P.A.C. 81

PUBLIC ACCOUNTS COMMITTEE, 1962-63

SIXTH REPORT

(THIRD LOK SABHA)

[Finance Accounts (Revenue Receipts)—Chapter VII of Audit Report (Civil), 1962]

PART I—REPORT

LOK SABHA SECRETARIAT
NEW DELHI
January, 1963
Magha, 1884 (Saka)

Price : Rs. 1·45 nP.

LIST OF AUTHORISED AGENTS OF LOK SABHA SECRETARIAT

ANDHRA PRADESH

1. G. R. Lakshmipathy Chetty and Sons, General Merchants & News Agents, Newpet, Chandragiri, Chittoor District (Andhra Pradesh).

BIHAR

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DELHI

34. Jain Book Agency, Connaught Place, New Delhi.

35. M/s. Sat Narain & Sons, 3141, Mohd. Ali Bazar, Mori Gate, Delhi.

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

37. J. M. Jain & Brothers, Mori Gate, Delhi-6.

38. The Central News Agency, 23/90, Connaught Circus, New Delhi.

39. The English Book Stall, 7-L, Connaught Circus, New Delhi.

40. Rama Krishna & Sons' 16-B, Connaught Place, New Delhi.

41. Lakshmi Book Stores, 42, M. M. Janpath, New Delhi.

42. Kitab Mahal (W.D.) Private Ltd., 28, Faiz Bazar, Delhi.

43. Bahri Brothers, 188 Lajpat Rai Market, Delhi-6.

CONTENTS

*Part II—Proceedings not printed. (One cyclostyled copy laid on the Table and five copies placed in the Parliament Library).

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(1962-63)

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SECRETARIAT

Shri H. N. Trivedi—*Deputy Secretary.*

INTRODUCTION

As authorised by the Public Accounts Committee, I hereby present this Sixth Report on the Finance Accounts (Revenue Receipts) of the Central Government and connected Audit Report, 1962. The Audit Report (Civil) 1962, in which the Comptroller and Auditor General of India has incorporated matters arising from the audit of Revenue Receipts relating mainly to Customs, Central Excise and Income Tax, was laid on the Table of the House on the 4th June, 1962.

2. In this Report the Committee have dealt with matters arising from the audit of Revenue Receipts relating to Customs, Central Excise and Income Tax.

3. The Committee examined the Finance Accounts (Revenue Receipts) Chapter VII of Audit Report (Civil), 1962 at their sittings held from the 23rd to 25th July, 1962.

4. This Report was considered and approved by the Committee at their sitting held on the 18th January 1963. A brief record of the proceedings of these sittings also forms part of this Report (Part II).*

5. A statement showing the summary of the principle conclusions/recommendations of the Committee is given in Appendix VIII. For facility of reference, these have been printed in thick type in the body of the Report.

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

7. The Committee would also like to express their thanks to the officers of the Ministry of Finance and the Central Board of Revenue for the cooperation extended by them in giving information to the Committee during the course of evidence.

NEW DELHI;
The 24th January, 1963.
Magha 4, 1884 (*Saka*).

MAHAVIR TYAGI,
Chairman,
Public Accounts Committee.

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

I

AUDIT OF REVENUE RECEIPTS

Unlike audit of Government expenditure, audit of 'Receipts' did not receive adequate attention in the past. It was because the audit of 'Receipts' was not ordinarily a statutory function of the Comptroller and Auditor General. But in virtue of his responsibility for the keeping of accounts of receipts it would be within his functions to verify that (a) sums are regularly recovered and checked against demand and (b) sums received are duly brought to credit in the accounts. In fact, the Public Accounts Committee had in the past considered the question of dealing with matters arising in connection with receipts as also the question of systematic audit of receipts.* They had also put a definite question to the then Auditor General whether the introduction of a systematic test-audit of receipts would not be well worth the cost involved and whether the revenues of the country would not improve considerably by reason of the existence of some audit supervision. As Auditor General, he replied that his answer was "emphatically in the affirmative" but he added that there were various difficulties to be faced. He further pointed out that, the expert audit machinery required for the undertaking of a real audit of receipts did not exist and that a period of about five years would be required for the necessary staff to be recruited and trained.

The audit of revenue receipts, particularly of Customs and Income Tax, had also engaged the attention of the Committee for a considerable time. The Public Accounts Committee (1950-51) in their Report on the Accounts of 1947-48 (Post-Partition) also discussed the question of purpose and scope of Audit of the Accounts of the Indian Union, and also whether the Committee should require the Comptroller and Auditor-General of India to give the Committee a report on the audit of Revenues and Receipts of the Indian Union. The Committee felt that unless they examined the receipt side of the accounts of the Indian Union, their examination of the accounts would not be complete.

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*Para 38 of P.A.C. Reprt on Accounts for 1923-24 and Paras 29 etc. of P.A.C. Report on Accounts for 1925-26.

In their Report of 1951-52* also the Committee expressed concern over the delay in the compilation of Finance Accounts. They observed that their work would not be complete until the audit of the Revenue side and Debt Heads was also taken up. The Committee's aim for the examination of the Finance and Revenue Accounts was to explore the various sources of revenue, how they should be developed and utilized. The Comptroller and Auditor General stated that with the idea of conducting a more thorough and scientific examination of Finance and Revenue Accounts, he had already set up a separate wing with Accounts Officers having financial and statistical background.

As according to Rule 308(1) of the Rules of Procedure and Conduct of Business in Lok Sabha the Public Accounts Committee are required *inter alia* to examine the Annual Finance Accounts of the Government of India also, it is but proper that the Comptroller and Auditor General should place before them the results of his audit in regard to revenue, debt, etc.

Under paragraph 13(2) of the Audit and Accounts Order, 1936 as adapted under the India (Provisional Constitution) Order, 1947, which remains in force by virtue of article 149 of the Constitution, the Comptroller and Auditor General may undertake the audit of receipts of any department of the Union only with the approval of the President. Though the receipts of certain departments like Railways, Posts & Telegraphs and Customs were being audited over a number of years, such major sources of revenue as Income Tax and Central Excise duties were not subjected to any regular audit check.

In view of certain difficulties encountered by the Comptroller and Auditor General as explained in the foregoing paragraphs, he could not undertake the audit of receipts, etc. as a regular arrangement. Now that the backlog of arrears in the preparation of the Finance Accounts has been practically cleared, the Comptroller and Auditor General made a suggestion to the Government in this regard and the latter have agreed that the Comptroller and Auditor General may undertake the audit of Income Tax Receipts and Excise Receipts (May-June 1959). Before this work could be taken up, it was necessary for the Comptroller and Auditor General to give adequate training to requisite staff of the Audit and Accounts Department. The Committee are glad to know that arrangements have now been made by the Comptroller and Auditor General to conduct this audit on a permanent basis from 1961-62. This will assist in ensuring

*Paras 6 & 40 of First Report of PAC (1951-52) and Appendix LI *ibid.*

that adequate measures are taken by the Government to secure effective check on the assessment, collection and proper allocation of Revenues. It will also enable the Committee to examine the receipts side of the Public Accounts on a systematic and regular basis.

2. The following ground has been covered upto the end of October 1961 by Audit:—

Income Tax Audit—Out of about 1,310 Income Tax Wards in the country, a test audit of assessment and other records has been carried out in respect of 235 wards.

Central Excise Audit—A test audit of the assessment documents and other records of the Chief Accounts Officers' Offices in the fourteen Central Excise Collectorates has been carried out and in addition, a test audit of the initial records and accounts mentioned in respect of 203 Central Excise Ranges (Out of about 1,700 Ranges in the country) has been carried out.

3. In the following paragraphs the Committee shall refer to some of the important points that they considered in the course of their examination of Audit Comments on the accounts relating to Customs, Central Excise and Income Tax Receipts.

II

CUSTOMS

Variations of the actuals from the estimates under "Customs Duty"— pages 91—93, *para* 71:

4. Against the Budget Estimates of Rs. 162·50 crores (net) under the Revenue head "1—Customs", the actuals for the year 1960-61 were Rs. 170·03 crores (net). The Committee desired to know the reasons for variations in the budget estimates and the actuals for the year 1960-61.

The witness stated that the estimates were prepared some time towards the end of the previous year when the actuals of the earlier year as also of the first six months of the current year were in hand. These actuals were compared to see how the things were moving. Besides, the foreign exchange position was also taken into consideration in estimating the revenue.

To a question as to what extent these variations in estimates and actuals could be narrowed down, the witness stated that in a developing economy, the probability of fluctuations would exist. **While agreeing that small variations in estimates and actuals cannot altogether be avoided, the Committee are of the view that there is considerable scope for narrowing down these variations.** As an instance, the Committee are not convinced of the reasons for the very wide variation in the customs imports against the heading "Oil batching fuel and lubricating" where the actual receipts were only Rs. 3·78 crores against the budget estimates of Rs. 12·75 crores.

As regards the tendency to keep the assessments low to be on the safe side, the witness stated that in some cases the estimates were low and in some cases high also; *e.g.* under protective duties, sea customs exports etc., the actuals were less.

The Committee, however, note that such instances are not many. More often than not the tendency is to underestimate the revenue. The Committee are of the view that this tendency needs to be checked.

In reply to a question whether at the time when new taxes were levied the estimates were put down at a lower level to justify new taxation, the representative of the Ministry assured the Committee

that this was not so. He added that at the time of levying a new tax, due to the non-availability or inadequacy of the actual statistics of production and consumption of articles at that stage the variations were sometimes large; but once a tax was imposed, the figures improved. In the first year, the recovery might vary but in subsequent years the recovery was closer to the estimates. The witness further added that taxation proposals were made after taking into consideration the total overall position of the budget, including changing economy, need for restrictions on consumption of various articles, etc. **The Committee suggest that the feasibility of basing new levies on adequate statistical data to avoid wide variations may be examined.**

Under-assessment and administrative delay in recovery of customs duty on Government Consignments—page 94, para 72.

5. Customs duty in respect of a consignment of sugar imported by the Ministry of Food in February 1954 was under-assessed to the extent of about Rs. 6·20 lakhs. Another under-assessment to the extent of Rs. 53,085 was noticed in respect of a consignment of diesel trucks imported by the Ministry of Defence in February, 1954.

It was pointed out by Audit that in the case relating to import of sugar by the Department of Food, the short levy arose because the 38th edition of Tariff Schedule effective upto 1953-54 did not incorporate the notification issued on 6th February 1954 enhancing the rate of duty from Rs. 7 to Rs. 11 per cwt.

In evidence, the witness stated that the effective rate of duty on sugar prior to 6th February, 1954 was Rs. 7 per cwt. On 6th February 1954 by a notification issued, it was increased to Rs. 11. A similar notification with some difference in technicalities was again issued on the 22nd February, 1954; but it was effective from 6th February, 1954. The Indian Customs Tariff Book unfortunately gave only the notification of 22nd February, 1954. This particular assessment took place much later, but unfortunately in 1956 the people, who were assessing it, proceeded on the basis that the rate of duty was still Rs. 7 per cwt. The Committee were also informed by the Ministry that copies of the notification issued on 6th February, 1954 were sent to all the Customs authorities and that there were standing instructions that the book then in force should be corrected immediately and kept up-to-date.

The Committee are surprised to note that the important books of reference like Indian Customs Tariff Book, the clauses of which have far-reaching financial implications are not kept up-to-date and assessment of duty is based on uncorrected schedule. It is also clear that

the supervisory authorities who were expected to check the correctness of the assessment also overlooked the amended schedule enhancing the rate of duty. The Committee feel that in a department responsible for assessment and collection of revenue, the various schedules and codes prescribing rates of assessments etc. should be maintained up-to-date and any laxity in this regard should be viewed with concern. They would urge that during internal inspections of the offices dealing with the assessment of revenues, taxes, duty etc., these points should inter alia be looked into and any slackness in this regard should be suitably taken up.

The Committee understand that the Ministry of Food and Agriculture (Department of Food) had paid the amount due voluntarily, even though the claim was time-barred. **They, however, feel that in regard to Government dues recoverable by one Government Department from the other, the question of 'time-barred' should not be raised in as much as the exchequer is common. The Committee would also suggest that the question of the payment of Customs Duty to the extent of Rs. 53,085 in respect of consignment of diesel trucks imported by the Ministry of Defence in February 1954 should be pursued to finality with the Ministry of Defence and steps taken to recover the dues from that Ministry. The Ministry of Finance should not forgo the claim yielding to the time-bar plea.**

Assessments under the 'Note Pass' Procedure—page 94, *para* 73.

6. Under the 'Note Pass' procedure, which is an extra-legal concession granted to Government Departments and Government Undertakings, goods are allowed to be cleared on importation before payment of duty or even before assessment, on the clear understanding that the necessary details and relevant documents would be made available to the Customs authorities within a period of three months of the date of clearance of the goods. As many Government departments are not in a position to furnish invoices and full particulars at the time of importation of goods, this concession has been allowed with a view to avoid incurring of demurrage and delay in the execution of national undertakings. However, 20,461 such "Note Pass" cases were pending finalisation in the Customs Department on the 1st November, 1961, as indicated below, due to failure on the part of the importing departments concerned, to submit the relevant documents in time:—

Year	No. of cases	Name of the main defaulting departments
1951-56	143	Hindustan Steel Limited
1957-61	20,030	Director of Supplies & Disposals, Ministry of Works, Housing & Supply.

The Customs duty recoverable in the above cases cannot be determined till the relevant documents are submitted. The estimated Customs Duty recoverable from Hindustan Steel Limited, in respect of goods imported for Bhilai Project only was approximately Rs. 7·5 crores.

The Committee were informed by Audit that the Government of India had issued instructions to the Collectors of Customs in 1956 to withdraw the 'Note Pass' concession given to the Government Departments in cases of chronic failure to furnish the documents within a reasonable time, but that they were not followed in actual practice.

In reply to a question as to why this concession was being continued when the Government had ordered in 1956 to withdraw it in chronic cases, and under what circumstances the 'Note Pass' concession was withdrawn and a case treated as a bad case, the witness stated that considering the difficulties experienced with the Government Departments the question would be whether the concession should not be withdrawn. It was further stated that in certain cases it was not possible to assess the duty because the value of the imported goods could not be determined till the entire import was completed. With a view to avoiding heavy loss both to the importing party and the Government, this concession was being allowed to be continued. **The Committee do not quite understand the propriety of issuing the instructions in 1956 when those instructions were not observed in actual practice. They would like to know whether those instructions are still in force or have been withdrawn, and whether they have at all been enforced in any individual cases.**

The Committee feel concerned about the question in view of the fact that there were 20,461 'Note Pass' cases pending finalisation in the Customs Department. They have been informed by the Ministry of Finance that this figure has since come down to 13,000, out of which about 9,600 cases were more than three months old. In about 3,400 cases including the case of the Hindustan Steel Limited in respect of goods imported for Bhilai Project involving a duty amounting to Rs. 7·5 crores, the assessment had been finalised but the duty still remains to be paid. **The Committee would like to know the measures taken by the Central Board of Revenue to clear all these cases and to effect recoveries of amounts due. They would await a report indicating the latest position in this regard. They would also like to know the steps proposed to be taken to avoid recurrence of such heavy arrears in future.**

Delay in recovering Customs dues on unclaimed goods from the Bombay Port Trust—page 95, para. 74.

7. The Bombay Port Trust is responsible for auctioning unclaimed and abandoned goods lying in the Port and adjusting the sale proceeds in accordance with certain priorities prescribed in Section 65 (read with Section 61) of the Bombay Port Trust Act, 1879. According to this provision, 'moneys payable to Government' take precedence over the dues payable to the Port Trust. Until January 1950, the Customs Duty payable on such goods was paid to the Custom House on such priority basis but thereafter certain fines also became payable under the Import Trade Control Regulations. The Customs Department held that those fines should be treated on a par with Customs Duty for the purpose of priority adjustments out of auction sale proceeds. Although the correctness of that view was endorsed by the Ministry of Law, the Port Trust did not agree. At the instance of the Central Board of Revenue, the matter has been pursued with the Port Trust by the Ministry of Transport since 1955 but no settlement has been reached so far. Consequently, the sale proceeds of such goods have been lying with the Port Trust for over 11 years. As at the end of July 1961, the total sum so due to Government was Rs. 29·61 lakhs, of which Customs Duty amounts to Rs. 9·73 lakhs and I.T.C. fines to Rs. 19·88 lakhs.

At the instance of the Committee, the Ministry of Finance furnished a note indicating the latest position in this respect. (Appendix I).

The Committee note from what has been stated by the Ministry that the question is one of interpretation of the legal provisions of the Sea Customs Act (Sections 88, 184 and 207) and the Bombay Port Trust Act (Sections 61, 64, 64A, 65 and 69) and not of inconsistency in law. The Ministry of Finance have assured the Committee that attempts have been made to settle the matter by discussion and negotiation and the question of amending the Act or Acts would also be considered by the appropriate Ministry or Ministries.

During the course of evidence, the Committee enquired of the Secretary, Department of Transport as to what steps had been taken by that Department to bring about a settlement between the Customs authorities and the Port Trust. The Transport Secretary stated that a compromise on the lines of certain arrangements agreed to between the C.B.R. and the Calcutta Port Trust had been suggested to the Bombay Port Trust, who had accepted the compromise in principle. Their acceptance had been conveyed to the C.B.R. in May last. The matter was at present under the consideration of the C.B.R. The Secretary, Department of Revenue stated that the compromise proposal would have to be carefully examined in all its aspects. He

further added that the rates charged by the Bombay Port Trust were higher than those charged by the Calcutta Port Trust, and if the arrangements obtaining at Calcutta were extended to Bombay, sufficient amount might not be left to cover I.T.C. fines. The Secretary, Department of Transport stated that within the broad principles of the arrangements obtaining at Calcutta, details as to rates and averages could be worked out by agreement between the parties so as to leave a sufficient margin to cover I.T.C. fines.

The Committee are concerned to observe that the differences between the Customs Department and the Bombay Port Trust had remained unresolved for a period of over 11 years. Such a state of affairs would indicate lack of proper coordination between the concerned Ministries/Departments. The Committee trust that the Ministries of Finance and Transport and Communications would smoothen out their differences in a spirit of cooperation and arrive at agreed arrangements without any further delay.

III

UNION EXCISE DUTIES

Variations of the actuals from the estimates under "Union Excise Duties"—pages 95—97, para 75.

8. Against the Budget Estimate of Rs. 380·01 crores under the revenue head "II—Union Excise Duties", the actuals for the year 1960-61 were Rs. 416·35 crores. The variations between budget estimates and actuals and reasons in respect of certain important minor heads are indicated below:—

(In lakhs of rupees)

Basic Duties	Budget Estimates	Actuals	Increase (+) Short-fall (—)	Reasons for Variations
Motor Spirit, Matches, Cotton Cloth, Textiles, Cement and other items collectively .	209,48	230,05	+20,57	
Sugar . .	59,30	55,09	—4,21	Grant of rebate on excess production and concession on sugar-cane crushed during the season, etc.
Steel Ingots .	12,00	13,14	+1,14	Increased production of steel.
Tyres & Tubes	10,56	13,54	+2,98	Progressive increase in indigenous production.
Tobacco .	51,04	59,41	+8,37	Mainly increased consumption.
Vegetable non-essential oils . .	13,09	11,68	—1,41	Grant of concessions to small scale manufacturers.
Refined Diesel Oils & Vaporising oils .	29,04	36,38	+7,34	Increase in rate of duty.
	384,51	419,29	+34,78	
Deduct Refunds & Drawbacks . .	4,50	2,94	+1,56	
Grand Total—Union Excise Duties .	380,01	416,35	+36,34	

In this connection the Central Board of Revenue has observed—

> The realisation of Central Excise revenue is related to the actual clearance of various excisable goods which in turn is largely dependent on the trend of production and consumption, price level, facilities for movement of excisable goods from the centres of production to the different areas of consumption and a variety of other factors. In a period of rapid development, such as the present it is inevitable that there should be strains and stresses developing from time to time in some point or the other in the country's economy, upsetting the estimate of production and clearance in respect of individual commodities. In this context, the actuals are bound to differ from the budget estimates which is a forecast of revenue made well before the commencement of a year.
>
> Apart from this general reason for variations, there was another reason. In the Budget presented on the 28th February 1960, the rates of duty were raised in respect of some commodities and new levies were imposed on certain commodities. In respect of new levies, the utmost secrecy has to be maintained until the presentation of the Budget and consequently the basic material for estimating the revenue from new excises has to be collected with a good deal of circumspection and this causes an inevitable handicap in making an accurate forecast of the revenue potential."

The Committee desired to know how much of the net increase of Rs. 36·34 crores in revenue over the estimates was due to (i) incorrect estimation on account of increase of production and (ii) incorrect estimation in the case of new commodities because of the reasons of secrecy and the reasons for such variations and measures taken to improve the position. The witness stated that sometimes during a year the rate of duty itself was changed or additional duties were levied. Then changes came as a result of the presentation of the new Budget on the 28th February.

In this connection, the Committee desired the Ministry to submit a note on the following points:—

(i) Break-up of the variation of Rs. 36·34 crores under the following reasons—

  (a) Incorrect estimation on account of increase in production; and

  (b) incorrect estimation in the case of new commodities because of the reasons of secrecy.

(ii) A note indicating the measures taken or proposed to be taken to improve the position of budgeting of revenue receipts.

As regards (i) above the Ministry have furnished a note (*vide* Appendix II) and given break-up of the variation thus—

	Rs.
(i) Variations from estimates on account of increase in production	27·62 crores
(ii) Variations from estimates in the case of new commodities due to reasons of Secrecy	5·80 crores
(iii) Collection of new excise duties introduced through Finance Bill 1961	2·92 crores
TOTAL	36·34 crores

They have stated that the excess of Rs. 27·62 crores was mainly contributed by tobacco (Rs. 9·93 crores), refined diesel oil and vaporising oil (Rs. 7·34 crores) and industrial fuel oil (Rs. 5·01 crores). Under tobacco, the bulk of the variation was in respect of cigarettes and cigarette tobacco. When the budget proposals were framed early in 1960, index numbers of production upto 1958-59 were alone available and their estimates were based on trends revealed therein. The relevant index numbers, as published in the Statistical Handbook of the Central Statistical Organisation (1961 edition) are as follows:—

Year	Index number of Tobacco manufacturers	General index of industrial production
1956	122·6	132·6
1958	139·1	139·7
1959	150·0	151·9
1960	178·7	170·0

While working out the figures for the budget estimates for 1960-61, it could not reasonably have been anticipated that the level of industrial production would record a much higher jump than the past trends. In point of fact, the quantum of increase in the year 1960 was of the order of what had cumulatively taken place in the three preceding years. This could not be anticipated. The Ministry have further stated that in a period of rapid economic transition and the number of uncertainties that this entails, it is particularly difficult to foresee with a greater degree of exactitude the actual variations in the volume of production of the large number of excisable goods.

In these circumstances, the Ministry have pleaded that variations between the sanctioned budget estimates and actuals of the order of 3 to 4 per cent. have to be considered to be within the range of normal error.

The note about item (ii) regarding measures taken or proposed to be taken to improve the position of budgeting of revenue receipts is still awaited. The Committee propose to deal with this subject in greater detail in their subsequent report on Finance Accounts. Here they would only like to observe that while appreciating the difficulties mentioned above in the matter of correct estimating of excise revenue, they are of the view that there is still considerable scope for improvement. As pointed out earlier, the actual collections under the Revenue head "II—Union Excise Duties" were Rs. 416·35 crores during 1960-61, against the budget estimates of Rs. 380·01 crores. The variation comes to Rs. 36·34 crores (approximately 9·6 per cent.). The Committee consider this variation to be very much on the high side, and are of the view that it calls for special efforts to improve the technique of budgeting of revenue receipts.

9. During the course of evidence, the Committee enquired whether it was a fact that the estimates were frequently found to be lower than the actual collections due to the initial assessment by lower authorities being low. It was explained by the Comptroller and Auditor General that so far as Customs and Excise budgets were concerned, the ordinary practice was not to obtain figures from lower authorities at the budgeting stage. The Department had got the requisite information and the estimates were based on past and current trends regarding the production of the articles such as cloth, tyres, etc., figures regarding import of oil etc. There was thus no scope for the estimates being vitiated by any incorrect assessments made by the lower staff. The Secretary of the Ministry agreed with the above. He further added that the Ministry were conscious that in a matter like the excise, where the assessment was done in a rather distant or out of the way place, there was scope for proper checks by officers; and that this was being done by frequent inspections and audit of books of parties concerned. He further stated that there was also a well-formed vigilance branch in the Ministry itself, and whenever complaints were received they were referred either to the vigilance branch or to the police authorities.

The Committee hope that the vigilance branch will be able to tone up the assessment work properly and constant efforts will continue to be made to plug all possible loopholes leading to leakage of revenue whether it is due to under-assessment or any other factors.

Under-assessment of duty on oils, paints and enamels due to wrong interpretation of the term "year"—page 97, para 76.

10. With effect from 1st October, 1960, excise duty on oil, paints and enamels was required to be levied at certain concessional rates prescribed by the Government of India. The concessional rates were applicable only to those manufacturers whose output for the year did not exceed 1,000 metric tonnes. This concession was allowed by the Department to a certain manufacturer whose production during the calendar year 1960 was less than 1,000 metric tonnes, but whose production during the financial year 1960-61 was more than 1,000 metric tonnes. It was felt in audit that the term 'year' should be taken to mean the financial year, and a clarification was sought from the Government of India on this point. The Government clarified that for the purpose of the above concession 'year' would mean the financial year. In the light of this clarification, a sum of Rs. 47,076 was found recoverable from the party concerned.

It was stated by the Ministry in February, 1962 that the demand for duty had been made but the party was disputing it.

The Committee desired to know as to why the term 'year' was not defined properly and what steps had been taken to recover the amount in question. The witness stated that in the body of the notification as well as in the proviso it was clearly mentioned 'financial year'; but in the schedule the term used was 'year'. The witness maintained that it was not a question of any ambiguity but a question of failure of personnel in a particular case.

The Committee are not happy that under-assessment to the tune of Rs. 47,067 should have occurred due to defective drafting of the notification and the relevant schedule. It should have been drafted in more precise terms when the intention of the Government was that "year" means "financial year". In financial matters no defects or lacuna in the wordings of the notifications, etc. which are fraught with the risk of under-assessment and/or leakage of revenue should have been allowed. Precision and clarity of expression being the very essence of all legal and statutory documents, drafting of notifications etc. should be given special care in future and any lapses in this regard should be brought home to the officers responsible therefor. The Committe desire that this should be impressed upon the authorities concerned so that cases of the type revealed in this audit para do not recur.

Coming to the point of recovery of the under-assessed amount of Rs. 47,067 which the firm is stated to have been disputing, the Committee were informed by the Ministry that the party concerned,

which was a very well known firm, has been asked to make the payment immediately and that there would be no difficulty in realising the dues. **The Committee would like to know when the dues are fully recovered.**

Incorrect assessment of Central Excise Duty—pages 97-98, para 77

11. From 12th August, 1960 onwards, excise duty on vegetable non-essential oil taken for the manufacture of Vanaspati (vegetable product) was being assessed in the case of one factory at the bleached stage instead of at the raw stage as contemplated in the orders of the Central Board of Revenue. Under this practice, the raw oil products by the factory escaped duty to the extent of the refining loss. The Board, to whom the case was referred, agreed with the view held by audit and directed the Department to raise demand for the difference in duty for the incorrect assessments made in the past. Assessment is being made at the raw stage with effect from 1st July 1961 and a demand for differential duty of Rs. 12,370 in respect of incorrect assessment made between 12th August, 1960 and 30th June, 1961 has been raised against the factory concerned. The amount is pending recovery. Audit was informed on 14th February 1962 that the assessee had filed an appeal to the Central Board of Revenue.

The Committee desired to know the circumstances under which the method of assessment of duty was changed from the raw stage to the bleached stage. The witness, while giving the background of the case, stated that the duty was first imposed on vegetable non-essential oils. Anybody who produced upto 125 tons was not taxed. Some of the oil which had not been taxed came to the vanaspati factory and was converted into vanaspati and thus escaped duty at raw stage. To remove this inequality, it was decided that there would be no free sector in vegetable non-essential oils.

The Committee feel concerned to note that such lapses as have been reported in the audit para should not have been detected by the departmental officers themselves and the audit had to point them out. They consider it to be a serious lapse on the part of the departmental officers and particularly of the inspecting staff of the Central Excise Department.

12. With a view to examining the various aspects of the case, the Committee desired the Ministry of Finance to furnish them the following information:—

(a) When the factory was producing only raw non-essential oil, was it being assessed at raw stage?

(b) If so, under what circumstances was the method of assessment of duty changed from raw stage to bleached stage? What action had been taken against the officers responsible?

(c) From what date was the old method of assessment at raw stage revived? What was the amount of such assessment of duty due to enforcement of assessment at bleached stage and what was the period covered?

The Ministry have since furnished the requisite information to the Committee.

As regards (a) above, the Committee observe that the factory had at no time been producing only raw vegetable non-essential oil. It had all along been producing both raw oil and vegetable product.

Regarding (b), the Ministry have stated that the change-over of the assessment from the raw stage to the refined stage was given effect to in the present case from the 12th August, 1960 by the local Central Excise Officers in the light of their own interpretation of the Board's orders contained in the letters No. F. 21/49/58-CX-III, dated the 29th January, 1960 and 8th April, 1960. In extenuation, the Ministry have stated that these instructions were misinterpreted by the local Central Excise Officers and were applied to this factory changing the assessment of the vegetable non-essential oils from the raw stage to the bleached stage. **With a view to ensuring that cases of misinterpretation of this type do not occur in future, the C.B.R. may consider the desirability of issuing clear instructions in the matter to the local Central Excise Officers. As regards the action taken against the officers responsible in the matter, the Committee would like to await a note from the Ministry.**

In regard to (c), it has been stated by the Ministry that the assessment of raw stage was revived with effect from 1st July 1961 and the amount of short assessment of duty due to assessment at bleached stage amounting to Rs. 12,370 covering the period 12th August, 1960 to 30th June 1961 has been recovered.

Omission to levy duty on shortages noticed in stock of cloth—page 98—para 78

13. In the course of audit of the accounts relating to a cloth mill in one Central Excise Collectorate, it was noticed that duty had not been levied on 4,218 square yards of cloth manufactured by the mill but found short in the course of verification of the stocks. In the absence of a valid explanation for the shortage, it was felt that this quantity of cloth might have been removed without payment of

duty and audit pointed out the necessity for investigation with particular reference to the records maintained by the mill. The Department conducted an investigation into the shortages and on completion of it issued a notice of demand for Rs. 2,28,455 for the period from 30th June, 1958 to 11th January, 1961 on the assessee. Recovery of this demand is yet to be made.

Audit was informed in February, 1962 that the mill had remained closed for a long time prior to the taking over of the management by the Authorised Controller from 15th September, 1961 and the latter had intimated on 25th October, 1961 that since the account books were in the custody of the Police it would take some time before any reconciliation of discrepancies was possible.

The Committee desired to know whether the shortage occurred in any one particular year or went on for a period of years, the reasons for the supervisory staff not checking it in time and whether the duty involved had been recovered. The witness, while giving the background, stated that the mill in question had been closed down on 10th September, 1960 due to some economic reasons and thereafter stock was taken. It was not correct to say that the shortage went on for a period of years. The shortage was of the order of Rs. 13,000. As regards fixation of responsibility, an enquiry was necessary which was being held.

It was further stated that in a running mill it was only at the end of the year on a certain date that stock-taking was done when officers of the Excise Department were present and a joint report on the stock position was submitted. Besides, the Excise Department kept a watch over the packed goods, loose cloth etc. Whenever any inspecting officer went there, he would make a test check of the bales and stock card. In addition, the Excise Department was supposed to have a gate control to see that nothing moved out without proper authority. In the present case it was only after two years when the new management took over the mill and conducted a physical verification of the stock that the shortage was discovered.

The Committee desired to have further details bearing on the various aspects of the case (Appendix III). The note furnished to them by the Ministry in this regard was examined by the Committee and their observations are contained in the following paragraphs:

(1) *Non-detection of the shortages in the stock of cloth by the Central Excise Department during the period June* 1958 *to January,* 1961

The Ministry of Finance have stated in their note that the Central Excise Department itself had found certain discrepancies in stock

of cloth in 1958. From the letter quoted in support by the Ministry, the Committee find that those discrepancies related to the period upto 30th June, 1958. They observe that further action taken on the letter mentioned by the Ministry in their note (*viz.* C. No. ST/58/406, dated the 7th August, 1958) had not been indicated. **It would appear that the matter was either not pursued or that the management had given an explanation which was accepted by the Inspector. Otherwise, investigation would not have started after audit pointed out the shortages. Obviously, the investigations conducted by the Central Excise Department were at the instance of audit and even the detailed investigation culminating in the issue of demand notice for excise duty of Rs. 2,28,455 was after the audit had pointed out the need for such an investigation.**

(2) *Cross check of quantities produced by the Mill with the figures of certified stock as furnished to the Income Tax Department*

The Ministry of Finance have stated in their note that—

(i) the Income Tax returns are filed long after the excise assessment takes place and consequently cross check with the certified stocks as furnished to the Department is not normally resorted to.

(ii) the Income Tax Department is primarily interested in the total value of the stocks and not in the quantity and its spread over different varieties and processes.

As regards (i) above, the Committee would like to point out that the question was raised with reference to the statement made by the Ministry that owing to the fact that the account books, stock registers etc. of the Mill had been seized by the Police authorities, they were not in a position to establish the actual figure of shortages. It was in that context that the Central Excise Department could have looked into the Income Tax returns and statements filed by the assessees for the assessment years 1959-60, 1960-61 and 1961-62, to find out whether in the statements accompanying the returns, any shortages have been admitted by the assessee.

As regards (ii) above, the Committee understand from Audit that the Ministry's reply does not disclose a correct appreciation of the working of the Income Tax Department. The primary function of the Income Tax Department is to check the accuracy of the income returned and this depends not only on the value of the stocks as disclosed but also on whether the stocks themselves (quantitatively) are properly disclosed. It is for this reason that elaborate statements are obtained particularly from the textile mills in which the

Mills are asked to give the various stages of production and the wastages at each stage together with a reconciliation of stocks at every stage.

In view of what has been stated above, the Committee feel that it could have been possible for the Central Excise Department to effect a cross check of the quantities produced by the Mill with reference to the figures of certified stocks as furnished by that Department to the Income Tax Department. The Committee suggest that the practice of 'cross-check' should be adopted in future wherever feasible to resolve doubts and to get the correct factual data.

(3) *Detailed enquiry into the shortage of cloth*

The Ministry have stated *inter alia* that the Assistant Collector of Central Excise, Nagpur is conducting some further investigations of certain points arising out of the joint report of the Examiner of Accounts and the Superintendent of Central Excise and that the final position would emerge after this has been completed. **The Committee would await a further report in this matter which may be expedited.**

(4) *Disciplinary action against the officers who failed to detect the discrepancy.*

It has been stated in the Ministry's note that it would be premature to consider disciplinary proceedings since the investigations regarding stock discrepancy are not complete. **The Committee desire that the matter should be pursued to finality and the final out-come of the case made known to them.**

Failure to assess Excise Duty in time and consequent withdrawal of claims as time-barred—pages 98-99, para 79

14. 'Sindur' and imitation vermillion manufactured by a company were exempted from payment of duty under the Ministry of Finance Notification of 29th April, 1955, exempting pigment and dye-stuff from payment of Central Excise duty. Subsequently, in the Ministry of Finance Notification dated 3rd December, 1955 pigment and dye-stuff containing binding agent or oil were declared liable to duty. No action was taken till 5th November 1956 to ascertain by chemical examination if 'sindur' and imitation vermillion, manufactured by the said factory, were liable to duty under the revised notification of 3rd December 1955. Samples taken on 5th November 1956 were declared as excisable by the Chemical Examiner on 24th November, 1956. Demand notice for excise duty amounting to Rs. 68,743 on the production for the period from 3rd December, 1955 to 13th March, 1957, the date from which the duty was withdrawn by the Government, was issued to the party on 26th August, 1957.

However, only a sum of Rs. 6,204 being the duty on clearances from 7th December, 1956, the date on which the party had given an undertaking for payment of duty, was declared recoverable by the Collector on appeal and the recovery of Rs. 62,539 being the duty on the production for the period from 3rd December, 1955 to 6th December, 1956 was withdrawn as time-barred under Rule 10 of the Central Excise Rules.

In extenuation, the representative of the C.B.R. stated that though 'sindur' came in the category of pigments containing binding agent or oil, the proportion of binding agent or oil in it was very small, the main ingredient, powdered pigment, constituting 95 per cent of the product. Further, the staff of the Central Excise Department was mostly non-technical. He, however, admitted that soon after the issue of the Ministry of Finance revised Notification dated the 3rd December, 1955, steps should have been taken by the Excise Range Officer concerned to ascertain by chemical composition whether 'sindur' and imitation vermillion contained binding agent or oil and, as such, came within the purview of the revised Notification. Due to sheer inertia he did not bother to do so, and in not having done this till November, 1956, the Range Officer concerned had erred.

As regards the disciplinary aspect of the case, the representative of the C.B.R. stated that the matter had been investigated by the Collector who had come to the conclusion that the mistake on the part of the officer concerned was not *mala fide*. At the instance of the Committee, the matter was further investigated by the Director of Inspection (Customs and Central Excise) and the Ministry have since informed the Committee that the Inspector, who was posted at the factory during the crucial period, was new to the factory excises and therefore, continue to allow clearance of 'sindur' and imitation vermillion without payment of duty according to the practice existing before he joined the factory. There is also no positive evidence to show that the notification in question had in fact been received by him. The Inspector who replaced him on 30-5-1956 was also new in service and failed to detect the omission. In the circumstances, it has not been possible to fix the responsibility on any of these officers.

The Committee are hardly convinced with the explanation furnished by the Ministry. They hold the view that the officers charged with responsible jobs involving financial interests of Government should be conscientious enough and quite alive to their duties and responsibilities, and any sort of inertia in that regard would mean nothing short of dereliction of duties for which they should be suitably dealt with.

One more point, which the Committee view with concern in the present context, is the posting of inexperienced officers in charge of factories manufacturing excisable commodities. The contention of the Ministry that the manufacturers in this case declared the composition of 'sindur' as nothing but 'barytes powder' and 'pigment dye' stuffs processed in Edge Runner Mill, is not tenable. They do not understand how the Central Excise Officer satisfied himself that the composition as given by the producer did not contain any binding material or oil making it liable to excise duty. They would urge that in selecting men for such jobs all round suitability, aptitude and adequate experience should *inter alia* be the weighing factors.

15. Referring to rule 10 of the Central Excise Rules, the Committee pointed out that this Rule applied to cases where a duty had been wrongly levied or a refund had been issued. As this was a case where no duty had been levied at all, it was not clear how the Collector had applied this Rule to the present case. The representative of the C.B.R. stated that opinion was divided as to the interpretation of Rule 10. According to one point of view, though pigments and dyes stuffs were exempted from the payment of Excise duty under the Ministry of Finance Notification of March, 1956, these remained on the list of excisable items, and so, for the purposes of the Central Excise Rules, were deemed to have been assessed at 'nil' rate. Asked whether the C.B.R. agreed with the Collector's orders in this case, the witness could not give a categorical reply. He, however, added that even if they had not agreed they could not do anything in the matter, as in excise, unlike in customs the Board had no powers to review the Collector's orders. Further asked whether the C.B.R. had since taken a decision regarding the correct interpretation of Rule 10 and issued instructions for the guidance of Collectors, the witness stated that general instructions on the basis of the Law Ministry's opinion on the application of Rule 10 and 10(A) had already been issued. The question of the validity of Rule 10(A) had recently been gone into by the Supreme Court who held it *intra vires* the Act. It was proposed to issue fresh instructions on the basis of the Supreme Court's judgment.

The Committee are surprised to note the Ministry's statement that the C.B.R. had no power to review the Collector's Orders. When the Collectorate are under the organisation and administrative control of the C.B.R., it is essential that they be responsible and answerable to the C.B.R. The Committee desires that the Central Board of Revenue should re-examine the position and initiate measures necessary to ensure that the Collector's orders are

subject to review by the C.B.R. This will reduce instances of errors of misconstruction, if any, on the part of the former and will also afford an opportunity to the latter to rectify mistakes.

Arrears of assessed demands—Pages 99-100—*para* 80.

16. The Central Excise Rules framed under the Central Excises and Salt Act, 1944 lay down that no excisable goods shall be removed from any place where they are produced or manufactured until the excise duty leviable thereon has been paid. However, in cases where such goods are:—

(a) deposited in a store room or in a warehouse approved by the Collector of Central Excise, or

(b) exported outside the country in the manner and subject to certain conditions, mentioned in these rules,

immediate payment of Excise duty on removal from the place of manufacture or production need not be made. If any goods are, in contravention of the aforesaid rules, removed from the authorised places of storage, the duty leviable on such goods has to be paid by producers or manufacturers thereof, upon written demand by the Central Excise official. When duties have been provisionally levied due to dispute as to the description, or value of goods, demands for the differential duties are issued subsequently on final assessment.

The amount of demands outstanding as on 1st April, 1961 was Rs. 3,06·38 lakhs as given below:—

(Amount in lakhs of Rupees).

Year (s)	Manufactured products and Coffee	Tobacco (unmanufactured)	Total
1. Pending for one year or more *i.e.* 1959-60 and earlier years . .	93.30	1,55.50	2,48.80
2. Pending for more than one month but not more than one year *i.e.*, 1960-61	11.00	46.58	57.58
TOTAL .	1,04.30	2,02.08	3,06.38

The main reasons for accumulations of arrears of revenue are stated as follows:—

A. Manufactured Products and Coffee.

(i) assessments challenged by parties pending adjudication departmentally;

(ii) pending of appeals and revision of applications with appellate authorities/Government of India;

(iii) *sub-judice* cases;

(iv) non-production of proof of export in cases where demand is issued;

B. Tobacco (unmanufactured).

(i) tobacco cultivation not done on commercial basis and disposal of the quantity grown before its presentation for assessment;

(ii) summary assessments made by excise officials being challenged;

(iii) poor quality of tobacco resulting in lack of market for disposal of goods;

(iv) floods or other natural calamities resulting in loss to growers and consequent inability to pay the duty;

(v) defaulters not traceable or becoming insolvent;

(vi) procedural delays and complications in State Government's agency in enforcing certificates issued under Section 11 of the Central Excises and Salt Act, 1944; and

(vii) pecuniary conditions of growers/curers.

In evidence, the representative of the Central Board of Revenue stated that about 95 per cent of the outstanding demands pending for more than one month but less than one year amounting to about Rs. 57 lakhs were expected to be realised. Outstandings amounting to Rs. 64 lakhs related to tobacco in transit. According to the witness, real arrears covered by long-term demands (i.e. pending for more than one year) were about Rs. 1 crore. Bulk of this amount was due from assessees in the States of Rajasthan, Uttar Pradesh, etc., who had since migrated to Pakistan. Though the Central Excise Department were making every effort to make recoveries, it appeared that a major portion of this amount would have to be written off. In reply to a question, the witness stated

that as there was always a time-lag between the placing of a demand and actual realisation in respect of unmanufactured tobacco, it was not possible to eliminate the arrears completely.

One of the main reasons for the accumulation of heavy arrears in respect of unmanufactured tobacco was procedural delays and complications in State Government's agency in enforcing certificates issued under Section 11 of the Central Excises and Salt Act, 1944. Referring to the Income Tax Act, 1961 under which the Central Government had been empowered to appoint recovery officers (who need not be State Government Officers), the Committee enquired whether anything analogous was proposed to be done on the Central excise side also. The Secretary, Department of Revenue stated that after the enactment of the said Act protests were received from a number of States who insisted that the Central Tax should continue to be collected through State Government agencies. He further added that in a letter addressed to the Chief Ministers, the Finance Minister had pointed out that there had been delays in recovery through State Government agencies, resulting in heavy accumulation of arrears. He, therefore, wanted to be certain whether State Government Officers would pay particular attention to the expeditious recovery of the Central Taxes. The replies received from State Governments had been quite reassuring. It had, therefore, been decided to appoint District Collectors as recovery officers, for the purposes of this Act. These officers would follow the procedure laid down in the annexure to the Income-tax Act.

The Committee trust that these arrangements would work well. They would like to have a report in due course regarding the working of this system and tangible results achieved in regard to speedy recovery of Union Excise Duties.

17. The Committee then referred to the appeals pending in the Central Excise Department and wanted to know whether there were any cases in which the condition of pre-deposit of the assessed duty had been waived, pending the disposal of the appeal. The Secretary, Department of Revenue stated that in rare cases, where the assessee was not in a position to pay the assessed amount, a waiver was granted on *ex gratia* considerations under the specific orders of the C.B.R. Quoting the relevant provisions of the Sea Customs Act, as extended to excise by Rule 215 of the Central Excise Rules, the Comptroller and Auditor General pointed out that prior deposit of the assessed amount was mandatory under the

existing law. In this connection, the Committee desired to have the following information:

(i) What was the number of cases of appeal pending in the Central Excise Department for more than one year as on 31-3-1960, 31-3-1961 and 31-3-1962?

(ii) What measures have been or are proposed to be taken to expedite disposal of appeal cases?

(iii) What was the number of cases during 1961-62 in which the recovery of excise duty was held in abeyance pending disposal of appeals? What was the amount involved? What was the legal authority for holding the recovery in abeyance?

A copy of the note furnished by the Ministry is enclosed as Appendix IV. From the figures furnished, the Committee observe that the number of appeals pending for more than one year has come down from 223 as on 31st March, 1960 to 179 as on 31st March, 1962. Compared to the number of cases received, the pendency has been stated to be very small and it worked out to only 5% of the number of cases received during a year.

While noting the reasons given by the Ministry for delays in the disposal of appeals, the Committee would like to observe that the number of appeal cases pending for more than 12 months is still quite large. Special efforts should be made to ensure that appeal cases do not remain pending with the Department for long periods. The Committee would also like the C.B.R. to review the position to improve collection of excise duties and to avoid arrears of assessed demands due to procedural defects, lacunae in the Central Excise Rules, etc.

As regards (iii), *viz.* the legal position in respect of deposits pending appeal of duty demanded, the Ministry have stated in their note *vide* Appendix IV that section 189 of the Sea Customs Act has been made applicable to central excise cases by a notification issued under section 12 of the Central Excises and Salt Act, 1944. Consequently, duty/penalty leviable in terms of the order of adjudication has to be deposited before the appeal can be filed. Thus legally, there is no need to keep in abeyance recovery of duty pending disposal of the appeals. In actual practice, however, there are various circumstances which have to be taken into account before enforcing the provisions of section 189.

The Committee observe that till the amendment to Section 188 of the Sea Customs Act, 1878, the pre-deposit of excise duty pending the disposal of the appeal was mandatory. The Committee fail to understand how in contravention of the clear provisions of the law then in force, the Central Board of Revenue could have granted exemptions even on *ex-gratia* considerations. The Committee, however, note that the relevant Act has since been amended, vesting discretionary powers in matters of exemptions in the Central Excise authorities. The Committee trust that these discretionary powers to dispense with such deposits pending appeal of duty demanded or penalty levied will be used sparingly and only in cases where it is absolutely necessary to do so. Wherever such exemptions are granted, they should be invariably reported to the Central Board of Revenue.

Ex-gratia *refund of Excise Duty—pages* 100-101, *para* 81.

18. In order to assist the Handloom Industry, the Government of India had first issued a notification under the Cotton Textile (Control) Order, 1948, and then an Ordinance, the Dhoties (Additional Excise Duty) Ordinance, 1953, to restrict the production of dhoties and levying an additional excise duty on dhoties issued in excess of the permissible quota. The Ordinance was replaced by an Act called the Dhoties (Additional Excise Duty) Act, 1953. This Act imposed additional excise duty on the quantity of dhoties issued out of any Mill in excess of the permissible quota fixed by Government. The permissible quota in respect of each individual mill was to be fixed by the Textile Commissioner. Certain mill-owners, who owned more than one mill, however, approached the Textile Commissioner with the request that a group of mills owned by the same company, or managed by the same Managing Agents, should be given the facility of combining their quotas for convenience of working. A Collector of Central Excise, in consultation with the Textile Commissioner, issued a circular to the effect that, while duty would be collected initially on the excess over the permissible quota of an individual mill, it would be refunded if it was within the collective quota of the mills belonging to the same management. The Government, in order to provide a legal basis for the principle of combined quota, issued a notification entitled the Dhoties (Fixation of Collective Quota) Rules on the 12th February, 1955. But these Rules were not given retrospective effect.

In the meantime a refund claim amounting to Rs. 18,803 presented by one Mill was paid in June, 1954 by the Collector on the basis of the commitment made by him, but on reconsideration similar claims

amounting to Rs. 5,01,661 relating to the period prior to 12th February, 1955 received subsequently from five mills were rejected. On suits being filed by the Mills, the High Court (OS) dismissed the suits mainly on the ground that the suits were barred by limitation. Appeals were filed by the Mills in the High Court against the order. But the parties also approached the Government of India with the request that the matter might be reconsidered and the refund granted. The Government thereupon decided in February, 1961 to pay the disputed sum of Rs. 5,01,661 to the parties as an *ex-gratia* measure.

In this connection, the Secretary, Department of Revenue stated that the circular issued by the Collector, under which the refund was claimed by the group of mills in question, was in consonance with the spirit of the Act. He further added that under the General Clauses Act, 'singular' included 'plural' and, therefore, the words 'a mill' or 'any mill' used in the Act could be construed to mean 'a group of mills'. This view was supported by the Advocate-General, Bombay. He admitted that after the dismissal of the Mills' suits by the High Court (OS) Government were under no obligation to make the refund, but, they decided to do so on ground of equity. This decision had the approval of the Cabinet. He also urged that the levy of the additional excise duty on dhoties was not a revenue measure and, as such, the refund had not resulted in the loss of any legitimate revenue.

In reply to a question, the witness stated that for the purposes of combined quota only those mills owned by a group were taken into account which actually produced dhoties. It was, however, pointed out by Audit that the Advocate-General, Bombay's interpretation of the words 'a mill' occurring in the charging section to mean as 'a group of mills' was not accepted by the High Court. The Committee desired the Secretary, Department of Revenue to furnish a detailed note setting forth the circumstances and the legal authority under which the refund of excise duty amounting to Rs. 5,01,661 was made. A copy of the note furnished by the Ministry is enclosed as Appendix V. In this note it has been stated *inter alia* "Without realising that the legal interpretation of provisions of the Act did not permit the grant of such a combined quota, a commitment was made to the Bombay Mill-owners' Association by the then Collector of Central Excise, Bombay, in consultation with the then Textile Commissioner, to the effect that, while duty would be collected initially on the excess over the permissible quota of an individual mill, it would be refunded if it was within the collective quota of the mills belonging to the same management".

The Committee feel that the commitment made by the Collector in accepting that the word 'Mill' should be "a group of mills", under one management was mainly responsible for the observation of the Bombay High Court that the suit was a direct result of the conduct of the Government. They feel concerned that the Collector of Central Excise should have, in matters of legal interpretations, acted on his own without consulting the Government before entering into such a commitment. The Committee hope that such mistakes will be avoided in future.

Another factor, that the Committee view with concern, is regarding the propriety and urgency for giving the *ex-grat* refund without waiting for the decision of the Appellate Court when the Plaintiffs had appealed against the judgment of the High Court (OS). The Committee would like to know whether, the fact that the matter was under reference to the Appellate Court, was taken into consideration while granting the *ex-gratia* payment and the circumstances in which it was decided not to await the judgment of the court.

The Committee also observe from the note that the present practice of accounting for refunds including *ex-gratia* refunds has the concurrence of the Comptroller and Auditor General. All the same, the Committee would like to stress that this device of *ex-gratia* payments should be resorted to very sparingly and in very exceptional circumstances.

IV

INCOME TAX

Variations of the actuals from the estimates under Corporation Tax and Taxes on Income other than Corporation Tax, Page 102, Para 82.

19. Against the Budget Estimates of Rs. 135 crores and Rs. 52·94 crores under the Revenue heads "III—Corporation Tax" and "IV—Taxes on income other than Corporation Tax" respectively, the actuals for the year 1960-61 were Rs. 109·70 crores and Rs. 81·37 crores respectively. The variations between budget estimates and actuals are indicated below:—

(figures in lakhs of rupees)

	Budget Estimates	Actuals	Increase(+) Short-fall(—)
III—Corporation Tax			
Ordinary Collections . . .	1,34,20	1,10,06	—24,14
Excess Profits Tax	70	—19	—89
Business Profits Tax	10	—17	—27
TOTAL .	1,35,00	1,09,70	—25,30
IV—Taxes on income other than Corporation Tax			
Ordinary Collections . . .	98,95	1,54,92	+55,97
Surcharge (Central) . . .	4,50	5,69	+1,19
Surcharge (Special) . .	1,50	2,38	+88
Excess Profits Tax .	5	2,31	+2,26
Business Profits Tax . . .		1,14	+1,14
Miscellaneous . . .		1,58	+1,58
Receipts in England . . .		72	+72
Share of net proceeds assigned to States	—52,06	—87,37	—35,31
TOTAL (Net)	52,94	81,37	+28,43

2541 (Aii) LS—3.

During evidence, the Committee were informed by the Chairman, Central Board of Revenues (CBR) that the shortfall of Rs. 25·30 crores under the Revenue Head "III—Corporation Tax" was mainly due to misclassification of a part of tax receipts from companies under "Income-Tax" instead of under "Corporation Tax". According to a change in the system of taxation introduced in 1960-61, grossing of dividends had been abolished, and a suitable rate for companies fixed. As a result, no tax paid by the Companies could be refunded to the shareholders, and the whole income-tax paid by the companies was to be treated as Corporation Tax. This change was not correctly comprehended by various field officers who continued to classify a part of the receipts under "Income-Tax", as in the past.

As regards the surplus under the head "IV—Taxes on Income other than Corporation Tax", this was explained as mainly due to completion of larger number of assessments of earlier years and better receipts than originally anticipated notably in respect of dividends and interest on securities.

The Committee were informed by the C. & A.G. that wide variations between the budget estimates and actuals of tax receipts had been a regular feature of the Income Tax Department for the past several years. The estimates of the Department were invariably on the lower side. The budget estimates and actuals were:

(In crores of rupees)

	Budget Estimates	*Actuals*
1956-57	189	202
1957-58	206	210
1958-59	217	226
1959-60	225	255
1960-61	240	278

In extenuation, it was stated by the Chairman, CBR, that though there were considerable variations in the original estimates (which were prepared in November of the preceding year on the basis of the industrial and trade conditions then obtaining) and actual realisations, the variations between the Revised Estimates (which were later prepared in February of the current financial year) and actual realisations were small, generally about five per cent. The witness did not regard the variations to this extent between revised estimates and actuals as serious. It was urged that in a dynamic economy in which the conditions of industry and trade were changing fast, it was extremely difficult to ensure accuracy in estimation. The Department

preferred an estimation on the lower side, as this had less serious results than over-estimation.

While appreciating the difficulties in arriving at very accurate estimates of the receipts of the Income-tax Department which depend upon a large number of factors whose effect cannot be foreseen with a great degree of precision, the Committee are of the view that the variations for the years 1959-60 and 1960-61 are rather disproportionately high as compared to the years 1957-58 and 1958-59. Special efforts are, therefore, necessary to ensure that the margin of variations is narrowed down to the minimum.

Under-assessment of tax and loss of revenue, page 103, *para.* 83.

20. In the course of test audit, the cases involving under-assessment of tax and loss of revenue to the extent of Rs. 120·77 lakhs were noticed as indicated below:

	No. of cases	Amount of tax involved (Rs. in lakhs)	Remarks
(A)			
(i) Cases involving under-assessment of tax of more than Rs. 10,000 in individual cases.	51	51·37	A few typical cases of under-assessments are briefly stated in paras 21-28.
(ii) Cases involving under-assessment of tax of less than Rs. 10,000 in individual cases.	1569	13·18	Action to revise or rectify the assessments had been or was being taken in respect of 673 cases covering a tax liability of Rs. 5·58 lakhs, while in the remaining cases action remains to be taken.
(B)			
Loss of revenue due to inability to recover tax from a foreign contractor operating in India.	1	56·22	The facts of this case are set out in para 29.
TOTAL	1621	120·77	

During evidence, the Committee were informed by the Secretary, Department of Revenue and the Chairman, CBR, that out of the 51 cases referred to at A(i), the mistakes had been rectified in 45 cases (involving an amount of Rs. 36·95 lakhs) and recoveries had already been made in 27 cases. In another five cases (involving Rs. 4·94 lakhs), necessary action to reassess and recover the correct amount was under way. In the remaining one case (involving Rs. 9·48 lakhs), there was a difference of opinion between the Department and Audit (the assessment had already become time-barred). Except the alleged loss in this case, there was no likelihood of loss in any other case.

Explaining the reasons for the under-assessment in the cases referred to in the Audit Para, the Chairman, CBR, stated that under-assessment was mainly the result of mistakes in calculating depreciations and dividends. In extenuation of such mistakes, it was stated that during the last ten years, a highly intensive and complex legislation had been introduced in the Income Tax field. The staff had to deal with cases involving old system of assessment as well as new system of assessment. It was difficult for the staff to master the intricacies of the new legislation and switch over quickly to the new pattern. Pursuant to the recommendation made in the Tyagi Committee Report, the system had since been simplified and consequently, the position was expected to improve considerably.

On an enquiry by the Committee about strengthening the internal audit introduced in the Department, as recommended by the Tyagi Committee, they were informed by the Secretary, Department of Revenue that two such checks were employed—one by the Inspecting Assistant Commissioner and the other by the internal audit parties. The internal audit system had been extended to the whole country and was proposed to be further strengthened. Asked how the cases of under-assessed revealed in the Audit para escaped the notice of the Internal Audit, the witness stated that the Internal Audit was concentrating on old cases, but the cases in question were relatively fresh.

The Committee are rather alarmed at such a large number of cases of under-assessment, involving considerable amounts, detected in the test Audit by the Comptroller and Auditor General, when it is borne in mind that this scrutiny was limited to only a small percentage of cases in 235 income tax wards out of 1310 wards in the country. It is significant to note that the number of cases in which defects, discrepancies, etc. involving under assessment to the extent of Rs. 120·77 lakhs were found, works out to about 16 per cent. of the total number of cases audited (i.e. 13357 cases). The few typical cases dealt with in the succeeding paragraphs indicate the gravity of the mistakes.

The Committee feel that the situation calls for more effective internal audit of the old and new assessment cases, so that the mistakes can be rectified and recoveries made before these become time-barred. The Committee regret that in spite of the recommendations of the Direct Taxation Enquiry Committee, no effective steps seem to have been taken to strengthen internal audit. This should be done without further delay.

The Committee agree that some mistakes might be due to difficulties in the procedure. They are glad that in pursuance of the recommendations of the Direct Taxation Enquiry Committee, the procedure has since been simplified. The Committee hope that improvements effected as a result of the simplified procedure and the strengthening of internal Audit will be reflected in future Audit Reports.

Depreciation allowance incorrectly admitted—Pages 104-105, *Para.* 84.

21. (a) A special concession by way of an additional depreciation equal to the normal allowance was admissible during the period 1949-50 to 1958-59 and it ceased to have effect from the assessment year 1959-60. In the cases of three companies, it was noticed that this additional depreciation was allowed even for the assessment years 1959-60 and 1960-61, resulting in an under-assessment of the income of these companies to the extent of Rs. 14·38 lakhs involving a tax liability of Rs. 7·07 lakhs.

The Committee were informed by audit that out of the amount of Rs. 7·07 lakhs short recovered, only Rs. 67,766 had been collected.

(b) A special concession in respect of machinery and plant, which worked for more than two shifts, was allowed to the extent of 100 per cent. of the normal depreciation for 5 years commencing from 1949-50. After this period of 5 years, i.e., after 1953-54, plant machinery which worked multiple shifts were entitled only to 50 per cent. of the normal depreciation attributable to the number of days during which the plant or machinery worked extra shift. While completing the assessments of two companies (one in respect of assessment years 1954-55, 1955-56 and 1959-60 and the other in respect of assessment year 1954-55, 1956-57 and 1957-58) the extra shift allowance was not so limited to 50 per cent. but was allowed upto 100 per cent. resulting in an undercharge of tax of Rs. 95,798.

In evidence, the representative of the Department of Revenue stated that the mistake had been rectified, and the amount had been collected in one case and partly in the other case. As regards the

responsibility for the lapses in these cases, the representative of the Department stated that there was no *malafide* in the cases. In making assessment in cases of the kind, sometimes arithmetical mistakes occurred.

(c) The balancing or the terminal allowance admissible as a set-off against business income was to be calculated as equal to the difference between the sale value of the asset sold and its written down value arrived at by reducing the actual cost by the depreciation allowances actually allowed. The written down value was to be calculated not only by setting off normal depreciation against the actual cost but also by deducting any initial depreciation at a higher rate allowed in respect of the year of erection or installation on the asset. In the case of the assessment of a firm for the year 1959-60, while allowing the balancing allowance in respect of a machinery, the initial depreciation already allowed by the department in respect of that machinery was not taken into account. This resulted in a short demand of tax amounting to Rs. 16,136.

The representative of the Department told the Committee that the mistake had been rectified and that the amount had been recovered partly in this case.

The Committee regret to note the mistakes pointed out in these three cases. These mistakes arose due to the fact that the provisions of the Income Tax Act relating to the allowance of depreciation were ignored. The Committee understand from a note submitted by the Department of Revenue (vide Appendix VII) that apart from these three cases, the internal audit parties had also found 854 other cases of incorrect allowance of depreciation pertaining to the years 1957-58 to 1961-62 involving a total revenue of Rs. 3,22,612, and that in all these cases, the mistakes had been rectified under Section 35 of the Income Tax Act, 1922. Such lapses should be taken serious notice of. The Committee will like to be informed about the recovery of extra amounts due in the three cases referred to above.

Excessive rebate allowed from super-tax payable by companies—pages 105-106, *para.* 85.

22. (a) In the assessment for the year 1957-58, in the case of two companies the value of the bonus shares issued to the shareholders to the extent of Rs. 12,42,500 was not taken into account for reducing the rebate with the result that there was a short levy of super-tax in these two cases to the extent of Rs. 3·72 lakhs.

The representative of the Ministry admitted the mistake and stated that the assessment had since been rectified.

(b) In the case of another company, whose assessment was completed for 1957-58 and 1958-59, dividend distributed in excess of 6 per cent. of the paid up capital was ignored with the result that the rebate from super-tax was not reduced with reference to the excess distribution of dividend. This resulted in an under-assessment of super-tax by Rs. 52,815.

The mistake was admitted by the representative of the Ministry, who also stated that it had since been rectified.

The Committee hope that such mistakes will not be allowed to recur in future.

23. (c) Under the provisions of the Finance Act, 1956, for the purpose of reducing the rebate of super-tax, with reference to payment of dividends in excess of 6 per cent. the actual amount to be taken into account was the dividend 'distributed'. In two cases where the dividend declared was less than the amount distributed during the year, the amount distributed by way of dividends was not taken into account but the amount declared as dividend during the year was considered for purposes of reducing the rebate of super-tax. The first case related to a sterling company. During the calendar year 1956, the company declared a dividend of £3·19 lakhs by way of final dividend. However, it distributed during that year a total amount of £4·11 lakhs by way of interim and final dividends. The Income-tax Officer took only the declared amount, *viz.*, £3·19 lakhs for purposes of calculating the excess dividend and not the sum of £4·11 lakhs actually distributed. In the second case, which related to 1956-57 assessment year, the amount distributed by way of dividend during the previous year was Rs. 1·82 crores, whereas the amount declared was Rs. 1·21 crores. Here again, the excess dividend was calculated with reference to the dividend declared, *viz.*, Rs. 1·21 crores instead of dividend distributed. The result was that in both these cases, according to Audit, super-tax was short-charged to the extent of Rs. 13·13 lakhs. (In the second case in which the under-charge of super-tax amounted to Rs. 9·4 lakhs, it is not possible to rectify the mistake owing to action being now barred by time).

During evidence, the Chairman, CBR, stated that the interpretation of the term "distributed" as "declared" was in accordance with the original intention of Government, and the placing of any other interpretation on this term would, besides leading to several

other difficulties, defeat the very object of the Excess Dividends Tax, *i.e.* to discourage companies from declaring excessive dividends. The 'date of actual payment', and the 'amount actually paid' where liable to manipulation according to the convenience of assessee companies, particularly private limited companies, but the 'date of declaration' of dividend was a specific date and could not be manipulated. The interpretation of 'distributed' as 'actually paid' would thus not only result in administrative inconvenience but also in general uncertainity. Illustrating his point, the witness stated that a private limited company by 'declaring' its dividend in a lean year but 'distributing' it in a good year, might through manipulation escape liability to this Tax in both the years. While admitting that in the two cases referred to in the Audit para. more revenue would have been collected, had the 'dividend actually paid' been the basis of assessment, the witness added that in a large number of other cases, where the amount actually distributed was less than that declared, there would have been a loss of revenue. For example, in the second case referred to in the Audit para., there might be a demand for the year 1956-57 on the basis of 'dividend paid' but on the same basis there would be a refund of Rs. 1,51,600 for the year 1958-59. The Secretary, Department of Revenue stated that the interpretation of the term 'distributed' to mean 'declared' made by the Income Tax Department had been accepted by a large number of assessees, which was evident from almost a complete absence of litigation on this score.

The Comptroller and Auditor General was, however, of the view that in the law as it was worded the term 'distributed' was quite distinct from and could not be interpreted as 'declared'. He pointed out that it was also in accordance with the intention of the Government as expressed in the speech of the Finance Minister, while introducing the Finance Bill, 1956—

> "If during the relevant previous year the company had issued bonus shares or has *distributed* dividends in excess of a certain percentage....."

He, therefore, felt that the assessments made by the Department in the cases referred to in the Audit para. were not in consonance with the wording of the Act. In support of this view, he quoted the following excerpt from the judgment of the Bombay High Court delivered on the 17th March, 1958:—

> ".....the difficulty for which it can have no answer is that the declaration of dividend is not made the test of taxability by the legislature. It is difficult to understand why if the intention of the Legislature was that no

other circumstance should be considered except the declaration of dividend, the legislature should have indulged in circumlocution and instead of using a simple expression 'to be the income of the previous year which was declared' should have used the words 'in which it was paid, credited or distributed' ".

The Comptroller and Auditor General also referred to two circulars issued by the Central Board of Revenue in 1956 and 1958 according to which the basis for reduction of rebate was to be "dividend actually distributed" and not the "dividend declared". The Chairman, CBR, stated in extenuation that the circulars had been issued by mistake in one section of the CBR which was not aware of the decisions already taken in the matter in another section. After the mistake came to notice, the circulars were cancelled on 31st March, 1962 (after the receipt of the Audit para.), and the original instructions issued in 1955 according to which the basis for reduction of rebate was to be "dividend declared" had been restored.

As regards the intention of Government in introducing the legislation, the Secretary, Revenue Department quoted the following excerpt from the Finance Minister's speech on the Finance Bill, 1956 :—

"My second proposal is to increase the rates of super-tax given by companies which declared dividends in excess of 6 per cent. on the paid up capital".

In a note submitted to the Committee at their instance (Appendix VI), the Department of Revenue have stated that in giving effect to the disputed clause of the Finance Act, 1956, the CBR were guided by the judicial opinion available in the case, Laxmidas Mulraj Khatau—1948 (ITR—p. 248), according to which a shareholder got the right to dividend as soon as it was declared by a company and it was the date of declaration that was relevant for the purpose of deciding in which year the assessee was to be assessed in respect of the dividend income. The date of declaration of dividend being specific and not liable to be manipulated, the CBR decided to go by that date for practical reasons. The Department have urged that as the provisions relating to excess dividend are no longer in operation, this question is of little consequence now. If a different interpretation is to be followed now, it will lead to considerable confusion and difficulty.

The Committee realise the practical difficulties explained by the Department of Revenue in making assessments on the basis of

'dividend actually distributed' and also the consequences of changing to this basis at this stage. They observe from the note that the Ministry of Finance have accepted in principle the point raised by the Comptroller and Auditor General during the course of evidence in connection with the examination of this Audit para. The Committee would, therefore, not like to pursue the matter further.

Excessive credit of Income Tax given while grossing up dividends—pages 106-107, *para.* 86.

24. A non-resident company received a dividend of Rs. 6,89,785 from three Indian companies. The net dividend so received was grossed up to the full extent and after grossing, the dividend amount came to Rs. 10·20 lakhs. However, from the details in the certificates furnished by the Indian companies in respect of the deduction of tax, it was seen that the full profits of the companies concerned had not been taxed but only a portion thereof, *viz.*, 65 per cent. in the case of the first, 93 per cent. in the case of the second and 89 per cent. in the case of the third company. Accordingly, the full amount of dividend received should not have been grossed up, but only the proportionate amount relatable to the taxed portion of the companies' profits. The correct amount of gross dividend should, therefore, have been Rs. 9·44 lakhs and not Rs. 10·20 lakhs adopted by the Income Tax Officer. This resulted in an under-assessment of tax of Rs. 28,227.

During evidence, the Chairman, C.B.R., while admitting the under-assessment of tax, stated that the mistake had been corrected and the amount recovered. The witness promised to look into the question of fixing the responsibility for the omission.

In a note submitted to the Committee (Appendix VII) the Department of Revenue have stated that the company filed an appeal before the Appellate Assistant Commissioner of Income Tax against the revised assessments and pointed out that the companies from which it had received dividends had kept separate accounts of taxed and untaxed reserves and the entire dividends declared by the latter companies had been paid out of the taxed reserves of the past years. Therefore, the grossing of the dividends at 100 per cent. was correct. The company's contention has been accepted by the Appellate Assistant Commissioner of Income Tax who has cancelled the supplementary assessment. The Department has filed an appeal against the Appellate Assistant Commissioner's orders to the Income Tax Appellate Tribunal.

As regards the question of fixing responsibility, the Department have stated that in making the original assessment, the Income Tax Officer concerned had considered the contention of the company to be correct and therefore allowed grossing of 100 per cent. of the dividend. The Department have further stated that, as a question of law is involved and the action taken by the Income Tax Officer has been upheld by the Appellate Assistant Commissioner, it is considered that no disciplinary action is called for.

The Committee would like to know the outcome of the appeal filed by the Income Tax Department in this case to the Income Tax Appellate Tribunal.

Excessive Reliefs—page 107, *para.* 87.

25. (a) In the case of two companies which derived agricultural income from Pakistan, the rebate allowed to the assessees on account of double taxation of agricultural income in Pakistan and India was not correctly worked out according to law resulting in these two cases an excessive relief and consequent under-assessment to the extent of Rs. 3·09 lakhs.

In evidence, the Chairman, C.B.R. stated that the assessment had since been revised; but the companies had filed appeals, challenging the same. Questioned whether necessary investigation had been made to find out if there were any *malafide* intentions in the cases, the witness stated that the calculation of rebate against Pakistan agricultural income-tax being a very complicated work, there was a possibility of an omission in the correct assessment.

In a note submitted to the Committee (Appendix VII) the Department of Revenue have stated that in working out the rate of income-tax, the Income-tax Officer divided the gross tax payable in India without deducting the rebate given for the Pakistan Tax on 40 per cent. income chargeable in India and Pakistan, by the total income in India. After this mistake was pointed out by Audit, a notice was given to the companies for enhancement of the assessment. The companies represented to Central Board of Revenue that the abatement given under the Double Taxation Avoidance Agreement was not a relief as mentioned in section 49D(3) of the Income Tax Act and therefore enhancement should not be made. After consulting the Ministry of Law, the Board have turned down the representation of the companies and the Income Tax Officer has been directed to carry out the rectification for all the years.

As regards the question of fixing responsibility for the original assessment, it has been stated that the Income Tax Officer gave his

interpretation in a *bona fide* manner and it was not necessary to take any disciplinary action against him.

The Committee hope that measures would be taken to avoid such mistakes involving large amounts of revenue in future. If a mistake is due to any ambiguity in the Rules, such ambiguity should be removed. If a mistake is due to any error of judgment on the part of an officer, the same should be suitably brought to the notice of the officer concerned who should be warned to be careful in future.

The Committee would like to be informed about the recoveries made from the companies in this case.

26. (b) In another case, excessive relief was found to have been allowed for donations to charitable institutions. Under the law, a donation to a charitable institution is entitled to a rebate at the average rate of tax, but such rebate should not exceed 50 per cent. of the amount donated. In the case of an individual, who donated Rs. 75,000, the relief allowed by way of tax was Rs. 60,198, instead of limiting it to Rs. 37,500, *i.e.*, 50 per cent. of Rs. 75,000. The excess relief and consequent under-assessment amounted to Rs. 22,698.

In evidence, the Chairman, C.B.R., admitted the mistake and stated that the under-assessment pointed out in the audit para. had been rectified. The Committee were assured that all such cases would be checked by the Internal Audit in due course and disciplinary action against the officers concerned, where necessary, would be taken.

While appreciating the prompt action taken to rectify the mistakes pointed out in the audit paras. and to safeguard the revenue, the Committee desired to know the circumstances in which these mistakes had occurred as also the remedial measures/disciplinary action taken or proposed to be taken to improve the position in regard to correct assessment of taxes etc.

In a note submitted to the Committee (Appendix VII) the Department of Revenue have stated that the mistake in the present case arose from the Income Tax Officer's overlooking the provisions of section 15B(3) of the Income Tax Act. All the same, the Commissioner of Income Tax was convinced that the mistake was *bona fide*.

The Committee are surprised how the Income Tax Officer while allowing relief under Section 15B of the Income Tax Act ignored the provisions of sub-section (3) of the same section. The Committee trust that necessary remedial measures would be taken to prevent the recurrence of such mistakes.

Deduction wrongly allowed in determining the taxable income—pages 107-108, *para.* 88.

27. Under the Electricity Supply Act, 1948, a certain amount can be deducted from the net profits for distribution to consumers in the form of a proportional rebate on the amounts collected from them for supply of electricity or by way of meter rentals. The Act also provides that the amount so deducted can be kept separately in a reserve account called Consumers' Benefit or Rebate Reserve Account. Normally any provision by way of reserve is not admissible as a deduction for purposes of income-tax, but when the amount is actually distributed, the amount so distributed will qualify as a deduction in the year in which it is distributed to consumers. In the case of an Electricity Supply concern, for the assessment year 1957-58 an amount of Rs. 17·06 lakhs, carried over to the special reserve account for the purpose indicated above, was straightaway allowed as deduction from the profits which was irregular. This deduction had resulted in an ultimate short levy of tax by Rs. 10·49 lakhs. It was seen that no distribution out of this reserve account was made upto 1960-61 and the amount carried over to the reserve continued to remain in the possession of the company.

The Committee asked whether the mistake pointed out in the audit para. was *bona fide* and whether the circumstances leading to the same had been enquired into. The Chairman, C.B.R., promised to look into the matter.

In a note submitted to the Committee (*vide* Appendix VII) the Department of Revenue have stated that in allowing deduction of the amount in this case, the Income Tax Officer was guided by the decision of the Appellate Tribunal given in an earlier case. The Income Tax Officer was not aware of the instructions issued by the Central Board of Revenue on 1st December, 1959, subsequent to the Tribunal's decision, enjoining that an allocation to the reserve was only an application of income and therefore such allocations should not be allowed as deductions but actual payments should be allowed in the year of payment. The Commissioner is however satisfied that the error was *bona fide*.

As regards the recovery of the tax short-levied, it has been stated that a notice has been issued for bringing to assessment the sum of Rs. 17·06 lakhs, but final order has not yet been passed in view of the fact that the assessment in question was also pending in appeal before the Appellate Assistant Commissioner, who has been requested to enhance the assessment or set it aside to enable the Income Tax Officer to look into the matter afresh. **The Committee would like to be informed of the final outcome of the case.**

Arithmetical inaccuracies while determining the taxable income—page 108, para. 89.

28. Mistakes arising out of incorrect calculations had also been noticed in some cases. In one instance, a company had set off depreciation to the extent of Rs. 1·17 lakhs, consisting of Rs. 1·14 lakhs and Rs. 0·03 lakh under two heads against the taxable income. The Income Tax Officer omitted to add back Rs. 1·14 lakhs when he recalculated the depreciation according to the prescribed rates and allowed the same against the business income. This had resulted in allowing depreciation twice over, once according to the provision made by the assessee, and again according to Income Tax rules. The under-assessment of tax involved on account of this mistake was Rs. 59,018.

In another case, a mistake arose in working out the dividend income in the case of a shareholder of a private limited company. Under the Income Tax Act, any loan given by such a company to its shareholders is treated as a payment of dividend. In this case, for the assessment year 1958-59, while calculating the amount of loan advanced to the shareholders with reference to the current account appearing in the company's books, the Income Tax Officer set off the opening balance against the closing balance twice over resulting in an under-assessment of tax to the extent of Rs. 53,402, which has been realised after rectification.

In evidence, the Chairman, C.B.R., admitted the mistakes pointed out by Audit in the two cases and stated that these had been rectified by the Department.

The Committee enquired whether a system could not be devised to ensure that mistakes in assessments were detected at the initial stage. The representative of the Department of Revenue stated that a system of checking calculations already existed in the C.B.R., but some lapses still occurred. Unlike Customs, there was no system of concurrent audit of Income Tax assessments. The witness added that if a second check of income tax assessments was introduced, it would result in delays in assessments. In his opinion, the better remedy would be to increase the number of internal audit parties so that the mistakes could be detected quickly and set right without much time-lag. In a few cases involving large assessments, above a certain limit a second check at the initial stage also could be introduced.

The Committee recommend that the present procedure of checking assessment should be revised with a view to ensuring that as far

as possible mistakes are detected at the initial stage. The Committee also favour the introduction of a system of double-check in the Income Tax Department in cases involving large assessments above a certain limit.

Irrecoverable Income Tax dues of Rs. 56·22 lakhs from a foreign company—pages 108—110, *para.* 90.

29. During the period February 1953 to August 1956, a foreign company conducted business in India and received sums aggregating over Rs. 2·2 crores from some State Governments towards contracts for sinking tube-wells. This concern registered itself with the Registrar of Joint Stock Companies in July 1954 as a foreign company. It did not submit any return of income till 31st October 1956, i.e. after closing its business, although two notices were issued by the Department under section 22(2) of the Income Tax Act in February 1955 and March 1956. The return (dated 10-10-1956) which it ultimately filed on 31st October 1956, disclosed an income of Rs. 48·86 lakhs and on that income the assessee estimated that it was liable to pay only a tax of Rs. 10·44 lakhs. However, the assessee did not pay even that sum of Rs. 10·44 lakhs in full, but paid only a sum of Rs. 4·51 lakhs and for the balance it authorised the Income Tax Department to adjust payments alleged to be due to it from two State Governments on account of works executed for them. The sum of Rs. 4·51 lakhs was paid by the company as a provisional payment for adjustment on completion of assessment. In the meantime, the foreign company's representative in India who was managing its affairs, had already left India on the 8th September 1956. A few subordinate Indian employees looking after the local office had no authority to reply to the queries of the Income Tax Department, and the local office functioned for only a few months till it was wound up on 31st March, 1957.

Earlier, an Income Tax Verification Certificate applied for by the Company in July 1956 to enable it to export part of its machinery (valued at Rs. 4 lakhs) out of India had been granted on 4th August 1956 on an assurance that some other machinery valued at about Rs. 17 lakhs left in India would be sufficient to meet its tax liability.

The Income Tax Officer made *ex-parte* assessment in 1959, 1960 and 1961 for the four years from 1954-55 to 1957-58 on a total income of Rs. 63 lakhs on which the demand (including the penal interest for the non-payment of advance tax) raised was Rs. 60·73 lakhs. Deducting Rs. 4·51 lakhs already paid by the Company, the balance tax due from the assessee was Rs. 56·22 lakhs.

The Department could not collect this amont as there were no assets of the foreign company in India and it was found that the tube-well machinery of the value of Rs. 16·43 lakhs which the foreign company had in India had actually been sold by it to an agency of its Government (TCM), which in turn made a gift of it to the Government of India. Even the sums which the company stated were due to it from the State Governments were found, on enquiry, to be really not due. An attempt was made in January 1958 to recover the moneys lying to the credit of the company with the National Overseas and Grindlay's Bank Limited, New Delhi. It was found that the company had stopped operating on the account since July 1957 and that the balance left was only Rs. 2·50 nP.

Audit pointed out that the loss of revenue was partly due to delay in making the assessment. In extenuation the Chairman, CBR, stated that when the Department came to know about the contract in early 1955, they issued a notice to the company to file the income tax return, but there was no response. Later, the originating income tax circle being wound up, the case was transferred to another officer who issued a second notice in March 1956. The company replied in July 1956 suggesting that the assessment might be deferred as it was not possible for it to state its income until the contract was completed. The Department considered this plea as reasonable and allowed the company time for submitting its return. In the absence of any proper basis, the Department could not have made a provisional assessment for the period. In October 1956, after the return had been filed by the assessee, a provisional assessment could have been made under section 23B of the Income Tax Act, but this was not done, as the final assessment was expected to be made shortly. The witness added that even if such an assessment had been made earlier, no useful purpose would have been served as the firm's main representative had already left India, leaving behind no assets. The witness pleaded that the loss of revenue suffered in this case was not due to any negligence on the part of the officers of the Department but to the breach of trust placed in the *bona fides* of the contractor. There were precedents for the grant of such requests of contractors for deferment of assessment till completion of works. It was urged that in the context of the country's development programme such risks with foreign contractors were taken, lest the Income Tax Department be blamed for harassing contractors and thus hampering the progress of development.

In extenuation of the issue of the Income Tax Verification Certificate to the contractor in August 1956 without verifying the tax liability of the company, the Chairman, CBR, stated that the purpose of this certificate was to enable the contractor to export machinery worth

Rs. 4 lakhs to Pakistan. As against this, the contractor was stated to have assets (machinery) worth Rs. 17 lakhs in India. Besides, he had paid a sum of Rs. 1 lakh in cash. In these circumstances, it was difficult for the Department to refuse the certificate.

Referring to the loss of revenue, the Chairman, CBR, held the view that the figure of Rs. 56·22 lakhs shown in the Audit Report did not represent the real loss. The income of the assessee, according to his books of accounts was Rs. 48·86 lakhs, including the proceeds of the plant and machinery sold to the T.C.M. authorities amounting to about Rs. 17 lakhs which were not taxable under the law. Deducting this amount, from the income, the tax on the balance would amount to about Rs. 23 lakhs. As against this, Government received on the whole about Rs. 21 lakhs *i.e.*, collection amounting to about Rs. 4 lakhs and machinery worth about Rs. 17 lakhs gifted by the T.C.M. It was, however, pointed out by the Comptroller and Auditor General that according to Government accounts, there was an unrealised demand of Rs. 56 lakhs. The original demand was Rs. 60 lakhs against which only Rs. 4 lakhs were realised and credited. The Department could not take credit for Rs. 17 lakhs being the value of machinery gifted by the T.C.M. since the Department could not say that the gift was given in lieu of the loss of revenue. The gift made by the T.C.M. to the Government of India was a matter of separate negotiations and nobody could say that the T.C.M. gave the machinery worth Rs. 17 lakhs because it purchased the machinery from the assessee. Hence the actual loss was Rs. 56 lakhs. The Chairman, CBR, stated that this demand of Rs. 56 lakhs would not have been sustainable had the assessee filed an appeal.

The Committee enquired about the safeguards considered for future against evasion of taxes by foreign contractors operating in India for short durations, and also the action taken on the recommendations of the Direct Taxes Administration Enquiry Committee, made in paragraphs 5·25 to 5·27 of their Report. In a note submitted to the Committee, the Department of Revenue have stated that it will be impossible to provide a complete safeguard against the risk, unless the law is revised to make it obligatory on every foreign company taking contracts in India to make an initial deposit of an estimated tax liability, and that in the present context of the country's development, when they have to deal with hundreds of foreign collaborators and contractors, any attempt to make their position difficult, is likely to affect the progress of development adversely. Further, they have stated that in view of keen competition attending global tenders in most cases, it cannot be postulated that every contract job would

end in a profit, and therefore, a request from a contractor to submit his accounts on completion of a job has to be acceded to.

In regard to the recommendation of the Direct Taxes Administration Enquiry Committee suggesting a deduction of 2½% on the turnover being made from the contractors' bills and refunding the amount only on production of a tax clearance certificate, the Department have stated that this was under consideration in consultation with the Ministry of Railways, Works, Housing and Rehabilitation and other Ministries dealing with contractors. **The Committee would like to be informed about the action taken on this recommendation.**

In the present case, the Committee feel that after allowing the contractor time to file the income tax return on completion of the job, the Department should have kept a watch on the progress of the work. The application of the contractor for an Income Tax Verification Certificate made in July 1956 to export a part of its machinery was a sufficient hint that the work was in the final stages of completion. The Department should have at that time pursued the question of assessment. The contractor's complete disregard of the Department's notice issued in February 1955 was a sufficient indication of his mal-intentions. The Committee regret that the officers did not show sufficient vigilance in dealing with this case. The Committee are also of the view that the action of the Department in issuing the Income Tax Verification Certificate to the company to enable it to export part of its machinery out of India without ascertaining the assets of the Company was totally unjustified.

Although the present case might be an exceptional one, its *modus operandi* calls for necessary remedial measures to avoid possibility of tax evasion, considering that a large number of foreign parties are engaged in short term assignments like contracts and collaborations in this country.

Failure to demand advance tax and to make provisional assessments—pages 100—111, *para.* 91.

30. The Audit para. disclosed that in 232 cases involving a tax amount of Rs. 17·37 lakhs, it was found that no action had been taken to demand advance tax under the provisions of section 18A of the

Income Tax Act, 1922. Similarly, failure to make provisional assessments under section 23B *ibid* was noticed in some cases.

In evidence, the Chairman, CBR, stated that the Department might have failed to make advance tax assessment or provisional assessement in a small percentage of cases. But the witness urged in extenuation that there was no loss of revenue involved in failure to demand advance tax or make provisional assessments inasmuch as each such assessment was subject to a regular assessment which was invariably done. The Comptroller and Auditor General enquired whether the Department had satisfied themselves that in cases where advance collections were not made there had, in fact, been no arrears of demand, and whether by delay or failure to make assessment any revenue was not endangered. The Chairman, CBR, did not think that there could be any loss of revenue but he promised to check up the position. The Committee desired to be furnished with a note setting forth the extent to which the failure of the Income Tax Department to make effective use of sections 18A and 23B of the Income Tax Act, 1922 resulted in loss of revenue and/or accumulation of arrears.

In a note submitted to the Committee, the Department of Revenue have stated that the information is not readily available in the Income Tax Department and its collection would involve examination of the individual assessment records of two lakhs assessees liable to advance tax, with reference to a number of years. The Department, therefore, submitted for consideration of the Committee whether it would be worthwhile undertaking such a huge task. The Committee have, however, been informed that a direction has been issued by the CBR in the current year to all Commissioners of Income Tax to the effect that notices for advance tax must be issued in all cases attracting liability for payment of advance tax and that provisional assessments must be made in all cases where the final assessment cannot be completed by 1st January.

In the circumstances explained by the Department of Revenue, the Committee do not wish to press for the information desired by them. The Committee's concern is that the provisions of the Income Tax Act in this regard, which provide built-in safeguards against loss of revenue and accumulation of arrears, should be strictly followed by the Income Tax Commissioners. They hope that the CBR will take serious note of any disregard of the instructions issued by them.

Arrears of Tax Demands—pages 111-112, *para.* 22.

31. A statement showing the arrears of tax demand upto 1960-61 and the collection of tax made against such arrears is shown as under:—

(*In crores of rupees*)

	Arrear demand created in 1958-59 and earlier years	Arrear demand created in 1959-60	Total of cols. 2 & 3	Current demand created during 1960-61	Total arrear demand (cols. 4+5)
1	2	3	4	5	6
As on 1st April, 1960 . .	162.62	50.78	213.40		..
Demand created during 1960-61				208.49	
Collection in 1960-61 .	13.39	22.67	36.06	132.34	..
Balance as on 1st April, 1961 .	149.23	28.11	177.34	76.15	253.49

The balance of Rs. 253·49 crores as on 1st April, 1961 included a sum of Rs. 46·41 crores which was not due for collection till 31st March, 1961. Deducting this figure, the gross arrears were Rs. 207·08 crores. The effective arrears were stated as Rs. 136·74 crores as detailed below:—

(*In crores of rupees*)

Gross demand in arrears on 31-3-1961			207.08
Less			
A. Reduction expected on account of			
(i) D.I.T. Relief . .		5.37	
(ii) Appellate relief . . .		13.23	
(iii) Protective assessments . . .		4.31	22.91
			184.71

(In crores of rupees)

B. Irrecoverable dues which will have to be written off ultimately :			
(i) From persons who have left India .		9·94	
(ii) From companies in liquidation		5·33	
(iii) From cases pending before Certificate Officers		32.16	47·13
Effective arrears .			136.74

The total number of appeal cases pending with the Departmental Officers as on 30th September, 1961 was 59,817 out of which 20,999 cases were pending for more than a year. Out of the effective arrears of Rs. 136·74 crores, nearly a fourth (*i.e.*, Rs. 33·53 crores) represented tax held up on account of pendency of appeals. Of this, the bulk (*viz.*, Rs. 23·53 crores) related to appeals before the Appellate Assistant Commissioners.

The Committee enquired about the present position of the pending appeals and the amount held back from collection on that account. The Chairman, CBR, stated that the position as on 31st May 1962 was that about 95,000 cases had been pending and collection amounting to roughly Rs. 20 crores had been held back because of non-disposal of cases. The witness did not consider the situation as alarming as that was the normal amount held back in appeal cases, filling of appeals being a continuous process. In disposing of pending cases, the policy of the Department was to give priority to old cases as also to those involving substantial points of dispute. Asked whether any time-limit was prescribed for the disposal of appeal cases pending before the Appellate Commissioners, the representative of the Department of Revenue replied that there had been a drive in the Department to clear off pending cases with expedition, but imposition of a time-limit would be dangerous. In regard to the filling up of posts of Assistant Commissioners, which were created pursuant to the recommendations of the Tyagi Committee for the specific purpose of clearing arrears, the witness stated that these had been filled up in April, 1962.

The Committee inquired about the considerations on which an assessee was allowed time to make payment. The Chairman, CBR, stated that the Department gave time for collection of revenue in appeal cases, where a case was considered arguable and no risk to

revenue was involved. Asked about the feasibility of obtaining a guarantee from assessees in such cases, the witness stated that where certain risk was involved, the Department did ask for a guarantee. But he did not favour enactment to that effect, as that would result *in financial burden to assessees who would be required to pay very heavy charges to the bank giving the guarantee. On a suggestion that assessees might be required to pay the amount of demand before filing an appeal, the witness stated that this system was in vogue in the Customs Department but its extension to the Income Tax Department would lead to harassment.* In fact, that was the general criticism against the Department, he added.

(a) The Committee feel concerned at the huge back-log of arrears of Income tax pending recovery to the tune of Rs. 253·49 crores out of which Rs. 136·74 crores were stated to be effective arrears. They desire that vigorous efforts should be made by the Income Tax Department to liquidate these arrears as delays in their recovery are fraught with dangers of loss of revenue. In the context of the present 'national emergency' when the country badly needs funds, it is imperative that the past arrears should be realised and current collections should not be allowed to accumulate.

(b) The Committee understand that one of the main causes for these arrears is that the collection of tax had to be stayed on account of appeals having been preferred against assessments to the Appellate authorities. In this connection, it is significant to note that the number of pending appeals in the Income Tax Department has increased from 59,817 as on 30th September, 1961 to 95,000 as on 31st May, 1962, a number of which have been pending for 4 to 5 years. This betrays an unsatisfactory state of affairs.

Progress of the work made by the Special Cell (Income-Tax) of the Central Board of Revenue—pages 112-113, *para.* 93.

32. The audit paragraph disclosed the results of the Directorate of Inspection (Special Investigation)—a special cell created by the CBR in 1954-55 to dispose of the cases originally referred to the Income Tax Investigation Commission, which had been set up following an enactment in 1947 to investigate the actual avoidance of tax etc. with particular reference to individual cases, but which had to be wound up consequent on the rulings of the Supreme Court. Out of the 914 cases which had been taken up by the Cell, 47 cases remained yet to be disposed of by the end of February, 1962. Out of this, 29 cases were covered by court proceedings and 18 were in various stages of investigations. In dealing with 867 cases, it was decided to make assessment in 183 cases, proceed on a settlement

basis in 389 cases and drop proceedings in 295 cases. The 572 (183+389) cases revealed a total concealed income of nearly Rs. 50·50 crores and the tax thereon was determined at Rs. 24·33 crores.

In evidence, the Chairman, CBR, stated that all the cases except 47 had been disposed of, consequent on which the special cell created by the CBR had been wound up. In regard to the position of pending cases, it was stated that 29 cases were *sub-judice*, and nothing could be done at this stage; the remaining 18 cases had been distributed in four groups and, he expected that they would be disposed of before long.

Referring to the rulings of the Supreme Court, which necessitated the re-opening of cases already settled by the Investigation Commission, the Committee enquired whether such cases had been compounded on the same terms or better terms in favour of the concerned parties. The Chairman, CBR, explained that there had been vary little change so far as settlement cases were concerned. With regard to assessment cases the Department had to take into account certain facts which came to light later. In regard to settlement cases only some minor arithmetical mistakes had to be corrected. He also added that at the time the Investigation Commission reported such cases, they did not make any assessment. On the basis of their Report the Income Tax Department made the assessment. In some cases certain evidence, which was not produced before the Investigation Commission, became available to the Department subsequently and the assessing officer had to take these facts also into consideration in making the assessment.

The Committee have noted the progress made and would like to be informed regarding the completion of the remaining 18 cases and of the recoveries made.

MAHAVIR TYAGI,
Chairman,
Public Accounts Committee.

NEW DELHI;
The 24th January 1963
Magha 4, 1884 (*Saka*)

APPENDICES

APPENDIX I

Ministry of Finance (Department of Revenue) O.M. No. 18/1/62-Cus VI dated the 10th September, 1962 regarding delay in recovery of Customs dues on unclaimed goods from the Bombay Port Trust.

[*Para 74 of Audit Report (Civil), 1962*]

The undersigned is directed to refer to Lok Sabha Secretariat's office Memorandum No. 6/1/62/PAC-Vol. II, dated the 2nd August, 1962 on the above subject and to give below the required information in regard to item 2 of the list annexed thereto:—

(i) The opinion of the Ministry of Law was obtained more than once on the question of the priority of the Import Trade Control fines, as "Government dues", over the Port Trust dues, on the sale proceeds of abandoned goods. The first reference to them on the point was in December, 1952. This matter was later discussed at a meeting on the 14th September, 1955 which was attended by the representatives of the Ministries of Finance, Transport and Communications and Law. The representative of the Ministry of Law confirmed the opinion given by that Ministry in 1952. The Ministry of Transport and Communications wrote to the Bombay Port Trust on the 31st October, 1955 conveying the legal opinion referred to above.

(ii) The legal provisions which are relevant to this question are Sections 88, 184 and 207 of the Sea Customs Act and Sections 61, 64, 64A, 65 and 69 of the Bombay Port Trust Act (extracts of these Sections are annexed). The Ministry of Law and the Legal Adviser of the Bombay Port Trust in the matter have however, differed in interpreting the effect of certain of the above provisions. Section 65 of the Bombay Port Trust Act provides that the sale proceeds of unclaimed goods should be applied in a particular sequence; the first category is of certain charges which include "money payable to Government". It is only after these charges have been met that the "rate and expenses due to the Board" which fall in the third category are to be recovered. It has been the view of this Ministry, as confirmed by the Ministry of Law, that both Customs duty and Import Trade Control fines are "money payable to Government", and therefore have precedence over the charges due to the Port Trust. The Legal Adviser of the Bombay Port Trust had however referred to Section 207 of the Sea Customs Act, which provides

inter alia that nothing in that Act shall affect any law relating to the Trustees of the Port of Bombay. He had advised that as a result, the lien of the Port Trust for its charges is not extinguished by the action for confiscation taken under Section 184 of the Sea Customs Act. As against this, the Ministry of Law have referred to Section 69 of the Bombay Port Trust Act, which provides that nothing in that Act shall affect the right of the Central Government to collect customs duties, or any power or authority vested in the Customs authorities for the administration of Sea Customs. Having regard to the wording of the relevant sections, the view of the Ministry of Law is that money due to Govrenment must have precedence over Port Trust dues, and that since Import Trade Control fines are "money due to Government" the stand of the Customs authorities on this point is correct in law.

2. Thus the question is one of interpretation, and not of inconsistency in law. An authoritative interpretation can only be given by a court of law, but a court case between the Customs Department and the Port Trust, besides being time-consuming, would not be desirable, so far as it can be avoided. Accordingly attempts have been made to settle the matter by discussion and negotiation, and without ruling out the possibility of a compromise. In a communication addressed to this Ministry by the Ministry of Transport and Communications dated the 26th May, 1962, that Ministry have indicated a desire on the part of the Bombay Port Trust, expressed a year ago, for an amicable settlement. The suggestions now made are under consideration. The question of amending the relevant Act or Acts if found to be necessary in this connection, will also be considered by the appropriate Ministry or Ministries.

3. This note has been seen by Audit.

Extract from the Sea Customs Act, 1878

88. *Procedure in case of goods not cleared or warehoused within four months after entry of vessel.*—If any goods are not entered and cleared for home-consumption, or warehoused, within four months from the date of entry of the vessel, such goods may, after due notice to the owner, if his address can be ascertained, and in the local official Gazette be sold by public auction, and the proceeds thereof shall be applied first, to the payment of freight, primage and general average if the goods are held by the Customs Collector subject to such charges under notice given under section 83, 84 or 85; next to the payment of the duties which would be leviable on such goods if they were then cleared for home-consumption, and next to the payment of the other charges (if any) payable to the Customs-Collector in respect of the same.

The surplus, if any, shall be paid to the owner of the goods on his application for the same; provided that such application be made within one year from the sale of the goods, or that sufficient cause be shown for not making it within such period.

(Chapter IX—Of Discharge of Cargo and Entry Inwards of Goods. Chapter X—Of Clearance of goods for Home Consumption. Chapter XI—Warehousing).

Power to direct sale of perishable goods.—If any goods of which the Customs-Collector has taken charge under section 83, 84 or 85 be of a perishable nature, the Customs-Collector may at any time, direct the sale thereof, and shall apply the proceeds in like manner:

Proviso. Provided that, where any goods liable to be sold under this section are arms, ammunition or military stores, they may be sold or otherwise disposed of at such place whether within or without India, and in such manner as the Chief Customs-authority may, with the concurrence of the Central Government, direct.

Provided also, that nothing in this section shall authorise the removal for home consumption of any dutiable goods without payment of duties of customs thereon.

* * * * *

184. *On confiscation, property to vest in Government.*—When anything is confiscated under section 182, such thing shall thereupon vest in Government.

The officer adjudging confiscation shall take and hold possession of the thing confiscated, and every officer of Police, on the requisition of such officer, shall assist him in taking and holding such possession.

* * * * *

207. *Saving of Calcutta Port Commissioners' and Bombay Port Trust Acts.*—Nothing in this Act shall affect any law for the time being in force relating to the Commissioners for making improvements in the Port of Calcutta or Trustees of the Port of Bombay or any like body hereafter created for any other port.

Extracts from Bombay Port Trust Act, 1879

* * * * *

61. *Recovery of rates in arrears.*—For the amount of all rates leviable under this Act in respect of any goods the Board shall have a lien on such goods, and shall be entitled to seize and detain the

same until such rates are fully paid. Rates in respect of goods to be landed shall become payable immediately on the landing of such goods. Rates in respect of goods to be removed from the premises of the Board or to be shipped for export shall be payable before such goods are removed or shipped. The lien for such rates shall have priority over all other liens and claims, except for general average, for the ship-owner's lien for freight upon the said goods (where such lien exists and has been preserved in the manner hereinafter provided), for primage and for money payable to Government.

* * * * *

64. *If rates not paid or lien for freight not discharged goods may be sold after two months.*—If the rates payable to the Board in respect of any goods are not paid, or if the lien of the ship-owner for freight, when such notice as aforesaid, had been given is not discharged, the Board may, and in the latter event, if required by or on behalf of the person claiming such lien for freight, shall, at the expiration of two months from the time when the goods were placed in their custody or if the goods are of a perishable nature, at such earlier period (being not less than twenty-four hours after the landing of the goods) as they shall think fit, sell by public auction the said goods, or so much as may be necessary to satisfy the amount hereinafter directed to be paid out of the produce of such sale.

Before making such sale, ten days notice of the same shall be given by publication thereof in the Bombay Govt. Gazette, unless the goods are of so perishable a nature as, in the opinion of the officer aforesaid, to render their immediate sale necessary or advisable, in which event such notice shall be given as the urgency of the case admits of.

If the address of the owner of the goods has been stated on the manifest of the cargo or in any of the documents which have come into the hands of the Board, or is otherwise known, notice shall also be given to the owner of the goods by letter delivered at such address, or sent by post; but the title of a *bona fide* purchaser of such goods shall not be invalidated by reason of the omission to send the notice hereinbefore mentioned, nor shall any such purchaser be bound to inquire whether such notice has been sent.

64A. *Disposal of goods not removed from the premises of the Board within time limited.*—(*1*) Notwithstanding anything contained in this Act, where any goods placed in the custody of the Board upon

the landing thereof are not removed by the owner or other person entitled thereto from the premises of the Board within one month from the date on which such goods were placed in their custody, the Board may, if the address of such owner or person is known, cause a notice to be served upon him by letter delivered at such address or sent by post or if the noitce cannot be so served upon him or his address is not known, cause a notice to be published in the Official Gazette and also in at least one of the principal local daily newspapers requiring him to remove the goods forthwith and stating that in default of compliance therewith the goods are liable to be sold by public auction:

Provided that, where all the rates and charges payable under this Act in respect of any such goods have been paid, no notice of removal shall be so served or published under this sub-section unless two months have expired from the date on which the goods were placed in the custody of the Board.

(2) If such owner or person does not comply with the requisition in the notice served upon him or published under sub-section (1), the Board may at any time after the expiration of one month from the date on which the notice was so served or published in the Official Gazette, sell the goods by public auction after giving notice of the sale in the manner prescribed in paragraphs 2 and 3 of section 64.

(3) The Central Government may by notification in the Official Gazettee, exempt any goods or class of goods from the operation of this section.

65. *Application of proceeds of sale.*—In the case of any sale under section 64 or section 64A, the moneys received from the sale shall be applied as follows—

Firstly, in payment, according to their respective priorities, of the liens and claims excepted in section 61 from the priority of the lien of the Board for rates;

secondly, in payment of the expenses of the sale;

thirdly, in payment of the rates and expenses due to the Board in respect thereof.

The surplus, if any, shall be paid to the owner of the goods or his agent on his applying for the same, provided such application be made within one year from the sale of the goods, or good reason be shown why such application was not so made, to the satisfaction of the Board; and in case such application shall not be so made,

nor reason shown, such surplus shall be applied by the Board to the purposes of this Act.

* * * * * *

69. *Saving of rights of Central Government to use wharves, etc., for collecting duties; and of power of Customs Officers.*—Nothing in this Act shall be deemed to affect—

(a) the right of the Central Government to collect customs duties, or of the Municipal Corporation of the City of Bombay to collect town duties, at any wharf, pier or dock in possession of the Board, or

(b) any power or authority vested in the Customs authorities under any law for the time being in force for the administration of Sea Customs.

APPENDIX II

Note re: *variations of the actuals from the estimates under 'Union Excise Duty'* [Para. 75 of Audit Report (civil), 1962]

Break-up of the variation of the actuals from the Budget estimates for 1960-61

(Rs. in lakhs)

Budget	Actuals	Variation from estimate on account of increase in production	Variation from estimates in the case of new commodities due to reasons of secrecy	Total variation
380,01	416,35	27,62	5,80	36,34*

*NOTE:—Includes Rs. 2,92 lakhs which represents the amount collected in the month of March, 1961 on account of New Excises introduced through Finance Bill, 1961.

2. The actuals exceeded the Budget Estimates by Rs. 27·62 crores in respect of the then existing excises. This excess was mainly contributed by tobacco (Rs. 9·93 crores) Refined Diesel Oil and vaporising oil (Rs. 7·34 crores) and Industrial Fuel Oil (Rs. 5·01 crores). Under tobacco, the bulk of the variation was in respect of cigarettes and cigarette tobacco. When the budget proposals were framed early in 1960, Index numbers of production upto 1958-59 were alone available and our estimates were based on trends revealed therein. The relevant index numbers, as published in the Statistical Handbook of the Central Statistical Organisation (1961 Edition), are as follows:—

Year	Index number of tobacco manufacturers	General index of Industrial Production
1956	122·6	132·6
1958	139·1	139·7
1959	150·0	151·9
1960	178·7	170·0

2541 (Aii) LS—5.

While working out the figures for the Budget estimates for 1960-61, it could not reasonably have been anticipated that the level of industrial production would record a much higher jump than the past trends. In point of fact, it would be observed that the quantum of increase in the year 1960 was of the order of what had cumulatively taken place in the three preceding years. This could not be anticipated.

3. A statement giving an analysis of the variations during each year for the five-year period ending 1960-61 is also attached. The Union Excise Tariff covers 65 commodities, ranging from a variety of articles of day-to-day consumption to durable consumption goods, luxuries, semi-manufactured goods and even some items of capital goods. In a period of rapid economic transition and the number of uncertainties that this entails, it is particularly difficult to foresee with a greater degree of exactitude the actual variations in the volume of production of the large number of excisable goods. In these circumstances, variations between the S.B.E. and actuals of the order of 3 to 4% has to be considered to be within the range of normal error.

UNION EXCISE DUTY

Statement showing analysis of variations—years 1956-57 to 1960-61

(In crores of rupees)

Year	Budget	Actuals	Variations		Variations due to changes made after the presentation of the Finance Bill and the Revenue Budget to Parliament Credit for these amounts could not therefore be taken in the S.B.	Difference on account of new Excises between S.B. and actuals. In these cases, as has been explained by the Finance Minister, more accurate estimation was not practicable consistent with the requirements of Budget Security	Additional amounts collected in the month of March on account of New Excises introduced through the Finance Bill for the succeeding fiscal year	Balance which alone is the true index of the degree of under-estimation.	
			Total Revenue	Percentage of S.B.E.				Amount	Percentage to S.B.E.
1	2	3	4	5	6	7	8	9	10
1956-57	170.35	190.43	20.08	11.8	14.60	0.96	..	4.52	2.7
1957-58	259.57	273.78	14.21	5.5	11.49	..	0.24	2.48	0.9
1958-59	304.76	312.94	8.18	2.7	5.81	..	2.37	..	..
1959-60	326.71	360.64	33.93	10.4	13.17	..	1.41	19.35	5.9
1960-61	380.01	416.35	36.34	9.6	..	5.80	2.92	27.62	7.3
TOTAL	1441.40	1554.14	112.74	7.80	45.07	6.76	6.94	53.97	3.7*

*Average for five years.

APPENDIX III

Note re Omission to levy duty on shortages noticed in stock of cloth [Para 78 of Audit Report (civil) 1962]

Question: (1) *What were the reasons that for more than two and a half years (June 1958 to January 1961) shortages in quantities of cloth liable to excise duty had taken place, the discrepancy could not be detected by the Central Excise Departments?*

Reply: (1) In fact the Central Excise Department itself had found certain discrepancies in stocks of cloth in 1958. The Inspector of Central Excise incharge of R.S.R.G. Mohta Mills called upon the licensee to explain the shortage of 7,63,054 linear yards of medium variety of cloth noticed as a result of the stock-taking conducted on 30th June, 1958 (*vide* his letter C. No. ST/58/406 dated 7th August, 1958, copy attached). It may be added that in the same stock-taking report excesses had been also detected in respect of coarse varieties of cloth. No credit was allowed for these excesses nor was the excess set off against the shortages as the two varieties are liable to tax at different rates and if there was any mistake in accounting, it was for the management to establish it. Audit of the mill was conducted by the Accountant General's party during 15th September, 1960 to 27th October, 1960 *i.e.* two years after the point had been raised by the Department itself. After scrutinising the stock-taking report for the half year ending 30th June, 1960, audit observed a shortage of only 4218 yards of bleached medium variety of cloth and desired that the matter may be investigated and duty levied, if found justifiable. According to the estimate made by the Audit party, the duty recoverable amounted to Rs. 382·25 only. The Audit party had also made mention of the fact that there was deficiency under certain categories and excesses under other categories and these discrepancies required investigation. (*Vide* Inspection Memo. No. OAD/Rev/Audit/CE/1959-60/11660 dated 25th February, 1961). The visit of the Audit party from the 15th September, 1960 was subsequent to the arrest of the management of the mill on 9th September, 1960 and the seizure of books of accounts by the Police. Despite repeated attempts, the books of accounts were not available to the Central Excise Department as police investigations as well as investigations by the Reserve Bank authorities in regard to the affairs of the Laxmi Bank with whom the assets of the mill had been pledged and which had gone into liquidation were in progress. This delayed the Central

Excise Department's investigations. Eventually, to be on the safe side and keeping the interests of Central Excise revenue in mind, the Superintendent of Central Excise issued an *ex parte* order demanding duty amounting to Rs. 2,28,454·64 *taking into account only the shortages and ignoring the excesses for this purpose.* This was done at that stage, without waiting for the completion of the investigations or waiting for the mill management's explanation, chiefly as a measure of precaution so that the claim of the Department may also be registered with the Official Liquidator who had by then taken charge of the plant, machinery, raw material, excisable goods etc. of the mill.

Question: (2) (a) *What is the present procedure regarding checking of accounts of quantities of exciseable commodities produced in mills? Is it done on the basis of raw materials consumed?*

(b) *Could not the Central Excise Department make a cross check of the quantities produced by the mill with reference to the figures of certified stocks as furnished by them to the Income-tax Department?*

Reply: (2) (a) The check is conducted with reference to the daily production reports and the accounts prescribed under the Rules. Apart from checks conducted by the Central Excise Officer incharge of the mill, periodically test checks are also conducted by Supervisory Officers and by the internal Audit party. Co-relation with raw materials used is not often practicable.

(b) The returns to the Income-tax Department are filed long after the excise assessment takes place and consequently cross check with the certified stocks as furnished to that Department is not normally resorted to. The Income-tax Department is primarily interested in the total value of the stocks and not in the quantity and its spread over different varieties and different processes.

Question: (3) (a) *When was the Mill closed down?*

(b) *When was its management taken over by the Bombay Government?*

(c) *What arrangements were made for the safe custody of stocks after the Mill was closed down?*

Reply: (3) (a) 10th September, 1960.

(b) 15th September, 1961 by the Government of Maharashtra.

(c) All the assets of the mill including plant, machinery, raw materials and finished products were pledged with the Laxmi Bank. When this Bank went into liquidation, all the pledged assets were taken into possession by the Official Liquidator.

Question: (4) *Has a detailed enquiry into the shortages of cloth been conducted? If so, what are the results?*

Reply: (4) While there were shortages under certain varieties, there were also excesses under other varieties. A detailed enquiry into these discrepancies was conducted by the Superintendent of Central Excise, Akola, and he submitted his findings to the Assistant Collector of Central Excise, Nagpur, on the 18th September, 1961. Subsequently, under the instructions of the Collector of Central Excise, Nagpur, the Examiner of Accounts and a new officer who had succeeded the previous Superintendent, at Akola, conducted detailed investigations jointly and submitted reports to the Collector on 19th May, 1962. According to this joint report, the duty involved would be substantially less than that for which the demand had been originally issued. The Assistant Collector of Central Excise, Nagpur is, however, conducting some further investigations on certain points, arising out of this joint report. The final position would emerge after this has been completed.

Question: (5) (a) *Have the Department taken any action against the officers (including supervisory officers) who failed to detect the discrepancy?*

(b) *Were the Officers responsible for the making and checking of the assessment of excise duty in the present case the same during the period in question?*

Reply: (5) (a) Until all the relevant facts, which as explained above, are still under investigation have been established, it would be somewhat premature to consider disciplinary proceedings.

(b) The officers at present incharge of the mills and who are entrusted with the further investigations are different from the officers who held charge during the period to which the discrepancies relate. In fact, it is not only the Inspector, Deputy Superintendent, and the Superintendent who are different but also the Assistant Collector as well as the Collector.

Question: (6) *What are the prospects of the recovery of Rs. 2,28,455 from the Mill in question?*

Reply: (6) the matter has been taken up with the Official Liquidator. It may, however, be mentioned that the duty involved will probably be substantially less than Rs. 2,28,455 initially claimed.

According to the appeal filed by the present management under the Authorised Controller, the discrepancies were due to clerical errors and a mix up between varieties and no duty is in fact payable.

Question: (7 *What are the safeguards against the evasion of Central Excise Duties at present? Are these safeguards considered adequate?*

Reply: (7) The important safeguards adopted by the Department against evasion of Central Excise duties are:

(i) physical supervision over the various operations connected with manufacture, storage, clearance etc. of the excisable goods;

(ii) maintenance of detailed statutory accounts especially regarding production, clearance, stocks, and where feasible even of raw materials, etc. by the manufacturers and scrutiny thereof by the Central Excise Officers;

(iii) inspection by the Circle/Divisional Officer, Collector and the Directorate of Inspection (Customs & Central Excise);

(iv) intelligence and preventive checks by staff of the Department independent of the assessing personnel; and

(v) internal audit conducted by Examiner of Accounts in respect of selected units.

The above safeguards coupled with penalties provided for in the Central Excises and Salt Act and the Rules thereunder, are considered to be reasonably adequate.

R.S.R.G. Mohta Mills, Akola—Sector

C.No. ST./58/406, Akola dated the 7th August, 1958.

M/s. R.S.R.G. Mohta Mills,
Akola.

Gentlemen,

SUBJECT:—Difference of Loose stock in stock-taking conducted on 30-6-58—C/R.

As per your stock-taking report conducted on 30th June, 1958 you have shown the stock of loose cloth of medium variety 1,77,609¾ linear yards while the stock of loose cloth as per your R.G.1 register is 9,40,664 linear yards. Thus you will find that there is a shortage of 7,63054¼ linear yards of Medium variety.

You should therefore please state the reasons for such vast difference in loose cloth. As I have to submit the report to the Collector of Central Excise, Nagpur, please treat the matter very urgent and submit your report by the evening to-day.

Yours faithfully,
Sd/- Illegible
7/8
Inspector, Central Excise,
I/C Mohta Mills, Private Ltd.,
Akola.

APPENDIX IV

Audit Report (Civil) 1962—Chapter VII—Revenue Receipts.

Note re Arrears of assessed demands [Para 80 of Audit Report (civil), 1962].

Question: (i) What was the number of cases of appeal pending in the Central Excise Department for more than one year as on 31st March, 1960, 31st March, 1961, and 31st March, 1962?

(ii) What measures have been or are proposed to be taken to expedite disposal of appeal cases?

(iii) What was the number of cases during 1961-62 in which the recovery of excise duty was held in abeyance pending disposal of appeals? What was the amount involved?

What was the legal authority for holding the recovery in abeyance?

Reply: (i) The number of cases was as under:

Date	Number of appeal cases pending in the Central Excise Department for more than one year.
31-3-1960	223
31-3-1961	187
31-3-1962	179

(ii) It will be observed that the number of appeals pending for more than one year has come down from 223 as on 31st March, 1960 to 179 as on 31st March, 1962. Compared to the number of cases received, the pendency is very small and it works out to only 5% of the number of cases received during a year. The disposal of appeals being of a quasi-judicial nature, some time-lag is inevitable as several stages have to be gone through. In particular, in most of the appeal cases, personal hearing has to be granted and this takes time as dates suitable to parties as well as the Appellate Authorities have to be arranged and sometimes adjournments have also to be agreed to. Collection of the original records and ascertaining all the facts of the case with reference to the points raised in

the appeals also take some time. Further section 35 of the Central Excise and Salt Act visualises that the Appellate Authority may make such further enquiry as is necessary before taking a decision on the appeal cases. Consequently, in some cases, further enquiries have to be undertaken at the appellate stage. There are also certain instances where appeals have to be kept pending because the parties had taken up the matter in courts of law and the cases are therefore, *sub judice*. Some of the appeal cases pending for over a year come under this category.

Nevertheless, a continuous review is made of the pending appeal cases with a view to expeditious disposal. The departmental instructions require that the Appellate Authorities should examine the Register of appeals at the beginning of each month in order to satisfy themselves that disposal of appeals is not delayed in their offices. Results of such examination are also required to be entered in the Remarks column each month. Having regard to the fact that the disposal of appeals is dealt with by the Appellate Authorities (Deputy Collectors, Collectors and Central Board of Revenue) along with various other duties including field inspections, devolving on them the number of cases pending is comparatively small.

(iii) In 1961-62, there was only one case in which the recovery of excise duty was held in abeyance pending disposal of the appeal. The amount involved was Rs. 2,28,455.

As regards the legal position, section 189 of the Sea Customs Act has been made applicable to central excise cases by a notification issued under section 12 of the Central Excises and Salt Act, 1944. Consequently, duty/penalty leviable in terms of the order of adjudication has to be deposited before the appeal can be filed. Thus legally, there is no need to keep in abeyance recovery of duty pending disposal of the appeals. In actual practice, however, there are various circumstances which have to be taken into account before enforcing the provisions of section 189. The time limit for the filing of an appeal is three months from the date of the order-in-original. In many cases, however, the appeal is filed just before the expiry of this time limit and the duty/penalty would not have been paid or no indication regarding it would have been given in the appeal. In order to comply with the requirements of natural justice, the party is called upon to deposit the dues within a specified period with a clear indication that otherwise the appeal would be liable to be dismissed for non-compliance with the provisions of section 189. This inevitably leads to some delay in the recovery of the dues.

The wording of section 189 of the Sea Customs Act is that—

> "Where the decision or order appealed against relates to any duty or penalty leviable in respect of any goods, the owner of such goods, if desirous of appealing against such decision or order, shall, pending the appeal, deposit.... the amount demanded by the officer passing such decision or order."

In some cases the ownership of the goods is itself in doubt and may be the very point raised in the appeal. In such cases, prior payment is not insisted upon.

In certain cases, the amount involved is so large compared to the means of the appellant that a strict enforcement of the provisions of section 189 will impose so onerous a burden as to deprive the parties of the means of redress through appeal. Such cases are examined on merits and sometimes *ad hoc* relaxation is authorised by Government. This takes various forms *e.g.*, obtaining a security instead of cash, recovery of dues in instalments in the absence of liquid assets etc. Where the financial position of the appellant is such that even such relief would not be of any avail, the appeal is considered on merits without enforcing the provisions of section 189 on the analogy of suits in *forma pauperis* permitted by courts. Recognising the need for some discretionary power in this matter, suitable amendments have been made to section 189 in the Customs Bill which has been introduced in Parliament (*vide* clause 129).

There are also certain cases where the courts have given directions that the appeal may be considered on merits without compliance with the provisions of section 189.

APPENDIX V

Note setting forth the detailed circumstances in which the ex-gratia refund exise duty amounting to Rs. 501,661/- was made What was the legal authority for making the refund? [Vide *para.* 81 *of Audit Report (Civil)*, 1962.]

As a measure of assistance to the handloom industry, the Ministry of Commerce and Industry issued a notification on the 9th December, 1952, under the Cotton Textile (Control) Order, 1948, restricting the production of dhoties in mills to not more than 60% of the average quantity of dhoties packed for sale for internal consumption during the year April, 1951 to March, 1952. By and large, the mills conformed to these restrictions but some units did not and it was not always found possible to prosecute the offender for infringement of the provisions of the Notification. To overcome this disability, it was considered desirable to lay down a graduated scale of additional excise duty on dhoties issued from a mill in excess of the permissible quota. For this purpose, and as a regulatory-*cum*-punitive measure, the Dhoties (Additional Excise Duty) Ordinance, 1953, was promulgated by the Ministry of Commerce and Industry. Subsequently, the Ordinance was replaced by an Act in the normal course. (Annexure I).

2. Section 3 of this Act, which lays down the manner of calculating the permissible quota reads as follows:—

> "3. *Permissible quota*—(1). The permissible quota of dhoties which may be issued out of any mill during any quarter, whether the dhoties were manufactured during that quarter or at any time previous thereto, shall be one-fourth of sixty per cent of the total quantity of dhoties packed by that mill during the relevant period".

Sub-section (1) of Section 4 of that Act which provides for levy of additional duty of Excise, as it stood prior to amendment in 1957, read as follows:—

> "4. *Levy of additional duty of excise on dhoties*—
>
> (1) Where the quantity of dhoties issued out of any mill on or after the 26th day of October, 1953 exceeds in any quarter the permissible quota for that quarter, there shall be levied and collected on that quantity of dhoties

so issued which is in excess of the permissible quota a duty of excise at the rate or rates which may be applicable therto as specified in the Schedule."

3. Certain Mill-owners who owned more than one mill approached the Textile Commissioner with the request that a group of mills owned by the same company or managed by the same managing agents, should be given the facility of combining their quotas for convenience of working. They desired that the calculation of the permissible quota would be made with reference to the past production of each mill as provided for in the Act but the quantity so determined for each mill might be aggregated, and the management given the freedom to manufacture dhoties within the *combined total of the quotas* of each mill by distributing the manufacture among these mills, according to convenience of working, the excess in one mill being compensated by the lower production in another. Without realising that the legal interpretation of provisions of the Act did not permit the grant of such a combined quota, a commitment was made to the Bombay Millowners' Association by the then Collector of Central Excise, Bombay, in consultation with the then Textile Commissioner, to the effect that, while duty would be collected initially on the excess over the permissible quota of an individual mill, it would be refunded if it was within the collective quota of the mills belonging to the same management. The Collector made this commitment in a circular dated the 5th November, 1953, issued to the Millowners, in the following terms:—

> "The Textile Commissioner has fixed the quota in respect of each individual mill. He has, however, allowed certain groups of mills.....to combine the quota of all the mills in the group. The effect of this is that no penal duty is leviable so long as the combined quota of all the mills in the groups is not exceeded.....The mills have agreed to pay the penal excise duty under protest so that they can claim its refund in case the combined quota of the group is not exceeded at the end of the quarter."

4. The Collector, however, not being in possession of authoritative information as to which units formed a particular group to become entitled to the combined quota, approached the Textile Commissioner for clarification. The Textile Commissioner in his turn made a reference to the Ministry of Commerce and Industry. That Ministry accepted the principle of combined quota and in order to give legal effect to it, issued a Notification entitled the Dhoties (Fixation of

Collective Quota) Rules on the 12th February, 1955, under Section 5 of the Dhoties (Additional Excise Duty) Act, 1953. A copy of these Rules is at Annexure II.

5. In the intervening period of November, 1953 to 11th February, 1955, the refund claims preferred by certain groups of mills on the basis of the above commitment in terms of the circular of 5th November, 1953 had been kept pending. To cover these cases the Textile Commissioner suggested that the above Rules should be given retrospective effect.

6. While the question of the grant of retrospective effect was being discussed between the Ministry of Commerce and Industry and this Ministry a further complication arose in September, 1955, when on a reference to the Ministry of Law, it was held by them that the Rules themselves, were *ultra vires* of the Act. This opinion was, however, contested by the then Commerce and Industry Minister and the minute recorded by him on the 30th September, 1955, is of particular relevance regarding this case and it is reproduced below:—

> "The entire noting on the file, including the advice tendered by the Law Ministry, is irrelevant. The penal excise duty is not assuredly a revenue measure, it becomes one incidentally. It is primarily intended to be a regulatory measure. Originally, the Commerce and Industry Ministry under the powers vested in them under the Essential Supplies (Temporary powers) Act regulated the production of dhoties by fixing a quota. Infringements took place. It was not always possible to prosecute the offenders for infrigements. Therefore, an automatic mechanism had to be created, namely, a penal excise duty on increased production on the basis of a progressive slab increase in the penalty in direct ratio to the extent of contravention of the rules and the exceeding of the quota.
>
> In regard to the regulatory measure, the application of the penalty has necessarily to be determined by the circumstances of each case. Production of dhoties necessarily has to be on the basis of a group of mills. It may be convenient to one millowner to produce all the dhoties that is permitted under a quota in one mill and produce other goods in other mills. I cannot understand, therefore, how the Law Ministry or for that matter any lawyer can say that a collective quota is inadmissible, and where is the law that prevents a collective quota being imposed upon?"

While this sets out the basis for additional duty, it was ultimately issued that as the Act did not specifically refer to grouping, a Rule made under the Act could not provide for grouping. Thereupon the Ministry of Commerce and Industry initiated a proposal to amend the Act itself with retrospective effect.

7. At the time of examining the question in this Ministry, it was felt that the mills in question had acted on the assurance given to them by the Collector of Central Excise, Bombay. And since that assurance was never formally countermanded, the mills had not been given an opportunity to decentralise production which they might have done if the correct position had been clarified to them in time. Further, the principles behind the Collector's assurance having been accepted by the Government, it was appreciated that to deny the refund of duty would cause sericus hardship and almost amount to a breach of faith.

8. Nevertheless, it was ultimately decided that the proposal to amend the Act in order to provide for the collective quota system need not be given retrospective effect.

9. As a result of the above decision, the Collector of Central Excise, Bombay was instructed to inform the mills concerned that their request for refund of duty for the period prior to the 12th February, 1955, could not be acceded to. Thereupon the following parties took the matter to the Bombay High Court:—

1. Bombay Dyeing and Mfg. Co. Ltd.,
2. Sasson Spinning and Weaving Co. Ltd.,
3. The Crown Spinning and Mfg. Co. Ltd.,
4. The Indian Manufacturing Co. Ltd.,
5. The Western Indian Spinning and Mfg. Co. Ltd.

10. The Hon'ble Mr. Justice K. K. Desai of the High Court of Bombay delivered the judgement on the 13th July, 1960. On merits and on the basis of the wording of the statute as well as on the ground that it was barred by the limitation of time imposed under section 40 of the Central Excise and Salt Act, 1944, he dismissed the suit. On the basic issue whether the permissible quota for clearance should be calculated with reference to each mill or a group of mills under the same management, Mr. Justice Desai stated as follows:—

> "Permissible quota as mentioned in section 3 has reference to dhoties issued out of any mill during any quarter. It has also reference to total quantity of dhoties packed by

that individual mill during the relevant period. The definition of a 'mill' has reference to the individual building or place where a certain mill is situate. The charging section also is directly related to the production in excess of the permissible quota as mentioned in section 3. There is no doubt that the only construction which can be put on the charging section is that the duty is levied upon the production of dhoties packed at and issued out of any mill in excess of the permissible quota of that particular individual mill. * * *
The levy of duty is made in respect of dhoties manufactured in excess of the permissible quota for each quarter. The language of the Ordinance and the Act and particularly the definition of "permissible quota" as mentioned in section 3 and the charging section in my view do not permit the construction argued for by the Advocate General. Such construction is contrary to the language of section 4. It is also relevant to notice that under the provisions of the Ordinance and the Act, there is no scheme enacted so as to permit combination and amalgamation of permissible quotas of a group consisting of more than one mill. In the absence of such scheme and machinery it is not possible to accept the contention of the Advocate General that mill as mentioned in the charging section should be read in plural, *viz.*, 'mills'. If combined quota is held permissible, language of the Ordinance and the Act would have to be stretched at several places to bring about a complete scheme for levying duty on a group of mills. As that result could not be brought about by the language of the Ordinance and the Act as the same was at the relevant period, I do not accept the contention that the true construction of the charging section was that duty was levied on quantity of dhoties packed at or issued out of a group of mills in excess of permissible combined quota of that group of mills."

While dismissing the suit, Mr. Justice Desai also made the following observation:—

"Though this was the nature of the Plaint, I have considered all the arguments advanced on behalf of the Plaintiffs as it appeared to me throughout that the Plaintiffs would not have suffered from the payments made by them if the authorities of the Defendants had not sanctioned the

course of conduct which the Plaintiffs had adopted. This suit is the direct result of the conduct which the Plaintiffs adopted, as having been authorised by the Defendants' authorities being the agents of the Defendants. This is, therefore, essentially a case where the Defendants would be well advised to make repayment to the Plaintiffs even though the Plaintiffs are non-suited."

11. The following further extract in one of the connected judgments also brings out the equity aspect of the claim made by the mills:—

"It remains to be pointed out that in this suit as in suit No. 103 of 1957 the plaintiffs suffered from the payments of duty for which refund is claimed as a result of the construction put forward by the Collector of Central Excise and the procedure prescribed by him. The Union of India itself has accepted that procedure and construction as correct in the rules made in 1955. The Legislature has also expressed its willingness to proceed on that footing in the subsequent amendment Act. Having regard to all that has transpired it is but fair that the defendants should consider the repayment of the amounts paid by the plaintiffs in this suit irrespective of the dismissal of this suit in this Court."

12. The parties filed appeals in the Bombay High Court against the judgment of Mr. Justice Desai. Simultaneously, on the strength of the observations cited above, the parties approached this Ministry again on 17th October, 1960, with a request that the Government might be pleased to reconsider the matter. On merits, apart from the observations made in the judgments of the Bombay High Court, an important consideration was that the Mills had been denied the opportunity to regulate manufacture so as to ensure that in no individual mill of a group was the permissible quota exceeded, although the total production would have been no different from the collective quota decided upon in consultation with the Textile Commissioner.

13. In view of the history of the case the matter was placed before the Cabinet and the Cabinet decided that refund should be given *ex-gratia*.

14. In the Public Accounts Committee meeting, a question was raised as to whether the grant of refund, even though approved by the Cabinet, was within the competence of the Government of India. In this connection, a reference is invited to sub-section (ii) of Section

4 of the Dhoties (Additional Excise Duty) Act, in which it has been provided that the duty of Excise leviable under that Act shall be levied and collected in the same manner as the duty of Excise on cloth as levied and collected under the Central Excises and Salt Act, 1944, and that the provisions of that Act and the Rules thereunder as far as may be applicable in this behalf shall apply accordingly. Thus, the refund could be sanctioned in the same manner as in respect of duties levied under the Central Excises and Salt Act, 1944.

15. At the Public Accounts Committee meeting, the question whether the Government had the authority to allow an *ex-gratia* refund of this nature without obtaining the approval of the Parliament was also raised. Sanction of *ex-gratia* refund by the Government is a well established and recognised practice. In this connection, a reference is invited to paragraphs 203 and 204 of the Central Government General Financial Rules, Volume I, First Edition, P. 64, which are reproduced below:—

"203. Refunds of revenue are broadly classified as—

(i) refunds to which the claimants are legally entitled, and

(ii) refunds which are made *ex-gratia* Government being under no legal obligation to make them.

NOTE 1.—Refunds of revenues are not regarded as expenditure for purposes of grants or appropriations.

NOTE 2.—Remissions of revenue allowed before collection are to be treated as reduction of demands and not as refunds.

204. Subject to the provisions of the relevant Acts and rules made thereunder, the sanction necessary for refunds of revenue will be regulated by the orders of the Local Administrations and by departmental rules and orders contained in the departmental manuals, etc.

The sanction may either be given on the voucher itself or quoted in it, a certified copy being attached when such orders are not separately communicated to the Accountant-General."

It is clear, therefore, that even though *ex-gratia* refunds are made when the Government has no legal obligation to make them, such payments are not regarded as expenditure for the purpose of grants or appropriations.

16. The present practice of treating *ex-gratia* refunds as deduction from revenue was operative prior to 1954 also. In the year 1963 the Law Ministry expressed the view that all drawbacks and *ex-gratia* payments should be made out of the Consolidated Fund of India subject to Parliament's vote ..... It was, therefore, decided that for such extra legal rebates and *ex-gratia* payments vote of the Parliament should be obtained, and consequently a new minor head was opened as follows:—

"Deduct—Rebates and *ex-gratia* payments".

In accordance with this instruction, in Demand for Grants for the years 1954-55 to 1955-56 the following amounts were budgeted against this head:—

DEMANDS FOR GRANTS, 1956-57

Major Head II H-Rebates and *ex-gratia* payment.	Actuals 1954-55 Rs.	Budget Estimate, 1955-56 Rs.	Revised Estimate, 1955-56 Rs.	Budget Estimate, 1956-57 Rs.
	1,86,653	1,00,00,000	1,13,04,000	Nil.

Even though this practice was adopted, the Government was of the view that such payments were in fact not expenditure but deductions from the revenue. The refunds are given because it is considered that such revenues were not collected rightly even though technically they might have been collected lawfully. In the year 1955 this matter was taken up again with the Ministry of Law and Comptroller and Auditor-General. The question raised was whether, when the Central Government alters or modifies an order passed by a junior authority of the Central Government, the money to be paid in consequence is to be treated as a refund of revenue, or penalty, wrongly collected or as a grant of money which requires expenditure sanction, and, therefore, a vote of Parliament. After discussion by the then Chairman, Central Board of Revenue (Shri A. K. Roy) with the then Comptroller and Auditor General of India, (Shri A. K. Chanda) and with the concurrence of Ministry of Law, a decision was taken to revert to the *status quo ante* and to treat such *ex-gratia* payments as deductions from revenue receipts and not as expenditure. In accordance with this, Government of India in their letter F. No. 15/16/55-CX, dated the 6th December, 1955 issued the following instructions:—

"The position in regard to accounting of rebates, refunds, and other *ex-gratia* payments under the Central Excise and

Customs laws has been reviewed in the light of the provisions of Article 266 of the Constitution. The Government of India have been advised that the distinction sought to be made between rebates, refund of duty and/or fine covered by law or rules having the force of law and other refunds, such as, draw backs, *ex-gratia* payments of revenue etc., is not appropriate and should be discontinued. Under Article 266 of the Constitution all refunds of revenue have to be treated alike and their payments made without subjecting them to the vote of the Parliament. It has accordingly been decided that with effect from the Budget for 1956-57, the present practice of treating drawbacks and *ex-gratia* payments of revenue as "expenditure" and obtaining the vote of Parliament therefore should be discontinued and like other "refunds" these should be treated as "deductions" from revenue receipts. The payments in the current year would however be classified in accordance with the (classification adopted in the Budget) existing instructions."

In accordance with this practice, the heads of List of Major and Minor Heads as compiled by the Comptroller and Auditor General of India were changed and the previous Minor Head "Deduct—Rebates and *ex-gratia* payments" under Major Head "II-Union Excise Duties" was discontinued and such amounts were included under minor head "Deduct—Refunds". It will, therefore, be seen that the present practice of sanction of *ex-gratia* refunds which does not require the vote of the Parliament has the full concurrence of the Comptroller and Auditor General of India. Hence, the Government acted properly and within the constitution in making such payments in the manner it did as these payments were not in the nature of expenditure but were refunds of revenue, which are regulated by Departmental Rules and orders under paragraph 204 of the General Financial Rules. The Comptroller and Auditor General has now drawn our attention to the Minutes of the meeting held in his office on the 9th May, 1956 which was attended by the representatives of the Ministry of Finance, Department of Economic Affairs. At this meeting, it was agreed that the fact that *ex-gratia* payments were not subject to the voted provisions would not fetter the discretion of audit in examining the propriety of such payments.

ANNEXURE I

THE DHOTIES (ADDITIONAL EXCISE DUTY) ACT, 1953

No. 39 OF 1953

(16*th December*, 1953)

An Act to provide for the levy and collection of an additional excise duty on dhoties issued out of mills in excess of the quota fixed for the purpose.

BE it enacted by Parliament as follows:—

1. Short title, extent and Commencement.—(1) This Act may be called the Dhoties (Additional Excise Duty) Act 1953.

(2) It extends to the whole of India [1][.....]

(3) It shall be deemed to have come into force on the 26th day of October, 1953.

2. Definitions.—In this Act,—

(a) 'dhoti' means any type of grey or bleached cloth of plain weave which—

(i) is manufactured by a mill either wholly from cotton or partly from cotton and partly from any other material;

(ii) contains coloured yarn on its borders;

(iii) has a width ranging between twenty-eight inches and fifty-four inches; and

(iv) is commonly known by that name;

[2][(aa) 'group of mills' means two or more mills under common ownership or management;]

(b) 'mill' means any building or place in which cotton yarn is spun and dhoties are manufactured by machinery moved otherwise than by manual labour, and includes every part of such building or place;

(c) 'permissible quota' means the quota referred to in section 3;

(d) 'quarter' means the period of three months ending on the last day of March, June, September and December.

3. Permissible quota.—(1) The permissible quota of dhoties which may be issued out of any mill during any quarter, whether the dhoties were manufactured during that quarter or at any time

previous thereto, shall be one-fourth of sixty per cent. of the total quantity of dhoties packed by that mill during the relevant period.

Explanation I.—For the purposes of sub-section (1), the Central Government shall, by notification in the official Gazette, fix for all mills any period of twelve months which has expired before the commencement of this Act as the relevant period, and where any such period has been so fixed, the total quantity of dhoties packed by any mill during that period shall be determined with reference to the returns furnished in that behalf by the mill to the Textile Commissioner to the Government of India under the Cotton Textiles (Control) Order, 1948:

Provided that where, in the case of any mill, the relevant period so fixed is not applicable by reason of the fact that the mill came into existence or commenced working only during or after the expiry of the relevant period, the Central Government may by a like notification, fix the permissible quota in respect thereof to be such quantity as, in its opinion, is reasonable, having regard to the machinery and other equipment installed therein and to the other circumstances of the case.

Explanation II.—The permissible quota for the quarter of the year 1953 remaining unexpired at the commencement of this Act shall bear the same proportion to one-fourth of the said sixty per cent. or as the case may be, to the permissible quota fixed under the proviso to Explanation I as the total number of days remaining unexpired bears to the total number of days in the quarter.

(2) Notwithstanding any thing contained in sub-section (1), if in the case of any mill or class of mills, the Central Government is of opinion that due to economic reasons connected with the nature of the machinery or other equipment installed therein a higher percentage than that specified in sub-section (1) should be fixed in respect thereof, it may, by notification in the Official Gazette, fix the permissible quota for a quarter for the mill or class of mills as one-fourth of such higher percentage as it may think fit, and where any such notification has been issued, the quota so fixed shall be deemed to be the permissible quota for the mill or class of mills within the meaning of this Act.

[2][(3) The permissible quota of dhoties which may be issued out of any group of mills as a whole during any quarter in any case where an application is made in that behalf by that group shall be such as the Textile Commissioner to the Government of India may fix but such permissible quota shall in no case exceed the total of the

permissible quotas under sub-section (1) or, as the case may be under sub-section (2), for all the mills included in that group.]

[2][(4) Where an application for the fixation of permissible quota under sub-section (3) is rejected, the Textile Commissioner shall record in writing a brief statement of his reasons for such rejection.]

4. Levy of additional duty of excise on dhoties.—(1) Where the quantity of dhoties issued out of any mill on or after the 26th day of October, 1953 or out of any group of mills exceeds in any quarter the permissible quota for that quarter, there shall be levied and collected on that quantity of dhoties so issued which is in excess of the permissible quota a duty of excise at the rate or rates which may be applicable thereto as specified in the Schedule.

(1A) For the removal of dhoties it is hereby declared that where a duty of excise has been levied under sub-section (1) on any quantity of dhoties issued in excess of the permissible quota fixed under sub-section (3) of section 3 for any group of mills, no duty of excise shall be levied separately under the said sub-section (1) on any quantity of dhoties issued out of any mill included in that group on the ground that such quantity is in excess of the permissible quota for that mill.

(2) The duty of excise referred to in sub-section (1) shall be in addition to the duty of excise chargeable on cloth under the Central Excise and Salt Act, 1944 (1 of 1944) and the Khadi and Other Handloom Industries Development (Additional Excise Duty on Cloth) Act, 1953 (12 of 1953), and shall be levied and collected in the same manner as the duty of excise on cloth is levied and collected under the Central Excises and Salt Act, 1944, and the provisions of that Act and the rules thereunder, as far as may be applicable in this behalf, shall apply accordingly.

5. *Power to make rules.*—(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act, including, in particular, the form and manner of applications for fixation of permissible quotas for groups of mills, the procedure to be followed in relation to such fixation and the submission of returns or other information relating to the manufacture or issue of dhoties by mills to such authority as may be specified in this behalf.

(2) All rules made under this Act shall be laid for not less than thirty days before each House of Parliament as soon as may be after they are made, and shall be subject to such modifications as Parliament may make during the session in which they are so laid or the session immediately following.

6. *Repeal of Ordinance 6 of* 1953.—The Dhoties (Additional Excise Duty) Ordinance, 1953 (6 of 1953) is hereby repealed.

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1. Omitted by the Dhoties (Additional Excise Duty) Amendment Act. 1957.

2. Inserted by the Dhoties (Additional Excise Duty) Amendment Act. 1957.

THE SECHEDULE

(*See* section 4).

	*Rate of duty.
When the quantity of dhoties issued out of any mill@ [or any group of mills] during any quarter is in excess of the permissible quota for that quarter—	
(1) in respect of quantity which does not exceed the permissible quota by more than 12½% thereof.	Two annas per yard.
(2) in respect of quantity which exceeds the permissible quota by more than 12½% thereof but does not exceed it by more than 25%.	Three annas per yard.
(3) in respect of the quantity which exceeds the permissible quota by more than 25% thereof but does not exceed it by more than 50%.	Four annas per yard.
(4) in respect of the quantity which exceeds the permissible quota by more than 50% thereof.	Eight annas per yard.

@. Inserted by the Dhoties (Additional Excise Duty) Amendment Act, 1957.

*These rates have since been converted into metric units under the Central Excise (Conversion to Metric Units) Act, 1960.

ANNEXURE II

TO BE PUBLISHED IN PART II SECTION 3 OF THE GAZETTE OF INDIA

GOVERNMENT OF INDIA

MINISTRY OF COMMERCE AND INDUSTRY

New Delhi, the 12th February, 1955.

NOTIFICATION

S.R.O. .—In exercise of the powers conferred by Section 5 of the Dhoties (Additional Excise Duty) Act, 1953, (39 of 1953), the Central Government hereby makes the following rules, namely:—

1. *Short title.*—These rules may be called the Dhoties (Fixation of Collective Quota) Rules, 1955.

2. *Definitions.*—In these rules, unless the context otherwise requires,

(a) 'the Act' means the Dhoties (Additional Excise Duty) Act, 1953 (39 of 1953);

(b) 'collective quota' means the total of the undivided quota fixed under section 3, for all mills included in a particular group;

(c) 'section' means a Section of the Act; and

(d) 'Textile Commissioner' has the same meaning as in the cotton Textiles (Control) Order, 1948.

3. *Mills in respect of which a collective quota may be fixed.*—Subject to the provisions of the Act, the Textile Commissioner may fix a collective quota in respect of mills,—

(i) which are under a common ownership or management, or

(ii) which may be placed by the Textile Commissioner, by order in writing, within a single group.

4. *Applications for collective quotas.*—Mills desirous of having a collective quota fixed for them shall apply to the Director (Production & Development), office of the Textile Commissioner, Bombay, in the Form annexed to these rules. Such applications shall be

received in the office of the Textile Commissioner not less than 30 days before the commencement of the quarter for which the collective quota has been applied for.

5. *Procedure for fixation of collective quota.*—When the Textile Commissioner has fixed a collective quota for a group of mills, he shall by order in writing, intimate to the mills concerned and to the central excise officers in charge of the said mills, the collective quota fixed for the group, the period for which the collective quota shall be valid, the mill or mills from which *dhoties* shall be allowed to be cleared under the collective quota, and the respective share of the collective quota allocated to each such mill.

6. *Alteration in collective quota once fixed.*—No alteration shall be permitted in the collective quota fixed for a group of mills or in its allocation as between the units in a group during the currency of the quarter to which the collective quota pertains.

7. *Mills to furnish such information etc. as may be required.*—Mills applying for a collective quota shall produce or cause to be produced such documents or furnish such information as the Textile Commissioner may from time to time require in support of applications.

8. *Power to issue supplementary instructions.*—The Textile Commissioner may, from time to time, issue written instructions providing for any matters incidental or ancillary to or arising out of these rules.

FORM OF APPLICATION

(*See* rule 4)

Important.—This Form should be completed and sent to the office of the Textile Commissioner, CST Section, Ballard Estate, Bombay No. 1. Mills are advised in their interests to post the returns under a certificate of posting or by registered post with an acknowledgement due.

1. Names of the mills which desire to form a group for the purpose of collective quota.
2. Address of each mill in the group.
3. Tex. Mark No. of each mill in the group.
4. State/States in which the mills are situated.
5. Name and address of the Managing Agents.
6. Permissible quota for each mill in accordance with the provisions of the Dhoties (Additional Excise Duty) Act, 1953.
7. Reasons why a collective quota for the group of mills is desired.
8. The name or names of the mills from which clearance of dhoties is desired and the proportion in which the collective quota is to be allocated.
9. The period for which collective quota is required.

I hereby declare that the particulars given above, in so far as I can ascertain, are accurate and complete.

Date
Place

Signature of the Managing Agents.

(*Note.*—Collective quotas will be allowed only for a full quarter or quarters and not for any portions thereof).

APPENDIX—VI

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

Audit Report, 1962—Paragraph 85 (C)

The Finance Act, 1956, fixed the rate of Super-tax on companies at -/6/9 in a rupee. The Act, however, provided for varying rates of rebate in the case of different types of companies. By a proviso, provision was made for the withdrawal of rebate in the case of companies which declared dividends in excess of certain prescribed percentages. The relevant clause is re-produced below:—

"(b) in addition, in the case of a company referred to in clause (ii) of the preceding proviso which has *disributed* to its shareholders during the previous year dividends in excess of six per cent of its paid-up capital not being dividends payable at a fixed rate—

On that part of the said dividends which exceeds 6 per cent but does not exceed 10 per cent of the paid-up capital.	at the rate of two annas per rupee.
On that part of the said dividends which exceeds 10 per cent of the paid-up capital.	at the rate of three annas per rupee."

2. The object of the clause was to discourage companies from declaring excessive dividends. According to the judicial opinion available at that time (Laxmidas Mulraj Khatau—1948 ITR-p. 248), a shareholder got the right to a dividend as soon as it was declared by a company and it was the date of declaration that was relevant for the purpose of deciding in which year the assessee was to be assessed in respect of the dividend income. The Central Board of Revenue felt that it was reasonable to follow that view in giving effect to the above-mentioned provision of the Finance Act, 1956. The date of declaration of a dividend is a specific date but the date of actual payment could be manipulated according to the convenience of the assessee company, particularly in the case of private limited companies. It is for this practical reason that the Central Board of Revenue decided to go by the date of declaration of dividend.

3. The objection of the Comptroller & Auditor General is apparently based on the view that the Central Board of Revenue should not issue any instructions which are not in conformity with the law. The Central Board of Revenue agree with this and it was never intended that the executive instructions should exceed the scope of the law. The provisions relating to excess dividend are no longer in operation and this question is of little consequence now. The interpretation given by the Board has been followed in a large number of cases and accepted by assessees. If a different interpretation is to be followed now, it will lead to considerable confusion and difficulty. In some cases, there will be an additional demand and in others there will be refunds. For example in the second case reported in the Audit para, there may be a demand for 1956-57, but on the same basis, there may be a refund of Rs. 1,51,600 for the year 1958-59. There will be other case involving refund. In the circumstances, it is suggested that the matter may be dropped.

APPENDIX VII

Notes *re* paras. 84, 86, 87 and 88 of Audit Report (Civil), 1962.

I. *Para.* 84: *Depreciation allowances incorrectly admitted.*

The information is given in the following statement:—

Financial year	No. of cases checked by internal audit parties.	No. of cases involving incorrectly allowed depreciation	Revenue involved
			Rs.
1957-58	85,254	80	53,796
1958-59	1,30,782	70	21,434
1959-60	1,53,247	192	74,429
1960-61	1,29,405	242	60,146
1961-62	1,65,735	270	1,12,807

In all these cases, the mistakes have been rectified under section 35 of the Income Tax Act, 1922.

Audit has expressed its inability to check the above figures as till recently there was no system of stamping files in token of having been internally audited.

II. *Para* 86: *Excessive rates of Income-tax given by grossing up dividends.*

The assessment of the company was rectified by the Income Tax Officer by taking action under section 34 on 16th February, 1962. Against the Income-Tax Officer's supplementary assessment, the company filed an appeal before the Appellate Assistant Commissioner of Income-tax and pointed out that the companies from which it had received dividends had kept separate accounts of taxed and untaxed reserves and the entire dividends declared by the latter companies had been paid out of the taxed reserves of the past years. Therefore, the grossing of the dividends at 100% was correct. The company's contention has been accepted by the Appellate Assistant

Commissioner of Income-tax who has cancelled the supplementary assessment. The Department has filed an appeal against the Appellate Assistant Commissioner's orders to the Income-Tax Appellate Tribunal. The Income Tax Officer who made the original assessment, has stated in his explanation that in his opinion the contention of the company was correct and therefore he had allowed grossing up of 100% of the dividend. As a question of law is involved and the action taken by the Income-tax Officer has been upheld by the Appellate Assistant Commissioner, it is considered that no disciplinary action is called for.

III. *Para* 87: *Excessive Reliefs.*

(a) There is an agreement between India and Pakistan for the avoidance of double taxation. Under this agreement, in the case of an assessee having income in both countries, each country makes the assessment according to its own laws. Where an item of income accrues in Pakistan, we give an abatement on that item at the Indian rate or Pakistan rate of tax, whichever is lower, and *vice versa.* Pakistan gives a rebate on income which accrues in India. Two tea companies assessed in West Bengal are resident in India but their estates are in Pakistan. In the case of tea estates in India, 4% of the income of tea business is treated as business profit assessable to income-tax and the balance of 60% is treated as agricultural income. However, in the case of tea estates in Pakistan, we have to treat the whole income as liable to income-tax, as the land on which the estate is situated is not subject to land revenue in India. Therefore, such estates will have to pay income-tax in India and agricultural income-tax in Pakistan on 60% of their income. The Double Taxation Agreement does not cover agricultural income. Therefore, to mitigate this hardship, provision has been made in section 49D(3) of our Income Tax Act for giving relief on the Pakitan agricultural income at the Indian or the Pakistan rate, whichever is lower. The Indian rate of tax has been defined as the rate determined by dividing the total amount of Indian Income-tax after deduction of any relief due under the other provisions of the Act but before the deduction of the relief due under this section, by the total income. In working out the rate, the Income Tax Officer divided the gross tax payable in India, without deducting the rebate given for the Pakistan tax on the 40% income chargeable in India and Pakistan, by the total income in India. The audit party pointed out that the rate should have been arrived at after deducting the rebate given in respect of the 40% income. Notice was accordingly given to the companies for enhancement of the assessment. The companies represented to the Board that the abatement given under the Double

Taxation Avoidance Agreement was not a relief as mentioned in the section and therefore enhancement should not be made. After consulting the Law Ministry, the companies have been informed that the Board do not agree with their contention. The Income Tax Officer gave his interpretation in a *bona fide* manner. It is not therefore necessary to take any disciplinary action against him.

Rectification has been made in the case of one company for the year 1951-52. Rectification for 1955-56 became time-barred on 21st March 1962. In the case of the other company, rectification for 1955-56 became time-barred on 5th March 1962, but the companies had given an undertaking that the question of limitation would not be raised till the matter was decided by the Board. Now that the Board has turned down the representation of the companies, the Income Tax Officer has been directed to carry out the rectification for all the years.

(b) Under section 15-B of the Income Tax Act, an assessee is entitled to a rebate of Income-tax and Super-tax in respect of donations made by him in the previous year to charities which are not confined to sectarian objects. However, section 15B(3) lays down that the rebate shall not exceed 50% of the sum donated. The Income Tax Officer overlooked this restriction and allowed the full rebate. The mistake has been rectified. The Commissioner of Income-tax is convinced that the mistake was *bona fide*.

Remedial measures

The Office Manual of the Income Tax Department contains the following instructions for checking of calculations of Income Tax demands and refunds:—

> "(a) There must obviously be an effective check on the accuracy of calculations of demands and refunds. Accordingly, all tax calculations of demands or refunds will be made by one clerk and checked by another before the issue of demand notice or refund orders. In cases of income over Rs. 10,000 or refunds of over Rs. 1,000 either the Head Clerk or the Supervisor should check and initial I.T. 30 form. The Income-tax Officer's responsibility does not cease at that; he must satisfy himself that calculations are being properly made. He is, therefore, advised that he should personally re-check demands in cases with incomes over 1 lack and refunds over Rs.10,000. The working sheets showing the calculations should not be destroyed either, but be filed in each case

in the Miscellaneous Record, duly signed by the person doing the original work as also the person checking it.

(b) At the time of Inspection, the Inspecting Assistant Commissioner's Supervisor who assists him in the Inspection should check not only big refund cases but also test check large demands in cases selected by the Inspecting Assistant Commissioner himself."

The attention of all officers and staff will again be drawn to these instructions.

IV. *Para 88: Deduction wrongly allowed in determining the taxable income.*

(a) Under the Electricity (Supply) Act, 1948, Electric Supply companies are required to apply one-third of their profits in excess of a "reasonable return" as defined in the Act for distribution by way of rebate to consumers or for the creation of a reserves for the benefit of consumers to be distributed in future in such manner as the State Government may direct. Electric Supply companies were claiming the amounts transferred to the reserve as an admissible deduction in their income-tax assessments. The practice of the Department was to add back the reserves but allow actual payments in the year of payment. One assessee of Bombay went in appeal to the Appellate Tribunal and the Tribunal allowed the deduction. The matter was then referred to the Board by the Commissioner of Income-tax, Bombay City. The question was carefully considered by the Board and instructions were issued by the Board to all Commissioners on 1st December 1959 to the effect that an allocation to the reserve was only an application of income and therefore such allocations should not be allowed as deductions but actual payments should be allowed in the year of payment. It may be stated here that the Board's view has not yet been put to the test in a court of law. In any case, whatever is added back in one year has to be allowed in a subsequent year on actual payment. The company referred to in para. 88 of the Audit Report relied on the Tribunal's decision and claimed the amount credited to the consumer's rebate reserve. Income-Tax Officer has explained that when he dealt with the assessment of the company, he was not aware of the Board's instructions of 1st December 1959. The Commissioner is satisfied that the error was *bona fide*.

The distribution of the amount taken to reserve in 1957-58 has not yet been made as the matter is still under consideration with the Government of West Bengal.

(b) Notice has been issued under section 34 of the Income-tax Act, 1922, for bringing to assessment the sum of Rs. 17,06,412. No final

order has yet been passed under section 34 in view of the fact that the assessment in question is also pending in appeal before the Appellate Assistant Commissioner who has been requested to enhance the assessment or set it aside to enable the Income Tax Officer to look into the matter afresh. The Appellate Assistant Commissioner's orders are awaited. The company is a well-known company with assets running to crores of rupees. There will be no difficulty in collection when the assessment is made.

APPENDIX VIII

Summary of main Conclusions/Recommendations

Serial No.	Para No. of Report	Ministry concerned	Conclusions/Recommendations
1	2	3	4
1	4	Finance C.B.R.	(i) While agreeing that small variations in estimates and actuals cannot altogether be avoided, the Committee are of the view that there is considerable scope for narrowing down these variations. (ii) The Committee are of the view that the tendency to keep the assessments low to be on safe side needs to be checked. (iii) The Committee suggest that the feasibility of basing new levies on adequate statistical data to avoid wide variations may be examined.
2	5	Finance C.B.R.	(i) The Committee are surprised to note that the important books of reference like Indian Customs Tariff Book, the clauses of which have far-reaching financial implications are not kept up-to-date and assessment of duty is based on uncorrected schedule. It is also clear that the supervisory authorities who were expected to check the correctness of the assessment also overlooked the amended schedule enhancing the rate of duty. The Committee fee hat in a department responsible for assessment and collection of revenue, the various schedules and

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			codes prescribing rates of assessments etc. should be maintained up-to-date and any laxity in this regard should be viewed with concern. They would urge that during internal inspections of the offices dealing with the assessment of revenues, taxes, duty, etc., these points should *inter alia* be looked into and any slackness in this regard should be suitably taken up.
		Finance C.B.R. Defence All other Ministries	(ii) The Committee feel that in regard to Government dues recoverable by one Government Department from the other, the question of 'time barred' should not be raised inasmuch as the exchequer is common. The Committee would also suggest that the question of the payment of Customs Duty to the extent of Rs. 53,085 in respect of consignment of diesel trucks imported by the Ministry of Defence in February, 1954 should be pursued to finality with the Ministry of Defence and steps taken to recover the dues from that Ministry. The Ministry of Finance should not forego the claim yielding to the time-bar plea.
3	6	Finance C.B.R.	(i) The Committee do not quite understand the propriety of issuing the instructions in 1956 re: withdrawal of the 'Note Pass' concession in chronic cases when those instructions were not observed in actual practice. They would like to know whether those instructions are still in force or have been withdrawn, and whether they have at all been enforced in any individual cases.
			(ii) The Committee feel concerned about the question in view of the fact that there were 20,461 'Note Pass' cases pending finalisation

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			in the Customs Department. They have been informed by the Ministry of Finance that this figure has since come down to 13,000, out of which about 9,600 cases were more than three months old. In about 3,400 cases including the case of the Hindustan Steel Limited in respect of goods imported for Bhilai Project involving a duty amounting to Rs. 7.5 crores, the assessment had been finalised but the duty still remains to be paid. The Committee would like to know the measures taken by the Central Board of Revenue to clear all these cases and to effect recoveries of amounts due. They would await a report indicating the latest position in this regard. They would also like to know the steps proposed to be taken to avoid recurrence of such heavy arrears in future.
4	7	Finance C.B.R. Transport & Communications	The Committee are concerned to observe that the differences between the Customs Department and the Bombay Port Trust had remained unresolved for a period of over 11 years. Such a state of affairs would indicate lack of proper co-ordination between the concerned Ministries / Departments. The Committee trust that the Ministries of Finance and Transport & Communications would smoothen out their differences in a spirit of cooperation and arrive at agreed arrangements without any further delay.
5	8	Finance C.B.R.	The note regarding measures taken or proposed to be taken to improve the position of budgeting of revenue receipts is still awaited. The Committee propose to deal with this subject in greater detail in their subsequent report on Finance

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			Accounts. Here they would only like to observe that while appreciating the difficulties involved in the matter of correct estimating of excise revenue, they are of the view that there is still considerable scope for improvement. As pointed out earlier, the actual collections under the Revenue head "II—Union Excise Duties" were Rs. 416.35 crores during 1960-61, against the budget estimates of Rs. 380.01 crores. The variation comes to Rs. 36.34 crores (approximately 9.6%). The Committee consider this variation to be very much on the high side, and are of the view that it calls for special efforts to improve the technique of budgeting of revenue receipts.
6	9	Finance C.B.R.	The Committee hope that the vigilance branch will be able to tone up the assessment work properly and constant efforts will continue to be made to plug all possible loop-holes leading to leakage of revenue whether it is due to under-assessment or any other factors.
7	10	Finance C.B.R. All other Ministries	(i) The Committee are not happy that under-assessment to the tune of Rs. 47,067 should have occurred due to defective drafting of the notification and the relevant schedule. It shoud have been drafted in more precise terms when the intention of the Government was that "year" means "financial year". In financial matters no defects or lacuna in the wordings of the notifications, etc. which are fraught with the risk of under-assessment and/or leakage of revenue should have been allowed. Precision and clarity of expression, being the very essence of all legal and statutory documents, drafting of notifications etc. should be given special

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			care in future and any lapses in this regard should be brought home to the officers responsible therefor. The Committee desire that this should be impressed upon the authorities concerned so that cases of the type revealed in this audit para do not recur.
		Finance ——— C.B.R.	(ii) Regarding the recovery of the underassessed amount of Rs. 47,067, the Committee would like to know when the dues are fully recovered.
8	11	Finance ——— C.B.R.	The Committee feel concerned to note that such cases of incorrect assessment of central excise duty as have been reported in the audit para should not have been detected by the departmental officers themselves and the audit had to point them out. They consider it to be a serious lapse on the part of the departmental officers and particularly of the inspecting staff of the Central Excise Department.
9	12	Finance ——— C.B.R.	With a view to ensuring that cases of misinterpretation of the instructions issued by the Central Board of Revenue do not occur in future, the C.B.R. may consider the desirability of issuing clear instructions in the matter to the local Central Excise Officers. As regards the action taken against the officers responsible in the matter, the Committee would like to await a note from the Ministry.
10	13(1)	Finance ——— C.B.R.	Regarding non-detection of the shortages in the stock of cloth by the Central Excise Department during the period June, 1958 to January, 1961, it would appear that the matter was either not pursued or

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			that the management had given an explanation which was accepted by the Inspector. Otherwise, investigation would not have started after audit pointed out the shortages. Obviously, the investigations conducted by the Central Excise Department were at the instance of audit and even the detailed investigation culminating in the issue of demand notice for excise duty of Rs. 2,28,455 was after the audit had pointed out the need for such an investigation.
11	13(2)	Finance — C.B.R.	The Committee feel that it could have been possible for the Central Excise Department to affect a cross check of the quantities produced by the Mill with reference to the figures of certified stocks as furnished by that Department to the Income Tax Department. The Committee suggest that the practice of 'cross-checks' should be adopted in future wherever feasible to resolve doubts and to get the correct factual data.
12	13(3)	Finance — C.B.R.	Regarding the detailed enquiry into the shortage of cloth, the Committee would wait a further report in this matter which may be expedited.
13	13(4)	Finance — C.B.R.	As regards the disciplinary action against the officers who failed to detect the discrepancy in the stock, the Committee desire that the matter should be pursued to finality and the final out-come of the case made known to them.
14	14	Finance — C.B.R.	(i) The Committee are hardly convinced with the explanation furnished by the Ministry in regard to failure to assess excise duty in time and consequent withdrawal of claims as time-barred. They hold the view that the officers

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			charged with responsible jobs involving financial interests of Government should be conscientious enough and quite alive to their duties and responsibilities, and any sort of inertia in that regard would mean nothing short of dereliction of duties for which they should be suitably dealt with.
			(ii) One more point, which the Committee view with concern in the present context, is the posting of inexperienced officers in charge of factories manufacturing excisable commodities. The contention of the Ministry that the manufacturers in this case declared the composition of 'sindur' as nothing but 'barytes powder' and 'pigment dye' stuffs processed in Edge Runner Mill, is not tenable. They do not understand how the Central Excise Officer satisfied himself tht the composition as given by the producer did not contain any binding material or oil making it liable to excise duty. They would urge that in selecting men for such jobs all-round suitability, aptitude and adequate experience should *inter alia* be the weighing factors.
15	15	Finance C.B.R.	The Committee are surprised to note the Ministry's statement that the C.B.R. had no power to review the Collector's Orders. When the Collectorate are under the organisation and administrative control of the C.B.R., it is essential that they be responsible and answerable to the C.B.R. The Committee desire that the Central Board of Revenue should re-examine the position and initiate measures necessary to ensure that the Collector's orders are subject to review by the C.B.R. This will reduce instances

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			of errors of misconstruction, if any, on the part of the former and will also afford an opportunity to the latter to rectify mistakes.
16	16	Finance C.B.R.	The Ministry of Finance have stated that it had been decided to appoint District Collectors as recovery officers, for the purposes of enforcing certificates under Section 11 of the Central Excises and Salt Act, 1944. These officers would follow the procedure laid down in the annexure to the Income Tax Act. The Committee trust that these arrangements would work well. They would like to have a report in due course regarding the working of this system and tangible results achieved in regard to speedy recovery of Union Excise Duties.
17	17	Finance C.B.R.	(i) While noting the reasons given by the Ministry for delays in the disposal of appeals, the Committee would like to observe that the number of appeal cases pending for more than 12 months is still quite large. Special efforts should be made to ensure that appeal cases do not remain pending with the Department for long periods. The Committee would also like the C.B.R. to review the position to improve collection of excise duties and to avoid arrears of assessed demands, due to procedural defects, lacunae in the Central Excise Rules, etc. (ii) The Committee observe that till the amendment to Section 189 of the Sea Customs Act, 1878, the pre-deposit of excise duty pending the disposal of the appeal was mandatory. The Committee fail to understand how in contravention of the clear provisions of the

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			law then in force, the Central Board of Revenue could have granted exemptions even on *ex-gratia* considerations. The Committee, however, note that the relevant Act has since been amended vesting discretionary powers in matters of exemptions in the Central Excise authorities. The Committee trust that these discretionary powers to dispense with such deposits pending appeal to duty demanded or penalty levied will be used sparingly and only in cases where it is absolutely necessary to do so. Wherever, such exemptions are granted they should be invariably reported to the Central Board of Revenue.
18	18	Finance C.B.R.	(i) The Committee feel that the commitment made by the Collector in accepting that the word 'Mill' should mean 'a group of mills' under one management was mainly responsible for the observation of the Bombay High Court that the suit was a direct result of the conduct of the Government. They feel concerned that the Collector of Central Excise should have, in matters of legal interpretations, acted on his own without consulting the Government before entering into such a commitment. The Committee hope that such mistakes will be avoided in future. (ii) Another factor, that the Committee view with concern, is regarding the propriety and urgency for giving the *ex-gratia* refund without waiting for the decision of the Appellate Court when the plaintiffs had appealed against the judgment of the High Court (OS). The Committee would like to know whether the fact that the matter

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			was under reference to the Appellate Court was taken into consideration while granting the *ex-gratia* payment and the circumstances in which it was decided not to await the judgement of the Court.
			(iii) The Committee also observe that the present practice of accounting for refunds including *ex-gratia* refunds, has the concurrence of the Comptroller & Auditor General. All the same, the Committee would like to stress that this device of *ex-gratia* payments should be resorted to very sparingly and in very exceptional circumstances.
19	19	Finance C.B.R.	While appreciating the difficulties in arriving at very accurate estimates of the receipts of the Income Tax Department which depend upon a large number of factors whose effect cannot be foreseen with a great degree of precision, the Committee are of the view that the variations for the years 1959-60 and 1960-61 are rather disproportionately high as compared to the years 1957-58 and 1958-59. Special efforts are, therefore, necessary to ensure that the margin of variations is narrowed down to the minimum.
20	20	Finance C.B.R.	(i) The Committee are rather alarmed at such a large number of cases of under-assessment, involving considerable amounts, detected in the test Audit by the Comptroller & Auditor General, when it is borne in mind that this scrutiny was limited to only a small percentage of cases in 235 income tax wards out of 1310 wards in the country. It is significant to note that the number of cases in which defects, discrepancies, etc. involving under-assessment to

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			the extent of Rs. 120.77 lakhs were found, works out to about 16 per cent. of the total number of cases audited (*i.e.*, 13357 cases). The few typical cases dealt with in the succeeding paragraphs indicate the gravity of the mistakes. The Committee feel that the situation calls for more effective internal audit of the old and new assessment cases, so that the mistakes can be rectified and recoveries made before these become time-barred. The Committee regret that in spite of the recommendations of the Direct Taxation Enquiry Committee, no effective steps seem to have been taken to strengthen internal audit. This should be done without further delay.
			(*ii*) The Committee agree that some mistakes might be due to difficulties in the procedure. They are glad that in pursuance of the recommendations of the Direct Taxation Enquiry Committee, the procedure has since been simplified. The Committee hope that improvements effected as a result of the simplified procedure and the strengthening of internal Audit will be reflected in future Audit Reports.
21	21	Finance C.B.R.	The Committee regret to note the mistakes pointed out in these three cases of depreciation allowance incorrectly admitted. These mistakes arose due to the fact that the provisions of the Income Tax Act relating to the allowance of depreciation were ignored. The Committee understand from a note submitted by the Department of Revenue that apart from these three cases, the internal audit parties had also found 854 other cases of incorrect allowance of

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			depreciation pertaining to the years 1957-58 to 1961-62 involving a total revenue of Rs. 3,22,612, and that in all these cases, the mistakes had been rectified under Section 35 of the Income Tax Act, 1922. Such lapses should be taken serious notice of. The Committee would like to be informed about the recovery of extra amounts due in the three cases referred to in para 84 of the Audit Report.
22	22	Finance C.B.R.	The cases of excessive rebate allowed from super tax payable by companies which had resulted in short levy/under assessment are stated to have been rectified since. The Committee hope that such mistakes will not be allowed to recur in future.
23	23	Finance C.B.R.	The Committee realise the practical difficulties explained by the Department of Revenue in making assessments on the basis of 'dividend actually distributed' and also the consequnces of changing to this basis at this stage. They observe from a note that the Ministry of Finance have accepted in principle the point raised by the Comptroller & Auditor General during the course of evidence in connection with the examination of para 85(*c*) of Audit Report. The Committee would, therefore, not like to pursue the matter further.
24	24	Finance C.B.R.	The Committee would like to know the outcome of the appeal filed by the Income Tax Department to the Income Tax Appellate Tribunal in this case of excessive credit of income tax while grossing up dividends.
25	25	Finance C.B.R.	The Committee hope that measures would be taken to avoid such mistakes in allowing rebates involving

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			large amounts of revenue in future If a mistake is due to any ambiguity in the Rules, such ambiguity should be removed. If a mistake is due to any error of judgement on the part of an officer, the same should be suitably brought to the notice of the officer concerned who should be warned to be careful in future. The Committee would also like to be informed about the recoveries made from the companies in this case.
26	26	Finance C.B.R.	The Committee are surprised how the Income Tax Officer while allowing relief under Section 15B of the Income Tax Act, ignored the provisions of sub-section (3) of the same section. The Committee trust that necessary remedial measues would be taken to prevent the recurrence of such mistakes in allowing reliefs.
27	27	Finance C.B.R.	As regards the recovery of the tax short-levied, it has been stated that a notice has been issued for bringing to assessment the sum of Rs. 17.06 lakhs, but final order has not yet been passed in view of the fact that the assessment in question was also pending in appeal before the Appellate Assistant Commissioner, who has been requested to enhance the assessment or set it aside to enable Income Tax Officer to look into the matter afresh. The Committee would like to be informed of the final outcome of the case.
28	28	Finance C.B.R.	The Committee recommend that the present procedure of checking assessments should be revised with a view to ensuring that as far as possible mistakes are detected at the initial stage. The Committee also favour the introduction of a system of double check in the Income

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			Tax Department in cases involving large assessments above a certain limit.
29	29	Finance C.B.R.	(i) In regard to the recommendation of the Direct Taxes Administration Enquiry Committee suggesting a deduction of 2½% on the turnover being made from the contractors' bills and refunding the amount only on production of a tax clearance certificate, the Department have stated that this was under consideration in consultation with the Minstries of Railways, Works, Housing & Rehabilitation and other Ministries dealing with contractors. The Committee would like to be informed about the action taken on this recommendation. (ii) In the present case, the Committee feel that after allowing the contractor time to file the income tax return on completion of the job, the Department should have kept a watch on the progress of the work. The application of the contractor for an Income Tax Verfication Certificate made in July 1956 to export a part of its machinery was a sufficient hint that the work was in the final stages of completion. The Department should have at that time pursued the question of assessment. The contractor's complete disregard of the Department's notice issued in February 1955 was a sufficient indication of his malintentions. The Committee regret that the officers did not show sufficient vigilance in dealing with this case. The Committee are also of the view that the action of the Department in issuing the Income Tax Verification Certificate to the company to enable it to export part of its machinery out of India without ascertaining the assets of the Company was totally unjustified.

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			(iii) Although the present case might be an exceptional one, its *modus operandi* calls for necessary remedial measures to avoid possibility of tax evasion, considering that a large number of foreign parties are engaged in short term assignments like contracts and collaborations in this country.
30	30	Finance C.B.R.	The Committee have been informed that a direction has been issued by the C.B.R. in the current year to all Commissioners of Income Tax to the effect that notices for advance tax must be issued in all cases attracting liability for payment of advance tax and that provisional assessments must be made in all cases where the final assessment cannot be completed by 1st January. In the circumstances explained by the Department of Revenue, the Committee do not wish to press for the information desired by them. The Committee's concern is that the provisions of the Income Tax Act in this regard, which provide built-in safeguards against loss of revenue and accumulation of arrears, should be strictly followed by the Income Tax Commissioners. They hope that the C.B.R. will take serious note of any disregard of the instructions issued by them.
31	31(*a*)	Finance C.B.R.	The Committee feel concerned at the huge back-log of arrears of income tax pending recovery to the tune of Rs. 253.49 crores out of which Rs. 136.74 crores were stated to be effective arrears They desire that vigorous efforts should be made by the Income Tax Department to liquidate these arrears as delays in their recovery are fraught with dangers of loss of revenue. In the context of the present 'national emergency'

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			when the country badly needs funds, it is imperative that the past arrears should be realised and current collections should not be allowed to accumulate.
32	31(*b*)	Finance C.B.R.	The Committee understand that one of the main causes for these arrears is that the collection of tax had to be stayed on account of appeals having been preferred against assessments to the Appellate authorities. In this connection, it is significant to note that the number of pending appeals in the Income Tax Department has increased from 59,817 as on 30-9-1961 to 95,000 as on 31-5-1962, a number of which have been pending for 4 to 5 years. This betrays an unsatisfactory state of affairs.
33	32	Finance C.B.R.	The Committee have noted the progress made by the Special Cell in the disposal of cases taken up by them. They would, however, like to be informed regarding the completion of the remaining 18 cases and of the recoveries made.

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