

MODVAT: Short-Term Administrative Reforms

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Preface

This report analyses the current functioning of the administration of the MODVAT system and, given the nature of the prevailing structure, makes recommendations for immediately feasible improvements. It refrains from making recommendations for long run improvements in administration.

There are two basic reasons for this. First, the structure of the MODVAT still does not reflect a traditional VAT. Reflecting multiple objectives, there are many exemptions as well as special categories within the small scale sector that have been accommodated, historically, within the tax structure. This not only makes the rate structure complex but also renders traditional methods of VAT administration, based on financial control, often inapplicable. In fact, therefore, from this perspective, the onus lies as much on tax structure as on administrative improvements.

Second, tax administration officers are practised in a specific manner of operation. While extensive discussions with them revealed a healthy anticipation for change, there seems to be still an overall preference for physical control methods. In areas in which financial control methods have been introduced, lags, for example, in the form of lack of follow-up, were also noticed. Thus, recommendations solely reflecting modern financial control methods for value added tax (VAT) administration might have resulted in a package of improvements feasible in the long run, while putting the interim role of short term improvements in the background.

While this report, therefore, focuses on possibilities for immediate administrative improvements, a study is planned for carefully assessing long run changes necessary for a full-fledged VAT administration. Of course, there are many binding structural issues that are intrinsically intertwined with such an effort, for example, the role of exemptions, and harmonisation with states, to name a few. Nevertheless, if India is to have a proper VAT some day, the intention for which has already been expressed, then long run modifications or even the setting up of a new VAT administration has to be addressed as an important component of that effort. That issue will be addressed in a future study.

The current study on short-term administrative issues, focusing mainly on various procedural aspects of the MODVAT credit system began in July 1995 but the scope had to be somewhat expanded in end-August when the terms of reference were received from the Department of Revenue, Ministry of Finance.

Questionnaires were subsequently sent to officers of the Department, manufacturers, dealers and Associations and Chambers of Commerce and Industry. Response from them was profuse. Field visits included various Excise Offices - including Range Offices - as well as manufacturing units and dealers all over India. Open discussions were held with chambers of commerce and industry, including of the small scale sector. Even though the ideas were not unanimous as might be expected, they provided a firm basis for the analysis, and the authors wish to thank them for their replies and suggestions which made this study possible. NIPFP particularly appreciates the advice and suggestions from the following officers who set apart time for various discussions of the conclusions and recommendations of the report:

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Shri V. Sridhar, Addl. Commissioner
Shri I. P. Lall, Deputy Secretary
Shri D. K. Nayar, Supdt. of Central Excise

Fictitious initials have, however, been used for Range Offices and Collectorates, and names of businesses have been removed, wherever needed. The authors remain responsible for the views expressed.

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Chapter 1

INTRODUCTION

NIPFP has undertaken a study of administrative aspects of MODVAT credit system now existing in the Central Excise. The study reviewed various aspects of MODVAT administration including,

- a. the rules relating to the credit of duty paid on excisable goods as inputs in the Central Excise Rules, 1944 and to suggest necessary modifications;
- b. the procedures in force in the Central Excise Collectorates pertaining to the claims and adjustments at the final stage of payment of duty with a view to improving them in a manner to prevent leakage of revenue;
- c. the existing system of supervisory controls on the claims being made and adjusted in order to infer to what extent they have been effective and what changes are required to make them foolproof;
- d. the extent to which the Range Office and the Division Office are exercising the task entrusted to them by the Central Board of Excise and Customs through the various circulars pertaining to use of MODVAT facilities and to recommend whatever changes may be required for making them effective;
- e. the computerisation of the MODVAT procedures and to suggest such modifications as are required for making it functional and effective; and
- g. has attempted to make suggestions which will ensure the successful functioning of the system without leading to its misuse and abuse in the short run. The study also elaborates on structural changes that will be needed in the long run in order to make MODVAT administration fully efficient, taxpayer friendly and internationally comparable.

For the purpose of carrying out the study one set of questionnaire was issued to all the Collectorates. Another set of questionnaire was sent to the industrialists, Associations and Chambers of Commerce, and replies were received from them. We had also discussions with the various officers of the Department, industries and the Chambers of Trade and Industry. We have also visited a number of factories as well as dealers. The study and its conclusions are derived on the basis of all of the above.

The MODVAT credit utilisation since its inception in March 1986 is as follows:

Table 1
MODVAT Credit and Net Revenue

(Rs. in crores)

Sl. No.	Year	Net Revenue	MODVAT	Per Cent of MODVAT
1.	1986-87	14407.29	1913.59	13.28
2.	1987-88	16552.58	2819.91	17.04
3.	1988-89	18738.81	3809.01	20.33
4.	1989-90	22196.95	5278.53	23.79
5.	1990-91	24335.65	6495.56	26.67
6.	1991-92	28020.08	7965.35	28.43
7.	1992-93	30555.16	10840.23	35.48
8.	1993-94	31711.07	11896.40	37.51
9.	1994-95	37415.95	21686.74	57.96

Source: Central Excise at a Glance 1994-95 by Dte. of S&I.

From the above figures and graph 1 it will be seen that MODVAT credit as a percentage of the total revenue has increased substantially over the last 9 years. This increase has caused certain amount of worry amongst the analysts prompting them to think that there could have been a lot of unauthorised avilment of MODVAT credit, that is to say that the manufacturers have taken credit where they should not have. For this purpose we have gone into all aspects in detail in the Chapters that follow.

On a month to month basis, the trend in increase in MODVAT credit is reflected in the following figures (in crores of rupees):-

Table 2
Monthly Movement in MODVAT Credit

April	1994	1358	April	1995	1990
May		1532	May		2210
June		1647	June		2279
July		1677	July		2319
August		1742	August		2344
September		1833	September		2503
October		1857	October		2308
November		1847	November		2600
December		2219			
January	1995	2124			
February		2045			
March		2219			

In 19 months the MODVAT credit has doubled. July 1994 is an important month when new system about dealers was introduced.

From the above statistical position there is sufficient prima facie indication that the unauthorised availment of MODVAT credit could largely account for the increase in the quantum of input credit. In the following chapters the discussion will endeavour to substantiate this view.

Chapter 2

ANALYSIS OF OFFENCES

We have tabulated the number of offences against each type of offence collectorate-wise, which is given in the Table 3 which refers to the period January 1994 to July 1995. All offences have been classified into three categories (A) Procedural/Technical (b) Substantial and (c) Fraudulent.

Offences that have been categorised as Procedural/Technical are the following:

1. Improper (incomplete/insufficient) Documentation
2. Wrong availment of credit of Capital Goods
3. Inadmissible Inputs
4. Premature credit prior to commencement of production
5. Undeclared inputs
6. Wrong interpretation of Notification
7. Unregistered Dealers Invoice
8. Credit on original invoice
9. Credit on endorsed invoice
10. Invoice not on factory address
11. Invoice not in the name of the unit.

In the procedural type, offences relating to documentation and also relating to the inadmissibility of inputs, have been included. These are basically controversial subjects and one cannot say without going into each one of the cases as to whether the assessee is at fault or whether it has arisen because of lack of clarification. There is a strong feeling amongst the assessees that many of the controversies relating to inadmissibility of inputs and procedural matters have arisen because there have been no proper clarifications at the correct time by the authorities and therefore the contentions are continuing. Interpretation of notification is also a matter where there may be difference of opinion. There are a few cases of undeclared inputs which also is a technical offence. Considering the nature of such

offences, we have grouped them as procedural/technical. Out of a total of 5840 offences, 5083 offences can be grouped in Technical/procedural category, which amounts to 87 per cent. From there it will be seen that the bulk of the offences really are of a technical and procedural nature.

Substantial Violations

Next, we have taken the substantial type of violations. By substantial we mean those offences where the revenue loss would be involved if it was not detected. These are not exactly the cases of difference of opinion but at the same time there is no particular fraud element also since there have been declarations in the RT-12. The broad difference between procedural and substantial offences is that there is no definite duty loss in the first category but in the second category there would be loss of duty had it not been detected. They are the following:

1. Irregular availment of deemed credit
2. Credit on exempted final products
3. Rejected inputs sent back without reversal of credit
4. Credit on basic customs duty
5. Misuse of facility of job work
6. Excess credit availed
7. SSI Unit availing MODVAT after opting out of it.

Fraudulent Violations

The categories are the following:

1. Credit without producing document
2. Credit on invoice w/o physical movement
3. Credit on extra/xerox copy of invoice
4. Credit availed twice on same invoice
5. Credit availed w/o payment of duty
6. Fraud/fake documents etc.

In this category the violations are of those types where deliberateness is there in defrauding the government revenue. The first category is taking credit without producing document. These are obvious cases where the manufacturers expected that they would not be detected and, therefore, they could get away with such offences. These have been detected because of the checking of the RT-12 statement with the invoices.

The second category is where credit has been taken on invoices without physical movement of the goods. These are cases where the goods would have been sold out to the small scale sector or to the exempted sector or to the other sectors where people buy goods without any invoices such as building sector and it is only the invoices which have been sold to the factories who take MODVAT credit. It is very difficult to detect such cases but obviously few cases have been detected because of the alertness of some officers.

The third category is where credit has been taken on the extra or xerox copy of the invoice. There are 115 cases detected in all the collectorates which means that this is quite a prevalent method of defrauding government revenue.

Credit availed twice on the same invoice is also another category which are 53 in number. Credit availed without payment of duty have also been detected but only in a few cases. Cases of pure fraud and fake document are 45 in number. These obviously have been detected by making special investigations. A list of the cases of fraudulent types has been listed separately in Chapter 3.

Here we may add that the total number of such cases of fraudulent type has come to 307 out of the total number of 5840 cases. This works out to 6 per cent. It is not possible to assess the amount involved there, but 6 per cent is quite high. It is true that in any system there would be fraud of some kind but 6 per cent constitutes quite a large number and the Government should not accept such a percentage as a normal occurrence.

Undetected Cases

We requested the Commissioners to let us know if there were some types of offences which were not detected and yet they were nevertheless in existence. Most of them have written about one such offence in which the goods are sold to exempted units or to such other units which do not need the MODVAT credit but sold the invoices to other units which need the MODVAT credit. It has been pointed out that small scale units do not need MODVAT credit upto Rs. 30 lakhs of turn over. Therefore, they keep on buying the product without any invoices. There are other cases of exemptions such as for hawai chappals upto a certain value where inputs are exempted. There is also housing sector where cement and steel are purchased without any invoice. When the goods are sold to this sector without any invoice, the modvatable invoices are up for sale. These are sold to the bigger units which need MODVAT credit. Such offences have been detected by the Director General Anti-Evasion recently which has been discussed in Chapter 5.

Chapter 3

ANALYSIS OF FRAUDULENT CASES

We find that 370 cases out of a total of 5840 relate to fraudulent availment of the benefit of MODVAT Credit by the various manufacturing units. An illustrative list is appended in the Annexure I. We find that broadly the following modus operandi has been adopted by the manufacturers while availing of the benefit of MODVAT credit in a fraudulent manner.

a. **Credit Availed on Forged Documents.** We find that in 53 cases the manufacturers availed themselves of the MODVAT credit on the basis of forged duty paying documents i.e., invoice/G.P.I. (gatepass)/A.R.1 (Application for removal).

Further, we find that in the 53 cases appended in Annexure I under this category, 38 cases relate to iron & steel alone. This points out that the propensity for iron & steel units to fabricate documents is high. We find that even [] have indulged in such practice which clearly indicates that units in highly organized sector are also not free from such malpractices. Only in 4 cases out of 53 such cases the amount of duty involved is less than Rs. 10,000/-. In the remaining 49 cases the amount of duty involved is over Rs. 10,000/-. We thus feel that this modus operandi is normally adopted for evading large sums of excise duty although it cannot at the same time be ruled out completely for evasion of small sums of excise duty.

Further, we find that a fairly large no. of such cases have been detected despite a great deal of effort being gradually required to detect such cases. This gives an impression that it could be fairly wide spread.

b. **Credit Without Payment of Duty.** We find that in 12 cases the manufacturers have availed of MODVAT credit of central excise duty although it had not been paid. This was largely possible by either making a false entry in the statutory records or by availing excess of MODVAT credit or availing MODVAT credit on non-duty paid goods. Excepting

one case the amounts involved are fairly large. Further, we find that the incidence of evasion is in the highly organized sector also.

c. **Credit Availed Twice on the Same Documents.** We find that out of the total of 370 cases wherein MODVAT credit has been availed of fraudulently, in 87 cases such fraud has been committed by manufacturers by availing themselves of the MODVAT credit twice either on the same document or two different copies of the same document. In 63 cases the amount involved was found to be less than Rs. 1 lakh. We also find that the prevalence of this modus operandi of misuse of MODVAT credit is fairly large among the units even in highly organized sector. They have indulged in this modus operandi for evading the central excise due on the finished products. Such large incidence of cases of this nature could also be attributed to the fact that such cases can be easily detected while scrutinizing the documents submitted by the assesseees in Range Office.

d. **Credit on Extra/Xerox Copy of Invoice.** We find that in 70 cases the assesseees have availed themselves of the MODVAT credit on the basis of an extra or xerox copy of the invoice or any other duty paying document. The fairly large no. of cases reported under this category is again suggestive of the ease with which such things can be detected during the course of scrutiny of documents in the Range office.

e. **Credit on Invoice Without Physical Movement of the Goods.** We find that in 31 cases out of a total of 312 cases the modus operandi adopted by the manufacturing unit has been to avail of MODVAT credit without the actual receipt of goods (the inputs). The modus operandi is simple. Although the goods are bought as per the record in the books and the invoice shows the duty paid taken on record, yet the goods are actually sold off to some one else and the amount is collected in cash. This modus operandi serves the dual purpose for the offending party. Firstly, it provides the duty benefit on the modvatable invoice. Secondly, it provides an opportunity to the offending party to generate black money and thereby evade income-tax. However, this modus operandi cannot be detected easily under the present system since there is no occasion to check the physical movement of the goods. Despite such a severe handicap on the detection of such a modus operandi of fraudulently availing MODVAT credit it has been possible by the Central Excise Deptt. to detect 31

cases. This points to the magnitude of evasion by this type. Further, we find that in 27 cases out of 31 cases reported under this head, duty involved is over Rs. 10,000/-. The incidence has also been found in units in highly organised sectors.

f. **Credit of Duty Without Production of Duty-Paying Documents.** We find that in 59 cases, the manufacturers have availed themselves of the MODVAT credit without production of the duty paying documents. Only in 3 cases out of 59 cases listed in Annexure I the duty involved is less than Rs. 10,000/-. In the remaining 56 cases it was found to be more than Rs. 10,000/- involving rather large sums. Units in highly organized sector including joint sector companies have indulged in it.

Chapter 4

CONCEPT OF INPUT

One of the major problems that arises in the administration of MODVAT system is that there has been a very large number of controversies regarding admissibility of inputs for the purpose of MODVAT credit. In the case of capital goods such controversies have arisen in 798 cases and in the case of other inputs there have been 1501 cases. Together it accounts for 2299 cases which is 40 per cent of the total number of cases. Some of the cases which have been reported by the Collectors relate to the following:

Problem Commodities

1. Ramming mass
2. Mortar
3. Unfired factory bricks
4. Ventol
5. Steel shaft
6. Low voltage high load fuse
7. Tubes & Pipes
8. Casting
9. Thermocouple tips
10. Polyethylene, glycol, polystyrene
11. Bottles for aerated water
12. Refractories before 15.3.95
13. Felt & Wire netting
14. Crown cork, packaging materials for aerated water
15. Craft paper
16. Inputs used in manufacture of sand moulds
17. Sand moulds
18. Furnace oil
19. Tool bags
20. Lubricating oil & Grease, cutting oil
21. Chemicals for effluent process treatment
22. Durable and returnable packing like steel drums

23. HDPE drums for bulk supplies
24. Paper bags used for packing cement
25. PVC pipes used in filling the machines
26. Mining equipment and explosives and quarries owned by the assessee
27. Goods used for quality control
28. Machinery for packing the goods manufactured
29. Foundry chemicals for making moulds
30. Sacks and bags of plastic woven fibre or jute used for bagging cement on the ground that they are not inputs for manufacture of cement
31. Catalysts
32. Jigs & fixtures
33. Tools & consumables like electrodes
34. Thinners, additives
35. Ancillary, plants of paper factory such as conveyor belt, evaporator, cooling tower etc.
36. Goods used in captive mines of cement factories
37. Machine for crushing, grinding coal for use in factory of cement
38. Solvent oil
39. Coated abrasives.

If we can solve this problem of too many controversies regarding which input would be admissible for MODVAT credit, then we will be able to achieve a lot. Some of the Collectors have pointed out that this problem can be solved if the definition of input can be made more specific. However, this does not seem to be the complete solution to the problem because we cannot make any definition so specific that there will be no controversy at all. The problem of admissibility or otherwise of inputs has been accentuated by the controversy in regard to the interpretation of the expression "used in manufacture" and "used in relation to manufacture". There have been a large number of litigations on the subject. The Courts have, however, interpreted that both should be taken in the same sense. Even then the controversies keep on arising which will be clear from the above list.

If we see the above list, we will find that there are many items which are plainly admissible. However, it is not possible for us here to say which one is admissible and which one is not. Nor is it the purpose of the study to point out which one of the inputs should be admissible. Some of the Commissioners have pointed to departmental instructions being

different from the Tribunal decisions and references having been made to the Board. One obvious solution is that the Board should give regular clarifications to cover all controversial cases. It has been pointed out by some of the Chambers of Commerce that clarifications used to be given by the Board upto 1992; since then hardly any meeting regarding MODVAT are taking place at the Central level. Also no clarifications are being issued by the Board or Principal Collectors.

We are of the view that even if such clarifications are in fact issued by the Board or by the Principal Collectors, it will only be an interim solution. A lasting solution has to be different which is discussed below.

We have had wide ranging discussions with the officers as well as with the Chambers of Commerce in various places and we find that there is a unanimous support for creating a Negative List showing the inputs which are not admissible for MODVAT credit. All other inputs, including capital goods, should be taken as admissible. This will mean that all the goods brought by the factory for use in the factory except those in the Negative List will be admissible for the purpose of MODVAT credit. This will solve the problem as it will eliminate all the controversies. We sent a questionnaire to all the Collectors and also discussed with the Chambers of Commerce on this specific point. There is a unanimous agreement that this is the proper solution. The list of items which should occur in the Negative List can be the following:

1. All materials for the building of the factory as well as office, including the materials for the maintenance and decoration (such as paints, distemper).
2. Office furniture and items used in the office such as floor coverings, typewriters, stationery and other office equipment.
3. Cars (however, those vehicles which are designed for use within the factory for carrying of goods from one place to another will not be in the Negative List). That is to say sub-item 87.03 will be in the Negative List.

4. Kerosene
5. Diesel
6. Petrol

7. Air conditioners for office (Central air conditioners for the factory will be allowed even though part of the benefit will be used in the office also).
8. Computers exclusively used for the office. (Dedicated computers for the factory machines will not be in the negative list. Those computers which are used both in the office as well as in the factory will be allowed).

This Negative List is a compilation based on the suggestions of various Collectors' reports. However, the Government can either decrease or increase it with the object of fully rationalising it while keeping the short term revenue impact in mind. It is immaterial whether the Negative List is bigger or smaller. What is important is to impart certainty to the concept of inputs. This will solve the problem regarding the admissibility or inadmissibility of inputs which now account for nearly 40 percent of all the recorded offences.

In order to reduce problems further we have to abolish the expression "used in manufacture" or "used in relation to manufacture". We have to use the following expression "brought for use in the factory except those in the Negative List." We need not mention specifically that if the inputs are sold away, they will not get credit because there is already a separate rule specifying that if the inputs are sold away, MODVAT credit has to be reversed. It is necessary to delink the admissibility issue from the concept of "used in manufacture" or "in relation to manufacture" since there are innumerable controversies as to what is manufacture. A recent judgement reported in 1995 80ELT 542 (T) demonstrates how the controversy arose because of difference of opinion between different benches of the Tribunal and how finally it has been settled by the Central Bench where 5 Tribunal Members combined to give this decision. Even now many experts feel that this judgement is not correct, which shows the intensity of the controversy. This decision is regarding whether a ribbon fitted into a computer printer would amount to manufacture, so that the MODVAT credit for the duty paid on the ribbon could be admissible for MODVAT credit. After lengthy discussions at different stages, finally it has been settled that fitting ribbon into a

computer printer is manufacture and MODVAT credit will be available for the duty paid on the ribbon at the time of original manufacture. The controversy arose because the concept of manufacture is still in doubt. Such controversies cannot be solved if we keep on using the expression "used in manufacture" or "in relation to manufacture".

Another instance is that of chemicals used in the treatment of effluents in the factories. These chemicals are not being admissible for MODVAT credit, although it is necessary for the factories to take steps for treating the effluents so that they do not pollute the environment. Strictly speaking, treatment of effluents is not manufacture but the intention of the Government cannot be to deny such chemicals which are used in the treatment of the effluents. All the above types of controversies will be over if we use the expression "brought for use in the factory except those in the Negative List." We find that not only the trade and the industry but also all the officers have supported this view in principle. We, therefore, strongly support the proposition that a Negative List be compiled, and except those in the Negative List, all other inputs (including capital goods) brought for use in the factory should be admissible for MODVAT credit. This will eliminate nearly 40 per cent of controversies that have now been arising.

Cascading Effect

A question is often asked whether the MODVAT system in India has eliminated the cascading effect. The simple answer is that it has eliminated cascading effect to the extent that MODVAT has been extended to more and more commodities. If and when we are able to extend the input credit to all commodities, the cascading effect will disappear. A lot was achieved in the budget of 1995-96 when interchangeability was introduced (such that anyone of the input credits could be used for clearing anyone of the outputs) thereby removing cascading effect further. We may also add that when the Negative List is introduced and MODVAT credit is extended to all other commodities excepting for the Negative List, the cascading effect will have been reduced even more. However, some cascading effect will remain to the extent that some commodities would continue to be on the Negative List. But it will be removed for all other goods where input credit is allowed.

Chapter 5

DEALERS

In July 1994 a new system was introduced in regard to the dealers. In the old system the dealers were not registered. They were also not required to maintain prescribed registers. The MODVAT credit was being taken on the basis of the invoices in the following way.

If the original manufacturer was selling, say 10 machines under one invoice to a dealer and the dealer was selling all the 10 machines to another dealer or to another manufacturer who takes the MODVAT credit, he would be selling on the basis of the original invoice. He would only endorse it himself in the name of the buyer. This was allowed upto two endorsements. Therefore, the original invoice issued by the original manufacturer would reach the final consumer factory who takes the MODVAT credit. In case the dealer splits up the consignment of 10 machines into six machines and four machines to different buyers, then he would get two subsidiary certificates countersigned by the range officer i.e. Supdt. of the Central Excise. On the basis of these certificates the MODVAT credit would be granted. This system has now been superseded by a new system which is as follows.

Now there is registration of dealers and the registered dealers are required to maintain documents and registers. The unregistered dealers do not come in the MODVAT chain. The dealers are now issuing their own invoices [gate pass has been abolished]. Whether they are selling the full consignment to another dealer or whether they are selling part consignment to another dealer or manufacturer, they do not have to get any countersignature from the range officer, so that they do not have to go to range office. In the end of the month, they take a photocopy of the registers maintained by them indicating all the transactions (RG 23D) and copies of all the invoices to the range office. The range office is supposed to verify in two ways. Firstly, they have to verify if the total goods covered by the invoice issued which would tally with the total of the goods received by them. If they tally, then they deface the invoices received by the dealers. The other check by the range office is to verify whether the invoices are genuine. For this purpose, they are supposed to cross-verify with the range of origin. This is the work which is simply not being accomplished separately. The first

check is routine, which is being done. The second check is more useful which is not being done.

It is significant that the facility of issuing modvatable invoices is not restricted to the first stage or second stage wholesale dealer but it is available to any stage wholesale dealer of specified inputs. Thus, in theory, even the 10th stage wholesale dealer has been provided the facility of issuing modvatable invoices. It is no doubt true that the reference of the invoices issued by the original manufacturer of inputs, with particulars of invoices, is to be indicated by each stage wholesale dealer in the modvatable invoices so as to provide linkage to the duty paid by the manufacturer of inputs. However, it becomes extremely difficult to verify the genuineness of the invoices at each stage. This is all the more difficult in the absence of comprehensive computerisation which is yet to be achieved. The system in operation is thus not capable of implementation in such a way that the cases of abuse or misuse are detected along with the process of implementation. If a wholesale dealer resorts to abuse and manipulates fictitious invoices, there is no inherent mechanism to check such abuse. In a tax structure which does not provide for levy of duty on all manufacturers of a given commodity but provides exemptions of several kinds, notably exemptions to the small scale units, there is incentive for misuse of the invoices. During the course of our informal discussions with the officers of the Central Excise department as well as representatives of trade and industry, we gathered that the invoices issued for supply of inputs to the small scale units are misused. Small scale units do not claim any MODVAT of the input duty and the invoices are sold at premium although goods do not move physically to the buyers.

Many Commissioners of Central Excise (CCEs) with whom we had occasion to interact have also expressed the view that the facility of dealers' invoices is prone to misuse and in any case it is not amenable to verification of the authenticity of the invoices. Large number of CCEs and other officers of the department feel that the system of issuing subsidiary gate passes (certificates) and endorsements of gate passes was better and could not have been misused except with the connivance of the departmental officers themselves. They feel that if any misuse takes place in the case of dealers' invoices it is extremely difficult to detect and investigate such cases.

We have been informed that more than 40,000 dealers have been registered by the Central Excise department. They are required to submit monthly returns showing details of the goods sold by them against the invoices received from their immediately preceding seller. As per the procedure prescribed by the department, the invoices are to be defaced by the Range Officer as and when deliveries against them are exhausted. We are given to understand that this has increased the work considerably for the Range Officers and for most of the time they are busy with the dealers in the work of defacing their invoices. A number of officers at the range and divisional level with whom we have interacted have informed us that the work of examining the returns furnished by the dealers and of defacing the invoices is purely mechanical and they are never sure whether the invoices are fake or manipulated. All they examine is whether the delivery is shown against a particular invoice, match in quantity and amount of duty shown on the invoices received by the dealer. The senior officers of the department are not sure if the existing procedure at all safeguards the revenue interest.

We had occasion to see the returns submitted by some of the dealers in Delhi, Bangalore, Pune, Madras and Jaipur. The returns are voluminous and the officers have genuine apprehensions that in due course of time they would have no space in their office to keep the returns. Many range offices are already facing this problem.

In view of the above, we have examined the efficacy of the present system in comparison with the previous one. In the present system there has been not a single offence case detected by the Collectorates. The offence cases which we have discussed in our chart on the basis of reports received from the Commissioners are only from the manufacturers' invoices which are submitted along with the RT 12 return every month. We have found that 6 per cent fraud cases have been detected. The fact that there has been no detection of cases relating to invoices issued by the dealers does not mean that there is no offence at all. The fact is that there is virtually no checking, the result being that no offence has been detected. Had a proper check been made, one could have expected at least a similar percentage as has been detected in the case of manufacturers' invoice although one cannot be sure about the quantum of the offence committed by the dealers compared to the offence committed by the manufacturers. We conclude that because of little checking being carried out on the invoices

of the dealers, offences which are taking place are going undetected.

The difficulty in verification of dealers' invoices also should be appreciated however. Now if a manufacturer at Poona sells goods to Bombay dealer who sells to Madras dealer who sells finally to a manufacturer at Coimbatore, then the Superintendent of Central Excise at Coimbatore has to write to Madras, get a reply, then write to Bombay, get a reply, then write to Madras and get the final reply. All this for one verification. One can imagine why verifications are not being done.

A particular report on dealers' misuse of invoices detected by Directorate General of Anti-Evasion (DGAE) is as below:

"A recent raid on the premises of some dealers in Calcutta has revealed a lot of misuse by the dealers. DGAE has detected huge evasion of C.Ex. duty on Iron/Steel products by way of the Registered dealers selling the goods to one set of customers in cash without accounting and selling/transferring the duty paying document/invoice to the other set of customers, mainly mini-steel plants to enable the latter to avail of undue credit against the bazar scrap (for which no duty paying document can be there) procured by them as input.

Although the case is basically on Mini Steel Plants, the salient feature underlined by it is the nexus that exists between a certain class of dealers and the Mini Steel Plants on the one hand and that between those dealers and brokers - who play a vital role in the entire chain - on the other.

The most important feature of this massive MODVAT rigging is its self-sustaining nature; all the major groups of players involved in it are benefitted out of it and the market dynamics are so arranged that each group - be it the dealers, the Mini Steel Plants, the rolling/forging units or the brokers - enjoys a symbiotic relationship with other groups.

The leakage of revenue is caused by two factors; one, trading in bills/challans including duty-paying documents sans goods and vice versa and two, availability of input items which have no duty-paying character.

Mini Steel Plants: Motive and Modus Operandi

For most of the Mini Steel Plants, non-duty paid steel scrap commonly known as 'Bazar Scrap' comprising of old/broken/rejected steel items and articles and scrap arising from vast multitude of small machine shops - constitute the most important input base. Besides, certain Mini Steel Plants also use iron scraps/sponge iron in their input mix. Since in either case the Mini Steel Plants are required to pay most of duty liability on the resultant final product - ingot, bloom/billet - in cash, they seldom enter such inputs in their books of accounts. Instead they show items like 'defective ingot/bloom/slab' or 'skelp cobble' etc. as their inputs. This they do by showing fake 'purchase' of these duty paid items from a certain class of dealers while those items actually find their way to various rolling/forging/machining units. Sometimes, instead of such fake 'purchase', the Mini Steel Plants procure the duty- paying documents through fake 'conversion' as if they have received such duty paid inputs for making ingots/bloom, etc., therefrom on job-charge basis. This 'conversion' route also helps in evading Sales Tax on the items produced by the Mini Steel Plants. In some cases the Mini Steel Plants preserve the purchase documents for their actual inputs-both non duty paid and duty paid at a very low rate-only for the time being before those are either destroyed or are disposed of through fake 'sale' effected in favour of certain dealers.

Rolling Mills/Forging-Cum-Machining Units: Motive and Modus Operandi

Most of the rolling mills in the country indulge in gross evasion of duty through clandestine removal. A part of their final products comprising bars, rods, flats etc. are also removed in the guise of 'scrap' or 'mis-rolls'. Since the products of the rolling mills are used by consumers who do not come within the purview of Central Excise and since in many cases those are purchased by the consumers through their unaccounted for money, the rolling mills always find it easy to dispose of their products in a clandestine manner. Clandestine manufacture requires clandestine purchase and the rolling mills procure a large portion of their inputs - ingots, blooms, billets - through unaccounted for cash purchase from dealers who obtain them either from major steel plants or from mini steel plants. In fact the SSI exemption limit of Rs.30 lakhs accounts for only 250 M.T. Now a unit produces only 250 M.T. in a year, it just cannot manage its show through the year. The very fact of the

existence throughout the year is the proof of their evasion.

Dealers: Motive and Modus Operandi

From the point of this case, dealers in iron and steel trade can be categorised into two groups; however, these are not water-tight compartments and overlapping features of both the groups are found in many dealers. The first group of dealers are those who procure their items from major or mini steel plants and sell such items mostly to downstream industries like rolling mills, forging or machining units. As noted earlier, many of these downstream industries, however, procure their required inputs through unaccounted for cash purchases and hence the dealers are left in a situation where they have only a book balance without any actual physical stock of goods. The dealers overcome this situation by effecting fake 'sale' either in favour of manufacturing units - including mini steel plants - which 'buy' the items albeit on paper only, for the purpose of MODVAT credit, or, to other dealers. These dealers who constitute the second group, are mostly engaged in book trade only without actually buying or selling anything. In fact in many cases they do not even have requisite godown to store the goods. The purchase documents so procured by these dealers are eventually 'sold' to MODVAT availing units for a premium which is determined by market trends prevailing at any given point of time. At times these dealers also 'buy' documents carrying no credit of duty; these are purchased from units who do not want to show them in their books of accounts either for the purpose of eventual suppression of production or because those units would like to 'replace' them with better MODVAT - yielding purchase documents - and these are sold to units who need them for the purpose of justifying their production out of a particular input. During the period when endorsed duty paying documents were in vogue, these dealers also accommodated the interest of the mini steel plants by 'reducing' the sale price of inputs by 2 to 3 thousand rupees per M.T. - so that there would be no surviving doubt about the character of the goods covered by such documents as that of melting scrap.

Brokers: Motive and Modus Operandi

Finally the brokers. It is the broker who arranges sale of goods as well as of documents for a commission.

Preliminary Scrutiny of the Records Reveals that

- i. these dealers are purchasing the duty-paying documents only without the corresponding materials and selling the same to the manufacturer-customers under their Dealer's Invoices for a consideration of Rs. 75 to Rs. 150/- per MT (depending upon the material) as their commission.
- ii. They were paid the entire amount of Bill through cheques which were encashed by them and paid back to the customer after deducting their commission. Cash seized is such cash in transit found at the possession of the dealers at the time of the searches.
- iii. the references of the vehicle (transporting goods) have been found to be fake.
- iv. Many a times they have been found to purchase documents for "defective ingot/billet' at [a] price of Rs. 10,000 (per MT), but making the sale bill for the same to the customer at a depreciated price of Rs. 7000/- so as to make it appear, as required/desired by the recipient/customer mini steel plant, that remelting of such defective ingot/billet is economically viable for them for the manufacture of ingots having a sale price of around Rs. 10,000/ per MT. Thus some of the dealers are found to be running only on loss on record.
- v. In the statements recorded so far, they have admitted all these schemes/facts.

Further investigations in this regard are going on."

Now, the question would arise whether we should go back to the old system or we should continue with the present system. We have discussed this issue with various manufacturers, dealers, chambers of commerce and our officers. The opinion on this is not unanimous but we have received support for the view from a large sections of the dealers and chambers of commerce and officers that we should go back to the old system.

Conclusion

The old system had certain advantages and the new system also has certain advantages. In the old system, the advantage was that the dealers were not issuing Modvatable invoices. In the new system there are the advantages of registration and maintenance of certain documents. At the same time, in the new system the movement of the trucks carrying dutiable goods is properly accounted for by writing the truck number etc. We, therefore, suggest that we should have a combination of the old and the new systems. The recommendations are:

- i. Registration should continue.
- ii. Documentation now being maintained is to continue, through submission of monthly statement.
- iii. In the case of sale of full consignment endorsement as in the old system should continue. All details of trucks and other modes of transport to be indicated in the invoice as in the new system. This will mean that even though the original invoice will be there, the numbers of the trucks in which the goods will be shifted will have to be indicated on the invoice.
- iv. Subsidiary invoice: In the case of split sale, the dealers will issue invoice, but they will be countersigned by the Inspector/Supdt. Central Excise after physical verification of the goods. The truck numbers etc. will be indicated in the invoice. This is an important change from the old system because in the old system the Supdt. was issuing a certificate. Now, it will be a signature on an invoice.
- v. For manufacturer-dealers, subsidiary invoices need not be countersigned since they are both voluminous and practically all of them are split sales.

- vi. The endorsement system can be available twice and subsidiary invoice can be allowed only once. Normal trade practice shows that there are hardly any cases where there are more than two dealers. This was the requirement earlier also, but in an executive instruction. This should be incorporated in the Rules.

Basically our suggestion is to bring back the old system plus registration of the new system.

The main disadvantage of the present scheme is that it is prone to misuse because of the difficulty in verifying the particulars of the dealers' invoices with the original duty paying document under which the goods were cleared from the factory. It is quite possible for a dealer to issue more than one invoice against original duty paying invoice so long as he knows that chances of detection are quite remote. The proposed scheme will obviate this problem by ensuring that the original duty paying invoice is available for verification at the user's end, or with the dealer who issued the invoices last (in the case of split consignment) in which case the Central Excise Officer's verification would be automatic. The continuation of upto a maximum of two endorsements are also not likely to affect the industry as experience shows that in most cases, goods do not pass through more than two dealers on their way to the final users.

This may not make it foolproof since the MODVAT system has the inherent possibility of misuse wherever there is any exemption. Reduction or abolition of exemption only can finally eliminate the misuses.

Chapter 6

OTHER SUGGESTIONS

In this chapter we have discussed some of the suggestions to streamline the MODVAT procedure.

a. **Printing of Serial Number.** There has been a controversy going on in several places regarding the way in which the expression "printing serial number" occurring at Rule 52A (b) of the Central Excise Rules should be interpreted. In many places, the Commissioners are insisting that the continuous serial number should be printed when the invoice book is printed by the printers. This, however, is found to be impracticable since it is not possible to print running serial number. In several places show-cause memos have been issued. In a meeting of several Chambers of Commerce in Bombay, this point was taken up. And the solution suggested in the meeting was that the use of franking machines should be allowed for the purpose of printing continuous serial number of the invoices.

The Solution is as follows:

i. **Computer Generated Invoices.** The serial numbers as generated by the computer when invoices come out should be accepted.

ii. **Non-Computer Invoices.** Franking machine should be allowed to be used for printing the serial numbers.

We agree that the above should be sufficient and we recommend that this may be accepted all over the country.

b. **No MODVAT for Small Scale.** Small scale industries are now availing all the small scale exemption (e.g., complete exemption upto Rs. 30 lakhs, 10 per cent less upto Rs. 50 lakhs and 5 per cent less upto Rs. 70 lakhs) and also take MODVAT credit at the same time. They get MODVAT credit when they clear goods above Rs. 30 lakhs. It has

been pointed out during discussion that this availment of SSI exemption as well as MODVAT credit leads to double benefit. This in fact allows them to go on without paying duty for clearances upto almost one crore. The suggestion is that small scale exemption and MODVAT credit should not be availed of at the same time. We agree with the above suggestion.

c. **Modification of Rule 57 F(3).** Under the present Rule 57 F(3) the system is that when some input (say copper ingots) is brought into a factory, the factory takes MODVAT credit. When it sends the ingots to a job worker for making, say, wire rods, it does not have to reverse MODVAT credit. When the wire rods come back, he merely receives the rods and proceeds to manufacture further, say, wires. The problem is to keep track whether the wire rods are brought back or not. Our suggestion is that the rule should be modified so that the manufacturer should reverse the MODVAT credit at the time of sending the goods for job worker and when the wire rod comes back, he can then take the MODVAT credit back again. It will be much easier for officers to ensure the receipt back of the goods in such situation, since the entries for taking back of the credit will be there to see and check.

d. **Consolidation of Adjudications on the Same Issue.** We find that a very large number of show cause memos are issued on the same issue. We are of the opinion that if there is one issue on which several show cause memos are to be issued, then one show cause could be issued in regard to a particular issue for a particular party rather than several show cause memos. In effect it is a suggestion to combine the show cause memos on the basis of issues for a period of six months. For example, a factory has taken MODVAT credit for, say, machinery for packaging material 10 times within six months. Our suggestion is that 10 show cause memos should not be issued since the issue is the same. Only one is to be issued for all of them. This will reduce the number of adjudications substantially.

e. **Extension of Time for Moulds.** It has been suggested by some chambers of commerce that the present system of returning moulds and dies of the factory to the manufacturer by the job worker within a period of 3 months from the date of receipt is

required to be modified to extend the period upto three years, since the manufacturing activity is carried out continuously at the job workers' site. We agree with the suggestion and recommend accordingly. The period should be extended for at least one year.

f. Bought-Out Items. It has been brought to our notice by some big manufacturers who manufacture complete units such as power plants, cranes, boilers that they are not getting the MODVAT credit in respect of bought-out items. When they supply a full power plant, they manufacture 90-95 per cent of it and supply them to the site part by part in several despatches. However, a few items they buy from the market and supply directly to the site. They pay the excise duty on all these bought-out items because the bought-out items are part of the whole plant. However, MODVAT credit is not allowed to them on the ground that these items are not brought into the factory as per MODVAT Rules. For these bought-out items, a separate Rule may be made empowering the Commissioners to waive the requirement of bringing into the factory if he is satisfied that these bought-out items are a part of the whole project manufactured by the factory and are supplied at site. However, the goods shall be supplied to the site in factory-packed condition and the verification of the receipt of the goods is to be done by the officer in whose jurisdiction the site is situated. This will enable the manufacturers of projects the benefit of MODVAT credit which is due to them because they are paying the duty on such bought-out items.

g. Retrospective Effect. A suggestion has been made by various associations that while MODVAT provisions are being more and more liberalised, cases are being adjudicated with the strictness as it was in vogue at that time. They request that the liberal benefits should be given even for the past cases also. We have examined this issue. While on principle, there is justification for asking for such a benefit, legally it is not possible to give retrospective benefit. However, we suggest that executive instructions may be issued to the Commissioners of Excise to extend the benefit of the liberalised provisions now existing in cases where these are matters of procedure. However, where liberal provisions have now come into effect because of any change in notification or Rule, no retrospective effect can be given to them.

h. Percentage Verification of Invoices. It has been found that verification of invoices of the manufacturer is being done only partially in some cases and not at all in some other places. So far as the dealers' invoices are concerned, there is hardly any verification at all. In certain cases of manufacturer-cum-dealers, the number of invoices is so much that it is impracticable to expect the Inspectors to verify everything. It is, therefore, desirable that a percentage is laid down and enforced very strictly. We suggest that it is better that the Government lays down that 20 per cent of the invoices are verified. This should be enforced rather than telling them to verify 100 per cent and not enforcing it at all. In the case of big manufacturer-cum-dealers, the verification cannot be more than 5 per cent but the percentage should be left to the Commissioner to decide. Our suggestion is that it should be around 5 per cent only. There should be a duty limit of Rs. 50,000 above which verification should be done of say 50 per cent cases.

i. Advance Intimation. There is a provision under Rule 57(A) and 57(T) which requires the manufacturer to declare the inputs in advance. This creates a lot of difficulties amongst the manufacturers since they receive inputs and utilise them but are often not able to declare them in advance. There are 385 such offences recorded in the 1½ years' study that we have made. This offence is of a mere procedural nature.

There is a consensus among the officers as well as the manufacturers and traders that this provision for declaration should be abolished since the input is declared in any case in the monthly return (RT 12).

We agree with this suggestion partially and recommend that while the system of prior declaration of inputs should continue, MODVAT credit should not be denied in case there is a default in giving the declaration.

j. Declaration Before the Superintendent. It has been suggested by several companies that the requirement of declaration of inputs to the Assistant Commissioner is creating problems. The request is to allow them to give the declaration to the Range Superintendent. We find that this is a practical suggestion because Assistant Commissioner's Office is quite often far away, whereas the Range Superintendent's Office is near around.

Therefore, we support the suggestion.

k. Power of Condonation by Commissioner. We have noticed that there are procedural and technical violations such as improper documentation, premature availment of credit before production starts, undeclared inputs, unregistered dealers' invoice not in the name of the unit etc. which are in the nature of purely procedural requirements. We have discussed with a number of Commissioners as well as with the Trade. There is a consensus that there is a large number of offences which are invoked against the manufacturers because of absence of power with the Commissioner to condone the technical requirements even when they are satisfied that the violations are of insignificant nature and the manufacturers genuinely deserve the MODVAT credit. Whereas, it is not desirable that the power to condone such procedural violations could be given to the junior officers, the powers could be given to the Commissioner, i.e., Commissioner (Jurisdiction), Commissioner (Judicial) and Commissioner (Appeal). We are of the view that there should be one general Rule which should empower the Commissioners to condone the procedural violations of technical nature and allow MODVAT credit once they are satisfied about the genuineness of the manufacturer's claim for getting MODVAT credit. This will eradicate the need for adjudication of a very large number of cases and also the need to go to Tribunal. There will be all round saving of time on the part of officers. This would reduce the harassment faced by the manufacturers due to procedural hassle.

This is also in consonance with the plea taken by almost all the Chambers of Commerce that procedural cases should be treated liberally and not strictly.

l. Interest to be Charged from the Date of Wrong Availment. From the number of offences that have been recorded we get the impression that it is a frequent happening that MODVAT credits have been taken by the manufacturers even knowingly that the inputs are inadmissible. They know that by the time MODVAT credit is reversed a sufficiently long time will lapse. During this time, the amount of MODVAT credit availed of by them will act as a cash reserve.

At present interest is chargeable from the date when the adjudication takes place when the amount of liability is determined. We suggest that the interest should be chargeable from the date when the wrong MODVAT credit is availed of. This however will be payable only when the adjudication order is passed.

m. Reversal of Credit. For offences of substantial and fraudulent nature as detailed in the Chart in Chapter 2, there should be power to the Commissioner to order immediate reversal of MODVAT credit. The show cause notice should be issued for imposing penalty and also confirming the reversal of credit.

n. Standardisation of Invoice. At present the invoices are not standardised at all. The Board has only given certain basic requirements which should be there in the invoice. Therefore different people are using different types of invoices, although the basic details are available in it. This does not quite meet the requirement for computerisation. We have a standard form for bill of entry and shipping bill on the customs side. There is no reason why the basic document of the Central Excise, namely, the invoice should not be standardised. For the sake of computerisation it is necessary that the invoice must be standardised. We, therefore, suggest that a standard and uniform invoice form should be devised by the Board and circulated and made effective after giving sufficient notice to the manufacturers and dealers. This will help in computerisation as well as in general checking. ECC (Electronic Computer Code) given by the Divisional Office of Central Excise to the manufacturers and the Income Tax Permanent Account Number should be a part of the invoice since it is easy to verify the invoices as to their genuineness if such numbers are available. In the case of dealers there is no such system as ECC. Our suggestion is that similar number for dealers should be evolved and introduced so that inter-commissionerate verification of dealers' invoices can be done by the computer network.

o. Loss of Duplicate Invoice - New Procedure. It has been represented to us very forcefully by the manufacturers and dealers that there is a serious difficulty now being faced by them in regard to the loss of duplicate invoice which is the transporters' copy on the basis of which MODVAT credit is taken. They say that the duplicate copy of the invoice is now well-known to the transit checkpoints for its importance since these duplicate copies

are used for taking MODVAT credit. It is therefore a common occurrence that when the trucks pass through the various checkpoints with the duty paid manufactured goods along with the duplicate invoice covering the goods, the checkpoints simply take away the duplicate invoice and do not return it to them. This creates serious difficulty at the time of taking MODVAT credit when the goods finally reach the destination factory. The destination factory has to follow the cumbersome procedure of filing an FIR and an affidavit from the transporter indicating where the duplicate has been lost. Quite often the police does not register such cases saying that there is no proof that the duplicate has been lost in its jurisdiction. This difficulty seems to be so genuine that during the discussion with the various Chambers of Commerce and the manufacturers we found a tremendous amount of resentment amongst them that the present procedure amounts to harassment. After elaborate discussion with our officers as well as keeping in view the opinions of the Chambers of Commerce, our suggestion is that we may allow the MODVAT credit on the basis of the original invoice provided the manufacturers on receipt of the goods send an intimation to the Range saying that the goods have been received. They should not take credit of the goods nor mix up the goods with the existing goods in the factory. The Range Officer should come within a certain period of time, say 48 hours, and then see the goods for himself. After that the MODVAT credit will be allowed on the basis of the original invoice. The manufacturer will of course give the usual guarantee on plain paper that if the duplicate copy is recovered, it will be defaced and the manufacturer will not take credit twice. Even now the MODVAT credit is allowed on the basis of the original invoice after the copy of the FIR is shown to the Assistant Commissioner. All that we are suggesting is that in the place of FIR it will be physical verification of the goods by the Range Officer. In fact this is a much better proposition because an FIR can always be managed, whereas the examination of the goods is a much more reliable method. It also does not lead to harassment. We found that this suggestion was universally appreciated by the manufacturers, Chambers of Commerce and even our own officers on the ground that this will be a very reasonable procedure. We, therefore, suggest that this method should be accepted. This will take away the cause for harassment and resentment amongst the manufacturers in a big way.

p. Tribunal. We find from the cases on MODVAT reported in ELT (Excise Law Times) ECR (Excise Customs Reporter) etc. that mostly the old cases are now being

decided by the Tribunals. The Rules have changed so much that when the old cases are decided they do not have any impact on the present situation. It is, therefore, our suggestion that the Government may request the Tribunal (if it is possible within the present arrangement to do so) to decide the new cases also. It can be so arranged that the cause list will include old cases and new cases in equal proportion. If the decisions are given on new cases, it will be of more immediate guidance to the manufacturers, dealers and officers.

At present the power of a single member bench is Rs. 1 lakh. This can be increased to Rs. 10 lakhs firstly because this Rs. 1 lakh was prescribed a number of years ago and secondly, because a large number of MODVAT cases will be decided if the power of a single member bench is increased to Rs. 10 lakhs.

q. Combining the Rules. The MODVAT Rules have become cumbersome because there are separate Rules for capital goods and separate Rules for other inputs. While we appreciate that the Rules were necessary to be made separately since MODVAT for capital goods was formulated at the time of Budget 1994-95 and had its own specialities, now that nearly two years are over and there has been an enlargement of the number of commodities, there is no necessity to have separate rules for capital goods different from other inputs. We, therefore, recommend that the Rules may be merged together and a combined set of rules should be framed which will simplify the matters. However, if the Government wants to make any special restrictions in regard to capital goods that can be provided in a proviso.

r. Rewriting of the Rules. All the MODVAT rules have become so complicated because they have evolved over a period of time. Even if the substance of the Rules remains the same, they need to be re-written. We suggest that after our Report is received, once the Government takes the decision regarding the recommendations, the whole set of Rules should be rewritten by the Board in simpler language with a minimum number of provisos.

s. Introduction of D-3 Intimation. A number of Commissioners has suggested that we should reintroduce the system of D3 intimation. It means that before the input credit is granted, intimation will be sent by the manufacturer to the officer of the nearest range

office of Central Excise. Only when the Central Excise officers examine the goods finally and tally them with the invoice that the input credit will be given. This suggestion has, however, been objected to by a large number of officers. So far as the trade is concerned, they are all against it. Obviously this will mean harassment and take the system backwards. We have also discussed this point and we do not recommend that the D-3 intimation should be re-introduced.

t. **Penal Provisions.** We had requested officers and the trade to let us know whether penal provisions at present available are adequate. The consensus is that the penal provisions are adequate. We also considered an additional point as to whether we can close down the dealers' premises for a short period of 7 - 8 days on the ground that the MODVAT provisions have been violated by them. This is prevalent in several Latin American countries. We may introduce this in India also. There is also another suggestion that for dealers who have committed serious offence, Section 11 and Rule 230 should provide for detention of goods of the dealers with the purpose of recovering the duty. Section 11 and Rule 230 are now only for the manufacturers. We agree with this suggestion.

u. **Sufficient Notice.** Procedural changes in the MODVAT system should not be brought about without giving sufficient notice. We have found that several changes were brought about within the last two years without sufficient notice and without allowing the manufacturers and dealers to adjust themselves to the new procedure. This led to serious repercussions in the shape of issuing of show cause memos in large numbers which could be avoided if sufficient notice had been allowed.

v. **Not by Executive Instruction.** Changes in the MODVAT system should be brought out by changing the Rules and not by issuing executive instructions. There have been several instances where the Tribunal has set aside the norms given by the Board in the executive instructions by saying that there is no sanctity for laying down such instructions. One example is that of two endorsements allowed on manufacturers' invoice. Undue litigation could be avoided if they are incorporated in the Rules or in a Notification.

w. **Nature of Checking to be More Meaningful.** The nature of checking invoices now is limited to arithmetical checking with the other Returns and in some cases with the Range of origin. But the checking of authenticity of duty-paying document with the Range of origin is not enough. For even if the duty-paying document is genuine, the goods may not accompany the documents if they (the goods) have been sold away to the exempted sector. Such cases have been detected by DGAE in Calcutta (discussed in the chapter on Dealers) because the investigating officers verified the numbers and details of the trucks by which the goods are supposed to have moved. On verification they found that some trucks were fictitious, some of them belonged to Calcutta Corporation and some were far below the capacity needed to carry the goods. The payments for the carriage of the trucks also were verified. It was found from all these verifications that the movements of goods never took place.

x. At present in a factory there may be 1, 2, 3 or 4 or more dutiable goods produced and there may be one exempted goods also produced at the same time. Because of this the amount of input credit used for the exempted product is to be calculated. This is quite a difficult job. Most of the time, we have to depend on the manufacturers' declarations. Our suggestion is that if an exempted product is made in a factory where suitable products are also manufactured, then the exemption cannot be availed by the manufacturer. For example, if A, B, C & D are four products made in a factory and if A, B & C are dutiable products and D is exempted, then the suggestion is that exemption for D will not be available to the factory. D may be otherwise manufactured by another manufacturer exclusively in a factory in which case the exemption will continue to be available to that manufacturer. This suggestion is being given with the following purpose.

Interchangeability has been introduced in the last budget (1995-96) which has given sufficient benefit to the factories many of whom have been able to avail of unutilised MODVAT credit. The purpose of interchangeability will be better served if all the outputs also pay the duty. Secondly, administratively, it will be extremely convenient if the exemption is abolished in the way suggested above.

Chapter 7

COMPUTERISATION

Unlike in Customs, computerisation in Central Excise is still at a preliminary stage. It is in a much less developed stage and interactivity with the different Collectorates has not been achieved. This is perhaps mainly because the Central Excise offices are scattered all over India and many of them are in hired premises. However, computerisation of MODVAT procedure can be effective only when

- i. all ranges/offices are linked with the national network so that any duty paying document originating from a range/division can be verified in the computer screen of any other range or division in India.
- ii. all ranges/divisions feed the particulars of invoices properly within a specified time-frame.
- iii. development of software is achieved so that verification of credit taken by the customer may be noted against the original entry of duty paying document.
- iv. Hardware infrastructure is developed.

As and when such development takes place it will be possible to verify the authenticity of the invoice. There are however two very important considerations which must be kept in mind.

First, the willingness of the officers to do the verification is very important. There are examples of various countries where enormous amounts have been spent on computerisation but no substantial improvement has been achieved in improving the fiscal administration. In the field we have noticed that even where verification of invoices could be done without much labour, it has not been done. It, therefore, cannot be assumed that just because computer network is established, the MODVAT system will be a success.

Secondly, computer can verify only the genuineness of the invoice. When the invoice is genuine but the goods have been sold away to some exempted sector or non-excisable sector (such as housing sector) the verification of the invoice through computer cannot detect such offence. Therefore, it is the alertness and auditing capacity of our staff which only can make such detection.

It goes without saying that computerisation will improve the functioning of the MODVAT system. However, so long as computerisation is not complete, a FAX machine can be given to all the divisional and range offices so that the verification of invoices can be made faster.

Chapter 8

AUDIT SYSTEM

Functional and Cyclical Audit

We have seen that the audit system in the various places does not follow a particular pattern. Big industries are covered invariably and some medium and small are covered within six months. But not all. In some places audit is carried out on a functional basis and in some places it is done on geographical basis. Functional basis refers to forming a group which will visit all factories relating to a particular commodity. All textiles are covered by one group, all metals are covered by one group and so on. The functional system is definitely better than the geographical system because of the following reasons. (i) In the functional system the officers become more expert on the commodities that they deal with. If they deal with textiles, they would know all the rules and regulations and notifications relating to textiles. On the other hand if they deal with all the commodities, they cannot become specialists on the subject. (ii) Also, uniformity will be achieved in a functional system. It is, therefore, recommended that the functional system should be adopted all over the country.

Audit should also be cyclical. This means that all the factories of a particular commodity group should be given a number such as 1, 2, 3 upto 40 if there are 40 factories. The numbering should be done based on the principle that side by side factories should get consecutive numbers. If there are two textile factories in North Bihar, they should get continuous numbers such as 3 & 4. Once the numbering has been given, this should not be changed. The audit should be on the basis of following the serial number, the first will be audited first, the second next and the third next and so on. The advantage of a cyclical system is that no factory will be missed. There is no need to do monthly programming.

In some places separate MODVAT audit teams are formed. Our suggestion is that no separate auditing should be there for MODVAT only, MODVAT being a part of the system. General auditing and MODVAT auditing should be done together. That will also save the manpower by avoiding duplication. Moreover, there should not be too many teams

visiting the factories.

So our suggestion is that audit should be functional and cyclical. And there should be no separate MODVAT auditing, but it should be a part of general auditing.

Audit should not be done in a routine manner. It should be broad-based following particular ideas. Some of these ideas are discussed below:

1. Input-Output Ratio and Costing

Many instances have come to notice where the manufacturer has shown higher consumption of inputs in order to avail of more MODVAT credit (and also to show less profit for the purposes of income tax assessment). MODVAT input-output ratio, (at least for the major inputs) should be worked out, even on the basis of rough estimates. If the products manufactured are according to any specification like ISI, Railways, DOT etc., such working out becomes simpler. If the input consumption is found to be disproportionately higher, the matter may be further probed from other angles.

2. Economic Viability

Conversely, from the input consumption shown in statutory records one should work out the costing of the final product taking into account the values shown in the incoming duty paying documents and compare the same with the assessable value to see whether they are commensurate or the costing is non-commensurate with the assessable value.

3. Technical Feasibility

Cases of taking credit on aluminum sheets for manufacture of aluminum wire has been noticed. Apart from the economic non-viability, it is not technically feasible to manufacture rod from sheet, nor do they have requisite infrastructure/plant & machinery for such manufacture. Similarly, ingots of weight/dimension more than what the existing furnace can accommodate, have been shown to have been used. It is, therefore, imperative to

examine whether it is technically feasible to use the inputs taken credit of in these and similar other areas of production.

4. Conformation of Specification

If the products manufactured are of a specification so that it requires use of inputs of the corresponding specification, it may be examined whether the inputs taken credit of are of that requisite specification.

5. Value Depreciation

If at any point from the clearance of the input from the manufacturing factory to the point of purchase by the recipient assessee there is any depreciation of value, then it calls for further probe as instances have come to notice that value is shown to have been depreciated in order to make it appear to be economically viable to use such inputs by the recipient manufacturer.

6. Verification of stock with RG 23A Account/Form IV Register, particularly when large/disproportionate quantities are reported to have been received.

7. Verification of the nature of goods, particularly when credit of input of doubtful nature is taken.

8. Verification of the references of vehicle(s) indicated in the incoming and outgoing duty-paying document(s).

More Importance to Audit

Carlos A. Silvani in his article "Improving Tax Compliance" appearing at p.287 of the book "Improving Tax Administration in Developing Countries" edited by Richard M. Bird and Milka Casanegra de Jantscher has argued for a greater allocation of administrations' manpower to the task of audit. He has pointed out that many tax administrations assign only

10 per cent or 15 per cent of their staff to audit. "In countries where there is a low level of evasion, on the other hand, the percentage of personnel generally assigned to tax audit is about 40 per cent," says Silvani. In the Customs and Excise Department the percentage of people engaged in audit is more towards 10 per cent than towards 40 per cent. The suggestion that we make here is to increase the percentage of people assigned to the task of audit.

Not to Judge by Detection

This effectiveness of audit function should not also be evaluated by the number of detections but by the voluntary tax compliance that it generates, said Carlos Silvani in the article mentioned above. We agree with the same when we recommend a higher allocation of manpower to tax audit.

Chapter 9

VISIT REPORT

Summary of Notes on the Visits to Different Factories and Ranges

I First Visit

[X] Division Range 12

Date of Visit 13.7.1975

Name of Factory

There are 45 factories in this Range and the break up is as follows:

Big:	6 (Duty Rs. 1 crore and above)
Medium:	10 (Rs.10 lakhs to Rs.1 crore)
Small:	10 (Revenue upto Rs.50,000)
Small scale:	19 (Avails of the small scale exemptions)and outputis below Rs. 3 crores) in a year
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The following invoices were found for the month of April 1995 for the range:

Where Situated	Number of Documents	Amount Duty Involved
(1)	(2)	(3)
Faridabad	32	Above Rs.10000/-
Jullunder	72	-do-
Solon	4	-do-
New Delhi	2	-do-
Delhi	3	Below Rs. 10000/-
Bangalore		
Delhi	1	-do-
Baroda	2	-do-

(1)	(2)	(3)
Bhopal	-	Below Rs. 10000/-
Agra	2	Above Rs. 10000/-
Agra	3	Below Rs. 10000/-
Agra	2	-do-
Faridabad	6	-do-
-do-	25	Big amounts Rs. 59,000/- and some below Rs. 10000/-
Ludhiana	1	Above Rs. 10000/-
Bangalore	2	Below Rs. 10000/-
Pune	6	Below Rs. 10000/-
Bombay		Above Rs. 10000/-
Delhi		Above Rs. 10000/-
Faridabad	4	Below Rs. 10000/-
Bombay	1	Above Rs. 10000/-
Faridabad	2	Below Rs. 10000/-
Faridabad	1	-do-
Howrah	5	Above Rs. 10000/-
Calcutta		
Faridabad	4	Below Rs. 10000/-
-do-	1	Above Rs. 10000/-
Bhatinda (Pb)	1	Below Rs. 10000/-
Agra	6	Below Rs. 10000/-
Agra	2	-do-
Delhi	5	-do-

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No verification has been done for the invoices with the Range Offices or origin. The work of verification may be made more systematically in the following manner. This analysis is based on the basis of the study of the Range for the factory.

If we see the above list we find there are a large number of invoices coming only from three factories. For these three factories alone, the number of invoices is 129 out of a total of 195 invoices. All others are very small members and the amounts involved are not very much. Even for this if verifications are done, then the percentage of verification would be quite high. Moreover, within the zone of [X] and [Y] a very large number of factories are situated from where the inputs are purchased. The outside places are only Jullunder, Bhopal, Pune, Bombay and Calcutta. For these five places letters can be sent. For all other places, the verification can be done by writing letters. Most of the verification can be done in the same city itself. However, what is true of [X] may not be true of other places because there are so many Divisions where the Ranges are not located in the same industrial area. But, at least in [X] where a large number of ranges is situated in the same city the task is easy but it has not been done.

In [X] Division there are six divisions and 24 ranges. All of them are situated in the same building. In spite of that there has been hardly any verification done. The verification could be done by going across to the next room or to the next floor; even then no verification seems to have been carried out.

I also saw the document relating to which is a small factory in this Division. All the documents relate to one dealer. Even though the dealer is situated in the local area, not a single verification has been done.

II Second Visit

Date of Visit: 3.8.1995

Bombay - Collectorate [Z]

Name of factory

This factory makes good quality soaps, They also manufacture washing soap for export purposes. The following are the inputs:

- i. **Oil:** Minor oil, rice bran oil, neem oil, palm kernel oil etc. They also import palm stearine oil. They also use inedible grade coconut oil because edible oil variety is not allowed to be used in soap. For minor oil they get money credit which means that they get a fixed sum for use of each kilogram of minor oil

as incentive. Therefore there is no question of MODVAT credit in the case of minor oil.

- ii. **Chemicals:** Caustic soda is the main chemical. They also use Soda ash and trisodium pyrophosphate. These chemicals are duty paid.
- iii. **Perfume** - duty paid.
- iv. **Colour and dyes** - duty paid
- v. **Packing material;** viz. paper and corrugated paper for outer box paper. Paper is duty paid. The outer board is exempted.
- vi. **Coal** - there is no duty.
- vii. **Furnace oil** - duty paid.

In respect of chemicals, perfume and packing material and furnace oil MODVAT is available.

I also visited the Range office which is attached to the factory. I saw the invoices which had been sent by the Office to the factory. They are sending the original copy of the duplicate invoice and they are being defaced by the Range Office according to the requirements. However, there are no photocopies kept for future use. The future use is for verification with the Range of origin. The verification of these invoices with the Range of Origin has not been given much attention. Some letters have been written but the number is not large.

The factory office pointed out that the factories from where they get the raw materials are about 20. If letters are written to 20 such units, then about 70 per cent of the invoices would be covered. The letters can be written after combining the entries for a few months. That will reduce the work and at the same time work will be effective.

III Third Visit

Date of Visit: 20.7.1995

Division [X] of Collectorate [Y].

Name of factory

The inputs for which they take credit are rubber, resin, chemicals, tyre cord, warp sheet and steel cord. Also visited the Range Office which is attached to the factory. In the Sector Office we saw documents which were submitted by the office to the Sector office where we found that the original invoices are not being submitted by the factory to the sector office at all. Officers present noted that the invoices submitted by the factory are only photocopies. According to rule 57(g)(4) the original copies of the invoices are required to be submitted. They are also required to be defaced. This requirement is not being complied with by the sector office.

Sector office has also not done verification of the invoices from the Ranges of origin. We gathered from the factory that the number of factories from where such raw materials such as rubber, resin, carbon black, tyre cord, warp sheet are purchased are few in number. These factories however are not situated at [X]. But, at least a percentage of the invoices could have been sent to the Range of origin by post. Not a single one has been sent. The sector officer could not give any reason why he has not done it. The Superintendent was present. He could not give any reason. It is quite clear that the officers in the Sector office are simply not discharging the fundamental responsibility of (i) defacing the original invoices on the basis of which input credit has been given (2) verifying of these invoices with reference to the range office or origin where copies of such invoices are available. If no verification is undertaken and not even original invoices are obtained in the sector office, misuse can take place without any check. One can not say that there is too much work because hardly any work has been done.

IV Fourth Visit

Date of Visit 11.9.1995

Collectorate [S]

Name of factory

The dealer gets the goods (HDPE, LDPE) from Maharashtra. He has brought them on consignment basis and sold them to different parties. They pass on the full value of the

goods to and get their commission per kg. They are registered dealers (registered on 20th July 1994). They are not real dealers in the sense that they are manufacturers' agents.

Their invoices have been defaced after all the goods covered by the invoices have been sold out. They send a monthly statement of the invoices received and of the goods received during a month and of the invoices issued by them. The statement is a copy of the RG 23-D register. These invoices received are verified by sending the details of them to the originating range office. A. C. says 100 per cent of them have been verified upto two months back. 173 dealers are there in urban Division [W]. A. C says, all of their invoices have been verified. They are getting reply from Ahmedabad, etc., but the stamps do not indicate the full name but only some signature though the name is there. A. C. feels that if all verifications are done, then misuse will be eliminated.

V Fifth Visit

Date of Visit 14.8.1995

Collectorate [U]

Name of factory

They manufacture pistons and the raw material is thin steel strips which are imported from Japan and cast iron forgings which are made in the factory. We saw the Range records and found that the defacement of the original copies of the duplicate invoices on the basis of which the factory has taken input credit has been done systematically and properly. So far as the verification of the invoices with the originals from the source range from where the goods have come is concerned, we have made an analysis which shows the following. The following is the break up of the places from where the invoices have come.

received. The A.C. puts it at 20 per cent. If the following principle is followed on the basis of above analysis, then the verification will be done much faster and properly:

a. Those which are in Ghaziabad alone should be checked on the basis of a "Clearing House" system i.e., on a particular day in the week, say Monday at 10.00 a.m. all the range officers will come to A.C.'s Office and sit around a table and cross verify the vouchers.

b. Those which are in other divisions and those which are near areas like Delhi, Meerut, Faridabad could be verified on the spot by sending officers. The officers in any case can claim the usual mileage for touring.

c. Those which are in far away places such as Pune and Calcutta can be verified by writing letters.

Since there are only 26 invoices for which letters have to be written (taking the above figures), even if 80 per cent replies do not come, the number will only be 20 that will remain unverified. At present for 80 per cent of 81 cases i.e., for 64 invoices replies are not coming. Thus the above scheme of verification will improve from the figure of unverified 64 invoices to a figure of unverified 20 invoices. There will be tremendous improvement if this system is followed.

Since in this division defacing and verification have been done very well, it is practicable to do in all other divisions. This is in contrast with other divisions visited by us. This leads us to the conclusion that if the Assistant Commissioner is alert it is distinctly possible to achieve results.

Deputy Commissioner and the Asstt. Commissioners who were present during the discussion in the divisional office were of the view that the nature of misuse were of procedural nature in 95 per cent of the cases and the largest number relates to the admissibility of MODVAT. They also felt that in the last budget most of the problems of this type have been solved.

The nature of audit was also discussed. It was found that they were doing audit on a functional basis but were not able to finish within six months.

VI Sixth Visit

Date of Visit: 4.9.1995

Collectorate [V]

Name of Factory

The factory manufactures different varieties of aerated water, namely Coca Cola, Thums Up, Citra, Gold Spot and Bislery club soda. The inputs are sugar, CO₂, empty bottles and plastic crates, crown cork, citric acid, light diesel oil, caustic soda, lubricants and beverage base concentrate (essence).

They have a number of disputes which are the following:

- i. Lubricants are used for maintaining machinery which is not being allowed MODVAT credit.
- ii. MODVAT credit on glass bottles also not being allowed.

The management pointed out that glass bottles are considered durable and returnable, but they are not so durable because a large percentage of them are broken every year during production as well as distribution of the cold drinks. The management stated that the cost of the glass bottles is entered in the cost of the aerated water, although strictly speaking according to the valuation rules, the cost of the bottles is not added to the cost of the aerated water. This is because they are containers and not packing material.

- iii. The plastic crates which are used for carrying the manufactured bottles are also not given MODVAT credit on the ground that they are not necessary for manufacture but are post- manufacturing handling equipment.
- iv. They also pointed out that in regard to availment of MODVAT credit on capital goods, for a number of items even those which are actually necessary

for manufacture were not being allowed MODVAT credit.

The Chief Commissioner and the Asstt. Commissioner were also present during the discussion along with the factory officials. It was felt during the discussion that problems regarding availment of MODVAT in this factory was not really in the nature of abuse but in the nature of controversy regarding the admissibility of the MODVAT credit. These could be solved by clarifications to be given by Chief Commissioner.

The Chief Commissioner could have a meeting every month in which all the managers of the factories where there are MODVAT problems can come with previous notice and the concerned Asstt. Commissioner and Commissioners can be present. Most of these problems could be sorted out straightaway and undue harassment by issuing show cause memo and adjudication could be avoided. It was also pointed out during the discussion that there used to be a meeting taken by the Board Member every three months to sort out the MODVAT problems but this meeting has not taken place since 1993. Periodic MODVAT meeting could be revived to sort out these problems.

We examined the documents being submitted by the factory and found that the range officers defaced the invoices and sent them back to the factory which are maintained there. We also saw dealers' invoices. Some were from Larson & Toubro, Bombay to Larson & Toubro, Calcutta and through another dealer called Electric Equipment Calcutta, it has come to this factory. The Assistant Collector who was present stated that verification of these invoices is being done regularly. This seems to be correct because those which were available with the factory had been checked and defaced by the customs officers.

VII Seventh Visit

Date of Visit: 9.10.1995

Collectorate [T]

Name of factory

They make VCR, VCP and TV. They had a balance of MODVAT credit of Rs. 1.25 crores which has been utilised completely by the end of September. From October onwards they are paying duty in terms of cash. They pointed out that interchangeability of input

credit for VCR/VCP and TV which has been allowed in last year's budget has allowed them to utilise the MODVAT credit which was otherwise remaining unutilised. The net duty they pay after adjusting the input credit comes to the following:

VCR/VCP	Rs. 100 to Rs. 150
TV	Rs. 200

This is the tax on the net value added.

They are manufacturing only PCB (populated printed circuit Board); rest of the work is only assembly. MODVAT credit is taken by them for all parts namely:

- 1) Picture tube - They import 40 per cent
Locally procured - rest 60 per cent from Samtel
- 2) Plastic granule - This is used to make moulded cases for the
TV and VCR/VCP. This is done by job work
and not in their own factory.
- 3) Hardware Nuts, bolts, screws etc.
- 4) Packing material
- 5) Electronic parts like capacitors, unpopulated PCB
- 6) Tape Deck mechanism for VCR/VCP which they receive from Toshiba of
Japan. The kit is assembled by them. They pay the c.v. duty which is
modvated.

It was pointed out that from the number of picture tubes and the Video heads it can be exactly calculated how many TVs and VCRs/VCPs are produced.

X Tenth Visit
Date of Visit 9.10.1995
Commissionerate [T]
Name of factory

They makes polyester films which are used for various purposes such as sun control films, magnetic tape and insulation tapes etc. They take MODVAT credit for the following
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They take MODVAT credit for the following:

1. Polyester chips - They bring from Garware Polyester (The same company's another unit)
2. Packing material
3. Packing reels
4. Fuel, furnace oil

Conclusion

The conclusion that can be derived from the observations on these visits is that the verification of the duplicate copies of the invoices with the range of origin is practically not being done at all. The plea taken by the officers is that there is too much work. This however is not found to be correct because no serious effort is at all being done and nobody seems to have been taken to task for not doing the work. The fact that there are 24 range offices and 6 divisions in one building in one of the Collectorates visited and yet no verification has been done, is proof enough that nobody has cared to do this work. The fact that some officers have been able to make verification while others have not done any thing at all shows that given the will it is possible to make the verifications. Our suggestion also is that it is possible to make verification if we follow a proper procedure which is as follows.

a. **Verification Within the Range.** A large number of invoices in the Division are to be verified with the ranges which are in the same Division. For that the range officers of the Division should sit together on a particular day at a particular time, say Monday at 10.00 a.m. in the room in the Divisional Office and cross verify all of the invoices.

b. Verification Amongst the Ranges in the Same Collectorate. Similarly, on Tuesday morning at 10.00 a.m. all the inter-divisional verifications within the Collectorate can be done if they assemble in the Collectorate at a particular room provided all these ranges belong to the same city. Quite often a number of divisions are in the same city, so this may be possible within the same city. That alone will count for a large number of invoices.

c. Verification Within the Industrial Zone. There are some industrial zones such as the one comprising Faridabad, Ghaziabad, Delhi, Noida etc. Verification may be done in the industrial zone by sending officers once a month.

d. Those Which are in Distant Places. For the rest of them which are in far away places, the verification can be done by writing letters. If the above procedure is followed, then the effort will be less and the productivity will be more. (a), (b) and (c) can cover nearly 80 per cent of cases.

The Board should give sufficient importance to the task of verification. It should be incorporated in the Rules rather than leaving it in an executive instruction as it is now. If officers do not do verification, they should be proceeded against. The present lackadaisical attitude towards verification should stop, if any effectiveness is to be achieved. If action is taken for non-performance of officers in this respect, results will pour in.

Our other observation from the visits is that many controversies can be solved by monthly or quarterly meetings taken by Principal Collector and Member Central Excise. The procedural controversies are not only large in number, they also take away a lot of time of the officers and the managers of the industries. The officers are being unnecessarily tied up with procedural wrangles. If this can be avoided then the time can be usefully spent on anti-evasion work.

Chapter 10

CONCLUSIONS AND RECOMMENDATIONS

1. The enormous increase in the quantum of MODVAT credit since April 1994 raises the doubt that availment of MODVAT credit may not have all been legal and valid.
2. Analysis of detected offences in regard to manufactures' invoices shows that 87 per cent of cases are of procedural or technical nature, 7 per cent are substantial and 6 per cent are of a fraudulent kind.
3. Analysis of the fraudulent cases shows that even big units have resorted to this type of activity.
4. There are hardly any problem cases detected in relation to dealers' invoices. This is mainly because of the enormity of the task and also seems to reflect a lack of effort and sufficient will.
5. A typical abuse of MODVAT system is where goods are sold to the exempted sector or to housing sector (where MODVAT is not there) and the invoices are sold to medium or large sector who take credit on the basis of such invoices.
6. Such cases have been detected mostly by enforcement agencies and not by Collectorates because the basic check regarding the genuineness of mode of transport is not being done by the officers in the normal course. The fact that the office of Anti-evasion Directorate has detected such cases on a big scale by proving that the truck numbers quoted by dealers are fictitious, only shows how ineffective the normal staff all over the country have become in regard to such checks.
7. It is important to free the staff at all levels from handling routine type of procedural/technical cases which are 87 per cent of all detected MODVAT offences.

8. To remove these procedural/technical cases NIPFP suggests that the root cause should be eliminated first. The cause lies in an unsure concept of input leading to interpretation problems relating to admissibility of inputs for the purpose of MODVAT credit. This problem cannot be solved by giving clarifications on a case to case basis.
9. The problem can be solved by having a Negative List of inputs where credit will not be admissible. All the rest will be admissible. A Negative List has been prepared by NIPFP but this is subject to addition or subtraction depending on the need for revenue.
10. The expression "used in manufacture" and "used in relation to manufacture" should be substituted by the expression "brought for use in the factory". So long as the input credit is linked to "manufacture", all the related legal controversies regarding manufacture will continue.
11. This will mean that all the goods "brought by the factory for use in the factory except those in the Negative List" will be admissible for the purpose of MODVAT credit.
12. In regard to dealers, the old system has certain advantages and the new system had also certain advantages. In the old system, the advantage was that the dealers were not issuing Modvatable invoices. In the new system there are the advantages of registration and maintenance of certain documents. At the same time, in the new system the movement of the trucks carrying dutiable goods are properly accounted for by writing the truck number etc. We, therefore, suggest that we should have a combination of the old and the new systems by combining them as below:
 - a. Registration should continue
 - b. Documentation now being maintained to continue, as also submission of monthly statement

- c. In the case of sale of full consignment endorsement as in the old system should be introduced again. All details of trucks and other modes of transport to be indicated in the invoice as in the new system. This will mean that even though the original invoice will be there, the numbers of the trucks in which the goods will be shifted will have to be indicated on the invoice.
- d. **Subsidiary invoice:** In the case of split sale, the dealers will not issue invoice, but they will be countersigned by the Inspector/Supdt. Central Excise after physical verification of the goods. The truck numbers etc.. will be indicated in the invoice. This is an important change from the old system because in the old system the Supdt. was issuing a certificate. Now, it will be an invoice.
- e. For manufacturer-dealers, subsidiary invoices need not be countersigned since they are both voluminous and practically all of them are split sales.

The main disadvantage of the present scheme is that it is prone to misuse because of the difficulty in verifying the particulars of the dealers' invoices with the original duty paying document under which the goods were cleared from the factory. It is quite possible for a dealer to issue more than one invoice against original duty paying invoice so long as he knows that chances of detection are quite remote. The proposed scheme will obviate this problem by ensuring that the original duty paying invoice is available for verification at the user's end, or with the dealer who issued the invoices last (in the case of split consignment) in which case the Central Excise Officer's verification would be automatic. The continuation of upto a maximum of two endorsements are also not likely to affect the industry as experience shows that in most cases, goods do not pass through more than two dealers on their way to the final users.

This may not make it foolproof since the MODVAT system has the inherent possibility of misuse wherever there is any exemption. Reduction or abolition of exemption can only finally eliminate the misuses.

13. For the requirement of "printed serial number" on the invoices, the use of franking machine should be allowed. Even on a simple issue like this there are unfortunately many unresolved disputes in some Commissionerates.
14. Small scale exemption and MODVAT credit should not be allowed at the same time as it basically lifts the exemption to practically rupees one crore. This also expands the scope for misuse of MODVAT credit as we have observed that the existence of an exempted sector is a hindrance to efficient operation of a value added tax system.
15. When manufacturers send raw materials to job workers they should reverse the MODVAT credit and take it back when the goods come back. Rule 57F(3) should be amended to provide for this. It will make it easier for excise officers to ensure the receiving back of the goods.
16. Adjudications should be consolidated on the same issue.
17. Time period for receiving back of the moulds should be extended from the present three months to one year.
18. Bought out items should be allowed for the purpose of MODVAT credit, if excise duty is charged on them. Now they are not getting the credit since they are supplied directly to the site. Rule has to be made for waiver of physically bringing them to the factory of manufacture.
19. Regarding retrospective effect which are being asked for by the manufacturers wherever the present situation is more liberal than in the past, the legal position should be clarified by the Government. Only changes brought about by executive instructions can have retrospective effect but not those where they have been caused by a change of Rule or in a Notification.
20. Verification of invoices should be of a certain percentage. The limit of duty above which the percentage should be increased can be Rs. 50,000/-.

21. Advance intimation for receipts of inputs should continue but credit should not be denied if the intimation is not given.
22. Declaration of inputs should be to the Range office which is nearer and not the Divisional Office.
23. Commissioner should have the power to condone the procedural and technical offences if he is satisfied that no loss of duty is involved.
24. Interest on the sum wrongly availed of as MODVAT credit should be charged from the date of wrong availment and not from the date of determination (adjudication).
25. Reversal of MODVAT credit in the case of substantive and fraudulent offences should be automatic subject to an order passed by the Commissioner to that effect even before adjudication. Adjudication will be only for imposing penalty and confirmation of the reversal order.
26. Invoice of the manufacturers and dealers should be standardised which will facilitate the computerisation in central excise. The invoice should contain the Electronic Computer Code and the income tax Permanent Account Number (PAN) which will make it easier to detect the fake cases.
27. During the transport of goods by trucks often the duplicate invoice is lost. At present the system is to ask the manufacturer to provide an FIR before the police and affidavit from the transporter. Apart from the fact that the manufacturers consider this a harassment, FIR and affidavit are no good by themselves from the point of view of the Department to ensure that there is no fraud. A much better solution to this problem is to ask the manufacturers in these circumstances to send an intimation to the Range Office about the goods' arrival. There will be physical verification of the goods by the Range officer within 48 hours after which credit will be allowed on the basis of the original invoice. This proposal was found universally acceptable to all the manufacturers as well as the officers.

28. The Government may have to find some means to request the Tribunal to decide 50 per cent of new cases relating to MODVAT. If only the old cases are decided, they do not give any guide for the present controversies.
29. Rules for capital goods and other inputs should be combined. The whole set of Rules should be rewritten in a simple language with a minimum of provisos.
30. Penal provisions in regard to manufacturers are enough but some more penal provisions for dealers are necessary. They should be made subject to Section 11 and Rule 230 as the manufacturers so that for realization of dues their goods can be attached.
31. Changes in MODVAT rules should be brought about after sufficiently long notice.
32. Changes should be brought about by amending Rules and no by executive instructions.
33. Checking invoices should be more meaningful. It should not be merely an arithmetical check as it has become now. Checking the genuineness of the truck and other modes of transport must be made to verify if goods have actually moved or the transaction was merely on paper. This is not a difficult check at all. If the office of Director General Anti Evasion could detect violations by checking the truck numbers which were found to be fictitious there is no reason why the Range staff cannot do this simple job.
34. Accountability seems to be low, with scant emphasis on checking even when it is feasible. The Divisional Assistant Collector and Deputy Commissioners should enforce a minimum level of checking that could have been done within the limitations faced. The oft-repeated complaint that, without computerisation on a large scale, things cannot improve is not a practical approach.

35. While computerisation is going to help, that cannot be the panacea. Computers cannot check if the goods are sold away to the exempted sector and the documents are sold to others. This can be done only by verification of transport details.
36. Fax machines should be given to all Ranges to make verification of documents more quick.
37. Verification of documents can be more effective if certain rationalisation of approach is resorted to as suggested in the visit notes at Chapter 9.
38. Audit should be functional and cyclical. More importance should be given to Audit than is being given now. However, it should not be routine but more investigative.
39. There should not be any separate MODVAT audit. It should be a part of general audit.
40. If there are dutiable goods and exempted goods produced in the same factory which avails of MODVAT credit, the exemption for the otherwise exempted goods will not be available to the factory.

A. CREDIT ON FORGED DOCUMENTS

Sl. No.	Commissioner-rate	Party's Name Contravention	Brief Modvat	Amount Rs.
	(1)	(2)	(3)	(4)
1.	Indore (S.No.10)		Availment of Modvat on fake gatepass.	30.6 lacs
2.	Hyderabad (S.No.1/94)		The assessee availed Modvat credit on forged Bills of entry. Originally the inputs were imported at NIL rate of duty.	11.62 lacs
3.	Vadodara (S.No.97)		Availed deemed credit on the basis of forged documents	13.19 lacs
4.	Vadodara (S.No.98)		-do-	6.20 lacs
5.	Raipur (S.No.21)		Credit availed on the basis of fake invoices issued by M/s Sunil Steels, Raipur.	77,269/-
6.	Raipur (S.No.22)		-do-	47,634/-
7.	Raipur (S.No.23)		Credit availed on the basis of fake invoices issued by M/s Sunil Steels, Raipur	5,622/-
8.	Raipur (S.No.24)		-do-	1,456/-
9.	Bombay III (S.No.88)		Inter alia, Credit availed on non-genuine (forged) documents.	5,21,521/-
10.	Jaipur (S.No.22)		Fraudulent availment of credit on the basis of forged and fake invoice	7,95,925/-
11.	Jaipur (S.No.23)		-do-	3,14,500/-
12.	Jaipur (S.No.24)		-do-	2,18,860/-

Sl. No.	(1)	(2)	(3)	(4)
13.	Jaipur (S.No.25)		Fraudulent availment of credit on the basis of forged and fake invoice	9,020/-
14.	Jaipur (S.No.26)		-do-	11,19,707/-
15.	Jaipur (S.No.27)		-do-	18,00,000/-
16.	Chandigarh (S.No.1)		Credit on fake documents issued by non-existent and closed unit	58,640/-
17.	Chandigarh (S.No.2)		Credit on bogus/fake GPI issued by M/s V.S. Udyog, Belur Hoorah	67,560/-
18.	Chandigarh (S.No.3)		-do-	36,115/-
19.	Chandigarh (S.No.4)		Credit on bogus documents	1,87,060/-
20.	Chandigarh (S.No.4)		Credit on bogus documents	2,20,935/-
21.	Chandigarh (S.No.5)		Credit on fake documents	79,930/-
22.	Chandigarh (S.No.6)		-do-	4,21,902/-
23.	Chandigarh (S.No.7)		-do-	2,34,610/-
24.	Chandigarh (S.No.8)		-do-	2,06,250/-
25.	Chandigarh (S.No.99)		Credit taken by making bogus entries	5,10,316/-
26.	Tiruchirapalli (S.No.19)		Fraudulent availment of Modvat credit	15,92,653/-
27.	Tiruchirapalli (S.No.20)		-do-	4,52,867/-
28.	Allahabad (S.No.47)		Credit availed on bogus invoices issued by fake units	3,10,205/-
29.	Allahabad (S.No.48)		-do-	5,94,340/-

Sl. No.	(1)	(2)	(3)	(4)
30.	Patna (S.No.2)		Credit availed on fake invoices (matter still under investigation)	
31.	Bombay II (S.No.2)		Credit availed on forged GPIs.	51,54,000/-
32.	DGAE (S.No.13)		Modvat on forged gatepasses	400.00 lacs
33.	DGAE (S.No.16)		Modvat credit on documents	57.00 lacs
34.	DGAE (S.No.18)		Modvat credit availed on fake GPIs	23.97 lacs
35.	DGAE (S.No.69)		Modvat credit on fake documents	28.24 lacs
36.	DGAE (S.No.70)		-do-	27.82 lacs
37.	DGAE (S.No.71)		-do-	40.79 lacs
38.	DGAE (S.No.72)		-do-	51.47 lacs
39.	Delhi (S.No.1)		-do- (Paid)	44,698/-
40.	Delhi (S.No.2)		-do- (Paid)	2,56,841/-
41.	Delhi (S.No.3)		-do- (Paid)	95,744/-
42.	Delhi (S.No.4)		-do- (Paid)	1,05,639/-
43.	Delhi (S.No.5)		-do- (Paid)	2,51,812/-
44.	Delhi (S.No.6)		-do- (Paid)	87,778/-
45.	Delhi (S.No.7)		-do- (Paid)	1,80,603/-
46.	Delhi (S.No.8)		-do- (Paid)	56,000/-
47.	Delhi (S.No.9)		-do- (Paid)	5,05,753/-

Sl. No.	(1)	(2)	(3)	(4)
48.	Delhi (S.No.10)		Modvat credit on fake documents (Paid)	3,27,442/-
49.	Delhi (S.No.11)		-do- (Paid)	31,500/-
50.	Delhi (S.No.12)		-do- (Paid)	5,86,500/-
51.	Delhi (S.No.13)		-do-	3,806/-
52.	Delhi (S.No.14)		-do-	1,95,515
53.	Delhi (S.No.15)		-do-	1,03,050/-

B. CREDIT WITHOUT PAYMENT OF DUTY

Sl. No.	(1)	(2)	(3)	(4)
1.	Surat (S.No.11)		The Depot of M/s Prag Bosimi Synthetic issued three invoices for duty free P.O.Y. imported under DEEC Scheme incorporating the amount of duty due (involved) and M/s Bombay Silk took Modvat credit fraudulently	Rs. 35.51 lacs
2.	Calcutta II (S.No.43)		Fraudulent credit in opening balance of RG 23A Pt. II by inserting the figure of Rs. 4 lacs	Rs. 3.32 lacs
3.	Raipur (S.No.16)		Taken modvat credit fraudulently by making false entries in statutory records	Rs. 2.32 lacs
4.	Coimbatore (S.No.200)		Credit taken on proforma invoices	Rs. 1,73,904/-
5.	Bombay-I (S.No.417)		Wrong availment of Modvat by excess debit	Rs. 2,04,324/-
6.	Bombay-I (S.No.450)		Excess modvat credit taken on dealer invoice	Rs. 1,108.85
7.	Bombay-I (S.No.529)		Duty has not been paid on the modvat invoice	-
8.	Belgaum (S.No.53)		Availed modvat credit on invoices not containing duty paying particulars	Rs. 21,675/-
9.	DGAE (S.No.3)		Excess modvat credit taken	Rs. 53.67 lacs
10.	Delhi (S.No.6/93-94)		Credit taken on non-duty paid/inputs	Rs. 51,70,420/-
11.	Delhi (S.No.8/93-94)		Credit availed on non-duty paid goods	Rs. 4.16 crores
12.	Delhi		-do-	Rs. 1,42,067/-

C. CREDIT AVAILED TWICE

Sl. No.	(1)	(2)	(3)	(4)
1.	Kanpur (S.No.42)		Modvat credit taken twice on some documents	Rs. 40,778/-
2.	Kanpur (S.No.43)		-do-	Rs. 45,000/-
3.	Bhubaneswar (S.No.62)		-do-	Rs. 1,28,386/-
4.	Bombay-III (S.No.75)		Inter alia, double credit taken on original and duplicate invoices	Rs. 6,50,234/37
5.	Bombay-III (S.No.125)		Overdrawal in RG 23A Pt. II due to twice credit taken for the same invoice	Rs. 3,82,454/-
6.	Coimbatore (S.No.1)		Credit taken twice on different copies of invoice	Rs. 2,50,052/-
7.	Coimbatore (S.No.2)		Credit taken twice on different copies of invoice	Rs. 4,80,007/-
8.	Coimbatore (S.No.3)		-do-	Rs. 1,11,904/-
9.	Coimbatore (S.No.4)		Credit taken twice	Rs. 1,90,065/-
10.	Coimbatore (S.No.5)		Credit taken twice on same document	Rs. 5,470/-
11.	Coimbatore (S.No.6)		-do-	Rs. 11,570/-
12.	Coimbatore (S.No.7)		-do-	Rs. 4,860/-
13.	Coimbatore (S.No.8)		-do-	Rs. 2,500/-
14.	Coimbatore (S.No.9)		-do-	Rs. 94,303/-
15.	Coimbatore (S.No.10)		Credit taken twice on the same documents	Rs. 3,150/-
16.	Coimbatore (S.No.11)		Unit II -do-	Rs. 8,341/-

Sl. No.	(1)	(2)	(3)	(4)
17.	Coimbatore (S.No.12)		Credit taken on two duplicate invoices, bearing same serial No. for the same consignment.	Rs. 6,445/-
18.	Coimbatore (S.No.13)		Credit taken on the duplicate and extra copy of invoice (i.e., credit taken twice)	Rs. 6,162/-
19.	Coimbatore (S.No.14)		Credit taken on the same invoices both under Rule 57H and Coimbatore Rule 57A	Rs. 42,935/-
20.	Coimbatore (S.No.15)		Credit availed on the original as well as the duplicate copy of invoice	Rs. 15,074/-
21.	Coimbatore (S.No.16)		-do-	Rs. 14,008/-
22.	Coimbatore (S.No.17)		Credit availed twice on single Bill of Entry	Rs. 98,146/-
23.	Coimbatore (S.No.21)		Credit availed twice (on 18 invoices)	Rs. 98,555/-
24.	Coimbatore (S.No.22)		-do- (on 2 invoices)	Rs. 10,845/-
25.	Coimbatore (S.No.23)		-do-	Rs. 2562/-
26.	Coimbatore (S.No.24)		-do- (on 6 invoices)	Rs. 95,663/-
27.	Coimbatore (S.No.25)		-do-	Rs. 1,748/-
28.	Coimbatore (S.No.26)		Credit availed twice	Rs. 8,885/-
29.	Coimbatore (S.No.27)		Credit availed twice	Rs. 2,451/-
30.	Coimbatore (S.No.28)		-do-	Rs. 1,580/-
31.	Coimbatore (S.No.29)		-do-	Rs. 2,372/-
32.	Coimbatore (S.No.30)		-do-	Rs. 8,450/-

Sl. No.	(1)	(2)	(3)	(4)
33.	Coimbatore (S.No.31)		Credit availed twice	Rs. 38,104/-
34.	Coimbatore (S.No.32)		Credit availed twice (on 23 invoices)	Rs. 4,40,588/-
35.	Coimbatore (S.No.33)		Credit availed twice	Rs. 1,184/-
36.	Coimbatore (S.No.34)		-do- (on 2 invoices)	Rs. 13,255/-
37.	Coimbatore (S.No.35)		Credit availed twice	Rs. 63,818/-
38.	Coimbatore (S.No.36)		-do-	Rs. 12,783/-
39.	Coimbatore (S.No.37)		-do-	Rs. 2,649/-
40.	Coimbatore (S.No.38)		-do- (on 2 invoices)	Rs. 6,955/-
41.	Coimbatore (S.No.39)		-do- (on 7 invoices)	Rs. 93,777/-
42.	Coimbatore (S.No.40)		-do- (on 10 invoices)	Rs. 59,862/-
43.	Coimbatore (S.No.41)		-do-	Rs. 2,730/-
44.	Coimbatore (S.No.42)		-do-	Rs. 8,340/-
45.	Coimbatore (S.No.43)		-do- (on 5 invoices)	Rs. 5,251/-
46.	Coimbatore (S.No.44)		Credit availed twice	Rs. 224/-
47.	Coimbatore (S.No.45)		-do- (on 13 invoices)	Rs. 9,113/-
48.	Coimbatore (S.No.46)		-do-	Rs. 576/-
49.	Coimbatore (S.No.47)		-do- (on 3 invoices)	Rs. 32,388/-

Sl. No.	(1)	(2)	(3)	(4)
50.	Coimbatore (S.No.48)		Credit availed twice (on 3 invoices)	Rs. 6,500/-
51.	Coimbatore (S.No.49)		-do-	Rs. 20,099/-
52.	Coimbatore (S.No.50)		-do-	Rs. 2,239/-
53.	Coimbatore (S.No.51)		-do-	Rs. 33/-
54.	Coimbatore (S.No.52)		-do-	Rs. 697/-
55.	Coimbatore (S.No.53)		Credit availed twice	Rs. 1,991/-
56.	Coimbatore (S.No.54)		-do-	Rs. 14,553/-
57.	Coimbatore (S.No.55)		-do-	Rs. 6,626/-
58.	Coimbatore (S.No.57)		Credit availed twice on the original and duplicate copies of invoices	Rs. 23,214/-
59.	Jaipur (S.No.5)		Double credit after a gap of 5 months on the same invoice	Rs. 3,465/-
60.	Jaipur (S.No.8)		Credit taken twice on same goods on the strength of two invoices bearing same S.No. and date by the same manufacturer	Rs. 694.50
61.	Chandigarh (S.No.385)		Credit taken twice on original and photocopy of invoice	Rs. 20,370/-
62.	Tiruchirapalli (S.No.15)		Credit twice on the same invoice	Rs. 5,61,020/-
63.	Tiruchirapalli (S.No.16)		-do-	Rs. 2,64,000/-
64.	Tiruchirapalli (S.No.17)		-do-	Rs. 5,52,000/-
65.	Tiruchirapalli (S.No.18)		-do-	Rs. 6,21,000/-

Sl. No.	(1)	(2)	(3)	(4)
66.	Shillong		Credit taken twice on consignment on the basis of different copies of the same invoice	Rs. 3,44,909/-
67.	Patna (S.No.32)		Modvat credit	Rs. 1,21,93,989/-
68.	Cochin (S.No.1)		Credit availed twice on the basis of duplicate copy and xerox copy of the invoice	Rs. 900/-
69.	Cochin (S.No.2)		-do-	Rs. 84,819/-
70.	Cochin (S.No.3)		-do-	Rs. 7,395/-
71.	Cochin (S.No.4)		-do-	Rs. 325/-
72.	Cochin (S.No.1)		-do-	Rs. 71,011/-
73.	Cochin (S.No.2)		-do-	Rs. 57,300/-
74.	Cochin (S.No.3)		-do-	Rs. 20,000/-
75.	Cochin (S.No.4)		-do-	Rs. 10,200/-
76.	Cochin (S.No.5)		-do-	Rs. 14,757/-
77.	Cochin (S.No.6)		-do-	Rs. 5,942/-
78.	Cochin (S.No.7)		-do-	Rs. 246/-
79.	Cochin (S.No.8)		-do-	Rs. 2,777/-
80.	Cochin (S.No.9)		-do-	Rs. 1,819/-
81.	Cochin (S.No.10)		-do-	Rs. 11,430/-

CREDIT AVAILED TWICE

Sl. No.	(1)	(2)	(3)	(4)
82.	Belgaum (S.No.8)		Credit availed twice on the same invoice	Rs. 36,280/-
83.	Belgaum (S.No.8)		-do-	Rs. 23,005/-
84.	Bombay (S.No.11)		Credit availed twice on the basis of extra & duplicate copies of invoices	Rs. 3,13,000/-
85.	Meerut (S.No.380)		Credit on six triplicate copy of invoice	Rs. 11,309/-
86.	Delhi (S.No.1)		Credit taken twice on same documents (Recovered)	Rs. 19,338/-
87.	Delhi		-do- (Recovered)	Rs. 15,338/-

D. CREDIT ON EXTRA/XEROX COPY OF INVOICE

Sl. No.	(1)	(2)	(3)	(4)
1.	Jamshedpur		Excess credit on extra copies of invoices	Rs. 5.23 lacs
2.	Indore (S.No.14)		Credit taken on photocopy of gatepass	Rs. 5,011/-
3.	Madras (S.No.9)		Wrong availment of modvat credit based on zerox/extra copy of invoices	Rs. 9.31 lacs
4.	Madras (S.No.9)		-do-	Rs. 5.16 lacs
5.	Madras (S.No.12)		Credit availed on zerox copy of Bill of Entry	Rs. 11.96 lacs
6.	Madras (S.No.13)		-do-	Rs. 6.44 lacs
7.	Madras (S.No.19)		Modvat availed based on extra copies (among other things)	Rs. 15.00 lacs
	Kanpur Comm			
8.			Modvat credit availed on photocopies of invoices	Rs. 1.18 lacs
9.			-do-	Rs. 6,292/-
10.	Kanpur (S.No.56)		Credit on photocopies of invoices	Rs. 8,120/-
11.	Vadodara (S.No.30)		Credit on zerox copies of Bills of Entries/Invoices	Rs. 10.02 lacs
12.	Vadodara (S.No.35)		Modvat availed on Proforma Invoices	Rs. 7.22 lacs
13.	Vadodara (S.No.56)		Credit availed on extra copy of invoice	Rs. 5.66 lacs
14.	Vadodara (S.No. 61)		Modvat credit availed on zerox copy of Bill of Entries	Rs. 103.74 lacs
15.	Vadodara (S.No.61)		Credit on the strength of copy of duty paying documents	Rs. 28.56 lacs
16.	Vadodara (S.No.123)		Credit taken on zerox copies of invoices	Rs. 5.23 lacs

Sl. No.	(1)	(2)	(3)	(4)
17.	Vadodara (S.No.14)		Credit taken on zerox copies of invoices	Rs. 15.75 lacs
18.	Vadodara S.No.19)		Credit on zerox copies of Bill of Entries	Rs. 13.33 lacs
19.	Vadodara (S.No.36)		-do-	Rs. 26.04 lacs
20.	Vadodara (S.No.52)		Credit on zerox copies of invoices	Rs. 10.43 lacs
21.	Bhubaneswar (S.No. 12)		-do-	Rs. 4,054/-
22.	Bhubaneswar (S.No.53)		Credit availed on extra copy of the invoice	Rs. 63,000/-
23.	Bhubaneswar (S.No.54)		Credit availed on duplicate copy of invoice	Rs. 12,858/-
24.	Bhubaneswar (S.No.24)		Credit availed on zerox copy of invoices	Rs. 9,900/-
25.	Bhubaneswar (S.No.38)		-do-	Rs. 14,100/-
26.	Bhubaneswar (S.No.40)		Credit availed on invoice	Rs. 33,700/-
27.	Bhubaneswar (S.No.73)		Credit availed on zerox copy of invoice	Rs. 3,299/-
28.	Bombay III (S.No.109)		Credit availed on extra copy of the invoice	Rs. 8,300/-
29.	Bombay III (S.No.125)		-do-	Rs. 4,48,900/-
30.	Bombay III (S.No. 125)		-do-	Rs. 62,251/-
31.	Jaipur (S.No.15)		Credit on 7th copy of invoice	Rs. 5,87,898/-
32.	Guntur (S.No.1)		Credit taken on extra copy	Rs. 2,82,386/-
33.	Guntur (S.No.2)		-do-	Rs. 6,56,121/-

Sl. No.	(1)	(2)	(3)	(4)
34.	Guntur (S.No.3)		Credit taken on extra copy	Rs. 43,451/-
35.	Guntur (S.No.9/95)		-do-	Rs. 9,574/-
36.	Guntur (S.No.29/95)		-do-	Rs. 50,109/-
37.	Chandigarh (S.No.382)		-do-	Rs. 1,24,724/-
38.	Chandigarh (S.No.392)		Credit on photocopy of original invoice	Rs. 26,891/-
39.	Tiruchirapalli (S.No.18)		-do-	Rs. 97,083/-
40.	Tiruchirapalli (S.No.33)		Credit on zerox copy of the invoice	Rs. 37,800/-
41.	Tiruchirapalli (S.No.37)		Credit on extra copy of the invoice	Rs. 77,724/-
42.	Tiruchirapalli (S.No.15)		Credit on zerox copy of invoice	Rs. 23,59,959/-
43.	Tiruchirapalli (S.No.42)		-do-	Rs. 1,56,733/-
44.	Tiruchirapalli (S.No.59)		-do-	Rs. 60,131/-
45.	Tiruchirapalli (S.No.39)		Credit on zerox copies of of Bill of Entry	Rs. 3,05,623/-
46.	Tiruchirapalli (S.No.40)		-do-	Rs. 1,75,928/-
47.	Allahabad (S.No.71)		Credit on extra copy of invoices	Rs. 36,208/-
48.	Allahabad (S.No.74)		Credit on extra copy of invoices	Rs. 228,921/-
49.	Allahabad (S.No.78)		-do-	Rs. 2,83,968/-
50.	Allahabad (S.No.81)		-do-	Rs. 89,528/-

Sl. No.	(1)	(2)	(3)	(4)
51.	Calcutta I (S.No.1)		Credit on extra copy of invoices	Rs. 1.59 crores
52.	Shillong (S.No.9)		Credit on extra copy/ xerox copy of invoices	Rs. 27,123/-
53.	Shillong (S.No.24)		Credit on xerox copies of invoices	Rs. 74,46,800/-
54.	Bombay I (S.No.11)		Credit availed on endorsed xerox copy of invoice	Rs. 37,872/-
55.	Bombay-I (S.No.3220)		Modvat on extra copy of invoice	Rs. 1,14,440/-
56.	Bombay-II (S.No.322)		-do-	Rs. 1,08,000/-
57.	Bombay I (S.No.370)		Modvat on copy of the invoice	Rs. 3,400/-
58.	Bombay I (S.No.540)		Modvat credit availed on the strength of xerox copy of the invoice	-
59.	Belgaum (S.No.39)		Modvat credit on extra copy of the invoice	Rs. 8,702/-
60.	Belgaum (S.No.2)		Modvat credit on endorsed extra copies of invoice	Rs. 6,600/-
61.	Belgaum (S.No.4)		Credit on extra copy of the invoice	Rs. 35,401/-
62.	Belgaum (S.No.20)		-do-	Rs. 26,09,826/-
63.	Belgaum (S.No.19)		-do-	Rs. 68,300/-
64.	Bombay II (S.No.8)		-do-	Rs. 83,000/-
65.	Bombay II (S.No.24)		-do-	Rs. 84,000/-
66.	Bombay II (S.No.20)		Availed credit on xerox copy of invoice	Rs. 7,49,000/-
67.	Goa (S.No.28)		Credit availed on xerox copies of invoice	Rs. 5,791/-

Sl. No.	(1)	(2)	(3)	(4)
68.	Goa (S.No.1)		Credit availed on zerox copies of certificates issued by CPWD Bambolim	Rs. 75,680/-
69.	Goa (S.No.38)		Credit availed on photocopies of invoices	Rs. 21,155/-
70.	Meerut (S.No.328)		-do-	Rs. 864/-
71.	Delhi (S.No.186)		Credit on extra copy of invoice	Rs. 6,69,304/-

E. CREDIT ON INVOICE WITHOUT PHYSICAL MOVEMENT OF GOODS

Sl. No.	(1)	(2)	(3)	(4)
1.	Nagpur		Invoices by dealers w/o physical movement of inputs	Rs. 24, 218/-
2.	-do-		-do-	Rs. 7,500/-
3.	Indore (S.No.3)		Fraudulent availment of Modvat Credit w/o receiving inputs. Only duty paying documents were received.	Rs. 50.0 lacs
4.	Indore (S.No.67)		Credit w/o actually receiving inputs	Rs. 25,256/-
5.	Hyderabad (S.No.3/94)		Credit was taken on purchased gate passes and fictitiously endorsed docs	Rs. 33.18 lacs
6.	Hyderabad (S.No.3/94-95)		Inputs actually not received but credit Hindupur was availed by procuring gate-passes of re-rolled products.	Rs. 9.97 lacs.
7.	Hyderabad (S.No.4/94-95)		The assessee availed Modvat Credit on defective blooms, etc., w/o actually receiving them.	Rs. 31.12 lacs
8.	Hyderabad (S.No.5/94-95)		The assessee availed Modvat credit on endorsed G.P.s w/o actually receiving goods (inputs) Ananthapur Distt.	Rs. 7.70 lacs
9.	Kanpur (S.No. 1)		Credit on invoices issued by SAIL Depot (stockyard) but goods diverted to 3rd party	Rs. 4.99 lacs
10.	Raipur (S.No.31)		Credit availed without physically receiving inputs in the factory of the assessee	Rs. 105.43 lacs
11.	Raipur (S.No.51)		-do-	Rs. 3.80 lacs
12.	Raipur (S.No.15)		Credit availed on inputs without physically receiving goods in their factory. Instead inputs sent to job-worker.	Rs. 6.94 lacs
13.	Bhubaneswar (S.No.34)		Modvat credit taken without receiving the inputs	Rs. 46,395/-

Sl. No.	(1)	(2)	(3)	(4)
14.	Bhubaneswar (S.No.20)		Modvat credit taken without receiving the inputs	Rs. 36,427/-
15.	Bombay III (S. No.1)		-do-	Rs. 10,05,392/-
16.	Coimbatore (S.No.18)		Modvat availed without receipt of input and without document	Rs. 12,000/-
17.	Coimbatore (S.No.19)		-do-	Rs. 45,216/-
18.	Coimbatore (S.No.20)		-do-	Rs. 26,050/-
19.	Tiruchirapalli (S.No.9)		Credit without inputs	Rs. 3,079/-
20.	Tiruchirapalli		Credit without inputs	Rs. 82,119/-
21.	Cochin (S.No.2)		-do-	Rs. 2,856/-
22.	Bombay-I (S.No.378)		-do-	Rs. 5,460/-
23.	Bombay I (S.No.345)		-do-	Rs. 17,474/-
24.	Belgaum (S.No.6)		-do-	Rs. 51,478/-
25.	Belgaum (S.No.11)		Credit taken without accounting for the input in RG 23A Pt. 1, i.e., without receipt of goods	Rs. 11,357/-
26.	DGAE (S.No.10)		Modvat credit availed without actual receipt of goods	Rs. 25.60 lacs
27.	DGAE (S.No.18)		Availed modvat credit without receiving the inputs	Rs. 1.55 lacs.
28.	DGAE (S.No.47)		-do-	Rs. 32.60 lacs
29.	DGAE (S.No.49)		-do-	Rs. 24.34 lacs
30.	DGAE (S.No.56)		Availed Modvat credit without receiving the inputs	Rs. 67.11 lacs
31.	New Delhi (S.No.1)		Modvat credit availed without actual receipt of inputs	Rs. 11,08,911/-

F. CREDIT OF DUTY WITHOUT PRODUCTION OF DOCUMENTS

Sl. No.	(1)	(2)	(3)	(4)
1.	Kanpur		Availed credit without supporting original duty paying document	Rs. 65,220/-
2.	Kanpur		-do-	Rs. 39,181/-
3.	Kanpur (S.No.4)		-do-	Rs. 52,800/-
4.	Kanpur (S.No.10)		-do-	Rs. 67,393/-
5.	Kanpur (S.No.13)		-do-	Rs. 11,825/-
6.	Kanpur (S.No.56)		The assessee has not submitted duty paying documents	Rs. 85,646.75
7.	Kanpur (S.No.79)		Credit availed without duty paying documents	Rs. 4.32 lacs
8.	Vadodara (S.No.19)		Modvat availed without having original duty paying document	Rs. 13.4 lacs
9.	Vadodara (S.No.25)		-do-	Rs. 18.48 lacs
10.	Vadodara (S.No.31)		-do-	Rs. 4.73 lacs
11.	Vadodara (S.No.48)		-do-	Rs. 5.96 lacs
12.	Vadodara (S.No.71)		Modvat credit without having duty paying documents	Rs. 7.07 lacs
13.	Vadodara (S.No.72)		-do-	Rs. 122.07 lacs
14.	Vadodara (S.No.75)		Modvat credit without having duty paying documents	Rs. 9.66 lacs
15.	Vadodara (S.No.78)		Modvat availed without having original duty paying document	Rs. 13.97 lacs

Sl. No.	(1)	(2)	(3)	(4)
16.	Vadodara (S.No.88)		Modvat availed without having original duty paying document	Rs. 11.32 lacs
17.	Vadodara (S.No. 2)		Availed modvat without duty documents	Rs. 14.97 lacs
18.	Vadodara (S.No.47)		-do-	Rs. 1.46 lacs
19.	Bhubaneswar (S.No.25)		-do-	Rs. 3.95 lacs
20.	Bhubaneswar (S.No.26)		-do-	Rs. 71,226/-
21.	Bhubaneswar (S.No.31)		-do-	Rs. 58,250/-
22.	Bhubaneswar (S.No.52)		-do-	Rs. 14,413/-
23.	Bhubaneswar (S.No.54)		Credit availed without duty paying documents	Rs. 4,57,097/-
24.	Bhubaneswar (S.No.55)		-do-	Rs. 44,232/-
25.	Bombay III (S.No.30)		-do-	Rs. 1,14,143/-
26.	Bombay III (S.No.73)		-do-	Rs. 19,550/-
27.	Guntur (S.No.7/95)		-do-	Rs. 48,905/-
28.	Tiruchirapalli (S.No.17)		-do-	Rs. 41,727/-
29.	Tiruchirapalli (S.No.20)		-do-	Rs. 38,882/-
30.	Tiruchirapalli (S.No.18)		Credit availed without producing Bill of Entry	Rs. 61,92,455/-
31.	Tiruchirapalli (S.No.23)		Credit availed without duty paying documents	Rs. 1,52,136/-
32.	Allahabad (S.No. 36)		-do-	Rs. 71,551/-
33.	Allahabad (S.No.38)		-do-	Rs. 1,71,136/-

Sl. No.	(1)	(2)	(3)	(4)
34.	Bombay I (S.No.274)		Credit availed without proper duty paying documents	Rs. 1,06,273/-
35.	Bombay I (S.No.299)		Irregular availment of Modvat without documentary evidence	Rs. 64,726/-
36.	Bombay I (S.No.376)		-do-	Rs. 38,196/-
37.	Bombay I (S.No.447)		Modvat credit without production of original duty paying documents	Rs. 16,000/-
38.	Bombay I (S.No.452)		-do-	Rs. 1,49,419/-
39.	Bombay I (S.No.506)		-do-	Rs. 57,163/-
40.	Belgaum (S.No.44)		Certification of Central Excise duty without original duty paying documents	(Not quantified)
41.	Belgaum (S.No.47)		Improper & incomplete duty paid evidencing	Rs. 10,165/-
42.	Belgaum (S.No.48)		-do-	Rs. 34,593/-
43.	Belgaum (S.No.48)		Credit availed without duty paying documents Belgaum	Rs. 2,247/-
44.	Bombay II (S.No.5)		-do-	Rs. 1,83,000/-
45.	Bombay II (S.No.8)		-do-	Rs. 3,67,000/-
46.	Bombay II (S.No.14)		-do-	Rs. 1,57,000/-
47.	Bombay II (S.No.33)		-do-	Rs. 1,77,000/-
48.	Goa (S.No.7)		-do-	Rs. 1,90,520/-
49.	Goa (S.No.16)		-do- (Paid by the party)	Rs. 12,788/-
50.	Goa (S.No.17)		-do-	Rs. 2,744/-

Sl. No.	(1)	(2)	(3)	(4)
51.	Goa (S.No.19)		Modvat availed without paying documents	Rs. 9,900/-
52.	Meerut (S.No.338)		Modvat documents not submitted for taking credit	Rs. 21,196/-
53.	Delhi (S.No.22)		Credit availed without duty paying documents	Rs. 1,56,530/-
54.	Delhi (S.No.26)		-do-	Rs. 2,05,821/-
55.	Delhi (S.No.204)		-do-	Rs. 3,33,487/-
56.	Delhi (S.No.251)		-do-	Rs. 3,55,666/-
57.	Delhi (S.No.252)		-do-	Rs. 2,48,469/-
58.	Delhi (S.No.252)		-do-	Rs. 1,21,562/-
59.	Jamshedpur (S.No.19)		Availed credit without duty paying documents	Rs. 1.20 lacs