

**ESTIMATES COMMITTEE  
(1978-79)**

**(SIXTH LOK SABHA)**

**TWENTY-EIGHTH REPORT**

**MINISTRY OF FINANCE  
(Department of Revenue)**

**CENTRAL EXCISE**



*Presented in Lok Sabha on 27 MAR 1979*

**LOK SABHA SECRETARIAT  
NEW DELHI**

*March 1979/Phalguna 1900 (Saka)*

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## APPENDIX

(Vide Introduction)

### ANALYSIS OF ACTION TAKEN BY GOVERNMENT ON RECOMMENDATIONS CONTAINED IN THE 20TH REPORT OF THE ESTIMATES COMMITTEE (6TH LOK SABHA)

I.	Total number of recommendations . . . . .	1
II.	Recommendations which have been accepted by Government . . . . .	
	Number . . . . .	Nil
	Percentage of total . . . . .	—
III.	Recommendations which the Committee do not desire to pursue in view of Government's replies . . . . .	
	Number . . . . .	Nil
	Percentage to total . . . . .	—
IV.	Recommendations in respect of which replies of Government have not been accepted by the Committee . . . . .	
	Number . . . . .	Nil
	Percentage to total . . . . .	—
V.	Recommendations in respect of which final replies of Government are still awaited . . . . .	
	Number . . . . .	
	Percentage to total . . . . .	100 %

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# **ESTIMATES COMMITTEE**

**(1978-79)**

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**Shri H. G. Paranjpe—*Joint Secretary***

**Shri K. S. Bhalla—*Chief Financial Committee Officer.***

**Shri H. C. Bahl—*Senior Financial Committee Officer.***

## INTRODUCTION

I, the Chairman of Estimates Committee having been authorised by the Committee to submit the Report on their behalf, present this Twenty-eight Report on Ministry of Finance (Department of Revenue)—Central Excise.

2. The Committee took evidence of the representatives of the Ministry of Finance (Department of Revenue) on 9, 10, 11, 13 and 30 November, 1978. The Committee wish to express their thanks to the officers of the Ministry for placing before them the material and information which they desired in connection with the examination of the subject and giving evidence before the Committee.

3. The Committee also wish to express their thanks to Associated Chambers of Commerce and Industry, Federation of Indian Chambers of Commerce and Industry, Association of Indian Engineering Industry, All India Manufacturers' Organisation, Federation of Associations Small Industries of India, Shri J. Banerjee, Retd. Member of Central Board of Excise and Customs, and Shri A. G. Kulkarni, M.P. for furnishing memoranda to the Committee and also for giving evidence and making valuable suggestions.

4. The Committee also wish to express their thanks to all other institutions, associations, bodies and individuals who furnished memoranda on the subject to the Committee.

5. The report was considered and adopted by the Committee on 27 and 28 February, 1979.

6. For facility of reference the recommendations|observations of the Committee have been printed in thick type in the body of the Report. A summary of the recommendations|observations is appended to the Report (Appendix II).

NEW DELHI;

March 5, 1979.

Phalguna 14, 1900 (Saka).

SATYENDRA NARAYAN SINHA,

Chairman,

Estimates Committee.

# **CHAPTER I**

## **INTRODUCTORY**

### **A—Story of Excise**

1.1. Central Excise is the most important source of revenue to the Central Government. According to the Budget Estimates for 1978-79, the Central Government are expected to collect Rs. 5299.06 crores by way of excise duties which works out to 52.8 per cent of the total tax revenue of the Government.

1.2. Excise duty has a very wide coverage and is levied on as many as 138 items, the last item being of a mis-residual nature covering a very wide range of products not specified elsewhere in the Excise Tariff. Out of 138 items, two are unmanufactured products, i.e., tobacco and coffee, while the remaining 136 items cover manufactured products.

1.3. Every manufacturer of excisable goods is required to obtain a licence before commencing production. He has to apply to the Superintendent of Central Excise in a prescribed form and pay a licence fee of Rs. 20/-; the licence is valid for a period of three years and has to be renewed thereafter.

1.4. A grower of unmanufactured products, i.e., tobacco and coffee, has to register himself with the Central Excise Department and declare the area and the estimated yield of the produce. A curer of unmanufactured products has to take out a licence in form L-1. While small curers are not required to pay any licence fee, those curing 40 quintals or more in a year, have to pay the licence fee of Rs. 20. Wholesale dealers and brokers of unmanufactured tobacco are also required to take out a licence. Persons having non-duty paid warehouses for storing unmanufactured products (as well as petroleum products) are also required to have a licence.

1.5. Manufacturers who are not required to pay duty have been exempted from obtaining a licence under certain circumstances.

1.6. A person undertaking the production of excisable goods without applying for or obtaining a Central Excise licence is liable to punishment. The same is the position in respect of a curer, a broker, a wholesale dealer and warehouse licensee.

1.7. On issue of the licence, every manufacturer and every warehouse owner is required to execute a bond with security or surety. However, small manufacturers working under the Compounded levy Scheme and the Simplified Procedure have been exempted from the execution of the bond. Small scale manufacturers are not required to furnish any security with the bond they execute.

1.8. Persons undertaking to export excisable goods, without payment of duty, or remove them without payment of duty from one warehouse to another or obtain them for special industrial purposes, are also required to execute bonds for the due arrival and account of the goods.

1.9. The following types of procedure have been prescribed for the levy and collection of Central Excise duties keeping in view the needs of different industrial sectors:—

- (i) Physical control;
- (ii) Clearance Based Control (CBC) with an alternative of a Simplified Procedure;
- (iii) Records Based Control (RBC);
- (iv) Production Based Control (PBC); and
- (v) Compounded Levy Scheme.

1.10. Physical control and Clearance Based Control are practically identical, except that the term physical control is mentioned in connection with unmanufactured products and some manufactured products, viz., Khandsari, sugar, matchies, biris, snuff and chewing tobacco and Clearance Based Control covers certain producers of manufactured products.

Physical control on unmanufactured products commences from the stage of growing and curing the produce and continues till the unmanufactured product is about to be consumed. This envisages control over storage and transport of the non-duty paid as well as the duty-paid unmanufactured product. Assessment is done by a Central Excise Officer and the goods are removed under the supervision of a Central Excise Officer under cover of a transport permit (T.P.) issued by him. In some cases the licensee is allowed to issue a transport certificate. However, in the case of coffee there is no control on duty paid coffee subsequent to its first removal on payment of duty.

1.11. Clearance Based Control is applicable to the manufacturers of 6 commodities only, viz., tea, cotton yarn, cotton fabrics, woollen fabrics, copper and copper alloys and wireless receiving sets who have not opted for the Simplified Procedure.

1.12. Under the Simplified Procedure small manufacturers of the aforesaid commodities whose annual value does not exceed Rs. 5 lakhs, are permitted to compound their monthly duty liability on the basis of their performance during the past three years. They are given a concession in the rate of duty and are also allowed an incentive of increasing their production upto 50 per cent without attracting additional duty liability. A small manufacturer opting for the Simplified Procedure has to get his monthly duty liability determined by the Department and pay it every month in advance. He is exempted from the regular procedural controls.

1.13. Under the Records Based Control and the Production Based Control a manufacturer has to get the rate of duty approved by the Department. Thereafter he can assess the goods to duty and remove them after payment of duty without interference by the Central Excise officers. For the purpose of payment of duty the assessee maintains an account current in which he makes credits from time to time and debits the duty determined at the time of removal of a consignment. He is required to submit a monthly return giving information about production and clearance and the stock of excisable goods along with the clearance documents, extracts of account current etc.

1.14. Records Based Control applies to 34 commodities produced in the organised sector. Under this system the assessee's books of accounts, invoices, despatch advices etc. are accepted and more reliance is placed on him.

1.15. Under the Production Based Control, checks are exercised by the Central Excise Officers at various stages of production to ensure full accountal of the goods produced by a manufacturer. The receipt of duty-paid goods into the factory is also subject to check. However, assessment and removal of goods is left to the assessee as under the Records Based Control.

1.16. Production Based Control applies to those excisable goods, which are not covered by Records Based Control, Simplified Procedure and Compounded Levy Scheme.

1.17. The Compounded Levy Scheme is meant for the Small scale decentralised sector and at present covers cotton fabrics produced on unauthorised powerlooms, battery parts, coarse grain plywood and embroidery. Duty for a specified period is fixed on the basis of the number and the type of machines. Payment of duty under the Compounded Levy Scheme absolves the manufacturer from observing day-to-day excise formalities regarding maintenance of accounts and removal of goods etc.

1.18. Disputes between the assessee and the Department regarding valuation, rate of duty etc. are decided by the Assistant Collector, the Deputy Collector or the Collector of Central Excise.

1.19. Offences booked against a person for contravention of Central Excise law or evasion of excise duty are decided by the Superintendent, the Assistant Collector, the Deputy Collector or the Collector of Central Excise depending on the amount of excise duty involved in a case.

1.20. If a person is aggrieved with the decision of an adjudicating authority he can file appeal to the Appellate Collector, against the order passed by a Superintendent, an Assistant Collector or a Deputy Collector. Appeal against the Collector's order lies to the Central Board of Excise and Custom. If a person is aggrieved with a decision in appeal he can file a revision application to the Government.

#### *Tariff items*

1.21. At present excise duty is levied on 138 items. According to the Ministry of Finance the number of units manufacturing the excisable commodities as on 31st March, 1977 was 1,25,503. The total revenues collected from these items in 1976-77 was Rs. 4221.35 crores. From the statement regarding collection of revenue (item-wise), the Committee noticed that in 1976-77 out of the 132 items on which excise duty was levied, 28 items accounted for 75 per cent of the total revenue collected (Rs. 3169.95 crores out of Rs. 4221.35 crores). It is also noticed that the 75 per cent of the revenue so collected was from 9886 factories while the remaining 25 per cent of the revenue was collected from as many as 1,15,617 factories.

1.22. The Chairman, Central Board of Excise and Customs, during evidence contended that effective excise control was exercised only in respect of about 18000 assesseees only, out of the 1,15,617 factories from where only about 25 per cent of the revenue is collected. Explaining this, the Ministry have stated in a written reply that out of 1,15,000 units, about 63,000 account for cotton fabrics (powerlooms) which were working under Special Procedure before the 1977 Budget and which, barring a few unauthorised units, presently enjoy exemption from duty. Another 2,700 units are also working under Special Procedure in respect of other items such as Khandsari, battery parts etc. In addition, over 6,000 units are covered by Tariff Item No. 68 on which the excise control procedures have been substantially simplified. About 24,000 units have been



benefited by the small scale exemption given as a part of the 1978 Budget and a sizeable number of such units have gone out of effective excise control completely. The above analysis accounts for about 96,300 units on which either there is no central excise control or the control is a simplified one. Thus the number of points of collection after deducting these collection points comes to 18700.

1.23. With a view to minimising the number of assesseees and the points of contacts between the excise authorities and the assesseees and thus reducing harassment to the assesseees, evasion of duty and administrative expenditure, a suggestion has been made that the excise duty might be in as many cases as practical be levied, either at source of production or at the end product stage. For example, in the case of Tobacco the duty may be levied at the stage of production of cigarette, cigars, biris etc., and not on unmanufactured tobacco. In the case of steel, aluminium, copper and zinc products for example duty may be levied at the sources of production, namely the steel Plants, BALCO, HINDALCO etc., and not on the thousands of factories manufacturing articles of steel, aluminium etc. To make up for the loss, if any, in the total revenue collection on such commodities, the rate of duty may be raised appropriately and/or export duty may be raised.

1.24. During the course of evidence before the Committee, a former member of the Central Board of Excise and Customs while expressing his views on the aforesaid suggestion to levy duty at the source of production of basic inputs or at the final stage stated that the proposal was "attractive". But there were certain snags in the way of implementing such a scheme. Citing the example of matches, he stated that about 50 per cent of the revenues from matches was realised from units in small scale sectors. Instead of collecting revenue from the innumerable small scale units, it would be "nice" if the duty could be collected from the potassium chlorate manufacturers whose number was three only. But there were certain snags in this. First, potassium chlorate had other uses also and used for making explosives. Secondly, if the duty was levied on the basic raw material the rate of duty on potassium chlorate might increase to Rs. 4 to 5 thousand per kilogramme. It would not be possible for small scale units manufacturing matches to pay such a heavy duty at the time of purchasing potassium chlorate and block their money till they produced matches, unless the realisation of duty could be deferred. Also deferment of duty would give rise to complications. The Department would have to keep a track of the movement of the goods.

1.25. The witness cited another example of steel which was being subjected to excise duty at two stages, viz., steel ingots and steel products. The revenue realised from the steel products was much more than those realised from the steel ingots. It would be easy to levy all the tax at the steel ingot stage, of which the main producers were few, and relieve the innumerable manufacturers of steel products from payment of duty. But again the main difficulty would be that the fabricators of steel could not afford to buy the steel ingots by paying the whole duty at the input stage and thereby block the money.

1.26. He added that there would be great resistance to levy of duty at raw material stage from the small scale manufacturers as they would have to pay a higher duty.

1.27. In a written reply, the Ministry of Finance have stated that the question whether excise duty should be levied either at the raw material stage or at the end-product stage has to be viewed in the context of the composition of individual industries. In general, it may be said that loading the tax at the input stage has a regressive impact and has the effect of distorting relative factor prices. Besides, it would entail heavy working capital outlay at the initial point of manufacture, the burden of which would be carried down the line. Furthermore, value added at subsequent stages would not get effectively taxed. However, the measure may be advantageous from the points of view of ease in administration and tax compliance. On the other hand, taxing only the 'final products' cannot be thought of for all commodities. Firstly, large sectors of the economy will have to remain untaxed (e.g. construction) and the taxation of such sectors is best achieved through taxation of inputs. Secondly, if manufactured inputs are freed of taxation, replacement consumption will escape taxation.

1.28. The Ministry have further stated that another factor which will have to be kept in view is ensuring the built-in-income elasticity of the tax system. This can be achieved by an extended tax system, which means having taxes at all stages of manufacture. Hence, it would not be possible to apply either of the principles on a universal basis.

1.29. The Finance Secretary stated during evidence that the imposition of excise duty on inputs might have to be supplemented with excise duty on finished products because the basic input might be used for a variety of purposes, some of which may be essential and some may not be essential. For example, steel could be used

for both essential purposes as well as for purposes which were bordering on luxury. Therefore, they had to levy a small excise duty on steel, supplemented by a suitably graduated excise duty on various products which are made of steel. The same was the case with stainless steel which might be used for making utensils as well as for making surgical equipment. Therefore, taxation of inputs alone might not get the revenue needed by the Government without detriment to the other objectives which the Government have in view.

Adding that the approach of levying tax at the basic input stage was already being adopted by Government., the Finance Secretary stated:—

“Some 2-3 years ago the taxation on art-silk fabrics was shifted from the fabrics stage to the fibre stage both with a view to check evasion by the various small scale units engaged in the production of art-silk fabrics and also with a view to minimise inconvenience to the large number of people. So we are increasingly moving in that direction. but still there are a few commodities where we have to have, a sort of a scheme which combines taxation on inputs and also on the finished products. Nobody can question the principle (of levying taxes at inputs stage) but they will have to be moderated in their application to concrete cases.”

1.31. The Chairman Central Board stated that in principle this approach of shifting duty incidence to basic input would only apply where there was a decentralised sector and collection of duty at the final stage would cause harassment as also will be cumbersome for the administration. Plastics was a “typical decentralised sector”, where there were numerous processing units. So the duty was levied only on the raw material, i.e. resin. Government had exempted the final products from the levy of the duty. The witness added that wherever this sort of a system was feasible, this was being adopted.

1.32. The Committee note that at present excise duty is levied on 138 items. The number of units manufacturing excisable items as on 31st March, 1977 was 1,25,503. The total revenue collected from these items in 1976-77 was Rs. 4221.35 crores. In 1976-77 out of 132 items on which excise duty was levied, 28 items accounted for 75 per cent of the total revenue collected from 9,886 units while

the remaining 25 per cent of revenue was collected from as many as 1,15,617 units. In other words, about 8 per cent of total units contributed 75 per cent of excise revenue and the remaining 92 per cent of the units yielded only 25 per cent of the revenue. According to the Ministry out of these 1,15,617 units, on 96,300 units there is no excise control or the control is a simplified one. The number of effective points of collection after deducting these 96,300 units comes to about 18,700. This, in the opinion of the Committee is a specious argument as, whether control is simplified or otherwise, the fact remains that all the 1,25,503 units which fall in the tax dragnet are subject to the excise rules and regulations and out of them 9,886 units account for 75 per cent of total revenue.

1.33. Under the present scheme, excise duty is leviable at various stages, that is, at raw materials, intermediary products/components, finished products. With a view to minimising the number of assesses and points of contacts between the Excise authorities and the assesseees, a suggestion has been made that excise duty should be levied either at raw materials (basic inputs) stage or at the end products stage. It has been conceded by the Ministry that the measure may be advantageous from the points of view of ease in administration and tax collection but it has certain disadvantages. Loading the tax at inputs stage has a 'regressive' impact and has the effect of distorting relative factor prices. It would entail heavy working outlay at the initial stage of manufacture, the burden of which would be carried down the line. Further, the value added at subsequent stages would not get effectively taxed. This view has also been supported by a former Member of Central Board of Excise and Customs who has said that this measure will particularly result in hardship to the small scale units which will be required to buy raw materials at a much higher cost. For example, in case of match box industry, if the duty is levied on potassium chlorate the basic raw material for matches being manufactured by three units only in the country, the administration of the duty will become much easier and the large number of small scale units making matches will escape the excise net. But it will be difficult for these small scale units to buy the raw material viz. potassium chlorate, at an exorbitant price consequent on the levy of duty at raw material stage.

While the Committee see force in this argument, they wish to point out that excise duty is to be paid by these small scale units in any case before they sell the finished products. Thus, shifting of the duty to the raw material stage should not mean any additional

burden on the small scale industry except that it will result in blocking of money for some time. On the other hand, such units should feel great relief as a result of being liberated from the bondage of the excise laws. Besides, Government can also provide more potent ways to encourage small scale industries like reservation of production lines, differential rate of interest, financial subsidies, rebates, preferential purchases etc.

1.34. The Committee note that levy of duty at basic inputs stage has already been adopted by Government in some cases. For example, taxation on art-silk fabrics was shifted from fabrics stage to fibre stage with a view to checking evasion by various small scale units engaged in the production of art-silk fabrics and also with a view to minimising inconvenience to the large number of assesseees. Similarly, in the case of plastics, the excise is levied only at the basic inputs stage, viz., resin, and not down the line. In the Committees' view there should be no difficulty in extending the system of levy of duty at source to more products like steel, copper, aluminium, zinc, match box etc.

1.35. So far as taxing only the final products is concerned according to the Government, this cannot be thought of for all commodities. Firstly, large sectors of economy will have to remain untaxed (e.g. construction) and the taxation of such sectors is best achieved through taxation of inputs. Secondly, if manufactured inputs are freed of taxation, replacement consumption will escape taxation. According to the Ministry, another factor which will have to be kept in view is ensuring the built-in-income elasticity of tax system which means having taxes at all stages of manufacture. The Committee are unable to appreciate this approach. They think the Ministry should be equally concerned with the simplification of the system and avoidance of harassment to the numerous small assesseees which the present scheme of excise control entails.

1.36. For example, in case of unmanufactured tobacco great harassment is caused to thousands of growers by bringing them under excise control. In the opinion of the Committee, this can be avoided if the duty is levied on finished products like branded biris, cigarettes etc. foregoing duty on the unmanufactured tobacco used for home consumption.

1.37. The Committee therefore strongly feel that the present system of excise control is complicated, complex and combursome. There cannot be two opinions on the need to simplify the scheme

without affecting the revenue. One way of achieving simplification is to minimise the points of contacts between the assessee and excise authorities thus reducing scope for harassment of assessee, evasion of duty and administrative expenditure. The Committee, therefore, recommend that the excise tariff should be so re-structured that the excise duty is levied either at the basic inputs stage or at the end product stage as far as possible. To start with this scheme may be introduced on a selective basis in respect of those items where it can be easily administered. After gaining experience in the field, Government may extend the system to more and more items progressively. The Committee need hardly stress that while revising the tax structure for this purpose, Government should keep only revenue consideration in view and not their social objectives which can be implemented through other fiscal and monetary policies.

#### *Cascading effect of taxes on inputs*

1.38. A leading organisation of industry in their memorandum stated that distortion in relative prices is brought about by the "cascading effect" of excise duties at different stages with the result that prices fail to reflect the "relative scarcities amongst competing products and lead to distortions in investment and misdirection in the allocation of physical and manpower resources."

1.39. A former Finance Secretary to the Government in his memorandum to the Committee, stated that as the industrial development of the country advanced, and the industrial base became wider and more diversified with a larger variety of raw materials and components being bought and sold, the problem of cascading effect of the levies on inputs would become even more acute. It had been suggested by him that the scope of Rule 56A (special procedure for movement of duty-paid materials or component parts for use in the manufacture of finished excisable goods) should be widened and credit allowed as a general principle for the duty already paid on raw materials or components used for the manufacture of various end products which were themselves excisable. At present, this rule applied only to 43 items. In his view, more use could be made of Chapter X (Remission of duty on goods used for special industrial purposes), of the Central Excise Rules to achieve a similar objective. These reforms would not result in loss of revenue as the duty rate on the end products could be suitably adjusted to recoup the loss on the components etc.

1.40. The following procedures viz., set off procedure, Rule 56-A procedure and Chapter X procedure regulates, to some extent, the problem of cascading effect of multi-point levy.

### ***Set-off Procedure***

“Under the set-off procedure, relief is granted in respect of input taxation as provided by a notification exempting the final product to the extent of central excise countervailing customs duty paid on the specified inputs i.e. raw material or component parts used in its manufacture. The duty paid on raw material or component parts is thus allowed to be set off at the time of clearing the finished product. For example, steel ingots are exempt to the extent of duty paid on such crude iron.”

### ***Rule 56-A Procedure***

“Rule 56-A of the Central Excise Rules, 1944 provides for a special procedure for movement of duty paid materials or component parts for use in the manufacture of finished excisable goods. Under the rule, specified excisable goods on which duty has been paid, or imported goods on which additional duty of customs has been paid, can be used for manufacture of other goods subject to “set-off” of the duty already paid against the duty on the finished excisable goods made from them. The rule is applicable only to excisable goods notified by the Central Government.”

### ***Chapter X Procedure***

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 procedure 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 processes subject to the observance of the procedure laid down in the Chapter.”

1.41. In regard to levy of excise duty on inputs and components, the Indirect Taxation Enquiry Committee, the Committee, 1978 has observed that heavy reliance on the taxation of inputs has led to several undesirable effects. In an extended system of taxation of

final products, it would not be possible to unconditionally free from taxation goods that are used as inputs or components. The ideal solution would be to make a distinction for tax purposes on the basis of the nature of use and not on the basis of category of goods. Whatever is used for further production by manufacturers, who are themselves subject to tax, should be given suitable tax relief, while the same product, if it goes direct to consumer, will pay tax at the appropriate rate.

1.42. To overcome the problem of cascading effect of taxes on inputs, the Jha Committee has suggested that there should be substantial extension of the application of rule 56-A. The tax credit allowed under this rule should cover, wherever economic considerations so warrant, packaging materials and consumable stores also.

1.43. Asked to state the steps taken to eliminate the problem of cascading effect of taxes on inputs, the Chairman, Central Board, stated during evidence

“In a nutshell the lay-out of our Tariff is not that if you are paying duty on raw materials, if you are paying duty on intermediaries, you should get set off or proforma credit. In some cases, we have adopted that. But by and large the Tariff has not been constructed on that basis. It appears that revenue resources rely on duty being collected at more than one point. It is a multi-point levy. If we have a different system of universal tax credit, Tariff will have to be restructured. Within the constraints, we are giving extension to 56-A, today we have 43 commodities in it. We are going into that. 56-A has been restricted in its scope; if it is applied extensively, there will be tremendous inroads unless the tariff rates are restructured.”

1.44. When pointed out that there are complications and difficulties in the application of Rule 56-A, the Chairman, Central Board of Excise and Customs admitted that “Rule 56-A does cost a lot administratively.”

1.45. Regarding extending the coverage of Rule 56-A, as recommended by the Jha Committee, the Chairman, Central Board stated that:—

“At present, an exercise is going on to see whether it can be extended usefully. The limiting factor would be that if



having regard to the present resources position we cannot afford to sacrifice any revenue, then by merely allowing set off we will be sacrificing revenue. So, an exercise has to be done, that if we give set off, is it necessary to increase the rate of duty on the final product? That is why, it is taking a little time. It is an exercise in toto."

1.46. At present excise duty is levied at various stages like raw-materials, components, finished products etc. According to industry distortion in relative prices is brought about by the cascading effect of excise duties at different stages. A former Finance Secretary to Government has opined that as the industrial development of the country advances and the industrial pace becomes wider and more diversified the problem of cascading effect of excise levy on inputs will become more acute. To overcome the problem of cascading effect of taxes on inputs, the Jha Committee has suggested that there should be substantial extension of the application of Rule 56-A of the Central Excise Rules which allows set off of excise duty paid on inputs used in the finished products. During evidence, the Chairman of the Central Board of Excise and Customs informed the Committee that within the rules, the Department was giving extension of Rule 56-A and at present 43 commodities were covered by it. If the rule is applied extensively there will be tremendous inroads upon revenue unless the tariff rates are restructured by increasing rates of duty on the final products. The Committee are not in favour of double taxation of component/parts used in finished products. The Committee strongly feel that cascading effect of excise duty at different stages should be avoided by extending the application of set-off procedure, Rule 56-A procedure and other procedures provided in the excise laws to all other commodities with suitable safeguards against evasion.

1.47. It is a fact that set-off procedures entail great difficulties in calculating the quantum of excise at various stages. The principle somehow cannot be denied that excise should not have the cascading effect at every stage of manufacture of different items with the same raw material. Both these problems could be resolved if the excise is imposed either at source or at the end products. The Committee, therefore, reaffirm their recommendation made in para 1.37 that the excise should be levied, as far as possible either at the basic inputs stage or at the end products stage.

1.48. At present the industry has to pay Central Excise Duty under different heads, such as, Basic Excise Duty, Additional Excise

Duty, Special Excise Duty, cess etc. It has been suggested by a large number of associations that for the purpose of making payment all these duties should be consolidated and a consolidated amount of duty prescribed and accepted under one head only, so that the assessee may not be required to keep more than one account. This, it was stated, would save the assessee from considerable amount of clerical work and complicated accounting, without in any way affecting the revenue of the Government.

1.49. In the course of evidence before the Committee a representative of a leading association of industry stated:—

“At present there is basic excise duty. Then there is special duty of 5 per cent on basic duty; and then there is additional duty in lieu of sales tax on certain items like tobacco, textile and sugar. Now, we are of the view that it will help a great deal if at least for the purposes of an assessee all these duties are consolidated as one. Otherwise, accounts have to be kept separately for all these duties; personal ledger accounts have to be kept separately. Even if there are funds in one account, these cannot be transferred to the other accounts. Our suggestion is that as far as assessee is concerned, these duties should be treated as one. That means there should be one composite duty at one time so that they can maintain only one personal ledger. If the Government desires to treat the duties separately, they could do so in their own accounts.”

1.50. In regard to this suggestion, the Ministry of Finance stated in a written reply that “Basic excise duties are levied under the Central Excise and Salt Act, 1944 while additional excise duties are levied under the Additional Duties of Excise (Goods of Special Importance) Act, 1957. These additional duties are levied in lieu of sales tax and accrue entirely to the States. Special excise duty is levied under the Finance Act, 1978 and is applicable for the financial year 1978-79 only. Different cesses are levied under different enactments. The proceeds of these cesses are earmarked for specified purposes. As these different duties are levied under different enactments and are to be distributed under different formulae it may not be practicable to consolidate them and to prescribe a consolidated amount of duty.”

1.51. The Ministry added that "wherever possible, for basic excise duties and additional excise duties, a consolidated rate has been fixed and the amount so collected is apportioned in a given ratio. For example, in case of cotton fabrics and cigars and cheroots a consolidated rate has been fixed for basic excise duty and additional excise duty and the amount so collected is apportioned in the ratio of 75:25 towards the two types of duties."

1.52. The representative of the Ministry of Finance stated during evidence:—

"The special Excise duty is 5 per cent of the basic excise duty and for this year alone. This is valid upto 31-3-1979. The question of merging it with the basic excise duty arise if it becomes a common pattern. So far as Additional Excise Duty is concerned this levy is in lieu of sales tax on certain specified commodities about which we have agreement with the States. The total collection of this additional excise duty has to be accounted for to the States completely. For putting it along with the basic excise duty, we will have to calculate how much additional excise duty for the purpose of distribution among the States. For keeping one rate or two rates, accounting has to be separate."

The witness added that "when there is an award that the amount which is collected as additional excise duty to the States, this amount requires to be certified by the Auditor General. So unless you give him separate figures, it is not possible."

1.53. The Committee pointed out that calculation of the share of States in total collection of excise duties is a matter of accounting and should be the job of the Department. On the Committee's enquiring as to why the assessee should be put to inconvenience of maintaining separate account for each kind of excise duty, the Finance Secretary replied "prima facie your point impresses me I shall get this matter examined."

1.54. The Committee note that at present industry has to pay Central Excise duty under different heads i.e., basic excise duty, additional excise duty, special excise duty, cess etc. For this purpose, assessees are required to maintain separate account for each levy, which results in extra work and inconvenience to the assessees. According to the Ministry of Finance, different duties are levied under different enactments and proceeds thereof are to be distributed under different formulae and it may not be practicable to consolidate them for

the purpose of payment of duty. The Committee are informed that in case of certain items, like Cotton fabrics, cigars, and cheroots; however, a single rate of duty has been fixed combining basic excise duty and additional excise duty and the amount collected is apportioned in a particular ratio, for the purpose of determining the share of the States. The Committee feel that the calculation of duties under various heads or determination of the share of the States is a matter of accounting and the job of the Department. The assesseees should not be made to do clerical work for the benefit of the Department and asked to maintain separate account for each kind of duty to facilitate departmental calculations. The Committee desire that as promised by Finance Secretary this matter should be examined expeditiously and a system of levying a consolidated rate of duty like the one in vogue in the case of cotton fabrics, cigars and cheroots be introduced in respect of other items also for the convenience of assesseees.

## **CHAPTER II**

### **NOTIFICATIONS**

#### **A—Circulation of Notifications**

2.1. All notifications issued in pursuance of the provisions of the Central Excise and Salt Act, 1944 read with Central Excise Rules, 1944, are published in the Official Gazette of India. In respect of those notifications which bring about changes of importance and significance, arrangements are made for publicity through issue of Press Notes and also through the medium of All India Radio. Apart from that copies of the notifications are supplied direct to a quite large number of Federations, Associations and Chambers of Industries and Members of Customs and Central Excise Advisory Council, who in turn are expected to pass on the information to their associate members and others whom they represent.

2.2. At the Collectorate level all Collectors of Central Excise issue trade notices giving the text of the notifications and also explaining the purport and the effect thereof. These trade notices are sent by them to the Members of the Regional Advisory Committees and local trade organisations who in turn are expected to pass on the information to all those assesseees whom they represent.

2.3. It has been represented by a number of organisations, individual firms etc. that there is considerable communication gap between the Department and the assesseees. According to an industries association of a State, "the greatest difficulty being experienced by the assesseees at the moment is with regard to the authenticity of the information reaching them about the levy and rates of Central Excise Duty. Their only sources of information are newspaper reports which too are sketchy and scanty and not always fully intelligible. To crown all, the assesseees have no means to make certain that the newspaper reports have covered all that was to be known. They have to face untold difficulties in obtaining copies of the various notification, orders, etc., issued by the Central Excise Department and if in certain cases, they do, this is after long delays." The problem faced in this regard by the small scale units and individual assesseees are stated to be even worse.

2.4. Commenting upon the delay in receipt of copies of notifications, the representatives of one of the leading Chambers of Com-

merce stated during evidence before the Committee:—

“A 4th July notification has been received in our office on 19th August; of 5th August reached us on 19th August and I have a third one of 6th August reaching us on 3rd September. We had corresponded with the Department and they had nominated 4 officers and we were required to contact them on day-to-day basis..... We are required to meet 4 Under Secretaries on day-to-day basis. I hold a letter. Now, when you go to an Under Secretary it may be that he has nothing to give on the same day; then another Under Secretary may say that you be in touch with the Despatch Section.”

2.5. The witness suggested that it would be helpful if the Department could evolve a procedure whereby copies of notifications were posted to the recognised chamber and also the licensees, of which the Department had a list on the same day.

2.6. It has been brought to the notice of the Committee that upto date copies of the Central Excise Manual are not available. Central Excise Rules are subject to change almost every day which is effected by way of notifications issued by the Union Ministry of Finance. Since the Central Excise Manual is not published regularly, the assesseees are at a disadvantage to know the basic Central Excise laws containing levies and rates of duty and their implications. It was also noticed by the Committee that the Central Excise Manual supplied to the Committee in 1978 was printed in August, 1976.

2.7. It has been suggested to the Committee that the Central Board of Excise and Customs should also bring out a fortnightly journal containing all relevant Notifications issued by the Union Ministry of Finance, Tariff Advices, decision taken at Tariff Conferences, decision of the Appellate authorities on important matters, etc.

2.8. With regard to delay in supply of notifications the Finance Secretary stated during evidence “we agree that there have been some cases of delay....” Explaining the arrangements that exist at present for supply of notifications, the representative of the Central Board of Excise and Customs stated that a small cell in the Directorate of Inspection dealt with the work relating to publications, etc. but the present system which was geared to handling a smaller volume of publications and catering to the needs of a smaller trading community, was not really the answer to the present

demands from the Trade as also from the field officers. He added "it is accepted by us that some positive overall step is necessary."

2.9. Regarding Central Excise Manuals the Chairman, Central Board of Excise and Customs representative admitted that "the manuals are not revised in time. They get delayed and some of the manuals which are of interest to the public do not reach them in time."

2.10. The witness further stated that the Department were considering a proposal to set up a separate Directorate of Publications. The following tasks were proposed to be assigned to the proposed Directorate of Publications:

- (i) Printing and publishing notifications and sending the copies of notifications direct to the field formations.
- (ii) Periodical publication of manuals like Central Excise Manual, Customs Manual, Tobacco Excise Manual, etc.
- (iii) Issue of commodity bulletins.
- (iv) Publicity of various kinds in the press, Television, folders, pamphlets, etc.
- (v) Publishing a fortnightly or a monthly bulletin giving notifications, tariff advices, decisions of the Appellate Authorities, case laws, etc.

2.11. The representative of the Central Board added that copies of all the notifications were proposed to be printed by the Directorate and mailed direct to the assessees at a nominal fee. For this purpose it was proposed to set up a Central Transmission Agency from which all the notifications etc. would be mailed. If the assessees are interested in particular commodities they might register their names and the relevant notifications, etc. would be sent to them. According to the witness "if things get going, it (Directorate of Publications) might perhaps be self-financing to a certain degree by itself...."

2.12. The witness informed the Committee that the Minister had accepted in principle the proposal to set up the Directorate of Publications. "This proposal is at the final stage of sanction. It is being considered by the Expenditure side."

2.13. A suggestion was made to the Committee that all the assessees should be registered with the Central Board and as and when notifications regarding excise duty were issued, the Central Board

should directly mail the notifications to the concerned assesseees. For this purpose the Central Board should maintain item-wise lists of assesseees so that only the relevant notifications were sent to an assessee. If necessary the Department might collect nominal fee from the assesseees for this purpose. When asked about his views on this suggestion, the Chairman Central Board of Excise and Customs replied that:

“We do have an idea of the number of assesseees, but we are now talking about the detailed addresses and for that we have no arrangement at present. But the suggestion will receive our consideration and we will go into it.”

#### *Publishing notifications in newspapers*

2.14. It had also been suggested in some memoranda to the Committee that notifications should be published in leading daily newspapers particularly in regional languages, at least in one paper in each region, so that the assesseees could come to know of excise levies promptly. Stating the views of the Government on the above suggestion, the Chairman (CBEC) said during evidence that:—

“The suggestion is fully accepted. In fact, it will be part of the functions of the Publications Division to undertake it”

2.15. In order to discharge his duty liability, each assessee has a right to know what is being taxed, quantum of tax he is to pay, when he has to discharge the liability and how he has to discharge the liability. For this purpose it is necessary that the copies of all notifications issued by the Ministry in pursuance of the provisions of the Central Excise and Salt Act, 1944 and Central Excise Rules are made available to assesseees promptly. It has been represented to the Committee by a large number of organisations that at present considerable difficulty is being experienced by the Central Excise assesseees in getting copies of the Central Excise notifications issued by the Ministry.

2.16. Almost all leading chambers to whom the copies of the notifications were reportedly being sent by the Central Board of Excise and Customs have complained of delay in receipt of notifications and trade notices. The Finance Secretary has admitted that there have been some cases of delay. The Committee feel that the delays is being caused as the existing Administrative machinery,



which was set up to cater for the needs of smaller trading community, is not able to cope with the present demand. The problem in the case of small and individual assesseees would be even more acute.

2.17. The Committee note that the Government propose to set up a separate Directorate of Publications to publish excise notifications and other excise documents and supply them direct to field formations and give them necessary publicity. In view of the widespread demand for prompt supply of excise notifications, the Committee strongly urge that the proposal for the separate Directorate, which is reported to have already been accepted in principle, should be given a concrete shape without delay and the Directorate set up at the earliest to bridge the communication gap between the Government and the assesseees. The Committee suggest that after the Directorate of Publicity is established all the assesseees etc. who desire to be on the mailing list for supply of excise notifications should be registered with the Central Board and as and when notifications regarding excise duty are issued, the Central Board should directly mail the notifications and the centrally drafted trade notices to the concerned assesseees without delay. For this purpose, the Central Board should maintain item-wise lists of assesseees to avoid delay in despatch of notifications to the assesseees concerned without difficulty.

2.18. The Central Board should also make arrangements to mail the notifications, departmental instructions etc. direct to the field formations as well in order to keep the field staff posted with the latest information concurrently and thus enable them to give proper guidance to the assesseees and make correct assessment of duty.

2.19. The Committee also note that the Ministry have accepted the suggestion that excise notifications should be published in leading daily newspapers so that the assesseees can come to know of excise levies promptly. The Committee feel that publication of excise notifications in leading daily newspapers for general information can start immediately and this need not await the setting up of the Directorate of Publications.

2.20. The Committee are glad to know that the proposed Directorate of Publications would also bring out a fortnightly or monthly journal containing all relevant Notifications issued by the Union Ministry of Finance, Tariff Advices, decision taken at Tariff Conferences, decision of the Appellate authorities on important matters. This is a welcome decision as it would meet a long felt need of the

trade and industry to have all useful information about excise duty at one place at regular intervals.

2.21. The Committee regret to note that Central Excise Manual containing excise laws and rules is not revised in time nor published regularly. The copy of the Manual supplied to the Committee in 1978 was published almost 2 years ago. They recommend that the Central Excise Manual should be revised and published annually immediately after budget and made available to public without delay.

2.22. The Committee desire that the Directorate of Publications should be so planned, organised and run that it becomes self-financing at the earliest.

### *B. Language of Notifications*

2.23. It has been represented by a large number of organisations and individual assesseees, that they experienced great difficulties in understanding the scope and implications of excise notifications because of too legalistic and ambiguous language.

2.24. A leading organisation of industries has stated in their memorandum to the Committee that-Central Excise notifications and orders are written not always in a comprehensive manner. Legal words are generally borrowed for this purpose. Expressions are always in a round about fashion and never direct in a common man's language. Many times amending notifications simply state the words or the para may be inserted replacing the earlier ones. No one can make anything until and unless earlier notification or para is linked up. The effect of the amendment is never explained in the notification. A specialist is needed to explain the coverage of the amendment."

2.25. It has been suggested in this connection that notifications should contain explanatory notes to make the meanings and implications of the amendments clear and unambiguous.

2.26. The Ministry have informed the Committee that all notifications and orders do not require explanatory notes. However, whenever an explanation is necessary it is incorporated in the Trade Notice issued by Collectorate. It has, however, been brought to the notice of the Committee by a number of associations that there is generally a time lag of about a fortnight between the receipt of notification by Collectorate and issue of trade notice by them.

2.27. During evidence, when the attention of the Chairman, Central Board of Excise and Customs was invited to Excise notification

dated 12 May 1978 (Appendix I) which contained only one long sentence and having more than 200 words, he admitted that "such notifications can make no sense unless and until read with all the other notifications which have been quoted..."

2.28. Regarding the style of language used in notifications, the Finance Secretary stated during evidence:

"It is true that the notifications issued under our various laws are couched in terms which are not easily comprehensible to even intelligent and educated persons. While we cannot compromise on the precisions needed for legal notification, the point which the Committee made is also valid. Along with the notification, there should be an explanatory note, drafted in a more lucid and easy language which an ordinary person can understand. We can add a precautionary note that it has to be read along with the notification or that it is not intended to supersede the notification or some such note of caution."

2.29. The Committee note that as reported by a large number of organisations and admitted by the Finance Secretary, the excise notifications "are couched in terms which are not easily comprehensible to even intelligent and educated persons". They regret that even though this fact has already been known to the Government, nothing substantial has been done so far to improve the situation and the problem continues unabated to the inconvenience of the assesseees. The Committee would like that an explanatory note drafted in a lucid and easily intelligible language explaining the scope and implications of a new rule or amendment, should be appended to all the notifications, particularly amending notifications, for the guidance of the assesseees. They would also suggest that where necessary the relevant extracts of the original notification which is sought to be amended should be appended to the amending notification to make the position absolutely clear to the readers.

### Section 'C'

#### *C. Divergent interpretation of Central Excise notifications, etc.*

2.30. It has been represented to the Committee by a large number of organisations that there is considerable divergence in interpretation of Excise laws by different Collectorates and sometimes by different officers in the same Collectorate. A leading industries association has stated:—

"Excise law notifications are interpreted differently by different Collectorates. Even within the same Collectorate

there are different opinions among the divisions. Care should be taken to ensure that there is no possibility of mis-interpretation, i.e., ambiguity in language should be removed in the first instance. However, if the notification is mis-interpreted even after proper wording, then the department should have a forum for discussion and issue one notification which should be binding on all the Collectorates interpretation by individual Collectorates should be avoided."

2.31. Similarly, the tariff description given in the Central Excise Tariff is quite inadequate and this leaves room for doubt about proper classification of the goods. A number of specific instances of divergent interpretations by different Collectorates were also brought to the notice of the Committee.

2.32. For example, it was stated in a Memorandum that "Ortho toluidine" is classified under T.I. 68 attracting 5 per cent duty in Gujarat whereas it is classified under item 14D paying 31.5 per cent duty under the Poona Collectorate. From the reply of the Ministry, the Committee noticed that the conflicting practices in this case have not been resolved even though the matter has been under discussion since January, 1978.

2.33. In another memorandum submitted to the Committee, it has been stated that the iron flats|bars manufactured out of very similar type of raw materials in the same type of rolling mills using similar type of process, have been given different names by various Collectorates all over the country and different rates of excise duty collected. In this regard, the Ministry have stated:

"Prevalence of divergent practices in the matter of classification of Iron flats|bars (falling under Item No. 26 AA of the Central Excise Tariff) had come to the notice of the Central Board of Excise and Customs. Instructions were issued from time to time in the matter of classification and assessment of flats|bars.

The issue of a consolidated and a comprehensive Circular covering the classification of flats|bars, plates, sheets, strips, hoops etc. under item 26 AA, is also under consideration."

2.34. The Ministry have also stated that cases do arise from time to time in which some items may be classified differently in some

**Collectorates.** As different authorities are called upon to perform the function of classification on the basis of their understanding of the entries in the Schedule (listing exciseable goods) based on their appreciation of the relevant law and facts such occasions do arise. However, when the Central Board becomes aware of the divergent practices in different Collectorates, uniformity is brought about through the system of Tariff Advices. The power of review has also been built into the scheme of the Act to protect the legitimate interests of the assesseees. The power of review could also be exercised so that erroneous orders whether in favour or against the revenue are modified or set aside.

2.35. During evidence the representative of the Central Board of Excise and Customs admitted:

“It is a fact that divergences do take place and they happen at different levels and different places. Sometimes even in the same Collectorate two separate practices start developing. This is a matter which cannot be denied; between different Collectorates different practices and different classifications cannot be ruled out.”

The Chairman, Central Board of Excise and Customs stated:

“There cannot always be uniformity, not only in this country but all over the world, in matters of classification. The question that arose is how to keep lack of uniformity to the very minimum. Firstly, there should be expertise in classification matters, and secondly, a higher hierarchy should be involved. These are the two definite steps to be taken.

The next question that arose is that when a divergent practice comes to light, then our machinery should be such as to be able to come into play with the least possible delay. We are doing that at present.”

2.36. In a written reply, the Ministry have informed that the following steps are taken to avoid divergence of practice being followed by different Collectorates in the matter of assessment of the same article:

- (i) While informing the Collectors of Central Excise of a change that is made by way of amendment in the Cent-

ral Excises and Salt Act, 1944, or the Central Excise Rules 1944, or by issue or amendment of a notification issued under the Act or the Rules, the purport, scope and effect of the change is also explained to them;

- (ii) as and when it comes to the notice of an assessing officer or the Collector that the practice followed by him or in his Collectorate is different from what is done elsewhere, he is expected to get in touch with his counterpart to be able to sort out the divergence;
- (iii) points of doubt which do not get thus resolved, or are otherwise felt by the Collector are referred by him to the Board and after due consideration of the matter from all angles such clarification as is issued to him gets circulated amongst all other Collectors for their information and guidance;
- (iv) important disputed aspects of classification assessment are discussed at Tariff Conferences held at regular intervals and which are chaired by a Member of the Board and attended by the Collectors concerned; decision taken at these conferences are circulated amongst all Collectors in the shape of Tariff Advices for their information and guidance;
- (v) judicial pronouncements that are accepted by the Government are also circulated amongst all Collectors for their information and guidance; and
- (vi) commodity supplements containing all important aspects of classification assessment in respect of a particular commodity are compiled and made available to field formations officers concerned to serve the purpose of ready guide.

2.37. As regards the technical machinery existing in the Central Excise Department to give authoritative opinion in regard to classification of various items, the Ministry have stated in a written reply:—

“Doubts or disputes with regard to classification aspects may be of legal or technical nature. On point of law, the Ministry of law is consulted. On technical aspects, opinion of experts on the subject is obtained by consulting the Chief Chemist, Central Control Laboratories, the

Director General of Technical Development and other Ministries having expertise knowledge, such as Ministry of Petroleum with regard to petroleum products, Textile Commissioner (under the Ministry of Commerce) with regard to textiles, etc.

### **Tariff Conferences**

2.38. Tariff Conferences are convened for discussing problems relating to the interpretation of the Central Excise Tariff; opportunity is also availed for examining important technical or administrative matters relating to the administration of excise laws in the Collectorates covered by the specific zone. For this purpose the collectorates have been classified region-wise viz. Eastern, Western, Northern and Southern.

Each Regional Conference is usually attended by—

- (a) The Collectors of Central Excise in the relevant region;
- (b) The Chief Chemist or in his absence, his representative (who could be the local Deputy Chief Chemist, if there is one);
- (c) The Director of Audit (Customs and Central Excise); and
- (d) The Concerned Officer in the D.G.T.D.

2.39. In addition, where a particular item regarding some problem/dispute relating to classification etc. is sponsored for discussion, a Collector outside the region but concerned with the commodity involved is invited with the approval of the Board.

2.40. The Conferences are presided by the Member (Central Excise) or in his absence, by the Senior most officer amongst the Directors/Collectors of the Central Excise present.

2.41. A Conference is convened at least once every three months for each region by rotation. Thus, twelve Conferences are scheduled for a year.

2.42. It was represented by the Industry to the Committee that as the Tariff Conferences discuss important classification disputes, the representatives of industry should also be invited to participate in the Conference. It was suggested that at the first sitting of the Conference, industry's views should be heard and discussed, and at the second sitting the officers might take decision in the matter.

2.43. Asked about the views of the Government on the suggestion, the representative of Board stated:—

"In principle, we have no objection to this. In practice, we do follow it. We call the representatives; we do not hold two separate sittings; we call them and take their opinion."

#### ***All India Classification Tribunal***

2.44. Pointing out the need for uniformity in classification of exciseable goods, the Indirect Taxation Inquiry Committee (1978) (Jha Committee) suggested the constitution of an All India Classification Tribunal to resolve disputes in this regard. In their report this Committee has observed that Uniformity and an early final ruling on classification are of utmost importance for the healthy growth of trade and industry and for normal interplay of commercial competition. According to the Jha Committee as the desired objective cannot be achieved through the normal appellate machinery, the balance of advantage, would be in a single body being vested with the necessary authority to dispose of disputes relating to classification, such decisions being made binding on all concerned including the Appellate Tribunal. The Jha Committee have recommended that an All India Classification Tribunal should therefore be set up with the members having appropriate status and qualification.

2.45. The representatives of some of the leading Chambers and associations of industry as well as the representatives of the small scale industries who gave evidence before the Committee fully endorsed the recommendation of the Jha Committee to set up an All India Classification Tribunal. It was suggested to the Committee that the Tribunal should have four benches in the country located in different regions.

2.46. Asked about the views of the Government in the matter, the Chairman (CBEC) informed the Committee during evidence that "on the setting up of classification Tribunal, discussions have taken place in the Board and the matter is ripe now to be placed before the Government for its final decision." On the suggestion of setting up four Benches of the Tribunal, the witness opened that "they will be self defeating so long as they are located in different parts of the country for dealing with the assessment matters. They will be acting in a quasi-judicial manner. I do not know what will be the machinery to reconcile if four Benches give different views



on the same commodity. Therefore, in essence, if this thing has to come about, we would be in favour of one Bench centrally situated."

2.47. The Committee are informed by several trade associations that there is considerable divergence in the interpretation of excise laws by different collectorates and even by different officers in the same collectorate, resulting in the same commodity being classified under different tariff items by various officers. For example, "Ortho toluidine" is classified under Tariff Item-68 attracting 5 per cent duty in Gujarat whereas it is classified under item 14 D paying 31.5 per cent duty in Poona Collectorate. The Ministry of Finance have admitted that the conflicting interpretations in Gujarat and Poona Collectorates had not been reconciled till the latter half of 1978 even though the matter had been receiving attention of the authorities since 1976. This is highly regrettable.

2.48. The Committee have been apprised by the Ministry of the various steps taken by them to avoid divergence of interpretation and to reconcile differences in views. But inspite of all the steps taken if a dispute about interpretation remains unresolved for over two years, as has happened in the case referred to above, the Committee cannot but conclude that there is something wrong not only in the drafting of excise laws, but also in the administrative machinery and procedures introduced to avoid and resolve disputes arising from divergent interpretations.

2.49. The Committee are informed that if disputes in regard to interpretation do not get resolved by direct discussion between the assessing officers or collectors concerned, the matter is reported to the Board for advice and in important cases, it is discussed at Tariff Conference and the decision taken there at is circulated for general guidance. This procedure, as it is on paper, might not appear faulty but where it appears to go wrong is in the matter of time-frame. The Committee feel that each collector should keep himself acquainted concurrently with the interpretations of excise laws not only in his own collectorate, where, in case of any divergence of interpretation he should act forthwith to set the matters right, but also in other collectorates.

2.50. The Committee would like that for each subsequent stage, i.e. inter-collectorate discussion, Board and Tariff Conference, a clear time limit may be fixed to deal with the problem conclusively so as to provide that no such case is left undecided for more than six months. Unless a sense of urgency is imparted at each stage to

resolve differences in interpretation, the Committee see no hope of relief to the assesseees and better tax administration.

2.51. The Committee are informed that Tariff Conference held every quarter to discuss problems relating to interpretation of excise tariff are attended by the Collectors concerned, Chief Chemist, Director of Audit, an officer of the D.G.T.D. and presided over by the Member (Central Excise) of the Central Board. The Committee suggest that, as desired by the industry and agreed to in principle by the Central Board, the representatives of the industries concerned should also be invited to place their views on disputed interpretations of excise tariff at the Tariff Conference before a decision is taken in the matter. They would like this practice to be introduced at the earliest. Participation by representatives of the industries concerned at discussion stage will go a long way in infusing a sense of participation and convincing them of fairness of the decision that may ultimately be taken.

2.52. The Committee note that the Indirect Taxation Enquiry Committee (Jha Committee 1978) has recommended setting up of an All India Classification Tribunal for disposing of disputes relating to classification. The Government have not yet taken a final decision on the recommendation. A number of Chambers and associations of industries including small scale industries have supported this recommendation of the Jha Committee.

2.53. The Committee need hardly emphasise that uniformity in interpretation and early decisions on classification are essential prerequisites for fair and equitable levy of duty. One of the major shortcomings in the present scheme of levy and collection of Central Excise is the divergence in interpretation of excise tariff and in the matter of classification of excisable products resulting in levy of different rates of duty on same or similar products by different collectorates. Considering all these aspects, the Committee endorse the recommendation of the Jha Committee that an All India Classification Tribunal independent of the Ministry of Finance should be set up for dealing with disputes relating to classification of excisable products.

2.54. In order that the assesseees in far flung areas are not put to hardship in approaching the Tribunal and pursuing their cases, the Committee suggest that the Tribunal should also hold sittings at four regional headquarters to be designated by the Government as and when considered necessary to hear and dispose of cases arising in the various regions.

## Section D—Excise Tariff

### *Excise Tariff*

2.55. It has been represented by a large number of organisations of industry that difficulties experienced in describing the goods in the classification lists were mainly due to inadequate description in the excise tariff. According to one association the difficulties in filing classification lists "emanate directly from the complicated and rather ambiguous nature of the tariff definitions." In another memorandum submitted to the Committee it has been stated that the Government should revise the language used in describing the tariff items and should clearly define the technical terms. If this is not possible, suitable explanations and clarifications may be provided in respect of each items.

2.56. In this regard, there was near unanimous demand from the representatives of the industry that the excise tariff should be revised and realigned as per the Customs Cooperation Council Nomenclature (C.C.C.N.)—commonly called Brussel Tariff Nomenclature (BTN). Emphasising the need for adoption of BTN for excise purposes a leading Chamber of Commerce has stated that recently the Customs Tariff has been restructured on the lines of internationally accepted classification of C.C.C.N. Because of greater precision in this nomenclature, "classification disputes in customs tariff have been reduced to a great extent, whereas existing excise tariff classification is one of the main source of disputes between the Government and ~~assessee~~."

2.57. Various organisations of the industry have also suggested that attempts should be made to describe the excisable goods as commonly understood in trade or industry parlance.

2.58. The Tariff Revision Committee which examined the tariff classifications as early as 1967 had felt that it was necessary to revise the central excise tariff on a scientific basis and align it with the customs tariff they recommended adoption of Brussels Tariff Nomenclature. That Committee had, however, observed that complete alignment of the two tariffs might not be feasible in areas where it would seriously affect the compactness of the then existing central excise headings, or in a few other instances (like textiles), where the accepted terminology differed considerably from the nomenclature of a few imported goods.

2.59. Regarding the structure of excise tariff the Working Group on Customs and Central Excise Administration of the Administrative Reforms Commission (1968) observed:—

“We are constrained to observe that the Central excise tariff is a maze, overlaid with complexities and distorted by factors which are not germane to sound principles of taxation. Consequently, the administration bristles with difficulties for the tax-payer as well as the excise official and opportunities abound for differential treatment and exercise of individual discretion, which could degenerate even into discrimination, abuse of power, and corruption.”

2.60. The Indirect Taxation Enquiry Committee (1978) (Jha Commission) which also studied the problem, recommended:—

“...On the whole while it would be desirable to extend the application of Brussels Tariff Nomenclature for excise purposes, it would be preferable to use the Indian Commercial or trade identity for describing the range of products where the latter is considered more appropriate. We endorse the recommendation of the Tariff Revision Committee for adoption of Brussels Tariff Nomenclature to the extent practicable though it should now be possible to have the BTN terminology in respect of greater number of products on account of the present universal coverage of excises. As for the timing of this revision we feel that it needs urgent consideration and could be synchronised with the process of rationalisation of rate structure...”

2.61. In this regard, the Ministry have stated that in recent years, while introducing new items in the Central Excise Tariff, as far as possible, definitions based on BTN have been adopted keeping in view the recommendation of the Tariff Revision Committee. A complete revision of the Central Excise Tariff based on BTN is, however, yet to be undertaken. The Government, is yet to take a final view on the recommendations of the Jha Committee on this point.

2.62. During evidence, the representatives of the Central Board of Excise & Customs stated that Tariff Revision Committee (1967) had pointed out that if the same type of classification for both customs and excise was adopted, there would be fewer occasions when there would be disputes in the levy of countervailing duty. The customs Tariff was brought in line with BTN “just one and a half

years ago". Until that was done, there was no particular advantage in revising the excise classification, because the object the Tariff Revision Committee had in view was countervailing duty.

2.63. The witness added that in regard to the excise tariff the department had been taking the terminology from BTN and using the same to the extent possible. For example, for classifying items like synthetic organic dyestuff, coated textiles, domestic electric appliances, coated abrasers, and grinding wheels etc. the BTN had been adopted. According to the representative of the Central Board of Excise and Customs "the aim was that India was to take the best advantage of BTN and we wanted to have as close a relationship as possible between customs and the excise tariff except in particular cases where Indian conditions or needs are different. The Indian Standards Institution has laid down various specifications for various articles manufactured in India with special references to Indian conditions and they are of great relevance to us and so it may be more advantageous if we have the wording with relation to ISI specifications rather than BTN. . ." He added that for a number of headings particularly with regard to sophisticated articles like plastics, terminology from BTN had been taken. BTN was being followed subject to practicability and the needs.

2.64. The Committee take notice of the almost unanimous demand from the trade and industry that in order to avoid confusion and disputes in classification the excise tariff should be revised on scientific lines and realigned with the Customs Cooperation Council Nomenclature (C.C.C.N.)—commonly called BTN (Brussels Tariff Nomenclature). Commenting on the structure of excise tariff, the working Group of Administrative Reforms Commission on Customs and Central Excise Administration (1968) had observed that "Central Excise tariff is a maze, overlaid with complexities and distorted by factors which are not germane to sound principles of taxation" and in its administration "opportunities abound for differential treatment and exercise of individual discretion, which could degenerate even into discrimination, abuse of power and corruption". The Committee note that the Indirect Taxation Enquiry Committee (1978)—Jha Committee—has endorsed the recommendation of the Tariff Revision Committee (1967) for adoption of BTN to the extent possible and has suggested that in doing so, it would be preferable to use the Indian commercial or trade identity for describing the range of products where the latter is considered more appropriate. The Committee are informed that the customs tariff has been brought in line with the BTN and in regard to excise tariff, the Government had been taking the terminology from BTN and using it to the extent possible. The Central Board of Excise and Customs informed the

Committee during evidence that "...it may be more advantageous if we have the wording with relation to Indian Standard Institution specifications rather than BTN..."

2.65. The Committee are of the opinion that the scheme of classification for the purpose of Customs and Excise should be identical to avoid disputes in the levy of countervailing duty. And now when the customs Tariff has already been restructured on the lines of BTN, there is no reason to delay the extension of BTN scheme to excise tariff. The Committee agree with the Jha Committee that in extending BTN to excise, Indian commercial and trade identity may be used for describing products where it is considered to be more appropriate. While revising the excise tariff, the ISI specifications may also be kept in mind to see if and how these can be harmonised with BTN scheme. The aim should be to make the tariff as scientific and comprehensive as possible leaving little scope for confusion or doubt.

## **CHAPTER III**

### **A. Classification List**

3.1. Under Rules 173B of the Central Excise Rules, 1944, every assessee before removing any excisable goods has to file with the appropriate officer for his approval a full description of (i) all excisable goods produced or manufactured by the assessee, (ii) all other goods produced or manufactured by him and intended to be removed from his factory and (iii) all excisable goods already deposited or likely to be deposited from time to time without payment of duty in his warehouses; the rate of duty leviable on each such goods is also required to be indicated.

3.2. A large number of organisations had brought to the notice of the Committee the difficulties being experienced in filing and getting approval of classification lists. The main difficulty faced by the assesseees in the matter of submission of classification lists is to ascertain the exact tariff item under which the goods in question fall.

3.3. The Department, it is stated, takes considerable time in approving classification list resulting in serious hardship to the assesseees. Due to delay in approval of classification, the assesseees have to resort to provisional payments with prolonged uncertainty in respect of final tax liability and exposes the producers to the risk of having to pay differential duty out of their own pockets.

3.4. In this regard, a leading Chamber of Commerce has in a memorandum elaborated the position thus:

"A classification list takes an extremely long time for finalisation sometimes taking as many as five to six years. The consequence is that the assessee finds it very difficult to chart his course of action vis-a-vis the customer. If he is to charge higher rate of duty treating the contended classification of Central Excise as correct, then he is faced with the problem of charging higher prices to the customer and its other economic consequences. In the alternative, if the assessee does not charge the customer with the extra amount of excise duty then he is faced with the

biggest problem of getting the unrealised amount absorbed in his own profit and loss account; in case the decision does not go in his favour then the total amount becomes a form of direct tax. If the burden is high, then it might even be ruinous for the organisation to stand. If the assessee happens to be a big or a comparatively large organisation, it can stand the strenuous travail from the beginning to the end of the finalisation of classification. But if it happens to be a smaller organisation then it cannot afford to wait for such a long time, nor has it the resources to fight the battle upto the end."

3.5. The Central Excise (Self-Removal Procedure) Review Committee, 1975) which also examined the problem of delay in approval of classification lists recommended:

"The classification list should be required to be approved by the proper officer within the stipulated period. There is no justification for keeping provisional approval of a classification list open for an indefinite length of time. In certain cases, approval of classification lists may be subject to delays in circumstances which are beyond the control of the officer concerned. The Government can provide for such contingencies by prescribing two or more stipulated periods for two or more sets of circumstances. The stipulated period should ordinarily be a matter of days and in no case more than three months. If the classification list is not approved within the period stipulated, the assessee should be free to assume that the classification indicated by him is *ipso facto* approved and all clearance taken by him on the basis of that classification will cease to be treated as provisional. If the classification list is approved within the stipulated period, all provisional clearances already taken will be finalised on the basis of the approved list."

3.6. Pointing out that departmental instructions have not proved to be an effective tool in cutting down delays, the Indirect Taxation Enquiry Committee (1978) (Jha Committee) in their report has recommended fixation of statutory time limit for approval of *inter alia* classification lists. The Jha Committee has observed:

"One question which needs to be considered right at the beginning is whether having regard to the apparent ineffectiveness of departmental instructions in eliminating delays, some statutory time limits should not be provided.



The point has been made to us by departmental officers that statutory time limits may lead to hasty and not fully considered decisions, which could jeopardise, the interests of revenue or of the assessees. However, the basic point is whether, when there are any doubts arising out of any ambiguities in the legal position for which the assessee is not to blame, he should be called upon to suffer such financial losses as may accrue on account of the delay in taking a decision. We feel that the time has come when statutory limits should be fixed in the excise and customs laws in respect of the following:—

- (i) approval of classification and valuation;
- (ii) sanction of refunds, re-bates and drawbacks of excise and customs duties;
- (iii) finalisation of provisional assessments and assessment documents; and
- (iv) decisions on short assessment demands.

3.7. The Jha Committee (1978) while recommending a definite time limit for approval of both the classification and price lists observed as follows:

“In most cases the approval of both the classification and the price lists should not take more than a fortnight. There may, however, be some cases where approval might be delayed owing to circumstances beyond the control of the excise department. In any event, approval should not take more than 3 months. Where this time limit is exceeded, the classification and value claimed by the assessee should be deemed to be final. Any revision in these lists thereafter should only be prospective in operation.”

3.8. On the question of fixing a time limit for approval of the classification list, the Ministry have informed the Committee in a note that the Government have issued instructions that approval to classification lists should be accorded as early as possible, normally in a matter of days, and in no case more than three months. The Self Removal Procedure (Review) Committee had also examined the aspect of delay in approval of the lists, but while emphasising that they should be approved within a stipulated period, had also recognised that in all cases it might not be possible to give the approval within a stipulated period. Hence, fixing of a time limit statutorily has not been considered advisable. The Ministry have added that generally the classification lists are understood to

be approved within a fortnight to a month. However, in complicated cases which require chemical analysis, market enquiries and reference to other collectorates etc. longer time is taken.

3.9. The Committee feel concerned over the reported inordinate delay that takes place at present in approval of classification lists, resulting in hardship to the assessee. Due to delay in approval of classification lists, the assessee has to resort to provisional assessments which prolong uncertainty in respect of their final tax liability. If the assessee charges higher rate of duty, he would be charging higher price to the customer and getting the differential amount of duty as refund which he may not pass on to the customer. If the assessee charges less duty he is faced with the problem of paying extra duty from his own pocket as it may not be possible for him to recover it from the customer.

3.10. A number of committees in the past have recommended fixation of statutory time limit for approval of classification list. The Central Excise (Self Removal Procedure) Review Committee (1975) recommended that the Government may prescribe 2 or more stipulated periods for two or more sets of circumstances thus providing for contingencies where the delay might be beyond the control of the officer. The stipulated period should ordinarily be a matter of days and in no case more than 3 months. The Indirect Taxation Inquiry Committee (1978) (Jha Committee) recommended a statutory time limit of a fortnight for most cases and not more than 3 months in any case, for approval of classification lists.

3.11. The Central Board of Excise and Customs have issued departmental instructions to the Collectors that approval of classification list should be accorded as early as possible, normally, in a matter of days and in no case, more than three months. The Committee have been informed that in the opinion of the Central Board, if time limits are fixed, it will result in hasty decisions and in more disputes and more claims. The Committee are not convinced by the arguments advanced by the Government against the fixation of time limit though they appreciate that in a few cases, it might not be possible for the assessing officers to approve that final classification within the time limit especially in cases where laboratory results take a longer time. The Committee feel that as suggested by the SRP Review Committee, Government can provide for such contingencies by prescribing two or more stipulated periods for two or more sets of circumstances, but there is no justification for keeping provisional approval of a classification list open for an indefinite

length of time. As delays on the part of excise officers persist in according approval to classification lists despite departmental instructions, the Committee agree with the Indirect Taxation Enquiry Committee, 1978 (Jha Committee that a time has come when statutory time limit should be fixed for approving the classification list. In case the classification list is not approved within the stipulated period, the classification claimed by assesseees should be deemed to be final. Any revision in the list should only be prospective in operation and not retrospective.

### **Central Excise Laboratories**

3.12. A number of organisations of industry have represented to the Committee that considerable hardship is being experienced by them due to delay in furnishing test results by the Central Excise Laboratories. As stated in the earlier Section, due to delay in furnishing tests results approval of classification of goods gets delayed.

3.13. A leading organisation of industry has stated that the Central Excise laboratories are neither adequately staffed nor fully equipped with the latest technical literature on the subject. Besides, often based on old and outmoded knowledge on the subject, findings of the test laboratories take unduly long time.

3.14. The Ministry have informed the Committee that the time generally taken for test of samples varies among individual laboratories depending upon the nature of test, workload on laboratories, etc. Every effort is made to send the test report within a period of 14 days. So far, however, it has been noticed that the time-lag is ordinarily more than this.

3.15. According to the Ministry fixing of time limit for furnishing test-results is generally not possible in view of the fact that the time taken in conducting a test would depend upon the nature of test to be conducted,, the workload of a particular laboratory etc.

3.16 Explaining the steps taken to cut down delay in this regard, the Ministry have stated that detailed instructions were issued by the Board in December, 1977 reducing the quantum of samples to be drawn for test purposes. Instructions were also issued to the effect that as far as possible only 1/3rd of the samples drawn should be sent to the laboratories for conducting tests. However, while aiming

at this limit, the Assistant Collector should ensure that there is no danger to revenue and keep in view the antecedents of manufacturer, the nature of goods and other relevant factors. According to the Ministry with the recent instructions issued regarding the frequency for drawal of samples and their selection for test purposes, the work of the chemical laboratories should be considerably reduced and they should be in a position to conduct the tests without delay.

3.17. A suggestion has been made to the Committee that the excise department should make use of renowned chemical laboratories. Alternatively, the the manufacturers could be asked to produce a certificate of chemical analysis from laboratories certified by the excise department for deciding classification.

3.18. The Ministry have, however, stated that sending of these samples for testing to outside laboratories is not favoured on account of the fact that departmental laboratories analyse the samples keeping in view the Central Excise Tariff while the outside agencies may conduct tests from a different angle and hence their reports might not be useful for purposes of classification with relation to Central Excise Tariff. Moreover, tests by the Departmental laboratories only give continuity and uniformity which is necessary for uniform classification of similar products of various manufacturers. Where the Departmental laboratories are not equipped to conduct a particular test, test reports of renowned laboratories such as the National Test House, Alipore the National Chemical Laboratory, Poona the Central Drug Laboratory, Calcutta and State Drug Laboratories etc. are accepted.

3.19 During evidence, the representative of the Central Board stated that they were also using the test facilities in other renowned laboratories like Sasmira in Bombay, Bata and Dunlop for Synthetic Rubber testing, I.C.I. Laboratories, etc.

3.20. Asked about the difficulty in accepting test reports produced by the assessee from renowned laboratories, the Chairman of the Central Board stated:

"There have been differing analyses given by outside private laboratories. The testing standards of our laboratories are very high and they enjoy world wide reputation. If there is no facility here we go outside. We send men and we use their equipment to test the materials. Testing for fundamental research and such like things is one thing. But

test for tariff purpose to develop these types of nuances will certainly take some time.

3.21. The Working Group on Customs and Central Excise Administration set up by the Administrative Reforms Commission (1968) noting that one of the major complaints put forward by the representatives of Industry related to the delays in obtaining test results, had suggested that regional laboratories should be set up at convenient points and the scope for utilising the assistance of college and university laboratories should be explored.

3.22. The SRP Review Committee (1975) suggested that "steps should be taken urgently to meet the existing deficiencies of Control Laboratories and streamline their working. The staff should be imparted the necessary training in the National or Government Industrial Testing Laboratories."

3.23. That SRP Review Committee, however, felt that—

"It is neither feasible nor necessary to make Control Laboratories self-sufficient in the matter of equipment and personnel needed for carrying out all the tests required in terms of the tariff. A vast majority of the tests required to be carried out are essentially chemical in character, while for others (of which the number is reportedly not more than 2 per cent) the laboratories have established the necessary liaison with Government and semi-Government institutions. In several cases it would be not only be uneconomical but involve avoidable expenditure to equip the control Laboratories with the paraphernalia for other tests."

3.24. With regard to the facilities in the Central Excise Laboratories, the Indirect Taxation Enquiry Committee (1978) in their report has stated that it has been brought to their notice that in comparison to the increased load of work in the recent years, the test facilities and the number of test laboratories in the Excise department are totally inadequate. This causes considerable delays in the receipt of test reports often holding up clearances of goods and resulting in uncertainty in the determination of final duty liability. That Committee has also observed that it appears that the deficiencies and inadequacies still continue to exist in respect of test facilities and other ancillary matters like promptness in the matter of tests etc.

3.25. The Ministry have informed the Committee that at present there are 15 laboratories (including two laboratories for narcotics, 6 for customs and 6 for Central Excise and one Central Laboratory at Delhi. The Government have set up an Expert Committee in May/June, 1978 to examine the working of the Central Revenue Laboratories at New Delhi and elsewhere under the control of Central Board of Excise and Customs with a view to improving their work and efficiency. The Committee is expected to submit its report by May, 1979.

3.26. The Ministry have stated that the following measures have been taken to streamline the laboratories:—

- (1) To strengthen the testing facilities, a list of items proposed to be added to the existing equipment of the laboratories has been drawn up and these articles of equipment are being acquired in a phased manner.
- (2) All the laboratories have been directed to equip themselves with thin layer chromatographic equipment for identification.
- (3) The Custom House Laboratory, Bombay has been equipped already with an Infra-red spectrophotometer, modern mettler balance and a Gas Liquid Gas Chromatograph.
- (4) The Central Revenue Control Laboratory, New Delhi has received several pieces of modern equipment including G.L.CO., U.V.—Vis spectrophotometer, Mettler Balance PL 1200 and H.54, T.L.C. equipment with accessories, a centrifugal machine, a crusher, and a rotary vacuum evaporator. These are to be shortly to be installed. The laboratories have well-equipped technical libraries.

3.27. During evidence, the representative of the Central Board admitted that "Delays were there" in furnishing test results by the Central Excise laboratories. He added that in the last 3 years the Department had opened more laboratories. The Expert Committee would go into their working.

3.28. Asked if instead of augmenting the facilities for various tests in Central Excise Labs. The Department could utilise the existing test facilities in the other laboratories in the country the representative of the Board stated:—

".... In respect of National and private laboratories they make it a condition that in respect of court cases or even departmentally they will not appear for evidence. This

is big handicap. They fell us in advance that they should not be called upon to give evidence."

3.29. The Committee are concerned to note that considerable hardship is being experienced by assesseees due to delay in furnishing test results by the laboratories working under the control of Central Board of Excise and Customs. Delay in the receipt of test results causes delay in approval of classification of goods and finalisation of assessments. The Ministry have admitted that although efforts are made to furnish the test report by a laboratory within a period of 14 days, the time lag ordinarily more than this and that delays take place in the laboratories. The Ministry are not in favour of fixing a time limit for furnishing the test report in view of the fact that the time taken in conducting a test report depends on the nature of the test to be conducted the work load of a particular laboratory etc. In order to cut down delays in this regard, the Ministry have laid down a procedure in December, 1977 thereby reducing the quantum of samples to be drawn for test purpose and requiring only 1/3 of the samples drawn to be sent to the laboratories for conducting tests so that the work of the laboratories could be considerably reduced.

3.30. The SRP Review Committee (1975) and the Jha Committee (1978) have pointed out deficiencies and inadequacies in respect of the test facilities and other ancillary matters like promptness in the matter of tests etc. in the laboratories. The Government have set up an Expert Committee in May, 1978 to examine the working of the laboratories under the control of Central Board of Excise and Customs with a view to improving their working and efficiency. The Report of the Expert Committee is expected to be submitted by May, 1979. The Committee would like to be apprised of the recommendations made by the Expert Committee and action taken by Government in pursuance thereof.

3.31. The Committee note the observations of the SRP Review Committee (1975) that a vast majority of the tests required to be carried out by the laboratories are essentially chemical in character while for other tests (of which the number is reportedly not more than 2 percent). the laboratories have established the necessary liaison with Government and semi-Government institutions.

3.32. The Committee have been informed by the Ministry that in cases where the departmental laboratories are not equipped to conduct a particular test, test facilities available at renowned laboratories such as National Test Houses, Alipur, State Drugs Labora-

tories, Sasmira Laboratory in Bombay, Bata and Dunlop Laboratories (for synthetic rubber testing), National chemical laboratory, Poona, etc. are availed of. In view of the admitted inadequacies of the existing departmental laboratories to conduct tests and furnish results without delay and in view of the fact that Government are already making use of the testing facilities in several other Government, semi-Government and private laboratories, the Committee would like the government to identify more outside laboratories of requisite standing and technical competence and avail of the testing facilities available with them so as to get results of all the selected samples within a period of 14 days. Government may lay down standards of tests for the guidance of outside laboratories to ensure uniformity and continuity of approach between the departmental and non-departmental laboratories.

3.33. The Committee note that the Ministry propose to augment the test facilities at the departmental laboratories by installing sophisticated equipment for various tests. While drawing the attention to the SRP Review Committee (1975) observation that in several cases it would not only be uneconomical but involve avoidable expenditure to equip the control laboratories with the paraphernalia for other than chemical tests, the Committee would like to emphasize that if adequate testing facilities exist in other government, and semi-government laboratories of standing and they can be persuaded to accept samples for tests for the purpose of Central Excise tariff, it would not be prudent for Government either to incur high expenditure on strengthening testing facilities in existing departmental laboratories or to set up new departmental laboratories unless there are overriding considerations. The Committee would like the Government to re-examine the question of purchase of sophisticated equipment for departmental laboratories from these angles and ensure that public funds are not spent in duplicating facilities unnecessarily.

3.34. It has been suggested to the Committee that a certificate produced by assessee from laboratories certified by the Central Excise departmental should be accepted for deciding classification etc. The Committee have been informed by the Deptt. that the testing standards of the Central Excise laboratories conform to the Central Excise Tariff while the outside laboratories may conduct the tests from a different angle and hence test reports of outside laboratories would not be useful for the purpose of classification



with relation to Central Excise Tariff. The Committee are unable to accept this argument. The Committee feel that this difficulty can be avoided if the Department lay down the standards required for tests relevant to the Central Excise Tariff for guidance of outside laboratories. The Committee would suggest that the Department should notify a panel of approved laboratories including the National Laboratories which may be approached by assessees for having their samples tested and whose test reports may be acceptable to the Government. Such a step in the opinion of the Committee would not only reduce the burden on the Central Excise laboratories but also avoid undue delay in finalisation of classification and assessments.

### C. Valuation of excisable goods

3.35. Section 4 of the Central Excise and Salt Act, 1944 defines the assessable value of excisable goods on which excise duty is chargeable with reference to their value. By an amendment made to Section 4 in 1973, the assessable value will be the 'normal price' that is the price at which such goods are ordinarily sold by the assessee to an independent buyer in the course of wholesale trade. When goods are generally not sold except through a related person such as subsidiary, distributor or a relative, the assessable value will be the price at which such related person sells these goods to an independent buyer. The amendment was given effect from 1975.

3.36. It has been stated by a leading Chamber of Commerce that the assessable value under Section 4 of the Central Excise and Salt Act has been defined as the normal price. The value under the normal price concept may be different under different sets of circumstances. The definition of normal price incorporated in the Act with effect from 1975 is not an exhaustive one. The incorporation of this new idea was done in a haste with a view to bypassing the decision of the Supreme Court in the Voltas case where it was held that excise duty should be leviable only on the manufacturing cost plus manufacturing profit. There has not been much debate on the new concept of normal price which has sought to replace the earlier concept of 'wholesale cash price' and later on interpreted by the Supreme Court as manufacturing cost plus manufacturing profit.

The concept of normal price has brought with it a host of serious criticisms and objections. Its application has become difficult for lack of logical approach. A well-established practice evolved through the tests of various sets of circumstances in different courts of law and also in the Supreme Court has been given up and replaced by one which was not put to test anywhere. The result is a "chaotic" condition in the determination of assessable value under the Central Excise Act.

3.37. During the course of evidence before the Committee the representative of a leading Chamber of Commerce stated that there was some "confusion" about the concept of excise. According to the witness, the concept of excise was that it was a tax on manufacture and it was not in the nature of turnover tax. In this connection, he also referred to the Supreme Court judgement in the Voltas case that excise was a tax on manufacture and should exclude the marketing or sales or post-manufacturing activity. The witness expressed the view that the provision of Section 4, as it existed before the amendment in 1973, was "quite good". In the year 1973, the concepts of "normal price" "related persons" etc. were introduced. This has lead to anomalies like the following:

"....If my selling price is Rs. 100 and I am giving Rs. 10 or 10 per cent commission or discount to the distribution process, I have still to pay excise duty on Rs. 100."

3.38. This means lot of "complexities". The witness added that the amendment brought in 1973 "really tries to disturb the whole mechanism of distribution". By trying to bring in this artificial concept of value, "we are trying to complicate the system and bring in artificial restrictions in the mechanisms of trade". The concepts of 'normal price', "related persons" etc. has created "complications". Prior to that amendment, it was "much better". They felt that "the situation as was obtaining before 1973 read with Supreme Court judgement should be the basis on which we should operate."

3.39. In this connection, the Chamber suggested that if specific duties are levied, it would be easy and convenient from the point of view of the assessment. Similar view was expressed by a former member of the Central Board on Excise and Customs while giving evidence before the Committee. Pointing out that the valuation problems and classifications disputes were the largest in number, he suggested that "if more and more items are brought under specific duty per weight, per volume, per unit, the work of the Department as well as of the assesseees will be very much simplified. There will be no friction between the assesseees and the assessing officials."

3.40. Referring to the arguments of the economists that in a developing economy, advalorem would be advantageous to the Government as with the increase in value, the Government would get more revenue, he questioned, "why should the Government depend upon getting more revenue during the course of the year which they had not thought of earlier while trying to balance the budget?"

3.41. The Indirect Taxation Enquiry Committee (1978), however, observed:

"Low elasticity of excises has been due to inadequate coverage and wide-spread reliance on specific duties in the past. The crux of the reform of excise taxation is the fashioning of an extended system with an adequate device for eliminating the harmful effects of input taxation. Further, advalorem duties are preferable to specific duties to avoid frequent revisions of rates for meeting revenue needs which tend to create distortions and irrationalities."

In this regard the Ministry have stated that with the introduction of residuary Central Excise tariff item (Tariff Item No. 68), a system of extended taxation has already been set in. As regards introduction of advalorem duties in the place of specific duties, in the 1977 Budget, items like Aerated Water, Paints and Varnishes, Synthetic rubber, Radio and radiograms and Tape recorders, were brought under the advalorem levies.

3.43. In their 80th Report (1977-78) the Public Accounts Committee have expressed their distress that despite the amendment to the Act, disputes continue to arise in the matter of determination of the assessable value. The Committee have desired that the problem should be studied in depth and a solution found so that while the manufacturers do not face harassment, the interests of the Exchequer are also protected.

3.44. The Ministry of Finance, have, in a written reply, stated that Section 4 of the Central Excise and Salt Act, 1944 as it stood before it was amended by Section 2 of the Central Excises and Salt (Amendment) Act, 1973 (22 of 1973) presented certain difficulties.

3.45. Section 2 of the Amendment Act aimed at revising the old section with a view to:

- (i) providing as far as practicable for assessment of excisable goods at the transaction value, except in areas where there can be scope for manipulation, such as sales to or through related persons; and

- (ii) making specific stipulations in the section itself with respect to situations frequently encountered in the sphere of valuation.

3.46. According to the Ministry, the assessable value will, as per the amended section be the price at which the excisable goods are ordinarily sold by the assessee to an independent buyer in the course of wholesale trade. It will be the price charged by the manufacturer. i.e., subsequent wholesale transactions will not be relevant and the value will aim at the price closest to the stage of manufacture and removal of the excisable goods.

3.47. The revised section was brought into force on and from the 1st of October, 1975. The Central Excise (Valuation) Rules, 1975, were also framed and issued in exercise of the powers conferred by Section 37 of the Act *ibid* for purposes of determination of value under Section 4(1)(b). Instructions have also been issued to the field formations on the scope of new section 4 as and when references were received from Collector of Central Excise so as to resolve doubts entertained by the trade or department in the sphere of valuation.

3.48. According to the Ministry, notwithstanding the aforesaid legislative exercise to provide for a clear statement of the law to the extent possible by issue of suitable clarifications from time to time to bring about uniformity, certain segment of the trade have taken the disputes in the sphere of valuation to the various High Courts where the Department has deemed it fit to resist their contentions. The Ministry have informed the Committee that 134 cases relating to the old section and 48 relating to the new section are pending before various High Courts/Division Bench of High Courts.

3.49. The verdict of the Supreme Court in a batch of Special Leave Petitions (SLPs) relating to valuation under the old section 4 which are currently pending before them would settle the nature of the impost and its implications on the aspects of valuation. Any fresh legislative exercise for a clearer statement of the law can only emerge after these SLPs are decided.

3.50. The Ministry have further stated that to study in depth the question of valuation taking into account the executive experience in administering the amended section, a Cell has been constituted. Further, legislative changes would, however, be part of the exercise to substitute the current law by a comprehensive code for excise as a whole.

3.51. During evidence the representative of the Central Board of Excise and Customs explained that valuation by itself is a complex subject however much one may try to make it simple in operation. The particular definition in Section 4 of the 1944 Act after a period of time was found to be creating difficulties. As a result of the Supreme Court judgment in Voltas case, it was found difficult to continue the old section. The Government, therefore, came up with a new section which was brought into force in 1975. The Department's basic idea was to have a definition which would be "objective, and which will represent the invoice value of a sale at arm's length between the manufacturer and the buyer. If that condition is satisfied that it is between two independent people, then that invoice value will represent the value of the goods for our purposes." The witness added that "if there was some factor which vitiated the independence or which affected the price, the department had to make efforts to evaluate that factor and to make an addition for that purpose."

3.52. Explaining the reasons for amending Section 4 after the Supreme Court's judgment in Voltas case, the witness stated that a lot of confusion had arisen on the concept of post-manufacturing expenses. The Supreme Court had observed in passing that excise duty was a tax on manufacture and it should be levied only on manufacturing cost and manufacturing profit. This particular observation was sought to be "applied or misapplied" by a large number of manufacturers on the contrary direction. The manufacturers would ask for deduction of the post-manufacturing expenses, like expenses on the sales organisation, advertising etc. from the actual price at which the goods were sold to the customers. The Department would not be able to "accept" this. They could not "accept a notional deduction from the actual price for post-manufacturing expenses."

3.53. A suggestion was made to the Committee to abolish section 4 and instead to accept invoice value as shown by the manufacturer as the basis for charging excise duty. The Committee asked for views of the Ministry regarding the feasibility of accepting invoice value and making penal provision for under invoicing. The Chairman, Central Board of Excise and Customs stated "If we abolish Section 4, we will not be able to send any body to jail". The Chairman of the Board added that no tax agency all over the world could do without a proper and adequate definition of "value". It was a complicated subject at the international level and in the Customs Cooperation Council which was functioning as an expert body, eighty

four nations discussed this subject year after year in the light of representations from the trade and changing conditions. This definition also had to keep pace with the changing conditions in the country. The witness said that the definition of value was absolutely imperative.

3.54. The witness further stated that the new Section 4 envisaged the correct transaction value which was "not a value which should be under-invoiced."

3.55. As regards the question of accepting invoice value, the Ministry have stated in a written reply, that it will not be possible to accept them without proper check. Even with all the elaborate valuation provisions, cases of wilful under-valuation of goods are not infrequent. If checks have to be exercised on the invoice value there will be hardly any improvement over the existing system.

3.55. As regards the question of accepting invoice value, the the case of item No. 68. the Ministry have stated that by issue of an exemption notification, goods falling under that item cleared from the factory of manufacture, on sale, have been exempted from the payment of duty of excise leviable thereon as is in excess of duty calculated on the basis of the invoice price (excluding duty and local taxes, if any, included in any such price) charged by the manufacturer for the sale of such goods. This exemption notification is subject to certain conditions. In the case of Item 68 it was considered that the range of excisable items covered by that entry was very large and the need for simplification was greater. Also, the facility of assessment at invoice price is optional and those who do not opt for it have to pay excise duty on the value determined under section 4 of the Central Excise Act.

3.57. The representative of the Board stated during evidence that the assessment as prescribed by notification under Item 68 was a matter of "expediency, and not because it was legitimate." Because the duty was only 1 per cent in 1975, the Department were faced with a problem, viz., it would have covered a very large number of factories, and items. In fact, one factory in Bombay was having about 10,000 items assessable under Item 68. The incidence of duty was so low that the Department felt that it was not worth the while going into the actual letter of the law, as spelt out in the notification. The rate went up from 1 per cent to 2 per cent in 1977 now (1978) it has gone up to 5 per cent. If, on some future date, it goes up and becomes an item of regular nature, it might have to come under Section 4.

3.58. It has also been represented to the Committee that concept of "related persons" in Section 4 has resulted in lot of complications in actual administration of the provision. In the case of Small Scale Industries, who had to rely for marketing their products through large houses, the application of the provision regarding 'related persons' results in their exploitation. They should therefore be exempted from this provision of 'related persons'. Asked whether the Department could not simplify the rules for Small Scale Industries with regard to the concept of related persons, the Chairman, (CBEC). Board during evidence stated that "there are more than one opinion on this subject; and this gives rise to a lot of disputes, a lot of queries, and even those officers, I dare say, cannot always accurately determine it. We are going into it very carefully. Some instructions have also been issued on the basis of what the actual definition of a "manufacturer". We propose to bring in something in the comprehensive Excise Bill also."

3.59. The Committee note that Section 4 of the Central Excise and Salt Act, 1944 was amended by Central Excise and Salt Act, 1973 with a view to overcoming certain difficulties experienced in valuation of excisable goods for purposes of Excise Duty, some of which got highlighted in the judgement of the Supreme Court in the Voltas case. The new Section 4 of the Act which was brought into force with effect from 1st October, 1975 provides, as far as practicable for assessment of duty of excisable goods on the basis of the normal price, i.e. the price at which such goods are ordinarily sold by the assessee to an independent buyer in the course of wholesale trade. It will be the price charged by the manufacturer, i.e. subsequent wholesale transactions will not be relevant, and the value will aim at the price closest to the stage of manufacture and removal of the excisable goods.

3.60. A large number of organisations of industry have represented to the Committee that the amendment to section 4 brought into force in 1975 has caused considerable complications and confusion with regard to the inclusion of post-manufacturing expenses for purposes of assessment of value. According to them the excise duty is a tax on manufacture and should be levied only on manufacturing cost plus manufacturing profit as has been observed by the Supreme Court in Voltas case. The manufacturers, it is stated by the Central Board, would ask for deduction of post-manufacturing expenses like expenses on sales organisation, advertising etc. from the actual price but the Central Board of Excise and Customs are not prepared to

accept a notional deduction from the actual price for post manufacturing expenses. The Central Board are also not willing to abolish Section 4 and accept invoice value as the basis for calculating excise duty. The Central Board consider definition of value as in Section 4 absolutely imperative. A representative organisation of trade and former member of Central Board of Excise and Customs have suggested introduction of system of specific duty to overcome the difficulties caused under Section 4 but this view runs counter to the view of the Indirect Taxation Enquiry Committee—Jha Committee (1978).

3.61. The Committee note that as many as 134 cases relating to valuation under old Section 4 and 48 cases relating to valuation under the amended Section 4 are pending before the various High Courts and Division Benches of High Courts. The Committee are very much concerned over the large number of disputes relating to valuation.

3.62. The Committee note that the Department have set up a cell to study in depth the question of valuation taking into account the experience in administering the amended Section. The Department have also felt that the verdict of the Supreme Court in a batch of Special Leave Petitions relating to valuation under old Section 4 which are currently pending before them, would settle the nature of the impost and its implications on the aspects of valuation. According to the Department any fresh legislative exercise for a clearer statement of the law could only emerge after these Special Leave Petitions are decided.

3.63. The Committee have considered the pros and cons of the Valuation procedure laid down in Section 4 of the Central Excise and Salt Act. This procedure gives wide discretion to Excise Officers and has given rise to numerous disputes between the Excise authorities and assessees. As such, in the opinion of the Committee, this is not an ideal procedure and should be changed. The need of the moment is to simplify the law and procedure in regard to Valuation under Section 4 so as to collect excise duty promptly without getting involved in protracted disputes, departmental or legal.

3.64. The Committee see nothing wrong in accepting invoice value as the basis for calculating excise duty and allowing a standard deduction from the invoice value towards post manufacturing expenses to an extent to be determined by Government. As the system of invoice value is already in vogue in the case of goods covered by Tariff Item 68, Government should have no fundamental objection in extending it to other Tariff Items on a



selective basis. In expressing this view, the Committee are not oblivious of the risk of under invoicing by unscrupulous manufacturers but if the invoice value system can reduce the number of disputes, narrow the scope of administrative discretions and result in saving on staff who can consequently be deployed to detect infringements and evasion, the risk is worth taking, with suitable provisions to give deterrent punishment to those found indulging in under-invoicing.

3.65. The Committee also feel that there is force in the suggestion that specific duty should be preferred to ad valorem duty to overcome the problems of Valuation arising under Section 4 and minimising disputes on this account. If fixed judiciously and on a selective basis, and specially if it is not inequitous or irrational there is no reason why specific duty should create distortions or irrationalities as apprehended by Jha Committee (1978) or lead to any reduction in tax revenue. On the contrary it will enable the industry to know their duty liability beforehand, make it possible for the Government to arrive at more accurate budgetary forecasts and minimise areas of administrative discretions and litigation.

3.66. The Committee would like the Government to examine both these suggestions dispassionately from a practical rather than a legalistic angle and extend the systems of invoice value and specific duty progressively to more and more items with a view to minimising disputes and expediting tax collection.

#### PROVISIONAL ASSESSMENT

3.67. Under Rule 9B of the Central Excise Rules, 1944, provisional assessment of duty is allowed where a manufacturer, curer or owner of excisable goods is unable to produce any document or furnish any information necessary for the assesment of duty on the goods or where it is considered necessary to subject the excisable goods to any chemical or any other test for the purpose of assessment of duty thereon or to make further enquiry. The assessee has to execute a bond binding himself for payment of the difference between the amount of duty as provisionally assessed and as finally assessed.

3.68. A number of organisations of industry have represented that considerable delay takes place in finalising the provisional assessments and consequently, the assessees are put to serious difficulties

in recovering the excess duty from customers. Explaining this, a former member of the Board, stated in his memorandum that:

Provisional assessments are not finalised for months and even years, leading to considerable difficulties to the assesseees since if higher duty than what was provisionally assessed is finally demanded, the assesseees are in no position to pay the differential amount as their goods have already been sold and it is not possible for them to realise this amount from the purchasers and/or consumers of their goods".

A leading Chamber of Commerce referring to the delay in finalising provisional assessments, suggested that statutory time limit should be fixed for finalising the provisional assessments.

3.69. At the instance of the Committee, the Ministry have furnished (December, 1978) the following statement indicating the number of provisional assessment cases pending and the break-up of the period of pendency, Collectorate-wise.

S. No.	Collectorate	Total	3-6 months	6-12 months	Over one year
1	2	3	4	5	6
1	Ahmedabad . . . . .	40	5	7	14
2	Allahabad . . . . .	25	3	5	3
3	Bangalore . . . . .	74	13	6	40
4	Baroda . . . . .	206	123	13	35
5	Bhubaneswar . . . . .	349	87	48	198
6	Bombay . . . . .	99	10	20	44
7	Calcutta . . . . .	31	2	5	22
8	Chandigarh . . . . .	422	41	100	223
9	Cochin . . . . .	47	5	14	18
10	Delhi . . . . .	7	—	4	2
11	Goa . . . . .	3	—	1	1
12	Guntur . . . . .	273	65	63	80

1	2	3	4	5	6
13	Hyderabad . . . . .	14	—	7	7
14	Madhya Pradesh (Indore) . . . . .	162	105	22	5
15	Jaipur . . . . .	9	—	—	3
16	Kanpur . . . . .	65	13	18	13
17	Madras . . . . .	156	51	50	11
18	Madurai . . . . .	274	6	6	255
19	Nagpur . . . . .	7	2	5	—
20	Patna . . . . .	368	50	13	30
21	Poona . . . . .	184	70	19	13
22	Shillong . . . . .	519	117	143	161
23	West Bengal . . . . .	999	98	187	530
	TOTAL . . . . .	4333	866	756	1648

3.70. The main reasons for delay in finalisation of provisional assessments have been stated as follows:—

- (i) Non-receipt of additional, necessary material such as cost-data, supporting documents etc. from the parties (for their finalisation). For instance, a major portion of the cases in Chandigarh (259), Shillong (304) and Guntur (51) Collectorates are pending on this account;
- (ii) Non-receipt of Chemical Tests reports;
- (iii) Awaiting clarifications/decisions from the Board/Government;
- (iv) Awaiting orders in appeal with Appellate Collectors and in Revision with the Government of India.
- (v) Pending in courts, for instance, number of cases pending in Chandigarh and Guntur Collectorates were 23 and 53 respectively.

3.71. The Public Accounts Committee have recommended in their 44th and 83rd Reports (5th Lok Sabha) that a time limit should be provided in the Central Excise Rules for finalisation of all provisional assessments with built in safeguards against dilatory

tactics of the assesseees like delay in production of invoices and other required information.

3.72. The Indirect Taxation Enquiry Committee—Jha Committee (1978)—also felt that the time has come when statutory limit should be fixed in Excise and Customs laws *inter alia* for finalisation of provisional assessments and assessment documents.

3.73. During evidence, the representative of the Central Board stated that instructions were issued to the Collectors in 1973 that provisional assessment should be finalised without delay and in any case within six months. The period had since been reduced to three months except in difficult cases which should be reported to the Collector for his personal attention. The witness added that instructions had been issued to the Collectors that they should take personal interest for finalisation of provisional assessments and that those provisional assessments which were pending as on 1st July, 1978 should be finalised by end of December, 1978.

As regards the feasibility of fixing a statutory time limit for finalising provisional assessment, the Chairman, Central Board of Excise and Customs stated during evidence that "our opinion is that if such time-limits are fixed it will only end up in appeal cases. There will be more disputes and more claims." He added that lot of delay was caused because the facilities for testing in laboratories were not enough. If all these things were streamlined assesseees would not have grouse about the delay.

3.74. The Committee feel very much concerned over the inordinate delays that take place at present in finalising the provisional assessments resulting in serious difficulties to the assesseees in recovering from the consumers any excess duty required to be paid by the assesseees after the finalisation of the assessments.

3.75. The Committee have been informed that the delays in finalisation of assessments were mainly due to non-receipt of information such as cost-data, supporting data etc. from the assesseees, non-receipt of test reports, the time taken in receiving clarifications/decisions from the Board/Government and orders on appeals, etc. It is stated that Instructions have been issued by the Board laying down a time limit of three months for finalising provisional assessments except in difficult cases which should be reported to the Collector for his personal attention. Instructions have

also been issued to the Collectors that the provisional assessments pending as on 1st July, 1978 should be finalised by the end of December, 1978.

3.76. The Committee, however, find that out of the 4333 cases reported to be pending in December, 1978, 3270 cases representing nearly 76 per cent of the total cases, were pending for more than 3 months; 756 (17 per cent) cases were pending for a period ranging between 6—12 months and 1648 (34 per cent) cases for one year and above.

3.77. This clearly shows that the executive instructions requiring finalisation of provisional assessments within 3 months have failed to speed up finalisation of provisional assessments. It is in the context of the failure of the executive instructions, that the question of laying down statutory limit for finalisation of provisional assessments assumes added importance. The Committee are not convinced with the arguments of the Central Board of Excise and Customs against the fixing of statutory time limit. The Committee endorse the views of the Public Accounts Committee (Fifth Lok Sabha) expressed in their 44th and 83rd Reports and the Indirect Taxation Enquiry Committee (1978) and recommend that a time limit should be stipulated in the Excise laws for finalising provisional assessments.

3.78. The Committee also note that the number of provisional assessments pending finalisation continues to be quite high in some collectorates viz. West Bengal (999), Shillong (519), Chandigarh (422), Patna (368), and Bhubaneswar (349). In fact these five Collectorates account for more than 50 per cent of the provisional assessments cases pending in all Collectorates. The Committee strongly recommend that the Board should devise ways and means to ensure that all the pending provisional assessments are finalised by the Collectorates expeditiously. The Board should report to the Committee the results of these measures within six months. The Committee feel that instead of merely issuing general instructions to collectors for expediting finalisation of provisional assessments, the Central Board should periodically ask for specific reports from collectors concerned on the provisional assessments pending for over 3 months and take specific measures to finalise them without delay.

## SECTION D

### D. TARIFF VALUES

3.79. Under Section 3 of the Central Excises and Salt Act, 1944, Central Government fixes Tariff values for assessment. Such excisable goods as have rapidly fluctuating market, or where the relevant tariff comprises various sub-items but the variation in price fluctuations is not very wide, are generally considered for tariff value.

Tariff values for the purpose of assessment are fixed to obviate practical difficulties in determining assessable value under Section 4 of the Act.

3.80. According to the Ministry of Finance, the system followed in working out the tariff values is to work out the average price of a given commodity as a whole, but where the number of manufacturers is very large, representative study is done with reference to various sectors of industry, small, medium and large, to arrive at the average weighted price. In some other cases, in which the relevant tariff item consists of very large number of products and manufactured by large number of producers, the whole-sale published prices of various items of manufacture is taken into consideration to work out the average price; the cost of production of the goods and the margin of profit upto the manufacturing stage are also taken into account in working out the tariff value.

3.81. Price trend of the commodities for which tariff values are fixed is also watched for review of tariff values at periodical intervals.

3.82. Presently, tariff values fixed under Section 3 of the Act, operate in respect of the following eight commodities:—

1. Gases
2. Woollen Fabrics
3. Plywood
4. Cinematograph Projectors
5. Art Silk Fabrics
6. Electrical Stampings and laminations
7. Starch
8. Free Sale Sugar.

3.83. Some organisations of industry have represented that the scheme of fixing tariff values should be extended to a large number

of items as this would (i) minimise disputes regarding valuation of goods, (ii) facilitate the assessee to know their duty liability and (iii) facilitate the Government to forecast revenue potential more precisely.

3.84. Some other organisations of industry have, however, opined that the system of fixing tariff values should be dispensed with as the system of tariff values tends to penalise more efficient manufacturers who may be producing an item at a price lower than the tariff value. Besides at times of falling prices the manufacturers of items covered by tariff values would be at a loss.

3.85. A former Member of the Central Board of Excise and Customs stated in his memorandum that the larger question was the theoretical benefit to the exchequer of *ad-valorem* rates of duty vis-a-vis specific rates. There was no doubt that both the assessee and the field officers would welcome specific rates. He added that these might be sometimes inequitable but nevertheless they were easily ascertainable and the total impact on pricing was always known. This was not so in the case of *ad-valorem* rates where the ultimate burden was anybody's guess. But that was not the main problem; it was the delayed reaction of the department that made the life of the assessee miserable. In this context, tariff values which in effect convert *ad-valorem* rates to specific ones, are useful provided sufficient thought is given and enough data collected. Once fixed, there should not be any revision for one year at least, and there should not be any retrospective revision of withdrawal.

3.86. Regarding the rationale for fixing tariff values for 8 items only the representative of the Central Board of Excise and Customs during evidence stated that the tariff values were fixed for items where (i) there were number of varieties and qualities leading to problems of categorisation, (ii) there are frequent fluctuations of prices and values resulting in difficulties in assessment on *ad-valorem* basis, (iii) the products are manufactured in different sectors: large sector, medium sector and small sector. The representative added that "it is a question of fixation of an acceptable price taking into account the quality differences which goes into a particular commodity; tariff value in effect is only specific rate of duty. It is not an *ad-valorem* rate. It is a movable specific rate."

3.87. About the coverage of items, the witness stated:

"It all started off in 1960 when we first fixed the tariff value for internal combustion engines. After that we had a

fairly large number of items on tariff value. But as expertise improved, we were able to do with the new section 4 where different classes of goods and different types can have different values. This is a much more specific section which is operating now. So, gradually things are going out of tariff value system. Where these considerations still exist we have tariff values."

3.88. Asked about the scope for extending the system of fixing tariff values, the representative of the Central Board on Excise and Customs replied that wherever the price of a commodity is subject to high fluctuations, administratively it may be convenient to have the tariff value. It proved convenient to have tariff value in the case of levy and free sugar for a number of years when price of sugar varied widely in different parts of the country. It depends upon the circumstances. The Board cannot take an apriori view that the tariff value system is good or bad. It may be advantageous in certain circumstances. It has to be under constant review depending on the conditions of the market. Then it may have all the advantages of an *ad-valorem* system without its disadvantages.

3.89. Regarding the system adopted for fixing tariff values it has been represented by some non-official organisations that tariff values were fixed on the basis of collection of data by the Excise Deptt. Such data collection sometimes was not comprehensive and was in favour of revenue only. Due to this the tariff values did not represent the true cost or price-structure of the entire industry. Sometimes the formulas were formed by the department to arrive at the tariffs for frequent changes in tariffs. But these formulas are never framed in consultation with the Industry. The tariff values, it has been suggested, should be fixed in consultation with the industry.

3.90. A number of non-official organisations also represented that the tariff values are not revised periodically. They suggested that the tariff value should be revised periodically so as to reflect the current price trends.

3.91. Regarding the periodical revision of tariff values, the Public Accounts Committee (Fifth Lok Sabha) in their 90th Report on Union Excise Duties emphasised that the tariff values should be revised once a year in accordance with the decision of the Government taken in December, 1967.



3.92. The Ministry of Finance informed the Committee that in case of Sugar the tariff values are reviewed and revised, generally, every month. In the case of other commodities, the tariff values are reviewed almost annually. The following Table shows the date of issue of Notification in respect of each commodity.

Commodity	Date of notification
Art Silk Fabrics/Man made fabrics	21-12-74 7-2-76 18-3-77 6-1-78
Plywood	4-4-75 30-3-76 14-7-76 2-1-78 29-5-78
Gases	24-8-74 26-7-75 14-12-76 30-3-78
Woollen fabrics	9-11-74 30-8-76 17-1-77 14-11-77
Starch	1-5-76 10-12-76 7-2-78
Electrical Stampings and Laminations	1-3-74 24-6-76
Cinematograph Projectors	17-6-74 28-2-76 10-6-77

3.93. From the above table it would be seen that in certain cases the process of review and issue of Notification took more than one year. Explaining the measures taken to ensure that tariff values are revised regularly, the Ministry have stated that periodicity of receipt of data from field formations, time for processing of data in the Directorate of Statistics & Intelligence and issue of final notification at Board's level have been prescribed and regular watch is kept and efforts made to see that these schedules are adhered to.

3.94. Asked about the effect of delay in revision of the revenue, the Ministry have stated that "no study has been made in this regard. Any such study would involve a lot of work and would be time consuming. In certain cases tariff values were high and had

to be lowered on the basis of representations made by the Trade and/or due to the fall of prices. In most cases, however, tariff values had to chase the rising prices and hence some increases were made. Hence, some loss or gain is inevitable."

3.95. During evidence the Committee desired to know the reasons for delay in revising tariff value in respect of Electrical stampings and laminations for which the last revision was made as early as 24 June, 1976 more than 2 years ago. The representative of the Central Board of Excise and Customs replied in November, 1978 that the price on electrical grade steel has been jumping up only in the past two months. In 1977 the wholesale index was 180, but now (October, 1978 it rose to 211). He added that the rise was of recent origin and that they wanted to revise it. Asked about the loss of revenue, the witness replied that the loss was "not much". Till four months ago, the old value could have very well existed. In the last three or four months the market was jumping up. The Ministry subsequently (November 1978) informed the Committee that the tariff value for this item was revised on 25 November, 1978.

3.96. The Committee note that the tariff values are fixed for assessment purposes for such of the products as have rapidly fluctuating market, or where the relevant tariff comprises various sub-items but the variation in price fluctuations is not very wide. Tariff values for the purpose of assessment are fixed to obviate practical difficulties in determining assessable values under Section 4 of the Central Excise & Salt Act, 1944. For fixing the tariff values, the average price of a given commodity is worked out as a whole, but where the number of manufacturers is very large, a representative study is done. At present, tariff values have been fixed in respect of 8 items.

3.97. Some of the representatives of the industry favoured extension of the system of tariff value as it would (i) minimise disputes regarding valuation of goods, (ii) facilitate the assessee to know their duty liability, (iii) facilitate the Government to forecast revenue potential more precisely. It was also argued that the system of fixing tariff values which in effect is a specific rate of duty would be administratively convenient. However, some others have felt that the system of fixing tariff values should be dispensed with (i) as this system tends to penalise more efficient manufacturers who may be producing an item at a price lower than the tariff value and (ii) at times of falling prices, the manufacturers have to pay duty for a higher value.

3.98. In view of the fact that the system of fixing tariff values has a number of advantages like minimising scope for disputes relating to valuation, facilitating the assessee to know their duty liability, and being convenient to administer, the Committee suggest that the system of tariff values be extended to other items on the tariff except where either it is not practicable or it is likely to create more problems than it may solve.

3.99. The Committee emphasize that the tariff values for each and every item should be reviewed at regular but not too frequent intervals, preferably once a year as per the decision of Government taken in December, 1967 so that neither the revenue nor the assessee should suffer because of increase or decrease in the prices of the items in question.

3.100. The Committee were informed by the Government that in the case of sugar the tariff values are reviewed and revised, generally every month, and for other commodities, the tariff values are reviewed almost annually.

3.101. The Committee have noticed that in some cases the time taken for revision was more than one year. For example, in the case of Electrical Stampings and Laminations there was a time gap of more than 2 years—June, 1976 to November, 1978. According to the Ministry, the delay was mainly due either to late receipt of information from field formations, or time taken to change the description of items as a result of discovery of certain new facts, representations, etc. The Committee are not happy over the delay in revision of tariff values and would like the Government to take steps to avoid the recurrence of delays in such matters.

3.102. The Committee are of the view that there is force in the suggestion made by some representatives of industry that tariff values should be revised in consultation with the industry concerned. The Committee suggest that a suitable mechanism be evolved by Government to consult the representative body of the industry concerned before revising the tariff value of any item.

### **E. Exemptions**

3.103. Though the Government of India have no powers to enhance the rate of excise duty levied on any product above the level approved by Parliament (commonly known as the statutory or tariff rate),

the Government have been vested with powers, under rule 8(1) of the Central Excise Rules, 1944 to either wholly or partly exempt duty on any excisable product. The Ministry have stated that in terms of rule 8(2) of the Central Excise Rules, 1944 the Central Board of Excise and Customs is also authorised to grant exemption by a special order in each case and under circumstances of an exceptional nature. All exemption notifications are laid before the Parliament soon after they are issued together with Explanatory Memoranda which give the background of exemption given. The Ministry have informed the Committee that in exercise of these powers, more than 600 notifications are currently effective which have been issued from time to time on various considerations like:—

1. prescribing general effective rates
2. achieving equity and progression in taxation
3. promotion of exports
4. goods for defence use
5. goods for non-commercial uses
6. goods for educational and research activities
7. fiscal incentive for agricultural sector
8. furthering the interest of public health
9. encouragement of higher production
10. production of low priced goods
11. conservation of scarce resources
12. exemption given on the consideration that the cumulative incidence on particular commodities is high
13. exemption on specific items arising out of various policy considerations
14. small scale sector.

### **Criteria for Exemptions to Small scale industries**

3.104. It has been represented to the Committee that the present method of granting exemptions to small scale industries on the basis of turnover is not a correct method as for certain products, while the initial investment is too low, the turnover is very high (e.g. electronics, diamond cutting etc.). Similarly granting of exemptions on the basis of investment alone also, it has been stated, poses problems to certain industries like machine tools, etc. where investment is very high while the turnover is comparatively of lower value.

3.105. The Indirect Taxation Enquiry Committee Jha Committee (1978) after considering the pros and cons of various criteria adopted for grant of concessions, like value of clearance, number of workers employed, use of power etc. concluded that "the value of production of a unit would be the most rational basis for granting concessions to smaller producers and it should generally replace the diverse criteria applied at present. The concessions should, however, be given on a slab system to minimise, avoid and mitigate hardship to the producers on the border line between the small and organised sectors."

3.106. During evidence the Committee were informed that the following criteria were adopted for granting exemptions:

Value of clearance; Capital investment on plant and machinery;

Use or non-use of power;

Number of workers involved;

The installed capacity in respect of the product etc.

3.107. Regarding rationalising the criteria for grant of exemptions, the representative of the Central Board on Excise and Customs stated that an attempt to rationalise and to bring the various exemptions based on one criterion value of clearance was made and on that basis 69 items of small scale industry where the value of clearance in the preceding year did not exceed Rs. 15 lakhs were exempted from the payment of duty for the first clearance upto an aggregate value of Rs. 5 lakhs. This was done as part of the 1978-79 Budget proposals. This particular notification replaced about 42 other notifications giving these exemptions based on different criteria.

3.108. Regarding the "Value of Clearance" criterion adopted for granting exemptions to small scale units, the Finance Secretary stated that "by and large, turnover and value of clearances is an index of profitability."

3.109. It has been represented to the Committee that such concessions on turn over as have been given to 69 items encourage fragmentation of units and also the tendency on the part of an assessee not to grow bigger. There are instances it has been stated where an assessee, after reaching the slab of production enjoying concession, has stopped further production. This is injurious to the national economy and, these concessions should be so designed that there is encouragement for achieving higher production. The concession should be on a slab basis and rates be applied on different slabs in an ascending order, as in the case of income-tax.

3.110. Commenting on the above suggestion, the Ministry have stated that these concessions were given mainly with the object of promoting the growth of small industries and with a view to widening the entrepreneurial base in the country. Under the new exemption scheme, small manufacturers of 69 specified goods whose clearances for home consumption of the said goods during the preceding financial year did not exceed Rs. 15 lakhs (Rs. 13.75 lakhs during the period April, 1977 to February, 1978) are eligible for complete exemption on clearances upto Rs. 5 lakhs in a financial year of the specified goods. Certain provisions have been incorporated in the relevant exemption notification with the object of preventing, to the extent possible, fragmentation of existing units for the purpose of claiming the exemption. It has been provided in the said notification that where a manufacturer has more than one factory manufacturing the specified goods, the clearances from all the factories will be taken into account for determining his eligibility to the said exemption.

3.111. Regarding the question of introducing a slab-based concession, the Ministry have stated that the new exemption scheme was introduced after considering various aspects including the recommendations made by the Jha Committee in this behalf. The extent of exemption is considerably higher than what most of the industries were enjoying earlier. Any extension of the area of relief is likely to affect the resources position. The new scheme has been in force only for about 8 months and it is perhaps too early to consider modifications to it.

#### **Exemption to small scale unit producing items covered by Tariff Item 68**

3.112. Under notification No. 176/76 goods falling under Tariff Item 68 manufactured by an assessee are exempted from excise duty if the total value of his plant and machinery is less than Rs. 10 lakhs and total value of all excisable goods cleared in the preceding financial year was less than Rs. 30 lakhs. The exemption is available only on the first clearance of the goods upto the value of Rs. 30 lakhs in the current financial year. However, this exemption is not available to a manufacturer if the total value of all the excisable goods cleared by him in the preceding year exceeded Rs. 30 lakhs. It has been represented to the Committee, that this limit acts as a disincentive for the small units to produce beyond Rs. 30 lakhs limit. It has been suggested that after the first clearance of goods worth Rs. 30 lakhs free of duty, the duty on excess production should be charged on slab basis as in the case of income-tax.

3.113. Regarding the grant of exemptions for the products coming under Tariff Item 68, the Ministry have stated that the above exemption was granted to provide relief to small scale units. In any scheme of identification of the small scale units, a cut-off point has to be fixed. However, by relating the eligibility to the performance in the preceding financial year, the contingency of charging of excise duty even on the clearances initially effected under exemption has been obviated.

3.114. The Ministry have also stated that the Indirect Taxation Enquiry Committee (1978) in the context of rationalisation of existing exemptions for the small scale sector, had recommended, that, as a general approach, a particular value limit should be fixed as a dividing line between small producers and others for the purpose of granting excise concessions.

3.115. During evidence the Committee pointed out that this exemption creates an anomalous situation in the sense that a unit producing goods upto Rs. 30 lakhs in the preceding and current years gets exemption completely, while a unit which produced goods worth Rs. 31 lakhs in the preceding year has to pay duty on the whole of its production in the current year. They desired to know the rationale behind the grant of this exemptions. The Chairman, Central Board of Excise and Customs replied that the Government had received some representations and that they were considering the matter.

#### **Exemptions to equipment supplied to Foreign Missions in India**

3.116. It has been brought to the notice of the Committee that whenever any Foreign Missions or Embassy in India imports air-conditioning or refrigeration equipment, complete exemption is given from customs duty. However, the same equipment when supplied indigenously is required to bear excise duty. This has induced the Missions|Embassies to import these equipment from overseas markets to the serious detriment of indigenous manufacturers.

3.117. The Chairman, Central Board of Excise and Customs stated during evidence that at the official level (Ministry of External Affairs, Department of Economic Affairs and Department of Revenue), it had been concluded that exemption from excise duty in such cases should be allowed and the papers were to be submitted to the Minister for approval.

### **Exemptions to Enterprises in Backward Areas**

3.118. It has been suggested in a memorandum to the Committee that enterprises in backward areas should be either exempted from payment of Central Excise duty for a few years or be allowed to retain a part of the excise duty.

3.119. Regarding this suggestion, the Finance Secretary stated during evidence that at present certain concessions like concessional rate of interest, capital subsidy, income tax concessions were available for industries in backward area. As far as the Excise Law is concerned, no such concession was extended with reference to location of industry.

3.120. The Committee note that in exercise of the powers vested in the Government under Rule 8(1) of the Central Excise Rules 1974, more than 600 exemption notifications have been issued by the Government of India exempting wholly or partly the payment of excise duty. Some of the considerations on which exemptions have been granted are: promotion of exports, manufacture of goods for defence use, encouragement of higher production, incentive for agricultural sector, small scale industries.

3.121. In seeking to give effect to these concessions, different criteria like value of clearance, capital investment, use or non-use of power, installed capacity etc. were adopted. The Indirect Taxation Enquiry Committee (1978) which also examined these diverse criteria felt that the value of production of a unit would be the most rational basis for granting concessions to small producers. This committee also suggested that concessions should be given on a slab system to avoid the hardship to producers on the border line between the small and organised sectors.

3.122. The Ministry of Finance have informed the Committee that as part of the Budget Proposals for 1978-79, a review of the system of exemptions was made in the light of the recommendations of the Indirect Taxation Enquiry Committee (1978) and the criterion of "value of clearance" in the preceding year was adopted for 69 items of small scale industries. Similar criterion has been adopted in respect of goods falling under Tariff Item 68.

3.123. It has, however, been contended by a number of organisations that the "value of clearance" criterion adopted for grant of exemptions encourages fragmentation of units and also the tendency on the part of an assessee not to grow bigger. For example, exemp-



tion from payment of duty is granted to a small scale unit producing items covered under Tariff Item 68 on the first clearance of goods upto the value of Rs. 30 lakhs if the unit produced goods upto Rs. 30 lakhs in the preceding year, but if a unit produced goods worth more than Rs. 30 lakhs in the preceding year, it will have to pay duty on the whole of its production during the current year.

3.124. The Committee have gone into the question of criteria to be adopted for grant of exemptions to small scale industries. They do not agree with the Jha Committee (1978) that the value of production of a unit should be the basis for granting concessions to small producers as this criterion might result in denying the concession to a large number of small scale units using high value inputs besides acting as a disincentive to higher production and encouraging fragmentation of units. In the opinion of the Committee, for grant of exemptions to small scale units, the investment in plant and machinery should be the criterion and the units falling under the category of 'small scale industry' as defined by the Ministry of Industry should be given the concessions regardless of turn over.

3.125. The Committee note that the power to authorise exemptions from duty is vested with the Central Government under Central Excise Rules, 1944. They also note that all exemption notifications issued in the exercise of this power are laid before Parliament soon after they are issued together with explanatory memoranda which give the background of exemptions. This power of granting exemption and relief in excise is liable to be abused. Armed with this power, the Finance Ministry may tend to be lax in formulating budget proposals, thinking that mistakes, if any, would be rectified later on by Notifications. It would be ideal if exemptions or relief considered necessary during the course of the year were to be stayed till the next budget. However, the Committee feel that if at all necessary, Government should exercise this power very sparingly and in extreme cases only. The Committee would also like that the notifications of exemption should be subject to modification or annulment by Parliament within a stipulated period and a suitable provision to this effect should be made in the parent Act.

3.126. In this connection, the Committee would like to draw attention of the Government to para 1.38. of 68th Report (March, 1978) of the Public Accounts Committee in which they have recommended specific measures against abuse of duty exemptions and

reiterated their earlier recommendation to have some Parliamentary control over exemptions on the following lines:

- i) All exemptions involving a revenue effect of Rs. 1 crore and more in each individual case should be given only with the prior approval of the Parliament.
- ii) The Financial implications of all exemption notifications in operation should be brought specifically to the notice of Parliament by Government at the time of presentation of the Budget.

The Committee desire that action in pursuance of this recommendation should be taken without delay.

3.127. The Committee also note that at present whenever any foreign mission in India imports any equipment like air-conditioning unit for its own use, complete exemption is given to it from payment of customs duty on the equipment. But similar equipment, if purchased indigenously is required to bear full excise duty. This practice, needless to say, operates to the detriment of indigenous industries as the foreign missions would obviously be induced to import such equipment from abroad rather than buy it from indigenous manufacturers. The Committee would like the Government to remove this anomaly at the earliest in order to encourage foreign missions to buy Indian made goods.

3.128. The Committee note that at present no special concession under the Central excise law is available to the industries located in backward areas. In view of the universally accepted need to pay special attention to the development of backward areas, the Committee would like the Government to examine the desirability of giving concessions/exemptions from excise duty to goods produced by units located in such areas. Such a step, the Committee feel, would act as an incentive to set up industries in backward areas and contribute to their faster progress.

## CHAPTER IV

### SYSTEM OF EXCISE CONTROL

4.1. At present the Central Excise Department exercise control mainly through (1) Physical Control over the manufacturing| producing units, and (2) Self Removal Procedure—now revised as (a) Production Based Control, (b) Clearance Based Control and Record Based Control.

#### *Physical control*

4.2. The system of physical control is exercised only in respect of 6 items viz., Khandsari and Palmyra Sugar, Unmanufactured tobacco, Biris, Chewing tobacco, Snuff and Matches.

#### *Self Removal Procedure*

4.3. The essence of the system of self-assessment by the manufacturers themselves, known as Self-Removal Procedure, was to repose a large measure of trust and confidence in them. Physical supervision by Central Excise officers over manufacturing processes and clearance of the goods was dispensed with and replaced by periodical checks of the self-assessed documents and accounts to ensure that the due amount of duty has been paid. This procedure was introduced with effect from 1-6-1968 and made obligatory for the manufacturers of all those goods which were liable to Central Excise duty at that time with the exception of certain goods.

4.4. The Self Removal Procedure greatly facilitated the working of the manufacturers. At the same time it did leave some scope for evasion of duty. Accordingly Central Excise (Self Removal Procedure) Review Committee was set up in 1971 to review the working of the procedure and recommend changes considered necessary to plug loopholes causing evasion.

4.5. This Review Committee having considered the heterogeneous character of commodities liable to Central Excise duties and other relevant factors recommended (in 1975) a system of selective control for levy and collection of duties made up of three distinct

procedures adapted to the different needs of different industrial sectors. These procedures were Accounts Based Control (A.B.C.) (now being referred to as Records Based Control or R.B.C.), Production Based Control (P.B.C.) and Clearance-based Control (C.B.C.) including Simplified Procedure.

### *Production Based Control*

4.6. The Production Based pattern of Control (P.B.C.) is applicable to all manufacturing units other than those covered by the conventional physical type of Control, Records Based Control, Clearance Based Control or those working under a Compounded levy scheme.

4.7. This pattern of Control preserves the essentials of the Self Removal Procedure, viz. that the assessee can clear his goods under his own gate pass or invoice-cum-despatch advice without the physical presence of the Central Excise Officer. The main change that has been made is to bring about a closer association of the Central Excise staff with different stages of the manufacturing process so that such checks as are considered necessary can be exercised so as to ensure that all the goods that are produced in the factory are fully accounted for.

The above pattern of Control was introduced with effect from 1-2-1978.

### *Clearance Based Control*

4.8. Clearance Based Control, has an alternative a simplified procedure for small scale manufacturers, which enables the manufacturers to compound their prospective duty liability on the basis of their past performance. This system was introduced with effect from the 1st March, 1976.

Record Based Control, is a liberalised version of that Self Removal Procedure, and Production Based Control. This system preserves the essentials of the Self Removal Procedure subject to such checks being exercised by Central Excise officers as are necessary to enable accounting of production to the full extent. This system was introduced with effect from the 1st February, 1978.

4.9. During Study tours of the Committee it was represented by associations of industry that the system of Production Based Control did not make any improvement in the way of collection of revenues, but at the same time it has put the licensees to great hardship and has brought back the element of malpractices with it.

4.10. Commenting on the system of Production Based Control, a Member of Parliament, in his memorandum to the Committee stated:

"The Self-Removal Procedure has, however, undergone a vast change now. The very same officers whom the Government thought were undesirable at the factories have been brought back at the factories by the back door. The old methods employed by the petty officials are again seen with renewed vigour. The recently introduced Production Based Control is nothing but Physical Control except that the clearance of documents are permitted to be signed by the manufacturers."

He added that—

"the staff posted at the factories should be withdrawn. The Senior Officers could visit the units once in six months and thoroughly scrutinise the elaborate record that is maintained. It is no use professing that the manufacturers are granted facility of the self-Removal Procedure whereas in actual practice it is physical Control with all the known ills."

4.11. The representatives of the leading Chambers of Commerce who gave evidence before the Committee also opined that the newly introduced Production Based Control system amounted to physical control.

4.12. In this connection, the Ministry of Finance have stated that reports about the Production Based Control System "received from twenty-one out of the twenty-three Central Excise Collectors in the country do not go to show that any complaint or representation has been received from the trade about the assessee being put to hardship or that there have been malpractices. This pattern of Control on the other hand, according to one source at least, may be found to be inconvenient by those manufacturers who would like to resort to malpractices."

4.13. The Ministry also contended that in any event it was too early to assess the impact of the system as it has been introduced only from 1-2-1978.

4.14. During the course of evidence the representatives of the Central Board of Excise and Customs stated that a large measure

of trust was placed in the manufacturers at the time of introduction of Self-Removal Procedure in 1968 but over the years it was found that this was not working and that there was evasion of excise duty. In this connection, the witness referred to the following observations of the Self-Removal Procedure (Review) Committee (1975):—

“...on the basis of all the evidence we have had before us, we have reached the conclusion that evasion is considerable and, in certain sectors, pervasive. This is an inference we have drawn from the totality of what we have seen, heard and investigated.”

4.15. When the attention of the Chairman, Central Board of Excise and Customs was drawn to the representations of industry that the Production Based Control was nothing but physical control, he stated that the main attributes of Self-Removal Procedure were retained even in the Production Based Control.

4.16. Asked about the number of checks made, the representatives of the Central Board of Excise and Customs stated that “there are checks, but we want not the routine type of checks, but this should be there with a certain amount of surprise element. We are trying to deploy our staff in such a way so that they can go at the various stages, end-product point, raw material point, intermediate product point and weigh bridges etc. The idea is not to make it a routine thing which the physical control did. There is a constraint about staff. The frequency will not be a harassing type of frequency.”

4.17. The Finance Secretary stated that “the Self-Removal Procedure was introduced in order to minimise the administrative burden involved in the administration of the law. But having simplified the procedure we should also take certain steps to see that a check is maintained on the production processes and we are satisfied that we are getting the revenue. For example, on the income-tax side, we have introduced the Self-Assessment Procedure, but the department does test-check to see that, by and large, the assessees are complying with the provisions of the law. This is precisely what the excise department is trying to do through Production Based and Record Based Controls. We have to think in terms of taking various steps for checking evasion. Convenience of the assessee cannot be the only consideration.”

4.18. The Committee note that at present the Excise Control is maintained over production through physical control and Self-Removal Procedure—the latter now revised as Production Based Control, Clearance Based Control and Records Based Control. Physical control is exercised in respect of 6 items only. The system of Self-Removal Procedure was introduced with effect from 1-6-1968. The essence of this system of self-assessment by the manufacturers themselves was to repose a large measure of trust and confidence in them. According to the Ministry this procedure greatly facilitated the working of the manufacturers, but it left some scope for evasion of duty. In view of this, the Central Excise Self-Removal Procedure (S.R.P.) Review Committee was set up in 1971 to review the working of the Self-Removal Procedure. On the basis of the recommendations made by this Review Committee, a system of selective control for levy and collection of duties made up of three procedures viz., Production Based Control, Clearance Based Control and Record Based Control were introduced with effect from February 1978, March, 1976 and February, 1978 respectively.

4.19. Some leading organisations of industry have represented to the Committee that the system of Production Based Control amounts to physical control and that under this system, the assessee have been put to great hardship. A Member of Parliament also opined before the Committee that the system of Production Based Control was nothing but physical control with all the known ills except that the clearance of documents are permitted to be signed by the manufacturers.

4.20. The Ministry have stated that they had not received any complaint or representation from industry against the Production Based Control. This pattern of control on the other hand “may be found to be inconvenient by those manufacturers who would like to resort to malpractices.” The Ministry have also contended that as there was considerable evasion, the system of Production Based Control was introduced with certain amount of checks at various stages, but the frequency of the checks would not be of a harassing type. As regards undertaking a review of the Production Based Control system, the Ministry have felt that it was too early to conduct a review.

4.21. The Committee agree that the excise control procedure should be such as gives no quarter to those assessee who resort

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to malpractices and evade duty. But in devising a suitable procedure, the Ministry should not only aim at preventing leakage of revenue but also ensure that it is not so cumbersome and oppressive as to cause harassment to honest tax payers.

4.22. As the Production Based Control procedure is reportedly causing hardship, it is just proper that the Ministry should go into the various aspects of this procedure and remove or suitably modify the irksome provisions of this procedure which are not very essential or relevant to check evasion in consultation with the trade and industry. The Ministry should in fact keep the working of all the procedures under constant watch with a view to plugging loopholes and removing pinpricks.



## **CHAPTER V**

### **A. Refunds**

5.1. Refunds of duties on excise, or other dues by the Department may arise under circumstances, such as—

- (i) duty paid through inadvertance, error or mis-constructions|mistake of law;
- (ii) duty paid on provisional basis being found at the time of final assessment to be in excess of what was due;
- (iii) initial amount of deposit, or excess amount of duty paid under Compounded Levy Schemes;
- (iv) favourable adjudication order or order-in appeal or order-in revision passed by the competent authority;
- (v) duty-paid goods being brought into factory for remaking, reprocessing, etc.
- (vi) licence fee on rejected applications for grant of Central Excise licences; or
- (vii) other types of cases such as unused Central Excise revenue stamps|labels, balance in P.L.A. etc.

5.2. Under Rule 11 of Central Excise Rules, 1944, any person claiming refund of any duty paid by him may make an application for refund of such duty before the expiry of six months from the date of payment of duty provided that the limitation of six months' shall not apply when any duty has been paid under protest. Where duty is paid provisionally on the basis of the value or the rate of duty, the period of six months shall be computed from the date on which duty is adjusted after final determination of the value or the rate of duty as the case may be.

5.3. A number of associations and Chambers of Industry have represented that the need for claiming refunds arises mainly due to over-assessment by the officers of the Central Excise Department because of their attitude to err on the safe-side. It has been opined that greater care at the level of assessing officials and understanding the trade point of view in regard to classification, valuation

and tariff assessment would go a long way in reducing cases of over-assessment of duty.

#### *Time taken for settling refund claims*

5.4. Almost all the representatives of the industry who furnished memoranda and gave evidence before the Committee or met the committee during study tours voiced their concern over the long time taken by the Department in settling refund claims. There was a near unanimous demand that a statutory time limit should be laid down for effecting refunds. They also desired that a prescribed rate of interest as in the case of income tax should be allowed on all refunds made after the statutory period. The Indirect Taxation Enquiry Committee (Jha Committee), 1978 have also recommended that a time has come when statutory limit should be fixed in the excise law for sanction of refund.

5.5. The Ministry have informed the Committee in a written reply that normally, the time taken in granting refund is about a month, and may even be lesser, if all the supporting documents/papers are made available by the claimant along with his claim. In case, however, the sanctioning authority feels the need of some further documents being called for, enquiry being made or for any other action being taken so as to satisfy himself that what is being allowed to be refunded is not more than what is due, time taken may vary from one month to four months, or even more depending on the nature of claim and the extent of verification required.

5.6. At the Committee's instance, the Ministry furnished the wise break-up of the refund applications pending as on 1-4-1976, 1-4-1977 and 1-4-1978 is as follows:—

Number of refund application pending (on all India basis) as on	For more than		
	3 months	6 months	1 year
(i) 1-4-1976 . . . . .	642	437	853
(ii) 1-4-1977 . . . . .	609	645	698
(iii) 1-4-1978 . . . . .	3268	959	898

5.7. The following factors, according to the Ministry, caused delay in settling refund claims:—

- (a) non-receipt of complete documents/papers along with the claim for refund;

- (b) number of documents required to be scrutinised being large;
- (c) enquiry about original credit;
- (d) doubt about certain contention of the claimant regarding interpretation of a point of law, or the provisions of some statutory notifications, or in the matter of tariff classification, for clearing which reference to higher authorities may be necessary;
- (e) matter otherwise being subjudice, or under investigation, or subject-matter of audit objection; and or
- (f) such other enquiry/investigation as the sanctioning authority may deem to be necessary.

5.8. The Ministry have informed the Committee that the question of fixation of statutory time-limits for sanction of refund claims including refund claims arising as a result of appellate orders has been examined by the Government in the past but it has not been found feasible on the following grounds:—

- (a) Fixation of a statutory time-limit for sanction of refund claims will only result in undue haste in disposal of claims and may adversely affect disposal in the long run in as much as the officers may reject the claims merely to adhere to the time-limit.
- (b) Where, on the basis of the principles laid down in appellate orders, the amount of refund has to be calculated with reference to the duty-paying documents and/or a question of fact has to be verified there is a possibility of a longer time being taken to finalise the refund.
- (c) In cases involving classification/valuation, a decision more often than not will give rise to a large number of claims arising out of a series of transactions involving the same decision. In such cases also, the period considered normal for routine cases may not be sufficient for finalising all claims.

5.9. The Ministry have, however, stated that keeping in view the need for expeditious disposal of refund claims executive instructions have been issued to the effect that every effort should be made to sanction them within a period of three months. If the claims cannot be sanctioned within this period the reasons for delay should be communicated to the assessee.

5.10. As regards making a provision for payment of interest on delayed refunds the Ministry have stated that this has also not been considered appropriate on the ground that it is a double-edged measure, in the sense that it will entail making a similar provision in favour of the Department in the case of delayed payments of duties etc. by the assesseees. Such a provision for charging of interest by the Department on delayed payments by the assesseees will have an adverse effect on the Trade, specially on a large number of small scale manufacturers and small growers/curers/traders of unmanufactured tobacco.

5.11. Explaining the measures taken to expedite the refund cases, the Ministry have stated that the need for expeditious disposal of refund claims is stressed upon the Collectors of Central Excise by the Divisional Offices, are desired to make it a point to examine Collectors, during the course of their inspections of and/or visits to the Divisional Offices, are desired to make it a point to examine critically the progress made in respect of disposal of refund claims and in particular those which are more than 3 months old. They, and the Assistant Collectors, are also required to make it a point to inspect the work relating to refund in their offices more frequently with a view to ensure that the claims do not get held up for an unduly long time without valid reason.

5.12. On his attention being drawn to the large number of pending claims for refunds, the representative of the Central Board of Excise and Customs stated during evidence that most of the claims related to powerlooms. For instance in Poona Collectorate alone as many as 1800 claims related to powerlooms. Action had been taken to settle the claims. The witness contended that the time-limit (of 3 months) prescribed under the departmental instructions was "fairly adequate" and that "our performance is quite good and most of the claims get settled within a month."

#### *Less charged demands*

5.13. Under Rule 10 of Central Excise Rules, 1944, where any duty has not been levied or paid or has been short-levied or erroneously refunded or any duty assessed has not been paid in full, the Department may initiate action within six months to recover the due amount.

5.14. In cases where any duty has not been levied or paid or has been short-levied or has not been paid in full, by reason of fraud, collusion or any wilful mis-statement or suppression of facts by the assessee, the period of limitation for initiating action to recover the amount is five years.

5.15. Regarding the practice of raising less charged demands on account of changes in classification, etc., a number of associations and chambers of industry have represented that the procedure devised was unsatisfactory and causes inconvenience to the assesseees. One of the leading chambers of commerce have stated in their memorandum that at present, demand can be raised by reopening cases upto six months in the normal course and upto five years where *mala-fide* actions on the part of the assesseees are suspected. However, in actual administration, no such distinction is being maintained and cases are often reopened even after 6 months (and upto five years).

5.16. At the instance of the Committee, the Ministry furnished the following statement indicating the number of less charge demands raised by the Central Excise Collectorates of Chandigarh, Jaipur, Calcutta and West Bengal during the period August, 1977—October, 1978.

Sl. No.	Collectorate	No. of cases	
		(a) Where time limit is 6 months	(b) Where time limit is 5 years
1	Chandigarh	150	33
2	Jaipur	20	nil
3	Calcutta	140	11
4	West Bengal	94	12

5.17. The Indirect Taxation Enquiry Committee (Jha Committee) (1978) have observed that sometimes, the Excise Department revises the classification of a product with retrospective effect as a result of which the manufacturer is called upon to pay a higher duty even for past clearances. Once the manufacturer has marketed his product, he cannot recover from his customers the higher duty.

5.18. The Jha Committee also expressed the view that "unless forgery, fraud or collusion is involved, a change in the classification of a product should have only prospective effect and the authorities should not demand a higher duty for the past period." The Jha Committee have further observed that there were also cases where due to a revision in classification the duty liability gets reduced and the manufacturer may get a fortuitous benefit which cannot be

passed on to his customer. According to Jha Committee "it would, therefore, be legitimate to hold that no refund in respect of past clearances should be permissible to the manufacturer'. A provision of this kind already exists in the sales tax law of Gujarat, the validity of which has been recently upheld by the Supreme Court. A similar provision should be made in the Central Excise law."

5.19. Regarding the question of passing on the benefits of refunds to the consumers, some of the representatives of Chambers of Commerce stated during evidence before the Committee that the benefits of refunds are passed on to the consumers where the duty was paid under protest. However, some other representatives of the industry stated that it was not practicable to pass on the refund to the consumers. According to an Association "there can be no question of the assessee passing on the benefit to the consumers as this is not practicable, more or less on the same lines, as it is not practicable to recover from customers extra payments made by the assessee in case of under-assessment."

5.20. During the course of evidence before the Committee, the representatives of leading organisations and associations of industry suggested that the industry would welcome the observations of the Jha Committee that no refund in respect of the past clearances due to changes in classification should be permissible if the Department did not raise less charge demands due to changes in classification in respect of past clearances, unless forgery, collusion is involved. During evidence the Finance Secretary stated that the question of incorporating a provision that in the case of past clearances no refunds would be permissible—as provided in the Sales Tax Law of Gujarat—would have to be examined in consultation with the Ministry of Law.

5.22. The Committee note that under Rule 11 of the Central Excise Rules 1944 time limit of 6 months has been prescribed for claiming refund of excise duty. A number of associations and industries have suggested to the Committee that the statutory time limit should be laid down for making refunds and in case refunds are not made within the statutory period, a prescribed rate of interest as in the case of income-tax should be allowed on all refunds. The Indirect Taxation Enquiry Committee (Jha Committee 1978) has also recommended that a time has come when statutory time limit should be fixed for sanction of refunds of excise duty. The Committee have been informed by the Ministry that the question of fixation of statutory time limit for sanction of refund claims has been examined by the Government in the past but it has not been found feasible as a statutory limit may result in undue haste in disposing of cases on the part of officers to the detriment of assessee's interests and also because in many cases it may not be

possible to verify the claims within the time limit. The Ministry have issued executive instructions to the effect that every effort should be made to sanction refunds within a period of 3 months and if the claims cannot be sanctioned within this period, the reasons for delay should be communicated to the assessee.

5.23. From the figures furnished to the Committee they note that despite departmental instructions as on 1st April, 1978, the number of refund claims pending for more than 3 months had registered a five-fold increase (3268) as compared to the number during the previous two years (642 in 1976 and 609 in 1977). The number of cases pending on 1st April, 1978 for more than 6 months also showed nearly 50 per cent increase as compared to the number in 1976 and 1977. This unmistakably shows that the executive instructions issued by the Department to finalise cases within 3 months have had absolutely no effect on the excise authorities. On the contrary, the position has deteriorated. The Committee, therefore, strongly feel that in order to bring home to all concerned a sense of urgency it is imperative that a time limit should be fixed for sanction of refund claims and if these are not sanctioned within the prescribed time limit, not only interest at market rate should be paid by the Government on the due amount but the officers found responsible for avoidable delays should be held accountable. The Committee appreciate the Ministry's view that payment of interest should be a "double-edged" measure in the sense that a similar provision should be made in favour of the Department also in case of delayed payment of duties by the assessee. The Committee have recommended elsewhere in this report that the assessee should be required either to pay the duty before filing appeal or pay interest on the due amount if the appeal is decided against him.

5.24. The Committee note that in the normal case of short levy of duty the Department may take action within six months to raise less charge demands but if a short levy is by the reason of fraud, collusion or in wilful mis-statement or suppression of facts by the assessee, the period of limitation to take action to recover the amount stands extended to 5 years. A number of associations have represented to the Committee that in actual administration of these provisions no distinction is maintained between bona fide cases of short levy and short levy by reason of fraud, wilful mis-statement etc. and cases are often re-opened after 6 months upto a period of 5 years. From the information furnished by the Ministry, the Committee find that in the Collectorates of Chandigarh, Calcutta and West Bengal, the number of cases re-opened within the time limit

of 6 months were 150, 140 and 94 and those reopened within time limit of 5 years were 33, 11 and 12. The Committee would like the Department to review on a regular but selective basis, such cases as are re-opened after a period of 6 months to see as to whether these cases really involved fraud, collusion, wilful mis-statement or suppression of facts by the assesseees and take corrective measures to ensure that, under the garb of these powers, honest assesseees are not harassed. They would like to be informed of the concrete action taken in this regard.

5.25. In the opinion of the Committee, the period of 5 years stipulated for reopening cases of short levy on the ground of fraud, collusion or willful mis-statement or suppression of facts is too long. This should be reduced to three yeears.

5.26. The Committee feel that the present system of raising less charge demands and payment of refunds is unsatisfactory. Excise duty is a tax which is ultimately paid by the consumer. When goods are sold, the consumer pays the excise-duty as a part of the price. In cases where duty is under-assessed originally and less charge demands are raised, it is not possible for the manufacturer to recover the duty from the consumer. Similarly, in cases of initial over-assessment of duty, the benefit of refund, if and when granted, cannot normally be passed on to the consumers who must have in normal course been required to pay the enhanced price, thus allowing the fortultous benefit to be retained by the assesseees. The Indirect Taxation Enquiry Committee (Jha Committee 1978) have expressed the view that unless forgery, fraud or collusion is involved a change in classification of a product resulting in higher rate of duty on the product should have a prospective effect. In the opinion of the Committee the revision in classification should never operate retrospectively. It should always operate prospectively.

### *B Arrears of Revenue*

5.27. The Ministry of Finance informed the Committee that the arrears of Central Excise outstanding as on 31st March, during the last 5 years was as follows —

	(Rs. in thousands)
31-3-1974	780527
31-3-1975	851304
31-3-1976	851057
31-3-1977	1224652
31-3-1978	1546743



5.28. According to the Ministry the reasons for the arrears as on 31st March, 1978 were:

Causes	Amount involved (Rs. in thousands)
Certification . . . . .	54164
Court cases . . . . .	295006
Appeals/R.As. with Board/G.I. . . . .	271932
Appeals with Appellate CCEs . . . . .	245167
Ministry/Board's Clarification . . . . .	217560
Adjudications . . . . .	54458
Persuasive action with the Deptt. . . . .	982888

5.29. From the data on the Collectorate-wise arrears of revenues as on 31st March, 1978 furnished by the Ministry it was observed that the arrears of revenue in respect of the following collectorate were very large.

	Rs. in thousand	Of which Amount involved in Court cases (Rs. in thousands)
Bombay . . . . .	23,11,64	3,32,07
Patna . . . . .	18,52,09	2,71,62
Madras . . . . .	16,72,64	1,45,38
Bangalore . . . . .	15,39,44	92,32
West Bengal . . . . .	12,29,71	1,66,41

5.30. The Committee also noticed from the information furnished by the Ministry that considerable amount of arrears to be collected related to the levy on the following items:

	Rs. in crores
1	2
Fertilizers . . . . .	18.20
Motor vehicles . . . . .	19.15

1	2
Iron & Steel Products . . . . .	9.38
Petroleum Products . . . . .	6.88
Raw Naptha . . . . .	6.34
R.D. Oil . . . . .	4.22
Tobacco . . . . .	3.56
Polymar chips . . . . .	3.38
Refrigeration & AC machinery . . . . .	3.08

5.31. The Ministry have stated that the major reason for increase in arrears was on account of disputed demands where higher rate of duty was attracted or higher value was applicable for determining the duty payable. Out of Rs. 154.67 crores of central excise arrears as on 31-3-1978, the portion viz. 111.09 crores (71.82%) was on account of disputed demands. By their very nature, settlement of these cases becomes very time consuming. Till the appeals/revisions petitions are decided by the competent authorities, or cases in court get decided, recoveries are not normally effected; this results in accumulation of unavoidable arrears.

5.32. In respect of un-manufactured products (Tobacco) a large number of growers/curers/dealers get involved. Many of the growers/curers are poor and default in payment. State Revenue authorities who have to enforce realisations are often unable to avoid delays in recovering the arrears.

5.33. The progress in the liquidation of arrears is reviewed by the Central Board periodically and necessary directions, issued to concerned Collectors of Central Excise for disposal of cases specially those involving large amounts on a poriority basis. Special liquidation squads have been created in the Collectorates for making a concerted drive to realise the arrears. The Collectors have also been asked to make a continual review so as to isolate factors that stand in the way of speedy disposal of cases.

5.34. During evidence, the Chairman, Central Board of Excise and Customs, stated that nearly 70 per cent of the arrears related to disputes in Court, revision applications etc. He added that "uptil now, even the cases which are disputed in revision application, etc. are treated as 'arrears'. One does not know whether they are actually 'arrears'. The net arrears are different from these 'gross arrears'.

5.35. Asked about the reasons for the piling up of arrears in respect of products like fertilizers, petroleum products where most of the units producing these items are Public Sector Undertakings, the representative of the Central Board of Excise and Customs stated that the Board were trying to settle the disputes across the table by calling them for discussion, if need be, by associating the representative of the Ministry of Law, also. Instructions had also been issued to the Public Sector Undertakings that they should not rush to courts in case of disputes which should be settled through departmental channels and, if necessary, by referring to the Ministry of Law.

5.36. In order to minimise cases regarding arrears of revenue it was suggested to the Committee that the assessee should be required to pay in full the amount of excise duty before his appeal for revision/exemption of the excise duty is entertained by the appellate authorities concerned. The representatives of a leading organisation of industry suggested during the course of evidence before the Committee that the assessee should be given one of the following two options (1) he may either pay the duty claimed by the Department first and in case he wins, the appeal etc., he may get back the amount paid with interest thereon; or (2) in the alternative, he may be allowed to file the appeal without payment of duty and in case he loses, he may be liable to pay the duty with interest thereon.

5.37. During evidence the Chairman, Central Board of Excise and Customs stated that under the Excise Law, the Department cannot compel the assessees to make payment beforehand. But in actual practice, the Collector or Assistant Collector was entitled to ask the assessees to pay duty pending final settlement, unless the Appellate Authority, in their own discretion, gives a stay order in regard to such collection. The witness also admitted that "there are numerous cases where stay orders are being given and in fact, this is increasing the work of the Appellate Authority." He added that the Department would "certainly examine" the suggestion regarding giving the aforesaid options to the assessees viz. paying first and then going in for appeal, in which case he will get interest if he wins, or in the alternative, going in for appeal without paying first, in which case he would pay interest if he loses.

5.38. The Committee note that the arrears of excise duty have increased from Rs. 78 crores as on 31st March, 1974 to Rs. 154.67

crores as on 31-3-1978. Although the progress in the liquidation of the arrears is reviewed by the Central Board periodically and special liquidation squads have been created in the Collectorates for making concerted drive to realise the arrears, the position, instead of improving, has deteriorated in the last two years. The Committee have been informed that out of Rs. 154.67 crores of Central Excise arrears as on 31-3-1978, the major portion viz. 111.09 crores (nearly 72 per cent) was accounted for by disputed demands and recoveries in such cases are not possible till the appeals, revision petitions or court cases are decided by competent authorities. In order to minimise cases of arrears involved in disputed demands, a suggestion has been made that before filing appeal/revision application, the assessee should be given one of the two options, viz. (1) he may either pay duty claimed by the department first before filing appeal, revision application etc. and in case he wins the appeal etc. he may get back the amount with interest or (2) in the alternative he may be allowed to file the appeal without payment of the amount duty in dispute and in case he loses, he may be liable to pay duty with interest thereon. The Committee welcome this suggestion and recommend that Government may make a suitable provision in this regard in the excise laws with a view to discouraging frivolous and dilatory appeals/revision applications and expediting recovery of excise dues.

5.39. The conclusion that the Committee draw from the sharp increase in arrears of excise duty from Rs. 85 crores in March, 1976, to over Rs. 122 crores in March, 1977 and over Rs. 154 crores in March, 1978 is that the measures taken to liquidate arrears have not proved effective. The Committee would like that Central Board/Ministry should review these measures and tighten them so as to produce results and inform the Committee of the action taken in the matter.

5.40. The Committee note that the arrears of revenues in certain collectorates like Bombay, Patna, Madras, Bangalore and West Bengal, are very heavy. They would like the Central Board to intensify efforts in all such Collectorates so as to liquidate the arrears at the earliest.

5.41. The Committee note that arrears have piled up in respect of products like fertilizers, petroleum products etc. which are mostly produced in public sector undertakings. The Committee have been informed that the Central Board are trying to settle disputes

with public sector undertakings across the table, by associating the representatives of the Ministry of Law where necessary. Instructions have also been issued by Government to the public sector undertakings that they should not rush to courts in case of disputes and should settle them through departmental channels, if necessary, by referring the matter to Ministry of Law. The Committee would like the Ministry to evolve a procedure for expeditious settlement of arrears due from and other disputes with the public undertakings in consultation with the Ministry of Law, which may provide for arbitration, wherever necessary.

## CHAPTER VI

### APPELLATE MACHINERY

6.1. An appeal against a decision or order passed by an officer lower in rank than a Collector of Central Excise lies to the Appellate Collector of Central Excise concerned, while an appeal against a decision or order passed by a Collector lies to the Central Board of Excise and Customs. Revision applications against the orders-in-appeal passed either by the Appellate Collectors or by the Board lie to the Central Government. Apart from this, the Central Government may of its own motion or otherwise call for and examine the record of any proceeding in which any decision or order has been passed for the purpose of satisfying itself as to the correctness, legality or propriety of such decisions or order and may pass such orders on it as it thinks fit.

6.2. From the figures to the Committee it was seen that the number of appeals pending with the Appellate Collectors was 4778 as on 31-12-1975, 3956 as on 31-12-1976, 6893 as on 31-12-1977 and 7880 as on 30-6-1978.

6.3. The number of appeals pending Appellate Collectorate wise as on 30-6-1978 was as follows:—

Bombay . . . . .	2051
Calcutta . . . . .	2232
Madras . . . . .	2393
Delhi . . . . .	1204
<b>TOTAL . . . . .</b>	<b>7880</b>

The pace of receipt and disposal was follows:—

Year	Receipt No. of appeals	Disposal No. of appeals
1976 . . . . .	8248	9068
1977 . . . . .	10090	7144

**6.4.** The number of appeal cases pending with the Central Board of Excise and Customs as on 30-6-1978 was 1663. The period-wise break-up of the pendency of these appeals was:—

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Less than 6 months . . . . .	162
Between 6—12 months . . . . .	264
1—2 years . . . . .	498
2—3 years . . . . .	387
3 yrs. & above . . . . .	359
	<hr/> 1663

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**6.5.** According to the Ministry the main reason for such accumulation of appeal cases pending with the Central Board is paucity of staff both at the decision making level and at lower levels.

**6.6.** As regards the remedial measures taken, the Ministry have stated that with a view to expediting decisions, one Member of the Central Board of Excise and Customs designated as Member (Judicial) has been posted to be incharge of the appeals exclusively with effect from 16-1-1978. Further, one more Member has assumed charge with effect from 14-8-1978. From about the middle of 1977, two posts of Senior Technical Officers of the rank of Class I Officer have also been created in the Appeal Unit. Appellants involved in minor cases, who cannot afford to come to Delhi are being heard at frequent intervals in Bombay, Calcutta, Madras and other Collectorate Headquarters. Even though no targets have been fixed, intensive efforts are being made to expedite disposal of as many appeals as possible, especially the older appeals.

**6.7.** During evidence the representative of the Central Board of Excise and Customs attributed the delay in disposing of appeals pending with the Board to the delay in filling up the post of a Member in the Board. One Member of the Board, it was stated, retired in September, 1975 and the full complement of the Board was in position roundabout January, 1978. The Chairman, Central Board stated that at present two members of the Board were dealing with appeals and that the position regarding clearance of the pending appeals would improve.

6.8. With regard to the large number of appeals pending with the Appellate Collectors, the representative of the Central Board stated that the pace of deciding the cases was affected due to vacancies in the Appellate Collectorates also. He added that in Madras there was a shortage of one Appellate Collector from August, 1976 to October, 1977. During this period, against two Appellate Collectors, one was looking after both Customs and Excise.

### **Revision Application**

6.9. Any person aggrieved by the order-in-appeal passed by the Appellate Collector of Central Excise or passed by the Central Board of Excise & Customs can prefer a Revision Application under Section 36 of the Central Excises and Salt Act, 1944 to the Government of India, Ministry of Finance (Deptt. of Revenue), New Delhi. The Revision Applications against the orders-in-appeal passed by the Appellate Collectors are dealt with by an Additional Secretary and two Joint Secretaries of Revision Application Unit or by a bench consisting of these officers, relating to valuation and classification cases. The Revision Application against the order-in-appeal passed by the Central Board of Excise & Customs is dealt with by Special Secretary (Revision Application).

6.10. The Ministry have informed the Committee that the number of Revision Applications relating to Central Excise pending with the Government was 2378 as on 31-12-1975, 2890 as on 31-12-1976, 3098 as on 31-3-1977, and 3669 as on 1-11-1978.

6.11. The period-wise pendency of the Central Excise revision applications as on 1-11-1978 was:—

Less than 6 months . . . . .	1365
Between 6 months & 1 year . . . . .	962
1 to 2 years . . . . .	697
2 to 3 years . . . . .	365
3 years and above . . . . .	280
<b>TOTAL</b>	<b>3669</b>



Pace of disposal of the revision applications was as follows:—

Year	No. of Applications	
	Received	Disposed
1974	1722	1256
1975	2175	974
1976	2663	2091
1977	2905	2434
1978	2340	1620

6.12. The following reasons according to the Ministry result in delay in deciding the revision applications:—

- (i) Average monthly receipt are on the increase ever since 1975 and more than 200 revision applications as against 100 and odd in earlier years are now received every month.

There is, however, only one Officer—Additional Secretary (as Joint Secretary before 1-7-1978) for disposing of the revision applications and the number of processing officers who make these applications ready for disposal has remained static since 1973. There was also the period when the vacancy at the Joint Secretary's level remained unfilled due to various administrative reasons.

- (ii) The introduction of Bench system with effect from 1-1-1976 which require the attention and time of the Additional Secretary (earlier Joint Secretary) and another Joint Secretary for disposal of classification and valuation cases is also to some extent responsible in the increased pendency.
- (iii) The trend these days is that in most cases the petitioners ask for personal hearing and such hearing is not only factual but very much legalistic and many eminent lawyers who appear before the revisionary authority raise many complicated legal issues and several case-laws are cited before it and the examination of such case-laws is quite time-consuming.
- (iv) In certain complicated cases technical advice from Chief Chemist/Directorate General of Technical Development and also legal advice from the Ministry of Law has to be taken. These cases, therefore, take more time and as a result a perceptible dent in liquidating the arrears has not been possible to the extent desirable.

6.13. Regarding the steps taken to expedite disposal of revision applications, the Ministry have stated that it has been impressed upon the officers and staff to put their utmost to liquidate the formidable arrears and to give priority for clearing arrears. Emphasis is being laid on streamlining the processing of the Revision Applications and to fix the focus on the points to be decided rather than the factual details which are available in the Revision Applications, order-in-appeal and the order-in-original. The matter regarding quicker receipt of the records from the Appellate Collectors of Central Excise is also being taken up with them. A system of periodical review of the pending Revision Applications is also introduced. The question of augmentation of staff strength to clear the arrears is also being examined and the Internal Work Study Unit is conducting a study in this regard.

6.14. There is also a proposal to set up a Regional Revisionary Unit in the first instance at Bombay on an experimental basis with processing officers stationed at Bombay. This has been thought of because basically most of revision cases emanate from the western region.

6.15. In the course of evidence, the representative of the Ministry of Finance stated that the bench system of disposal had been introduced since 1 January, 1976. The Bench consisted of one Additional Secretary and one Joint Secretary. About 60 per cent cases related to classification and 40 per cent to valuation. These were "very complicated" matters. According to the witness "this bench system had also to some extent retarded the pace of disposal." Almost in all cases, the parties sought personal hearing, and the cases had become legalistic.

6.16. In this regard the delay in receipt of case records from field offices was also cited as a cause for delay in settling disputes. The representative of the Ministry of Finance stated that 6 month's time was taken in getting case records from the field formations. To overcome this problem, the Ministry had requested the Collectors to be prompt in dispatching records to the headquarters.

6.17. The representative of the Ministry of Finance apprised the Committee that as per the present pace of receipt of revision applications, one more Joint Secretary and supporting staff was required and that this matter was already being examined by the Financial Adviser of the Ministry. The witness felt that if we strengthen it, the revision application unit can be made to serve a very useful purpose. For various matters including those of interpretation of law of notification and classification, if this unit is strengthened, perhaps many of the other items of work which now devolve on the Board can be reduced, if not eliminated."

### Cases pending in Courts

6.18. The Ministry have furnished the following details of the cases pending in Supreme Courts, High Courts and other Courts:—

	5 years & above	3 years & above	1—3 years	6—12 months
	No. of cases	No. of cases	No. of cases	No. of cases
Supreme Court . . . .	52	12	36	47
High Court . . . . .	250	273	920	160
Other Courts . . . . .	30	26	332	20
	332	311	1288	227
	TOTAL : 2158			

### Appellate Tribunal

6.19. There has been a near unanimous demand from the representatives of the Industry for appointment of an independent Appellate Tribunal for dealing with disputes relating to Central Excise. In this connection, a leading Chamber of Commerce has stated that a recent study has reportedly shown that between 1962 and 1970 as many as 14 cases of Central Excise went to the Supreme Court of which only three were decided in favour of Government. During the same period 222 Central Excise matters were decided by the High Courts of which 126 went in favour of the assesseees.

6.20. The representatives of the Chambers of Commerce who tendered evidence before the Committee, while pleading for the setting up of an independent Appellate Tribunal for dealing with disputes relating to Central Excise, referred to the successful working of the Income Tax Appellate Tribunal. They also suggested that the Tribunal should function under the Ministry of Law.

6.21. It has been represented by a number of associations and chambers of industry that the assesseees generally feel that most of the decisions at the stage of appeals and revision applications either at the Board level or at the Government level tend to be biased in favour of revenue without due regard to the facts of the case. The present appellate machinery is under the Department of Revenue. Even the revision applications are heard by an officer who is under the Ministry of Finance. Adjudication and appellate pro-

cedure was biased in favour of revenue and the assesseees do not get full justice.

6.22. It was also stated by them that the Department appellate machinery takes considerable time for setting disputes.

6.23. In this regard the Ministry have stated that the institution of Appellate Collectors of Central Excise was created keeping in view the basic principle of separation of executive and judicial functions. The appeal against an order-in-original passed by an officer subordinate to a Collector of Central Excise now lies with the Appellate Collector and not with the Executive Collector. Appeal against an order-in-original passed by the Collector of Central Excise is decided by the Member (Judicial) of the Central Board of Excise and Customs.

6.24. Neither the Appellate Collector nor the Member (Judicial) have been entrusted with an executive/administrative responsibilities that might interfere with their independent and impartial functioning.

6.25. As in the case of appellate authorities the revisionary authorities have also not been burdened with any executive or administrative functions that might interfere in the performance of their duties.

The appellate and revisionary authorities function in a quasi-judicial manner, follow the principles of natural justice and ensure that their decisions are independent.

6.26. According to the Ministry the feeling that the decisions at the appellate/revisionary stage are biased in favour of revenue "is not correct". It may be that the appellate and revisionary authorities are officers belonging to the Department, but they are very senior officers who are expected to act and do act in a quasi-judicial capacity. They are exclusively appointed for deciding appeals/revisions and do not have any administrative functions. Hence it will not be fair to presume that they would suffer from any administrative or revenue bias.

6.27. Furthermore, instructions have also been issued from time to time to the effect that these authorities should issue 'Speaking Orders', especially when rejecting the appeals and revisions, so that the party does not get the feeling that the decision arrived at is arbitrary and not based on the facts of the case.

6.28. A Member of Parliament has suggested that for reasons of economy, to start with, as an alternative to setting up of a sepa-

rate Tribunal for dealing with excise disputes, the jurisdiction of the Income Tax Tribunal may be enlarged to hear and decide excise disputes also.

6.29. A leading Chamber of Commerce has suggested that as in the case of Income Tax, the assessee under the Central Excise should be given the option after the first appeal either to go to the independent Appellate Tribunal or to go through the Departmental Appellate procedure.

6.30. In this connection it is noticed that a number of expert bodies such as the Taxation Enquiry Commission (1953-54), Customs Reorganisation Committee (1958), the Central Excise Reorganisation Committee (1968), the Working Group of Administrative Reforms Commission (1968), the Central Excise (SRP) Review Committee (1975) and more recently the Indirect Taxation Enquiry Committee (1978) have recommended that independent tribunal should be set up for dealing with the disputes relating to the Central Excise and Customs. In their report the Indirect Taxation Enquiry Committee (Jha Committee) (1978), recommended that:—

“A two-tier appellate machinery with a Tribunal independent of the Board for hearing appeals both on facts and law from the first court of appeal should be established. All relevant procedural provisions in the Income Tax Act, can, with suitable adaptations, be incorporated into the Central Excise and Customs Act, with the variation namely, that the procedure in vogue under the Income Tax Act whereby an assessee/department has to move the Tribunal for drawing up a statement of the case to the High Court be dispensed with.

6.31. As early as 1958 the Estimates Committee (2nd Lok Sabha) also in their 49th Report on the organisation of the Department of Revenue (Central Board of Revenue) had recommended that “the feasibility of setting up a separate Tribunal to deal with revision petitions independently of the Central Board of Revenue as suggested by the Taxation Enquiry Commission (1953-54) might be reconsidered.”

6.32. The Ministry of Finance have informed the Committee that the question regarding the setting up of an Appellate Tribunal for Central Excise disputes has been examined by the Government a number of times in the past. The system of an Appellate Tribunal has not *prima-facie* been found suitable for commodity

taxation. However, steps have already been taken to strengthen the existing appellate/revisionary machinery and to separate the quasi-judicial and executive functions at the appeal/revision stages.

6.33. During evidence, the Chairman, Central Board of Excise & Customs stated that in a number of cases, some sort of relief was available in appeal cases decided by the Bench. Out of 251 Central Excise appeals decided in 1978; number of appeals allowed were 42; number of appeals partly allowed and original order modified to give relief to the applicant 106; number of appeals rejected 103.

6.34. The witness expressed the view that the relief given was not only reasonable but fairly substantial. But the Public did not seem to be satisfied with this system and they had made the demand for a tribunal. Several committees had supported that demand but Government in its wisdom so far had not been able to agree to the demand. The witness added that from the point of view of the services, creation of Tribunals, various benches and so on would bring a larger prosperity to the services; more people will be employed. In spite of that, if Government had decided against it, they must have been convinced at least partially that the system of appellate tribunals may not, in the realm of commodity taxation, be totally a good thing.

6.35. The Chairman, Central Board of Excise & Customs further stated that the recommendation of the Jha Committee in this connection was under consideration of the Government and that a "decision will be taken shortly".

6.36. The Committee are unhappy over the inordinate delay in disposal of appeals and revision applications in respect of Central Excise disputes. The number of appeals pending with the Appellate Collectorates increased from 4,773 as on 31-12-75 to 7,880 as on 21-6-78. The number of appeal cases pending with the Central Board of Excise and Customs stood at 1,663 as on 30 June, 1978, out of which 359 cases were pending for more than 3 years, 380 between 2-3 years and 494 between 1-2 years. The number of revision applications pending with Government of India (Ministry of Finance) reached a record figure of 3,669 as on 1-11-78, out of which 280 cases were more than 3 years old, 365 cases 2-3 years old and 697 cases 1-2 years old. The annual disposal of revision applications during the years 1974-78 has been less than the number of fresh applications received. The Ministry have informed the committee that the delay in disposal of appeals and revision

applications has been mainly due to paucity of staff both at the decision making level and lower levels. With a view to expediting decisions on appeals pending with the Board one member of Central Board of Excise and Customs designated as Member (Judicial) has been posted to be in-charge of appeals exclusively with effect from 16-1-1978. One more member has assumed charge with effect from 14-8-78 and with two Members now dealing with appeals, the position is expected to improve. The Committee are surprised to note that the post of a Member in the Board who retired in September, 1975 was not filled till January 1978. The Committee are also informed that as per the present pace of receipt of revision applications, one more Joint Secretary and supporting staff are required in the Ministry. It is seen that questions pertaining to staff strength at various level are under examination. The Committee desire that an independent review of the personnel required at all levels and of the office procedures should be undertaken without delay. The review should aim at finding out ways and means of toning up the overall efficiency of the Departmental appellate machinery consistent with need for economy so as to speed up the pace of disposal of appeals and revision applications. The Committee are anxious that arrears of appeals should progressively be liquidated and time lag in disposal of cases cut down to the minimum. The Ministry should apprise the Committee within six months of the outcome of the review.

6.37. The Committee welcome the proposal to set up a Regional Revisionary Unit in the first instance, at Bombay on an experimental basis. They would like to be informed of the decision taken in the matter.

6.38. A large number of organisations of the industry have represented to the Committee that under the present system of departmental appellate machinery, the decisions given by the officers are revenue biased. They have suggested that independent appellate tribunal on the pattern of the Income tax Appellate Tribunal should be set up for dealing with disputes relating to Central Excise. In this regard, it is also noticed that a number of Expert Committee viz. Taxation Enquiry Commission (1953-54), Customs Reorganisation Committee (1958), Central Excise Reorganisation Committee (1963) Working Group of Administrative Reforms Commission (1968), the Central Excise (Self Removal Procedure) Review Committee (1975) and more recently the Indirect Taxation Enquiry Committee (Jha Committee) 1978 have also recommended setting up of appellate tribunal to adjudicate disputes relating to Excise and Customs. The Estimates Committee (Second Lok Sabha) also in their 49th Report had recommended

that the feasibility of setting up a separate tribunal for dealing with Central Excise disputes should be considered. But, the Committee, note, the idea of independent appellate tribunal had not found favour with the Government in the past though the matter, in the light of the Jha Committee's recommendation, is stated to be under consideration again. The system of appellate tribunal according to the Government has not prima facie been found suitable for commodity taxation. While denying the charge of bias, in favour of revenue in the decisions of departmental appellate officers, the Ministry have stated that the existing appellate and revisionary authorities, function in a quasi-judicial manner following the principle of natural justice and ensure that their decisions are independent. The Committee expect that the decisions of the Appellate Machinery should be objective and not subjected to any extraneous influence.

6.39. The Committee are unable to appreciate the Government's stand against the idea of an independent appellate tribunal for deciding excise disputes. What surprises the Committee is that Government have been disregarding expert opinion in this matter for nearly 25 years and have been persisting in the departmental appellate machinery in which the industry does not have full confidence. The Committee urge the Government to reconsider their earlier stand in this regard and institute without further delay. An independent appellate tribunal for settling disputes relating to excise and customs on the lines of the Income Tax Appellate Tribunal in deference to the near unanimous demand of the industry and oft-repeated views of the Government appointed expert bodies



## CHAPTER VII

### EVASION, INSPECTION AND SEIZURE

#### Section 'A'—*Evasion*

7.1. The scope and magnitude of evasion of Central Excise duty under the Self Removal Procedure (as introduced during 1968-69), as compared to the pre-S.R.P. period, came to be examined by the Central Excise (S.R.P.) Review Committee (1975) at considerable length. They found that complexities of tariff structure with differential rates of duty for different categories and sub-categories under the same item, grant of conditional exemptions subject to prescribed limitations and levels and higher rates of duty affecting small sector, provided for in-built incentive for evasion of duty.

7.2. Having found that evasion of duty (whether or not, caused by Self Removal Procedure) is pervasive, the Committee also made attempts and adopted various approaches to arrive at some broad quantitative estimate of evasion either in its totality or in terms of individual sectors of production. They, however, did not find it possible to do so. The following are their concluding observations:

“....on the basis of all the evidence we have had before us, we have reached the conclusion that evasion is considerable and, in certain sectors, pervasive. This is an inference we have drawn from the totality of what we have seen, heard and investigated. We consider it a perfectly valid conclusion based on what we have elsewhere called the general evidence. But such a conclusion has to be distinguished from quantification, just as quantification in turn has to be distinguished from a mere guess as to quantum....we are unable to quantify and unwilling to guess.”

7.3. In respect of tobacco the scope and magnitude of evasion of Central Excise duty was examined by the tobacco Excise Tariff Committee (1974). The Committee observed that the estimates of evasion of duty on tobacco can be considered as “guess estimates” only because the difficulties in quantifying the exact extent of evasion are the same as faced by the Central Excise (SRP) Review Committee.

7.4. This Committee observed that the burden of evidence even though circumstantial in nature, in its totality leads to the inescapable conclusion that substantial quantities of dutiable tobacco are in fact escaping payment of duty altogether. The extent of leakage was estimated by the Committee at about 25—30 per cent of the total unmanufactured tobacco.

7.5. The Ministry have stated that the *modus operandi* adopted for evasion was:—

- (i) Removal of goods without gate pass or incorrect gate pass.
- (ii) Substitution.
- (iii) Non-accountal or incorrect accountal of excisable goods.
- (iv) Non-declaration of land in the case of un-manufactured products.
- (v) Affixing of spurious banderols in the case of matches.
- (vi) Use of the same transport document for double transportation.
- (vii) Mis-declaration of value.
- (viii) Wrong description of goods or other mis-declaration leading to incorrect classification.
- (ix) Manufacture of excisable goods without taking out the requisite Central Excise licence.
- (x) Under-declaration of yield by growers/curers in the case of unmanufactured tobacco.
- (xi) Clearance of unmanufactured tobacco without Transport permit or misdeclaration of weight on the permit.

7.6. The total number of cases of evasion that came to the notice of the Government during the last 2 years was 24,422.

#### *Remedial Measures*

7.7. The Ministry have informed the Committee that under the Central Excise and Salt Act, 1944, and the rules and procedures framed thereunder there are suitable provisions for preventing evasion of excise duty.

7.8. There are Preventive Parties at the Collectorate headquarters as well as at the Divisional headquarters. The basic function of these parties is to gather information about the suspected units indulging in evasion of excise duty, and also conduct surprise checks on-route at odd hours.

7.9. There is also an Assistant Collector (Valuation) in most of the collectorates whose function is to scrutinise the various classification and price lists that have been submitted by the assesseees to ensure that the goods are being cleared at the correct rate of duty and that there has been no under-valuation with regard to goods chargeable to duty on an *ad valorem* basis.

7.10. There is also an institution of Internal Audit Parties. These Internal Parties visit the units on a prescribed scale and conduct detailed checks of the accounts maintained by the assessee and also undertake checks of stock to ensure that all goods produced have been properly and duly accounted for in the books of accounts.

7.11. Furthermore, to ensure that assesseees do not maintain duplicate sets of accounts etc. all books of accounts are required to be pre-authenticated by the Central Excise Officers before they are brought into use. Also, in the case of packed goods, provision has been made for affixing a running serial/batch number on the packages and to further prevent clandestine removal of goods; the hours of clearance in a day are prescribed by the Collector.

7.12. Under the Central Excise Rules, 1944, certain powers like powers to free access to the premises, equipment, stocks and accounts of firms licensed, powers to detain persons and examine goods, powers to stop and search conveyance etc. and seize goods which appear to be contraband etc. have been delegated to Central Excise Officers.

7.13. To ensure that an assessee does not attempt to under-declare his production, accounts in respect of principal raw material used in the manufacture of the finished goods have to be maintained and a quarterly return submitted to the Department. In case it is found that the ratio of raw-material consumed *vis-a-vis* the finished product is not normal, the Department can fix the norms of production and take action in the light of these norms.

7.14. Furthermore, with effect from 1st February, 1978 the procedure known as 'Production Based Control' has been introduced. This procedure, while not deviating from the essence of the Self Removal Procedure, incorporates certain modifications with a view to bringing about a more efficient control to ensure full accounting

of the production. With this end in view, the excise staff has been redeployed to carry out checks at various stages, such as on:—

- (a) receipt of duty paid goods for the use in the manufacture of finished goods;
- (b) receipt of duty paid goods returned to the factory for remaking, refining, etc.; and
- (c) receipt of goods cleared for export but returned to the factory for remaking, refining etc.

A close watch is also required to be kept on the production at various stages. The Central Excise Officers are required to make frequent checks on—

- (i) packing and filling operations;
- (ii) major raw materials used and their ratio *vis-a-vis* the finished goods; and
- (iii) checking of goods produced even at a stage prior to which they are considered completely manufactured.

7.15. In order to check evasion of duty on tobacco also certain measures were adopted, based on the recommendations of the Tobacco Excise Tariff Committee, to tighten up the procedures.

7.16. The Public Accounts Committee have in their reports on Central Excise commented upon a large number of cases of evasion of excise duty and suggested various remedial measures. In pursuance of the recommendations of the Public Accounts Committee that the functioning of Internal Audit in the Customs Houses and the Central Excise Collectorates should be streamlined and made more effective, a Directorate of Audit has been created as an independent wing in the Directorate of Inspection and Audit. The Director of Audit will coordinate all the Internal Audit activities and will also be required to carry out periodical inspections to assess and evaluate the performance of the Internal Audit parties in the field.

7.17. The preventive Organisation in the Collectorates have been strengthened. There is now a two-tier system of Preventive Control. Thus not only will the Collectorate Headquarters be having their preventive parties but the Divisional offices will also be maintaining their own preventive parties, provided with necessary equipment and vehicles.

7.18. In addition to the above steps the need of a Central Agency to coordinate the work relating to evasion of Central excise revenues

on all India basis to collect and pursue intelligence regarding such evasion had been felt for a long time. Accordingly, a separate Directorate of Anti-Evasion to deal with his vulnerable area has been set up in December, 1978.

7.19. During evidence, the representative of the Central Board of Excise and Customs stated that the Central Excise (SRP) Review Committee (1975) identified about 30 products in which evasion was "going on a large scale." The Department have set up a full-fledged Directorate of Anti-Evasion to deal with his vulnerable area has been Out of 23 Collectorates, 11 Collectorates have a Deputy Collector solely in charge of audit. Audit will be one of the major methods for checking evasion. Preventive parties have been set up in the Collectorate and the Divisions and the Board have prescribed detailed steps which should be taken like inspections by the Assistant Collectors etc.

#### *Fixing of Responsibility for Evasion*

7.20. A former Finance Secretary to Government has suggested in his memorandum to the Committee that "it is necessary to fix responsibility squarely for specified units on particular officers and personnel, so that if any evasion is subsequently detected at any of these units, there will be clear accountability, and the delinquent officers should be departmentally proceeded against. The officers should be encouraged to keep in close touch with the units in their charge, and to keep continuous watch on the manufacturing processes. They must also be conversant with the system of accounts maintained by the manufacturing units on their own".

7.21. Commenting on the above suggestion to fix responsibility on staff for leakage of revenue, the Chairman, Central Board of Excise and Customs stated during evidence that "it is not going to be possible to impose that type of responsibility that the moment there is any leakage the Inspector who is loaded with the responsibility of visiting the factory is to be held personally responsible. The first parameter and the first requirement would be that each factory should be individually manned by one or two Inspectors round the clock; otherwise there are various methods and various timings for evading duty, removing things and so on. Even the SRP has envisaged that the expenditure involved in such an arrangement will be so heavy that I do not know if the Government will seriously consider that. The system envisages a very close supervision on the manufacturing process. We tried it in one or two commodities and we have come to the conclusion that it should be only where it is very necessary."

7.22. The witness further added that "where it is established that an officer due to carelessness or lack of devotion to duty is responsible for leakage of revenue, undoubtedly he should be proceeded against. But the mere fact that there has been a leakage of revenue and the man must be held responsible, I do not think we will be able to hold him like that."

7.23. The Committee are concerned to note that there is considerable evasion of excise duty by unscrupulous manufacturers. During the last two years Government came across as many 24,422 cases of evasion. According to the Ministry, the modus operandi adopted for evading excise duty were removal of goods without gate pass, non-accountal of excisable goods, wrong declaration or description of goods etc. The Public Accounts Committee have also referred to a large number of cases of evasion of excise duty in their reports and suggested remedial measures.

7.24. The Committee have been informed by the Ministry that a number of steps have been taken by Government to prevent evasion of duty. Among the steps reported to have been taken was the introduction of Production Based Control which incorporates certain modifications in Self Removal Procedure with a view to bringing about more efficient control. The Internal Audit and Preventive Organisation in Central Excise Collectorates have also been streamlined. Besides these, a Directorate of Anti-evasion was set up in December, 1978 with a view to coordinating the anti-evasion activities on an All India basis and collecting and pursuing intelligence regarding evasion of excise duty.

7.25. While taking note of the various anti-evasion measures taken by the Central Board/Ministry, the Committee would like to observe that they would judge these measures only by the results achieved. The Committee are well aware that it is not easy as opined by the SRP Review Committee (1975), to quantify the extent of evasion of excise duty. However, in the absence of comparative assessment of the magnitude of evasion from time to time, it would not be possible to say whether evasion is on the increase or decrease and whether the anti-evasion measures are producing results or not. The Committee feel that evolution of some empiric, though loose, yardsticks to attempt a guess, if not an estimate, about the extent of excise evasion is very necessary and that a fresh and determined bid may be made for the purpose. While examining the matter, Government may, inter alia, consider whether comparing the rate of growth of industrial production, particularly in big units (in respect of which growth figures can become available) individually and collectively,

with the growth of excise revenue can give any clue or whether any inference can be drawn from the number and value of evasion cases detected by the preventive and audit organisations. If the growth of excise revenue is not found to be keeping pace with industrial production in any unit or collectorate or if there is increase in evasion cases detected by preventive organisations, the inference should be obvious and the Government should intensify anti-evasion measures in the units or areas concerned.

The Committee cannot over-emphasise the need for keeping all the anti-evasion measures under constant watch and to make them more effective from time to time in the light of experience.

7.26. The Committee would also like the Government to consider evolving an incentive scheme to encourage the excise staff to detect cases of tax evasion more vigorously and bring the culprits to book.

7.27. The Committee take note of the suggestion made by a former Finance Secretary to fix responsibility for specified units squarely on particular officers and staff so that if any evasion is subsequently detected in any of the units under their charge, the delinquent persons can be departmentally proceeded against. The Committee see force in the view held by the Chairman of the Central Board that "it is not going to be possible to impose that type of responsibility". The Committee, however, feel that normally there could be no evasion without the complicity of the excise staff. While they would not like any unjust or arbitrary system to be introduced to harass individual officers for tax evasion except when the evasion is proved to have taken place due to their carelessness or complicity, they feel that a sense of responsibility has got to be inculcated amongst the excise officers and staff and those officers and staff who are found unable to check malpractices in the production units in their jurisdiction should be held accountable for their action and inaction leading to loss of revenue.

7.28. It has been the view of export bodies that evasion has been pervasive all these years. In the opinion of the committee the evasion appears to be almost inherent in the present system of excise control which involves a very large number of excise assessees, big or small, spread throughout the length and breadth of the country. The task of reducing tax evasion would become easier if the recommendation made by the Committee in para 1.37 for levying excise as far as possible either at the source or at the finished product stage were to be implemented. This simplification and rationalisation in the system would make control over excise evasion more effective and go a long way in checking evasion.

## **B. Inspection & Seizure**

### **(i) Inspection and Seizure**

7.29. It has been represented to the Committee by a large number of non-official organisations that sometimes officers are found to be over zealous and that they indulge in repeated inspections. The inspections are sometimes made in such a manner and at such hours that assessees are put to a lot of inconvenience and economic loss. Sometimes seizures are made without advancing any ground or any reasonable grounds.

7.30. The Ministry have informed the Committee that under the Central Excise law, necessary action is taken in terms of rules 197, 199, 200, 201 and 202 of the Central Excise Rules read with Section 12 of the Central Excises and Salt Act, 1944 whereunder certain provisions of the Customs Act, 1962, relating to the powers of search, seizure and arrest and confiscation of goods etc. have been made applicable on the Central Excise side as well. Instructions have also been issued by the Department to the officers that when conducting raids they should show their identity cards, the search/seizure warrants and give proper receipts in respect of the papers/records that are impounded by them. Instructions have also been issued to the effect that unnecessary harassment should not be caused to the trade by conducting repeated searches specially when an earlier search has proved fruitless. In order to ensure that searches are conducted with due and sufficient cause, instructions have been issued that as far as possible searches should ordinarily be carried out only under the order of an Assistant Collector or of a higher officer.

### **SEIZURES ON GROUND OF TECHNICAL INFRINGEMENT AND EXCISE LAWS**

7.31. It has been stated by a number of representatives of Industry that on many occasions the Central Excise Division proceeds against the assesseees on trivial technolerial issues and minor book keeping irregularities. In large organisations maintaining records scattered over a wide area, some *bona fide* mistakes may crop up resulting in minor violations of the Central Excise Rules. Yet very few officers take note of the reasons but merely follow the printed letters.

7.32. In this regard, the Ministry have stated in a written reply that the Department have issued instructions detailing the circumstances in which seizures should be made. The Ministry have also stated that contravention of the Central Excise Rules, 1944 can be either of a serious nature involving evasion of duty or of a purely technical nature not involving any Central Excise duty as such. However, the very fact that there has been a contravention of the Central Excise Rules makes the excisable goods liable to confiscation



in law. It is necessary that the Central Excise officers seize such goods in law. To give discretion to Inspectors to judge and decide for himself to decide the nature of a contravention, and not to seize goods involved in what he decides is a purely technical offence will not be a step in the right direction. It is, hence, with a view to discourage seizures on purely technical and flimsy grounds that the detailed instructions have been issued. According to these it has been made incumbent that the Assistant Collector will review each case of seizure within 48 hours of the receipt of the seizure report; if it is found that the circumstances do not warrant seizure of the goods he can order the lifting of the seizure and inform the partly, the seizing officer and the adjudicating officer accordingly.

7.33. In order to avoid vexatious seizures etc. Section 22 of the Central Excises and Salt Act, 1944 provides for punishment of an officer by imposition of a fine which may extend upto Rs. 2000 or with imprisonment for a term which may extend upto two years or both. The Ministry have informed the Committee that "no officer has been punished under Section 22 of the Central Excise Act during the last three years."

7.34. During evidence, the Chairman, Central Board of Excise and Customs stated that "so far as technical offences are concerned instructions have been issued that there need be no seizures and in turn some small penalty can be imposed. In larger cases where bigger issue are involved seizures are the right thing but there also we have made the provision for provisional releases."

He added:

"After the seizure has been made the case must be put up to the Assistant Collector who should see whether the seizure was well-deserved or not. From the past practice the improvement that has been made is that the Assistant Collector should immediately go through and take an immediate decision as to whether the seizure was right or not."

7.35. At the Committee's instance the Ministry furnished the following statement indicating the number of seizures made during 1975-76 and 1976-77:

Sl. No.	Name of Collectorate	No. of seizures	
		1975-76	1976-77
1	2	3	4
1. Ahmedabad	. . . . .	162	186
2. Shillong	. . . . .	78	124
3. Bangalore	. . . . .	583	627
4. Calcutta	. . . . .	165	312
5. Delhi	. . . . .	193	195
6. Madurai	. . . . .	372	485

1	2	3	4
7.	Goa . . . . .	2	2
8.	Bhubaneswar . . . . .	143	252
9.	Madras . . . . .	912	1176
10.	Guntur . . . . .	1255	1396
11.	Cochin . . . . .	605	555
12.	Chandigarh . . . . .	371	433
13.	Baroda . . . . .	378	477
14.	Indore . . . . .	367	538
15.	Nagpur . . . . .	178	102
16.	Hyderabad . . . . .	700	782
17.	Jaipur . . . . .	113	117
18.	Bombay . . . . .	300	384
19.	West Bengal . . . . .	599	604
20.	Pune . . . . .	345	318
21.	Patna . . . . .	372	544
22.	Allahabad . . . . .	558	470
23.	Kanpur . . . . .	425	425
		9076	10504

7.36. From this statement it is noticed that some Collectorates there were very large number of seizures, viz., (in 1976-77) Gantur 1396, Madras 1176, Hyderabad 782, Bangalore 627, Cochin 555 while in some major Collectorate e.g. Ahmedabad 186, Delhi 195, Calcutta 312, Pune 318 and Bombay 384, seizures were comparatively less. Referring to some of the representations received from industry during study tours that some excise officials are overzealous and indulge in repeated seizures, the Committee desired to know from the Ministry the reasons for large number of seizures in some Collectorates. The representative of the Central Board of Excise and Customs replied during evidence that "it is correct that some of the seizures were not on very sound grounds but, as has been mentioned, we have now enjoined that once a seizure has been made, within 48 hours, it should be brought to the notice of the Assistant Collector and he has to make up his mind as to whether to proceed with the case or not. I presume on account of this a lot of these cases will get liqui-

dated." The Ministry also subsequently stated that an analysis was got conducted by the Collectors of Central Excise, Guntur, Madras, Hyderabad, Bangalore and Cochin. These Collectorates have a good deal to do with tobacco excise, coffee etc. Large number of cases were accounted for by offences like transport of unmanufactured tobacco and coffee without valid transport permits, irregularities committed by warehouse licensees, non-accountal of production of branded bidis, matches being unbanded or affixed with forged banderols etc. The seizures were effected by Central Excise officers during the course of preventive or surprise checks as a part of their normal duty; there was no indication of these seizures being due to over-zealousness on the part of the officers.

7.37. It has been represented to the Committee by a number of non-official organisations that sometimes officers are found to be over-zealous and they indulge in repeated inspections putting the assesseees to a lot of inconvenience and economic loss. The Committee are informed by the Ministry that instructions have been issued to the staff that unnecessary harassment should not be caused to be trade by conducting repeated searches and that as far as possible searches should ordinarily be carried out only under the orders of Assistant Collector or of a higher officer. The Committee note that the number of seizures made rose from 9076 in 1975-76 to 10504 in 1976-77. During these years, as compared to the seizures made in comparatively bigger collectorates like Ahmedabad, Delhi, Calcutta and Bombay, the number of seizures made in some collectorates like Guntur, Madras, Hyderabad, Bangalore and Cochin was quite high. This was stated to be due to irregularities and offences committed by tobacco, coffee and match box producers and not due to over-zealousness on the part of officers. With a view to discouraging seizures on purely technical and flimsy grounds, the Ministry have issued instructions according to which it has been made incumbent that the Assistant Collector should review each case of seizures within 48 hours of the receipt of the seizure report. During evidence, the representative of the Central Board of Excise and Customs admitted that "it is correct that some of the seizures were not on very sound ground", but surprisingly during the last 3 years no officer has been punished under Section 22, which provides for punishment of an officer guilty of vexatious seizures with fine or imprisonment or both. In the opinion of the Committee, there is a strong case for regular monitoring of all searches and seizures and their review by senior officers in order to see that searches and seizures are made only under the orders of authorised officers and on reasonable grounds and if, as a result of review, any seizures are found to have been

carried out on purely technical or flimsy grounds or due to over-zealousness or malice on the part of excise staff, the staff concerned should be suitably dealt with.

7.38. It has also been brought to the notice of the Committee that on many occasions the excise officers proceed against assesseees on trivial techno-clerical issues. In a written reply the Ministry stated that where a contravention of the Central Excise Rules making excisable goods liable to confiscation is detected, it is necessary that the Excise Inspector seizes such goods in law. According to the Ministry allowing discretion to the Inspector not to seize the goods involved just because it appears to him to be a purely technical offence "will not be a step in the right direction" though instructions to discourage seizures on purely technical or flimsy grounds have been issued to the staff. During evidence, however, the Chairman of the Central Board stated that "so far as technical offences are concerned, instructions have been issued that there need be no seizures and in turn some small penalty can be imposed". There is obviously an ambiguity between what the Central Board stated in written reply and what the Chairman of the Central Board stated during evidence. The Committee would like the Central Board/Ministry to look into this matter and make the position clear beyond doubt for the guidance of the excise officers.

#### (ii) Disposal of Seizure Cases

7.39. Some of the representatives of industry represented to the Committee that seized goods were often kept pending for a long time causing business loss.

7.40. In this regard, the Ministry have stated that a detailed time schedule has been fixed for disposing of seizure cases but "it has not been always possible to stick to the time schedule as in complicated cases involving scrutiny of the assessee's records, investigations take longer time. Further before, disposal of all the seizure cases, the assessee has to be given reasonable opportunity to explain his case and the principles of natural justice have to be observed; this is a time consuming process". Instructions have however, been issued by the Ministry recently to the collectors to dispose of adjudication cases expeditiously.

7.41. Asked about the actual time taken for disposing seizure cases, the Ministry have stated that the time taken to investigate a case after seizure varies depending on the complexities of the case. In simple cases, usually, investigation is completed within 2 months; in complicated cases it takes 5-6 months. Every effort is made by

the Department to adjudicate seizure cases as early as possible. However, taking into account various factors, such as the non-availability of the party, extensions of time asked for, for replying to the show cause notice, adjournment allowed for personal hearing, etc., it is noticed that generally speaking the time taken for adjudicating a case is about 6 months.

7.42. Seized goods do not have to necessarily remain in the custody of the Department till the finalisation of adjudication proceedings. According to the provisions of rule 206 of the Central Excise Rules, 1944, anything seized by a Central Excise Officer, may, pending the orders of the adjudicating officer, be released to the owner on taking a bond from him with such security as the Collector may require.

7.43. Seized goods where provisional release is not secured by the owner have ordinarily to be kept by the Department in its custody till the finalisation of adjudication proceedings.

7.44. In case of perishable goods, however, it is not merely permissible but obligatory on the part of the Departmental authorities to sell them before they deteriorate and to keep the sale proceeds in deposit with them in order to protect the interest of the party concerned. The sale proceeds are returned to the owner if it is eventually held that penal action was not justified; if on the other hand, it is held that the goods would have been confiscated, the confiscation of the sale proceeds in lieu of the physical goods is effected.

7.45. In respect of goods that are ordered to be confiscated, the owner is given an option, to redeem them on payment of specified fine in lieu of confiscation within the specified period. In case this option is not exercised, the goods are sold, or otherwise disposed of in such manner as the collector may direct.

7.46. A show-cause notice has to be issued within a period of 6 months from the date of seizure of the goods, failing which the goods have to be returned to the person from whose possession they were seized. This period of 6 months may be, however, on sufficient cause being shown, extended by the Collector for a further period not exceeding 6 months.

7.47. The Ministry have further stated "no statutory time-limit has been-or in the nature of things, can be-prescribed for finalisation of an adjudication proceeding."

7.48. At the instance of the Committee, the Ministry furnished the following statement (October, 1978) indicating the time taken for issue of show-cause notice, and adjudication etc. relating to seizures made in 1976-77:—

Sl.  
No.

Name of the Collectorate

Sl. No.	Name of the Collectorate	No. of seizures		No. of cases dropped after investigation		Time taken for issue of seizure		No. of cases adjudicated		Total No. of case still pending					
		Less than 6 months	Bet. 2 & 3 months	Bet. 4 & 6 months	Less than one month	Between 2 and 3 months	Between 4 & 6 months	Within 3 months	Between 3 & 6 months	more than 6 months					
1	Ahmedabad	.	.	.	186	8	12	15	30	133	5	31	121	157	9
2	Shillong	.	.	.	124	3	—	81	27	11	70	30	19	119	—
3	Bangalore	.	.	.	627	2	6	199	270	154	230	145	217	592	26
4	Calcutta	.	.	.	312	—	3	38	80	190	30	32	155	217	91
5	Delhi	.	.	.	195	2	4	25	43	127	34	34	158	192	3
6	Madurai	.	.	.	485	4	24	82	81	271	46	83	298	427	28
7	Goa	.	.	.	2	—	—	2	—	—	2	—	—	2	—
8	Bhubaneswar	.	.	.	252	2	1	100	86	64	33	95	93	222	15
9	Madras	.	.	.	1176	10	17	417	416	332	458	305	328	1121	10
10	Guntur	.	.	.	1396	3	16	459	368	548	417	302	635	1354	21
11	Cochin	.	.	.	555	2	14	158	174	191	184	202	139	552	3
12	Chandigarh	.	.	.	433	—	3	10	169	121	95	156	159	400	17
13	Baroda	.	.	.	477	—	11	30	101	215	41	94	248	394	83
14	Indore	.	.	.	538	5	13	12	270	170	207	163	126	526	12

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)
15	Nagpur . . . . .	102	—	—	6	76	16	9	46	27	23	102	11
16	Hyderabad . . . . .	782	22	29	31	174	357	158	297	230	170	779	3
17	Jaipur . . . . .	117	4	2	1	24	56	30	18	44	45	107	3
18	Bombay . . . . .	384	2	5	12	23	74	268	51	42	146	258	126
19	West Bengal . . . . .	604	1	—	—	233	221	148	223	225	148	591	12
20	Pune . . . . .	318	3	1	11	81	80	142	66	67	164	297	6
21	Patna . . . . .	544	5	4	11	183	193	148	166	117	104	387	137
22	Allahabad . . . . .	470	—	2	—	73	211	183	88	170	158	417	50
23	Kanpur . . . . .	425	2	3	6	84	156	175	38	102	221	372	53
		10504			207	2697	3479	3888			3875	9585	719

7.49. Asked about the reasons for the large number of seizure cases pending to be disposed in Patna (137), Bombay (126), Baroda (83) and Calcutta (91) excise collectorates, the Ministry have stated that a sample survey was also got conducted by the Collectors of Central Excise, Bombay, Calcutta and Baroda regarding the large number of seizure cases pending at the end of 1976-77. Generally speaking, reasons for pendency were:—

- (a) Extension of time sought for by parties for replying to show-cause notices;
- (b) Cross-examination of witnesses;
- (c) Postponement of personal hearings.
- (d) Chemical testing or retesting of samples of seized goods;
- (e) Complicated nature of the cases; and
- (f) Cases involving similar issue pending with the Appellate authority and/or Courts of law.

7.50. It has been represented to the Committee that seized goods are often kept pending for a long time causing business loss. The Committee are informed by the Ministry that every effort is made by the Department to adjudicate seizure cases as early as possible but it being a time consuming process, generally it takes about 6 months. According to the Ministry "no statutory limit has been—or in the nature of things, can be—prescribed for finalisation of an adjudication proceeding". The Committee note that in 1976-77 out of 9585 seizure cases adjudicated, nearly 40 per cent of the cases (3885) took more than 6 months and over 700 seizure cases pertaining to that year have been pending till October, 1978 (i.e. even after the lapse of 1½ years). These figures reveal rather unsatisfactory picture of the Department's efficiency in this field. The efforts of the Board to get the seizure cases disposed of within a period of six months have not been effective. The Committee feel that in order to introduce a sense of urgency in dealing with seizure cases, it is necessary to fix a statutory limit of 6 months to dispose of such cases; and if the seizure cases are not disposed of within the statutory period of six months; the goods should be released.

#### (ii) DELEGATION OF POWERS TO ARREST AND TO SUMMON PERSONS TO GIVE EVIDENCE

7.51. Section 13 and 14 of the Central Excise and Salt Act, 1944 confer Powers to arrest and Powers to summon person to give evidence as follows:



(i) Section 13—*Power to arrest*

Any officer not inferior in rank to an Inspector has been authorised in this behalf; provided that in the case of a factory as defined in the Factories Act, 1948 (63 of 1948) no owner or manager thereof shall be arrested without the written consent of an Assistant Collector.

(ii) Section 14—*Power to summon persons to give evidence and produce documents in inquiries under this Act.*

Any officer not inferior in rank to a Superintendent has been authorised with reference to the powers to be exercised under Section 14.

For the purposes of section 14, the Central Government have empowered all Inspecting Officers of the Directorate of Inspection, Customs and Central Excise who have been invested with the powers of Central Excise Officer under that section by the Central Board of Revenue.

7.52. It is seen from above that powers to arrest a person other than the owner or manager of a factory have been delegated to an Inspector (a non-gazetted officer) but the powers to summon for evidence and to conduct enquiry have been delegated to a Superintendent. (a Gazetted Officer)

7.53. The Ministry have stated that the powers of arrest under the Central Excise law no doubt vest with the Inspector and those of summon with the Superintendent, but this was on account of the fact that the powers of arrest have to be exercised on the spot. A Central Excise Officer on field and preventive duties is required to travel to distant places remote from the headquarters of senior officers. If during the course of such a visit he is required to arrest a person it is imperative that he is given the necessary powers to do so.

7.54. However, the owner or a manager of a factory is not a person likely to abscond or will not otherwise be easily untraceable. An exception has hence been made regarding their arrest, which should be done only with the written consent of the Assistant Collector.

7.55. Moreover, under section 13 of the Act from which the power of arrest is generally derived, an Inspector may arrest only such persons whom he has reason to believe will be punishable under the Act. In other words a person should be arrested only

when it is intended to prosecute him in a court of law and not otherwise.

7.56. Summoning of a person on the other hand does not require the same urgency of execution and hence powers to do so have been vested in a Superintendent who should exercise them after carefully going through the case records etc.

7.57. Moreover, the powers of arrest given to the Inspector have certain inbuilt safeguards. Arrest is to be made in accordance with the provisions of the Code of Criminal Procedure. A person who is arrested has to be produced without delay either to the nearest Central Excise officer empowered to send the person so arrested to a Magistrate or if there is no Central Excise officer to the officer-in-charge of the nearest Police station. In case the arrested person is sent to an officer-in-charge of the Police station, the said officer shall either admit the person arrested to bail to appear before the Magistrate or in default of bail forward him in custody to such Magistrate. In case the arrested person is taken to a Central Excise officer the Central Excise officer shall proceed to enquire into the charges made and if he finds that there is sufficient evidence or reasonable grounds of suspicion against such person, either admit him to bail to appear before the Magistrate or forward him in custody to such Magistrate. In case the Central Excise officer finds that there is no sufficient evidence or reasonable grounds of suspicion he shall release the person on his executing a bond to appear before a Magistrate as and when required.

7.58. It will thus be seen that the powers of arrest have been conferred on an Inspector on account of the expediency mentioned above, and not because the Central Government feels that arrest is a less serious action than summoning of a person.

7.59. The Ministry have also stated that no review of the exercise of powers of arrest have been made in the recent years.

7.60. A number of non-officials and organisations have represented in the Committee that excise officers, particularly at the lower levels goaded by revenue considerations often harass the assesseees.

7.61. During evidence the Committee were informed that the powers to arrest and search under Section 13 and 26 had been delegated from 7 December, 1957. With regard to the exercise of these powers, the representative of the Central Board of Excise & Customs (CBEC) stated "figures were collected from the Collectors. They all say that there has been no case of misuse of

powers which has come to their notice". Supplementing this the Chairman CBEC, stated that on the excise side arrest was "almost a rare phenomenon."

7.62. The Committee note that the powers to arrest a person other than owner or manager of a factory have been delegated to Inspectors (who are non-gazetted officers) whereas the power to summon someone for evidence or enquiry has been delegated to an officer of a higher rank, viz., superintendent (a gazetted officer). This delegation was made in 1957. A Central Excise officer on field and preventive duties is required to travel to distant places remote from the headquarters of senior officers. If during the course of such a visit he is required to arrest a person according to the Ministry, it is imperative that he is given the necessary powers to do so on the spot. The power of arrest which the Ministry say has certain in-built safeguards, is stated to have been conferred on an Inspector on account of expediency. The Ministry have informed the Committee that no review of the exercise of these powers has been made though arrest for infringement of excise law was "almost a rare phenomenon". In this regard some representatives of the Industry have stated that the excise officers, particularly at the field level, on revenue considerations, often harass the assesseees. The Central Board have contended that no case of misuse of these powers have come to their notice.

7.63. The Committee would like that the delegation of power of arrest made over two decades ago to lower level officers like Inspectors should be reviewed in the light of experience and requirements of the changed situation. They feel that powers of arrest should be delegated only to responsible officers who will not misuse or even threaten to misuse these powers.

## **CHAPTER VIII**

### **CENTRAL EXCISE ADMINISTRATION**

#### **A. Organisational set up**

##### **(i) Set up of the Central Board and Collectorates Central Board of Excise and Customs:**

8.1. The Central Board of Excise and Customs is one of the two statutory Boards under the Central Board of Revenue Act, 1963 (Act No. 54 of 1963). It comprises Chairman and six Members functioning as Ex-Officio Additional Secretaries to the Government of India.

8.2. The main functions of the Central Board of Excise and Customs are to formulate policy for levy and collection of Indirect Taxes (Customs Central Excise duties etc.), anti-smuggling operations. The Board also serves as Administrative Appellate authority for subordinate organisations viz. Customs and Central Excise Collectorates.

8.3. The Board have also under them attached and field organisations such as the Directorates, the Collectorates of Central Excise. Collectorates of Customs and Central Bureau of Narcotics.

#### **Central Excise Collectorates**

8.4. In the Central Excise Department, the Collector's charge is organised on territorial basis and its jurisdiction is specifically notified under the Central Excises Rules. Presently, there are 23 Central Excise Collectorates. The size of jurisdiction, the amount of revenue, variety of duty-paying units and the subordinate field formations of the present Collectorates show very wide divergencies.

8.5. The lowest field formation, formed on either territorial or functional basis is a "Range" placed under a Superintendent of Central Excise. A number of such ranges constitute a "Division" under an Assistant Collector. Some ranges are Multiple Officer Ranges headed by Superintendents. A number of such divisions constitute a "Collectorate" (normally it is 4-8 divisions. The Divisions are generally constituted on territorial basis. However, in some cases,

notably in metropolitan cities with large concentration of industrial units, the Divisions can be assigned a functional jurisdiction.

### *Industry-wise Organisation of Field Formations*

8.6. It has been suggested in a memorandum to Committee that instead of zonal jurisdiction, the Collectorates may be re-organised industry-wise so that the officials concerned are able to develop specialisation in specified fields. Under the present system of area-wise division, a division has to deal with all excisable products within its jurisdiction and this does not allow specialisation to develop and the task of officers becomes more complicated. The ideal system, it has been suggested, would be to have area-cum-industry-wise divisions.

8.7. Commenting on this suggestion the Chairman, Central Board of Excise and Customs stated during evidence that there would be some convenience in having industry-wise Divisions, but jurisdictionally, in the same area several officers would be visiting. When pointed out that in Bombay Collectorate, industry-wise Divisions operate, the representative of the Central Board of Excise and Customs stated that "in Bombay in particular areas like Parel and Worli in cases like that, where they have got a large concentration of textile industries, the particular Assistant Collector who goes there in the textile area will be a man who has got some specialisation in textiles. Only to that extent, otherwise, the division is territorial."

8.8. The witness also stated that in Calcutta Excise Collectorate, a different pattern of combination of functional and territorial division was being experimented with. According to him "at one particular point, there will be certainly overseeing of the work of others so that there is no divergence at that level."

8.9. The Committee note that at present Central Excise Collectorates have been organised on territorial basis under the charge of a Collector. A Collectorate consists of 4—8 Divisions each organised by and large on territorial basis under the charge of an Assistant Collector. It has been suggested to the Committee that in order to develop specialisation in specific fields amongst the officials the collectorates may be re-organised industry-wise or area-cum-industry-wise. The Committee were informed that in Bombay and Calcutta Collectorates, certain patterns of functional-cum-territorial Divisions are being experimented with. There is, of course, an obvious advantage in carving out Divisions within a Collectorate on the lines suggested above provided it can be ensured that the territorial

spread of an Assistant Collector's charge does not become too wide and far flung for effective control. The Committee would suggest that the working of area-cum-industry-wise Divisions in Bombay and Calcutta should be evaluated and the pattern with necessary improvements extended to more Collectorates, especially those where there is concentration of industries of same or similar character.

## **(ii) Public Relations Set up**

8.10. The Ministry have informed the Committee that an officer of appropriate grade and scale of pay, depending upon the need, is functioning as Public Relations Officer (PRO) in every Central Excise Collectorate and Divisional Office. Usually an officer of the status of an Assistant Collector or Superintendent (Grade I) is the PRO at the Collectorate Headquarters and an officer of the status of a Superintendent (Gr. II) or Inspector in the Divisional Offices. No posts of PRO have been specifically created for the purpose.

8.11. The Collectors have been advised by the Ministry that the PRO should be located at an easily accessible place in their office, and the public should know where he can be contacted. This officer on his part should be able to direct the person concerned to the proper quarter if he himself does not readily have the necessary knowledge or information with him.

8.12. A number of representatives of industry represented to the Committee that the present public relations set up in the Central Excise organisation was not satisfactory. It was also represented that there is considerable communication gap between the assesseees and officials, particularly at the senior levels. In this regard it has been suggested that in each Collectorate an officer of the rank of Assistant Collector should be designated exclusively to guide and advise the assesseees on various procedural and other aspects of Excise laws.

8.13. During evidence, the Chairman, Central Board of Excise and Customs welcomed the above suggestion. To a point that some specialised knowledge for carrying out the work of PRO would be necessary, the witness replied that "PRO will have to be such a person who is obviously conversant with various procedures "

## **Library of Excise Notifications etc.**

8.14. It has also been suggested by a leading Chamber of Commerce that each Central Excise Collectorate and the offices under

it should maintain a library containing all relevant publications and records in regard to Central Excise and also notifications and circulars which may be made available to the assesseees for perusal. Copies of the publications as required by the industry may also be made available to them, if necessary, on nominal payment.

8.15. The representative of the Central Board of Excise and Customs during evidence stated that the Board were in "full agreement with this suggestion. The Public Relations Officers are supposed to maintain this library."

8.16. The Committee find that though officers of various ranks are functioning as Public Relations Officers at the Headquarters of Central Excise Collectorates and the Divisional Offices, the industry is not satisfied with the present public relations set up and it feels that there is considerable communication gap between the assesseees and officials particularly at the senior levels. The Committee would like that the suggestion made by the industry and welcomed during evidence by the Chairman, Central Board, to designate senior and experienced officers at Collectorate and Divisional levels exclusively to guide and advise the assesseees in various procedural and other aspects of Excise laws, should be given a concrete shape and implemented to meet the needs of industries, particularly the small assesseees who may not be able to engage the services of private experts.

8.17. The Public Relations Officers should maintain upto date sets of excise rules, regulations, notifications and other publications and make them available to assesseees for reference purposes. They should also make available copies of these publications/notifications on sale.

### **B. Matters relating to Officials**

#### **(i) Inducting Technical Personnel in Central Excise Organisation**

8.18. It has been stated in a memorandum to the Committee that:—

"With all respect to the hard-working Excise personnel one should admit that their knowledge of technology is rather limited. The non-technical Excise staff are expected to understand the intricacies of engineering products, chemicals or plastics and assess and guide the industry. We have not come across a Chemist or an Engineer in the Excise Department staff"

8.19. The Ministry have informed the Committee that there would certainly be a number of graduates in Chemistry and other science subjects among the Central Excise staff at lower levels. So far as Group 'A' officers are concerned, 50 per cent of the posts are filled by direct recruitment through the competitive examination conducted by the Union Public Service Commission, where the educational qualification required include a Degree in Engineering. Among Group 'A' officers are concerned, 50 per cent of the posts are filled in engineering.

8.20. Direct recruits to the posts of Inspectors are given adequate training, which includes visits to factories, production units and tobacco fields so that they acquaint themselves with the method of production, materials and general working of the factories. For the rest, they have to learn on the job as new employees have to do in many other occupations.

8.21. The question of induction of persons holding technical qualifications in the cadres of the Central Excise and Customs Departments has been engaging the attention of the Central Board of Excise and Customs from time to time. It has been decided to make a beginning in this direction by reserving 100 posts in Group 'B' for experts in various technical fields. Action to recruit persons against these posts is being taken through the Union Public Service Commission.

8.22. The Committee find that the need for having technical staff in the Central Excise Department who can understand the intricacies of engineering products, chemicals, plastics etc. has been pointed out by the industry and recognised by the Excise Department. The Committee are informed that among Group 'A' officers directly recruited through UPSC, there are graduates not only in science but also in engineering and that at lower levels also there are a number of graduates in Chemistry and other disciplines of science. Recognising the need for inducting persons holding technical qualifications in the cadres of Central Excise and Customs Department it has been decided by the Ministry to make a beginning in this direction by reserving 100 posts in Group 'B' for experts in various technical fields.

8.23. While this welcome decision will help the Central Board fill gaps for the time being, the Committee would like the Board to consider making it a regular feature of their personnel policy so that they can, from time to time, strengthen their organisation



at various levels to be able to cope with the intricacies of engineering and other sophisticated products. For this purpose the Central Board will do well to assess the requirements of technical staff and officers in various fields from time to time and do the necessary career planning for them.

*(ii) Training of Officers*

8.24. The Ministry have informed that the Directorate of Training has been set up to look after to the training needs in respect of various categories of officers and staff of the Central Excise and Customs Departments. It has under it a Central Training Institute at New Delhi and Regional Training Institutes at Bombay, Madras and Calcutta. The Central Training Institute imparts initial training to Group 'A' direct recruits to the Indian Customs and Central Excise Service, arranges for refresher courses for Assistant Collectors of Customs and Central Excise and provides for initial and refresher training for Group 'B' and Group 'C' executive staff of the North Zone Collectorates of Central Excise. The Regional Training Institutes provide initial training to Appraisers of Customs and Superintendents of Central Excise, Preventive Officers and Examiner of Customs and Inspectors of Central Excise, and arrange for refresher courses for Group 'B' and Group 'C' executive staff functioning in the two departments.

8.25. Keeping in view the needs of both the Customs and Central Excise Departments and within the resource—constraints in terms of man-power (faculty and supporting staff) and physical facilities (accommodation by way of hostels, lecture-halls, etc.) the institutes have been trying their best to bring within the fold of training as many officers as possible. The courses conducted are generally in the nature of induction, general and specialised refresher, combined courses on classification and valuation, specific commodities, etc. etc.

8.26. The Indirect Taxation Enquiry Committee—Jha Committee (1978) has recommended that in the context of the growing complexity of custom and excise administration and with the switch over to more account based controls under excise, there is an immediate need to reorient the training of the officers to meet the professionalised needs of administration.

8.27. In this regard the Ministry have stated that the Government are aware of the need for improving and extending the benefits of training to all the officers and staff in the Department, and

the question of strictly expanding the staff and facilities for training has been under consideration. In the meantime, in order to meet very urgent needs, arrangements have been made by diversion of some staff from the Collectorate.

8.28. At present the Directorate Headquarters and the Regional Training Institutes are housed in hired buildings. However, the Directorate has been making all endeavours to acquire land so that their own building could be constructed to meet the growing needs for large accommodation which would enable the Institute to organise more number of training courses and to net larger number of officers within the fold of training.

8.29. The Committee cannot over-emphasize the importance of training programme for the officers and staff of Central Excise and Customs to enable them to cope efficiently with the complexities posed in the administration of Excise and Customs laws. They find that a similar feeling has been echoed by the Jha Committee (1978). The Committee note that the need for imparting training to staff and officers has been recognised by the Central Board, and a Directorate of Training with four training institutes at New Delhi, Bombay, Madras and Calcutta has been set up to organise training programmes for various categories of staff. But it appears, constraints of resources stand in the way of their providing adequate faculty members and supporting staff and physical facilities like hostels, lecture halls etc. They hope that the expansion of staff and facilities for training, which is stated to be under consideration, will materialise without delay and training institutes will be developed to meet the training needs of the staff in full.

8.30. The Committee find that the Directorate of Training and Regional Training Institutes are housed in hired buildings at New Delhi, Bombay, Madras and Calcutta and the Directorate has been making endeavours to acquire land to enable them to construct their own buildings.

8.31. The Committee do not understand why the Directorate should be keen to locate the training institutes in the metropolitan cities of Delhi, Bombay, Calcutta and Madras which are not only already too congested but also too expensive. The Committee feel that the Directorate of Training and the training institutes can be set up in smaller towns without any adverse effect on the training programmes.

8.32. In this connection the Committee would like to draw the attention of the Government to Para 5.41 of the Ninety-Seventh Report of the Estimates Committee (1975-76) on Ministry of Works

and Housing—Slum Clearance and Housing Schemes in which the Committee urged that “in order to relieve the congestion as also to reduce pressure on civil amenities in the metropolitan cities, it is high time that Government should identify at a very early date such offices as can be shifted from Delhi and other metropolitan cities and take concerted follow up action to shift them according to a time bound programmes . . . the example in this regard has to be set up by the Government themselves, if congestion in cities is to be reduced.”

(iii) *Harassment of Assesseees by officials*

8.33. With regard to complaints of alleged harassment of assesseees and corrupt practices on the part of the excise staff, the Ministry of Finance have informed the Committee that wherever allegations of harassment of assesseees and demands for payment of money on the part of officers are made, investigations are carried out either departmentally or by the Central Bureau of Investigation and wherever necessary, prosecutions are launched or departmental action is taken against the delinquent officials.

8.34. To prevent this type of corruption, the following steps have been taken:

- (i) Identification of sensitive places and points which offer scope for mal-practices and corruption.
- (ii) Collection of adequate intelligence about the sensitive areas and about the officers' performance and activities in any such areas.
- (iii) Preparation of Agreed Lists of officers of doubtful integrity in consultation with the CBI and maintenance of surveillance over their activities.
- (iv) Prompt investigation into complaints.
- (v) Periodical rotation of officials working at different levels in order to ensure that they do not develop vested interests in collusion with the unscrupulous elements of the trade.

8.35. The Central Board of Excise and Customs have also issued instructions from time to time exhorting the Heads of Department under them to ensure that all officials of doubtful integrity and ineffective performance are suitably dealt with under the relevant rules.

8.36. It has also been represented to the Committee that some of the officials at the level of Inspectors and Superintendents are rude to the assesseees.

8.37. Commenting on this, the Ministry have stated in a written reply that Government have issued instructions from time to time to all Ministries and Departments of the Government of India and the offices under them emphasising the utmost need to maintain good public relations with the representatives of the trade and with the public in general. The imperative need on the part of the officers at all levels to extend courtesy to the members of the public with whom they have to deal, without in any way detracting from the discharge of the duties has been emphasised.

8.38. Senior officers of the Collectorates endeavour to ensure that the excise staff do not behave rudely or discourteously towards assesseees by keeping in constant touch with the trade and licencees and by promptly looking into the complaints received from them regarding discourtesy or misbehaviour shown by any Inspector or other executive officer. They also, during the course of their tours to the Ranges/Divisional Offices, pursue the complaints received by their Range/Divisional offices and where necessary investigate into them and take adequate action against the erring officers wherever called for. The need for observing proper decorum, polite manners and courtesy in their dealings with the public is also emphasised on all officers during visits to lower formations. The training imparted to Inspectors at the Collectorate's headquarters includes a lecture on public relations.

8.39. In some of the Collectorates "complaint registers" are maintained at the Ranges/Divisional and Collectorate's offices and specific officers have been nominated to deal with such complaints.

8.40. At the Collectorate level complaints are required to be promptly brought to the notice of the Collector. The Ministry have further stated that according to the available information 18 complaints were received in 1976. Of the 18 complaints, 15 complaints were found on investigation to be unsubstantiated. In the other 3 cases action was taken against the erring officers—in two cases the officers were cautioned to be more careful in future and in one case the officer concerned was transferred.

8.41. Similarly, according to available information 20 complaints were received in 1977. Of the 20 complaints 16 were found to be unsubstantiated. Two are under investigation. In two cases departmental proceedings have been initiated against the officers who were found to have behaved rudely to the staff of a factory.

8.42. There is a general complaint that the field officers of Central Excise not only harass the assesseees unnecessarily but also indulge

in corrupt practices. The Ministry have stated that to fight this type of corruption, besides investigating specific complaints of corruption and harassment and prosecuting the corrupt officials, they have taken such steps as identification of sensitive points, collection of adequate intelligence about the sensitive areas, preparation of "agreed" list of officers of doubtful integrity in consultation with CBI and maintenance of surveillance over their activity and periodical rotation of officers working at different levels. In the opinion of the Committee, these steps, though good in themselves, cannot be said to have succeeded in rooting out corruption. The Committee therefore cannot overemphasize the need for intensifying the aforesaid anti-corruption measures and devising such other measures as may become necessary to deal with the ever-changing facets of corruption and to weed out and punish the corrupt.

8.43. The Committee would also suggest that the Government should keep a more watchful eye on the style and standard of living of officials of doubtful integrity and should not hesitate proceeding against those who have assets beyond their known sources of income or are found living a life beyond their means. If such officials can be brought to book without delay, it will definitely go a long way to deter others from pursuing the path of corruption.

8.44. Needless to say that a large number of excise staff and officers are honest and upright but even the honest and upright officials would perhaps admit that the general image of excise staff has been tarnished beyond words because of the activities of corrupt officials among them. The Committee feel that the honest officials should be as much concerned about furnishing the general image of excise staff as the Government about rooting out corruption in the interest of their revenues. In their opinion, therefore, if the Government can enlist the enthusiastic support and cooperation of honest staff if necessary by giving them some incentives in the fight against corruption, the task may become easier and the results more encouraging.

8.45. There are also complaints about the officials at various levels being rude to assesses. The Government have from time to time emphasised the imperative need on the part of the officers at all levels to extend due courtesy to the Members of Public with whom they have to deal without in any way detracting from the discharge of duties. The need for observing proper decorum, polite manners and courtesies in their dealings with

the public is also emphasised on all officers by the senior officers during their visits to lower formations. The Committee are surprised to know from the Ministry that during the year 1976, they received only 18 complaints out of which on investigation 15 were found to be "unsubstantiated"; and during the year 1977, out of 20 complaints, 16 were found to be "unsubstantiated". In the opinion of the Committee, the Ministry would be committing a grave error if from this unbelievably small number of formal complaints of discourteous behaviour and still smaller number of 'substantiated' complaints, they draw a conclusion to rebut the general complaint of rudeness, as in the very nature of things, not every aggrieved person makes a complaint and not every complainant can substantiate the allegation. Besides reiterating advice to the staff to deal with the public politely and courteously, the Ministry should impress upon senior officers in the field not only to create and appreciate an attitude of friendliness and courtesy amongst staff but also to be more easily and frequently accessible to the public to hear their grievances and redress them without detracting from the discharge of their duties.

8.46. The Committee cannot appreciate why only in "some of the Collectorates" and not all, should there be complaint registers kept for the people to record their complaints. Such register should be maintained in all the Collectorates at all levels and periodically inspected by senior officers and the complainants informed of the action taken on their complaints at the earliest.

(iv) *Dilatoriness on the part of officials*

8.47. A leading organisation of Industry has brought to the notice of the Committee that dilatoriness and tendency to shirk decisions have become a growing trend in the Excise Department. It has been suggested that specific responsibilities should be fixed at levels of officers of the rank of Superintendent and above and the officers encouraged to take prompt and final decisions on cases with which they are concerned.

8.48. Commenting upon the above observation, the Chairman, Central Board of Excise and Customs stated during evidence that "if this tendency (to shirk decisions) is there, it may not be quite correct to say that it is confined to Excise Department only" Conceding that "there is this tendency on the part of the officers not always to face the issues squarely", he opined that "if the administration at all levels including the Parliamentary control, can make it possible that *bonafide* errors will not be seriously take note of, there can be improvement in this regard." He added that in *malafide* cases, action like dismissal, discharge and even prosecution in courts of law, has been taken. Adding that if something is found in audit, action is

taken against officers he stated that "it is the fear complex which is retarding these officers from taking free decisions."

8.49. The Committee are concerned to know that, admittedly, there is a growing tendency amongst the officers in the Central Excise Department to shirk decisions in order to avoid penal action in case of errors. If even bona fide errors on the part of officers are viewed seriously, no wonder, they shirk taking decisions for fear of action. It is unfortunate that even though the Excise Department have been aware of this malady, they have not done anything to control it. The Committee would urge the Ministry to study the causes of the "fear complex" among officers and take necessary measures on all fronts to re-establish a climate of confidence in which the officers may be encouraged to face the issues squarely and take free decisions and they be re-assured that bona fide mistakes will not be taken serious note of. This is a very serious matter and the sooner it is attended to, the better it would be for everybody.

### C Cost of Collection

8.50. The cost of collection of excise duties, its percentage to the revenue during the last 10 years has been as follows:—

Year	Receipts	Net Ex- penditure	Cost of Collection
	Rs. in crore	Rs. in crore	
1967-68 . . . . .	1148.25	12.28	1.07%
1968-69 . . . . .	1323.40	12.84	0.97%
1969-70 . . . . .	1524.31	12.78	0.84%
1970-71 . . . . .	1758.55	14.34	0.81%
1971-72 . . . . .	2061.80	15.57	0.76%
1972-73 . . . . .	2324.32	16.91	0.72%
1973-74 . . . . .	2602.13	19.04	0.73%
1974-75 . . . . .	3230.51	23.52	0.73%
1975-76 . . . . .	3844.78	30.63	0.79%
1976-77 . . . . .	4221.35	30.40	0.72%

8.51. It is seen that while the cost of collection in percentage has come down, the actual expenditure on staff etc. has increased 2½ times from Rs. 12.28 crores in 1967-68 to Rs. 30.04 crores in 1976-77. During the same period, the collection of revenue increased from Rs. 1148 crores to Rs. 4221 crores. From the information furnished to the Committee, it was noticed that the cost of collection in the following Collectorates was higher than the all-India average which was 0.72 per cent in 1976-77:—

S. No.	Name of the Collectorate	Cost of collection (1976-77)
1.	Delhi	1.61%
2.	Guntur	1.45%
3.	Hyderabad	0.94%
4.	Shillong	0.86%
5.	Chandigarh	0.79%
6.	Nagpur	1.55%
7.	Jaipur	0.75%
8.	Madurai	0.95%
9.	Allahabad	1.15%
10.	West Bengal	0.91%
11.	Calcutta	0.92%

8.52. The cost of collection in other collectorates during 1976-77 was as under:—

S. No.	Name of the Collectorate	Cost of collection (1976-77)
1.	Goa	0.18%
2.	Patna	0.53%
3.	Baroda	0.53%
4.	Ahmedabad	0.65%
5.	Bangalore	0.59%
6.	Cochin	0.50%
7.	Indore	0.66%
8.	Bombay	0.28%
9.	Orissa	0.50%
10.	Madras	0.68%
11.	Kanpur	0.62%
12.	Pune	0.66%



8.53. During evidence, the Committee pointed out whether the reduction in the percentage of cost of collection was not on account of increase in earnings rather than on account of economy in expenditure. In reply the Financial Adviser to the Ministry stated that "*prima facie* it is rather difficult to apportion the cost of collection between the earnings of excise revenue and the efficiency of the department....." He added that the increase in cost of collection from Rs. 12.28 crores in 1967-68 to over Rs. 30 crores in 1976-77 was broadly due to the following:—

- (i) the emoluments of staff have been revised from time to time. This accounted for 60 per cent increase.
- (ii) The staff strength during the period was increased by 32.8 per cent and this accounted for the remaining 40 per cent increase. The sanctioned staff strength in the Central Excise Collectorates was 29,476 as on 1-1-68 and 39,234 as on 1-1-1977.
- (iii) The number of commodities covered by excise which was 69 in 1967-68, increased to 132 in 1976-77.
- (iv) The number of licensed units has increased from 89,492 in 1968-69 to 1,51,065 in 1976-77 representing a 68 per cent increase.

8.54. When pointed out that in absolute terms the expenditure has been escalating and that the administration is proliferating very fast, the Finance Secretary stated that "there is no room for complacency." I concede, but in India the increase in excise revenue is not merely due to buoyancy but it is also due to increase in coverage." He added that every year more commodities were being brought into tax net and as industries grow, more units come into tax net.

8.55. The Committee note that the cost of collection in relation to revenue collection has progressively come down from 1.07 per cent in 1967-68 to 0.72 per cent in 1976-77. Although the cost of collection in terms of percentage has come down, the actual expenditure on staff etc. has increased 2½ times from Rs. 12.28 crores in 1967-68 to Rs. 30.40 crores in 1976-77. During the same period, the amount of revenue increased from Rs. 1148 crores to Rs. 4221 crores. It is thus evident that the reduction in cost of collection in terms of ratio to the revenue collected was more on account of increase in earnings than on account of economy in expenditure. The Committee have been informed that the rise in cost of collection in absolute terms was due to (i) the increase in the emoluments of staff from time to time; (ii) the increase in staff strength from 29,476 as

on 1.1.1968 to 39,234 as on 1.1.1977 above 33 per cent increase; (iii) the increase in the number of commodities covered by excise from 69 in 1967-68 to 132 in 1976-77, and (iv) increase in the number of licensed units from 89,492 in 1968-69 to 1,51,065 in 1976-77, representing a 68 per cent increase.

8.56. In the absence of any comprehensive study of the staff strength and their deployment, the Committee are not in a position to judge whether an increase of nearly 10,000 employees during a period of 9 years (1968—1977) was justified even though there has been considerable expansion in the excise net work. The Committee feel that the organisational structure, staff strength and the deployment of staff at the headquarters and in the field units responsible for collection of central excise and other related matters should be studied comprehensively by an independent body of experts to be appointed in consultation with the Department of Administrative Reforms and the Staff Inspection Unit of the Ministry of Finance and the Central Board of Excise and Customs should review the position in the light of their report. The Committee hope that action in this regard will be initiated without delay and progress reported to them.

8.57. The Committee find that whereas the all India average cost of collection is 0.72 per cent of the excise revenue, it is twice the national average in Nagpur, Delhi and Guntur and well above the national mark in some other Collectorates like Hyderabad, Shillong, Madurai, Allahabad, West Bengal and Calcutta. The Committee also find that some other Collectorates have been able to keep their cost of collection much below the national average. In this connection the examples of Goa (0.18 per cent), Bombay (0.28 per cent), Cochin and Orissa (0.5 per cent), Patna and Baroda (0.53 per cent) are worth mentioning here. The Committee would like the Central Board to study critically the working of the excise machinery in the Collectorates where the cost of collection is higher than the national average to identify the factors responsible for higher expenditure and take measures to bring down their expenditure to the level of other Collectorates of comparable size and complexion.

#### **D. GENERAL PROCEDURE**

##### *(i) System of Making Payments*

8.58. Prior to the introduction of the scheme of Departmentalisation of Accounts with effect from 1-4-1977 an assessee working under the Self Removal Procedure could pay central excise duty by issuing a cheque and forwarding it under Registered Post (Acknowledgement Due) and take credit for it on the date of despatch. With the

introduction of the scheme relating to Departmentalisation of Accounts this system has been withdrawn. The assesseees are now required to deposit the dues in any of the nominated Public Sector Banks or their Branches. According to the Ministry as under the revised scheme the collection points have greatly increased "there should be no difficulty for an assessee to deposit the duty in the nominated Banks".

8.59. A large number of organisations of industry have represented that consequent on the withdrawal of the facility for making payments by cheque following the departmentalisation of accounts, the assesseees experience considerable hardship in clearing the goods. According to them the assesseees have either to make payment by cash (which at times may run into thousands of rupees) for clearing the goods immediately or alternatively have to wait until the cheque is realised and banker's receipt is available. This means that after tendering the cheque the assessee has to wait for at least 2-3 days to get an acknowledgement when assesseees maintain a bank account in the same bank as selected by the Central Excise Department. If, however, the assessee maintains an account in another bank the time required for obtaining receipt is more. Again, if there is any industrial relations problem in the bank where the assessee maintains the account the delay is likely to be even greater.

8.60. In this context, a leading Chamber of Commerce has pointed out that "according to the Negotiable Instruments Act, a person drawing a cheque discharges his responsibility immediately upon issue of cheques. This principle seems to have been overlooked by the Central Excise authorities while laying down the foregoing procedure. However, the same principle is applied when any payment is made by the Central Excise Authorities; they consider that their responsibility is fully discharged with the issue of the cheque from their department if any refund is to be made to the assessee".

8.61. There was a unanimous demand from the representatives of industry that the earlier system of allowing release of goods on despatch of cheques should be restored by the Excise Department.

8.62. Regarding the suggestion to permit payment of duty by cheque, the Ministry have stated that "if permission to pay duty by cheques is permitted it will result in financial accommodation to the assessee (at least for a few days) till the cheque is encashed. This principle would be counter to the basic concept of Excise law that excisable goods shall not be removed without payment of the due duty amount."

8.63. As regards difficulties in depositing duties as a result of strikes etc. the Ministry have stated that a procedure has already been evolved to enable an assessee to deposit the duty so that his clearances are not withheld. During periods of strike, the assessee can make payments by sending cheques by registered post.

8.64. During evidence, the Financial Adviser to the Ministry stated that as the number of treasuries in which payments could be made prior to 1 April, 1977 was restricted, many assessee could not make payments in advance. Under the new procedure, in about 10000 branches of public sector banks payments could be made. He contended that "there is hardly any factory which is not near a branch of a public sector bank. It is now possible for the assessee to deposit in cash in the nearest branches before making clearance."

8.65. Supplementing this, the representatives of the Central Board of Excise and Customs stated that the cheque facility was "widely abused". In a number of occasions, the cheques bounced back. Explaining further he stated that "the man in Bombay would send it by registered post. He would not send it by hand. It would take about three or four days for the cheque to reach by post. In the meantime he would have taken credit and started clearing goods. He would have arranged with the bank not to have it cleared till such time that the goods are sold and he had enough money in the bank. In this way, Department was giving unsecured overdraft for about fifteen days."

8.66. When it was pointed out to the witness that transactions were being done throughout the world based on credit instruments and so long as the cheques did not bounce credit instruments were as good as money, the Finance Secretary replied that the Department would examine this aspect.

8.67. In a written reply subsequently, the Ministry informed that on 1487 occasions the cheques bounced during the five years from 1972-73 to 1976-77. Regarding the action taken in such cases, the Ministry have stated that in these cases penal action was taken after taking into account the circumstances and merits of each case. In some cases the cheque facility was withdrawn either temporarily or permanently. Penalties were also imposed by way of departmental adjudications and the duty amounts recovered. In some cases, the parties were issued only warnings; none was prosecuted.

8.68. The Committee note that prior to the introduction of the scheme of Departmentalisation of Accounts, an assessee coming under the scheme of Self-Removal Procedure could pay central excise duty by issuing a cheque and forwarding it under Registered Post (Acknowledgement Due) and take credit for it from the date of despatch. With the introduction of the Scheme of Departmentalisation of accounts from 1.4.1977 this system has been withdrawn and the assesseees are now required to deposit the dues in any of the nominated branches of the Public Sector Banks whose number was reported to be around 10,000.

8.69. It has been represented by industry that under the revised system of making payment, the assesseees experience considerable hardship in clearing the goods. According to them, the assesseees have to either make payment in cash for clearing the goods immediately or alternatively have to wait until the cheque is realised and banker's receipt is available which means considerable delay.

The representatives of the industry have pleaded that the assesseees should be allowed to make payment by cheque as previously.

8.70 The Ministry have adduced two main reasons for withdrawing the facility for making payments by cheque. First if permission to pay duty by cheques is allowed, it will result in financial accommodation to the assesseees ranging upto 15 days in some cases till the cheque is encashed. This would be counter to the basic concept of Excise Law that excisable goods shall not be removed without payment of due duty secondly the cheque facility was "widely abused" During the five years from 1972-73 to 1976-77, on 1487 occasions the cheques are stated to have bounced back, and in such cases penal action was taken taking into account the circumstances and merits of each case.

8.71. The Committee do not find anything new in the arguments advanced by the Central Board Ministry in support of withdrawal of cheque facility. If these factors did not discourage the Government from giving the cheque facility before 1-4-1977, there is no reason to give them too much importance now just because departmental procedure relating to accounts has undergone a change. It is unreasonable to expect assesseees to carry bagfuls of cash for deposit in the banks in the modern age when payment through cheque is the order of the day. They suggest that the Government should reconsider the payment procedure and introduce the cheque facility for payment of excise duty with suitable safeguards against

bouncing of cheques and abuse of this facility. They would like that the assesses who are found to have abused this facility deliberately should be sternly dealt with.

(ii) *System of maintaining records*

8.72. The Ministry of Finance have informed the Committee that the present system of recording, indexing and retrieval of information followed by the field formations upto the level of the Collectorate Headquarters under the Central Board of Excise and Customs is based on the instructions issued from time to time by the Central Board of Excise and Customs and other authorities contained in the Office Procedure Manual for Circles and Divisions. In the case of sections dealing with confidential and secret nature of work like Confidential and Preventive and Intelligence Branches of the Collectorate Headquarters modern systems such as Kardex, are already in vogue. The Kardex system is in vogue at airports and other important places for keeping indexes of smugglers etc.

8.73. A Central Exchange for assessment data has been set up under the Directorate of Statistics and Intelligence (Central Excise and Customs) for the purpose of computerising data relating to Central Excise duty. Data relating to assessment of Central Excise duties on 37 commodities is being punched in cards and arrangements are being made with the Electronic Commission for the processing of the data. Information required by the Ministry of Finance for examining various fiscal policies would be available from the data being proposed to be built up.

8.74. The question of further improvement in the methods for storage and retrieval of information, and in particular the possibilities of computerisation, are proposed to be studied by the Director of Inspection and Audit in consultation with other senior officers of the Department.

8.75. It has been stated in a memorandum to the Committee that the method of filing, presentation and retrieval of records "is quite outmoded", and cross reference, central filing system, "are all unheard of". It has been stressed that "proper recording and quick disposal of information is vital to a live-wire department like Central Excise on which lies the smooth functioning of the entire industry."

8.76. During evidence, the Committee were informed that the Central Board of Excise and Customs had not conducted any review

about the system of maintaining records in the recent past. The Board were trying to introduce Kardex system to keep a watch on the units whose production is near the exemption limit range so that the Department can keep a track of the units which cross the exemption limit. He added that the Department "are having a Central Exchange with a computer where we are trying to introduce some modernisation in the matter of classification and matters connected therewith."

8.77. Asked whether the Government were satisfied with the procedures, the representative of the Central Board of Excise and Customs stated "no; there is scope for improvement". The Chairman, Central Board of Excise and Customs stated that "this is an aspect of administration which certainly needs much greater strengthening, and modernisation of means and methods employed is very much called for."

8.78. The Committee note that neither the industry nor the Central Board was satisfied with the present system of maintenance of excise records and retrieval of information. The Chairman, Central Board, stated during evidence that "this is an aspect of administration which certainly needs much greater strengthening, and modernisation of means and methods employed is very much called for". The Committee hope that since the Central Board Ministry are already conscious of the inadequacies of the system of records, they should take steps, without delay, to modernise the entire system of keeping records and retrieving information and inform the Committee of the steps taken in the matter.

### (iii) *Returns—Simplification*

8.79. It has been represented by a number of non-official organisation that the returns are formulated by the Department without any consultation with the assesseees. The returns should be modified and simplified. An Association of Mills has brought to the notice of the Committee that in the name of computerising the tabulation and analysis of data collected from the assesseees the various returns, for instance RT 3 and RT 12, have been made very cumbersome and elaborate and the assesseees find it very difficult to compile these returns running into number of pages and submit them to the authorities within the stipulated time. To quote a specific instance, the textile mills are required to file 5 copies of the RT 12 return with the concerned superintendent of Central Excise in respect of each of the Central Excise licences granted to them. But not all these excisable goods are manufactured by mills every

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month. But still mills are required to submit RT 12 returns for all the excisable commodities, even if the RT 12 returns in respect of one or more commodities are nil. The return consists of 9 pages and mills have to take a minimum of 7 copies (including office copy). If the RT 12 return in respect of 2 commodities is 'NIL' for a particular month, the mills would be submitting 126 pages of stationery without any purpose.

8.80. During evidence, the representative of the Central Board of Excise and Customs stated that the RT 12 return is the basic document and it contains many columns, like production, exports etc. Only for 36 or 37 commodities this form is applicable. He added that it was not the Boards' intention that all the columns (where not applicable) should be filled by the assesseees. A general review of all returns was being made by the Directorate of Inspection from time to time. The Department also consult the industry before making any changes.

8.81. Subsequently (December, 1978), the Ministry informed the Committee that detailed instructions simplifying the system of filing of forms RT-12/RT-3 were issued in November, 1978.

8.82. The Committee note that a general review of all the returns is made by the Directorate of Inspection in the Central Board of Excise and Customs from time to time. The Department also consult the industry before making any change. However, a number of organisations of industry have represented that the forms should be modified and simplified and that the industry should be consulted in formulating the returns.

8.83. The Committee suggest that the Central Board of Excise and Customs should undertake review of the forms and returns periodically in consultation with the industry so that these forms are simple and easy to fill by the assesseees.

#### **E. CUSTOMS AND CENTRAL EXCISE ADVISORY COUNCIL**

8.84. With a view to providing an effective forum at the Centre for the purpose of discussing general Customs and Central Excise problems on an all-India basis, the Ministry of Finance (Department of Revenue) in their resolution dated 8th May, 1959 constituted a Customs and Central Excise Advisory Council. The Council is Advisory in character and is intended to discuss general problems of procedures relating to the clearance of goods and passengers



insofar as they concern the Customs and Central Excise Laws, tariffs and rules. Apart from the official members, the Council consists of 7 institutional members representing Chamber of Commerce and not less than seven other members nominated by Government. Two Members of Parliament (one from each House) are also nominated to the Council. The term of office of nominated non-official members is two years. The term of office of Members of Parliament is two years or till they cease to be Members of Parliament, whichever is earlier.

8.85. Besides the Central Advisory Council, in each Central Excise Collectorate, Regional Advisory Committees are functioning. In the Regional Advisory Committees, representatives of the industry are included as members.

8.86. The functions of the Regional Committees are purely advisory and the Committees are intended for resolving the procedural difficulties of a general nature. They may, however, discuss any matter including the policy behind individual cases but excluding individual cases themselves as also judicial and semi-judicial work. The term of the Committee is two years.

#### REGIONAL ADVISORY COMMITTEES FOR SMALL SCALE INDUSTRIES

8.87. In December, 1975, the Central Board of Excise and Customs decided that there should be a separate Regional Advisory Committee for Small-Scale Industries in each Central Excise Collectorate. The Committee consists of not more than 8 regular members one of whom is to be the nominee of the State Govt. dealing with small scale industries. The functions of the Regional Advisory Committees are purely advisory and the Committees are intended for resolving procedural difficulties of a general nature.

8.88. The Committee is constituted for a period of two calendar years, and accordingly the terms of office for each member nominated to such a committee is two years.

8.89. The Ministry have informed the Committee that Regional Advisory Committees for the Small Scale Sector have been formed in 17 out of the 23 Collectorates of Central Excise. There is no separate Regional Advisory Committee in the Goa Collectorate as the interests of the Trade and Industry are looked after by the Regional Advisory Committee of the Collectorate of Central Excise.

Bombay. The remaining five Collectorates, viz., Bhubaneswar, Madhya Pradesh, Madurai, Shillong and Jaipur did not consider it necessary to have separate Regional Advisory Committees for Small Scale Sector industries as they had been given a fair representation on the Regional Advisory Committees in those Collectorates for the Organised Sector.

#### CENTRAL COUNCIL

8.90. A number of representatives of industry have represented to the Committee that the Customs and Central Advisory Council does not meet regularly. According to them, many a time follow up action on the discussions of the Council was taken promptly.

8.91. The Committee were informed by the Ministry that during the period from 1973 to 1978, five meetings of the Customs and Central Excise Council were held. During evidence the representative of the Central Board stated that the frequency of the meetings has been "fairly kept up" over the years since the Council was constituted in 1959. However, as suggested by the Minister of Finance in the meeting of the Central Advisory Council in January, 1978, the Department would hold one sitting of the Council a couple of months before the Budget Session and another sitting after the presentation of the Budget to know the reactions of the trade in the budget proposals.

8.92. Regarding the follow up action on the recommendation of the Council, the representative of the Central Board have stated that the points which are settled in the advisory Council are followed up. The follow up action taken is also intimated to the organisations of the industry.

#### REGIONAL COMMITTEES

8.93. A number of organisations of industry have represented to the Committee that the Regional Advisory Committees do not meet frequently. They have also represented that at present the Regional Advisory Committee deals with only local and procedural matters. They have suggested that the Regional Advisory Committee should also discuss policy matters and the Government should intimate the action taken on the recommendations of the Committee.

8.94. The Ministry, at the instance of the Committee have furnished the following statement indicating the number of sittings held

by each of the Regional Advisory Committees during the last 5 years:—

Sl. No.	Name of the Colledtorate	No. of S'itting
1.	Ahmedabad . . . . .	9
2.	Allahabad . . . . .	10
3.	Bangalore . . . . .	12
4.	Baroda . . . . .	12
5.	Bhubaneswar . . . . .	3
6.	Bombay . . . . .	13
7.	Calcutta . . . . .	12
8.	Chandigarh . . . . .	8
9.	Cochin . . . . .	11
10.	Delhi . . . . .	9
11.	Guntur . . . . .	12
12.	Hyderabad . . . . .	9
13.	Jaipur . . . . .	3
14.	Kanpur . . . . .	13
15.	Madras . . . . .	8
16.	Madurai . . . . .	8
17.	Nagpur . . . . .	9
18.	Patna . . . . .	11
19.	Poona . . . . .	10
20.	Shillong . . . . .	10
21.	West Bengal . . . . .	11

8.95. During evidence the representative of the CBEC stated that the Regional Advisory Committee was intended mainly to resolve procedural difficulties of a general nature. There was, however, no bar to discuss policy issues arising out of individual cases (and not the cases themselves) in the Regional Committees and to make suggestions to the Centre.

8.96. Regarding the periodicity of meetings of the Regional Advisory Committees the witness stated that originally the Board prescribed four meetings a year for the Regional Advisory Committees for organised sector, but later reduced them to two. He added that "attendance was thin" in the Regional Advisory Committees meetings.

8.97. When asked whether the attendance in the Regional Advisory Committee meetings was not thin because the Committee did not serve any useful purpose, the Chairman, Central Board stated that these forums could be extremely useful if both sides made full use of them. He added that necessary instructions had been issued to the Collectors that the meetings of the Regional Advisory Committees should not be postponed.

#### Delay in setting up Advisory Committee in Delhi

8.98. It was represented to the Committee that the notification constituting the Regional Committee of the Delhi Collectorate from January, 1978 was issued only on 20th August, 1978. Admitting the delay in the constitution of the Regional Advisory Committee in Delhi, the representative of the Central Board stated that "it has been rather badly delayed in Delhi Collectorate. There is not much of any defence which I can offer on this case."

8.99. The Committee note that with a view to providing an effective forum at the Centre for the purpose of discussing general Customs and Central Excise problems on an All-India basis, the Government of India have constituted a Customs and Central Excise Advisory Council. The Council is advisory in character and is intended to discuss general problems of procedures relating to the clearance of goods and passengers in so far as they concern the Customs and Central Excise law, tariffs and rules. Besides a Regional Advisory Committee has been set up in each Central Excise Collectorate to discuss and resolve procedural difficulties of a general nature. Regional Advisory Committees discuss any matter including the policy behind individual cases but excluding individual cases themselves. Government have also set up separate Regional Advisory Committee for Small Scale Industries in 17 out of 23 Collectorates to resolve procedural difficulties of a general nature of Small Scale Industries.

8.100. It has been represented to the Committee that the Central Advisory Council and the Regional Advisory Committees have not been functioning satisfactorily. It is stated that the Central Advisory Council and the Regional Advisory Committees are not meeting frequently and follow up action on their recommendations is not taken promptly. The Committee find that the Central Advisory Council met only 5 times during the last 6 years from 1973 to 1978. The representative of the Central Board of Excise and Customs has informed the Committee that hereafter the Council would meet twice a year—one before the Budget Session and again after the presentation of the Budget to ascertain the industries reactions on

the Budget proposals. Decision to increase the frequency of meetings of the Central Council is a welcome decision but, needless to say, these meetings can serve a useful purpose only if the Government representatives at these meetings hear the representatives of the industries with an open mind and display an attitude of accommodation to the extent possible.

8.101. The Committee note that the Central Board of Excise and Customs originally prescribed four meetings a year for Regional Advisory Committees but had later reduced them to two meetings a year. It is, however, noticed that even this reduced scale of meetings has not been followed in case of Regional Advisory Committees in Ahmedabad, Bhubaneswar, Chandigarh, Delhi, Hyderabad, Jaipur, Madras, Madurai and Nagpur Collectorates. If the meetings are not held regularly and follow-up action is not taken promptly it is no wonder if the representatives of the industry lose interest in these Committees and develop an attitude of cynicism which is manifested in the admittedly thin attendance at the meetings of these Committees. The Committee cannot over-emphasise the importance of the Regional Advisory Committees which can not only serve as a useful forum for the representatives of the industries to ventilate their grievances but also become a barometer of public opinion on excise laws and procedures and the working of the Excise Collectorates for the benefit of Government. The Committee would like that the Central Board/Ministry should spare no effort to revive the interest of the industries in the Regional Advisory Committees and bring home to them the usefulness of these Committees. If meetings are held frequently, points for discussion are invited and agenda circulated in advance, the views of the representatives heard with an open and sympathetic mind and their views on matters of policy conveyed to the appropriate authorities for sympathetic consideration, follow-up action is taken promptly and a report on the follow-up action made at the following meetings of the Committees, the Committee have no doubt that these Committees would evoke the enthusiasm of the industries and fulfil the object for which these Committees have been constituted. The Committee would like to be apprised of the concrete steps taken in this regard.

8.102. The Committee regret to note the delay in constituting the Regional Advisory Committee in Delhi in 1978. They hope that the Ministry will take adequate measures to avoid the recurrence of such delay in Delhi or elsewhere in the future.

NEW DELHI,  
March 5, 1979.

Phalgun 14, 1900 (S).

SATYENDRA NARAIN SINHA

Chairman,

Estimates Committee.

## **APPENDIX I**

(Vide Para 2.27 of the Report)

**GOVERNMENT OF INDIA**

**MINISTRY OF FINANCE**

**(DEPARTMENT OF REVENUE)**

New Delhi, 12th May, 1978

22nd Vaisakha 1900 (Saka)

### **NOTIFICATION**

#### *Central Excise*

GSR—In exercise of the powers conferred by Sub-rule (1) of Rule 8 of the Central Excise Rules, 1944 read with Sub-section (4) of Section 37 of the Finance Act, 1978 (19 of 1978), and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 64/78-Central Excise, dated the 1st March, 1978, the Central Government hereby exempts excisable goods (other than those falling under item No. 11D, 11E and 68 of the First Schedule to the Central Excise and Salt Act, 1944, (1 of 1944) in respect of which notifications under Sub-rule (1) of Rule 8 of the afore-said rules have been issued by the Central Government exempting them from so much of the duty of excise leviable thereon as is equivalent to the amount of duty of excise already paid on other excisable goods (hereinafter referred to as "intermediate products") used in their manufacture and which are specified in the respective notifications, from so much of the special duty of excise leviable thereon as is equivalent to the special duty of excise already paid on the intermediate products specified in the respective notifications."

Sd/- LAJJA RAM,

Deputy Secretary to the  
Government of India.

## APPENDIX II

### Summary of Recommendations/Observations

Sl. no.	Para no. of the Report	Recommendations/Observations
1	2	3
		<i>Levy of duty at basic inputs or end products stage</i>
1	1.32 to 1.37	<p>Shifting of the duty to the raw material stage should not mean any additional burden on the small scale industry except that it will result in blocking of money for some time. On the other hand, such units should feel great relief as a result of being liberated from the bondage of the excise laws. Besides, Government can also provide more potent ways to encourage small scale industries like reservation of production lines, differential rate of interest, financial subsidies, rebates, preferential purchases etc. in the Committee's view there should be no difficulty in extending the system of levy of duty at source to more products like Steel, Copper, Aluminium, Zinc, Match boxes, etc.</p> <p>The Committee therefore strongly feel that the present system of excise control is complicated, complex and cumbersome. There cannot be two opinions on the need to simplify the scheme without affecting the revenue. One way of achieving simplification is to minimise the points of contacts between the assesseees and excise authorities thus reducing scope for harassment of assesseees, evasion of duty and administrative expenditure. The Committee, therefore, recommend that the excise tariff should be so re-structured that the excise duty is levied either at the basic inputs stage or at the end product</p>

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stage as far as possible. To start with, this scheme may be introduced on a selective basis in respect of those items where it can be easily administered.

After gaining experience in the field, Government may extend the system to more and more items progressively. The Committee need hardly stress that while revising the tax structure for this purpose, Government should keep only revenue consideration in view and not their social objectives which can be implemented through other fiscal and monetary policies.

#### *Measures to avoid Cascading Effect*

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The Committee are not in favour of double taxation of component/parts used in finished products. The Committee strongly feel that cascading effect of excise duty at different stages should be avoided by extending the application of set-off procedure, Rule 56-A procedure and other procedures provided in the excise laws to all other commodities with suitable safeguards against evasion.

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It is a fact that set-off procedures entail great difficulties in calculating the quantum of excise at various stages. The principle somehow cannot be denied that excise should not have the cascading effect at every stage of manufacture of different items with the same raw material. Both these problems could be resolved if the excise is imposed either at source or at the end products. The Committee therefore, reaffirm their recommendation made in para 1.37 that the excise should be levied, as far as possible, either at the basic input stage or at the end products.



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*Consolidated rate of duty*

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At present industry has to pay Central Excise duty under different heads i.e., basic excise duty, additional excise duty, special excise duty, cess etc. For this purpose assesseees are required to maintain separate account for each levy, which results in extra work and inconvenience to the assesseees. According to the Ministry of Finance, different duties are levied under different enactments and proceeds thereof are to be distributed under different formulae and it may not be practicable to consolidate them for the purpose of payment of duty. The Committee feel that the calculation of duties under various heads or determination of the share of the States is a matter of accounting and the job of the Department. The assesseees should not be made to do clerical work for the benefit of the Department and asked to maintain separate account for each kind of duty to facilitate departmental calculations. The Committee desire that as promised by Finance Secretary, this matter should be examined expeditiously and a system of levying a consolidated rate of duty like the one in vogue in the case of cotton fabrics, cigars and cheroots, introduced in respect of other items also for the convenience of assesseees.

*Supply of Excise notifications*

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and  
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The Committee feel that the delay in receipt of Excise notifications and trade notices is being caused as the existing administrative machinery, which was set up to cater for the needs of smaller trading community, is not able to cope with the present demand. The problem in the case of small and individual assesseees would be even more acute.

In view of the wide spread demand for prompt supply of excise notifications, the Committee strongly urge that the proposal for the separate Directorate of Publications, which is reported to have already been accepted in princi-

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ple, should be given a concrete shape without delay and the Directorate set up at the earliest to bridge the communication gap between the Government and the assesseees. The Committee suggest that after the Directorate of Publicity is established all the assesseees etc. who desire to be on the mailing list for supply of excise notifications should be registered with the Central Board and as and when notifications regarding excise duty are issued, the Central Board should directly mail the notifications and the centrally drafted trade notices to the concerned assesseees without delay. For this purpose, the Central Board should maintain item-wise lists of assesseees to avoid delay in despatch of notifications to the assesseees concerned without difficulty.

- 6            2.18            The Central Board should make arrangements to mail the notifications, departmental instructions etc. direct to the field formations as well in order to keep the field staff posted with the latest information concurrently and thus enable them to give proper guidance to the assesseees and make correct assessment of duty.

*Publicity through newspapers*

- 7            2.19            The Committee also note that the Ministry have accepted the suggestion that excise notifications should be published in leading daily newspapers so that the assesseees can come to know of excise levies promptly. The Committee feel that publication of excise notifications in leading daily newspapers for general information can start immediately and this need not await the setting up of the Directorate of Publications.

*Publication of Journal*

- 8            2.20            The Committee are glad to know that the proposed Directorate of Publications would also bring out a fortnightly or monthly journal containing all relevant Notifications issued by the Union Ministry of Finance, Tariff Advices, decision taken at Tariff Conferences, decision of the

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Appellate authorities on important matters. This is a welcome decision as it would meet a long felt need of the trade and industry to have all useful information about excise duty at one place at regular intervals.

*Central Excise Manual*

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The Committee regret to note that Central Excise Manual containing excise laws and rules is not revised in time not published regularly. The copy of the Manual supplied to the Committee in 1978 was published almost 2 years ago. They recommend that the Central Excise Manual should be revised and published annually immediately after budget and made available to public without delay.

*Directorate of Publications*

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The Committee desire that the Directorate of Publications should be so planned, organised and run that it becomes self-financing at the earliest.

*Explanatory Note*

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The Committee would like that an explanatory note drafted in a lucid and easily intelligible language explaining the scope and implications of a new rule or amendment, should be appended to all the notifications, particularly amending notifications, for the guidance of the assesseees. They would also suggest that where necessary the relevant extract of the original notification which is sought to be amended should also be appended to the amending notification to make the position absolutely clear to the readers.

*Divergent Interpretations*

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and  
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It is highly regrettable that the conflicting interpretations in Gujarat and Poona Collectorate regarding classification of "Ortho toluidine" has not been reconciled till the latter half of

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1978, even though the matter has been receiving attention of the authorities since 1976. The Committee cannot but conclude that there is something wrong not only in the drafting of excise laws, but also in the administrative machinery and procedures introduced to avoid and resolve disputes arising from divergent interpretations.

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The Committee feel that each collector should keep himself acquainted concurrently with the interpretations of excise laws not only in his own collectorate, where, in case of any divergence of interpretation he should act forthwith to set the matters right, but also in other collectorates.

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The Committee would like that for each subsequent stage, i.e. inter-collectorate discussion, Board and Tariff Conference, a clear time limit may be fixed to deal with the problem conclusively so as to provide that no such case is left undecided for more than six months. Unless a sense of urgency is imported at each stage to resolve differences in interpretation the Committee see no hope of relief to the assesseees and better tax administration.

#### *Tariff Conference*

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2.51

The Committee suggest that, as desired by the industry and agreed to in principle by the Central Board, the representatives of the industries concerned should also be invited to place their views on disputed interpretations of excise tariff at the Tariff Conference before a decision is taken in the matter. They would like this practice to be introduced at the earliest. Participation by representatives of the industries concerned at discussion stage will go a long way in infusing a sense of participation and convincing them of fairness of the decision that may ultimately be taken.

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### *Classification Tribunal*

16	2.52 2.53	The Committee endorse the recommendation of the Jha Committee that an All India Classification Tribunal independent of the Ministry of Finance should be set up for dealing with disputes relating to classification of excisable products.
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17	2.54	In order that the assesseees in far flung areas are not put to hardship in approaching the Tribunal and pursuing their cases, the Committee suggest that the Tribunal should also hold sittings at four regional headquarters to be designated by the Government as and when considered necessary to hear and dispose of cases arising in the various regions.
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### *Adoption of CCCN (BTN) Scheme for Tariff*

18	2.64 2.65	The Committee are of the opinion that the scheme of classification for the purpose of Customs and Excise should be identical to avoid disputes in the levy of countervailing duty. And now when the customs Tariff has already been restructured on the lines of BTN, there is no reason to delay the extension of BTN scheme to excise tariff. The Committee agree with the Jha Committee that in extending BTN to excise, Indian commercial and trade identity may be used for describing products where it is considered to be more appropriate while revising the excise tariff. The ISI specifications may also be kept in mind to see if and how these can be harmonised with BTN scheme. The aim should be to make the tariff as scientific and comprehensive as possible leaving little scope for confusion or doubt.
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### *Time-limit for approval of Classification Lists*

19	3.9 3.10 3.11	The Committee feel concerned over the reported inordinate delay that takes place at present in approval of classification lists, resulting
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in hardship to the assesseees. Due to delay in approval of classification lists, the assesseees have to resort to provisional assessments which prolonged uncertainty in respect of their final tax liability.

The Committee have been informed that in the opinion of the Central Board, if time limits are fixed for approval of classification lists, it will result in hasty decisions and in more disputes and more claims. The Committee are not convinced by the arguments advanced by the Government against the fixation of time limit though they appreciate that in a few cases, it might not be possible for the assessing officers to approve the final classification within the time limit especially in cases where laboratory results take a longer time. The Committee feel that as suggested by the SRP Review Committee, Government can provide for such contingencies by prescribing two or more stipulated periods for two or more sets of circumstances, but there is no justification for keeping provisional approval of a classification list open for an indefinite length of time. As delays on the part of excise officers persist in according approval to classification lists despite departmental instructions, the Committee agree with the Indirect Taxation Enquiry Committee, 1978 (Jha Committee) that a time has come when statutory time limit should be fixed for approving the classification list. In case the classification list is not approved within the stipulated period, the classification claimed by assesseees should be deemed to be final. Any revision in the list should only be prospective in operation and not retrospective.

#### *Test Laboratories*

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The Committee are concerned to note that considerable hardship is being experienced by assesseees due to delay in furnishing test results by the laboratories working under the control

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of Central Board of Excise and Customs. Delay in the receipt of test results causes delay in approval of classification of goods and finalisation of assessments. The Ministry have admitted that although efforts are made to furnish the test report by a laboratory within a period of 14 days, the time lag is ordinarily more than this and that delays take place in the laboratories.

The Government have set up an Expert Committee in May, 1978 to examine the working of the laboratories under the control of Central Board of Excise and Customs with a view to improving their working and efficiency. The Report of the Expert Committee is expected to be submitted by May, 1979. The Committee would like to be apprised of the recommendations made by the Expert Committee and action taken by Government in pursuance thereof.

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The Committee have been informed by the Ministry that in cases where the departmental laboratories are not equipped to conduct a particular test, test facilities available at renowned laboratories are availed of. In view of the admitted inadequacies of the existing departmental laboratories to conduct tests and furnish results without delay and in view of the fact that Government are already making use of the testing facilities in several other Government, semi-Government and private laboratories, the Committee would like the government to identify more outside laboratories of requisite standing and technical competence and avail of the testing facilities available with them so as to get results of all the selected samples within a period of 14 days. Government may lay down standards of tests for the guidance of outside laboratories to ensure uniformity and continuity of approach between the departmental and non-departmental laboratories.

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22	3.33	<p>The Committee note that the Ministry propose to augment the test facilities at the departmental laboratories by installing sophisticated equipment for various tests. The Committee would like to emphasize that if adequate testing facilities exist in other government, and semi-government laboratories of standing and they can be persuaded to accept samples for tests for the purpose of Central Excise tariff, it would not be prudent for Government either to incur high expenditure on strengthening testing facilities in existing departmental laboratories or to set up new departmental laboratories unless these are over-riding considerations. The Committee would like the Government to re-examine the question of purchase of sophisticated equipment for departmental laboratories from these angles and ensure that public funds are not spent in duplicating facilities unnecessarily.</p>
23	3.34	<p>It has been suggested to the Committee that a certificate produced by assessee from laboratories certified by the Central Excise department should be accepted for deciding classification etc. The Committee would suggest that the Department should notify a panel of approved laboratories including the National Laboratories which may be approached by assessees for having their samples tested and whose test reports may be acceptable to the Government. Such a step in the opinion of the Committee would not only reduce the burden on the Central Excise laboratories but also avoid undue delay in finalisation of classification and assessments.</p>
24	<p data-bbox="375 1905 445 1928">4.11</p> <p data-bbox="375 1940 442 1963">3.59</p> <p data-bbox="375 1987 457 2010">to</p> <p data-bbox="375 2034 457 2058">3.63</p>	<p data-bbox="531 1865 1142 1905"><i>Invoice value as basis of valuation</i></p> <p data-bbox="531 1940 1387 2156">The Committee note that as many as 134 cases relating to valuation under old Section 4 and 48 cases relating to valuation under the amended Section 4 are pending before the various High Courts and Division Benches of</p>



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High Courts. The Committee are very much concerned over the large number of disputes relating to valuation.

The Committee have considered the pros and cons of the Valuation procedure laid down in Section 4 of the Central Excise and Salt Act. This procedure gives wide discretion to Excise Officers and has given rise to numerous disputes between the Excise authorities and assessees. As such, in the opinion of the Committee, this is not an ideal procedure and should be changed. The need of the moment is to simplify the law and procedure in regard to Valuation under Section 4 so as to collect excise duty promptly without getting involved in protracted disputes, departmental or legal.

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The Committee see nothing wrong in accepting invoice value as the basis for calculating excise duty and, allowing a standard deduction from the invoice value towards post manufacturing expenses to an extent to be determined by Government. As the system of invoice value is already in vogue in the case of goods covered by Tariff Item 68, Government should have no fundamental objection in extending it to other Tariff items on a selective basis.

#### *Specific duty*

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The Committee also feel that there is force in the suggestion that specific duty should be preferred to *ad valorem* duty to overcome the problems of Valuation arising under Section 4 and minimising disputes on this account. If fixed judiciously and on a selective basis and specially if it is not inequitable or irrational, there is no reason why specific duty should create distortions or irrationalities as apprehended by Jha Committee (1978) or lead to any reduction in tax revenue. On the contrary it will enable the

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industry to know their duty liability beforehand, make it possible for the Government to arrive at more accurate budgetary forecasts and minimise areas of administrative discretions and litigation.

The Committee would like the Government to examine both these suggestions dispassionately from a practical rather than a legalistic angle and extend the systems of invoice value and specific duty progressively to more and more items with a view to minimising disputes and expediting tax collection.

#### *Provisional assessment*

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to

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The Committee feel very much concerned over the inordinate delays that take place at present in finalising the provisional assessments resulting in serious difficulties to the assesseees in recovering from the consumers any excess duty required to be paid by the assesseees after the finalisation of the assessments.

The Committee find that out of the 4333 cases reported to be pending in December, 1978, 3270 cases representing nearly 76 per cent of the total cases, were pending for more than 3 months; 756 (17 per cent) cases were pending for a period ranging between 6-12 months and 1648 (34 per cent) cases for one year and above.

This clearly shows that the executive instructions requiring finalisation of provisional assessments within 3 months have failed to speed up finalisation of provisional assessments. The Committee endorse the views of the Public Accounts Committee (Fifth Lok Sabha) expressed in their 44th and 83rd Reports and the Indirect Taxation Enquiry Committee (1978) and recommend that a time limit should be stipulated in the Excise laws for finalising provisional assessments.

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28	3.78	<p>The Committee also note that the number of provisional assessments pending finalisation continues to be quite high in some collectorates viz. West Bengal (999) Shillong (519), Chandigarh (422), Patna (363), and Bhubaneswar (349). The Committee strongly recommend that the Board should devise ways and means to ensure that all the pending provisional assessments are finalised by the Collectorates expeditiously. The Board should report to the Committee the results of these measures within six months. The Committee feel that instead of merely issuing general instructions to collectors for expediting finalisation of provisional assessments, the Central Board should periodically ask for specific reports from collectors concerned on the provisional assessments pending for over 3 months and take specific measures to finalise them without delay.</p>
<i>Tariff values</i>		
29	3.96 to 3.98	<p>In view of the fact that the system of fixing tariff values has a number of advantages like minimising scope for disputes relating to valuation, facilitating the assesseees to know their duty liability, and being convenient to administer, the Committee suggest that the system of tariff values be extended to other items on the tariff except where either it is not practicable or it is likely to create more problems than it may solve.</p>
30	3.99 to 3.101	<p>The Committee emphasize that the tariff values for each and every item should be reviewed at regular but not too frequent intervals, preferably once a year as per the decision of Government taken in December, 1967 so that neither the revenue nor the assessee should suffer because of increase or decrease in the prices of the items in question.</p>

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The Committee are not happy over the delay in revision of tariff values and would like the Government to take steps to avoid the recurrence of delays in such matters.

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3.102

The Committee are of the view that there is force in the suggestion made by some representatives of industry that tariff values should be revised in consultation with the industry concerned. The Committee suggest that a suitable mechanism be evolved by Government to consult the representative body of the industry concerned before revising the tariff value of any item.

#### *Exemptions*

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3.120

to

3.124

The Committee have gone into the question of criteria to be adopted for grant of exemptions to small scale industry. They do not agree with the Jha Committee (1978) that the value of production of a unit should be the basis for granting concessions to small producers as this criterion might result in denying the concession to a large number of small scale units using high value inputs besides acting as a disincentive to higher production and encouraging fragmentation of units. In the opinion of the Committee, for grant of exemptions to small scale units, the investment in plant and machinery should be the criterion and the units falling under the category of 'small scale industry' as defined by the Ministry of Industry should be given the concession regardless of turn-over.

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3.126

The Committee note that the power to authorise exemption from duty is vested with the Central Government under Central Excise Rules, 1944. They also note that all exemption notifications issued in the exercise of this power are laid before Parliament soon after they are

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issued together with explanatory memoranda which give the background of exemptions. This power of granting exemption and relief in excise is liable to be abused. The Committee feel that if at all necessary, Government should exercise the power to grant exemptions very sparingly and in extreme cases only. The Committee would also like that the notifications of exemption should be subject to modification or annulment by Parliament within a stipulated period and a suitable provision to this effect should be made in the parent Act.

The Committee would like to draw attention to para 1.38 of 68.h Report (March, 1978) of the Public Accounts Committee in which they have recommended specific measures against abuse of duty exemptions and reiterated their earlier recommendation to have some parliamentary control over exemption on the following lines:

(i) All exemptions involving a revenue effect of Rs. 1 crores and more in each individual case should be given only with the prior approval of Parliament."

(ii) The Financial implications of all exemption notifications in operations should be brought specifically to the notice of Parliament by Government at the time of presentation of the Budget."

The Committee desire that action in pursuance of this recommendation should be taken without delay.

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3.127

At present whenever any foreign mission in India imports any equipment like air-conditioning unit for its own use, complete exemption is given to it from payment of customs duty on the equipment. But similar equipment, if purchased indigenously is required to bear full excise duty. This practice, needless to say, operates to the detriment of indigenous industries as the foreign

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missions would obviously be induced to import such equipment from abroad rather than buy it from indigenous manufacturers. The Committee would like the Government to remove this anomaly at the earliest in order to encourage foreign missions to buy Indian made goods.

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3.128

At present no special concession under the Central excise law is available to the industries located in backward areas. In view of the universally accepted need to pay special attention to the development of backward areas, the Committee would like the Government to examine the desirability of giving concessions/exemptions from excise duty to goods produced by units located in such areas. Such a step, the Committee feel, would act as an incentive to set up industries in backward areas and contribute to their faster progress.

#### *Excise Control Procedure*

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The Committee agree that the excise control procedure should be such as gives no quarter to those assesseees who resort to malpractices and evade duty. But in devising a suitable procedure, the Ministry should not only aim at preventing leakage of revenue but also ensure that it is not so cumbersome and oppressive as to cause harassment to honest tax payers.

As the Production Based Control Procedure is reportedly causing hardship, it is just proper that the Ministry should go into the various aspects of this procedure and remove or suitably modify the irksome provisions of this procedure which are not very essential or relevant to check evasion in consultation with the trade and Industry. The Ministry should in fact keep the working of all the procedures under constant watch with a view to plugging loopholes and removing pinpricks.

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### *Refunds*

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From the figures furnished to the Committee they note that despite departmental instructions for sanction of refunds within 3 months as on 1-4-1978, the number of refund claims, pending for more than 3 months had registered a five fold increase (3268) as compared to the number during the previous two years (642 in 1976 and 609 in 1977). The number of cases pending on 1 April, 1978 for more than 6 months also showed nearly 50 per cent increase as compared to the number in 1976 and 1977. This unmistakably shows that the executive instructions issued by the Department to finalise cases within 3 months have had absolutely no effect on the excise authorities. On the contrary, the position has deteriorated. The Committee, therefore, strongly feel that in order to bring home to all concerned a sense of urgency it is imperative that a time limit should be fixed for sanction of refund claims and if these are not sanctioned within the prescribed time limit, not only interest at market rate should be paid by the Government on the due amount but the officers found responsible for avoidable delays should be held accountable.

### *Less Charged Demands*

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The Committee would like the Department to review on a regular but selective basis, such cases of short levy of duty as are re-opened after a period of 6 months to see as to whether these cases really involved fraud, collusion, wilful mis-statement or suppression of facts by the assesseees and take corrective measures to ensure that, under the garb of these powers, honest assesseees are not harassed. They would like to be informed of the concrete action taken in this regard.

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39	5.25	<p>In the opinion of the Committee, the period of 5 years stipulated for reopening cases of short levy on the ground of fraud, collusion or wilful statement or suppression of facts is too long. This should be reduced to three years.</p> <p><i>Revision of classification</i></p>
40	5.26	<p>The Committee feel that the present system of raising less charge demands and payment of refunds is unsatisfactory. Excise duty is a tax which is ultimately paid by the consumer. When goods are sold, the consumer pays the excise duty as a part of the price. In cases where duty is under-assessed originally and less charge demands are raised, it is not possible for the manufacturer to recover the duty from the consumer. Similarly, in cases of initial over-assessment of duty, the benefit of refund, if and when granted, cannot normally be passed on to the consumers who must have in normal course been required to pay the enhanced price, thus allowing the fortuitous benefit to be retained by the assessee. In the opinion of the Committee, the revision in classification should never operate retrospectively. It should always operate prospectively.</p> <p><i>Measures to check arrears</i></p>
41	5.38	<p>The Committee note that the arrears of excise duty have increased from Rs. 78 crores as on 31st March, 1974 to Rs. 154.67 crores as on 31-3-1978. The Committee have been informed that out of Rs. 154.67 crores of Central Excise arrears as on 31-3-1978, the major portion viz. 111.09 crore (nearly 72 per cent) was accounted for by disputed demands and recoveries in such cases are not possible till the appeals, revision petitions or court cases are decided by competent authorities. In order to minimise cases of arrears involved in disputed demands, a suggestion has</p>



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been made that before filing appeal|revision application the assessee should be given one of the two options, viz. (1) he may either pay duty claimed by the department first before filing appeal, revision application etc. and in case he wins the appeal etc. he may get back the amount with interest or (2) in the alternative he may be allowed to file the appeal without payment of the amount of duty in dispute and in case he loses, he may be liable to pay duty with interest thereon. The Committee welcome this suggestion and recommend that Government may make a suitable provision in this regard in the excise laws with a view to discouraging frivolous and dilatory appeals/revision applications and expediting recovery of excise dues.

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The conclusion that the Committee draw from the sharp increase in arrears of excise duty from Rs. 85 crores in March, 1976, to over Rs. 122 crores in March, 1977 and over Rs. 154 crores in March, 1978 is that the measures taken to liquidate arrears have not proved effective. The Committee would like that Central Board|Ministry should review these measures and tighten them so as to produce results and inform the Committee of the action taken in the matter.

The Committee note that the arrears of revenues in certain collectorates like Bombay, Patna, Madras, Bangalore and West Bengal, are very heavy. They would like the Central Board to intensify efforts in all such Collectorates so as to liquidate the arrears at the earliest.

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The Committee note that arrears have piled up in respect of products like fertilizers, petroleum products etc. which are mostly produced in public sector undertakings. The Committee have been informed that the Central Board are trying to settle disputes with public sector undertakings

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across that table, by associating the representatives of the Ministry of Law where necessary. Instructions have also been issued by Government to the Public sector undertakings that they should not rush to courts in case of disputes and should settle them through departmental channels, if necessary, by referring the matter to Ministry of Law. The Committee would like the Ministry to evolve a procedure for expeditious settlement of arrears due from and other disputes with the public undertakings in consultation with the Ministry of Law which may provide for arbitration, wherever necessary.

*Appeals and Revision Applications*

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6.36

The Committee are unhappy over the inordinate delay in disposal of appeals and revision applications in respect of Central Excise disputes. The Ministry have informed the committee that the delay in disposal of appeals and revision applications has been mainly due to paucity of staff both at the decision making level and lower levels.

The Committee desire that an independent review of the personnel required at all levels and of the office procedures should be undertaken without delay. The review should aim at finding out ways and means of toning up the overall efficiency of the Departmental appellate machinery consistent with need for economy so as to speed up the pace of disposal of appeals and revision applications. The Committee are anxious that arrears of appeals should progressively be liquidated and time lag in disposal of cases cut down to the minimum. The Ministry should apprise the Committee within six months of the outcome of the review.

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The Committee welcome the proposal to set up a Regional Revisionary Unit in the first ins-

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tance, at Bombay on an experimental basis. They would like to be informed of the decision taken in the matter.

#### *Appellate Tribunal*

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The Committee, note, the idea of independent appellate tribunal had not found favour with the Government in the past though the matter, in the light of the Jha Committee's recommendation, is stated to be under consideration again. While denying the charge of bias in favour of revenue in the decisions of departmental appellate offices, the Ministry have stated that the existing appellate and revisionary authorities, function in a quasi-judicial manner following the principle of natural justice and ensure that their decisions are independent. The Committee expect that the decisions of the Appellate Machinery should be objective and not subjected to any extraneous influence.

The Committee are unable to appreciate the Government's stand against the idea of an independent appellate tribunal for deciding excise disputes. What surprises the Committee is that Government have been disregarding expert opinion in this matter for nearly 25 years and have been persisting in the departmental appellate machinery in which the industry does not have full confidence. The Committee urge the Government to reconsider their earlier stand in this regard and institute without further delay an independent appellate tribunal for settling disputes relating to excise and customs on the lines of the Income Tax Appellate Tribunal in deference to the near unanimous demand of the industry and oft-repeated views of the Government appointed expert bodies.

#### *Evasion*

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The Committee are concerned to note that there is considerable evasion of excise duty

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by unscrupulous manufacturers. During the last two years Government came across as many as 24,422 cases of evasion.

In the absence of comparative assessment of the magnitude of evasion from time to time, it would not be possible to say whether evasion is on the increase or decrease and whether the anti-evasion measures are producing results or not. The Committee feel that evolution of some empiric, though loose, yardsticks to attempt a guess, if not an estimate, about the extent of excise evasion is very necessary and that a fresh and determined bid may be made for the purpose. While examining the matter, Government may, *inter alia*, consider whether comparing the rate of growth of industrial production, particularly in big units (in respect of which growth figures can become available) individually and collectively, with the growth of excise revenue can give any clue or whether any inference can be drawn from the number and value of evasion cases detected by the preventive and audit organisations. If the growth of excise revenue is not found to be keeping pace with industrial production in any unit or collectorate or if there is increase in evasion cases detected by preventive organisations, the inference should be obvious and the Government should intensify anti-evasion measures in the units or areas concerned.

The Committee cannot over-emphasise the need for keeping all the anti-evasion measures under constant watch and to make them more effective from time to time in the light of experience.

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The Committee would also like the Government to consider evolving an incentive scheme to encourage the excise staff to detect cases of

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tax evasion more vigorously and bring the culprits to book.

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The Committee, feel that normally there could be no evasion without the complicity of the excise staff. While they would not like any unjust or arbitrary system to be introduced to harass individual officers for tax evasion except when the evasion is proved to have taken place due to their carelessness or complicity, they feel that a sense of responsibility has got to be inculcated amongst the excise officers and staff and those officers and staff who are found unable to check malpractices in the production units in their jurisdiction should be held accountable for their action and inaction leading to loss of revenue.

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It has been the view of expert bodies that evasion has been pervasive all these years. In the opinion of the Committee the evasion appears to be almost inherent in the present system of excise control which involves a very large number of excise assesseees, big or small, spread throughout the length and breadth of the country. The task of reducing tax evasion would become easier if the recommendation made by the Committee in para 1.37 for levying excise as far as possible either at the source or at the finished products stage were to be implemented. This simplification and rationalisation in the system would make control over excise evasion more effective and go a long way in checking evasion.

#### Seizures

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It has been represented to the Committee by a number of non-official organisations that sometimes officers are found to be over-zealous and they indulge in repeated inspections putting

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the assesseees to a lot of inconvenience and economic loss.

With a view to discouraging seizures on purely technical flimsy grounds, the Ministry have issued instructions according to which it has been made incumbent that the Assistant Collector should review each case of seizure within 48 hours of the receipt of the seizure report.

In the opinion of the Committee, there is a strong case for regular monitoring of all searches and seizures and their review by senior officers in order to see that searches and seizures are made only under the orders of authorised officers and on reasonable grounds and if, as a result of review, any seizures are found to have been carried out on purely technical or flimsy grounds or due to over-zealousness or malice on the part of excise staff, the staff concerned should be suitably dealt with.

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It has also been brought to the notice of the Committee that on many occasions the excise officers proceed against assesseees on trivial technical issues. In a written reply the Ministry stated that where a contravention of the Central Excise Rules making excisable goods liable to confiscation is detected, it is necessary that the Excise Inspector seizes such goods in law.

During evidence, however, the Chairman of the Central Board stated that "so far as technical offences are concerned, instructions have been issued that there need be no seizures and in turn some small penalty can be imposed". There is obviously an ambiguity between what the Central Board stated in written reply and what the Chairman of the Central Board stated during evidence. The Committee would like the Central Board/Ministry to look into this matter and make the position clear beyond doubt for the guidance of the excise officers.

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		<i>Adjudication of Seizures cases</i>
53	7.50	<p>It has been represented to the Committee that seized goods are often kept pending for a long time causing business loss. Every effort is reported to be made by the Department to adjudicate seizure cases as early as possible but, it being a time consuming process, generally it takes about 6 months. According to the Ministry "no statutory limit has been—or in the nature of things, can be—prescribed for finalisation of an adjudication proceeding". The Committee note that in 1976-77 out of 9585 seizure cases adjudicated, nearly 40 per cent of the cases (3881) took more than 6 months and over 700 seizure cases pertaining to that year have been pending till October, 1978 (i.e., even after the lapse of 14 years). These figures reveal rather unsatisfactory picture of the Department's efficiency in this field.</p> <p>The efforts of the Board to get the seizure cases disposed of within a period of 6 months have not been effective. The Committee feel that in order to introduce a sense of urgency in dealing with seizure cases it is necessary to fix a statutory limit of 6 months to dispose of such cases; and if the seizure cases are not disposed of within the statutory period of 6 months; the goods should be released.</p>
54	7.62 and 7.63	<p>The Committee note that the powers to arrest a person other than owner or manager of a factory have been delegated to Inspectors (who are non-gazetted officers whereas the power to summon someone for evidence or enquiry has been delegated to an officer of a higher rank, viz., superintendent (a gazetted officer). This delegation was made in 1957.</p> <p>The Committee would like that the delegation of power of arrest made over two decades ago to lower level officers like Inspectors should be reviewed in the light of experience and requirements of the changed situation. They feel that</p>

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powers of arrest should be delegated only to responsible officers who will not misuse or even threaten to misuse these powers.

#### Reorganisation of collectorates

At present Central Excise Collectorates have been organised on territorial basis under the charge of a Collector. It has been suggested to the Committee that in order to develop specialisation in specific fields amongst the officials the collectorates may be re-organised industry-wise or areas-cum-industry-wise. In Bombay and Calcutta Collectorates, certain patterns of functional-cum-territorial Divisions are being experimented with. The Committee would suggest that the working of area-cum-industry-wise Divisions in Bombay and Calcutta should be evaluated and the pattern with necessary improvements extended to more Collectorates, especially those where there is concentration of industries of same or similar character.

#### Public Relations Officers

The Committee find that though officers of various ranks are functioning as Public Relations Officers at the Headquarters of Central Excise Collectorates and the Divisional offices, the industry is not satisfied with the present public relations set up and it feels that there is considerable communication gap between the assessee and officials particularly at the senior levels. The Committee would like that the suggestion made by the industry and welcomed during evidence by the Chairman, Central Board, to designate senior and experienced officers at Collectorate and Divisional levels exclusively to guide and advise the assessee in various procedural and other aspects of excise laws, should be given a concrete shape and implemented to meet the needs of industries, particularly the small assessee who may not be able to engage the services of private experts.

The Public Relations Officers should maintain upto date sets of excise rules, regulations,



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notifications and other publications and make them available to assesseees for reference purposes. They should also make available copies of these publications/notifications on sale.

#### **Technical Staff**

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The Committee find that the need for having technical staff in the Central Excise Department who can understand the intricacies of engineering products, chemicals, plastics etc., has been pointed out by the industry and recognised by the Excise Department. Recognising the need for inducting persons holding technical qualifications in the cadres of Central Excise and Customs Department it has been decided by the Ministry to make a beginning in this direction by reserving 100 posts in Group 'B' for experts in various technical fields.

While this welcome decision will help the Central Board fill gaps for the time being, the Committee would like the Board to consider making it a regular feature of their personnel policy so that they can, from time to time, strengthen their organisation at various levels to be able to cope with the intricacies of engineering and other sophisticated products. For this purpose the Central Board will do well to assess the requirements of technical staff and officers in various fields from time to time and do the necessary career planning for them.

#### **Training Programme**

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The Committee cannot over-emphasize the importance of training programme for the officers and staff of Central Excise and Customs to enable them to cope efficiently with the complexities posed in the administration of Excise and Customs laws. They find that a similar feeling has been echoed by the Jha Committee (1978). The Committee note that the need for imparting training to staff and officers has been recognised by the Central Board, and a Directorate of Training with four training institutes at New Delhi,

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		<p>Bombay, Madras and Calcutta has been set up to organise training programmes for various categories of staff. But, it appears, constraints of resources stand in the way of their providing adequate faculty members and supporting staff and physical facilities like hostels, lecture halls etc. They hope that the expansion of staff and facilities for training, which is stated to be under consideration, will materialise without delay and training institutes will be developed to meet the training needs of the staff in full.</p>

60	8.30 to 8.42	<p>The Committee do not understand why the Directorate should be keen to locate the training institutes in the metropolitan cities of Delhi, Bombay, Calcutta and Madras which are not only already too congested but also too expensive. The Committee feel that the Directorate of Training and the training institutes can be set up in smaller towns without any adverse effect on the training programmes.</p>
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*Anti-corruption measures*

61	8.42	<p>There is a general complaint that the field officers of Central Excise not only harass the assesseses unnecessarily but also indulge in corrupt practices. The Ministry have stated that to fight this type of corruption, besides investigating specific complaints of corruption and harassment and prosecuting the corrupt officials, they have taken such steps as identification of sensitive points, collection of adequate intelligence about the sensitive areas, preparation of "agreed" list of officers of doubtful integrity in consultation with CBI and maintenance of surveillance over their activity and periodical rotation of officers working at different levels. In the opinion of the Committee, these steps, though good in themselves, cannot be said to have succeeded in rooting out corruption. The Committee therefore</p>
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		cannot over emphasize the need for intensifying the aforesaid anti-corruption measures and devising such other measures as may become necessary to deal with the ever-changing facets of corruption and to weed out and punish the corrupt.
62	8.43	The Committee would also suggest that the Government should keep a more watchful eye on the style and standard of living of officials of doubtful integrity and should not hesitate proceeding against those who have assets beyond their known sources of income or are found living a life beyond their means. If such officials can be brought to book without delay, it will definitely go a long way to deter others from pursuing the path of corruption.
63	8.44	Needless to say that a large number of excise staff and officers are honest and upright but even the honest and upright officials would perhaps admit that the general image of excise staff has been tarnished beyond words because of the activities of corrupt officials among them. The Committee feel that the honest officials should be as much concerned about furnishing the general image of excise staff as the Government about rooting out corruption in the interest of their revenues. In their opinion, therefore, if the Government can enlist the enthusiastic support and cooperation of honest staff if necessary by giving them some incentives in the fight against corruption, the task may become easier and the results more encouraging.
		<i>Courteous behaviour</i>
64	8.45	There are also complaints about the officials at various levels being rude to assessees. The Committee are surprised to know from the Ministry that during the year 1976, they received only 18 complaints out of which on investigation

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15 were found to be "unsubstantiated"; and during the year 1977, out of 20 complaints, 16 were found to be "unsubstantiated". In the opinion of the Committee, the Ministry would be committing a grave error if from this unbelievably small number of formal complaints of discourteous behaviour and still smaller number of 'substantiated' complaints, they draw a conclusion to rebut the general complaint of rudeness, as, in the very nature of things, not every aggrieved person makes a complaint and not every complainant can substantiate the allegation. The Ministry should impress upon senior officers in the field not only to create and appreciate an attitude of friendliness and courtesy amongst staff but also to be more easily and frequently accessible to the public to hear their grievances and redress them without detracting from the discharge of their duties.

#### **Complaint Register**

**8.46** The Committee cannot appreciate why only in "some of the Collectorates" and not all, should there be complaint registers kept for the people to record their complaints. Such register should be maintained in all the Collectorates at all levels and periodically inspected by senior officers and the complainants informed of the action taken on their complaints at the earliest.

#### **Fear Complex among officers**

**8.49** The Committee are concerned to know that, admittedly, there is a growing tendency amongst the officers in the Central Excise Department to shirk decisions in order to avoid penal action in case of errors. If even bonafide errors on the part of officers are viewed seriously, no wonder, they shirk taking decisions for fear of action. The Committee would urge the Ministry to study the causes of the "fear complex" among officers and take necessary measures on all fronts to re-establish a climate of confidence in which the

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officers may be encouraged to face the issues squarely and take free decisions and they be re-assured that bona fide mistakes will not be taken serious note of. This is a very serious matter and the sooner it is attended to, the better it would be for everybody.

### Review of Staff Strength

**8.55** In the absence of any comprehensive study of the staff strength and their deployment, the Committee are not in a position to judge whether an increase of nearly 10,000 employees during a period of 9 years (1968—1977) was justified even though there has been considerable expansion in the excise network. The Committee feel that the organisational structure, staff strength and the deployment of staff at the headquarters and in the field units responsible for collection of central excise and other related matters should be studied comprehensively by an independent body of experts to be appointed in consultation with the Department of Administrative Reforms and the Staff Inspection Unit of the Ministry of Finance and the Central Board of Excise and Customs should review the position in the light of their report. The Committee hope that action in this regard will be initiated without delay and progress reported to them.

### Cost of Collection

**8.57** The Committee find that whereas the all India average cost of collection is 0.72 per cent of the excise revenue, it is twice the national average in Nagpur, Delhi and Guntur and well above the national mark in some other Collectorates like Hyderabad, Shillong, Madurai, Allahabad, West Bengal and Calcutta. The Committee also find that some other Collectorates have been able to keep their cost of collection much below the national average. In this connection the examples of Goa (0.18 per cent), Bombay (0.28

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		per cent), Cochin and Orissa (0.5 per cent), Patna and Baroda (0.53 per cent) are worth mentioning here. The Committee would like the Central Board to study critically the working of the excise machinery in the Collectorates where the cost of collection is higher than the national average to identify the factors responsible for higher expenditure and to take measures to bring down their expenditure to the level of other Collectorates of comparable size and complexion.

### *Cheque Facility*

69	8.68	With the introduction of the Scheme of Departmentalisation of accounts from 1-4-1977 the system of making payments by cheque has been withdrawn and the assesseees are now required to deposit the dues in any of the nominated branches of the Public Sector Banks whose number was reported to be around 10,000.
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The Committee suggest that the Government should reconsider the payment procedure and introduce the cheque facility for payment of excise duty with suitable safeguards against bounding of cheques and abuse of this facility. They would like that the assesseees who are found to have abused this facility deliberately should be sternly dealt with.

### *System of Records*

70	7.78	The Committee hope that since the Central Board Ministry are already conscious of the inadequacies of the system of maintenance of records, they should take steps, without delay, to modernise the entire system of keeping records and retrieving information and inform the Committee of the steps taken in the matter.
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<i>Review of Forms and returns</i>		
71	8.82 8.83	The Committee suggest that the Central Board of Excise and Customs should undertake review of the forms and returns periodically in consultation with the industry so that these forms are simple and easy to fill by the assesseees.
72	8.99 8.100	The Committee note that with a view to providing any effective forum at the Centre for the purpose of discussing general Customs and Central Excise problems on an all-India basis, the Government of India have constituted a Customs and Central Excise Advisory Council. Besides a Regional Advisory Committee has been set up in each Central Excise Collectorate to discuss and resolve procedural difficulties of a general nature. The Committee find that the Central Advisory Council met only 5 times during the last 6 years from 1973 to 1978. The representative of the Central Board of Excise and Customs has informed the Committee that hereafter the Council would meet twice a year—one before the Budget Session and again after the presentation of the Budget to ascertain the industries reactions on the Budget proposals. Decision to increase the frequency of meetings of the Central Council is a welcome decision but, needless to say, these meetings can serve a useful purpose only if the Government representatives at these meetings hear the representatives of the industries with an open mind and display an attitude of accommodation to the extent possible.
73	8.101	The Committee note that the Central Board of Excise and Customs originally prescribed four meetings a year for Regional Advisory Committees but had later reduced them to two meetings a year. It is, however, noticed that even this reduced scale of meetings has not been followed in case of Regional Advisory Committees in Ahmeda-

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		<p>bad, Bhubaneswar, Chandigarh, Delhi, Hyderabad, Jaipur, Madras, Madurai and Nagpur Collectorates. The Committee cannot over-emphasise the importance of the Regional Advisory Committees which can not only serve as a useful forum for the representatives of the industries to ventilate their grievances but also become a barometer of public opinion on excise laws and procedures and the working of the Excise Collectorates for the benefit of Government. The Committee would like that the Central Board Ministry should spare no effort to revive the interest of the industries in the Regional Advisory Committees and bring home to them the usefulness of these Committees. If meetings are held frequently, points for discussion are invited and agenda circulated in advance, the views of the representatives heard with an open and sympathetic mind and their views on matters of policy conveyed to the appropriate authorities for sympathetic consideration, follow-up action is taken promptly and a report on the follow-up action made at the following meetings of the Committees, the Committee have no doubt that these Committees would evoke the enthusiasm of the industries and fulfil the object for which these Committees have been constituted. The Committee would like to be apprised of the concrete steps taken in this regard.</p>

74	8.102	<p>The Committee regret to note the delay in constituting the Regional Advisory Committee in Delhi in 1978. They hope that the Ministry will take adequate measures to avoid the recurrence of such delay in Delhi or elsewhere in the future.</p>
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