not been commenced or has been taken in hand only recently. A review of the position of arrears by Audit indicated that on 31 December, 1980, about two lakhs monthly returns were still awaited in the CAO's offices from the Range Offices resulting in an estimated amount of Rs. 502 crores lying unreconciled in a number of collectorates.

9.4 The Ministry of Finance have stated (December 1981) that since this paragraph relates to 25 collectorates it will take time to ascertain the latest position and the comments will follow in due course.

[Paragraph 2.76 of the Report of the Comptroller & Auditor General of India for the year 1980-81, Union Government (Civil), Revenue Receipts, Volume-I, Indirect Taxes.]

9.5 In regard to the action taken with reference to the audit paragraph, the Ministry of Finance in its note of 26 May, 1982 has stated :

"The Collectors have been directed to take immediate steps for bringing reconciliation work uptodate. Certain suggestions made by the Collectors are being examined in consultation with the Director, Directorate of Inspection, Customs and Central Excise."

9.6 The Committee are constrained to observe that even after the lapse of ten months the Ministry of Finance have not furnished the information asked for by the Committee in June, 1982 on certain points arising out of the above audit paragraph viz., the extent of collection network, the number of staff engaged in reconciling credit given in personal ledger accounts with amounts booked in Accounts Offices at range level collectorate level and at Board level, etc. The Committee would like to know the reasons for this undue delay.

9.7 The Committee are distressed to observe that because of non-furnishing of the aforesaid information by the Ministry, the Committee has not been able to examine the serious lacunae in the accounting of Excise revenues as pointed out by audit. The Committee would like the Ministry to furnish all requisite information without further delay and inform the Committee of the steps proposed to be taken to reconcile the unreconciled accounts involving Rs. 502 crores of revenue.

NEW DELHI
April 28, 1983
Vaisakha 8, 1905 (s)

SATISH AGARWAL
Chairman
Public Aceounts Committee.

APPENDIX I

(*See* para 1.5 of Report)

Notification No. 71/78-CET dated 1-3-1978-Eligibility of loan licensees for exemption.

A doubt has been raised whether, for the purpose of determining the eligibility of a manufacturer to the exemption contained in Notification No. 71/78-CET. dated the 1st March, 1978, the value of goods manufactured and cleared by the manufacturer on behalf of his loan licensees should also be taken into account. Attention is invited in this connection, to the instructions contained in Board's F.No. 25/5/66-CX-I, dated the 18th October, 1968 and F.No. 24-34/68-CX-I, dated the 28th January, 1969 where the question of loan licensees has been examined in consultation with the Law Ministry. The Law Ministry had opined that a loan licensee may be treated as a manufacturer within the meaning of Section 2(f) of the Central Excises and Salt Act, 1944, and this opinion was accepted by the Board. This being the position, it is clarified that the value of goods cleared by a manufacturer on behalf of his loan licensees should not be taken into account for the purpose of determining the eligibility of the manufacturer to the said exemption. The loan licensees will be eligible for the said exemption, separately provided their clearances do not exceed the limits prescribed in the said notification.

(G.I.M.F. (DR) F.No. B. 23/21/21/78-TRU, dated 23-5-1978).

APPENDIX II

(*see* para 1.6 of Report)

F. No. 336/106/80-TRU

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(Department of Revenue)

Directorate of Tax Research

New Delhi, the 14th May, 1982

To

All Collectors of Central Excise.

SUBJECT : Central Excise—Clearance on behalf of a loan licensee—Inclusion in computation of clearance limits for the purpose of availing exemption under Notification No. 71/78-CE dated 1-3-78 and No. 80/80—CE dated 19-6-1980—question regarding.

Sir,

I am directed to say that certain doubts have been raised as to whether a loan licensee can be treated as a separate 'manufacturer and whether the clearances made on behalf of him can be included in computing the clearance limits for availing the exemption under Notification Nos. 71/78-CE dated 1-3-1978 and 80/80-CE dated 19-6-1980 (as it existed prior to its amendment by Notification No. 73/81-CE dated 25-3-1981).

The matter has been examined in consultation with the Ministry of Law whose opinion is to the following effect :

(i) The Hon'ble Supreme Court had accepted the interpretation that a person who supplied raw-materials and got the goods manufactured on his account was a 'Manufacturer' (vide Supreme Court's Judgement in Civil Appeal No. 1790 (NCM) of 1966 in the case of M/s. Shree Agency Vs. Shri S.K. Bhattacharjee and others copy of which was forwarded under Ministry of Finance Letter F. No. 270/86/71-CX-8 dated 17th February, 1972).

(ii) On the question as to what is the legal position in respect of those loan licenses who do not supply raw-materials but merely lend their brand name, the High Court of Gujarat and Allahabad had held that mere affixation of the Trade mark of the Customer could not make the customer a 'manufacturer' : *Vide* Cibatul case 1978 ELT (J 68), Hind Lamps case 1978 ELT (J 78) and Phillips (India) case [(1980 ELT 263 All).] Appeals have been filed in the Supreme Court against the aforesaid judgements.

(iii) Notwithstanding the above decisions, it would appear to be advisable for the Department to continue to treat the loan licensee as a manufacturer irrespective of whether he supplies raw materials or specifications or only brand name. Any other stand would be inconsistent with the SLPs files in the Supreme Court.

(iv) Under Notification Nos. 71/78-CE dated 1-3-1978 and No. 80/10-CE dated 19-6-80 (as it existed prior to its amendment by Notification No. 73/81-CE dated 25-3-1981), the benefit of the concession is to be given to clearances for home consumption by or on behalf of a manufacturer from one or more factories. Therefore, the clearances by the principal manufacturer (factory owner), even if they are on behalf of a loan licensee will have to be reckoned for the purpose of determining the principal manufacturer (factory owner's) eligibility to the benefits under these notifications. On the other hand, the clearances made by the principal manufacturer on his own account cannot be clubbed with the clearances made by or on behalf of the loan licensee for the purpose of determining the letter's eligibility to the benefits of these notifications

2. The Ministry accepts the advice of the Ministry of Law and desires that their advice may be kept in view for finalising pending cases of provisional assessment and audit objections. Department's stand in respect of court cases filed by principal manufacturers and loan licensees may also be finalised accordingly.

Yours faithfully

Sd/-

(R.K. CHAKRABARTY)

Deputy Secretary to the Government of India

Endorsement as per Circular mailing list.

APPENDIX III

(*Sᵊe* para 4.9 of Report)

LIST OF STATE DRUGS CONTROLLERS

1. Additional Inspector General of Police and Drugs Controller & Food (Health) Authority, Narayanaguda, Hyderabad.50029.
2. Drugs Controller, Assam, Dte, of Health Services, Assam Dispur, Gauhati-6
3. Drugs Controller, Bihar, Dte. Health Services, 4th Floor, New Secretariat, Patna-800015.
4. Director, Drugs Control Admn. Gujarat State, Multi Storyed Building, Show Room No 35, Sector 7-c, Ahmedabad-80001.
5. Director Health Services (H) & State Drugs Controller, Haryana, n2d Floor Lal Darwaj Chandigarh-160019.
6. Drugs Controller-cum-Director of Health Services, Simla-4 (H.P.) 171004.
7. Drugs Controller, Kerala Public Health Laboratory Campur P.O. Red Cross Road, Trivendrum-695001.
8. Drugs Controller, Directorate of Health Services, Jammu/Srinagar.
9. Commissioner, Food and Drugs Administration, Maharashtra State, Griha Nirman Bhavan, Opp. Kala Nagar, Bandra (East) Bombay-400051.
10. Drugs Controller, Karnataka Place Road, P.B. No. 5377 Bangalore-560001.
11. Drugs Controller, Orissa Dte. of Medical and Education and Training, Bhubaneshwar.

12. Food and Drug Controller, Food and Drugs Administration, Madhya Pradesh, Idgah Hills, Bhopal.

13. Drugs Controller & Director, Dte. of Medical Health Services, Jaipur (Rajasthan).

14. Drugs Controller U.P. Dte. of Medical & Health Services, Lucknow, U.P.

15. Director of Drugs Control, West Bengal, College Square, West Calcutta-700073.

16. Drugs Controller, Delhi, Delhi Administration Dte. of Health Services, 15, Sham Nath Marg, Delhi-110054.

17. Drugs Controller, Manipur, Dte. of Health & Family Welfare Services, Imphal.

18. Drugs Controller, Goa Dte. of Health Services, Panaji-403001.

19. Drugs Controller, Tripura Dte. of Health Services, Agartala-799001, Tripura.

20. Commissioner, Food and Drugs Administration, P.B. No. 504, Roman Rolland Street, Pondicherry-505001.

21. Director of Medical & Health Services, Andaman & Nicobar Islands, Port Blair-740104.

22. Drugs Controller & Addl. Director Health Services, Chandigarh Admn. Union Territory of Chandigarh, Pin-160016.

23. Drugs Controller, Punjab Joint Director (Food & Drugs) Dte. of Health Services, Sector-7C Chandigarh (Punjab) Pin-160019.

24. Drugs Controller, Tamil Nadu, 81, Mount Road, Madras-6.

25. Director of Health Services, Nagaland, *Ex-Officio* State Drugs Controller, Dte. of Health Services, P.O. Kohima, Nagaland-797001.

26. Drugs Controller, Mizoram, Dte. of Health Services, P.O. Aizwal-796001.

27. Drugs Controller & Director of Health Services, Meghalaya, Shillong-793001.

28. Senior Medical Officer, Medical Directorate, Union Territory of Lakshdweep P.O. Kavaratti, *via* H.P.O. Calicut-673555

29. Chief Medical Officer Dadar & Nagar Haveli. Dilvassa-396230.

30. Director of Health Services, & *Ex-Officio* Drugs. Controller, Arunachal Pradesh New Itanagar, Pin-791110.

APPENDIX IV

(*See* Para 6.4 of the Report)

(Copy of the letter No. V(18A) 1/78 Audit dated 5 April, 1979 received from Collector of C. Ex. Bombay and addressed to Dy. Secretary, Government of India. Tax Research Unit Deptt. of Revenue, New Delhi.

(Attention of Shri Lajjaram Deputy Secretary)

SUBJECT : The Additional duties of Excises (Textiles and Textile Articles) Ordinance, 1979 regarding.

Please refer to telex F. No. 2349/A/6/78 (TRU) PT dated 3 October 1978 under which it is conveyed that the levy being a new impost would not be attracted on goods in fully manufactured condition and in stock with the manufacturers on the midnight of 3rd and 4th October, 1978.

Section 3(1) of the additional Duties of Excise (Textiles and Textile Articles) Ordinance, 1978 stipulates levy collection of duty of excise equal to 10 per cent of the total amount chargeable on goods of description mentioned in the schedule. It may be mentioned that the wording in the ordinance is more or less akin to Section 37 of Finance Bill of 1978 under which special duty of excise has been levied. The clause runs under :

> "37 (1) : In case of goods chargeable with a duty of excise under the Central Excises Act as amended from time to time, read with any notification for the time in force issued by the Central Government in relation to the duty so chargeable, there shall be levied and collected a special duty of excise equal to 5 per cent of the amount so chargeable on such goods."

While collecting the special excise duty, no distinction was made between the goods manufactured prior to midnight of 28 February, 1978/1 March, 1978 and thereafter. On the analogy of the provisions regarding special excise duty as mentioned above, the distinction made between goods which are fully packed and lying in stock as on the midnight of 3rd/4th October, 1978 and goods which are not so packed and lying in stock perhaps needs a second look.

However, no action is taken at this end so far to deviate from the telex instructions, but the issue may please be examined and instructions, if any, may be communicated early.

APPENDIX V

(See Para 8.8 of Report)

Central Excise—Provisional Assessments under Rule 9-B of Central Excise Rules, 1944 —Delay in finalisation of correspondences regarding.

Consequent to the observations made by the Public Accounts Committee on the huge pendency of provisional assessments in various Collectorates, the Chairman, Central Board of Excise and Customs had desired the Directorate of Inspection to make a study of the provisional assessment pending as on 1.7.74. That study discloses the following pendencies in various Collectorates and the reasons therefor :

	Reasons	No. of classification cases	No. of Valuation cases
	1	2	3
1.	Due to delay in obtaning test reports from Chemical Examiners		1214
2.	(a) Due to delay in getting the end use verification and some other enquiry reports	913	—
	(b) Due to non approval of classifications list/valuation lists by Assistant Collectors	614	5,129
	(c) Pending for want of decision by the Collectors	1497	2,245
	(d) Pending for verification of prices		4,784

	1	2	3
	(e) Due to delay on the part of manufacturers in production of invoices, supplying information etc.		6,572
3.	(a) Connected with Appeals pending with Appelate Collectors	224	1,296
	(b) Connected with revision application with Govt. of India	32	29
	(c) Connected with Appeals to Board		3
4.	Provisional assessment cases linked with court cases	140	3,370
5.	Provisional assessment pending due to other reasons	290	668

(2) It .will be observed that bulk of the cases mentioned under serial No. 2 are pending for reasons which are normally within the control of the officers of the Department. A concerted and systematic drive to keep provisional assessments under limits is needed. It appears that enough attention is not paid to this aspect of assessment. It has been observed by the Chairman that large scale resort to provisional assessment in the field of commodity taxation is not healthy. It should, therefore, be ensured that the provisional assessment, both on account of classification and Valuation, should be finalised normally within a period of three months and in any case not later than six months.

From 2(e) above, it is noticed that as many as 6,572 valuation cases are pending due to delay on the part of manufactureres in producing invoices, supplying information etc. In this connection, it appears that the instructions issued by the Board vide their letter F. No. 202/11/73-Cx-6 dated the 29th August, 1973* are not being followed properly. The

*C.B.R. Bulletin C. Ex, Tech. Vol. IX. No. 3 Page 666

Board desires that you should keep a close watch on the pendency of provisional assessment arising out of the classification and valuation disputes and pending due to factors mentioned under 2 (e) of para 1.4.

(3) The pendency on account of non-finalisation of appeals is causing no less concern. It is seen that bulk of these cases are pending with Appellate Collectors. Collectors should take up this matter with concerned Appellate Collectors and impress upon them the need to liquidate this pendency. The Appellate Collectors are also being instructed to dispose of such cases expeditiously by a suitable endorsement to this letter. It is felt that nothing much can be done directly as regards pendency on account of cases pending in Law Courts, yet it would be advisable that through the Government Counsels, handling these cases, the courts are moved for expeditious disposal of such cases. It is presumed that courts have been invariably approached, for taking suitable guarantees from the assessee for safeguarding revenue interests during the pendency of such cases. Delaying tactics on the part of assessees should be adequately resisted and departmental counsels should be suitably advised in this respect.

(4) Collectors may send a quarterly report of provisional assessments to the Director of Inspection, Customs and Central Excise, who will study the position and watch the progress made in finalisation of such cases. Report for the first quarter of 1976 should be sent to the Director of Inspection by 10th of the month, following the quarter.

(C.B.E. & C., F.No. 202/34/75-Cx-6 dated 4.3,197[illegible])

Circular No. 2/76-CX-6

APPENDIX VI

(*Conclusion/Recommendation*)

Sl. No.	Para No.	Ministry/Deptt.	Recommendation
1	2	3	4
1	1.7	Ministry of Communi-cations (P & T Board)	The Committee find that till May 1982, the Ministry had held that the clearances on behalf of the loan licensee are not to be taken into account for the purpose of calculating eligibility limit of the manufacturer to the exemption. Thereafter, the Ministry of Finance clarified that such clearances should also be taken into account in arriving at the limit.
2	1.8	-do-	The Committee would like to be apprised of the considerations which weighed with the Government for the reversal of their earlier decision and also of the precise reasons which prevented them from taking such a decision earlier.
3	2.10	-do-	The Committee note that the Board of Central Excise and Customs had taken a decision to the effect that resorcinol formaldehyde solution was liable to duty as resin under tariff item 15A and it was conveyed to the field only on 14th November, 1980 when tariff advice No. 71/80 was issued. The sample for chemical examination were taken in May 1976

1	2	3	4
			and July 1979 and audit objections on non-levy of duty were raised in March 1977 and March 1980. The Committee are perturbed to observe that the department was aware of the suspected leakage of revenue from May 1976 onwards but it took them 4 years to take a decision for which the Ministry of Finance have not given any plausible explanation. The Committee would like to be apprised of the precise reasons for such deplorable delay. The Committee would also like to be apprised of the details regarding monitoring done by the Board of Central Excise and Customs to follow up audit objections pointing out leakage of revenue and the precise reasons of not resolving the ambiguities within 6 months or at the most one year through discussion in Tariff Conference of Collectors, tripartite meetings with the Ministry of law and by decisions at the level of the Board of Excise and Customs.
4	2.12	Ministry of Communications (P & T Board)	The Committee are surprised to find that the Ministry of Finance have not been able to furnish their final reply in the matter relating to audit paragraph 2.53(f), although audit objection was sent to the Department concerned as early as in July 1980. Even after a lapse of two years the matter is stated to be still under examination. The Committee would like to be apprised of the reasons for such delay and would urge upon the Government to finalise the matter expeditiously and furnish their final reply without much delay.

5	3.20	-do-	The Committee are at a loss to understand that when the marking and marketing of a product as fertiliser was the criteria for determining its classification, why the grade of ammonium chloride which is marketed as chemical was not taken to fall outside the scope of tariff item 14 HH. The test of marketability and popular usage or common parlance is undisputably the real criterion for classifying a product. Collectors and Assistant Collectors of Central Excise, are expected to make market enquiries and their field staff, who assist them, had also held the product to be other than fertiliser. The committee is, therefore, unable to appreciate how the Ministry of Finance agreed to the wrong classification of technical grade ammonium chloride as fertiliser, setting aside the well established principles of classification. If the Ministry wanted to exempt, in public interest, even technical grade ammonium chloride from duty or allow concessional duty on raw naphtha used in manufacture of technical grade ammonium chloride. it could have done so without doing violence to well established principles of classification. In the circumstances, the Committee cannot escape the conclusion that the action taken by the Ministry of Finance was most extraordinary.
6	3.21	-do-	The Committee observe that the assessee unit has been producing ammonium chloride of purity 99.8 per cent which is of technical grade as per Indian Standards Specifications 1113. The Collector of Central Excise, Cochin, had also reported that the ammonium chloride manufactured by the unit is not fertiliser but only meant for chemical or industrial use. The Company proposed to boost production from 1974-75 in

1	2	3	4
			order to market the excess production of ammonium chloride as fertiliser and so the unit requested for reclassification of product as fertiliser. The reclassification was approved by the Department from 6 July 1974. In spite of all this the production of ammonium by the unit declined from 1974-75 onwards and at best was static. The Committee cannot but conclude that the Ministry did not care to ascertain what percentage of the ammonium chloride produced by the assessee was in fact used as fertiliser, over the years before approving the reclassification of the product as fertiliser.
7	3.23	Ministry of Communications (P & T Board)	The Committee note that the department had raised demand on 29 September, 1969, treating the product of FACT as fertiliser but the same was withdrawn because the Collector of Central Excise, Cochin, had held on 17 August 1970 that the levy of duty on ammonium chloride, which is marketed as chemical, was *ab initio* void. The Company's claim that their product was fertiliser was rejected by the appellate authority on 9 November 1973. The Committee are distressed to observe that despite the above facts, the Ministry of Finance agreed to the reclassification of ammonium chloride as fertiliser with effect from 6 July 1974. The Committee would like the Ministry to enquire into the matter and apprise the Committee of the reasons for approving such reclassification

8	3.24	-do-	The Committee observe that M/s. Fertiliser and Chemical Travancore Limited has been obtaining raw naphtha since 1967 at concessional rate under notification No. 187/61 CE dated 23 December 1961 subject to the condition that it was proved to the satisfaction of the Collector of Central Excise (Assistant Collector with effect from 30 July 1277) that (i) such raw naphtha was intended for use in the manufacture of fertiliser; and (ii) the procedure set out in Chapter X of the Central Excise Rules, 1944, was followed. The Committee are surprised to find that though the unit produced and marketed only chemical or technical grade ammonium chloride and produced no fertiliser grade, it was permitted to bring in raw naphtha at concessional rate on the plea that it was used in the production of fertiliser.
9	3.25	-do-	The Committee are distressed to note that for over 5 years, the Ministry of Finance had taken no action on the audit observations and only in 1981 after the audit paragraph was included in the Report of Comptroller and Auditor General for 1980-81 that the demands were raised by the Department. These demands are stated to be the subject matter of a writ petition filed recently. The Committee recommend that the Government should enquire into the reasons for inaction by the Ministry of Finance prior to the raising of the demand in 1981 and fix the responsibility for loss of revenue which will arise on account of clearances made in the past without raising protective demands even if the decision of the court were to go in favour of revenue. The Committee would like to be apprised of the results of the investigation and action taken against the guilty persons.

1	2	3	4
10	4.12	Ministry of Communications (P & T Board)	The Committee is distressed to find that the Department of Revenue has no information regarding the magnitude of the impact made by the exemption notification as the Ministry is neither aware of the number of units manufacturing patent and proprietory medicines to woich the exemption orders apply, nor of the number of medicines involved. The Department has also not realised that the administrative arrangements, necessitated by the exemption notificatian in question, are extremely difficult to work in practice, given the level of academic knowledge in excise officers who do not specialise in pharmaceutical area. The Committee are of the view that the harassment that would be caused to manufacturers in their administering the kind or exemption notification will be very pronouned. It is impractical to expect the excise officer to detect cases of use of therapeutically active ingredients or use of pharmaceutically non-necessary ingredients but having therapeutic value, in addition to approved ingredients.
11	4.13	-do-	The Committee is not convinced of their argument advanced by the department that if the exemption is allowed so long as the approved ingredient is used in the formulation, the exemption notification could be misused. The Committee would urge upon the Ministry to furnish the wanting data referred to in paragraphs 4.9 and 4.10 above to them. The Committee would also like the Ministry to take a more realistic look at

			the size of import which the exemption notification has and also to consider in consultation with the Drugs Controller whether the risk to revenue is more to be feared by amendment of the notification or by its continuance without administration in reality. The Committee are of the view that so long as the specified ingredients are used in the formulations, the exemption should be allowed irrespective of whether any other ingredients are used. The community of druggists and formulators will only run the risk of cancellation of the exemption notification if they misuse it to the deteriment of citizens' health or in defrauding revenue.
12	5.8	-do-	The Committee are unahpapy to note that the points raised in the above Audit Paragraph which was sent to the Ministry of Finance in August 1981 are still under examination of the Ministry. The Committee would like the Ministry of Finance to investigate the reasons for this inordinate delay and apprise the Committee of the results thereof. The Committee would also like the Ministry to finalise the examination of the points raised in Audit Para without further delay.
13	6.4	-do-	The Committee find that the Collectror of Central Excise, Bombay, in a letter dated 5 April 1979 (*Appendix IV*) made a reference to the Department of Revenue (Tax Research Unit), New Delhi, seeking clarification on whether the additional duties of excise would be a new impost or addition to the quantum of excise duty to which textile and textile articles were already subject.
14	6.5	-do-	The Committee is surprised to learn that even after a lapse of 4 years, thc Ministry of Finance has not been able to furnish a final reply

1	2	3	4
			to a reference made to it in April 1979 by the Audit. The reference in question relates to the point whether duties of the nature of excise when imposed are to be construed as more changes in quantum of excise duty made by changes or new additions in the budget; which was the view advanced by the Collector and Audit or the impost is to be viewed as a new duty of different nature altogether.
15	6.6	Ministry of Communications (P & T Board)	The Committee recommend that in the interest of revenue and with a view to obviating such cases involving loss of revenue, the Board of Central Excise and Customs should arrange to have monthly meetings with the Ministry of Law to settle all legal issues having revenue implications. Where the revenue is likely to suffer, due to ambiguity in legal interpretations, they should be remedied by amending the law without delay. The Committee would like to be informed of the legal advice in the matter without delay which should also take into account the various relevant pronouncements of the Supreme Court and the High Courts.
16	7.6	-do-	The Committee observe that the collector had issued orders in August 1978 that the addition to price stated to be on account of breakage should form part of the assessable value. The show cause notices for the differential duty as a result of the addition to price raising the assessable value, were however, issued in July 1980 after the mistake

			was pointed out in audit in October 1979. Subsequently, in December, 1981 the Ministry of Finance held that 1 per cent addition to price charged by the supplier was for covering transit risk and was at special request in some cases and as such it was not obligatory on the buyers to pay this amonnt on all the sales made by the manufacturer and so they did not form part of normal price. The Ministry of Finance has not stated any reason why the class of public sector/Government buyers is not to be treated as a separate class and why the addition to price should not be included in the assessable value.
17	7.7	-do-	The Committee also find that the goods were not insured by the manufacturer supplier with any insurance company and breakage charges were being charged at 1 per cent as per agreements for supply with Government department. The manufacturer pleaded before the Appellate Collector that he incurred loss on account of breakeges of more than 1 per cent.
18	7.8	-do-	The Committee would like the Ministry of Finance to examine with reference to the legal position existing after nationalisation of general insurance, as to how far such self insurance schemes adopted by manufacturers can legally allow of such post manufacturing addition to sale price which will not be includible in the excisable value. The Committee would also like the Ministry to examine whether in the event of such self insurance being a legal addition to the price, whether the class of buyers from whom the manufacturer realises an addition to sale-price

1	2	3	4
			would form a separate class in respect of whom a separate normal price would be determinable. The Committee would like to be informed of results of the examination made by the Ministry in the matter.
19	8.13	Ministry of Communications (P & T Board)	The Committee are perturbed to note that the number of provisional assessments is on the increase and the amount of revenue to be received by Government as on 31 March 1982 amounted to, over Rs. 162 crores. The major factors, as identified by the O & M Directorate of the Department, indicate that decision making and administrative effort is avoided by taking recourse to the path of least resistence offered by provisional assessment. The Committee is of the view that unless it is statutorily provided that the provisional assessment will become final within one year, of the original date of provisional assessment, the path of least resistance will continue to be used by assessing officer in more and more cases and demanded by assessee increasingly and under constraints of litigations and to the detriment of revenue.
20	8.14	-do-	The Committee would, therefore, urge that a statutory time limit of one year be preseribed for finalisation of the provisional assessment, after which such provisional assessments should be deemed to have become final. The only exception to be allowed statutorily should be in cases where a suit is in progress in a regular court of low or where on an appli-

			cation made by the department to an Appellate Collector or to the Tribunal the Department has been allowed extension of statutory time limit by the appellate Collector or Tribunal. The statute should also separately allow for supplementary duty being demanded within 12 months in cases where escalation clauses are involved or valuation or price is changed by the manufacturer, 12 months being allowed to the department from the date of the clause being invoked or valuation or price changed or the date of notice of the same to the assessing officer by the licencee, whichever is latter.
21	8.15	-do-	The Committee would also like the Ministry of Finance to furnish the complete information referred to in paragraphs 8.9 and 8.10 above without further delay. The Committee cannot help observe that the absence of such information with the Ministry and delay in its collection from its field offices shows how poorly provisional assessments are followed up at all levels in the department.
22	9.6	-do-	The Committee are constrained to observe that even after the lapse of ten months the Ministry of Finance have not furnished the information asked for by the Committee in June, 1982 on certain points arising out of the above audit paragraph viz., the extent of collection network, the number of staff engaged in reconciling credit given in personal ledger accounts with amounts booked in Accounts Offices at range level collectorate level and at Board level, etc. The Committee would like to know the reasons for this undue delay.

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23	9.7	Ministry of Communications (P & T Board)	The Committee are distressed to observe that because of non-furnishing of the aforesaid information by the Ministry, the Committee has not been able to examine the serious lacunae in the accounting of Excise revenues as pointed out by audit. The Committee would like the Ministry to furnish all requisite information without further delay and inform the Committee of the steps proposed to be taken to reconcile the unreconciled accounts involving Rs. 502 crores of revenue.

20. Atma Ram & Sons,
Kashmere Gate,
Delhi-6.

21. J.M. Jain & Brothers,
Mori Gate,
Delhi.

22. The English Book Store,
7-L, Connaught Circus,
New Delhi.

23. Bahree Brothers,
188, Lajpatrai Market,
Delhi-6.

24. Oxford Book & Stationery
Company, Scindia House,
Connaught Place,
New Delhi-1.

25. Bookwell,
4, Sant Narankari Colony,
Kingsway Camp,
Delhi-9.

26. The Central News Agency,
23/90, Connaught Place,
New Delhi.

27. M/s. D.K. Book Organisations,
74-D, Anand Nagar (Inder Lok),
P.B. No. 2141,
Delhi-110035.

28. M/s. Rajendra Book Agency,
IV-D/50 Lajpat Nagar,
Old Double Storey,
Delhi-110024

29. M/s. Ashoka Book Agency,
2/27, Roop Nagar,
Delhi.

30. Books India Corporation,
B-967, Shastri Nagar,
New Delhi.

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