

NINETY-NINTH REPORT
PUBLIC ACCOUNTS COMMITTEE
(1981-82)

(SEVENTH LOK SABHA)

**UNION EXCISE DUTIES—LOSS OF REVENUE DUE TO
OPERATION OF TIME BAR**

MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

Presented to Lok Sabha on.....
Laid in Rajya Sabha on.....

LOK SABHA SECRETARIAT
NEW DELHI

April, 1982/Chaitra 1904 (Saka)

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(1981-82)

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*Ceased to be a Member of the Committee consequent on his appointment as a Minister
w.e.f. 15-1-1982.

*Ceased to be a Member of the Committee consequent on his retirement from Rajya Sabha
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[iv]

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3. Shri K. K. Sharma—*Senior Financial Committee Officer.*

**Ceased to be Member of the Committee consequent on his requirement from Rajya Sabha w.e.f. 2-4-1982

INTRODUCTION

I, the Chairman of the Public Accounts Committee, as authorised by the Committee, do present on their behalf, this 99th Report on Paragraph 2.66 of the Report of the Comptroller and Auditor General of India for the year 1979-80, Union Government (Civil), Revenue Receipts, Vol. I, Indirect Taxes relating to Loss of revenue due to operation of time bar.

2. The Report of the Comptroller and Auditor General of India for the year 1979-80, Union Government (Civil), Revenue Receipts, Vol. I, Indirect Taxes was laid on the Table of the House on 17 March, 1981.

3. In this Report, the Committee have expressed their deep concern over the loss of revenue amounting Rs. 1.06 crores to the Public exchequer due to non-issue of demands for short-levy, non-levy or erroneous refunds of excise duty within the prescribed time limit in respect of assessment during the year 1979-80 in 49 cases. They have recommended that the Ministry of Finance should thoroughly analyse the reasons for these lapses, ascertain to what extent the delays were avoidable, identify the short-comings in the functioning of the department in this respect, responsibility of individual officers and take appropriate measures in order to avoid such losses in future. The Committee have, in this connection, emphasized the need for finalising the assessments promptly and conducting the checks and audit of assessee's accounts regularly.

4. After incorporation of Section 11A in the Central Excise and Salt Act, 1944, the period of limitation (6 months in normal cases and 5 years in case of fraud, collusion, wilful misstatement, suppression of facts or contravention of rules with intent to evade duty) for issue of the show cause notice for non-levy, short-levy or erroneous refunds of excise duty will run from the date on which the monthly return (RT 12 Returns) is to be submitted by assessee where such return is required to be filed. The Committee have observed that in all the collectorates taken together, 51, 417 RT-12 Returns were pending finalisation on 1 June 1981 ranging over a period of 13 years from 1968 to 1981. After considering the reasons attributed by the Ministry of Finance that most of the reasons given for pendency of return are such which can be removed by toning up the working of the Department. As the crucial date for

issue of show cause notice is now closely linked with the submission of monthly return, the Committee have recommended that the Central Board of Excise and Customs should immediately look into specific cases, particularly those which are pending for more than 5 years, identify the reasons and find out how far the laxity of officers concerned has been responsible for these delays and take corrective measures.

5. The Committee (1981-82) examined paragraph 2.66 on the basis of the written information furnished by the Ministry of Finance (Department of Revenue). The Committee considered and finalised the Report at their sitting held on 16 April, 1982. Minutes of the sitting of the Committee form Part II of the Report.

6. For facility of reference and convenience the observations and recommendations of the Committee have been printed in thick type in the body of the Report and have also been reproduced in a consolidated form in Appendix III to the Report.

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

8. The Committee also place on record their appreciation of the assistance rendered by the Office of the Comptroller and Auditor General of India in the examination of this paragraph.

NEW DELHI;
17 April, 1982.

27 Chaitra, 1904 (Saka).

SATISH AGARWAL
Chairman,
Public Accounts Committee.

REPORT

Audit Paragraph

Loss of revenue due to operation of time bar

1.1 The total amount of revenue forgone by Government owing to non-issue of demand within the prescribed time limit in respect of assessments during 1979-80 was Rs. 1,05,96,068* as detailed below:

	No. of cases	Loss of revenue Rs.
(a) Demands not issued due to operation of time bar	7	16,30,392
(b) Demands withdrawn due to operation of time bar	42	89,65,676

1.2 Some cases of loss of revenue noticed in audit are given below:—

- (i) A factory manufactured rough steel castings which were subsequently machined so as to convert them into identifiable machine parts. The Central Board of Excise and Customs clarified on 23rd September, 1975 that such items should be assessable to duty under tariff item 68. The factory, however, discharged its duty liability by classifying the product under tariff item 26AA (v). This led to an escapement of duty of Rs. 3,26,060 during the period 22nd July, 1977 to 31st August, 1978 on the basis of the average value of the machined castings at the rate of Rs. 13,000 per metric tonne.

On this being pointed out in audit in December 1978, the department prepared (February 1980) a demand for Rs. 16,64,427 for the period March 1975 to May 1979, which could not be served (July 1980) due to closure of the factory in September 1979. The department claimed that it detected (December 1976) the case earlier than audit. The fact, however, remains that the department took an abnormally long time to initiate action in prepar-

*Figures are provisional and are in respect of twenty-two collectorates as intimated by the Ministry of Finance in December 1980.

ing the demand which also could not be served eventually resulting in loss of Rs. 16,64,427.

The Ministry of Finance have admitted the facts as substantially correct (December 1980).

- (ii) Preparations for the care of skin are assessable to duty as cosmetics under tariff item 14F. A factory in a collectorate, manufactured 'lip salve', a preparation for chapped lips, for supply to a Government department. The product was charged at a lower rate of duty after classifying it as patent or proprietary medicine under tariff item 14E. The sample of the product was also not got examined either by the Chemical Examiner or the Director General of Health Services.

Lip salve manufacture by another factory in another collectorate, was classified as cosmetics under tariff item 14F. On a reference, the Central Board of Excise and Customs clarified on 26th October, 1977 that lip salve could not be classified as medicine because its ingredients had no therapeutic properties, the preparation was for chapped lips and it was classifiable as cosmetics.

The department issued (May 1978) a show cause notice demanding differential duty of Rs. 2,01,608 for the period 14th November, 1973 to 27th April, 1977, but no action was taken to raise the demand of Rs. 1,16,360 for pre 14th November, 1973 period.

When this was pointed out by Audit in July 1978, the department intimated (February 1979) that the case was adjudicated by the jurisdictional Assistant Collector in November 1978 and it was held that in the absence of any wilful mis-statement, collusion or fraud on the part of the licensee, the demands were time barred under rule 10 of Central Excise Rules 1944. It was also argued that the above instructions of the Board could be applied from the date of their issue and as such the demands for the past period were not enforceable. Actually the Board's letter was in the form of a clarification which was equally applicable to past clearances.

The total loss of revenue due to misclassification of the product between November 1968 to April 1977 worked out to Rs. 3,17,968.

The paragraph was sent to the Ministry of Finance in September 1980; reply is awaited (December 1980).

- (iii) Calcium carbide was brought under the excise net under tariff item 14AA from 1st March 1970, the rate of duty being *ad valorem*. The chemical is generally marketed in different sizes to suit the requirements of customers.

A manufacturer in a collectorate, sold calcium carbide of the same size to different customers at varying wholesale prices. The assessee filed price lists declaring all such prices as prices of different grades of carbide within the same size and cleared the goods after paying duty on the basis of the aforesaid prices. The provisional approval giving to these price lists was confirmed by the department in June 1971.

There were, however, no different grades within the same size and all clearances of calcium carbide of the same size should have been assessed to duty on the basis of the maximum declared price. This was detected by the department and a show cause notice for payment of Rs. 2,51,685 on account of differential duty for the period 10th March 1970 to 31st May 1972 was issued to the assessee on 28th June 1972. No action on the said show cause notice was taken by the department till it was pointed out by Audit in August 1972. Of these, one demand for Rs. 1,13,169 was set aside by the Appellate Collector on the ground of time bar. The failure of the department in not taking timely action resulted in loss of Rs. 1,13,169 for the period 10th March 1970 to 28th June 1971. Assessee's writ petition against the other two demands for Rs. 1,52,219 was dismissed by the High Court in November 1979 and the amount was realised in July 1980.

While accepting the facts as substantially correct, the Ministry of Finance have stated (December 1980) that the short levy of Rs. 1,52,219 for the period 29th June 1971 to 31st July 1972 has been adjusted in the personal ledger account of the assessee on 17th July 1980. The Ministry have also added that the assessee has requested for the adjustment of short levy of Rs. 1,13,169 for the period 10th March 1970 to 28th June 1971 in his refund claim pending with the jurisdictional Assistant Collector.

- (iv) A licensee manufacturing PVC film laminated textile fabrics filed in July 1970 a classification list classifying the product under tariff item 19-I(2) which attracted duty at the rate of 25 paise per square metre. While approving the classification list in April 1971, the department held the product as classifiable under tariff item 19-III chargeable to duty at the rate of 25 per cent *ad valorem*. The licensee went in appeal in September 1971 against the classification approved by the department. The Appellate authority dismissed the appeal as time barred in October 1974. A show cause notice and demand for differential duty for the period July 1970 to April 1971 during which the product was cleared on payment of duty at lower rate was, however, issued by the department in April 1976, when only the department could finally collect the price list from the licensee. On an appeal filed by the licensee against the said demand the Appellate authority held in July 1979 that the demand was not sustainable under rule 10 of Central Excise Rules, 1944.

The failure of the department to issue demand on receipt of the order of the Appellate authority in October 1974, resulted in a loss of Rs. 89,779. On this being pointed out, the department accepted the objection in July 1980.

The Ministry of Finance have accepted the facts as substantially correct (December 1980).

- (v) A factory manufacturing motor vehicle parts submitted a price list, effective from 1st October 1975, claiming abatement of discounts allowed to its area distributors. After initial approval of the price list in September 1975, the Assistant Collector disallowed these abatements in May 1976 on the ground that the distributors were related persons as defined under section 4(4)(c) of the Central Excises and Salt Act, 1944. Accordingly, demands were raised against the assessee by the range officer in December 1976 and March 1977 for the payment of differential duty of Rs. 63,711 for the period 1st October 1975 to 12th May 1976. Subsequently, a show cause notice was issued by the Assistant Collector in April 1977. After a personal hearing, another show cause notice was issued to the assessee in June 1977 and demand was confirmed in September 1977. On an appeal preferred by the assessee,

the Appellate Collector set aside, in September 1978, the confirmatory order issued by the Assistant Collector. In September 1977 stating that the demand was hit by limitation under the then rule 10. It was also added that even the show cause notice issued by the Assistant Collector in June 1977 was not valid as by that time the period of one year within which such notices could be issued had lapsed. Thus, delay in the issue of demand and show cause notices resulted in loss of revenue of Rs. 0.64 lakh.

Reply of the department on the loss of revenue called for in March 1980 is awaited (August 1980).

The Ministry of Finance have accepted the facts as substantially correct (December 1980).

[Paragraph 2.66 of the Report of the Comptroller and Auditor General of India for the year 1979-80, Union Government (Civil), Revenue Receipts, Volume-I, Indirect Taxes].

Provisions for Recovery of Duty

1.3 The provisions for recovery and refunds of excise duty with a time limit of three months were made in rules 10 and 11 of the Central Excise Rules 1944 to suit the "physical type of control" in vogue before 1968. With the coming into existence in 1968 of the Self Removal Procedure (SRP) the time limit was raised to one year for such assesseees through the insertion of rule 173-J in the said rules.

1.4 Rule 10, amongst others, was amended w.e.f. 6 August, 1977 vide the Central Excise (19th Amendment) Rules 1977 under notification No. 267/77-CE dated 6 August 1977 replacing the existing time limit of one year/3 months by a uniform time limit of six months. This new rule 10 applied to situations where duty has not been levied or paid or has been short levied, or erroneously refunded. However, in case of fraud, collusion, wilful mis-statement, suppression of facts or contravention of rules with intent to evade duty the time limit was fixed at five years instead of unlimited time limit in the old rule 10A which was omitted from 6 August 1977.

1.5 Whereas under the old rule 10 the period of limitation for the recovery of short levy started from the date on which the duty or charge was paid or adjusted in the account current, under the new rule it started from the date on which the duty was required to be paid under rules and in the case of excisable goods on which the

value or rate of duty has been provisionally determined, the date on which the duty is adjusted after final determination of the value or the rate of duty, as the case may be and in the case of excisable goods, on which duty has been erroneously refunded, the date of such refund.

1.6 The period of limitation of six months or five years for the issue of notice in respect of goods covered by tariff item 68 was to be computed from the close of the accounting year followed by the assessee under Rule 173-PP of the Central Excise Rules. During the period 6 August, 1977 to 31 July 1979 provisions of Rule 173-PP pertaining to tariff item 68 continued to override the provisions of Rule 10 in so far as computing of time limit for the recovery is concerned. It was brought at par with the provisions of Rule 10 by the issue of notification No. 235/79-CE dated 23 July 1979.

Amendments in November 1980

1.7 As the constitutionality and area of operation of Rule 10 had been a subject matter of controversy in the various High Courts and the Supreme Court, the Government on the recommendation of Central Excise (SRP) Review Committee and in consultation with the Ministry of Law introduced in Parliament a bill making provision for the time limit for recovery and refunds in the Act instead of in the Rules as hithertofore. These changes were enacted by Parliament replacing Rule 10 by Section 11A of the Central Excises and Salt Act as per Section 21 of the Customs Central Excises and Salt and Central Board of Revenue (Amendment) Act 1978 (No. 25 of 1978). The assent to this Act was given by the President on 6 June 1978. As per Section 1(2) of the above Act, the provisions of the Act were to come into force on such date as the Central Government may by notification in the official gazette appoint.

1.8 The provisions of section 11A and 11B were brought into force with effect from 17 November 1980 with the issue of notification No. 182/80 dated 15 November, 1980. Consequently, rules 10, 11 and 173-J of the Central Excise Rules were omitted by notification No. 177/80 dated 12 November, 1980.

1.9 The difference between the two is that under the erstwhile rule 10 a show cause notice was to be issued by the "Proper Officer" while in Section 11A it can be issued by any Central Excise Officer.

1.10 Moreover, under rule 10 the words "relevant dates" from which the limitation for issue of show cause notice had to start was defined to mean "the date on which the duty is required to be paid".

In Section 11A, it has been defined to mean either the date on which the monthly return is submitted or where no monthly return is submitted, the last date on which the said return was required to be filed. Thus, now the limitation for issue of the show cause notice for the duty not paid or short paid will not run from the date of removal of goods or payment of duty but would run from the date the monthly return is submitted. However, in cases where there is no requirement of filing a monthly return under the Central Excise Rules the said limitation will continue to run from the date on which duty is to be paid.

Effect of Section 11A on pendings how cause notices

1.11 The Committee desired to know the effect of the new Section 11A on the show cause notices pending on 17 November, 1980, the date of its coming into force, and whether such notices would lapse in the absence of any saving clause therein.

1.12. The Ministry of Finance (Department of Revenue) while stating that the matter was still under examination in consultation with the Ministry of Law, furnished a copy of the Central Board of Excise and Customs circular No. 6/78-CX-6 dated 13 March, 1978 issued *vide* F. No. 311/1-M/77-CX-6. In the Circular it was *inter-alia* stated as under:—

“The issue regarding the effect of the amendment to rule 10, 10A and 11 of the Central Excise Rules, 1944 under the aforesaid notification on pending cases has been under consideration of the Board in consultation with the Ministry of Law.

2. In this connection copies of the advice of the Secretary, Ministry of Law, and the note of Shri S. B. Vakil, Government Standing Counsel at Ahmedabad are enclosed as Annexure I and II to this letter for your information and guidance.
3. It would be seen that the note of the Government Standing Counsel at Ahmedabad is sufficiently elaborate and detailed enough to cover most of the questions that might have arisen as a result of the amendment to the above rules by notification No. 267/77-CE dated 6 August 1977. In brief, the important points raised and the advice as

given by the Government Standing Counsel at Ahmedabad and accepted by the Ministry of Law, are as under:—

- (i) In case short-levy/non-levy has occurred prior to 6-8-1977, whether a show-cause notice under old rule 10 or 10A can be issued on the principle that laws are prospective in their operations.

It would appear that the rights of the State to demand duty short-levied or erroneously refunded under the repealed rule 10 and the right to recover sums under rule 10A, and the corresponding obligations and liability of the persons concerned can be said to have been acquired accrued or incurred under the repealed rules 10 and 10A. Furthermore there is nothing in the new rule or the notification indicating any intention to affect any investigation, legal proceedings or remedy in respect of any right, obligation or liability acquired or incurred under the repealed rule 10 or 10A. Hence any investigation, legal proceedings or remedy, in respect of such right, obligation or liability can be instituted, continued or enforced as if the notification had not been issued. In view of the same where the short levy or erroneous refund has occurred prior to 6-8-1977 suitable action against the party can be instituted/continued by recourse to the repealed rule 10 or 10A and the period of limitation mentioned in new rule 10 will have no application to the recovery of sums due to the Government prior to 6th August, 1977.

- (ii) If show-cause notice has already been issued prior to 6-8-1977, whether there is any legal bar to the continuance of the proceedings already initiated.

There is no such bar and the cases can be decided as per the repealed rule 10 or 10A.

- (iii) Whether orders confirming demands under repealed rule 10A and issued after 6th August, 1977 stand vacated. Demands confirmed by the Assistant Collector under repealed rule 10A after 6th August, 1977 and prior to the receipt of the notification by the Field Officers are not illegal on account of the fact that rule 10A is not in existence any more.

(iv) Whether a fresh show-cause notice under new rule 10 in lieu of previous notices issued under repealed rule 10 or 10A should be issued where possible in the time limit specified under new rule 10. In such cases a fresh show-cause notice may be issued as a strategic measure in addition to and without prejudice to the notice already issued prior to 6-8-1977 where the period of six months or five years, as the case may be, has not expired.

(v) Whether the cases in which show-cause notice was issued prior to 6th August, 1977 under repealed rule 10 read with old rule 173-J extending the period of limitations to one year, can be confirmed after receipt of notification No. 267/77-CE dated the 6th August, 1977 for the whole period covered by the said notice or the Assistant Collector can confirm the demands only for the period of six months just preceding the crucial date of issue of show cause notice. The Assistant Collector will be competent to confirm the pending demands within the period of one year under the repealed rule 10 read with old rule 173-J. This is on account of the fact that the rights, obligations and liabilities acquired, accrued or incurred under the repealed rule 10 and the old rule 173-J would stand.

4. The advice of the Government Standing Counsel at Ahmedabad which has been accepted by the Ministry of Law will also hold good in the case of amendments to rule 11.

5. Suitable instructions to all the field officers in your charge should be issued immediately for taking necessary action. It may be noted that these instructions are meant for departmental use only....."

1.13 The Central Board of Excise and Customs in their circular No. 1/81/CX. 6 dated 12 January, 1981 issued vide F. No. 209/3/78-CX 6 further clarified *inter alia* as under:—

"A doubt has been raised that as there is no saving clause in favour of pending show cause notices or refund claims under rule 10 and 11 and as section 6 of the General Clauses Act 1897 is not applicable, all pending cases under rule 10 and 11 automatically lapsed.

In this regard your attention is drawn to instructions contained in the Board's letter F. No. 311/1-M/77-CX 6 dated

the 13 March, 1978. These instructions will *mutatis mutandis* apply to this situation.

It may be noted that in view of the statutory time limit now laid down in the Act, extension for filing claim of refund beyond a period of 6 months in terms of rule 97, 97A, 173 and 173M can not be granted."

1.14 When enquired about the general practice followed by the Government in dealing with pending cases or such situation effected by amendments/complete replacement of the statutory provisions by new Acts of Parliament and whether that practice was followed in the present case also, the Ministry of Finance (Department of Revenue) in their note stated as follows:—

"Pending cases have to be decided in accordance with the provisions of law in force at the time when the cause of action arose. This finds support from the Law Ministry's advice referred to above. This as well as other amendments made in the past were based on their understanding.

1.15 Asked whether the intention of the Government about the pending cases covered under rules 10, 11 and 173-J brought out clearly in the notification by which the above rules were omitted, the Ministry by Finance (Department of Revenue) stated:—

"The Government's intention was in line with the position stated above and in view of the legal position explained by the Law Ministry the Government's intention was brought out in the notification by which the above rules were omitted."

Loss of revenue

1.16 The Audit Paragraph has revealed that the total amount of revenue foregone by Government owing to non-issue of demand within the prescribed time limit in respect of assessments during 1979-80 was Rs. 1,05,96,068 in 49 cases as per the figures furnished by the Ministry of Finance in December 1980 in respect of 22 collectorates.

1.17 The loss of revenue on this account fell within two broad categories:—

- (a) Demands not issued due to operation of time bar.
- (b) Demands withdrawn due to operation of time bar.

1.18 In their note furnished to the Committee, the Ministry of Finance (Department of Revenue) have stated that 49 cases referred to by Audit had occurred in nine Collectorates. A Table indi-

cating the number of cases, collectorate-wise, amounts and reasons therefor is given below:—

Sl. No.	Name of the Collectorate	Demands not issued due to operation of time bar		Demands withdrawn due to operation of time bar		Total loss of revenue	Main reasons for demands getting time barred in brief
		No. of cases	Loss of revenue	No. of cases	Loss of revenue		
1	2	3	4	5	6	7	8
			Rs.		Rs.	Rs.	
1	Ahmedabad . . . . .	..	..	3	21,320.52	21,320.52	Failure of the supervisory officer to detect the short levy within the time limit.
2	Bangalore . . . . .	..	..	1	2,04,654.60	2,04,654.60	Failure of the Assistant Collector to issue demands immediately after receipt of Internal Audit Report.
3	Baroda	4	3,17,346.35	28	*76,04,077.27	79,21,423.62	In respect of M/s Gujarat State Fertilizer Co. the instructions issued by the Ministry of Finance were not complied with and demands were not issued by jurisdictional Supdt. in time. 2. Out of the 16 cases, whose details were furnished to the Committee in 15 cases irregularities were not detected in time.

*Loss of revenue due to operation of time bar in respect of 16 demands relating to one unit viz. M/s. Gujarat State Fertilizers Company itself amounted to Rs. 73,80,315.32.

1	2	3	4	5	6	7	8		
4	Hyderabad	.	.	..	..	3	2,64,318·11	2,64,318·11	Failure of the jurisdictional Supdt. to raise demands in time.
5	Madurai	.	.	..	..	1	2,153·25	2,153·25	Delay in raising demand.
4	Patna	.	.	..	..	1	11,564·50	11,564·50	Delay in raising demand.
7	Pune	.	.	..	..	3	1,24,373·15	1,24,373·15	Demands set aside by the Appellate Collector in 2 cases. Reasons yet to be ascertained by the Ministry of Finance in third case.
8	Bombay	.	.	..	..	2	6,55,393·21	6,55,393·21	Failure of the Range staff to check duty liability from time to time.
9	Jaipur	.	.	..	..	3	not furnished	not furnished	Delay in raising demand due to non receipt of the Tariff Advice by the Range Officers."

1.19 Dealing with the loss of revenue due to operation of time bar in the case of M/s. Gujarat State Fertilizers Company, Baroda, the Ministry of Finance (Department of Revenue) have in their note stated as under:—

“There are 16 demands relating to this factory and the total revenue involved is Rs. 73,80,315.32. In this case, the internal audit of Baroda Collectorate pointed out in the audit report 16/72 that prices determined for assessment of fertilizers sold by Gujarat State Fertilizers Company are not correct and on redetermination as directed by the audit, 16 demands amounting to Rs. 73,80,315.32 were issued for the period 1-3-1969 to 30-6-1970 under Rule 10A. While deciding the case, Assistant Collector, Baroda observed that since the price list was approved by the authority concerned provision of rule 10A would not apply and the demands fell under Rule 10. Since the demands under Rule 10 were time-barred, the show cause notice was discharged.

In all these sixteen cases, the Ministry's instructions referred to in Point No. 1 do not appear to have been followed as demands were not issued immediately by the jurisdictional Supdt. on receipt of the audit objection but he entered into correspondence with the Assistant Collector and the demand became time barred.”

Audit Objections

1.20 In addition to the All India statistics in respect of loss of revenue during the year 1979-80 due to operation of time bar, Audit have also highlighted 5 specific cases involving duty of Rs. 24.02 lakhs. These cases are dealt with in the succeeding paragraphs.

1.21 The first case pointed out by the Audit involved a loss of revenue amounting to Rs. 16,64,427 due to the delay in issuing the demands against underassessments of duty on steel castings during the period March, 1975 to May, 1979. In a note furnished to the Committee on the above case, the Ministry of Finance (Department of Revenue) stated as follows:—

“M/s. Kumardhubi Engineering Works Ltd. Kumardhubi manufactured two types of steel casting (i) Steel castings (Rough) and (ii) Steel castings (Machined). From 22-7-77 steel castings Manufactured by the factory in their electric arc furnace out of old and used scrap and duty paid steel scraps etc. were cleared without payment of duty in terms of notification No. 152/77 dated 18-6-77 as subsequently amended by notification No. 235/77 dated 15-7-77. The rough castings falling under item 26AA(v) of C.E. Tariff were subsequently machined and cleared from the factory as machined castings,

identifiable as Machine parts without payment of any further duty. Since the steel castings were subjected to machining after their manufacture as such the machine castings were liable to pay duty under T.I. 68 also.

The irregularity is reported to have been detected by the jurisdictional Asstt. Collector in March, 1977. But it took some time to ascertain the exact value of the machined castings cleared since 1-3-75 and finally demand for Rs. 16,64,426.63 for the period March, 1975 to May, 1979 was served on the factory on 7-2-1980."

1.22 When asked about the action taken by the Department to classify the goods correctly and to assess the same to duty accordingly, the Ministry of Finance (Department of Revenue) stated as under:—

"Asstt. Collector (Valuation) of Patna Collectorate on visit to the factory on 8-12-1976 intimated on 31-3-1977 to jurisdictional Assistant Collector that casting after machining should be treated as machined parts and charged to duty under T.I. 68. The factory was asked to furnish figures of machined castings but the factory instead of furnishing figures contested the stand of the Department and insisted that the same was classifiable under T.I. 26AA(v). The factory under their letter dated 12-7-1979 sought further clarification and they were informed by the jurisdictional Asstt. Collector under his letter dated 31-7-1979 that the machine castings identifiable as machine parts obtained by adopting different process being not identifiable as castings in crude form was liable to be assessed under T.I. 68. The calculation of figures right from 1-3-1975 to 31-5-1979 being voluminous work took time and ultimately demand for duty was raised on 7-2-1980 and served through the Head Office of the factory at Calcutta."

1.23 When asked to furnish the latest position of the case, the Ministry of Finance (Department of Revenue) have stated as under:

"As it is alleged to be a case of suppression of fact, the demand has been issued on the basis of five years period. The factory is closed since September, 1979 and as no reply to the show cause notice has been submitted, the demand could not be confirmed. The Asstt. Collector is being asked by the Collector concerned to expedite the adjudication proceedings."

1.24 The second case highlighted by the Audit in the present paragraph involved a loss of revenue amounting to Rs. 3,17,968 due to operation of

time bar of demands issued in respect of underassessment of excise duty on 'lip salve' between the period November, 1968 to April, 1977. Explaining the case, the Ministry of Finance (Department of Revenue) have in a note stated as follows:—

“M/s. Technological Production Cooperative Society Ltd. Kanpur had been manufacturing 'Lip Salve' since, 1968. The supply was for the use by the military personnel at high altitude to prevent lip cracking. The ingredients of the product are (1) Bees Wax T.P. (2) Lanolin IP (3) White, Soft paraffin IMP (4) Liquid Paraffin (5) Cetyl Alcohol C.P. (6) Methyl hydroxy Benzoate, and (7) perfume.

M/s. Technological Production Cooperative Society, Kanpur vide their letter dated 11th August, 1973, informed the department of their intention to manufacture 'Lip salve' and enquired about its dutiability. They also declared the ingredients of the product as mainly pharmacopeial. On this, their product was classified as P.P. Medicine under tariff item 14-E and an offence case was also booked for manufacture without licence and removal without payment of duty. The manufacturer also procured a drug licence issued by the Drug Controller of Uttar Pradesh and 'lip salve' was treated as a drug under Drug / Cosmetic Act, 1940. Since all the constituents of 'lip salve' were mainly pharmacopeial and the assessee procured a drug licence, the product was classified under item 14E of C.E. Tariff as P.P. medicine. After appropriate proceedings, the party took a licence under item 14E, paid the compounding fee and the demand for the clearance prior to 22-8-1973. Thereafter, regular clearances were taken on payment of duty on 'lip salve' under item 14-E of Central Excise Tariff.

The classification of 'lip salve' was subsequently examined by the Ministry in consultation with the Directorate General of Health Services and the Ministry conveyed the advice that the 'lip salve' may be classified as a 'cosmetic' on 25-10-1977. On its receipt the field officers took up a review of a classification of 'lip salve' which was till then, being classified under item 14-E. The demands for the past period spreading over five years were worked out and the assessee was asked by the Superintendent of C.E. concerned to show cause as to why differential duty amounting to Rs. 2,01,608.04 may not be demanded from them. The case was adjudicated by the jurisdictional Asstt. Collector and it was held that as there was no wilful mis-statement fraud or collusion on the part of the

assessee, the demands were time-barred under Rule 10 of the C.E. Rules, 1944 and were therefore, set aside. As the matter was within the knowledge of the Deptt. and corrective action was taken on its own audit objection in this regard was not accepted."

1.25 It was learnt from Audit that the Ministry of Finance in their reply to the Audit dated 13 February, 1981 stated that the misclassification of the product as a result of clarification issued by the Board on 26 October, 1977 was within the knowledge of the department. The question of raising any demand prior to 14 November, 1973 does not arise since demand can only be raised for the past period subject to law of limitation as provided in the Central Excise Rules, 1944.

1.26 In this connection, the Committee desired to know the distinction between Tariff Advice and a clarification issued by the Board. The Ministry of Finance (Department of Revenue) in their note have stated:

"Tariff Advice is issued in the matters connected with classification of the goods under a tariff item or an exemption notification, while a clarification clarifies the position in respect of matters connected with procedure, rules and exemptions etc."

1.27 Asked whether a Tariff Advice/clarification was applicable prospectively or retrospectively, the Ministry of Finance (Department of Revenue) stated:

"A tariff advice/clarification gives the latest and most authoritative interpretation of the law already in existence. Such tariff advice/clarification can be implemented for the past period subjected to the provisions of Sections 11A, 11B and 11-C of the Central Excise and Salt Act, 1944."

1.28. The third case of loss of revenue reported in the Audit paragraph due to operation of time bar related to M/s. Travancore Electro Chemical Industries Ltd. under Cochin Collectorate in respect of a demand raised by the department towards underassessment of duty of Rs. 1,13,169 on calcium carbide for the period 10 March, 1970 to 28 June, 1971. The details of the case furnished by Ministry of Finance (Department of Revenue) are as follows:

"M/s. Travancore Electro Chemical Industries Ltd. Chingavanam were manufacturing Calcium Carbide which fall under Tariff item 14A from 1-3-70. "Calcium Carbide as soon as it is formed during the process of manufacture is grounded and sorted into different sizes of grains 4.80 mm, 50—80 mm, 25—50 mm, is marketed in terms of the sizes mentioned

above according to the requirements of the customers. Different customers require different sizes of grains depending on the nature of generator used by them for the product of Acetylene Gas. Calcium carbide falling under the same size was however sold by the assessee at varying wholesale prices to different customers. These varying prices at which the commodity of the same size was sold from time to time were declared by the assessee treating such prices as prices of different grades within the same size. This was detected by the department and a show cause notice covering a short levy of Rs. 2,51,685.85 and 19,773.25 was issued to the assessee on 28-6-72 for the period from 10-3-70 to 31-5-72 and 1-6-72 to 31-7-72 respectively. The assessee filed an appeal before the Appellate Collector concerned which was partially allowed holding that the demand for Rs. 1,13,168.85 relating to the period 10-3-70 to 28-6-71 was hit by time bar. The amount has become irrecoverable now."

1.29 The Committee learnt from Audit that the Ministry of Finance had, while furnishing their comments to the Audit paragraph on 13 December, 1980 stated that there had been no loss of revenue as the assessee requested that the balance amount of Rs. 1,13,168 be adjusted in the refund claim pending with the jurisdictional Assistant Collector. When asked how the demand had become irrecoverable when request for adjustment of the same from the pending refund claims had already been received from the assessee, the Ministry of Finance (Department of Revenue) in their note stated:

"M/s. Travancore Electro Chemical Industries Ltd. had not requested to adjust differential duty amount of Rs. 1,13,168.85 in their refund claim. Request by party for adjustment in refund claim was actually in respect of another demand for Rs. 6017 and not for demand of Rs. 1,13,168.85. The incorrect factual position reported by the Collector concerned at the Draft Audit Para stage was based on an incorrect report received by him from the Divisional Officer. This is regretted. The demand for Rs. 1,13,168.85 was time-barred even at the time it was raised."

1.30 The fourth case highlighted by the Audit involved a loss of Rs. 89,779 due to operation of time bar. In their note furnished to the Committee on the case the Ministry of Finance (Department of Revenue) have stated as follows:

"M/s. Dharampur Leather Cloth Co. Ltd. Dharampur manufactured P.V.C. film laminated textile fabrics. The unit sub-

mitted a classification list in July 1970 for PVC film laminated textile fabrics classifying the product under T.I. 191(2) as processed fabrics chargeable to duty at the rate of 25 paise per sq. unit. The Asstt. Collector approved the said classification in April, 1971 under T.I. 19 III as coated/impregnated fabrics chargeable to duty at 25 per cent ad valorem instead of T.I. 19 I(2). The assessee filed appeal against order of Asstt. Collector and it was rejected in October, 1974 by Appellate Collector. The assessee was asked to give price of the fabric cleared from July, 1970 to April, 1971 which was furnished by the assessee only in March, 1976. Demand for Rs. 89,779.35 was therefore, issued on 26-4-76 under Rule 10. Asstt. Collector confirmed the demand under Rule 10A. On appeal, Appellate Collector set aside the demand as time barred under Rule 10."

1.31 In reply to a question of the Committee as to when the assessee was asked to furnish the price of fabrics, the Ministry of Finance (Department of Revenue) in their note stated that the assessee was asked on 22 April, 1971 to furnish the price of the fabric and subsequently reminded on 8 May, 1971, 27 August, 1971 and 29 November, 1971.

1.32 The Ministry of Finance (Department of Revenue) also stated that on receipt of the Appellate Collector's order the matter was pursued by issuing further reminders on 9 January, 1975 and 14 July, 1975.

1.33 The Committee enquired about the provisions in the Central Excise Law to deal with cases of failure of the assessee to furnish information/documents within a reasonable time. The Ministry of Finance (Department of Revenue) in their note stated as under:—

"Under Section 14 of the Central Excises and Salt Act, 1944, the assessee can be summoned to produce the documents."

1.34 On being asked as to why those provisions were not invoked in this case, the Ministry of Finance (Department of Revenue) have stated as follows:

"It appears that the concerned sector officer (now expired) did not bring the facts of failure of supplying the information by the assessee to the notice of the higher authorities for invoking provisions of section 14 in time."

1.35. Yet another case pointed out by Audit in the para under examination involved a loss of revenue of Rs. 63,711 owing to the delay in the issue of demand and show cause notices in respect of underassessments of

duty on motor vehicles part for the period 1 October, 1975 to 12 May, 1976.

1.36 The facts of the case as stated by the Ministry of Finance (Department of Revenue) in their note are as under:—

“M/s. Sri Ramdas Motor Transport Ltd. (SRMT) Kakinada, manufacturers of parts and accessories of Motor Vehicles under Tariff item No. 34-A, filed price list for their product on 24-9-76 for approval. This was approved by the Asstt. Collector concerned.

During the audit of the records of the unit, the Internal Audit pointed out that the distributors appointed by M/s. SRMT, Kakinada were related persons and as such they were not eligible to get the benefit of duty from out of the normal discount allowed to others and indicated that action be taken for recovery of differential duty on the goods cleared between the period from 1-10-75 to 12-5-76. A demand for Rs. 22,722.11 was issued but the same was revised to Rs. 63,711.11 owing to some mistakes in calculation. The Asstt. Collectorate concerned issued a show cause notice on 9-4-77 and a revised show cause notice on 3-6-77 and thereafter confirmed the demand in his Adj. order dated 17-9-77. The assessee preferred an appeal to the Appellate Collector concerned who in his order dated 21-9-78 set aside the order of the Asstt. Collector on the ground that Rule 10-A could not be invoked. Thus the demand was withdrawn.”

Submission and finalisation of RT 12 Returns

1.37 Under Rule 173G(3) of the Central Excise Rules every assessee is required to file a monthly return (RT 12 Returns) within 7 days after the close of every month which may be reduced/extended by the Collector. The RT 12 returns indicates the particulars of the duty paid on the excisable goods removed during the months to which the said returns relates.

1.38 After the incorporation of Section 11A in the Central Excise and Salt Act 1944 operative from 17 November, 1980, the period of limitation for issue of the show cause notice against non-levy, short-levy of erroneous refund of duty will run from the date on which the monthly return is to be filed by the assessee.

1.39 The Committee enquired whether any period had been prescribed for the submission of monthly return (RT 12 return) and completion of

the assessment memorandum thereon. The Ministry of Finance (Department of Revenue) have in a note stated:

“Under rule 173-G(3) an assessee is required to file monthly RT 12 returns within 7-days after the close of the month to which it relates. However, the Collector has power to extend this period upto 21 days after the close of the month *vide* proviso to the aforesaid sub-rule. Though no period for completion of assessment memorandum of RT 12 return has been specifically provided for in the rules, assessment memorandum has to be completed within the period laid down in section 11A of the Central Excises and Salt Act as non-finalisation of assessment may result in the demand, if any raised, becoming time-barred.”

1.40 Asked whether the Government was considering to make such a provision in the Central Excise Rules to avoid claims becoming time barred due to laxity on the part of the Central Excise Offices to finalise the assessment memorandum on RT 12 returns and issuing show cause notices simultaneously whenever necessary, the Ministry of Finance (Department of Revenue) stated as under:—

“The Government are not considering to prescribe in the Central Excise Rules, the period for completion of the assessment memorandum on the RT 12 returns and for issue of show-cause notice simultaneously where necessary.”

1.41 Under Section 11A of the Central Excises and Salt Act, 1944, when any duty of excise has not been levied or paid or has been short levied or short paid or erroneously refunded, a Central Excise Officer may, within six months from the relevant date, serve notice on the person chargeable with the duty which has not been levied or short-levied or short paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

1.42 The Committee enquired as to whether the amounts shown due by Central Excise Officers in RT 12 returns not backed by proper show cause notices were legally recoverable and if not whether the Government intended to take any step to ensure that show cause notice are issued in time to avoid the claims becoming time barred. In a note furnished to the Committee, the Ministry of Finance (Department of Revenue) stated as under:

“Assessment on RT 12 returns is finalised in terms of the provisions of rule 173-I. This rule does not provide for issue of show cause notice before the deficiency is pointed out by the assessing officer in the assessment memorandum on the return.

In view of this position the question of taking any steps to ensure that the show cause notices are issued in time does not arise."

Pendency of finalisation of RT 12 Returns as on 1 June, 1981

1.43. In this connection, the Committee desired to be furnished with the following details:

- (i) R.T. 12 Returns pending finalisation on 1 June, 1981.
- (ii) Out of the above, number of those which were hit by the time limit.
- (iii) Reasons for the pendency of (ii) above.
- (iv) Out of (ii) above R.T. 12 Returns since finalised and total amount of demands hit by the time limit, and
- (v) Procedure, if any evolved or guidelines issued to ensure that all R.T. 12 assessments are finalised well within 6 months.

1.44 A statement furnished by the Ministry of Finance (Department of Revenue) indicating the above details is shown as Appendix I.

1.45 The position of pendency of RT 12 Returns as on 1 June, 1981 and the total amount hit by time limit which emerged on perusal of the details furnished by the Ministry of Finance (Department of Revenue) is indicated in the following Table:

Particulars	No.	Periods	Amount
1. Number of RT 12 Returns pending finalisation on 1 June, 1981	51,417	1962 to 1981	..
2. Out of the above, number of RT 12 Returns hit by the time limit	18,309	1975 to 1981	..
3. Out of (2) above RT 12 Returns finalised and total amount hit by time limit	3,155	1975 to 1980	33,57,320

1.46 The reasons attributed by the Ministry of Finance for the pendency, in general, are summarised as follows:

1. Pending with High Court
2. Provisional assessment
3. Non-production of records
4. Pending with RO
5. Non-approval of classification/Price lists
6. Shortage of staff

7. Late receipt of report on samples
8. Reorganisation of range offices
9. Complicated nature of work.

1.47 From the information made available by the Ministry of Finance it was also seen that different procedures were being followed in different collectorates for watching the finalisation of RT 12 returns.

1.48 While intimating the steps taken by the Central Board of Excise and Customs for ensuring timely finalisation of HT-12 returns, the Ministry of Finance (Department of Revenue) forwarded copies of the Board's instructions dated 30 August 1980, 26 March 1981 and 15 July 1981.

1.49 In their instruction dated 30 August, 1980 to Collectors of Central Board of Excise and Customs had inter alia stated.

- “2. In confidential instructions meant for department officers issued at the time of introduction of the Self Removal Procedure it had been stipulated that RT 12 returns should be finalised before the receipt of the next RT. 12, i.e., within a period of one month.
3. Every effort should, therefore, be made to assess RT. 12 within one month of its receipt. If for some reasons it cannot be finalised within one month, its assessment should be completed in any case within three months of its submission.
4. In order to ensure a timely finalisation of RT. 12 returns the supervising officers should during the course of their visits make it a point to check up the pendency in this regard.
5. Moreover, for keeping a proper watch a monthly statement in the enclosed proforma should be submitted by the Range Superintendent and the Divisional Officer. The Assistant Collector should examine all the cases pending for more than 3 months in his division and give necessary directions to the Range Superintendents for their early finalisation. You should review the cases in which RT. 12s have been pending for more than six months and give suitable guidance to your staff.”

1.50 Further, in their communication dated 26 March 1981 addressed to all Collectors of Central Excise, the Board had inter alia instructed:—

- “ The Board had an occasion to examine in consultation with the Ministry of Law, whether completion of the Assessment Memorandum on the reverse of the RT. 12 return would attract

the time limits prescribed under Rule 10 and 11 of the Central Excise Rules, 1944. Ministry of Law advised that the time limit prescribed under rules 10 and 11 applied to recovery of short levy of refund or excess levy even under Chapter VIIA, as rule 173J extended the provisions of rules 10 and 11 to the self Removal Procedure and there was no exception in favour of rule 173(I).

2. Though rules 10, 11 and 173J have been omitted and replaced by sections 11A and 11B of the Central Excises and Salt Act, 1944 the above advice will equally apply to the present situation. In other words, demands/refund on RT. 12's assessment have to be finalised within the time limit laid down in sections 11A and 11B.
3. In view of the above, you are requested to take immediate steps to ensure that the Assessment Memorandum on the RT.12 is completed within the time limits statutorily laid down. The field formations may also be suitably informed....."

1.51 Instruction issued by the Board on 15 July, 1981 seem to be a follow-up action on the audit objection.

1.52 Asked whether the period of six months prescribed under Section 11A and 11B was adequate to avoid the claims becoming time barred particularly in RT 12 cases, the Ministry of Finance (Deptt. of Revenue) in a note stated:

"The period of six months prescribed under Sections 11A and 11B is considered to be prima facie adequate. It may be mentioned here that this period was prescribed initially in rules 10 and 11 as amended in 1977 in the light of the decision taken on the recommendations of the Central Excise (SRP) Review Committee. However, in cases of lock out, strike etc. in a factory sometimes RT. 12 returns are not filed in time i.e. the deemed date limit. The matter of meeting such special situations leading to delay in filing RT-12 returns is being separately considered."

1.53 The provisions for recovery of duty in respect of short-levy, non-levy or erroneous refunds have undergone a number of changes from time to time since the inception of the Central Excise Law. A period of three months had been prescribed in Rule 10 of the Central Excise Rules 1944 to suit the physical type of control in vogue before 1968. After the introduction of Self Removal Procedure (SRP) in 1968, the time limit was raised to one year for such assesseees through the insertion of rule 173-J

in the Central Excise Rules. The amendment to Rule 10 of the Central Excise Rules with effect from 6 August, 1977 replaced the time limit of one year|3 months by a uniform time limit of six months in normal cases and a period of 5 years in cases of fraud, collusion, wilful mis-statement suppression of facts or contravention of rules with intent to evade duty. As the constitutionality and area of operation of Rule 10 had been a subject matter of controversy in the various High Courts and the Supreme Court, the Government on the recommendations of Central Excise (SRP) Review Committee incorporated Section 11A in the Central Excises and Salt Act, 1944 itself which came into force on 17 November, 1980 retaining the period of 6 months|5 years for recovery of duty and thereby omitting the corresponding provisions in the Central Excise Rules. Section 11A of the Act differed from the erstwhile Rule 10 of the Rules in so far as the "relevant date" from which the limitation for issue of show cause notice had to start, was concerned. While under the erstwhile rule 10 "relevant date" was defined to mean "the date on which the duty is required to be paid", under Section 11A, it has been defined to mean either the date on which the monthly return is submitted or where no monthly return is submitted, the last date on which the said return is required to be filed.

1.54 The Committee are greatly concerned to note that there had been a loss of revenue amounting to Rs. 1.06 crores to the public exchequer due to non-issue of demand within the prescribed time limit in respect of assessments during the year 1979-80 in 49 cases. The reasons for the operation of time bar in these cases were attributed by the Ministry of Finance to non-compliance of instructions, non-detection of irregularities in time, failure to check duty liability from time to time, non-receipt of the Tariff Advice by the Range Officers etc. The conclusion is inescapable that the losses have primarily occurred due to the laxity and negligence on the part of the department. This conclusion is further substantiated by the Committee's examination in detail of 5 such specific cases pointed out by Audit in the paragraph under examination where it was found beyond doubt that the losses had mainly arisen due to the inordinate delay on the part of the department in raising demands|issuing show cause notices.

1.55 During examination the Ministry of Finance had maintained that the period of six months prescribed under Section 11A was considered by them to be prima facie adequate. Keeping in view this fact and considering that a substantial amount of duty had to be foregone during the year 1979-80 due to the failure on the part of the department in issuing the demands within the prescribed time limit, the Committee would strongly recommend that the Ministry of Finance should thoroughly analyse the reasons for these lapses, ascertain to what extent the delays

were avoidable, identify the short-comings in the functioning of the department in this respect, responsibility of individual officers and take appropriate measures in order to avoid such losses in future. The Committee, in this connection, would like to emphasise the need for finalising the assessments promptly and conducting the checks and audit of assesses accounts regularly.

1.56 The Committee find that in one of the 5 cases viz. that of M/s Kuamrdhubi Engineering Works Ltd, under Patna Colectorate, engaged in the manufacture of steel castings, in irregularity was detected in March 1977. However, the demand notice for Rs. 16.64 lakhs for the period March, 1975 to May, 1979 was raised on 7 February, 1980 only and had to be served through the factory headquarters as the factory was by then closed. According to the Ministry of Finance, the delay in raising demand occurred as "it took some time to ascertain the exact value of the machined castings". . . . The Ministry have subsequently informed the Committee that as the case was alleged to be one of suppression of facts, the demands had been issued on the basis of five years period, and the case was stated to be under the process of adjudication. The Committee would like to be informed of the final outcome of the case.

157 The Committee find that a demand raised by the department against an under assessment of duty of Rs. 1.13 lakhs for the period 10 March, 1970 to 28 June, 1971 in respect of calcium carbide on M/s Travancore Electro Chemical Industries Ltd. under Cochin Collectorate was set aside by the Appellate Collector on the ground of time bar. The loss has occurred on account of the failure of the department in taking timely action. According to the Audit Paragraph, the Ministry of Finance had informed the Audit that the assessee had requested for the adjustment of the short levy against his refund claim pending with the jurisdictional Assistant Collector. The Ministry of Finance have now stated that the request by the assessee for adjustment in refund claim was in respect of another demand and the demand for Rs. 1.13 lakhs had become time barred even at the time it was issued. Expressing regret over the incorrect information furnished to the Audit, the Ministry have added that, 'the incorrect factual position reported by the Collector concerned at the Draft Audit para stage was based on an incorrect report received by him from the Divisional Officer'. The Committee would, in this connection, like to be apprised of the precise legal position of adjustment of outstanding demand from the pending refund claims. The Committee would also like to be apprised of the specific reasons for delay in raising the demand.

1.58 The Committee find from another case pointed out by Audit that an appeal filed in September, 1971 by M/s. Dharmpur Leather Cloth Company Ltd., an assessee under Baroda Collectorate manufacturing P.V.C. Film laminated textile fabrics against the classification approved by the department was dismissed by the appellate authority as time barred in October, 1974. A show cause notice and demand for differential duty for the period July, 1970 to April, 1971 during which the product was cleared on payment of duty at lower rate was, however, issued by the department in April, 1976 only. On an appeal filed by the assessee against the said demand the appellate authority held in July, 1979 that the demand was not sustainable under rule 10 of Central Excise Rules 1944. According to the Ministry of Finance the delay in raising the demand occurred as the price list was obtained from the assessee only in March, 1976. From the information furnished by Ministry of Finance the Committee find that the assessee was requested to furnish the price list on 22 April, 1971 and subsequently reminded on 8 May, 1971, 27 August, 1971, 29 November, 1971, 9 January, 1975 and 14 July, 1975. Apparently, the matter was not pursued during the period December, 1971 to September, 1974 and August, 1975 to February, 1976. What is more intriguing is that the department did not take timely recourse to Section 14 of the Central Excise and Salt Act, 1944 which empowers the Government to summon an assessee to furnish information| produce documents. The Ministry of Finance have not been able to adduce any plausible explanation for this lapse and have merely stated that, "it appears that the concerned sector officer (now expired) did not bring the facts of failure of supplying the information by the assessee to the notice of the higher authorities for invoking provisions of Section 14 in time". The Committee find the reply of the Ministry totally unconvincing. They cannot but reach at the conclusion that this is clearly indicative of the casual manner in which matters relating to raising of demand are being dealt with in the Department. The Committee would like to express their concern at this unsatisfactory state of affairs. The Committee recommend that while examining the reasons for delay in raising demands and formulating suitable corrective action as recommended by the Committee in an earlier paragraph, the Ministry of Finance should take necessary steps to obviate recurrence of the type of lapse dealt with in the instant case.

1.59. The Committee note that after incorporation of Section 11A in the Central Excise and Salt Act, 1944, the period of limitation for issue of the show cause notice for non-levy short-levy or erroneous refund of duty will run from the date on which the monthly return (RT 12 Returns) is to be submitted by assessees where such return is required to be filed and where no monthly return is submitted, the last date on

which such return was to be filed and in any other case, the limitation will continue to run from the date on which duty is paid. From the information furnished by the Ministry of Finance the Committee find that in all the Collectorates taken together, 51,417 RT 12 Returns were pending finalisation on 1 June 1981 ranging over a period of 13 years from 1968 to 1981. Out of these, 8309 returns ranging from 1975 to 1981 were stated to have been hit by the time limit. According to the information furnished by the Ministry of Finance, out of 8309 returns, 3155 returns relating to 1975-1980 had since been finalised and an amount of Rs. 33,57,320 was lost due to operation of time bar.

1.60 The Ministry of Finance attributed this disquieting level of pendency inter alia to cases pending with High Courts, provisional assessments, non-production of records, returns pending with range offices, non-approval of classification/price lists, shortage of staff, late receipt of report on samples, reorganisation of range offices, complicated nature of work etc. The Ministry of Finance have, however, stated that instructions were issued to the Collectors from time to time emphasising the need for timely finalisation of RT 12 Returns. In this connection, the Committee find that at the time of introduction of Self Removal Procedure it had been stipulated that RT 12 Returns should be finalised before the receipt of the next return i.e. within a period of one month and if for some reason it cannot be finalised within one month, its assessment should be completed within a period of 3 months of its submission in any case. The fact that returns pertaining to a considerable length of time, in some cases ranging upto 13 years, remain yet to be finalised clearly indicates that the Central Board of Excise and Customs have failed to exercise adequate control in ensuring prompt finalisation of RT 12 Returns. The Committee feel that most of the reasons given for pendency of returns are such which can be removed by toning up the working of the Department. As the crucial data for issue of show cause notice is now closely linked with the submission of monthly return the Committee would strongly recommend that the Central Board of Excise and Customs should immediately look into specific cases, particularly those which are pending for more than 5 years, identify the reasons and find out how far the laxity of officers concerned has been responsible for these delays and take corrective measures. The Committee would like the Central Board of Excise and Customs to introduce a regular system of monitoring in respect of all Collectorates to ensure that the returns are finalised expeditiously.

1.61 In this connection, the Committee note that presently no time limit has been specifically provided in the Central Excise Rules for completion of assessment memorandum on RT 12 Returns. The Committee would recommend that the Government should consider the desirability

of prescribing a time limit in the Central Excise Rules for the finalisation of assessment in RT 12 returns in order to avoid delay in finalisation of assessments and consequently the demands becoming time barred due to laxity on the part of the department.

1.62 Another disquieting feature which acme to the notice of the Committee during their examination was that no uniform procedure was being followed by different Collectorates for watching the finalisation of RT 12 Returns. The Committee recommend that the Central Board of Excise and Customs should look into the matter and take necessary measures to lay down uniform procedure for watching finalisation of RT 12 Returns.

1.63 During examination, the Committee desired to know whether the amounts of short assessments shown due by Central Excise Officers on RT 12 Returns which are not backed by proper show cause notices for want of any provision in rule 1731 for the issue of show cause notices could be legally enforced against assesseees who choose not to place further debits in the Accounts Current as required in that rule. In their note the Ministry of Finance have merely stated that, "Assessment on RT 12 Return is finalised in term of the provisions of Rule 173 I. This rule does not provide for issue of show cause notice before the deficiency is pointed out by the assessing officer in the assessment memorandum on the return". This does not answer the point at all. The Committee would like to be apprised of the precise legal position in respect of recovery of the amounts shown due on RT 12 Returns in the absence of proper show cause notices for which there is no provision in that rule.

1.64. The Committee note that in the newly introduced Section 11A of the Central Excises and Salt Act, 1944, there is no saving clause in favour of pending show cause notices issued under the erstwhile rule 10. To a pointed question of the Committee as to whether such notices lapsed in the absence of the saving clause in the new provision, the Ministry of Finance inter alia replied that the matter was still under examination in consultation with the Ministry of Law. The Board, however, in their circular No. 1/81-CX-6 dated 12 January, 1981 clarified that the instructions of 13 March 1978 will mutatis mutandis apply in such cases. There is no indication in this circular about the advice given by the Ministry of Law. The Committee recommend that the matter should be expeditiously examined and the position made abundantly clear. They would like to be informed of the final results of the examination.

NEW DELHI;
17 April, 1982
27 Chaitra 1904 (S)

SATISH AGARWAL
Chairman
Public Accounts Committee.

PART II

Minutes of the sitting of the Public Accounts Committee held on 16 April 1982

The Committee sat from 1500 hrs. to 1700 hrs.

PRESENT

- Shri Satish Agarwal — *Chairman*
2. Shri Tridib Chaudhury
 3. Shri Ashok Gehlot
 4. Shri Hari Krishna Shastri
 5. Shri Satish Prasad Singh
 6. Shri N. K. P. Salve
 7. Shri Indradeep Sinha

REPRESENTATIVES OF AUDIT

1. Shri G. N. Pathak — *Director of Audit (Defence Services)*
2. Shri R. S. Gupta — *Director, Receipt Audit*
3. Shri N. Sivasubramaniam — *Director, Receipt Audit*
4. Shri K. H. Chhaya — *Joint Director (Railways)*
5. Shri G. R. Sood — *Joint Director (Reports)*
6. Shri N. C. Roychoudhury — *Joint Director (Receipt Audit)*

SECRETARIAT

1. Shri H. G. Paranjpe — *Joint Secretary*
2. Shri D. C. Pande — *Chief Financial Committee Officer*
3. Shri K. C. Rastogi — *Senior Financial Committee officer*
4. Shri K. K. Sharma — *Senior Financial Committee Officer*
2. x x x x x x x

3. The Committee then took up for consideration and adopted the draft 92th, 99th, 102nd and 103rd Reports with minor amendments/modifications. The Committee also approved some amendments/modifications arising out of factual verification by Audit.

4. The amendments/modifications made in the draft 99th, 102nd and 103rd Reports are indicated in Annexures I* to III.

The Committee then adjourned

*Annexure I is shown as Ashard: *II, Annexures II and III are not printed.

APPENDIX I

(Vide para 1.66)

Statement showing pendency of finalisation of RTR Returns as on 1 June 1981

Collectorate	R.T. 12 Returns pending finalisation on 1-6-81	Out of col. 2 No. of those which are hit by the time limit	Reasons for pendency for cases shown in col. 3	Out of col. 3 RT 12 Returns		Procedure if any involved or guidelines issued to ensure that all RT 12 assessments are finalised well within 6 months	Remarks	
				Since finalised	Total number of demands hit by the time limit			
1	2	3	4	5	6	7	8	
1 Ahmedabad	1979 1980 1981 <hr/> 125	6 14 105 <hr/> 125	Nil	Not applicable	Nil	Nil	1. Pendency position being watched every month at Div. & Hqr. level 2. All assessing officer have been instructed to assess RT 12 within time-limit to avoid demands getting time barred.	6 RT12 of 1979 and 14 of 1980 pending finalisation as a result of interim orders of Gujarat High Court.
2. Allahabad	1979 1980 1981 <hr/> 316	71 57 252 <hr/> 316	7 57 32 <hr/> 96	34 cases are pending in High Courts and 62 due to provisional assessment.	Nil	Nil	Constant watch is being kept over the matter through monthly returns and administrative reports.	

(as on 16-9-81)

3. Bangalore	1975	36	.. 39 cases are panding	1978	Nil	1980-82 2188-98 <hr/> 4169-00	Detailed instructions have been issued to the Div. Officers to ensure RT 12s are finalised within 6 months of their filing and laxity if any noticed will not be viewed leniently. A return is being prescribed to keep a track of such cases
	1976	48	.. for non production	1979	23		
	1977	69	.. of record-like in-	1980	88		
	1978	89	.. 1				
	1979	121	.. 37				
	1980	315	.. 135	Range Officers for	117		
1981	1023	.. 3	scrutiny				
		<hr/> 1701					
		<hr/> 184					
		<hr/>					
4. Baroda	1978	12	Nil	Nil	Nil	Instructions have been issued to the assessing officers to assets the RT 12s within 6 months. Pendency of assessments is observed from monthly administrative reports.	RT 12s 78, 79 1980 pending due to court cases or involve provisional assessment.
	1979	84					
	1980	62					
	1981	3361					
			<hr/> 3519				
		<hr/>					
5. Bombay-I	1977	13	11 Non-approval of	1978	13	61,81,134.94	Periodical meetings held by Divl. Asst. Collectors with Range Officers to Review pendency position strict watch kept on pendency through periodical statements
	1978	77	57 classification lists,	1979	122		
	1979	364	303 price lists, non-pro-	1980	372		
	1980	1771	1049 duction of records,				
	1981	5495	.. for want of chemi-		507		
			<hr/> 1420	cal reports and			
		<hr/> 7720	shortage of staff				
		<hr/>					

1	2	3	4	5	6	7	8	9	10
4. Bombay II	1975	3	3	For want of approval of C.L. and P.L. non-production of concerned documents (invoices) by the assessee; issues pending with High courts and Appellate Collector; due to late receipt of report on samples sent for test. Non-availability of records due to factory being on strike under scrutiny.	1978	5	Being ascertained	The field formations are repeatedly instructed to finalise all RT 12s within time limit of six months.	
	1976	12	12		79	36			
	1977	12	12		80	224			
	1978	22	17						
	1979	90	78						
	1980	463	351						
	1981	4609	.						
		5391	473						
7. Bhubaneswar	1976	5	5	Pending due to adjudication proceeding (required for finalisation and approval of price lists with Asstt. Collect. due to non-production of challans, invoices, bills etc.	1977	6	-Do-	Collector has issued a circular dt. 16-4-81 asking field officers to finalise assessment on RT 12s provisionally to avoid the mischief of time bar. This has also been discussed by Collr/Addl. Collr. specifically during their inspection visits to Ranges and sectors.	
	1977	12	12		79	8			
	1978	16	12		80	12			
	1979	34	12						
	1980	107	36			26			
	1981	133	.						
(till 1-6-81)		307	77						

8. Calcutta

1968	6			1975	19	40,587.00
69	12			76	56	
70	12			77	177	
71	74			78	258	
72	13			79	220	
73	35			80	298	
74	36					
75	222	75	18			
76	347	76	72			
77	661	77	217			
78	D77	78	396			
79	4768	79	452			
80	2854	80	719			
81	4394					
	<u>114115</u>	<u>1874</u>				

Want of approval of classification lists price lists due to shortage of staff acute shedding.

Necessary guidelines in this regard were already issued by Collector Dy. Collr. Asstt. Collr. concerned for speedy finalisation of RT 12 assessments.

Out of Rs. 40,587 shown at Col. 6, an amount of Rs. 38,618 were due to mis-statement and mis-declaration and the provision of 5 years is attracted. In respect of remaining amount demands raised due to some calculation mistake and in all cases the assessee has agreed to pay the amount demanded.

33

9. Chandigarh

1981	280	Nil	Not applicable	Not applicable
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Officers have been instructed to ensure that RT 12 assessments are finalised well before the expiry of 6 months. Senior Officers on their inspections also ensure this. Besides control is exercised through monthly statements of pendency received at Hqrs. office.

1	2	3	4	5	6	7	8		
10. Gochin	1977 1978 1979 1980 1981	3 28 181 932 124 <u>2368</u>	3 .. 13 101 .. 117	RT 12s pening for awant of finalisa- tion of exemption classification prob- lems of staff and complicated nature of work involved/ want of chemical examiners report.	1977 1979 1980 <u>116</u>	3 13 100 <u>116</u>	1,26,033.95	Progress of finalisation of RT 12 is watch-monthly statements and adminis- trative reports.	
11. Guntur	1980 1981	2 41 <u>43</u>	2 .. <u>2</u>	Due to non-produc- tion of records.	2 pending RT 12s have how- ever been finalised without having to raise demands.		Instructions issued to the filed formations to com- plete assessments of RT 12s within a time-limit.		
12. Indore	1977 1978 1979 1980 1981	12 11 132 190 218 <u>563</u>	.. .. 111 120 .. 231	Short of staff	1979 1980	98 97 195	7903.65	Board's instructions dt. 30-6-80 has been circulated and a strict watch is being kept on the pendency of assessment of RT 12 returns by scrutiny of monthly returns.	Out of Rs. 8903.65 shown at Col. 6 an amount of Rs. 433988 has since been realised.
13. Jaipur	1978 1979 1980 1981	16 93 191 310 <u>610</u>	16 90 122 .. 248	Non-production of records. Want of Chartered Account- ants Certificate, for want of ap- proval of classifica- tion/price lists.	1978 1979 1980	18 6725,40,400.96 118 <u>193</u>		Instructions have been issued where in the man- ner in which implemen- tation of these instruc- tions is to be ensured at various supervisory le- vels has also been laid down.	The time limit taken into account for preparing RT 12s bit by time bar has been taken as its months.

larger number of cases suppression or mis-declaration is involved and so time limit of five years may apply. This can be decided only when adjudication proceedings are complete.

14. Madras	1975	18	18	Non-approval of price/classification lists. Want of Chemical Examiners report. Non-availability of record shortage of staff Re-organisation of ranges dispute regarding proforma credit.	1979	10	Nil	Instructions issued to All Assistants Collectors. Intrnal Audit Prtics and supervising Officers are also looking into this particulars aspect.
	1976	66	43		1980	88		
	1977	108	72					
	1978	157	116			98		
	1979	317	226					
	1980	1321	613					
	1981	3453	..					
		<u>5440</u>	<u>1093</u>					
15. Madurai	1978	32	Nil	Nil	Nil	Nil	General circular issued in pursurance of Board's instruction dt. 30-8-80 to all Range Officers, and the position of pendency continues to be reviewed periodically. similarly the importance of timely completion of assessments was stressed again in July 1981.	Explanation to Col. 3 to 6 a the cases exce ding six month were covered either by the stay orders of the High count or were under provisional assessment.
	1979	159						
	1980	219						
	1981	287						
			<u>697</u>					

1	2	3	4	5	6	7	8	
16. Meerut . . .	1978 1979 1980 1981	29 26 62 943 <hr/> 1060	Nil	Not applicable	Not applicable		On receipt of Member (CX)'s D.O. dated 30-8-80 detailed instructions were issued to all the field formations to ensure that RT-12 assessments are finalised well within the period of 6 months. Special reports called for from the Assistant Collectors and the position is reviewed periodically in Assistant Collectors concurrence.	RT-12's pending were assessed provisionally & hence time bar not attractive.
17. Nagpur . . .			Nil	Nil	Nil	Nil	Nil	
18. Patna	1980 1981	11 8 <hr/> 19	11	11 of 1980 as the assessee failed to submit required transport challans etc.	11	Nil	Detailed guidelines for finalisation of RT-12 returns within the prescribed time limit was issued. A watch is maintained through monthly reports received.	
19. Pune . . .	1980 1981	18 1475 <hr/> 1493	Nil	Nil	Nil	Nil	Necessary instructions have already been issued to all Asstt. Collectors to ensure timely finalisation of RT-12s and all the Asstt. Collectors have been asked to report the pendency in their monthly administrative reports the position of pendency is critically watched.	There is no RT-12 pending more than 6 months.

20. Hyderabad	1975	2	..	For want of classification/price lists want of production of records. Disputed cases Court cases.	1977	5	Being ascertained	The Divisional/Range Officer have been duly instructed to finalise the RT-12 assessment within the time limit prescribed in Sec-11-A and avoid delays in case of disputed assessments, field officers have been advised to take action by issuing show cause notice within time.	Amount at Col. 6 is being ascertained.
	1976	12	..		1978	9			
	1977	25	13		1979	36			
	1978	39	41		1979	36			
	1979	144	90						
	1980	458	104						
	1981	708	..						
	1408	348							
21. Shillong	1981	63	Nil	Nil	Nil	Nil	Nil	Finalisation of RT-12 within six months is ensure through monthly Administrative Reports wherein receipt and disposals of RT-12s are furnished. As per existing instructions checks of RT-12 are required to be completed before the receipt of the next RT-12.	
22. West Bengal	1977	11	11	Nil	112	Nil**	Apart from the set of instructions to the concurrence of field formations on finalisation of R.T. 12s in time. During monthly conference of Asstt. Collectors. Collector examines individually as regards RT-12 and other matters. To guard against pendency of finalisation of RT-12	**In 3 cases the RT-12 did not have any differential duty. In 71 cases RT-12s will all come in 5 years of time limit. In 38 case demands were raised prior to finalisation.	
	1978	28	28						
	1979	36	36						
	1980	40	37						
	1981	806	..						
		921	112						

1	2	3	4	5	6	7	8
						beyond 6 months the target has been fixed in all the Divisions to finalise the RT-12 within 3 months.	
23. Kanpur . . .	1979	22	..	Incomplete information given by the assessee in price lists and due to heavy work load.	22	Nil	Instructions received from the Board specifying the time limit has been reiterated to lower formations. Moreover the pendency and need for expeditious disposal is being repeatedly pointed out in the Internal Audit Reports and other communications to Divisional Officers. They have also been asked to certify that No RTs are pending in the Administrative reports. Assistant Collectors are advised suitably to finalise such RT-12s.
	1980	83	22				
	1981	496	Nil				
		601	22				

Description	Collectorate		
	Delhi	Goa	
1. RT 12 Returns pending finalisation on 1-6-81	1975	26	1981—277
	1976	26	
	1977	26	
	1978	115	
	1979	758	
	1980	1669	
	1981	2470	
2. Out of Col. 2 No. of those which are hit by the time limit.	1975	2	1981—17
	1976	2	
	1977	27	
	1978	98	
	1979	639	
	1980	1077	
	1981	12	
3. Reasons for pendency for cases shown in Col. 2 above.	<p>For want of certain records/ pricelists and classification disputes/want of reports from Chemical Examiner/DGTD; Non-approval of price/classification list; want of chartered accounts certificate shortage of staff; due to transfer of records to other ranges etc.</p>		6 RT 12 are pending on account of appeal filed by the assessee. The remaining 11 cases, which had been under investigation for allege. under-valuation are being analysed expeditiously.
4. Out of Col. 2 RT 12 returns since finalised-No.	1978	8	Nil
	1979	325	
	1980	515	
	1981	12	
Total amount of demands hit by time limit.	The amount of short levy involved is Rs. 36762.05 out of which a sum of Rs. 5337.02 has since been got deposited.		Nil

Note : Some of these cases which are pending for reasons stated in para 3 would be covered by provisional assessment and strictly speaking, may not be hit by time bar.

Description	Collectorate	
	Delhi	Goa
5. Procedure, if any, evolved or guidelines issued to ensure that all RT 12 assessments are finalised well within 6 months	<p>The Range Officers have been instructed to keep the assessment register upto date and to finalise the returns within six months. The invoices are being checked by the Inspectors by visiting the units to avoid delay in finalisation of the returns. The R.Os have also been instructed to forward the price lists/classification lists to the divisional officer immediately after receipt by them for approval by the Asstt. Collector.</p>	<p>Progress of disposal watched by monthly returns and reported to Board in monthly Administrative Reports.</p>

APPENDIX-II
(vide Part-ii)

ANNEXURE I

Modifications/Amendments made by the Public Accounts Committee in Draft Ninety-ninth Report relating to Union Excise Duties — Loss of revenue due to operation to time bar.

Page	Para	Line/Lines	Modifications/Amendments
33	1.53	6—8	Delete “the definition... of”
33.	1.53	11—15	Delete “a show cause... words”
35	1.56	3	Add “under Patna Collectorate,” after “Kumardhubi Engineering Works Ltd.”
37	1.58	4	Add “under Baroda Collectorate” after “an assessee”
38	1.58	1—2	Substitute “was necessitated” by “occurred”
39	1.58	4	Add “unsatisfactory” after “this”
40	1.60	1	Delete “reasons attributed by the”
40	1.60	2	Substitute “or” by “attributed”
40	1.60	3	Substitute, “were returns” by “inter alia to cases”
40	1.60	5	Add “returns” after “records”
42	1.63	2	Add “of short assessments” after “amounts”
42	1.63	4—5	Substitute “and... assesses” by which are not backend by proper show cause notices for want of any provision in rule 173 I for the issue of show cause notices could be legally enforced against assesses who choose not to place further debits in the Accounts current as required in that rule.”
43	1.63	5—7	Substitute “As... claims” by “This does not answer the point at all”.
43	1.63	10—11	Substitute “but ... notices” by “in the absence of of proper show cause notices for which there is no provision in that rule.”
43	1.64	11	Add “The Board, however, in their Circular No. 1/81-CX 6 dated 12 January 1981 clarified that the instructions of 13 March 1978 will <i>mutatis mutandis</i> apply in such cases. There is no indication in this Circular about the advice given by the Ministry of Law after “Ministry of Law.”

APPENDIX III

Conclusions/Recommendations

S.No.	Para No.	Ministry/Deptt. concerned	Conclusions/Recommendations
1	2	3	4
1	1.53	Ministry of Finance Deptt. of Revenue	<p>The provisions for recovery of duty in respect of short-levy, non-levy or erroneous refunds have undergone a number of changes, from time to time since the inception of the Central Excise Law. A period of three months had been prescribed in Rule 10 of the Central Excise Rules 1944 to suit the physical type of control in vogue before 1968. After the introduction of Self Removal Procedure (SRP) in 1968, the time limit was raised to one year for such assessees through the insertion of rule 178-J in the Central Excise Rules. The amendment to Rule 10 of the Central Excise Rules with effect from 6 August, 1977 replaced the time limit of one year/3 months by a uniform time limit of six months in normal cases and a period of 5 years in cases of fraud, collusion, wilful mis-statement, suppression of facts or contravention of rules with intent to evade duty. As the constitutionality and area of operation of Rule 10 had been a subject matter of controversy in the various High Courts and the Supreme Court, the Government on the recommendations of Central Excise (SRP) Review Committee incorporated Section 11A in the Central Excises and</p>

Salt Act, 1944 itself which came into force on 17 November, 1980 retaining the period of 6 months/5 years for recovery of duty and thereby omitting the corresponding provisions in the Central Excise Rules. Section 11A of the Act differed from the erstwhile Rule 10 of the Rules in so far as the "relevant date" from which the limitation for issue of show cause notice had to start, was concerned. While under the erstwhile rule 10, "relevant date" was defined to mean "the date on which the duty is required to be paid", under Section 11A, it has been defined to mean either the date on which the monthly return is submitted or where no monthly return is submitted, the last date on which the said return is required to be filed.

2. 1.54 Do.

The Committee are greatly concerned to note that there had been a loss of revenue amounting to Rs. 1.06 crores to the public exchequer due to non-issue of demand within the prescribed time limit in respect of assessments during the year 1979-80 in 49 cases. The reasons for the operation of time bar in these cases were attributed by the Ministry of Finance to non-compliance of instructions, non-detection of irregularities in time, failure to check duty liability from time to time, non-receipt of the Tariff Advice by the Range Officers etc. The conclusion is inescapable that the losses have primarily occurred due to the laxity and negligence on the part of the department. This conclusion is further substantiated by the Committee's examination in detail of 5 such specific cases pointed out by Audit in the paragraph under examination where it was found beyond doubt that the losses had mainly arisen due to the inordinate delay on the part of the department in raising demands/issuing show cause notices.

1	2	3	4
3.	1.55	Ministry of Finance Dept. of Revenue	<p>During examination the Ministry of Finance had maintained that the period of six months prescribed under Section 11A was considered by them to be prima facie adequate. Keeping in view this fact and considering that a substantial amount of duty had to be foregone during the year 1979-80 due to the failure on the part of the department in issuing the demands within the prescribed time limit, the Committee would strongly recommend that the Ministry of Finance should thoroughly analyse the reasons for these lapses, ascertain to what extent the delays were avoidable, identify the short-comings in the functioning of the department in this respect, responsibility of individual officers and take appropriate measures in order to avoid such losses in future. The Committee, in this connection, would like to emphasise the need for finalising the assessments promptly and conducting the checks and audit of assessee's accounts regularly.</p>
4.	1.56	Do.	<p>The Committee find that in one of the 5 cases viz. that of M/s. Kumardhubi Engineering Works Ltd. under Patna Collectorate engaged in the manufacture of steel castings, an irregularity was detected in March 1977. However, the demand notice for Rs. 16.64 lakhs for the period March 1975 to May, 1979 was raised on 7 February 1980 only and had to be served through the factory headquarters as the factory was by then closed. According to the Ministry of Finance, the delay in raising demand occurred as "it took some time to ascertain the exact value of the machined castings"....The Ministry have subsequently informed the Committee</p>

that as the case was alleged to be one of suppression of facts, the demands had been issued on the basis of five years period, and the case was stated to be under the process of adjudication. The Committee would like to be informed of the final outcome of the case.

5

1.57

Do.

The Committee find that a demand raised by the department against an underassessment of duty of Rs. 1.13 lakhs for the period 10 March, 1970 to 28 June, 1971 in respect of calcium carbide on M/s. Travancore Electro Chemical Industries Ltd. under Cochin Collectorate was set aside by the Appellate Collector on the ground of time bar. The loss has occurred on account of the failure of the department in taking timely action. According to the Audit Paragraph, the Ministry of Finance had informed the Audit that the assessee had requested for the adjustment of the short levy against his refund claim pending with the jurisdictional Assistant Collector. The Ministry of Finance have now stated that the request by the assessee for adjustment in refund claim was in respect of another demand and the demand for Rs. 1.13 lakhs had become time barred even at the time it was issued. Expressing regret over the incorrect information furnished to the Audit, the Ministry have added that, "the incorrect factual position reported by the Collector concerned at the Draft Audit para stage was based on an incorrect report received by him from the Divisional Officer". The Committee would, in this connection, like to be apprised of the precise legal position of adjustment of outstanding demand from the pending refund claims. The Committee would also like to be apprised of the specific reasons for delay in raising the demand.

45

1	2	3	4
6	1.58	Ministry of Finance (Deptt. of Revenue)	<p>The Committee find from another case pointed out by Audit that an appeal filed in September, 1971 by M/s Dharmpur Leather Cloth Company Ltd., an assessee under Baroda Collectorate manufacturing P.V.C. Film laminated textile fabrics against the classification approved by the department was dismissed by the appellate authority as time barred in October, 1974. A show cause notice and demand for differential duty for the period July 1970 to April 1971 during which the product was cleared on payment of duty at lower rate was, however, issued by the department in April 1976 only. On an appeal filed by the assessee against the said demand the appellate authority held in July 1979 that the demand was not sustainable under rule 10 of Central Excise Rules 1944. According to the Ministry of Finance the delay in raising the demand occurred as the price list was obtained from the assessee only in March 1976. From the information furnished by Ministry of Finance the Committee find that the assessee was requested to furnish the price list on 22 April, 1971 and subsequently reminded on 8 May, 1971, 27 August, 1971, 29 November, 1971, 9 January, 1975 and 14 July, 1975. Apparently, the matter was not pursued during the period December 1971 to September 1974 and August 1975 to February 1976. What is more intriguing is that the department did not take timely recourse to Section 14 of the Central Excise and Salt Act 1944 which empowers the Government to summon an assessee to furnish information/produce documents. The Ministry of Finance have not been able to adduce any plausible explanation for this lapse and have merely stated that, "it appears that the concerned sector officer</p>

(now expired) did not bring the facts of failure of supplying the information by the assessee to the notice of the higher authorities for invoking provisions of Section 14 in time". The Committee find the reply of the Ministry totally unconvincing. They cannot but reach at the conclusion that this is clearly indicative of the casual manner in which matters relating to raising of demand are being dealt with in the Department. The Committee would like to express their concern at this unsatisfactory state of affairs. The Committee recommend that while examining the reasons for delay in raising demands and formulating suitable corrective action as recommended by the Committee in an earlier paragraph, the Ministry of Finance should take necessary steps to obviate recurrence of the type of lapse dealt with in the instant case.

7

1.59

Do.

The Committee note that after incorporation of Section 11A in the Central Excise and Salt Act, 1944, the period of limitation for issue of the show cause notice for non-levy short-levy or erroneous refund of duty will run from the date on which the monthly return (RT 12 Returns) is to be submitted by assessees where such return is required to be filed and where no monthly return is submitted, the last date on which such return was to be filed and in any other case, the limitation will continue to run from the date on which duty is paid. From the information furnished by the Ministry of Finance the Committee find that in all the Collectorates taken together, 51,417 RT 12 Returns were pending finalisation on 1 June 1981 ranging over a period of 13 years from 1968 to 1981. Out of these, 8309 returns ranging from 1975 to 1981 were stated to have been hit by the time limit. According to the information furnished by the

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Ministry of Finance, out of 8309 returns, 3155 returns relating to 1975—1980 had since been finalised and an amount of Rs. 33,57,320 was lost due to operation of time bar.

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1.60

Ministry of Finance
Deppt of Revenue

The Ministry of Finance attributed this disquieting level of pendency *inter alia* to cases pending with High Courts, provisional assessments, non-production of records, returns pending with range offices, non-approval of classification/price lists, shortage, of staff, late receipt of report on samples, reorganisation of range offices, complicated nature of work etc. The Ministry of Finance have, however, stated that instructions were issued to the Collectors from time to time emphasising the need for timely finalisation of RT 12 Returns. In this connection, the Committee find that at the time of introduction of Self Removal Procedure it had been stipulated that RT 12 Returns should be finalised before the receipt of the next return i.e. within a period of one month and if for some reason it cannot be finalised within one month, its assessment should be completed within a period of 3 months of its submission in any case. The fact that returns pertaining to a considerable length of time, in some cases ranging upto 13 years, remain yet to be finalised clearly indicates that the Central Board of Excise and Customs have failed to exercise adequate control in ensuring prompt finalisation of RT 12 Returns. The Committee feel that most of the reasons given for pendency of returns are such which can be removed by toning up the working of the Department. As the crucial date for issue of show cause notice is now closely linked with the

submission of monthly return the Committee would strongly recommend that the Central Board of Excise and Customs should immediately look into specific cases, particularly those which are pending for more than 5 years, identify the reasons and find out how for the laxity of officers concerned has been responsible for these delays and take corrective measures. The Committee would like the Central Board of Excise and Customs to introduce a regular system of monitoring in respect of all Collectorates to ensure that the returns are finalised expeditiously.

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1.61

Do.

In this connection, the Committee note that presently no time limit has been specifically provided in the Central Excise Rules for completion of assessment memorandum on RT 12 Returns. The Committee would recommend that the Government should consider the desirability of prescribing a time limit in the Central Excise Rules for the finalisation of assessment in RT 12 Returns in order to avoid delay in finalisation of assessments and consequently the demands becoming time barred due to laxity on the part of the department.

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Do.

Another disquieting feature which came to the notice of the Committee during their examination was that no uniform procedure was being followed by different Collectorates for watching the finalisation of RT 12 Returns. The Committee recommend that the Central Board of Excise and Customs should look into the matter and take necessary measures to lay down uniform procedure for watching finalisation of RT 12 Returns.

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11.1.63 -do-

During examination, the Committee desired to know whether the amounts of short assessments shown due by Central Excise Officers on RT 12 Returns which are not backed by proper show cause notices for want of any provision in rule 1731 for the issue of show cause notices could be legally enforced against assesses who choose not to place further debits in the Accounts Current as required in that rule. In their note the Ministry of Finance have merely stated that, "Assessment on RT 12 Return is finalised in terms of the provisions of Rule 173 I. This rule does not provide for issue of show cause notice before the deficiency is pointed out by the assessing officer in the assessment memorandum on the return". This does not answer the point at all. The Committee would like to be apprised of the precise legal position in respect of recovery of the amounts shown due on RT 12 Returns in the absence of proper show cause notices for which there is no provision in that rule.

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12 1.64 Do.

The Committee note that in the newly introduced Section 11A of the Central Excises and Salt Act, 1944, there is no saving clause in favour of pending show cause notices issued under the erstwhile rule 10. To a pointed question of the Committee as to whether such notices lapsed in the absence of the saving clause in the new provision, the Ministry of Finance *inter alia* replied that the matter was still under examination in

consultation with the Ministry of Law. The Board, however, in their circular No. 1/81-CX-6 dated 12 January, 1981 clarified that the instructions of 13 March 1978 will *mutatis mutandis* apply in such cases. There is no indication in this circular about the advice given by the Ministry of Law. The Committee recommend that the matter should be expeditiously examined and the position made abundantly clear. They would like to be informed of the final results of the examination.
