TWENTY-SEVENTH REPORT

PUBLIC ACCOUNTS COMMITTEE
(1980-81)

(SEVENTH LOK SABHA)

[redacted]

[redacted]

November, 1980/Agrahayana, 1902(S)
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Corrigenda to 27th Report of the Public Accounts Committee (7th Lok Sabha).

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54	Line 1 under column 2		1.30	1.39
55	Lines 17 and 27 under column 4		Omit "	
58	Line 16 under column 4		.	,

CONTENTS

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(1980-81)

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1. Shri H. G. Paranjpe—*Joint Secretary.*
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3. Shri T. R. Ghai—*Senior Financial Committee Officer.*

INTRODUCTION

I, the Chairman of the Public Accounts Committee, as authorised by the Committee, do present on their behalf this Twenty-Seventh Report of the Public Accounts Committee on paragraphs 37 and 53 relating to Union Excise Duties included in the Report of the Comptroller and Auditor General of India for the year 1976-77, Union Government (Civil) Revenue Receipts, Vol. I, Indirect Taxes. Paragraph 37 dealt with a case wherein raw naphtha obtained by Fertiliser Corporation of India, Sindri at concessional rate of duty for the manufacture of fertiliser, was sold and/or used for purposes other than for manufacture of fertiliser. Paragraph 53 related to short payment of duty by certain licensees manufacturing Cement who clubbed the superior and ordinary varieties of grey portland cement and paid duty on all clearances at the lower rate applicable to ordinary cement.

2. The Report of the Comptroller and Auditor General of India for the year 1976-77, Union Government (Civil) Revenue Receipts Vol. I, Indirect Taxes, relating to Union Excise Duties was laid on the Table of the House on 12 April, 1978. The Committee (1978-79) examined these paragraphs at their sittings held on 5 February (AN) and 6 February, 1979 (FN). The Public Accounts Committee (1980-81) considered and finalised this Report at their sitting held on 10 and 11 September, 1980 (AN) based on the evidence taken and further information furnished by the Ministry of Finance (Department of Revenue), Ministry of Industry (Deptt. of Industrial Development) and Ministry of Petroleum, Chemicals and Fertilisers (Deptt. of Chemicals and Fertilisers) earlier. Minutes of the sittings form Part II* of the Report.

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

4. The Committee place on record their appreciation of the commendable work done by the Public Accounts Committee (1978-79) in taking evidence and obtaining information for this Report.

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5. The Committee also place on record their appreciation of the assistance rendered to them in the examination of these paragraphs by the C&AG of India.

6. The Committee would also like to express their thanks to the officers of the Mtnistry of Finance (Department of Revenue), Ministry of Industry (Department of Industrial Development) and Ministry of Petroleum, Chemicals and Fertilisers (Department of Checicals and Fertilisers) for the Cooperation extended by them in giving information to the Committee.

NEW DELHI;
October 27, 1980
Kartika 5, 1902 (S)

CHANDRAJIT YADAV
Chairman
Public Accounts Committee.

REPORT

EVASION/AVOIDANCE OF DUTY

Raw Naphtha

Audit Paragraph

1.1. By issue of exemption notifications, the rate of duty on raw naphtha was fixed at 5 per cent *ad valorem* from 23rd December, 1961 and at Rs. 4.15 per kilolitre from 7th May, 1971, subject to the condition that it was proved to the satisfaction of the Collector that the raw naphtha was intended for use in the manufacture of fertilisers and the procedure laid down in Chapter X of the Central Excise Rules, 1944 was followed. Rule 196 enjoins that, if any excisable goods obtained for industrial use under the said procedure are not accounted for as having been used for that purpose, the manufacturer, who obtained the goods shall, on demand by the proper officer, immediately pay the differential duty.

1.2. A fertiliser factory had been obtaining raw naphtha from an oil refinery since 1969-70 on payment of duty at the concessional rates for the manufacture of fertilisers. In the process of manufacture of fertiliser, the factory first manufactures ammonia from the raw naphtha so obtained. Ammonia is also manufactured by it from the coke gasification process as well as from coke oven gas as a by-product. The liquid ammonia manufactured from these three sources is, however, stored in a common tank, from where it is cleared for the manufacture of fertilisers as also for sale or for other puproses. It was pointed out in audit that the quantity of raw naphtha used in the production of ammonia, which was sold and/or used for purposes other than for manufacture of fertilisers, was not entitled to the concessional rate of duty. Audit also pointed out short payment of duty to the extent of Rs. 94.11 lakhs on the raw naphtha estimated to have been used for manufacture of 9,450 kilolitres of ammonia sold for purposes other than for manufacture of fertilisers during the period June 1973 to January 1974. The collectorate raised (15th July, 1975) demand for differential duty of Rs. 3.40 crores on 17,045.878 kilolitres of raw naphtha used in the manufacture of ammonia which was sold or used for purposes other than for the manufacture of fertilisers during the period April 1969 to November 1974. The factory filed a representation with the jurisdictional Assistant Collector on 13 August, 1975 stating that

the quantity of ammonia produced from coal and coke oven gas was much more than that produced from raw naphtha and that whatever ammonia had been sold or used otherwise than for manufacture of fertilisers was out of the ammonia produced from sources other than raw naphtha.

1.3. As the fertilisers factory had no separate tank for storing the ammonia produced from raw naphtha, there was no evidence to show that the ammonia produced from raw naphtha was entirely used for manufacture of fertilisers.

1.4. In the absence of separate accounts of production and clearance of ammonia from different sources, the quantity of ammonia sold or used otherwise than for manufacture of fertilisers can be allocated to raw naphtha and other sources in the same proportion in which the total production of ammonia was contributed by these sources in the respective years. The Central Board of Excise and Customs, in their letter dated 29 June, 1973, also laid down the same principle for being adopted in determining the duty liability of the manufacturer in such cases. Accordingly, out of the total quantity of 1,03,175.352 metric tonnes of ammonia sold and/or used for purposes other than for manufacture of fertilisers during 1969-70 to 1975-76, a quantity of 18,147.882 metric tonnes was the proportionate contribution from raw naphtha. The proportionate quantity of raw naphtha consumed in the production of 18,147.882 metric tonnes of ammonia was 25,563 kilolitres and the differential duty thereon worked out to Rs. 5.36 crores.

1.5. While accepting the facts as substantially correct, the Ministry of Finance have stated that two demands amounting to Rs. 3,65,36,746 on a total quantity of 24,495 kilolitres of raw naphtha for the periods 1st April, 1969 to 30 November, 1974 and 1st December, 1974 to 15 August, 1976 have been raised (January 1978).

[Paragraph 37 of the Report of the C. & A.G. of India for the year 1976-77—Union Government (Civil)—Vol. I—Indirect Taxes]

1.6. According to the information furnished by Audit, M/s. Fertiliser Corporation of India, Sindri had been receiving raw naphtha for manufacturing fertilisers at concessional rate of duty since 1st April, 1969. They were producing ammonia, which is an intermediate product in the manufacture of fertilisers, not only from raw naphtha but from coke gasification process and coke oven process as well. Liquid Ammonia produced from all these three processes was stored in a common tank. Ammonia so stored was partly used in the manufacture of fertilisers and partly sold and/or used for other purposes

1.7. The Committee desired to know when and how the fact of sale of ammonia by Fertiliser Corporation of India, Sindri came to the notice of the Department. The Member (Excise) stated during evidence:

"On 24 September, 1973 the factory wanted to store in their naphtha factory imported naphtha also. The Inspector was examining it on the feasibility of giving a licence. On the 24 October, 1973, he found that they were selling ammonia and he sent a report to the Assistant Collector. The name of this gentleman is Mr. (Inspector). He reported to the Asstt. Collector on 30th October, 1973 that this malpractice has been going on. Unfortunately, that Assistant Collector took no notice of it. Then he was asked to give more details on the 12 of November. On the 12 November, the Sindri Fertilizer people wrote back saying that they were mixing the gases. Then this gentleman wrote saying: This is going on, please take action. On 17 December he wrote to the Fertilizer Corporation asking for details of sales of ammonia from 1st January, 1969, from the date licence was given, upto 30th November, 1973. On the 27th December the Fertilizer Corporation replied to him. The fertilizer people went and saw the Asstt. Collector on 9th January, 1974. Mr. (Inspector) was not invited but he turned up. This is what the Assistant Collector wrote:—

'The licensee has claimed that out of the raw naphtha received by them on payment of concessional duty, they will be able to prove that no quantities were consumed for manufacture of goods and commodities other than fertilisers. But that will need to be strictly checked up even by experts who are in the service of the Govt. of India. And pending the report with facts and figures on records and pending a decision that they have in fact misused the concession it will not be proper to refuse renewal of their L-6 licence. Therefore, I feel that there will be no difficulty in renewing their licence (L-6).... If it is found that they are abusing, will abuse it, or have been abusing it in the past, the concerned licensees will be severely penalised including cancellation of their Licence.'

Upto this it is all right. Then it says:—

> 'Since this office had not called him to attend and since Mr. (Inspector) had attended office on his own, no DA/TA for this journey will be payable to him.'

1.8. When enquired in regard to subsequent events, the witness stated:—

> "On 9th January, 1974 further details were asked for and supplied on 17th January, 1974. The Assistant Collector asked for details of sales. These were given. After that the department took no action till Audit came and pointed it out. Audit went somewhere in March, 1974 and objected on 1st November, 1974. This thing was pointed out much later by Audit."

1.9. Asked if any action was taken against the Assistant Collector after the discrepancy had come to the notice of the Department, the witness replied in the negative. Explaining the reasons therefor, he stated:

> "Because it was I think, still in the stage as to whether the demand should be raised and if so what should be the demand."

1.10. The witness further informed the Committee that the concerned Assistant Collector retired in May, 1975.

1.11. The Committee wanted to know the effective rates of duty on raw naphtha used in the manufacture of fertilisers and that sold or used otherwise than in the manufacture of fertilisers. In a written note, the Ministry of Finance (Deptt. of Revenue) have furnished the requisite information for the years 1969-70 to 1978-79 which is reproduced in the statement at Appendix I.

1.12. The Committee desired to know the rationale for the grant of concessional rates of duty in favour of raw naphtha used in the manufacture of fertilisers. The Ministry of Finance (Department of Revenue) have in a written note stated as under:—

> "In 1961, the Ministry of Commerce and Industry came up with a proposal for exemption from excise duty on raw naphtha on the grounds that the raw naphtha was accumulating in large quantities so much so that the surplus was estimated to be to the tune of 1,71,000 tons by the end of 1966. To ensure its optimum use it was suggested by

that Ministry that exemption from excise duty be granted for encouraging its use in the manufacture of fertilisers, petro-chemicals and town gas.

The Ministry of Commerce and Industry had pointed out that the cost of ammonia based on non-duty paid naphtha varied from Rs. 348 per ton to Rs. 472 per ton while the cost of ammonia based on coal was Rs. 379 per ton. If duty were payable on raw naphtha, the cost of ammonia would be very high and it would be uneconomical to use raw naphtha for manufacture of fertiliser.

On examination it was found that there was no definite scheme then for utilisation of raw naphtha in the production of petro-chemicals or town gas. As such, it was not necessary to consider exemption of excise duty on raw naphtha used for these purposes. But there were very good prospects of using raw naphtha in the production of fertilisers. Its use as raw material in the fertiliser industry was considered to be desirable for more than one reason. It was not only to help in solving a serious problem of the oil economy but was also to some extent, to relieve the pressure on coal and help in conserving foreign exchange being spent on the import of fertilisers. It was felt that exemption from duty was necessary but at the same time, it was desirable to exercise certain amount of control over the ultimate use of raw naphtha to ensure that it was not diverted for an unauthorised purpose. For this purpose and also as a revenue measure, it was decided to retain a small duty of 5 per cent *ad valorem* on raw naphtha used for the manufacture of fertilisers as it will particularly wipe out any edge which raw naphtha will otherwise have over coal in identical conditions and will thereby ensure a fair competition."

1.13. The Ministry of Finance (Department of Revenue) also informed that the above concession was introduced w.e.f. 23-12-1961.

1.14. Justifying the continuance of this concession from time to time, the Ministry of Finance (Deptt. of Revenue) have further stated:—

"The concession granted for raw naphtha used in the manufacture of fertilisers was reviewed in consultation with Ministry of Petroleum and Chemicals in 1970 in the con-

text of conversion of concessional *ad valorem* rate into equivalent specific rate. That Ministry considered that there was no justification to increase the incidence of duty as it would increase the cost of basic fertiliser feed stock. That Ministry also pointed out that any increase in the price of feed stock for fertilisers would seriously affect fertiliser prices and would hamper the growth of fertiliser industry and use of fertiliser in agriculture. In these circumstances, it was decided that the concession should be continued. Again the concession was reviewed as a part of the Budget proposals for 1973-74 and the then Finance Minister in the Budget Speech had explained the continuance of *status quo* as under:—

"70. I also intend to take this opportunity for making a few modifications in regard to certain petroleum fractions which are classifiable as motor spirit, particularly raw naphtha, where there is need for economy in its consumption. However, in doing so, the existing concessions for the use of naphtha in the manufacture of fertilisers, as also fuel in the manufacture of steel, will be left untouched."

1.15. The Committee wanted to know the factual position regarding the Audit objection. The Member (Excise) stated during evidence:

"The whole Audit objection relates to the mixture of three streams of gases. Actually it is two streams. The factory has got one process called the CCC process—i.e. Chemical Construction Corporation process. In that, ammonia is derived from coke. They started this right in 1951. Now, the factory's contention is that it is this ammonia alone which is sold. In other words, there is no injection of naphtha into the picture at all.

The second stream, which started in 1954, was from the coke oven gas. Before it formed into coke, coke oven gas was taken aside, and this was known as the 'Montecatini' process. From that also ammonia can be produced.

Now, the coke oven battery became weak over the years. So, from 1969 onwards, they took permission to bring in naphtha from outside to reinforce this coke oven gas. So, we have two streams which took the coke-oven gas and

the Naphtha. These two streams merge to produce ammonia....There are two processes—one derived from coke, and the other derived from naphtha. It is the ammonia derived from naphtha, which is eligible for duty concession, if it goes into the manufacture of fertilisers. There are a number of stages starting with the raw material and a number of tanks, pipelines, etc. before it ends up in, what is called, the horton sphere where the ammonia is stored before sale, utilisation, etc. They have got two streams, the various intermediate tanks and the final storage tank. There are a number of pipelines from the beginning to the end, and in between there are let-down tanks where the pressure is let down to some extent and from where also ammonia can be drawn off. The contention of the factory has been that there are two self-contained streams and that whatever ammonia was sold out, was taken only out of the stream of the coke process before it had finally reached the Horton sphere—at the intermediate stage from the let-down tank. And whatever came to the naphtha stream was utilised entirely for fertilisers. That has been their stand. It was not accepted by the Assistant Collector for the reason, as he was advised by the chemical examiner, that these two pipelines were not entirely separate and the possibility of gas from one going to the other in the intermediate stage could not be ruled out."

1.16. Since this factory was allowed to draw raw naphtha at concessional rate of duty, the Committee wanted to know the precautions taken by the Department for the accurate measurement of naphtha used for fertiliser and that used for other purposes so as to ensure that there was no leakage or mix-up or confusion. The Finance Secretary explained during evidence:—

"It is true that raw naphtha has been given a concessional rate insofar as, and to the extent to which, it is used in the production of fertilisers. If it is used for other purposes, it will not be entitled to that concessional rate because Government, as a matter of policy, in the interest of keeping fertiliser prices, etc., at reasonable levels have given this concessional rate for raw naphtha used in the manufacture of fertilisers. It is true, as you pointed out, that once you provide for a concessional rate related to the end use of a product, then it is the obligation of the

assessee and it is the duty of the Department to ensure that the input which is given such concessional treatment is accounted for separately and its utilisation is monitored from the beginning to the end. I concede that point. To that extent, the audit point has force. If we wanted the end use of raw naphtha to be monitored strictly, we must have provided for and insisted on separate storages for the ammonia produced as a result of the reforming of naphtha. I am told that the provision of a separate storage facility for ammonia is a very costly proposition costing something like Rs. 40 to Rs. 50 lakhs. I also happen to be the Finance Secretary interested in Plan finance, and so on. In view of the very significant presence of public sector in the fertiliser industry, we should seriously consider whether purely from the point of view of monitoring the end use of naphtha, we should go to the extent of insisting on separate storages for ammonia. Each factory may have to provide for a separate storage and it may cost, I am told, Rs. 40 to 50 lakhs. I am not trying to justify any lapse on the part of the Department in not enforcing the so-called 'Chapter X procedure' nor am I straightway conceding the contention of the Fertiliser Corporation of India before the assessing authorities."

1.17. The Committee wanted to know the procedure laid down in Chapter X of the Central Excise Rules, 1944 to provide for safeguards in relation to excisable goods which are cleared at a concessional rate of excise duty for special industrial purposes. In this connection, the Ministry of Finance (Department of Revenue) have furnished a note which is at Appendix II. It would be seen from there that apart from the safeguards provided under Rule 192, certain other safeguards with regard to disposal of surplus excisable goods have also been provided for by rules 195 and 196 separately. Furthermore (*vide* rule 196) powers have been given to demand duty on excisable goods that have not been accounted for and the Collector has also been empowered to withdraw the concession granted under rule 192 in case of breach of these rules by the applicant or his agent or any person employed by him.

1.18. The Committee wanted to know the inbuilt safeguards for the compliance of the prescribed procedure by the licensee. The Member (Excise) stated during evidence:

"Before L-6 licence is applied for, the use of the products is given. The Collector has to verify whether the storage

facilities are there and proper account will be there. After verifying these he gives the licence. After that what is received is entered into the RG-16 account. This account is expected to be checked twice in a year by our inspection groups. Then every month the factory submits to the department a monthly report of how much material they received and how much they made out of it and how much got destroyed. It comes in RT-11 return. In addition we are expected to do preventive checks."

1.19. Asked whether the register in the prescribed form was maintained by the Fertiliser Corporation of India, Sindri, the Ministry of Finance (Department of Revenue), have in a written note, stated as under :

"The prescribed register in Form R.G. 16 was maintained by the licensee from 1969 onwards, Details of receipts of raw naphtha from the oil refinery and the quantity of raw naphtha issued for manufacture of reformed gas, were shown in the register. The quantity of reformed gas *viz.* Nitrogen and Hydrogen manufactured and issued were also shown in R. G. 16 register."

1.20. Asked whether the register was checked by the Inspection Group/Internal Audit and if so what were the comments thereon, the Ministry of Finance (Deptt. of Revenue) have stated:

"The register maintained by the factory was checked by the Inspection Group. Their comments on the maintenance of the register are given below :

29.5.70 (a) "Gate Pass or issue chits are not available for the period from July, 1969 to 12.9.1969.

(b) Checked the issue of quantity of both duty paid and nil duty upto 30-4-1970 and receipts of nil duty quantity upto 30-4-1970."

20-1-71 to 23-1-71. (a) "Checked the receipts with relevant A.R. 8" as from 1-5-1970 to 31-12-70 and found in order.

(b) Checked the issue with relevant gate passes from 1.5.70 to 30-12-70 and found in order."

25-9-74. "Checked the receipts with A.R. 3As, gate passes and clearances with gate passes from 1.7.72 to 31.8.1974."

26-5-75. The internal Audit, Patna, visited the factory but R.G. 16 was not checked by the Internal Audit Party.

1.21. The Committee noted that under Chapter X Procedure, in terms of sub-rule (3) of Rule 194 of the Central Excise Rules, 1944, the licensee is required to submit a monthly statement in the prescribed form showing the receipts and issues of the excisable goods and also the quantities of commodities manufactured out of such goods. The Committee wanted to know whether the Fertiliser Corporation of India, Sindri complied with this procedure. The Ministry of Finance (Department of Revenue) have in a written note stated as follows :

> "F.C.I., Sindri, did submit a monthly statement regularly and in time showing the receipts and issues of raw naphtha but the quantities of ammonia manufactured out of such raw naphtha were not shown separately in these statements, with the result that no check or verification of ammonia, manufactured out of raw naphtha could be done by the officers."

1.22. The Member (Excise) stated during evidence:

> "So far as Sindri is concerned, I am afraid the factory was making out their RG 11 return except on two to three occasions and filing the RT-11. From our side, I am afraid, the checks were not as accurate as they should be."

1.23. The Committee wanted to know whether the use of common tank in the case of Sindri factory did not amount to a violation of the condition stipulated in the Chapter X procedure. In a written note, the Ministry of Finance (Department of Revenue) have stated as under:

> "Although according to sub-rule 2 of Rule 194 of the Central Excise Rules, 1944 a licensee has to store each consignment of excisable goods separately, under the provisions of this rule, the Collector is empowered to exempt any applicant or any class of goods from the operation of the sub-rule. Thus, though the use of a common tank for storage of ammonia procured from raw naphtha as well as from other sources is not permitted under this sub-rule, the Collector has powers to allow the licensee to store the ammonia procured both from raw naphtha as well as from other sources in a common tank. Besides, maintaining a separate storage tank has also been appreciated by the Board. In this connection, relevant extracts from the circular letter issued by the Department to the Collectors *vide* F. No. 8/9/70-CX3 dated 29th June, 1973 are reproduced below:

"Where ammonia manufactured from raw naphtha is segregated from the ammonia manufactured from other sources, there will certainly be no difficulty since the manufacturer could sell the ammonia manufactured from raw naphtha exclusively in the manufacture of fertilisers. While this is the ideal position and the Collectors may persuade the manufacturers of fertilisers to so segregate ammonia, the Board appreciates that where such a segregation is not possible on account of technical or technological reason, the alternative pro-rata calculation has invariably to be resorted to.

From the above, it will be seen that the Department has also allowed the use of common tank for storage of ammonia produced from different sources. Hence, such a process would not tantamount to violation of the condition stipulated in Chapter X Procedure."

1.24. Having noted that the F.C.I. Sindri did not have a separate tank for storing ammonia and that the ammonia obtained from raw naphtha alongwith that procured out of other sources was stored in a common tank, the Committee wanted to know the measures taken to ensure correct measurement of ammonia used for manufacture of fertiliser and that used for other purposes. The Ministry of Finance (Department of Revenue) have in a written note stated as under:

"It is precisely on account of this difficulty in maintaining a separate tank, that the Board after careful consideration in consultaion with the Chief Chemist, Director of Inspection and the Ministry of Law, issued instructions *vide* their letter F. No. 8|9|70-CX-3 dated 20th June, 1973 that in such cases, the quantities of ammonia produced from raw naphtha source and from other sources should be worked out separately on the basis of the formula suggested by the Chief Chemist and to determine if any quantity of ammonia sold or used other than for use in the manufacture of fertilisers, relates to raw naphtha source on pro-rata basis, and then to calculate and charge the differential duty on that quantity of raw naphtha utilised in such manner."

1.25. The Committee wanted to know whether any written permission of the Collector was obtained by Sindri Fertilisers for storage of ammonia obtained from raw naphtha in a common tank. The

Ministry of Finance (Department of Revenue) have stated in a written note, as follows:

> "Under sub-rule (2) of Rule 194, only raw naphtha received by FCI for use in the manufacture of fertiliser, is required to be stored separately and not ammonia, which is an intermediate product in the process of manufacture of fertilisers. The rule does not stipulate any permission, written or oral, to be obtained from the department for storing ammonia, obtained from the raw naphtha, in a common tank. However, segregation of ammonia obtained from other sources is desirable from the point of proper accountal of raw naphtha. The licencee (in this case, FCI) is required to prove to the satisfaction of the department that raw naphtha received by him at concessional rate, has been fully utilised in the manufacture of fertilisers."

1.26. The Committee wanted to know the input|output ratio between raw naphtha and ammonia. In this connection the Department have stated that the approximate theoretical ratio is 0.812:1, *i.e.* 0.812 tonne of raw naphtha will yield approximateily one tonne of ammonia, but in practice it is generally 1 : 1.

1.27 Asked about such ratio in respect of F.C.I. Sindri the Ministry of Finance (Department of Revenue) have in a written note stated as under:

> "The ratio has been reported to be 1.05:1; (i.e. 1.05 tonne of raw naphtha gives 1 tonne of ammonia). The slight variation in the ratio is reported to be due to the following factors:
>
> (i) As against the conventional process of naphtha reforming, which involves two phases, namely the primary and secondary reforming, in the case of Sindri Fertilisers, only one process of reforming, namely primary reforming is adopted with the result that a small portion of raw naptha escapes from being converted into ammonia.
>
> (ii) The Sindri Plant has become old and as a consequence of wear and tear, leakage of gas occurs adversely affecting the consumption efficiency

The relationship between ammonia and fertiliser as ascertained from the foctory is as follows:—

(a) 0.35 tonnes of ammonia gives 1 tonne of ammonium sulphate;

(b) 0.56 tonnes of ammonia gives one tonne of urea;

(c) 0.45 tonnes of ammonia gives 1 tonne of double salt;

(d) 0.6 tonnes of ammonia gives 1 tonne of ammonium nitrate;

(e) 0.16 tonne of ammonia gives 1 tonne of nitrate acid."

1.28. The Committee noted that one of the reasons for the variation in the ratio of FCI Sindri was due to its plant having become old and as a consequence of wear and tear, leakage of gas occurred adversely affecting the consumption efficiency. Explaining the reasons therefor, the Ministry of Petroleum, Chemicals and Fertilisers have in a note stated:

"In order to rectify the difficulties encountered in the old plant a new scheme, called Sindri Modernisation is under implementation. The new plant is based on fuel oil. The old Sindri plants are being retired progressively due to ageing and consequent excessive wear and tear and also due to non-economic operations in those plants due to less capacity utilisation and also high incidence of operating costs. Some of the plants have already been shut-down; the urea and double salt plants were shut-down in August '76 and the semi-water gas plant, CCC ammonia plant and the ammonium sulphate plant were shut-down in February '78. Subsequently the following plants are operating:

1. Nitric Acid
2. Ammonium Nitrate
3. Coke-oven battery
4. Gas reformation plant, being operated on naphtha and coke oven gas to produce ammonia.

(The plant at No. 4 is operated to the extent necessary to provide ammonia for plants at Nos. 1 and 2).

Once the Sindri Modernisation Plant starts operating fully (the commissioning is in progress)—the naphtha operations will be completely closed down."

1.29. In reply to another query the Committee have been informed by the Ministry of Finance (Department of Revenue) in a written note that no norms have been prescribed by the Board|Collector in regard to the relationship between raw naphtha and ammonia. The Committee wanted to know the checks exercised to co-relate such relationship in the absence of such norms. The Ministry of Finance (Department of Revenue) have in a written note stated as under:

> "Rule 173 (d) authorises the Collector to require the assessee to maintain a Raw Material Account and also empowers him to ask him to inform the quantity of any particular raw material required for manufacture of excisable goods, and to intimate alterations if any in the information supplied by the assessee.
>
> Inspection Groups are required to make a realistic correlation between the consumption of raw material and output of finished goods.
>
> Detailed instructions have been issued in July 1978 prescribing various checks to be exercised by the Internal Audit Parties. One of the checks prescribed for these parties is that they should study the ratio of specified raw materials to finished products and check the correlation between inputs and outputs."

1.30. The Committee wanted to know the steps taken by the Department to make the system fool-proof for the correct assessment of duty. The Member (Excise) stated during evidence:

> "From February 1978 we have intensified our controls and introduced a revised system called production-and-record-based control. We have set up an entire directorate of Audit at the Centre. The whole thing depends on our own audit, as a first-line check. We have intensified our audit parties. We have laid down frequencies. If it works out satisfactorily, this situation may not arise. We will be able to work out backwards, to say: if so much of ammonia has been produced, how much of naphtha it should have come from."

1.31. The Committee wanted to know whether it was not necessary to have supervision at the higher levels to check the sale of

ammonia obtained from raw naphtha. The Member (Excise) stated during evidence:

> "We entirely agree. Whatever be the basic arrangement, there has always to be a proper supervision. It may not be comprehensive; but it should be on such a basis that the lower staff will have a feeling that whatever they do, somebody may come and supervise it. The Assistant and Deputy Collectors should go out to the field, visit particularly important factories so that they may be able to apply an intelligent mind. Even the members of the Board, when they go out, visit important factories. Then they will get to know what the processes are, and the difficulties of the assessees. Sometimes it throws up the question of leakage etc."

1.32. In this context, the Ministry of Finance (Deptt. of Revenue) have subsequently in a written note clarified the position as under:

> "The need for and the importance of visits to factories by senior officers not only from revenue point of view but also from the point of view of having a first hand knowledge of the problems of the assessees, location of procedural difficulties or loopholes, faulty assessment practices and so on have always been fully realised by the department. Detailed instructions have been issued recently to all the Collectors under letter F. No. B 12014|99|78-AD.IV dated 27-11-1978 wherein the scales of visits to the factories by senior officers, for purpose of inspection have been prescribed *vide* para 8 ibid."

1.33. The Committee wanted to know the position in regard to the realisation of the two demands referred to in Audit Paragraph. The Member (Excise) stated during evidence:—

> "The demand for the period fell into two parts, namely from 1-4-69 to 30-11-74 amounting to Rs. 2,00,47,959.40 and from 1-12-74 to 15-8-76 amounting to Rs. 1,64,68,786.35. The Assistant Collector of Central Excise, Dhanbad passed an order on 11-3-77 in which he confirmed both the portions of the demand.....An appeal against this was submitted to the Appellate Collector, Calcutta. At the appeal stage the party's counsel cited two things. The first was that the second portion of the demand should not have been covered by the order, and the second was that natural

justice had been denied in that a copy of the Inspection Report of the Chemical Examiner of the Sindri Factory was not made available to them. So, the Appellate Collector set the order aside on the ground of denial of natural justice and sent it back for a *de novo* examination..... The party said that the order should legitimately be relatable only to the first portion of the demand. They said they were not asked to show cause in regard to the other portion.

Secondly, the Assistant Collector referred in his order, to the fact that he relied in coming to a conclusion, on the Inspection Report of the Chemical Examiner. Because this is a technological problem, a Chemical Examiner visited the factory and gave a report."

1.34. Regarding further developments of the case, the Ministry of Finance (Department of Revenue) have stated:

"A revised show-cause notice was issued on 25-4-1978.

The assessee had replied to the show-cause notice on 19-6-1978.

The case is now to be adjudicated by the Collector of Central Excise, Patna. In view of the complicated nature of the case, the assessee has requested the Collector to grant time upto 31-3-1979 for presenting their case properly."

1.35. The Committee wanted to know the particulars of the assessees, besides Fertiliser Corporation of India, Sindri, who were using raw naphtha for the manufacture of fertilisers, obtained at concessional rate of duty. In a written note the Ministry of Finance (Department of Revenue) have furnished the following information:

Sl. No.	Name of Collectorate	Manufacturers using raw naphtha for manufacture of fertiliser and availing the concessional rate of duty
1	Jaipur	M/s. Shri Ram Fertilisers and Chemicals.
2	Madras .	(i) M/s. Madras Fertilisers, Madras (ii) M/s. EID Parry (India) Ltd.
3	Cochin . .	(i) M/s. FACT Ltd. Udyogmandal (ii) M/s. FACT Amvalamedu.
4	Patna	M/s. Hindustan Fertiliser Corporation Ltd. Barauni.
5	Bangalore . . .	M/s. Mangalore Chemicals and Fertilisers.

S. No.	Name of Collectorate	Manufacturers using raw naphtha for manufacture of fertiliser and availing the concessional rate of duty
6	Kanpur	M/s. Indian Explosives Ltd.
7	Ahmedabad	M/s. Indian Farmers Fertilisers Corporation Ltd.
8	Madhurai	M/s. Southern Petro-Chemicals Industrial Corporation.
9	Baroda	M/s. Gujarat State Fertilisers, Baroda.
10	Bhubaneswar	M/s. Fertiliser Factory of Steel.
11	Bombay	M/s. Rashtriya Chemicals.
12	Allahabad	M/s. F.C.I. Gorakhpur.
13	West Bengal	M/s. Hindustan Fertilisers.
14	Goa	M/s. Zauri Agro-Chemicals.

1.36. When asked as to which of the above manufacturers had a common tank for storing ammonia manufactured by different processes, the Ministry of Finance (Department of Revenue) have furnished the following details:—

Sl. No.	Name of the Collectorate	Name of the manufacturer
1	Ahmedabad	Indian Farmers Fertilisers Corporation Ltd. Kalol.
2	Bangalore	Bangalore Chemicals and Fertilisers, Mangalore.
3	Baroda	Gujarat State Fertilisers.
4	Bhubaneswar	Hindustan Steel Ltd.
5	Bombay	Rashtriya Chemicals
6	Cochin	(i) FACT Ltd. Udyog Mandal (ii) FACT Ltd. Ambalamedu
7	Madras	(i) Madras Fertilisers, Madras (ii) F.I.D. Parry, Madras.

1.37. When asked whetherr in the case of the aforesaid factories where raw naphtha is used for manufacture of fertilisers, any demands for evasion of duty were raised, the Member (Excise) stated in evidence:

"Wherever a similar situation is there we have raised the demand."

1.38. Subsequently in a written note the Ministry of Finance (Department of Revenue) have furnished the names of the manufacturers and the details of the demand for duty raise against them (Appendix III). It would be seen from the Appendix that huge amounts of duty are due from several fertiliser factories other than F.C.I. In one case only show-cause notice has been issued so far.

1.39. The Committee not that the Government introduced a scheme with effect from 23rd December, 1961 for the grant of concession in excise duty on raw naphtha used exclusively in the production of fertilisers. This concession was granted for various reasons, viz., to keep the fertiliser prices at reasonable levels, to relieve the pressure on coal and to help in the conservation of foreign exchange being spent on the import of fertilisers. M/s. Fertilisers Corporation of India, Sindri received raw naphtha at concessional rate of duty since 1st April, 1969. They produced ammonia, which is an intermediary product in the manufacture of fertilisers, not only from raw naphtha but also from coke gasification process and coke oven process. Ammonia produced from all these processes was stored in a common tank. While processing the application of the above licensee for the renewal of L-6 licence required for procurement of raw naphtha at concessional rate of duty, the Inspector of Central Excise on his visit to their factory on 24th October, 1973, found that they were selling ammonia manufactured out of raw naphtha. He submitted a report on 30th October, 1973 to the Assistant Collector Dhanbad pointing out the misuse of raw naphtha obtained at the concessional rate of duty. The Assistant Collector asked for certain details from the licensee which were supplied on 17th January, 1974. An Audit Party of the Accountant General's Office also visited the factory and issued objection memo on 16th March, 1974 pointing out the irregularity. The Assistant Collector concerned retired in May, 1975. Thereafter, on 15th July, 1975 the Collectorate of Central Excise, Patna raised a demand on the licensee for payment of differential duty of Rs. 3.40 crores on raw naphtha not used in the manufacture of fertilisers during April, 1969 to November, 1974. No satisfactory explanation has been given for inaction on the part of the Assistant Collector concerned after January, 1974 and till his retirement in May, 1975 although he was aware of the Inspector's report and the Audit objection that the factory was misusing the concession in duty allowed to it. The Committee have an apprehension that a deliberate attempt was made to avoid action against the licensee. They would therefore like the matter to be thoroughly investigated, preferably by the C.B.I. and apportion responsibility of all officers, including Deputy Collector and Collector of Central Excise and

Inspection Group. The result of the investigation should be apprised to the Committee. Suitable action should be taken against the officials found responsible for abetting in the avoiding of payment of excise duty in this case. In particular, the Committee would like to be informed why proceedings to withhold pension under Rule 9 of the Central Civil Services (Pension) Rules 1972 were not initiated against the said Assistant Collector."

1.40. M/s. Fertiliser Corporation of India, Sindri, were granted a L-6 licence whereby they were entitled to obtain raw naphtha at concessional rate of duty for the manufacture of fertilisers. Under Rule 194 of the Central Excise Rules, a licensee is required to maintain a register in form RC-16 showing the quantity of the excisable goods received the quantity used in the industrial process and such other particulars as the Central Board of Excise and Customs or the Collector may prescribe. This account is expected to be checked twice in a year by the inspection groups. The licensee is also required to submit a monthly return in Form RT-11 to the proper officer within seven days of the close of each month, showing the description and the quantity of the goods used and the commodity manufactured, the manner of manufacture and such other particulars as the Board or the Collector may prescribe. The Committee have been informed that the monthly register in Form RG-16 maintained by the F.C.I., Sindri showed the receipts and issues of raw naphtha but the quantities of ammonia manufactured out of such raw naphtha were not shown separately in these statements with the result that no check or verification of ammonia produced out of raw naphtha could be done by the Departmental officers.

During evidence the Member (Excise) conceded: "From our side, I am afraid, the checks were not as accurate as they should be". The Committee regret to observe that the registers maintained by the licensee were not checked properly and the misuse of concession in duty remained undetected till October, 1973 although the concession was being availed of by the licensee since April, 1969. The Committee would like the Department to investigate into the matter and take suitable action against the officials found responsible for negligence of duty.

1.41. The Committee find that an order for the realisation of differential duty amounting to Rs. 3.65 crores (Rs. 2.00 crores for the period 1st April, 1969 to 30th November, 1974 and Rs. 1.65 crores for the period 1st December, 1974 to 15th August, 1976) from Fertiliser Corporation of India, Sindri was confirmed by the jurisdictional

Assistant Collector of Central Excise, Dhanbad on 11th March, 1977. An appeal against this order was submitted to the Appellate Collector of Central Excise, Calcutta. At the appeal stage, the party argued that natural justice was denied to them in that a copy of the Report of the Chemical Examiner was not made available to them. The Appellate Collector accepted the appeal on 18th October, 1977 and sent the case back for de novo examination. Since then the matter is pending adjudication by the Collector of Central Excise, Patna. As more than seven years have elapsed since the misuse of concession in duty was brought to the notice of the Collectorate, the Committee desire that the adjudication proceedings in the case should be finalised expeditiously.

1.42. The Committee are informed that besides Fertiliser Corporation of India, Sindri, there are 16 more licensees who are obtaining raw naphtha at concessional rate of duty for use in the manufacture of fertilisers. However, nine of them have common tanks for the storage of ammonia used for manufacture of fertilisers as also for other purposes. The raw naphtha used for production of ammonia and diverted for use other than manufacture of fertilisers is not entitled to concessional rate of duty and differential duty is chargeable from the concerned licensees. From the information furnished to the Committee, it is seen that:

(i) demand of Rs. 1.50 crores has been raised for the period 1970 to 1978 in the case of Gujarat State Fertilisers Co. Ltd.;

(ii) in the case of M/s. Fertilisers and Chemicals (Travancore) Cochin duty of Rs. 3.33 crores is due for the period 1st April, 1967 to 31st December, 1971 and Rs. 33.38 lakhs for the period from 1st October, 1976 to 23rd June, 1977; and

(iii) Show cause notices have been issued for the realisation of duty from the Fertiliser Plant of Steel Authority of India Ltd., Bhubaneshwar and Rashtriya Chemicals, Bombay.

for diverting raw naphtha. The Committee would like to be informed of the latest position in regard to the stages of recovery for the realisation of duty from these licensees. They would also like to be apprised whether Government have specifically verified that such an irregularity has not been committed by any of the remaining 11 licensees. The Committee would also like the enquiry authority to

enquire into the circumstances in which similar revenue evasion took place in other Collectorates and fix responsibility for the same and bring the erring officials to book and report compliance to the Committee.

1.43. The Committee were informed during evidence that there are inbuilt safeguards for compliance with the prescribed procedure by the licensee in that before granting L-6 licence, the Collector has to verify whether the storage facilities are there and proper account will be there to verify compliance with the conditions of end-use. The Central Board of Excise and Customs were also aware that in a number of fertiliser factories, ammonia produced from raw naphtha obtained at concessional rate of duty as also ammonia obtained from other processes were stored in common tanks and there were no separate storage facilities. In fact the Board had, after obtaining advice of the Ministry of Law Branch Secretariat Bombay, issued instructions on 29th June, 1973 prescribing that the quantity of ammonia sold or used otherwise than for the manufacture of fertiliser should be allocated to raw naphtha and other resources on pro-rata basis i.e., in the same proporation in which total production of ammonia was contributed by these sources in the respective years. The Committee are pained to note that despite these co-called inbuilt safeguards and the instructions issued by the Board on 29th June, 1973 the irregularity in this case occurred and continued unnoticed till 1974, thus putting substantial amounts of revenue in jeopardy. The Committee cannot but observe that there was alround lack of supervision and also a clear lack of monitoring in compliance with both the inbuilt safeguards as well as the instructions issued by the Board.

Short levy/non-levy of duty owing to misclassification of commodities

Grey Portland Cement

Audit Paragraph

2.1. The assessable value of grey cement including portland cement of specific surface not less than 3500 square cm. per gram, being of a superior variety, was higher than that of the ordinary grey portland cement and hence this variety was subject to duty at a higher rate. Further, the packing materials used for the supply of this variety of cement were also subject to duty.

2.2. In three collectorates, six licensees manufacturing cement clubbed the superior and ordinary varieties of grey portland cement and paid duty on all clearances at the lower rate applicable to ordinary cement. This resulted in short payment of duty of Rs. 54.54

lakhs on the clearance of 4.49 lakhs metric tonnes of superior variety of cement during the period October, 1975 to May, 1977.

2.3. The Collector of Central Excise accepted (March, 1977) the short levy of duty of Rs. 46.19 lakhs in the case of one factory. Reply in the other cases is awaited (June, 1977).

2.4. The Ministry of Finance have confirmed the facts in one case. The paragraph relating to other cases was sent to the Ministry in September, 1977; reply is awaited (January, 1978).

[Paragraph 53 of the Report of the Comptroller and Auditor General of India for the year 1976-77, Union Government (Civil) Vol. I—Indirect Taxes]

2.5. The Committee have been informed that M/s. Associated Cement Co. Ltd., Kymore in Indore Collectorate produced a considerable quantity of grey cement of specific surface not less than 3500 cm2/gm which was not shown as such in R.G.I. (Daily Production Register). Instead, the product in question was clubbed with other varieties of ordinary cement (Ordinary Portland, Pozzolana etc.) and cleared at a lesser value for assessment to the extent of Rs. 23 per metric tonne from 1st October, 1975 to 8th January, 1976, at Rs. 64.00 per metric tonne (Rs. 23.00 plus Rs. 41.00 packing charges) from 9th January, 1976 to 15th March, 1976 and lesser duty of Rs. 9.00 per metric tonne (Rs. 91.00—Rs. 82.00) from 16th March, 1976 to 31st October, 1976. In all, the manufacturer cleared 3,79,452.75 metric tonnes of this variety of cement as ordinary one which involved a differential duty of Rs. 46.19 lakhs.

2.6. Similarly, in the case of five other *marginally noted factories the variety of cement liable to duty at higher rate was clubbed with that of ordinary variety and was accordingly cleared on payment of duty at lower rate from 1st October, 1975. The incorrect classification of grey cement of specific surface not less than 3500 cm2/gm as ordinary cement resulted in short assessment of duty of Rs. 8.35 lakhs right from 1st October, 1975.

2.7. The Committee wanted to know the date from which excise duty was introduced on cement and the effective rates of duty from time to time indicating the reasons for a change in the mode of

*1. M/S. C.C.I. Mandhar 2. M/S. A.C.C. Wadi Bellary 3. M/S. A.C.C. Sevalsa Balasinore 4. M/S. A.C.C. Porbander 5. M/S. Saurashtra. Cement & Chemical Industries Rananav.

assessment or in the rates. The Ministry of Finance (Department of Revenue) have in a written note furnished the following information:

Sl. No.	Period	Effective rate of duty		
		Basic	Special	Auxiliary
1	1-3-1954	Rs. 5 per Ton		
2	11-9-1957	Rs. 20 per Ton		..
3	1-3-1958	Rs. 24 per Ton		
4	October, 1960	Rs. 23·60 per Tonne	..	..
5	1-3-1963	Rs. 23·60 per Tonne	20% of Basic duty	
6	1-3-1969	21% ad valorem	Do.	..
7	29-4-1969	19·80% ad valorem	Do.	..
8	29-5-1971	20% ad val.	Do.	..
9	17-3-1972	25% ad val.		..
10	1-3-1974	25% ad val.	..	10% of Basic duty
11	1-8-1974	30% ad val.		Do.
12	1-3-1975	35% ad val.		Do.

13	16-3-79	DUTY	
Variety		Basic	Auxiliary
(i)	Waterproof (hydrophobics cement)	Rs. 94 per tonne	..
(ii)	Grey cement of specific surface not less than 3500 cm2/g, rapid hardening cement and low heat cement	Rs. 91 per tonne	
(iii)	Other varieties of cement falling under sub-item (1) of Item No. 23 of CET as it existed at that time	Rs. 82 per Tonne*	..

*Reduced to Rs. 65/- per tonne with effect from 27th January, 1977.

	(iv) All other varieties of Cement covered under sub-item (2) of item 23	35 % ad val.	
14.	3-6-1977		
	(i) Water-proof (Hydro-phobic) cement . .	Rs. 94 per M.T.	..
	(ii) Rapid hardening cement, low heat cement and high strength ordinary portland cement	Rs. 91 per M.T.	..
	(iii) Ordinary portland Cement, portland pozzalana cement blast furnace slag cement and masonry cement	Rs. 65 per M.T.	..
	(iv) Other varieties of cement falling under sub-item (2) of item 23.	35 % ad val.	10 % of Basic duty

15. 18-6-1977

No change in duty with regard to the varieties indicated against Sl. No. (i), (ii) and (iii) effective from 3rd June, 1977 (See Sl. No. 14 above). In respect of the varieties shown against Sl. No. (iv) the basic duty was raised from 35 per cent *ad val.* to 40 per cent *ad val.* and the auxiliary duty was abolished.

16. 1-3-1978

Special excise duty at the rate of 5 per cent of the basic effective duty was additionally imposed. No change in the basic rates of excise duty was made.

Reasons for change in duty

Except in respect of cases discussed in the following paragraph, the upward revision in the excise duty rates on cement were intended primarily as a revenue measure.

In October, 1960, the change in the duty rate was occassioned following the switch-over to the Metric system.

In the 1969 Budget, it was decided to switch over from specific to *ad valorem* basis and the duty was eventually fixed at 19.80 per cent *ad valorem* plus 20 per cent of basis duty special excise duty with effect from 29th April, 1969. **In the 1969 budget Speech of the Finance Minister** the conversion of the specific duty on cement into *ad valorem* duty was justified on the ground that *ad valorem* duties are more rational and there is more equity in duty incidence. Adjustment in duty from 21 per cent *ad valorem* (Basic),

to 19.80 per cent (Basic) between 1st March, 1969 and 29th April, 1969 was necessitated in the light of the information gained about the assessable value of cement after the presentation of the 1969 Budget.

At the time of framing the 1976 Budget proposals, the Cement Manufacturers' Association represented to the Government of India that excise duty on cement which was controlled item for the major portion of production should be prescribed on a specific rate basis with a view to facilitating assessment of duty. Keeping in view the then existing duty level of 38.5 per cent *ad valorem* leviable on the controlled prices of the different varieties of cement, the specific duty rates were worked out and announced on 16th March, 1976 at the time of presentation of the Budget.

On 27th January, 1977, the excise duty on the common controlled varieties of cement was reduced from Rs. 82 per tonne to Rs. 65 per tonne with a view to accommodating an increase in the railway freight without raising the controlled price.

Later on some difficulties were expressed in the classification of different controlled varieties of cement and accordingly the description of these varieties was modified with effect from 3rd June, 1977."

2.8. The Committee wanted to know when was the distinction between the superior variety and ordinary grey portland cement for the purpose of excise duty introduced. The Ministry of Finance (Deptt. of Revenue) have in a written note stated:

> "Prior to 16th March, 1976 there was no occasion to make a distinction between different varieties of grey portland cement. Only in the case of high alumina refractory cement a concessional duty was prescribed with effect from 8th April, 1972. The distinction between different varieties of portland cement for duty purposes was made after the switch-over from *ad valorem* to specific rates of duty in the 1976 Budget, i.e. with effect from 16th March, 1976."

2.9. Asked in regard to the rationale for the distinction based on specific surface (measured in terms of sq. cm. per gram), the Ministry of Finance, (Deptt. of Revenue) have stated in a written note:

> "The distinction based on specific surface (measured in terms of sq. cm. per gram) was introduced as the controlled price of grey cement of specific surface less than 3500 cm^2/g. was lower than the controlled prices of grey

cement of specific surface not less than 3500 cm^2/g. Thus, with an *ad valorem* duty of 38.5 per cent prevaling prior to 16th March, 1976, the total duty burden, in absolute terms, was different on these two varieties of cement which was decided to be continued by expressly providing different specific rates of duty in the case of these two varieties."

2.10. The Committee wanted to know the names of the Collectorates and the licensees referred to by the Audit who clubbed the superior and ordinary varieties of grey portland cement and paid duty on all clearances at the lower rate applicable to ordinary cement. The Member (Excise) stated during evidence:—

"There were actually 4 Collectorates—Indore, Baroda, Ahmedabad and Bangalore. Indore has two factories—One of Associated Cement Companies at Kymore and the other a Government of India Undertaking, the Cement Corporation of India at Mandhar. In Baroda, it is the factory of Associated Cement Companies. In Ahmedabad Collectorate, there are two factories—one belonging to Associated Cement Companies and the other Saurashtra Cement and Chemicals Industries. In Bangalore collectorate, there is a factory belonging to Associated Cement Companies at Wadi. So, out of the six factories, 4 are Associated Cement Companies, one is Cement Corporation of India and the other is Saurashtra Cement and Chemicals Industries. Out of Rs. 54 lakhs and odd, the lion's share i.e. Rs. 46 lakhs which the audit has referred to is in respect of ACC Kymore factory in the Indore Collectorate."

2.11. The Committee noted that the short levy of Rs. 46.19 lakhs accepted by the Collector of Central Excise related to one factory of ACC. They wanted to know if such malpractice was prevalent in the case of their other factories also. The witness has deposed in evidence:

"Associated Cement Companies have got 17 factories and they are controlled by their head office in Bombay. In a sort of conglomeration like this, the normal presumption would be that if a malpractice was there in one place, it could not have been absent in other places."

2.12. Subsequently in a written note, the Ministry of Finance (Deptt. of Revenue) have stated as under:

> "According to reports received from Collectors cases of under-assessment resulting from mis-declaration about the quality of cement occurred in twelve more factories of A.C.C."

2.13. The Committee wanted to know whether these malpractices were practised under the instructions of the A.C.C. management. In reply the witness has stated:

> "The management is not above board."

2.14. The Committee desired to know if the department had noticed similar cases of under-assessment besides those pointed out by Audit, due to mis-declaration about the quality of cement. In a written note the Ministry of Finance (Deptt. of Revenue) have furnished the following information:

> "Similar cases of under assessment resulting from mis-declaration about the quality of cement are reported to have occurred in Units in Ahmedabad, Bangalore, Guntur, Hyderabad, Indore and Jaipur Collectorates. The details of the assessees and Units involved are shown below:—

	Name of the Company	Name of the Collectorate	Amount involved Rs.
1		2	3
		AHMEDABAD COLLECTORATE	
1	M/s. Associated Cement Co. Ltd. Dwaraka		1,01,148·96
		BANGALORE COLLECTORATE	
2	M/s. Associated Cement Co. Ltd. Wadi		235,053·00
3	M/s. Visveswariya Iron & Steel Ltd. Bhadravati		64,807·05
		GUNTUR COLLECTORATE	
4	M/s. Associated Cement Co. Ltd., Tadepalli		98,010·60
		HYDERABAD COLLECTORATE	
5	M/s. Associated Cement Co. Ltd., Mancherial		3,63,127·54

INDORE COLLECTORATE

6. M/s. Asscciated Cement Co· Ltd., Jamal . . .	6,04,933·25
JAIPUR COLLECTORATE	
7. M/s. Udaipur Cement Works, Udaipur .	3,95,116·70
8. M/s. Jaipur Uydcg Ltd., Sawai Madhopur . .	17,81,499·45
9. M/s. Birla Cement Works, Chittorgarh	10,61,941·50
10. M/s. Associated Cement Co. Ltd·, Lakhari .	6,62,998·80
	53,13,636·85

2.15. When asked whether any action had been taken against these firms for mis-classification/under-assessment and for fixing responsibility, the Ministry have stated:—

> "The Collectors have been asked to conduct thorough-going investigation into all these cases of under-assessments and to mis-classification of cement. Action against the assessees and the officers, wherever deemed necessary, will be taken by the Collectors concerned after completing the investigatons."

2.16. The Committee wanted to know as to how the Central Excise Department satisfied themselves that the correct duty was paid with reference to the quality of the cement. The Ministry of Finance (Department of Revenue) have in a written note stated:

> "The rate of duty leviable on the excisable goods manufactured by an assessee has to be got approved by the Department by submission of a classification list in terms of rule 173. The classification list should give detailed description of each and every item of goods produced in the factory. If a factory produces cement of different quality/grade, each quality/grade is to be mentioned separately in the classification list. Correctness of the information given in the classification list is verified before the approval is accorded by the proper officer after such enquiry as he deems fit; such enquiry may include chemical test, market enquiry or any other investigation.
>
> In order to ensure that the assessee has paid the duty at the correct rate, Central Excise Officers check the R.T. 12 return submitted by the assessee in terms of rule 173G.

If at the time of this check, it is nottced that the duty has not been correctly paid, the differential duty is duly indicated in the assessment memorandum and the assessee is required to pay it.

Apart from the above, Internal Audit parties visit the Unit every six months. During the coure of their visits they are required to see that the goods manufactured by the assessee have in fact been properly described in the classification list and the rates shown there in have been correctly approved. Moreover under the Production Based pattern of Control (PBC), Central Excise Officers are required to visit the Units frequently to ensure proper checks on production and clearnces."

2.17. The Chairman, CBE&C explained during evidence:

"The factory has to submit a classification list saying that under rule 173(B) such and such varieties of goods fall under such and such tariff, with such and such rate of duty. This is submitted to the Excise Departmet. It will go to the Inspector, Superintendent or Asstt. Collector, depending on whether there is a doubt or not. He will give approval to the classification. That is the first stage. The further stage is that having got this classification list, the company itself proceeds to clear the goods. They may have declared four or five varieties for which different rates of duty are applicable. Every time they clear a consignment, they have to make out a gate pass in which they will show that this quantity of cement falling under such and such item, so much rate of duty, has been cleared. Ultimately at the end of the month there is a return which goes to the excise authorities with copies of all these gate passes. At that stage, the excise authorities have to see whether the gate passes are in accordance with the approved classification, whether a particular quality of cement which has been cleared is in accordance with the classification which has been approved by the department earlier. If any discrepancy is observed, they will have to go into it further and take the company to task. Although the company has given ten descriptions, all their clearance for a month may be only against one of the descriptions, and if they pay duty only at that rate, the documents may show nothing wrong was done, unless a further probe is undertaken.

2.18. Enquired if the declarations given by the assessees were checked by the Department or were accepted without any verification, the Ministry of Finance (Deptt. of Revenue) have stated in a written note:—

> "The declarations given by the assessee are accepted only after they are checked by the Department. The broad procedure and the checks to be generally exercised with regard to the approval of the classification list filed by the asstssee has been laid down."

2.19. Asked whether samples were drawn periodically to test the quality of cement produced and cleared, the Ministry of Finance (Deptt. of Reveue) have stated:

> "No periodicity has been fixed for drawal of samples of cement. Samples are drawn as and when considered necessary."

2.20. When asked about the relevant rule for taking out samples, the Ministry of Finance (Deptt. of Reveue) have stated:

> "Rule 56 of the Central Excise Rules provides for drawal of samples for excise purposes."

2.21. Referring to Ministry's reply that no periodicity was fixed for the drawal of samples of cement, the Committee wanted to know the level at which a decision was taken whether particular sample was necessary or not. The Member (Excise) stated in evidence:—

> "This is not entirely correct in so far as the cement is concerned, because we have what is called Cement Manual. The department does not draw the samples in the case of cement. They normally are expected to go by the ISI specifications because it is a commodity where we link up the quality of cement with the ISI specifications. For instance, for pure ordinary portland cement, there is a specification called ISI 269 and we would have adopted that. If the cement was according to that specification, it would have been treated as cement. What happens is, this particular test is conducted by the National Test Laboratories. In Calcutta it is in Alipore. The factory sends monthly samples to them and the laboratory certifies the quantity of cement, whether it is according to ISI 269. In so far as ordinary portland cement is concerned our officers would have accepted their certificate because it is an independent national test house."

2.22. Asked if the production of cement could be different from the samples that were sent and which were tested in the laboratories, the witness explained.

> "There is a possibility. But no factory would do it because there is always the consumer, who would like to know that when he is asking for portland cement, he is getting the same. Every consumer is entitled to the Test Report. Before 1973, the tariff description was quite simple. It included all varieties. It is only from 16.3.1976 that the tariff got sub-divided and different varieties were specified and at that time we started linking ourselves with the Cement Control Order which came in 1968 and this tariff was amended in 1976. At that particular point of time, we sub-divided the tariff in terms of the Cement Control Order."

2.23. The Committee wanted to know whether the classification lists submitted in respect of the six factories referred to in the Audtt Paragarph contained detailed description of each and every variety of cement produced. The Ministry of Finance (Deptt. of Revenue) have in a written note stated:—

> "No; the classification list filed by the factory during the relevant period gave the description of cement as Ordinary Portland Cement, Portland Pozzolana Cement, Portland Blast Furnace Slag Cement etc. In the case of A.C.C. Kymore and A.C.C. Wadi although the assessees did file a classification list for grey cement of specific surface not less than 3500 cm^2/gm. in the assessment documents relating to cement cleared by them, this description was not mentioned, thus giving the impression that what was cleared by them was either Ordinary Portland Cement or Portland Pozzolana Cement, assessable to duty at a lower rate, and not grey cement of specific surface not less than 3500 cm^2/gm."

2.24. The Committee wanted to know how in the absence of such details, the declarations of the assessees were accepted by the authorities. The Ministry of Finance (Department of Revenue) have stated as under:

> "(i) Since grey cement of a specific surface not less than 3500 cm2/gm. was mentioned as a separate variety of cement and since duty on no other variety of cement was related to its specific surface, when the assessees furnished

the description of cement in the classification lists filed by them as "ordinary portland cement, portland pozzolana cement" etc., these declarations were accepted by the officers, without enquiring about their specific surface as the same was not considered relevant or necessary for purpose of assessment.

(ii) Since it was a statutory obligation to produce cement conforming to I.S.I. specification and since I.S.I. had not prescribed any specification for "grey cement of a specific surface not less than 3500 cm^2/gm." it was felt that the cement declared by the assessee in the classification lists as ordinary portland cement/pozzolana cement could be only such varieties and not grey cement of a specific surface not less than 3500 cm^2/gm.

(iii) It was also learnt that such cement (inspite of their specific surface being more than 3500 cm^2/gm.) was actually sold at the prices fixed for ordinary portland cement, under the Cement Control Order. This made the officers believe that what was declared by the assessee was the one sold and therefore the assessment made (of such cement) at a lower rate was in order.

(iv) Even the analytical reports received from the National Laboratories (National Test House, Alipore, Bombay etc.) of samples sent for test in a few cases, did not mention that the cement in question was "grey cement of a specific surface not less than 3500 cm^2/gm. Instead they categorically described these samples as "ordinary portland cement."

(v) At least in a few cases reported by the Collectors, such cement (of specific surface not less than 3500 cm^2/gm) was fixed and stored together in common silos along with cement of specific surface less than 3500 cm^2/gm. Therefore, there is a strong possibility of the specific surface of cement finally cleared from the factory being less than 3500 cm^2/gm. To that extent, the duty charged at a lower rate, would seem to be not improper."

2.25. The Committee wanted to know who were the concerned officers who approved the classification lists in these cases. The

Ministry of Finance (Department of Revenue) have in a written note intimated as under:

> "Superintendents of Central Excise except in the case of A.C.C. Kymore. In this case the classification list was approved by the Assistant Collector."

2.26. Enquired if the assessees showed the monthly production of cement correctly in R.T. 12 returns submitted by them in these cases, the Ministry of Finance (Department of Revenue) have in a written note stated as under:

> "The description shown in the R.T. 12 returns filed by the assessees tallied with the description shown in the relevant clearance documents."

2.27. Asked how the correctness of the aforesaid returns was ensured by the authorities, the Ministry of Finance (Department of Revenue) have stated:

> "The description shown in the R.T. 12 returns was checked with reference to the description shown in classification list/gate passes and no discrepancy was observed."

2.28. Supplementing the information, the Member (Excise) stated during evidence:

> "The gate passes were made by their own factories from 1968—78. It was called self-removal."

2.29. On enquiry how the correctness of the gate passes was verified, the witness stated:

> "At that time we had constituted Inspection Groups. They were expected to go inside the factory. They can go inside the factory and check the cement. They were similar to the audit parties and their frequency was twice a year and at that time they were looking into all these things, the gate passes, the production records, their registers, their returns and then draw the conclusions."

2.30. Since the visit was normally once a year, the Committee wanted to know whether any mis-declaration was possible because the factory became sure that there would be no risk of another visit before the year was out, the witness stated:

> "That possibility is there."

2.31. The Committee wanted to know as to why the Internal Audit parties who were required to visit the factories half-yearly, could not detect the evasion. The Ministry of Finance (Department of Revenue) have explained the position in respect of all the six factories as under:

"1. Saurashtra Cement & Chemical Industries, Ranavav (Ahmedabad Collectorate) 2. A.C.C. Porbandar (Ahmedabad Collectorate)	According to the periodicity of checks prescribed for the Internal Audit parties, the factory in question was not required to be visited by the Internal Audit Parties during the relevant period. Since the Internal Audit Parties did not visit the factory, the irregularity could not be detected.
3. A.C.C. Savalia (Baroda Collectorate)	No irregularity occurred during the period for which the accounts were audited by the Internal Audit Party.
4. C.C.I. Mandhar (Indore Collectorate) 5. A.C.C. Kymore (Indore Collectorate) 6. A.C.C. Wadi (Bangalore Collectorate)	According to the periodicity of checks prescribed for the Internal Audit Parties, the factory in question was not required to be visited by the Internal Audit Parties during the relevant period. Since the Internal Audit Parties did not visit the factory the irregularity could not be detected."

2.32. The Committee noted that under the Production Based pattern of Control, Central Excise Officers were required to visit the factories frequently. They wanted to know how many times and at what levels the officials visited the Kymore factory during 1975-76 and 1976-77 and what were their findings. The Ministry of Finance (Department of Revenue) have in a written note stated:

> "Inspection Group, Jabalpur headed by the Superintendent, Central Excise visited the factory twice during 1975-76 and thrice during 1976-77; but the irregularity could not be detected; the Asstt. Collector, Central Excise Jabalpur visited the factory once in 1975-76 and again in 1976-77. During his second visit, that is November, 1976, the Asstt. Collector ordered that the decline in revenue on cement cleared by the factory, should be probed into. Necessary investigations were conducted and on the basis of these investigations, a case was registered against the factory, which has since been adjudicated by the Collector, Indore. Apart from demanding a differential duty of Rs. 46,36,267. 78p, a penalty of Rs. 25 lacs was also imposed on the factory for contravention of Rule 173(b) read with Rule 9(2) of the Central Excise Rules, 1944."

2.33. The Committee wanted to know the main features of the Cement Control Order. The representative of the Ministry of Industry stated during evidence:

"The Cement Control Order was promulgated under the Industries (Development and Regulation) Act. It came into force from January, 1968. Under this Order, the Central Government has power to require any producer to sell cement to such persons or class of persons by such mode of transport and by such terms and conditions. The Order also defines Cement. There has been some discussion on the definition of cement which flows from the definition of cement in the Cement Control Order. The original Order of 1967 defines cement in the following terms: Cement means any variety of cement manufactured in India and includes port-land pozzolana cement, oil well cement, waterproof hydrophobic cement, blast furnace cement, low heat cement but does not include white and coloured cement other than grey portland cement. Then, under Clause 8 of this Order, the prices at which a producer may sell different varieties of Cement have been laid down from time to time. In the original Order, it said, "No producer shall himself or any person on his behalf sell rapid hardening cement and low heat cement at a price exceeding Rs. 145.53 per tonne and any other variety of cement at a price exceeding Rs. 125.53 per tonne.

These two clauses, clause 2 in which cement has been defined and clause 8 in which prices are stipulated for different varieties of cement have been amended from time to time.

As far as the consumer is concerned, he is entitled to get the cement of the variety stipulated in this Order at the price stipulated in this Order. The prices that are fixed here are built up further the prices indicated in the Order are ex-factory prices by addition of various other factors including duty, transportation cost, etc. So, when a final price is fixed for the retail consumer or even the wholesaler, the built up price is based on the basic price. That would show the amount of duty that has been paid and that has been recovered from the consumer for a particular variety of cement."

2.34. Asked if any ambiguity was left in the Cement Control Order in so far as the incidence of excise duty was concerned, the witness stated:

"The Order defines various types of cement. In Clause 8, the prices of different varieties of cement are fixed. The definition of cement has been altered from time to time. The original Order had only two categories. It referred to rapid hardening cement and low heat cement. All other varieties of cement came under another category for which a separate price was fixed.

In 1974, we amended clause 2 of the Cement Control Order. The category that was excluded from the purview of the Cement Control Order was white and coloured cement other than grey portland cement. To this was also added "grey cement of a specific surface of not less than 3500 sq. cm. per gramme." This was taken out of the purview of the Cement Control Order of 1974. In 1975, we defined cement—in Clause 2, cement means any variety of cement manufactured in India and includes portland pozzolana cement, blast furnace slag cement, water-proof hydrophobic cement, rapid hardening cement, low heat cement, masonary cement and grey cement of specific surface of not less than 3500 sq. cm. per gramme. It continued to exclude oil well cement, white and coloured cement other than grey portland cement.

In the same Order, we also stipulated the prices for different varieties of cement which were grouped in three categories. The first category was, water-proof hydrophobic cement for which a price not exceeding Rs. 243/- per tonne was fixed; the second category was rapid hardening cement, low heat Cement and grey cement of specific surface of not less than 3500 sq. cm. per gramme for which a price not exceeding Rs. 234 per tonne was fixed and the third category was, any other variety of cement at a price not exceeding Rs. 211 per tonne. What we intended by this was, under "any variety of cement", items mentioned in clause 2, such as portland pozzolana, blast furnace slag cement, masonary cement and ordinary portland cement were covered. These were covered in the third category of not exceeding Rs. 211 per tonne. If I may point out, Portland Pozzolana Cement, Blast Furnace slag Cement

and Masonary Cement can conceivably be treated as having a specific surface exceeding 3500 sq. centimetres. What we said was that Black Cement or Portland Pozzolana Cement irrespective of the specific surface, would form a separate category and would come under the third category sold at Rs. 211 per tonne. If you take into account the price fixed for the three categories, read along with the definition of cement which was introduced in the Cement Control Order, it is clear that Portland Pozzolana Cement and Slag Cement and Masonary Cement, although of the grey variety, are not treated as the same, and each is distinct.'

2.35. Asked how the specification "grey cement of a specific surface not less than 3500 cm^2/gm" was decided and this variety of cement brought within the purview of the Cement Control Order, the Ministry of Industrial Development have in a note, stated:

"In their letter dated 17-4-1971 addressed to the then Chief Cement Officer, the Railway Board desired to ascertain the possibility of procurement of cement of consistently high grade required for the manufacture of Railway sleepers. The specification of cement prescribed by the Railway Board was 3500 cm^2/gm of seven day strength. As the producers were not in a position to meet the requirements of Ministry of Railways for cement of this higher specification without higher prices and such requirements are small, it was decided to exempt the cement of this specification from the purview of the Cement Control Order so that Railways might negotiate the price direct with the producers who were in a position to supply cement of this specification. Further the requirement of such variety of cement was small (about 20,000 tonnes) and intended for only Ministry of Railways. The amendment to Cement Control Order issued on 20th March, 1974 specifically excluded "grey cement of specific surface not less than 3500 cm^2/gm" from the provisions of the Cement Control Order.

The result of this amendment was that cement producers could manufacture this type of cement and sell to any one as they liked for whatever purpose such cement may be required. Ordinary grey portland cement and this type of cement are not different in quality except that this special quality cement is ground to finer particles. As this was likely to lead to malpractices it was decided that this type

of cement be brought within the purview of the Cement Control Order. The Cement Control Order of 30th September, 1975 accordingly includes this type of cement in the Cement Control Order."

2.36. When asked if the definition was clear from excise point of view, the Member (Excise) stated in evidence:

"So far as Excise is concerned, it is not clear at all. Earlier, in so far as cement is concerned, cement as understood by us was cement made according to ISI specifications. Now, when this 3500 grade cement was introduced on 20-3-74 by the amendment of the Cement Control Order, this particular variety of cement was not there at all in the ISI specification, and the specification for this was introduced for the first time only on 25-6-76. So, it was not cement as understood by the Central Excise. I must make this position quite clear because what is called grey cement was a creation of the Cement Control Order. I must be specific about it. It is not Portland Cement because Portland Cement specification is 2250 cm^2/gm. One can argue theoretically that anything over 2250 is Portland Cement. But if it was Portland Cement why should anybody make a fineness of over 3500 and stick to that fineness."

2.37. Clarifying the position, the Finance Secretary stated in evidence:

"One can argue that the Central Excise authorities should have looked only into the physical characteristics of cement and assess excise duty on that basis, and should not have taken other factors into consideration at all. To that extent, the point made by Audit would be valid. We can certainly carry out a further examination of whether the company had managed to get itself assessed at a lower rate and if any of our officers had been negligent in their supervision etc., including the question whether a prosecution could be successfully launched against the company. We will go into these aspects but, at the same time, I would like to add that there were some mitigating circumstances so far as the officers of the Excise Department were concerned. The mistake seems to lie in the fact that without looking into the physical characteristics of cement—whether the specific surface was more than 3500 sq. centimetres per gramme or not—they seem to have been carried away by the description of the varieties of cement as given to

them by the industry—*viz.* whether it is Portland Cement or Pozzolana Cement or Blast Furnace Cement etc. As the description given to them conformed to the normal usage in trade and if that cement was also sold at the price applicable to the variety under the Control Order, they seem to have applied the appropriate excise duty. But it was in this process that the mistake arose. Even if the description was given as Portland Cement or Pozzolana Cement etc., why did they not go and verify the physical characteristics of cement, is a point that can be made. If the Central Excise Officer went by the normal terminology in use in the trade or in the industry, if they had satisfied themselves on point that the factory had filed a classification list—that it is Portland Cement or Pozzolana Cement etc.—and they had looked at the price also, and then charged the duty, then they may be said to have levied the appropriate excise duty."

2.38. The Committee noted that if a factory produced different quality/grade of cement, each quality/grade was required to be mentioned in the classification list in terms of Rule 173 B. They wanted to know whether these particulars were verified at the time when the change in the Cement Control Order was made. The Member (Excise) stated during evidence:—

"About the description, normally one would expect when the classification list was approved by the Superintendent or the Assistant Collector that the full description is given. If necessary, he has to make market enquiry and then only approve the classification list.....This was and still is the requirement that before the approval of the classification list, these have to be done."

2.39. The Committee wanted to know as to how the misclassification escaped the notice of officers. The Member (Excise) stated during evidence:—

"Normally in our statutes we go by trade practice or international convention or revenue consideration in framing the phraseology of a statutory tariff but in this particular cases, we took the words from the Cement Control Order and bodily incorporated it into our Tariff. Once that was done, there was no escape for our officers but to follow whichever way the same Control Order went. Now, they have changed the description and we are following it. The factory started saying that they are selling it at the controlled

price and so it is none of their concern. They declared it as grey portland cement. So, our officers accepted it blindly. This is the only mitigating explanation I could give on the part of our officers."

2.40. Regarding A.C.C. factory at Kymore, the witness explained:

"In so far as ACC Kymore factory is concerned, I cannot find any sort of excuse for what ACC has been doing because they started manufacturing superfine cement in the middle of June, 1975 and they stopped production in September, 1975. From Ist October, they could no longer capitalise on it because it had been brought under control. In these three months, they manufactured 5,000 tonnes and in the 17 factories all over India, they manufactured 1.20 lakh tonnes of cement. They continued to make this cement after 1-10-1975. Of course, the Audit has stated that they "clubbed" it together and they were selling it at the controlled price. As far as our officers go, they declared it as portland cement."

2.41. The Committee wanted to know the reasons for the assessment of superior variety of cement at a lower rate of duty. The Chairman, C. B. E. & C. stated during evidence:

"The background is that originally the rate of duty on cement was *ad valorem*, so much per cent. Under the Central Excise Act where the goods are sold on the basis of statutory controlled price, the value for assessment purposes is the controlled price. If the controlled price is Rs. 211, then the duty is to be assessed at so much per cent, say 40, on the basis of Rs. 211. If the controlled price is Rs. 234, then the duty would be so much per cent of Rs. 234. For purposes of facility, this *ad valorem* rate was converted into various specific rates. It was done by calculation, so much for masonary cement, so much for grey portland cement and so on. So, an arithmetical exercise was done and it was worked out that the incidence of duty would be Rs. 9,491 and 82 per tonne. When the duty was made specific for these controlled varieties, notifications were issued fixing duty according to description. Now the descriptions were supposed to be related to the controlled price, so that if a particular variety was sold at Rs. 234 per tonne the corresponding rate of specific duty would be attracted. Therefore, there was a real connection and rationale for linking the rate of specific duty which would

be charged on the cement to the controlled price at which it was sold. When the new system came, on the basis of the Control Order, these goods were being sold; naturally, with the amended description the new classification list had to be filed by the factory. Thereafter, under the SRP, on the basis of the description given by them the prices were declared by them,. Thereafter, the excise authorities appear to have considered that so long as the particular price of Rs. 211 was being charged and the rate of duty was Rs. 82 per tonne, it was in accordance with the intention, which was explained to them in the instructions given to them. They did not in most cases probe further whether actually the fineness was more or less. Now, at a later date, thanks to the vigilance of the Audit, it has come to light. If a more probing enquiry had been made by the excise authorities at that time, they might have come across this and taken remedial action. Because of the background to this, the most important factor was considered to be the price at which they were sold, and so long as the duty was appropriate to the controlled price at which it was sold, probably the excise authorities thought that everything was alright."

2.42. In this context, the Member (Excise) stated during evidence:

"Perhaps the excise authorities were more governed by the price at which these were to be sold and they did not pay sufficient attention to the actual characteristic of the goods because the fact remains that under the law, even if they are sold at the controlled price, if the specification was something else, if the goods were of specific surface above 3,500 cm^2/gm, then the higher rate of duty should have been charged. But that suspicion evidently did not occur. It may be due to carelessness on the part of some officers. Now that we know it, we have made some study."

2.43. The Committee wanted to know the action taken to fix responsibility for the lapse in these cases. The Member (Excise) stated during evidence:

"So far as the excise authorities are concerned, having something in mind they might have given perhaps undue importance to the price at which the goods are sold. If the goods were cleared which were of a different specification, naturally the higher rate was leviable. As to what checks were made by the excise authorities, as to what were the

actual specifications, now in the context of this present evidence, we have made a fairly close study, we are trying to get further information as to what exactly was the description given by the factory in the respective classification lists, how they assessed because it is a matter of self-assessment, they themselves assess the duty and they themselves cleared but we are trying to see on what basis the self-assessed goods were cleared and what was the amount paid and whether there was any mention about the price at which they were sold. We feel that some sort of probe on our side is necessary. We will have to go into much greater detail as to what happened in each of these factories, whether there was a deliberate attempt to mislead on the part of the company or whether there was any negligence or lack of due care on the part of assessing Central Excise Officer. All this we propose to do. At this point of time, all that appears is that in certain cases goods were cleared which technically should have a higher rate of duty. The biggest case is Kymore factory where the Collector has already taken steps he has already demanded duty and even imposed a fairly stiff penalty on the company. So far as the other cases are concerned we can perhaps view them both from the point of view of the culpability of the company and any possible negligence on the part of the excise officers. This is what we propose to do."

2.44. The Committee wanted to know as to how it would be possible to find out at this stage, the quality of cement cleared in the earlier years as the factories had now stopped giving specification of the quality. The Chairman, C. B. E. & C. stated in evidence:

"According to the enquiries we have made, the bulk of this was from one particular factory at Kymore, and there, the Collector, who is the senior most officer of the collectorate, has gone into the evidence, come to a conclusion and already given his findings. The others are smaller cases, and there also, on the basis of whatever records are available, a view will be taken."

2.45. In this connection the Member (Excise) clarified:

"In Kymore the records were available. In other places if they are not available, we might not be able to establish a case. I only hope that the records are still available."

2.46. Enquired about the time by which it would be possible for the authorities to complete the enquiries, the witness deposed:

> "We will try to do it as early as possible. So far as our officers are concerned, in the constrained circumstances in which they were placed, I do not think they could have taken a different view, because they were not visiting the factory in these cases. Only the inspection groups were going, because they were under SRP, they were on their own. They were selling it as Portland cement. According to the Inspection Report, if they had gone, they would have shown it less than 3500. So, they were in a better position."

2.47. The Committee were given to understand that on 8th December, 1976, the Head Office of A.C.C. at Bombay sent a telegram to the A.C.C. units all over the country to the effect that the system of mentioning the specific surface of cement cm2/gm. in the daily production account should be stopped forthwith. In this context the Committee wanted to know whether in compliance with the telegram of the Head Office, the various units of A.C.C. had removed the relevant records relating to the irregularities involved in mis-classifying the superior variety of cement. The Member (Excise) stated during evidence:

> "If we find, as pursuant to this telegram that the records which should be there have been done away with, we will take action. The possibility is there. We will certainly see that they are brought to book for what they have done. We will certainly take serious note of it."

2.48. The rate of duty leviable on the excisable goods manufactured by an assessee has to be got approved by the proper officer by submission of a classification list in terms of Rule 173-B of the Central Excise Rules, 1944. The proper officer for purposes of this rule is Superintendent of Central Excise. The Assistant Collector of Central Excise also approves classification lists in case of complicated items specified by the Collectors. The classification list contains detailed description of each and every item of goods produced in a factory. If a factory produces cement of different quality/grade, each quality/grade is to be mentioned separately in the classification list. The Sector Officer or Inspector dealing with the commodity is required to examine inter alia **whether the list covers all excisable goods manufactured by the assessee in his**

factory or warehouse in his factory and whether detailed description of each and every item of goods manufactured has been furnished therein. Before the list is approved, the Superintendent or Assistant Collector may visit the factory himself or depute an Inspector to do so for checking the products, for drawing samples or for verification of prices or any other important items of work connected with the classification of goods. After approval of the classification list, the Assistant Callector (Audit) i s also required to ensure that there is no mis-classification of goods falling under complicated items of the tariff.

2.49. The classification list submitted by the six cement factories, namely, Associated Cement Companies at Porbandar, Savalia, Kymore and Wadi, Saurashtra Cement and Chemical Industries, Ranavav and Cement Corporation of India, Mandhar, were approved even though these did not contain detailed description of each and every variety of the cement produced by them. This led to the clearance of grey cement of specific surface not less than 3500 cm2/gm. as ordinary portland cement at lower rates of duty. Under notification No. 89/76 dated 16 March, 1976 grey cement of specific surface not less than 35 cm2/gm was assessable at Rs. 91.00 per tonne while others were assessable at Rs. 82.00 per tonne. As a result there was short payment of duty to the extent of Rs. 107.68 lakhs (Rs. 54.54 lakhs in the case of six units referred to above and Rs. 53.14 lakhs in the case of ten other units).

2.50. The Kymore and Wadi Units of the Associated Cement Co. did file a classification list for grey cement of specific surface not less than 3500 cm2/gm and the list was approved by the concerned Superintendent/Assistant Collector of Central Excise. Yet, these units managed to clear grey cement of specific surface not less than 3500 cm2/gm on payment of lower rate of duty applicable to ordinary grey portland cement. Also, in the case of the other four units referred to above, grey cement of specific surface not less than 3500 cm2/gm was cleared on payment of duty at a lower rate. The way the consignments were thus wrongfully got cleared from the factory without scrutiny of the specific surface of the cement, shows negligence on the part of the excise staff and possible connivance with the managements of the factories concerned. Although the Department promised during evidence to investigate whether there was a deliberate attempt to mislead on the part of a Company or whether there was any negligence or lack of due care on the part of Assessing Central Excise Officer, the Committee recommend that in view of the peculiar circumstances of the case involving possible culpability of the company aimed at

destruction of record it is necessary that the matter should be entrusted to the Central Bureau of Investigation for a thorough investigation. The Committee would like to be informed also of the results of the promised probe by the Department itself alongwith details of action taken in pursuance thereof.

2.51. When amendment was made to clause 2 of the Cement Control Order and "3500 cm^2/gm" grade cement was introduced on 20 March, 1974, this particular variety did not find place in the I.S.I. specifications. The specification for this variety of cement was introduced for the first time only on 25 June, 1976 and is now called "high strength ordinary portland cement". Corresponding amendment to the Cement Control Order was made with effect from 2 May, 1977 whereby the words "grey cement of specific surface not less than 3500 cm2/gm" were deleted and substituted by the words "high strength ordinary portland cement". The Central Excise Notification levying higher rate of duty for "high strength ordinary portland cement" was issued with effect from 3 June, 1977. In the opinion of the Committee, I.S.I. specification should have been introduced simultaneously with the amendment of the Cement Control Order on 20 March, 1974 or soon thereafter. The delay of more than two years in the introduction of I.S.I. specification and a further delay of one year in announcing the excise classification was clearly avoidable. The Committee would therefore like the Government to review the existing procedures in this regard and take remedial measures so as to ensure that whenever excise tariff is sub-divided, no ambiguity is left in the description of excisable goods and, wherever required, I.S.I. specifications are introduced without delay.

2.52. The Committee have been informed that on adjudication of the case by the Collector, Indore against A.C.C. factory at Kymore (Indore Collectorate) a differential duty of Rs. 46.36 lakhs has been demanded besides a penalty of Rs. 25 lakhs for clearance of the superior variety of grey portland cement on payment of duty at the lower rates applicable to grey portland cement, thereby contravening the provisions of Rules 173(b) and 9(2) of the Central Excise Rules. They would like to be informed whether the amount of duty and penalty has since been realised from the party. The Committee would like to know whether any prosecution for violation of the Excise Law has been launched against the company and if not, the reasons therefor.

2.53. The Committee would also like to be apprised of the precise action taken against five other factories, namely, the Cement Corporation of India, Mandhar in Indore Collectorate, three factories of Associated Cement Companies in Baroda, Ahmedabad and Bangalore Collectorates and Saurashtra Cement and Chemical Industries, Ranavav in Ahmedabad Collectorate who had also cleared the superior variety of grey portland cement on payment of duty at lower rates applicable to ordinary grey portland cement. Complete details in regard to the action taken against them, including the actual amount of duty demanded and penalty imposed, if any, may be furnished to the Committee.

2.54. The Committee find that besides the six factories referred to earlier, there are 10 more units in Ahmedabad, Bangalore, Guntur, Hyderabad, Indore and Jaipur Collectorates who misdeclared the superior quality of cement and paid duty at lower rates leviable on ordinary grey portland cement. Six of these ten units belong to the A.C.C. Group of Companies. The total amount involved on account of such under-assessment is estimated to the tune of Rs. 53 lakhs. The Committee would like to be informed of the present position regarding recovery of duty and penalty from each of these units and of any other action taken against them.

NEW DELHI
October 27, 1980
Kartika 5, 1902 (S)

CHANDRAJIT YADAV
Chairman,
Public Accounts Committee.

APPENDIX I

(*Vide* Para 1.11)

AUDIT PARA

17/76-17

POINT I-Adv. Information

STATEMENT SHOWING RATE OF CENTRAL EXCISE DUTY IN RESPECT OF RAW NAPTHA EFFECTIVE RATE (PER KL)

	1969-70	1970-71	1971-72	1972-73	1973-74	1974-75	1975-76	1976-77	1977-78	1978-79	SPECIAL
	Basic	Basic	Basic	Basic	Basic	Basic	Basic	Basic	Basic	Basic	
1 2	3	4	5	6	7	8	9	10	11	12	13
Raw Naptha . . .	620	720.00	920.00	920.00	1000.00	2000.00	2100.00	2100.00	2100.00	2146.55	5% of Basic duty chargeable
Raw Naptha Intended for use in manufacture of fertiliser	5% Ad Val.	5% Ad Val.	4.15	4.15	4.15	4.15	4.15	4.15	4.15	4.15	"
Raw Naptha produced in a refinery											"
(i) When used within the refinery as a fuel	..										
(ii) When used elsewhere as fuel	5% Ad Val.										
I Raw Naptha intended for use in the manufacture of Methanol	5%Ad Val.	5%Ad Val.	4.15	4.15	25.00	450.00	450.00 (upto 30-6-75)				
III Raw Naptha intended for use as on industrial fuel	37.10	98.50	98.50	123.50 (upto 2-7-72)							
IV Raw Naptha intended for use in the manufacture of Patrochemical	5% Ad Val	5% Ad Val	4.15	4.15	4.15	25.00	25.00				
V Raw Naptha intended to be used and has been used as feed stock in the manufacture of (Town Gas) or Carbon Dioxide	163.70	163.70	163.70	163.70	250.00	250.00	deleted from 17-12-70				

1	2	3	4	5	6	7	8	9	10	11	12	13
VI	Raw Naptha for use in the manufacture of Ammonia	5%	5% Ad Val	4.15	4.15	4.15	4.15	4.15	25.00	25.00	25.00	4.15% of Basic duty chargeable
VII	Raw Naptha intended for use as fuel in the manufacture of steel & steel products				128.50 w.e.f. 9-8-72	128.50	128.50 500.00 w.e.f. 7-9-74	500.00	500.00	500.00	500.00	"
VIII	Raw Naptha produced in a factory											
(i)	When used within the refinery itself as a fuel for the manufacture of other Petroleum Product	Nil										
(ii)	When used elsewhere as fuel in blast furnances	5% Ad Val										
IX	Raw Naptha intended for use in the premises declared to be refinery and in the manufacture of any of the products mentioned in the schedule							25.00 w.e.f.	25.00 30-8-75	25.00	25.00	"
X	Raw Naptha intended to be used within the Heavy water plant at Baroda or Tuticorin, Gujarat State Fertiliser Corpn. Baroda, M/s. Southern Petrochemicals Industrial Corpn. Tuticorin for the manufacture of synthesis gas or ammonia or both									4.15	4.15	"

APPENDIX II

(*Vide* Para 1.17)

Procedure under Chapter X of the Central Excise Rules, 1944

Chapter X of the Central Excise Rules, 1944 provides for the procedure and the safeguards in relation to excisable goods that are cleared at a concessional rate of excise duty for special industrial purposes. The Chapter is applicable only to those excisable goods where the Central Government has given full or partial remission of duty under rule 8 for their use in specified industrial process subject to the observance of the procedure laid down in the chapter.

A person wishing to obtain remission of duty on such goods has to make an application to the Collector in the proper Form, stating the annual quantity of the excisable goods required and the purpose and the manner in which he intends to use them. If the Collector is satisfied that the applicant is a person to whom the concession can be granted without danger to revenue, and if he is also further satisfied that the premises are otherwise suitable for storage of the goods, he may grant the necessary permission, subject to the applicant agreeing to bear the cost of any establishment, which may be considered necessary for supervising the operations in the applicant's premises. On grant of the permission by the Collector the applicant is required to enter into a Bond in the proper Form. The Collector has been empowered to demand a fresh bond or additional security where necessary. The applicant has to take out a Central Excise licence and the permission granted by the Collector unless renewed ceases on the expiry of the licence.

The goods which are obtained by an applicant under the permission granted to the applicant under rule 192 should be transported immediately to the applicant's premises. Transport is covered by the bond executed by the applicant. In order to ensure that there is no mix up the Collector has been empowered to regulate the manner in which the goods should be packed and the marking of weight on such packages.

On receipt of the goods, they have to be stored in a storeroom, provided for and approved for this purpose by the proper officer.

The key of the store-room is to remain in personal custody of the applicant or his manager. A register in the prescribed form has also to be maintained showing the quantities of the excisable goods received, the quantity used in the industrial process and such further particulars as the Central Board of Excise and Customs or the Collector may prescribe. Further more, each consignment of excisable goods has to be stored separately and goods of distinct varieties have to be kept in distinct lots and be distinctly marked and the principle of "first-in-first out" followed.

A person who has been granted permission to receive goods under this Chapter is also required to submit a monthly statement in the proper form to the proper officer within 7 days of the close of each month, showing the description and the quantity of the goods used and the commodity manufactured, the manner of manufacture and such other particulars as the Board or the Collector may prescribe.

The above procedure which the applicant is required to follow, stipulates certain safeguards. Apart from above safeguards, certain other safeguards with regard to disposal of refuse of excisable goods and disposal of surplus excisable goods have also been provided for by rules 195 and 196A respectively. Furthermore (*vide* rule 196) powers have been given to demand duty on excisable goods that have not been duly accounted for and the Collector has also been empowered to withdraw the concession granted under rule 192 in case of breach of these rules by the applicant or his agent or any person employed by him. Also in the event of such a breach the Collector may order forfeiture of the security deposited with the bond which the applicant has furnished under rule 192 and the Collector may also confiscate not only the excisable goods but all other goods manufactured from such goods and in stock at the factory.

Instructions have been issued asking the field formations to exercise preventive checks over the units to whom this concession has been granted. It has also been stipulated that these units should be treated at par with duty paying units in the matter of checks and inspections and that the control should be more rigorous on units in the un-organised sector. Further instructions have been issued asking Internal Audit Parties to conduct various checks in order to ensure proper use of this facility.

APPENDIX III

(*Vide* Para 1.38)

STATEMENT SHOWING DETAILS OF SIMILAR CASES AS REPORTED BY THE COLLECTORS OF CENTRAL EXCISE

Name of the assessee	Brief facts of the case
1	2
Gujarat State Fertilizers Co. Ltd. (Baroda Collectorate)	M/s. G.S.F.C. Ltd. are procuring raw naphtha at concessional rate of Rs. 4.15 K.L. from Gujarat Refinery as per Notification No. 187/61 dated 23-12-61. They manufacture ammonia from raw naphtha and natural gas in their ammonia plants The bulk of ammonia manufactured is used in the manufacture of fertilizers. The excess quantity of ammonia is stored in storage vessel from where it is cleared out to industrial consumers on payment of duty. Ammonia is also removed to the caprolactum plant of M/s. G.S.F.C. Ltd. on payment of duty. Since M/s. G.S.F.C. Ltd. are utilising raw naphtha other than as provided in the notification No. 187/61 *i.e.* manufacture of fertilizers. They are required to pay differential duty. Accordingly demands amounting to Rs. 1.50 crores have been raised against them between 1970 and 1978. The demands have not been paid. The matter is pending before court/in revision application.
Fertilizers & Chemicals (Travencore) Limited. (Cochin Collectorate)	M/s. FACT Udyog Mandal Eloor are manufacturers of naphtha based fertilisers. They have obtained licence in form L6 for bringig Raw Naphtha at the concessional rate of duty from the storage installation of M/s. B.O.C. for manufacture of fertilisers. The raw naphtha so brought was being used in the gasification plant for the manufacture of ammonia which in turn was used in the manufacture of fertilisers. M/s. F.A.C.T. have an Electrolytic Hydrogen Plant where also Ammonia was produced. The ammonia produced in the Electrolytic Hydrogen Plant was being partly sold out and partly used in the manufacture of Ammonium Chloride which was not being treated as fertiliser. Thus till 1966-67 'ammonia produced out of Raw Naphtha' was not sold out or used in the manufacture of ammonium chloride. In 1967-68 M/s. F.A.C.T. dismantled some of the units of the Electrolytic Hydrogen Plant and sold them to Nangal Unit of Fertiliser Corporation of India. The production of

1	2
	Ammonia in the remaining units of Electrolytic hydrogen plant was not adequate for the manufacture of ammonium chloride and for sale outside. They therefore commenced diverting the ammonia produced out of raw naphtha obtained at the concessional rate under Chapter X procedure for manufacture of ammonium chloride—a non-fertiliser and for sale outside. Accordingly, demands for the differential duty of Rs. 1,09,28,247.50 involved on the raw naphtha in question for the period 1-4-67 to 31-12-71 were issued to M/s. F.A.C.T. Their appeal and revision application against these demands were rejected. In the meanwhile the assessee continued diverting ammonia produced out of raw naphtha as aforesaid. The CERA Party during their inspection of the unit for the period 1/69 to 8/70 had raised an objection regarding the rate of duty to be adopted for demanding duty on the raw naphtha diverted for not fertilizer purposes. They contended that the rate of duty was to be determined under Rule 9A(5). This was referred to the Ministry of Law who advised that the correct Rule applicable is Rule 9A(i)(ii). The demands already issued were consequently revised and 12 demands for a total amount of Rs. 3,36.17, 208.79 were issued to M/s. F.A.C.T. two demands on 8-12-76, one demand each on 17-3-76, 5-1-76 and 8 demands on 31-3-76. Besides a show cause notice for Rs. 33, 38, 248.08 being the differential duty involved for the period 1-10-76 to 23-6-77 was also issued. Out of the 12 demands, M/s. F.A.C.T. honoured on demand for Rs. 3,50, 680.33. The balance amount due from M/s. F.A.C.T. is Rs. 3,66,04,776.04 i.e. R. 3,32 66, 527.96 —Rs. 33, 38, 248.08. The Ministry in their Telex No. 83/22/75-CX III dated 2-6-76 stayed up to 30-7-76 recovery proceedings of differential duty already demanded. M/s. F.A.C.T. then represented to the Government of India for *ex-gratia* relief from payment of the differential duty due from them. F.No 83/22/75-CX.III dated 27-9-76 have ordered that the proceedings for recovery should be kept in abeyance. In the meanwhile the assessees were proceeded against for violation of Rule 196 of the Central Excise Rules, 1944. The case adjudicated by the Collector of Central Excise as per his C. No. V/6/15/7/73-CX. Adj. dated 16-7-76 and as per the said orders the security deposit of Rs. 5,000/-furnished by the assessee was forfeited.
M/s. Fertilizer Plant of Steel Authority of India Ltd. (Bhubaneswar Collectorate)	Show cause notice has been issed for the realisation of duty on the raw naphtha which has been diverted for use other than the manufacture of fertilisers.
M/s. Rashtriya Chemicals and Fertilizers Bombay, (Bombay Collectorate)	They are having common tank for storage of ammonia intended for use in the manufacture of fertilisers and for other purposes. Action is being taken to recover duty on pro rata basis, on raw naphtha which has been diverted.

1	2
M/s. Madras Fertilisers Ltd. and M/s. E.I.D. Parry (I) Ltd. (madras Collectorate)	They receive raw naphtha at concessional rate for manufacture of fertilizers under Notification No. 187/61 dated 23-12-61 as amended and at higher-concessional rate for other than manufacture of fertilisers under Notification No. 192/75 of 30-8-75 as amended Notification No. 291/77 dated 12-9-77 as amended by Notification No. 161/78 dated 9-9-78. Duty at appropriate rate is realised on raw naphtha which is not proved to have been utilised in the manufacture of fertilisers.

**N.B. : Other Collectors have furnished 'NIL' reports.

APPENDIX IV

Conclusions/Recommendations

S.No.	Para No.	Ministry Concerned	Recommendations
1	2	3	4
1	1.30	M/o. Finance (Deptt. of Revenue)	The Committee note that the Government introduced a scheme with effect from 23-12-1961 for the grant of concession in excise duty on raw naptha used exclusively in the production of fertilisers. This concession was granted for various reasons, *viz.*, to keep the fertiliser prices at reasonable levels, to relieve the pressure on coal and to help in the conservation of foreign exchange being spent on the import of fertilisers. M/s Fertilisers Corporation of India, Sindri received raw naphtha at concessional rate of duty since 1-4-1969. They produced ammonia, which is an intermediary product in the manufacture of fertilisers, not only from raw naphtha but also from coke gasification process and coke oven process. Ammonia produced from all these processes was stored in a common tank. While processing the application of the above licensee for the renewal of L-6 licence required for procurement of raw naphtha at concessional rate of duty, the Inspector of Central Excise on his visit to their factory on 24-10-1973, found that they were selling ammonia manufactured out of raw naphtha. He submitted

a report on 30-10-1973 to the Assistant Collector Dhanbad pointing out the misuse of raw naphtha obtained at the concessional rate of duty. The Assistant Collector asked for certain details from the licensee which were supplied on 17-1-1974. An Audit Party of the Accountant General's Office also visited the factory and issued objection memo on 16-3-1974 pointing out the irregularity. The Assistant Collector concerned retired in May, 1975. Thereafter, on 15-7-1975 the Collectorate of Central Excise, Patna raised a demand on the licensee for payment of differential duty of Rs. 3.40 crores on raw naphtha not used in the manufacture of fertilisers during April 1969 to November 1974. No satisfactory explanation has been given for inaction on the part of the Assistant Collector concerned after January 1974 and till his retirement in May, 1975 although he was aware of the Inspector's report and the Audit objection that the factory was misusing the concession in duty allowed to it. The Committee have an apprehension that a deliberate attempt was made to avoid action against the licensee. "They would therefore like the matter to be thoroughly investigated, preferably by the C.B.I. and apportion responsibility of all officers, including Deputy Collector and Collector of Central Excise and Inspection Group. The result of the investigation should be apprised to the Committee. Suitable action should be taken against the officials found responsible for abetting in the avoidance of payment of excise duty in this case. In particular, the Committee would like to be informed why proceedings to withhold pension under Rule 9 of the Central Civil Services (Pension) Rules 1972 were not initiated against the said Assistant Collector."

1	2	3	4
2	1.4c	M/o Finance (Deptt. of Revenue.)	M/s Fertiliser Corporation of India, Sindri, were granted a L-6 licence whereby they were entitled to obtain raw naphtha at concessional rate of duty for the manufacture of fertilisers. Under Rule 194 of the Central Excise Rules, a licensee is required to maintain a register in form RG-16 showing the quantity of the excisable goods received the quantity used in the industrial process and such other particulars as the Central Board of Excise and Customs or the Collector may prescribe. This account is expected to be checked twice in a year by the inspection groups. The licensee is also required to submit a monthly return in Form RT-11 to the proper officer within seven days of the close of each month, showing the description and the quantity of the goods used and the commodity manufactured, the manner of manufacture and such other particulars as the Board or the Collector may prescribe. The Committee have been informed that the monthly register in Form RG-16 maintained by the F.C.I., Sindri showed the receipts and issues of raw naphtha but the quantities of ammonia manufactured out of such raw naphtha were not shown separately in these statements with the result that no check or verification of ammonia produced out of raw naphtha could be done by the Departmental officers. During evidence the Member (Excise) conceded: "From out side, I am afraid, the checks were not as accurate as they should be." The Committee regret to observe that the registers maintained by the licensee were not checked properly and the misuse of concession in duty remained

undetected till October 1973 although the concession was being availed of by the licensee since April 1969. The Committee would like the Department to investigate into the matter and take suitable action against the officials found responsible for negligence of duty.

3. 1.41 Do.

The Committee find that an order for the realisation of differential duty amounting to Rs. 3.65 crores (Rs. 2.00 crores for the period 1-4-1969 to 30-11-1974 and Rs. 1.65 crores for the period 1-12-1974 to 15-8-1976) from Fertiliser Corporation of India, Sindri was confirmed by the jurisdictional Assistant Collector of Central Excise, Dhanbad on 11-3-1977. An appeal against this order was submitted to the Appellate Collector of Central Excise, Calcutta. At the appeal stage, the party argued that natural justice was denied to them in that a copy of the Report of the Chemical Examiner was not made available to them. The Appellate Collector accepted the appeal on 18-10-1977 and sent the case back for *de novo* examination. Since then the matter is pending adjudication by the Collector of Central Excise, Patna. As more than seven years have elapsed since the misuse of concession in duty was brought to the notice of the Collectorate, the Committee desire that the adjudication proceedings in the case should be finalised expeditiously.

4. 1.42 Do.

The Committee are informed that besides Fertiliser Corporation of India, Sindri there are 14 more licensees who are obtaining raw naphtha at concessional rate of duty for use in the manufacture of fertilisers. However, nine of them have common tanks for the

1	2	3	4

storage of ammonia used for manufacture of fertilisers as also for other purposes. The raw naphtha used for production of ammonia and diverted for use other than manufacture of fertilisers is not entitled to concessional rate of duty and differential duty is chargeable from the concerned licensees. From the information furnished to the Committee, it is seen that:

(i) Demand of Rs. 1.50 crores has been raised for the period 1970 to 1978 in the case of Gujarat State Fertilisers Co. Ltd.

(ii) In the case of M/s Fertilisers and Chemicals (Travancore) Cochin duty of Rs. 3.33 crores is due for the period 1-4-67 to 31-12-71 and Rs. 33.38 lakhs for the period from 1-10-76 to 23-6-1977; and

(iii) Show cause notices have been issued for the realisation of duty from the Fertiliser Plant of Steel Authority of India Ltd., Bhubaneshwar and Rashtriya Chemicals, Bombay.

for diverting raw naphtha. The Committee would like to be informed of the latest position in regard to the stages of recovery for the realisation of duty from these licensees. They would also like to be apprised whether Government have specifically verified that such an irregularity has not been committed by any of the remaining 11

licensees. The Committee would also like the enquiry authority to enquire into the circumstances in which similar revenue evasion took place in other Collectorates and fix responsibility for the same and bring the erring officials to book and report compliance to the Committee.

5 1.43 M/o. Finance (Department of Revenue)

The Committee were informed during evidence that there are inbuilt safeguards for compliance with the prescribed procedure by the licensee in that before granting L—6 licence, the Collector has to verify whether the storage facilities are there and proper account will be there to verify compliance with the conditions of end-use. The Central Board of Excise and Customs were also aware that in a number of fertiliser factories, ammonia produced from raw naphtha obtained at concessional rate of duty as also ammonia obtained from other processes were stored in common tanks and there were no separate storage facilities. In fact the Board had, after obtaining advice of the Ministry of Law Branch Secretariat Bombay, issued instructions on 29-6-1973 prescribing that the quantity of ammonia sold or used otherwise than for the manufacture of fertiliser should be allocated to raw naphtha and other resources on pro-rata basis *i.e.*, in the same proportion in which total production of ammonia was contributed by these sources in the respective years. The Committee are pained to note that despite these so-called inbuilt safeguards and the instructions issued by the Board on 29-6-1973 the irregularity in this case occurred and continued unnoticed till 1974, thus putting substantial amounts of revenue in jeopardy. The Committee cannot but observe that there was all round lack of supervision

1	2	3	4
			and also a clear lock of monitoring in compliance with both the inbuilt safeguards as well as the instructions issued by the Board.
6.	2.48	M/o Finance (Deptt. of Revenue)	The rate of duty leviable on the excisable goods manufactured by an assessee has to be got approved by the proper officer by submission of a classification list in terms of Rule 173-B of the Central Excise Rules, 1944. The proper officer for purposes of this rule is Superintendent of Central Excise. The Assistant Collector of Central Excise also approves classification lists in case of complicated items specified by the Collectors. The classification list contains detail description of each and every item of goods produced in a factory. If a factory produces cement of different quality/grade, each quality/grade is to be mentioned separately in the classification list. The Sector Officer or Inspector dealing with the commodity is required to examine, *inter alia*, whether the list covers all excisable goods manufactured by the assessee in his factory or warehoused in his factory and whether detailed description of each and every item of goods manufactured has been furnished therein. Before the list is approved, the Superintendent or Assistant Collector may visit the factory himself or depute an Inspector to do so far checking the products, for drawing samples or for verification of prices or any other important items of work connected with the classification of goods. After approval of the classification list, the Assistant Collector (Audit) is also required to ensure that there is no mis-classification of goods falling under complicated items of the tariff.

7. 2.49	Do.	The classification list submitted by the six cement factories, namely, Associated Cement Companies at Porbandar, Savalia, Kymore and Wadi, Saurashtra Cement and Chemical Industries, Rananav and Cement Corporation of India, Mandhar, were approved even though these did not contain detailed description of each and every variety of the cement produced by them. This led to the clearance of grey cement of specific surface not less than 3500 cm2/ gm. as ordinary portland cement at lower rates of duty. Under notification No. 89/76 dated 16th March, 1976 grey cement of specific surface not less than 3500 cm2/gm. was assessable at Rs. 91.00 per tonne while others were assessable at Rs. 82.00 per tonne. As a result there was short payment of duty to the extent of Rs. 107.68 lakhs (Rs. 54.54 lakhs in the case of six units referred to above and Rs. 53.14 lakhs in the case of ten other units).
8. 250	Do.	The Kymore and Wadi Units of the Associated Cement Co. did file a classification list for grey cement of specific surface not less than 3500 cm2/gm. and the list was approved by the concerned Superintendent/Assistant Collector of Central Excise. Yet, these units managed to clear grey cement of specific surface not less than 3500 cm2/gm. on payment of lower rate of duty applicable to ordinary grey portland cement. Also, in the case of the other four units referred to above, grey cement of specific surface not less than 3500 cm2/gm. was cleared on payment of duty at a lower rate. The way the consignments were thus wrongfully got cleared from the factory without scrutiny of the specific surface of the cement, shows negligence on the part of the excise staff and possible connivance with

1	2	3	4
			the managements of the factory concerned. Although the Department promised during evidence to investigate whether there was a deliberate attempt to mislead on the part of a Company or whether there was any negligence or lack of due care on the part of Assessing Central Excise Officer, the Committee recommend that in view of the peculiar circumstances of the case involving possible culpability of the company aimed at destruction of record it is necessary that the matter should be entrusted to the Central Bureau of Investigation for a thorough investigation. The Committee would like to be informed also of the results of the promised probe by the Department itself along with details of action taken in pursuance thereof.
9. 2.51	Ministry of Finance (Deptt. of Revenue)		When amendment was made to clause 2 of the Cement Control Order and "3500 cm2/gm." grade cement was introduced on 20th March, 1974, this particular variety did not find place in the I.S.I. specifications. The specification for this variety of cement was introduced for the first time only on 25th June, 1976 and is now called "high strength ordinary portland cement". Corresponding amendment to the Cement Control Order was made with effect from 2nd May, 1977 whereby the words "grey cement of specific surface not less than 3500 cm2/gm." were deleted and substituted by the words "high strength ordinary portland cement". The Central Excise Notification levying higher rate of duty for "high strength ordinary portland cement" was issued with effect from 3rd June, 1977. In

the opinion of the Committee, I.S.I. specification should have been introduced simultaneously with the amendment of the Cement Control Order on 20th March, 1974 or soon thereafter. The delay of more than two years in the introduction of I.S.I. specification and a further delay of one year in announcing the excise classification was clearly avoidable. The Committee would therefore like the Government to review the existing procedures in this regard and take remedial measures so as to ensure that whenever excise tariff is sub-divided, no ambiguity is left in the description of excisable goods and, wherever required, I.S.I. specifications are introduced without delay.

10. 2.52 Do. The Committee have been informed that on adjudication of the case by the Collector, Indore against A.C.C. factory at Kymore (Indore Collectorate) a differential duty of Rs. 46.36 lakhs has been demanded besides a penalty of Rs. 25 lakhs for clearance of the superior variety of grey portland cement on payment of duty at the lower rates applicable to grey portland cement, thereby contravening the provisions of Rules 173(b) and 9(2) of the Central Excise Rules. They would like to be informed whether the amount of duty and penalty has since been realised from the party. The Committee would like to know whether any prosecution for violation of the Excise Law has been launched against the company and if not, the reasons therefor.

11. 2.53 Do. The Committee would also like to be apprised of the precise action taken against five other factories, namely, the Cement Cor-

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			poration of India, Mandhar in Indore Collectorate, three factories of Associated Cement Companies in Baroda, Ahmedabad and Bangalore Collectorates and Saurashtra Cement and Chemical Industries, Ranavav in Ahmedabad Collectorate who had also cleared the superior variety of grey portland cement on payment of duty at lower rates applicable to ordinary grey portland cement. Complete details in regard to the action taken against them, including the actual amount of duty demanded and penalty imposed, if any, may be furnished to the Committee.
12. 2.54	M/o Finance (Deptt. of Revenue)		The Committee find that besides the six factories referred to earlier, there are 10 more units in Ahmedabad, Bangalore, Guntur, Hyderabad, Indore and Jaipur Collectorates who misdeclared the superior quality of cement and paid duty at lower rates leviable on ordinary grey portland cement. Six of these ten units belong to the A.C.C. Group of Companies. The total amount involved on account of such under-assessment is estimated to the tune of Rs. 53 lakhs. The Committee would like to be informed of the present position regarding recovery of duty and penalty from each of these units and of any other action taken against them.