

**Report of the  
Comptroller and Auditor General  
of India**

**for the year ended March 2015**

**Union Government**  
**(Department of Revenue –Customs)**  
**(Compliance Audit)**  
**No.5 of 2016**



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## **PREFACE**

This Report for the year ended March 2015 has been prepared for submission to the President of India under the Article 151 of the Constitution of India.

The Report contains significant results of the Compliance audit of the Department of Revenue – Customs under the Ministry of Finance.

The instances mentioned in this Report are those, which came to notice in the course of test audit for the period 2014-15 as well as those which came to notice in earlier years, but could not be reported in the previous Audit Reports; instances relating to the period subsequent to 2014-15 have also been included, wherever necessary.

The audit has been conducted in conformity with the Auditing Standards issued by the Comptroller and Auditor General of India.



## EXECUTIVE SUMMARY

During the financial year 2014-15 the Custom Receipts of ₹ 1,88,016 crore grew by nine percent over the previous financial year accounting for 34 percent of Indirect Tax revenue and 15 percent of Gross tax revenue. The ratio of Customs duty collected to GDP had reduced to 1.5 percent, however, the duty foregone increased by 100 percent to ₹ 4,97,945 crore in the last five years.

The Report has a total revenue implication of ₹ 1162 crore covering 122 paragraphs in addition to several systemic and internal control issues worth ₹ 37,852 crore. There were 80 paragraphs involving money value of ₹ 82 crore on which rectificatory action was taken by the department/Ministry in the form of issuing show cause notices, adjudicating of show cause notices and recovery of ₹ 22 crore. A few significant findings included in this Report are mentioned in the following paragraphs.

### Chapter I: Customs revenue

The chapter discusses trends, composition and systemic issues in Customs using data from Finance Accounts, departmental accounts and relevant data available in public domain.

- Customs revenue as a ratio of GDP had shown declining trend in FY 14 and FY 15.  
*{Paragraph 1.5}*
- Exports have recorded a marginal decline of 0.45 per cent while imports registered growth of 0.80 per cent during FY 15. Customs receipts grew at 9 per cent during the same period  
*{Paragraphs 1.6 to 1.8}*
- The Customs Revenue forgone is increasing exponentially without commensurate increase in the exports. Five schemes accounted for 80 per cent of total revenue foregone under the Schemes.  
*{Paragraph 1.11}*
- Custom revenue of ₹ 20,808 crore demanded up to March 2015 was not realized by the department at the end of the FY 15. Of this, ₹ 6,211 crore was undisputed. Eight zones accounted for 76 per cent of total revenue arrears pending during FY 15.  
*{Paragraph 1.13}*

## Chapter II: Provisional Assessments

- There were abnormal delays in finalization of provisional assessment and consequent postponement in realisation of revenue. More than 36000 cases with bond value exceeding ₹ 108389.37 crore were pending beyond 6 months for collection of Customs Revenue.
- There were several cases of non-compliance of Customs rules, regulation relating to provisional assessment, provisional duty, bond and bank guarantee management. The module for finalization of the provisional assessment in ICES 1.5 needs streamlining.
- Audit noticed issues worth ₹ 545.92 crore alongwith the issue of execution of bonds valued at ₹ 28679.48 crore without any security or Bank Guarantee, in addition to the systemic deficiencies which could not be quantified.

*{Paragraphs 2.1 to 2.30}*

## Chapter III: Re-export of goods

- Inadequate information management of re export transactions, bond management and improper maintenance of re import/export records by the Commissionerates resulted in inadequate internal control, management and monitoring by the Commissionerates and the CBEC.
- Based on only 26 percent of the trade transactions audit observed irregularities worth ₹ 308.26 crore essentially on matters of non compliance of conditions of notifications, provisions of the Act or instruction issued by the board, with a material bearing on Customs revenue. There were several other cases of lack and lapse of internal control and systemic malfunction which could not be quantified because of unavailability of necessary records with the Commissionerates/CBEC.

*{Paragraphs 3.1 to 3.45}*

## Chapter IV: Assessment of customs Revenue

We detected incorrect assessment of customs duty totalling ₹ 53.65 crore. These arose mainly due to Non recovery of TED refund amount, Non recovery of customs cost recovery charges, Imports cleared without levying or short levying the applicable anti dumping duty, Import of foreign liquor, Special valuation etc.

*{Paragraphs 4.1 to 4.10}*



## **Chapter V: Duty exemption/Remission schemes**

- Revenue of ₹ 168.94 crore was due from exporters/importers who had availed of the benefits of the duty exemption schemes but had not fulfilled the prescribed obligations/conditions.

*{Paragraphs 5.1 to 5.10}*

## **Chapter VI: Incorrect application of General exemption notifications**

- Duty of ₹ 1.52 crore was short levied due to incorrect application of exemption notifications.

*{Paragraphs 6.1 to 6.6}*

## **Chapter VII: Mis-classification of goods**

- Duty of ₹ 1.70 crore was short levied due to misclassification of goods.

*{Paragraphs 7.1 to 7.7}*

## Glossary of terms and abbreviations

<b>Expanded form</b>	<b>Abbreviation</b>
Accredited Client Programme	ACP
Advance authorization	AA
Authorised Economic Operator	AEO
Advance release order	ARO
Anti Dumping Duty	ADD
Basic customs duty	BCD
Bill of entry	BE
Comprehensive Payment and Accounting Package	COMPACT
Customs tariff heading	CTH
Central Board of Excise and Custom	CBEC
Central Excise tariff heading	CETH
Central Statistical organization	CSO
Central Sales Tax	CST
Cost Insurance Freight	c.i.f.
Commissionerate of custom	Commissionerate
Countervailing duty	CVD
Directorate of Data Management	DDM
Department of Revenue	DoR
Department of Commerce	DoC
Director General of Foreign Trade	DGFT
Development Commissioner	DC
Director General of Anti Dumping	DGAD
Director general of commercial intelligence and statistics	DGCIS
Directorate General of Valuation	DGOV
Domestic tariff area	DTA
Duty Entitlement Pass Book	DEPB
Duty Exemption Entitlement Certificate	DEEC
Duty Free Entitlement Credit Certificate	DFECC
Duty Free Replenishment Certificate	DFRC
Electronic Data Interchange	EDI
Export obligation	EO
Export obligation discharge certificate	EODC
Export Oriented Unit	EOU
Export Performance	EP
Export Promotion Capital Goods	EPCG
Export Processing Zone	EPZ
Export and Import	EXIM
Financial year	FY
Fiscal Responsibility and Budget Management Act	FRBM
Free on Board	FOB
Foreign Trade Policy	FTP

Gross Domestic product	GDP
Hand Book of Procedures	HBP
High speed diesel	HSD
Harmonised system of nomenclature	HSN
High sea sale	HSS
Information and Communication Technology	ICT
Importer Exporter Code	IEC
Indian Customs Electronic Data Interchange system	ICES
Inland Container Depot	ICD
International Tariff Classification (Harmonised System)	ITC(HS)
Joint Director General of Foreign Trade	JDGFT
Letter of permission	LOP
Local Risk Management	LRM
National e-governance plan	NEGP
Mission mode project	MMP
On Site Post Clearance Audit	OSPCA
Public Accounts Committee	PAC
Performance monitoring and Evaluation system	PMES
Principal Chief Controller of Accounts	Pr.CCA
Regional licensing authority	RLA
Result Framework Document	RFD
Risk Management System	RMS
Rupees	₹
Special additional duty of customs	SAD
Special Economic Zone	SEZ
Served from India Scheme	SFIS
Software Technology Park	STP
Standard input output norms	SION
Vishesh Krishi and Gram Udyog Yojana	VKGUY



**CHAPTER I**  
**DEPARTMENT OF REVENUE -CUSTOMS REVENUE**

**1.1 Resources of the Union Government**

The Government of India's resources include all revenues received by the Union Government, all loans raised by issue of treasury bills, internal and external loans and all moneys received by the Government in repayment of loans. Tax revenue resources of the Union Government consist of revenue receipts from direct and indirect taxes. Table 1.1 below shows the summary of resources of the Union Government for the Financial Year (FY) 2014-15 and FY 2013-14.

<b>Table 1.1: Resources of the Union Government</b>	<b>(₹ in crore)</b>	
	<b>FY 2014-15</b>	<b>FY 2013-14</b>
A. Total Revenue Receipts	16,66,717	15,36,024
<i>i. Direct Taxes Receipts</i>	6,95,792	6,38,596
<i>ii. Indirect Taxes Receipts including other taxes<sup>1</sup></i>	5,49,343	5,00,400
<i>iii. Non-Tax Receipts</i>	4,19,982	3,93,410
<i>iv. Grants-in-aid &amp; contributions</i>	1,600	3,618
B. Miscellaneous Capital Receipts <sup>2</sup>	37,740	29,368
C. Recovery of Loan & Advances <sup>3</sup>	26,547	24,549
D. Public Debt Receipts <sup>4</sup>	42,18,196	39,94,966
<b>Receipts of Government of India (A+B+C+D)</b>	<b>59,49,200</b>	<b>55,84,907</b>

Source: Union Finance Accounts of respective years. Direct Tax receipts and Indirect tax receipts including other taxes have been worked out from the Union Finance Accounts. Total Revenue Receipts include ₹ 3,37,808 crore in FY 2014-15 and ₹ 3,18,230 crore in FY 2013-14, share of net proceeds of direct and indirect taxes directly assigned to states.

Source: Union Finance Accounts of FY 2014-15

**1.1.1** The total receipts of the Union Government increased to ₹ 59,49,200 crore in FY 2014-15 from ₹ 55,84,907 crore in FY 2013-14. In FY 2014-15, its own receipts were ₹ 16,66,717 crore including gross tax receipts of ₹ 12,45,135 crore.

**1.2 Nature of Indirect Taxes**

Indirect taxes attach themselves to the cost of the supply of goods/services and are, in this sense, transaction-specific rather than person-specific. The major indirect taxes/duties levied under Acts of Parliament are:

<sup>1</sup> Indirect taxes levied on goods and services such as customs duty, excise duty, service tax etc.;

<sup>2</sup> This comprises of value of bonus share, disinvestment of public sector and other undertakings and other receipts;

<sup>3</sup> Recovery of loans and advances made by the Union Government;

<sup>4</sup> Borrowing by the Government of India internally as well as externally;

- a) **Customs duty:** Customs Duty is levied on import of goods into India and on export of certain goods out of India (Entry 83 of List 1 of the Seventh Schedule of the Constitution). Custom also has important border and exchange control roles.
- b) **Central Excise duty:** Duty is levied on manufacture or production of goods in India. Parliament has powers to levy excise duties on tobacco and other goods manufactured or produced in India except alcoholic liquors for human consumption, opium, Indian hemp and other narcotic drugs and narcotics but including medicinal and toilet preparations containing alcohol, opium etc (Entry 84 of List 1 of the Seventh Schedule of the Constitution).
- c) **Taxes on Services:** Service Tax is levied on services provided within the taxable territory (Entry 97 of List 1 of the Seventh Schedule of the Constitution). Service Tax is a tax on services rendered by one person to another. Section 66 B of the Finance Act envisages that there shall be a tax levied at the rate of 12 per cent on the value of all services, other than those specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed. 'Service' has been defined in section 65 B (44) of the Finance Act to mean any activity for consideration (other than the items excluded therein) carried out by a person for another and to include a declared serviceable territory (Entry 97 of List 1 of the Seventh Schedule of the Constitution).

### **1.3 Organisational Structure**

The Department of Revenue (DoR) of MOF, functions under the overall direction and control of the Secretary (Revenue) and coordinates matters relating to all the Direct and Indirect Union Taxes through two statutory Boards namely, the Central Board of Excise and Customs (CBEC) and the Central Board of Direct Taxes (CBDT) constituted under the Central Board of Revenue Act, 1963. Matters relating to the levy and collection of Customs are looked after by the CBEC.

In addition, DoR is also responsible for the Indian Stamp Act 1899 (to the extent falling within the jurisdiction of the Union), the Central Sales Tax Act 1956, the Narcotic Drugs and Psychotropic Substances Act 1985 (NDPSA), the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (SAFEMA), the Foreign Exchange Management Act, 1999 (FEMA) and the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA), the Prevention of Money Laundering Act, 2002 (PMLA) and

the attached/ subordinate offices for intelligence, enforcement, ombudsman and quasi judicial functions.

The overall sanctioned staff strength of the CBEC is 91,807<sup>5</sup>(as on 1 January 2015). The organizational structure of CBEC is shown in Annual Report 2015, Ministry of Finance.

#### 1.4 Growth of Indirect Taxes - Trends and composition

Table 1.2 below gives the relative growth of indirect taxes during FY 11 to FY 15. The percentage share of indirect taxes to GDP<sup>6</sup> was slightly above 4 per cent during last five years.

Table 1.2: Growth of Indirect Taxes

Year	Indirect Taxes	GDP	Indirect Taxes as % of GDP	Gross Tax Revenue	Indirect Taxes as % of Gross Tax Revenue	Cr. ₹
FY 11	3,45,371	77,95,314	4.43	7,93,307	44	
FY 12	3,92,674	90,09,722	4.36	8,89,118	44	
FY 13	4,74,728	1,01,13,281	4.69	10,36,460	46	
FY 14	4,97,349	1,13,45,056	4.38	11,38,996	44	
FY 15	5,49,343	1,25,41,208	4.38	12,45,135	44	

Source: Finance Accounts, Figures for FY 15 are provisional

Indirect taxes as a percentage of GDP in FY 15 were lower than the average of 4.4 per cent in the last five years. The share of indirect taxes to gross tax revenues of FY 15 were equivalent to the five years average of 44 per cent. GDP has grown by 61 percent and gross tax revenue by 60 percent during this period, which saw major rationalization and reduction of indirect taxes. GDP increased from ₹ 77.95 lakh crore in FY 11 to ₹ 125.41 lakh crore (61 %) in FY 15 whereas Indirect Taxes increased from ₹ 3.45 lakh crore in FY 11 to ₹ 5.49 lakh crore (60 %) in FY 15.

#### 1.5 Growth of Customs Receipts - Trends and composition

Table 1.3 below gives the growth trends of Customs Revenue in absolute and GDP terms during FY 11 to FY 15.

<sup>5</sup> Figures furnished by the Directorate General of HRD (Customs, Central Ex. & STax as on 1 January 2015.

<sup>6</sup> Source: Union Finance Accounts of respective years, GDP Figures of GDP provided by Central Statistical Organisation. in June 2015.

Table 1.3: Growth of Customs Receipts

Year	GDP	Gross Tax Revenues	Gross Indirect Taxes	Customs Receipts	Cr. ₹		
					Customs Revenue as % of GDP	Customs Revenue as % of Gross tax	Customs as % of Indirect taxes
FY 11	77,95,314	7,93,307	3,45,371	1,35,813	1.74	17	40
FY 12	90,09,722	8,89,118	3,92,674	1,49,328	1.66	17	38
FY 13	1,01,13,281	10,36,235	4,74,728	1,65,346	1.63	16	35
FY 14	1,13,55,073	11,38,996	5,00,400	1,72,033	1.52	15	34
FY 15	1,25,41,208	12,45,135	5,49,343	1,88,016	1.50	15	34

Source: Finance Accounts, FY 14 figures are provisional

The Customs Revenue as percentage of GDP shows declining trend in the FY14 and FY 15. While, the Customs Revenue as a percentage of Indirect taxes showed decline from 40 percent in FY 11 to 34 percent in FY 15. Customs revenue as a percentage of gross tax reduced from 17 percent in FY 11 to 15 percent in FY 15. Custom duty as a ratio of gross tax and indirect taxes remained at 15 percent and 34 percent as in FY 14.

### 1.6 India's export and import for FY 11 to FY 15

Exports have recorded a year on year decline to (-) 0.45 percent (₹ 8,663 crore) during FY 15 as compared to 17 percent growth (₹ 2,70,692 crore) in FY 14 and 35 percent in FY 11 (Table 1.4 given below).

Table 1.4: India's Import and Export

Year	Imports	Growth %	Customs Receipts	Growth %	** %	Exports	Growth %	Cr. ₹	
								Trade Imbalance	% #
FY 11	1683467	23	135813	63	5	1142922	35	-540545	32
FY 12	2345463	39	149328	10	4	1465959	28	-879504	37
FY 13	2669162	14	165346	11	4	1634319	11	-1034843	38
FY 14	2715434	2	172033	4	4	1905011	17	-810423	30
FY 15	2737087	0.80	188016	9	4	1896348	-0.45	-840739	31

Source: EXIM data, Department of Commerce, \*\* Customs Receipts as percent of (Imports +Exports), # Trade imbalance as percent of Imports

Customs receipts have remained steadily at an average of 4 percent of the total trade in the last five years. Imports have fluctuated between 39 per cent (FY 12) to 0.80 per cent (FY 15) in the last five years. Imports registered a miniscule growth of 0.80 percent (₹ 21,653 crore) as compared to growth of 2 percent (₹ 46,272 crore) last year. There was negative export growth with higher trade imbalance vis-à-vis FY 14. There was no apparent correlation between the growth in imports to the decline in exports over the last five years. The trade imbalance reduced from 38 percent in FY 13 to 31 percent in FY 15, close to the lowest at 30 per cent in FY 14, in the last five years.



## 1.7 Tax base

The customs revenue base comprises of the Importers and Exporters issued with Importer Exporter Code (IEC)<sup>7</sup> by the Director General of Foreign Trade (DGFT). As on July 2015 there are 65011 active IECs. For managing the foreign trade there are 391 Import ports (98 EDI, 72 Non-EDI, 41 Manual and 180 SEZ) and 359 Export ports (115 EDI, 74 Non-EDI, 37 Manual and 133 SEZ). During 2014-15, ₹ 18.96 lakh crore exports (92,62,011 transactions) and ₹ 27.37 lakh crore worth of imports (75,22,430 transactions) took place. Eighteen trade agreements<sup>8</sup> providing some kind of tariff concession, Customs Receipts (₹ 1,88,016 crore) along with revenue forgone (₹ 4,97,945 crore) forms the basis of the tax audit.

## 1.8 Growth in Imports and Customs Receipts

The table 1.5 below depicts growth in Imports and Customs Receipts.

**Table 1.5: Growth in imports and Customs Receipts**

Year	Imports	Growth %	Customs Receipts	Growth %	Custom Receipts to Imports %	Peak rate of duty
FY 11	1683467	23	135813	63	8.1	10
FY 12	2345463	39	149328	10	6.4	10
FY 13	2669162	14	165346	11	6.2	10
FY 14	2715434	2	172033	4	6.3	10
FY 15	2737087	1	188016	9	6.9	10

Source: Union Budget, EXIM Data- Department of Commerce

Growth in value imports has reduced to one percent because of the huge reduction in the International prices of Crude and Commodities. The Customs receipts to value of imports averaged at 6.8 percent, ranging between 6.2 to 8 percent. In FY 15 it was 6.9 percent.

During FY 15, for one percent growth of value of imports, customs receipts increased by nine percent over the last financial year.

## 1.9 Monitoring of Departmental performance

Department of Revenue does not have a Results Framework Document (RFD)<sup>9</sup>. In the absence of measurable performance indicator its revenue policy strategy and methodology of gauging its performance is not known. Department of Revenue prepares one annual report and outcome budget for the entire Ministry of Finance with five big departments and Responsibility Centres (RCs).

<sup>7</sup> IEC is issued by DGFT, Delhi to every importer/Exporter.

<sup>8</sup> <http://commerce.nic.in/trade/international>

<sup>9</sup> RFD is required to be prepared under the "Performance Monitoring and Evaluation System (PMES)" of Cabinet Secretariat.

### 1.10 Budgeting issues in Customs receipts

Table 1.6 below depicts Budget and Revised estimates vis-a vis actual Customs receipts.

**Table 1.6: Budget and Revised estimates, Actual receipts**

Year	Budget estimates	Revised budget estimates	Actual receipts	Diff. between actuals and BE	% variation between actuals and BE	% variation between actuals and RE
FY 11	115000	131800	135813	(+)20813	(+)18.10	(+)3.04
FY 12	151700	153000	149328	(-)2372	(-)1.56	(-)2.40
FY 13	186694	164853	165346	(-)21348	(-)11.43	(+)0.30
FY 14	187308	175056	172033	(-)15275	(-)8.16	(-)1.73
FY 15	201819	188713	188016	(-)13803	(-)6.84	(-)0.37

Source: Union Budgets and Finance Accounts

Despite the actual receipts falling short of the budget estimates year after year, the Government continued to make optimistic projections during presentation of the Annual Budget. The percentage variation during the last five years between budget estimates and actual collections was in the range of (-) 11.43 percent to (+) 18.10 percent as shown in Table. The revised estimates to actual receipts also varied from (-)3.97 percent to (+) 3.04 percent.

Ministry may furnish reasons for variation in BE, RE and actuals in 2014-15 alongwith its forecasting methodology in Customs revenue.

### 1.11 Customs Revenue forgone under Customs Act, 1962

The Central Government has been delegated powers of duty exemption under Section 25(1) of the Customs Act, 1962 to issue notifications in public interest so as to prescribe duty rates lower than the tariff rates prescribed in the Schedule to the Customs Tariff Act. These rates prescribed by notification are known as the “effective rates”.

The revenue forgone is thus defined by Ministry of Finance to be the difference between duty that would have been payable but for the issue of the exemption notification and the actual duty paid in terms of the relevant notification. In other words,

$$\text{Revenue forgone} = \text{Value} \times (\text{Tariff rate of duty} - \text{Effective rate of duty})$$

**Table1.7: Customs Receipts and Total Customs Revenue forgone**

Year	Customs Receipts	Revenue forgone on commodities including Schemes	Refunds	Drawback paid	Rev. forgone +Refunds+ DBK	Cr.₹
						Revenue forgone as % of Customs Receipts
FY 11	135813	230131	3474	9001	242606	179
FY 12	149328	285638	3202	12331	301171	202
FY 13	165346	298094	3031	17355	318480	193
FY 14	172033	326365	4501	18539	349405	203
FY 15	188016	465618	5051	27276	497945	265

Source: Union Receipts Budget, CBEC DDM, CBEC

The Revenue forgone as a percentage of Customs Receipts was the highest in FY 15 at 265 percent (Table 1.7). During the last five years it ranged from 179 to 265 percent. Revenue foregone on commodities as well as total revenue foregone had doubled in the last 5 years from ₹ 2.43 thousand crore to ₹ 4.98 thousand crore in FY 15. Drawbacks have grown 200 per cent in the last 5 years, whereas refunds have only grown by 47 per cent. During the FY 15, 78 percent of the Revenue forgone was on precious metals and articles thereof, mineral fuels and Iron and Steel etc.

**Table1.8: Revenue forgone under various Export promotion schemes**

Scheme	Amount forgone/disbursed					Cr.₹
	FY11	FY 12	FY 13	FY 14	FY 15 (% of Total)	
1. Duty Drawback excluding SEZ	9001	12331	17422	21799	26998	(29)
2. Advance Licence	19355	18306	18971	20956	23461	(26)
3. Focus Product Scheme (FPS)	1209	3056	4579	7640	10083	(11)
4. EPCG	10621	9672	11218	8990	8010	(9)
5. SEZ	8668	4567	4503	6206	4752	(5)
6. Others *	22174	20564	15649	17261	18660	(20)
<b>TOTAL</b>	<b>71028</b>	<b>68496</b>	<b>72342</b>	<b>82852</b>	<b>91964</b>	
<b>% of Customs Receipts</b>	<b>52</b>	<b>46</b>	<b>43</b>	<b>48</b>	<b>49</b>	

\*Others include EOU/EHT/STP, DFIA Schemes, FMS, Vishesh Krishi and Gram Udyog Yojana (VKGUY), Target plus schemes, Status Holder Incentive scrip scheme (SHIS), Served from India Scheme (SFIS), DEPB (exclud. SEZ), DFEC Schemes, DFRC etc.

Source: Directorate of Data Management, CBEC, Ministry of Finance

The Revenue forgone under Export Promotion schemes stood at 49 percent of the Customs Receipts during the FY 15. Scheme wise duty forgone ranged from 52 percent to 43 percent between FY 11 to FY 15 (Table 1.8 above).

During FY 15 top five schemes on which duty was foregone were Duty drawback scheme, Advance license scheme, Focus Product Scheme, EPCG, and

SEZ. These five schemes accounted for 80 percent of total duty foregone under the schemes.

During FY 15 revenue foregone under Duty Drawback Scheme was the highest among the different Export Promotion Schemes. It had regular upward increase from FY 11 onwards and exceeded Advance License scheme in FY 14 and FY 15. The revenue foregone under Advance License Scheme and Focus Product Scheme had shown increasing trend from FY 12 onwards. Duty foregone under EPCG Scheme correlated with the export growth during FY 11 to FY 15 except in the FY 14.

Revenue outcome assessments of the various promotional schemes, trade agreements and general exemptions are not made available as a part of the budget document.

### **1.12 Human Resources management in CBEC**

Director General of Human Resource Development formed in November 2008 has specific roles with respect to Cadre management, Performance management (of group and individual levels), capacity building, strategic vision development and welfare and Infrastructure divisions for a 91,807 strong work force (as on 1 January 2015) which included 18067 additional posts sanctioned (December 2013) by the Ministry after cadre re-structuring in 2013 so that:

- a. Indirect tax to GDP ratio could be improved;
- b. A robust Risk Management System (RMS) covering all ports and transactions could be in place;
- c. Officials and officers are trained to use ICES proficiently;
- d. Technical audit procedures are strengthened.

The RFD FY 15 of CBEC covers the important activities mentioned above. The measurement and success indicators have not been correlated with the policy decisions already taken by Government in case of self assessment, OSPCA, RMS and use of ICT, ICES and inter linkages with other tax and foreign policies of Government necessitating, restructuring and re-allocation of human resources with appropriate skills to fill the capacity gaps.

CBEC has not provided information about the trainings conducted by their Regional training institutes during FY 15 despite several reminders.

### **1.13 Arrears of customs duties**

Table 1.9 overleaf depicts Customs revenue demanded up to March 2014 but not realised by the department at the end of the FY 15.

Table1.9: Arrears of Customs duties

Zone	Amt. under dispute				Amt. not under dispute				Grand total (Col.5+9)
	Less than 5 years	Five years but < 10 years	More than 10 years	Total (Co.2+3+4)	Less than 5 years	Five years but < 10 years	More than 10 years	Total (Co.6+7+8)	
1	2	3	4	5	6	7	8	9	10
Ahmedabad Cus	2039	88	69	2196	465	465	265	1195	3390
Chennai Cus	1700	291	28	2019	174	258	246	678	2697
Delhi	989	53	43	1085	641	169	31	841	1926
Bangalore Cus	1465	134	4	1603	142	39	14	195	1798
Mumbai-I	755	106	11	872	437	271	212	920	1715
Vizag	1422	39	29	1490	111	16	50	178	1667
Mumbai-III	923	262	41	1226	126	83	35	244	1470
Delhi Cus-Prev	865	94	01	960	127	33	32	192	1152
Sub total	10158	1067	226	11451	2223	1387	775	4443	15815
Others	2272	746	129	3146	728	695	403	1768	4993
Grand Total	<b>12430</b>	<b>1813</b>	<b>355</b>	<b>14597</b>	<b>2951</b>	<b>2082</b>	<b>1178</b>	<b>6211</b>	<b>20808</b>
<b>Arrears of top eight zone to total Arrears in percentage</b>									<b>76%</b>

Source: Chief Commissioner, Tax Arrears Recovery, Central Excise, Customs & Service Tax

Customs revenue of ₹ 20,808 crore demanded up to March 2015, was not realised by the department at the end of the FY 15 (Table 1.9). Of this ₹ 6211 crore was undisputed. However ₹ 3260 crore (53 percent of total arrears) of the undisputed amount had not been recovered for a period of over five years. Customs revenue arrears for top eight zones account for 76 per cent of total arrears pending during FY 15. There is a need to strengthen the recovery mechanism of the department.

#### 1.14 Cost of Collection for the FY 11 to FY 15

Table 1.10 below indicates the cost of collection for the five year financial period from 2010-11 to 2014-15.

Table1.10: Cost of Collection during FY 11 to FY 15

Year	Expdr. on Revenue, Import /export and trade control functions	Expenditure on preventive and other functions	Transfer to Res. Fund, Deposit A/c and other expdr.	Total	Customs receipts	Cost of collection as % of customs receipts
FY 11	293	1421	5	1719	135813	1.27
FY 12	306	1577	5	1888	149876	1.26
FY 13	315	1653	10	1979	165346	1.20
FY 14	333	1804	5	2142	172033	1.25
FY 15	382	2094	20	2496	188016	1.33

Source: Finance Accounts

Expressed in terms of percentage of receipts, cost of collection ranged between 1.20 percent (FY 13) to 1.33 percent (FY15) (Table 1.10). Despite automation and extensive use of ICT, the cost of collection was the highest in FY 15 in the last five years. CBEC did not provide to audit the methodology to calculate the Reserve fund, Deposit Account and other expenditure in the overall cost of collection mentioned in the table above.

### **1.15 Tax accounting and internal Audit irregularities**

**1.15.1** Audit of Tax accounting, controls and reconciliation in the offices of PCCA, PAOs, Customs Commissionerates and their subordinate field offices for the year 2015 revealed that the system suffered from several inadequacies. There were instances of Non reconciliation of revenue figures by the P.A.O. with Chief Accounts Officers of the respective commissionerates (₹ 5319.24 crore), Non reconciliation of refund figures (₹ 2465.96 crore), Cases of mismatch of ICEGATE data with Bank data for Customs Duty paid (₹ 1166.53 crore), Non-availability of details of Education Cess separately in the physical challans received in PAO (Customs), Discrepancies between Date-wise Monthly Statements (DMS) and Put-Through Statements (PTS) prepared by CAS, RBI, Nagpur (₹ 3.84 crore), Custom receipts of ₹ 20.75 crore are awaiting transfer to receipt head and Non-conduction of internal audit at PAO (Customs), New Delhi, Kolkata, Kandla, Tiruchirapalli, Chennai and Tuticorin for the period 2011-15.

The department had not given reasons for the mismatch claiming that it does not have details of e-payments through ICEGATE and could only respond after receiving data from NIC. It was also observed that register of lost challans and register of bank scrolls were not maintained.

**1.15.2** Principal Chief Controller of Accounts (Pr.CCA), CBEC audits different payment and accounting functions of CBEC. Though internal audit is an integral part of the internal control system, the internal audit reports of Pr.CCA indicated pendency to the tune of 475 internal audit paras with gross value of ₹ 34670.68 crore<sup>10</sup>.

Pr.CCA audit comments comprised the following irregularities apart from points of establishment audit till FY 15:

- a) Non recovery of dues from Govt. Department/State Government Bodies/Private parties/ Autonomous bodies; ₹ 16192.69 crore.
- b) Blocking of government money; ₹ 7387.90 crore.
- c) Idle machinery/ surplus stores, ₹ 71.72 crore

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<sup>10</sup> Pr.CCA DO letter No. IA/NZ/HQ/CAG INFO/2015-16/198 dated 18 September 2015

The internal audit report does not provide a control based assurance in line with its risk assessment.

### 1.16 Technical audit by DG (Audit), CBEC

Custom department has been computerized by introducing ICES in 1994 which has been further upgraded to ICES 1.5 version (2009). It has also introduced Risk Management System (RMS) by flagging various risk factors on valuation, classification, notification etc. in the system. Computerization seeks to improve the assessment process of imported goods as well as exported goods and minimizes irregularities of incorrect calculation of duty, application of tariff rates, application of exemption notifications, mis-classification of goods in general.

**Table1.11: Departmental audit during FY 11 to FY 14**

FY	Audits conducted	Duty detected	Duty recovered	Cr.₹		
				Duty detected to Customs Receipts %	Duty recovered to Detected %	Duty recovered to Customs Receipts %
FY 11	323399	548	447	0.40	82	0.32
FY12	525406	439	459	0.29	105	0.31
FY13	446911	1824	1058	1.10	58	0.64
FY14	494393	294	223	0.17	76	0.13
FY 15	441068	4.45	3.50	0.002	79	0.001

Source: Directorate General of Audit, Customs & Central Excise

Departmental audit is an important instrument of internal control which detects non compliance and inefficiencies and initiates remedial action on shortcomings. To ensure effective inspection system CBEC issued instructions on the subject recently. Table 1.11 given above gives quantitative achievements in this area during FY 11 to FY 15.

### 1.17 Tax Evasion, Investigation and Seizures

There has been decreasing trend in evasion of cases both in terms of numbers and the amount during the last 3 years (FY 13 to FY 15) as shown in the **Annexure 1**. The number of duty evasion cases came down from 709 to 407 and value went down from ₹ 4,743 crore to ₹ 2,926 crore during the same period. Interestingly, this was also the period when various ICT solutions were in use and Self assessment, RMS based PCA and intelligence was embarked on with a gradual shift towards OSPCA.

DRI unit (CBEC) detected 2889 cases of tax evasion involving ₹ 13335.61 crore during the FY 11 to FY 15. The products involved were mainly second hand machinery, electronic goods, memory cards, helicopters, automobiles and its accessories, gold and diamonds.

### **1.18 Irregular trend in Seizures of Specified Commodities**

Scrutiny of seizures of Specified Commodities during FY 11 to FY 15 (**Annexure 2**) reveals that there was an irregular trend in seizures of specified commodities. During FY 12 and FY 14 there was a sudden increase. Seizures over the period have reduced to 0.10 percent (FY 15) of the value of imports from 0.20 percent (FY 11) in tandem with the decreasing trend in scheme based duty evasion (**Annexure 1**).

It was seen that total amount of seizures at All India level have come down from ₹ 2475.70 crore in FY 11 to ₹ 2029.18 crore in FY 15. Maximum rise was in Gold, Narcotic Drugs, Machinery/Parts and Vehicles/Vessel/Aircrafts etc. This was despite tariff rationalization, increasing trade openness, facilitation and surveillance.

### **1.19 Customs procedure and Trade facilitation**

The Government continued to streamline customs procedures and implement various trade facilitation measures. Self Assessment is a major trade facilitation measure that could result in significant reduction in the time taken for clearance of imported/export goods through Customs as witnessed in the case of Excise and Service tax department. Some of the initiatives taken include the introduction of EDI, "self assessment" for imports as well as exports and increased coverage of the risk management system (RMS) to carry out assessment on randomly selected bills of entry based on risk parameters and On Site Post Clearance Audit (OSPCA). The level of customs intervention in the clearance of import and export cargoes is intended to progressively reduce. In addition, AEO (Authorized Economic Operator) and large taxpayer unit (LTU) have been introduced for international and national facilitation. For expeditious sanction and refund of 4 per cent SAD, the procedures applied in general and especially for ACP importers have been simplified for sanction of refund without pre-audit within a fixed time of 30 days. Further, the utilization of refund of 4 percent SAD paid through different scrips such as DEPB/Reward Schemes has been relaxed by allowing manual registration of such scrips. Time release studies have been conducted in limited ports. It was observed that ICT based solutions (ICES) were not extended to all customs transactions.

**1.20** Customs procedures are largely computerised and supplement all the facilitation measures. The import and export documents have to be e-filed in Custom's ICEGATE portal which is processed in ICES 1.5 system of the CBEC. ICES was developed as the core ICT system through which import and export documents were to be processed to ensure uniformity of assessment and valuation for collection of revenue. The Government from time to time issues various notifications for change in duty rates, imposition and exemption of duties and taxes, change in currency exchange rates etc. Likewise, licensing



procedures for imports and exports are computerised (DGFT EDI) by the DGFT. Similarly, imports into and exports from Special Economic Zones are managed by SEZs through computerised portal SEZ ONLINE. Audit observations based on the EDI Customs data on the schemes and assessment orders have been reported in the respective chapters

**1.20.1** SEZ online system inter-alia captured, maintained and managed data base for export value (₹ 232944.79 crore), DTA sales (₹ 51474.94 crore), DTA purchase (₹ 59118.68 crore), import value (₹ 233460.58 crore) and the duty forgone (₹ 22569.08 crore) in 2014-15. Audit of the application revealed that the data captured was incomplete, inconsistent and at times incorrect without a linkage with the ICES system of the CBEC. DoC and DCs SEZ also could not avail of the system as its Dashboard and MIS.

Though DoC committed (June 2014) to rectify the deficiencies/lacuna in the system, the irregularities still persisted as on date (September 2015).

**1.20.2** DGFT's EDI data is stored in four databases, namely, DGFTMAIN, DGFTRLA, EBRC and DGFT. While the first three forms the set of central databases and reside at the NIC Data Centre at New Delhi, the database called DGFT resides at the Local Sever of each of the 36 Regional Licensing Authorities (RLAs). The data in each RLA's 'DGFT' database is finally collated at the central server.

Audit of the application revealed that there were still cases relating to incorrect or insufficient mapping of FTP provisions, lack of validations of entered data, permissions for too many manual interventions and alterations of data, incorrect updating of important rate directories, poor synchronization with ICES data. A few cases are illustrated below:

i. Audit observed that FOB Value in SB data entered manually was different *vis-à-vis* data supplied by Customs for the same Shipping Bills. In the 3,72,458 SB records were manually entered, it was noticed that in 15691 cases (4 %), the FOB value entered in manual data was different from that provided by Customs. The FOB value of exports, which is the basis for granting duty credit, was found higher in 2580 cases amounting to ₹ 608.66 crore. Reduction in FOB value was also noticed in 13,111 cases amounting to ₹ 401.75 crore. Even at the minimum allowed duty credit rate for Chapter 3 schemes @2 percent of FOB value for FPS and MLFPS, the increase in net FOB value translates into grant of excess duty credit benefits amounting to ₹ 4 crore in 15691 cases. Manual change in Customs port of export was also noticed in 2,389 cases.

ii. Comparison of VKGUY scrip records for the period 2014-15 with records of items attracting specific DEPB rates not falling under product codes

90/22C and 90/22D, revealed that excess duty credit under VKGUY Scheme was allowed due to non-restriction of the allowed rates to the reduced rates of the applicable 3 percent or 5 percent, in 44 cases.

iii. Audit of the Status holders and their status certificates revealed that in 59 cases SHIS duty scrip were issued to the firms wherein their status/certificate issuing authority is not available in the DGFT licensing database.

DGFT in reply (November 2014) to similar observations in the C&AG Audit Report no.8 of 2015 (Chapter 8) stated that the audit observations would go a long way in improving their systems and processes. However on a follow up audit in (September 2015), the systemic deficiencies seemed to persist in the DGFT EDI system.

### 1.21 Risk Management system (RMS)

Efficiency of RMS hinges on the precision of the outliers highlighted and increasing the coverage of the ICT application to all air cargo, sea port and land ports, SEZ / EOU. It does not include the non-EDI ports and all filings in the EDI ports. Table 1.12 given overleaf depicts number of Import and export transactions flagged by RMS vis-a-vis import and export transactions during FY14 and FY 15.

**Table 1.12: Transactions flagged by the RMS**

No. of transactions flagged by RMS	FY 14	FY 15
Imports	16,21,734 <sup>#</sup> ( 23.24 %)	18,12,765 (24 %)
Exports	3,20,047 <sup>#</sup> (03.80 %)	18,10,718 (20 %)
Total transactions (Imports)	69,15,958*	75,22,430
Total transactions (Exports)	84,11,542*	92,62,011

Source: <sup>#</sup> Risk Management Division, DRI, CBEC, MOC and Industry, Govt. of India

In imports 18.13 lakh transactions (24 percent) and in exports 18.11 lakh (20 percent) transactions have been flagged against total imports and export transactions during FY 15.

### 1.22 On Site Post Clearance Audit (OSPCA) Scheme

After introduction of OSPCA, on the one hand Customs department had effectively reduced the audit of ACP clients, while on the other the OSPCA scheme had not fully picked up. During the FY15, out of 519 planned, audit of only 113 units under OSPCA, was conducted which resulted in detection of short levy of ₹ 4.73 crore, of which ₹ 2.38 crore was recovered.

### 1.23 24X7 Customs Clearance Operation

In order to facilitate import and exports the Board decided to begin on a pilot basis 24X7 customs clearance with effect from 1 September 2012 at identified Air cargo complexes (Chennai, Mumbai, Delhi and Bangalore) and seaports

(Kandla, JNPT, Chennai and Kolkata) in respect of following categories of imports and exports:

- a. Facilitated Bills of Entry where no examination and assessment is required; and
- b. Factory stuffed export containers and export consignment covered by Free Shipping Bills.

In order to further facilitate trade, coverage of 24X7 customs clearance operations was extended to cover export consignments at four air cargo complexes. Further, 24X7 services for select import and export documents have now been extended (May 2013) to 13 more air cargo complexes working on EDI. The facility was extended to airports such as Chennai, Mumbai, Delhi and Bangalore.

#### **1.24 Single window Customs clearance**

In order to cut transaction cost and time, as well as for better utilization of resources, implementation of single window scheme has been conceptualized by CBEC with customs being lead agency to implement the same.

Single window in customs aims to provide a platform for traders to file a common declaration electronically, meeting requirements of other regulatory agencies involved in clearance process of imported/exported goods. Under single window regime, data fields/information relating to other regulatory agencies is transmitted electronically to get their clearance/input before clearance is allowed by customs.

#### **1.25 Border control and facilitation issues**

It has been observed in audit that infrastructure available with Customs' agencies at Land, Air and Sea Custom Stations are not always adequate and sufficient.

Like Air and Sea Ports, an institutional framework viz. Land Ports Authorities of India (LPAI Act 2010) was also established and entrusted the responsibility to undertake the construction, management and maintenance of Integrated custom port (ICPs) for regulatory and support functions in an integrated manner in one complex with a single agency responsible for co-ordinated functioning of various Government authorities/service providers.

These Customs stations and ICPs have outstanding issues duly supported by DRI, Local Risk Management (LRM) inputs with security implications impacting border control functions of Customs e.g. availability of full body truck scanners, inadequate system of examination of passenger baggage and passengers at passenger terminal; no mechanism to inspect the purity of gold/Precious stones; lack of sufficient manpower to curb smuggling activities despite increasing trend in seizure of gold, absence of facility of X-ray/ Non

intrusive investigation (NII) techniques, ICES coverage of Precious Cargo Customs Clearance (PCCC), Foreign Port Officer (FPO), hand baggage; access to Directorate of Valuation database, etc. This often led to smuggling of unauthorized goods and /or lack of facilitation.

The overall impact, of not having the desired augmentations in the port infrastructure on border control/ facilitation gains importance under the following scenarios where:

- Customs department had not made formal request for any augmentation to the port authorities for equipment/ infrastructure for security/ facilitation purposes.
- Customs department had for a defined and acknowledged need, requested for specific augmentations but the same has not been acceded by the port authorities.
- For a defined and acknowledged need of the Customs department, specific augmentations have been acceded by the port authorities but were not acted upon in time.

#### **1.26 Audit effort and Customs Audit Products**

##### **Compliance Audit Report**

Compliance audit was managed as per the Comptroller and Auditor General's (CAG) Audit Quality Management Framework, 2014 employing the Auditing Standards, 2<sup>nd</sup> Edition, 2002.

##### **1.27 Sources of information and the process of consultation**

Data from the Union Finance Account, Exim Data DoC, DGFT (EDI) data, SEZ online data DoC, Annual Import/Export Data of Customs (CBEC), Single Sign On (SSO id) based access of ICES 1.5 was used along with examination of basic Records/ documents in DoR, CBEC, Department of Commerce and their field formations. MIS, MTRs of CBEC along with other stake holder reports were used. We have nine field offices headed by Director Generals (DGs)/ Principal Directors (PDs) of audit, who managed audit of 415 units in FY 15 and issued 2175 Audit observations. Transaction level data of ICES 1.5 for imports and exports in 2014-15 as per the data directory was not provided by Director General (System), CBEC despite several reminders. The CRA module also does not cater to macro analysis and periodic analysis of the transaction data.

Remedial action taken on the compliance audit report and their status as of January 2016 is given in Table 1.13:

**Table 1.13: Remedial action taken on the compliance audit report**

Report No.	CBEC, Customs		DoC	
	ATNs pending	ATNs not received even for the first time	ATNs pending	ATNs not received
CA 7 of 2006 (Cus,CX,ST)	1	0	0	0
CA 20 of 2009-10 (Cus, CX, ST)	0	0	1	0
CA 24 of 2010-11	1	0	0	0
CA 14 of 2013	1	0	1	1
CA 12 of 2014	5	9	3	2
CA 8 of 2015	1	38	0	6
<b>Total</b>	<b>9</b>	<b>47</b>	<b>5</b>	<b>9</b>

Source: CBEC, Ministry of Finance, Deptt. of Commerce

The current report has 120 paragraphs and two thematic paragraphs of ₹ 1162 crore. There were generally six kinds of observation: Incorrect classification; Incorrect application of exemption notification; Condition of notification not fulfilled; Incorrect exemption due to miscalculation; Scheme based exemption, Incorrect assessment of customs duties in addition to systemic issues and matters of Policy interpretations. The department/ Ministry has already taken rectificatory action involving money value of ₹ 81.58 crore in case of 80 paragraphs (**Annexure 3**) in the form of issue of show cause notices, adjudication of show cause notices and reported recovery in some cases.

### 1.28 Public Accounts Committee (PAC)

PAC has taken up performance review on 'ICES 1.5', Special Economic Zones and three long paragraph on 'Management of Narcotic substances (Department of Revenue)', Disposal of seized and confiscated goods, Public and private bonded warehouses and Incorrect Application of General Exemption Notifications for examination/discussion. PAC's advance questionnaires to the Department of Revenue/ Commerce have been broad based at the levels of tax policy, administration and implementation. It has also observed lack of inter-ministerial coordination, scheme outcomes as well as inadequate monitoring in the past.

### 1.29 Response to CAG's audit, revenue Impact/follow-up of Audit Reports

In the last five audit reports (including current year's report) we had included 654 audit paragraphs (Table 1.14) involving ₹ 5615 crore.

**Table 1.14: Follow up of Audit Reports**

Cr. ₹

Year	Paragraphs included		Paragraphs accepted						Recoveries effected					
			Pre printing		Post printing		Total		Pre printing		Post printing		Total	
	No.	Amt.	No.	Amt.	No.	Amt.	No.	Amt.	No.	Amt.	No.	Amt.	No.	Amt.
FY 11	118	131	102	99	29	18	131	117	56	18	3	4	59	22
FY 12	121	62	108	48	11	11	119	59	79	30	14	3	93	33
FY 13	139	1832	100	66	27	29	127	95	63	17	12	8	75	25
FY14	154	2428	104	42	10	4	114	46	65	16	0	0	65	16
FY 15	122	1162	80	82	0	0	80	82	61	22	0	0	61	22
<b>Total</b>	<b>654</b>	<b>5615</b>	<b>494</b>	<b>337</b>	<b>77</b>	<b>62</b>	<b>571</b>	<b>399</b>	<b>324</b>	<b>103</b>	<b>29</b>	<b>15</b>	<b>353</b>	<b>118</b>

Source: CAG Audit reports

Government had accepted audit observations in 80 audit paragraphs involving ₹ 82 crore and had recovered ₹ 22 crore for the current report.

## **CHAPTER II**

### **PROVISIONAL ASSESSMENTS (CUSTOMS)**

#### **2.1 Introduction**

Provisional Assessment (PA) is a facilitation measure given to the importer/exporter under the provisions of Customs Act 1962 to avoid hardship by way of payment of demurrage charges or other financial losses.

In addition, with the introduction of self-assessment system in the Finance Act, 2011, the importer or exporter is mandatorily required to self-assess the duty in terms of Section 17 of the Customs Act, 1962. This self-assessment is subject to verification by the proper officer of the Customs. In case an importer or exporter is unable to make self-assessment, he may, request the proper officer in writing for the assessment of the imported goods or export goods. In such cases and in other circumstances such as non-availability of relevant information or documents or due to any other reasons mentioned in Section 18 of the Customs Act, 1962, the proper officer wherever deems it necessary to make further enquiry may direct that the duty is to be assessed provisionally and allow clearance of such goods by taking bond with appropriate security as withholding clearance of goods.

#### **2.2 Audit Objectives**

The audit was conducted to evaluate whether;

- (i) there was compliance to rules, regulations and procedures framed under Customs Act, 1962, Customs (Provisional Duty Assessment) Regulations, 2011 and Appraising Manual.
- (ii) provisional assessments are finalised without undue delay and without causing loss of revenue to the exchequer and
- (iii) internal controls and monitoring mechanism are in place to guard against misuse of provisional assessment facility.

#### **2.3 Scope and Coverage**

There are 94 Customs Commissionerates. Out of which Bills of Entry (BsE)/ Shipping Bills (SBs) and related records/documents pertaining to 42 Commissionerates (**Annexure 4**) on pan India basis covering the period from 2011-12 to 2013-14 were selected for conducting audit on provisional assessments.

Out of 42 Commissionerates selected, 26 Commissionerates (**Annexure 5**) provided the information sought by audit to varying extent and the remaining 16 Commissionerates (**Annexure 6**) had not furnished any information. However, all the 42 Commissionerates were audited by the various field formations of Customs Receipt Audit wing.

Information on these aspects was called for but was not furnished by the Commissionerates. Ministry may like to furnish the all India position from April 2011 to March 2015.

#### 2.4 Sample Selection

All Bills of Entry/Shipping Bills provisionally assessed with assessable value of above 5 crore, 50 per cent of bills valuing 1 crore to 5 crore (Maximum 1000 cases) and 25 per cent of bills valuing up to 1 crore (Maximum 1000 cases) were selected for audit.

**Table 2.1: Total assessments vis-a-vis provisional assessments**

Year	Total No. of bills entry/shipping bills presented & assessed		Bills of entry/shipping bills assessed provisionally			Percentage of provisional assessments to total assessments	Percentage of Assessable value to total assessable value
	No.	Assessable value (Cr. ₹)	No.	Assessable value (Cr. ₹)	Bond value(Cr. ₹)		
2011-12	2178496	965841	110298	382991	68485	5.06	39.65
2012-13	2172426	1337098	137568	602488	68910	6.33	45.06
2013-14	1718783	1257364	143675	662216	62012	8.36	52.67
<b>Total</b>	<b>6069705</b>	<b>3560303</b>	<b>391541</b>	<b>1647695</b>	<b>199407</b>		

Source: Data sourced from DG (Systems) in respect of Tamil Nadu, Karnataka and Delhi states. Data provided by units/compiled by audit was adopted in Gujarat, Rajasthan Andhra Pradesh, Telangana, Odisha, Punjab, Haryana and Uttar Pradesh. Data was not furnished by 15 Commissionerates<sup>11</sup>.

Analysis of provisional assessments revealed that the percentage of provisionally assessed cases increased from 5.06 to 8.36 during the period April 2011 to March 2014. Likewise, percentage of assessable value to total assessable value has increased from 39.65 during 2011-12 to 52.67 during the year 2013-14.

**Table 2.2: Cases provisionally assessed vis-a-vis finalized**

Year	Cases provisionally assessed		Cases finalised	
	No.	Bond value (Cr. ₹)	No.	Bond value (Cr. ₹)
2011-12	50475	64075	6877	24062
2012-13	48096	72620	12363	30783
2013-14	21468	53874	9214	21215
<b>Total</b>	<b>120039</b>	<b>190569</b>	<b>28454</b>	<b>76060</b>

Source: Data was sourced from DG (Systems) in respect of Tamil Nadu, Kerala and Karnataka. Data was not furnished by the department in Maharashtra, West Bengal and Meghalaya states.

1. Bond value does not include the value of 3152 bonds (provisionally assessed) and 1659 bonds (finally assessed) in respect of Punjab and Haryana states.

<sup>11</sup>West Bengal (Kolkata Port, Kolkata Air, ICD Durgapur, Siliguri- Preventive), Meghalaya (Shillong), Maharashtra (NCH Zone-I(4),NCH Zone II(3), ACC Zone III(2),



2. *Data for the year 2013-14 was furnished / compiled only for two months i.e., April and May 2013 as no data was received for remaining months from DG (System), CBEC, hence the lesser number of provisional assessments and their bond value. However, the percentage of provisional assessments finalised for two months for the year 2013-14 was 43 percent while it was 14 and 26 percent for the years 2011-12 and 2012-13.*

## **2.5 Systemic lacunae and poor quality of data maintained by CBEC on Provisional Assessments**

**2.5.1** The Customs Act, 1962 mandates filing of electronic declarations both for import and export. Manual filing is generally allowed only in exceptional cases where it is not feasible to file electronic declarations due to non availability of Electronic Data Interchange (EDI) or operational issues relating to EDI. In such cases approval of Commissioner of Customs is required.

Manual finalization of provisional assessments still continued subsequent to issue of Standing Order 05/2014 dated 02/06/2014. Further, the ICES 1.5 module did not incorporate the provisional Assessment module with all its functionality.

Ministry in its earlier response had reported that “in order to ensure compliance with mandatorily filing of BEs and SBs electronically, CBEC vide F.No.401/ 81/2011-CUS.III dated 4<sup>th</sup> May 2011 had issued instructions that only in the rarest of rare and genuine cases manual processing and clearance will be allowed and further the Authority of permitting manual documents shall be vested only with the Commissioner of Customs”.

### **2.5.2 Audit noticed deficiencies in the provisional assessment monitoring system under ICES 1.5 version**

Directorate of Systems and Data Management had launched a module for finalization of PA Bills of Entry in ICES 1.5 in April 2014 for online finalization of provisionally assessed bills and to monitor the pendency in finalization of provisionally assessed BsE/SBs. The module was being implemented from February 2015 in four commissionerates only.

However, audit noticed that there was no provision to watch pendency of provisional assessments, receipt of test report documents, revalidation of bond or Bank Guarantee (BG) etc from the system. Further the following deficiencies resulted in lack of monitoring of Provisional Assessment cases.

- i. No provision existed in the system to distinguish provisional duty bonds against bonds executed for various other schemes. The reasons for resorting to provisional assessment such as pendency of receipt of test report, valuation or any specific reason could not be ascertained from the system.

- ii. Details such as date of finalization, reasons for non-finalization, revalidation of Bond/BG, details of provisional duty paid, final duty assessed could not be generated from the existing modules in EDI.
- iii. Manual finalization of provisional assessments still continued subsequent to issue of Standing Order 05/2014 dated 02/06/2014.
- iv. Final assessments were made manually up to November 2014 and as such the data on the pending provisional assessments shown in the EDI system did not match with the actual pendency position. Data as per EDI system and physical data maintained in the registers needs reconciliation.
- v. Lapsed/cancelled bonds do not get reflected in the Bond Ledger/Bond Module in ICES module.
- vi. Separate reports on number of bills of entry/shipping bills assessed provisionally and finalized could not be generated from the EDI system.
- vii. Report on age-wise registration and pendency of provisional assessments could not be generated.
- viii. Module for levy of Extra Duty Deposit (EDD) does not exist and the same is being levied manually.
- ix. This module was unable to generate monthly reports, group-wise (within Commissionerate) and consolidated report for the Commissionerate.
- x. At ACC, Bengaluru, 1455 bills of entry filed under 34 bonds were closed during March 2015. However, the fact of their closure under bond management module could not be verified from the EDI system.  
CBEC may like to examine the impact of the above audit observations on its facilitation measures pan India.

**2.5.3** To obtain a holistic picture of provisional assessments for the period 2011 to 2014, audit could not find out the All India data from the CBEC web site ([www.cbec.ddm](http://www.cbec.ddm)) or from Annual Reports of the Finance Ministry. Therefore no trend analysis could be done because of the poor quality of data maintained by the CBEC.

Subsequent to the audit recommendation during the previous audit report 2006-07, a time frame of six months for finalisation of provisional assessments was introduced. Present audit for the period 2011 to 2014, however, revealed that abnormal delays continued despite introduction of the time frame.

With an objective to improve tax payer services, finalization of provisional assessments was considered as the action point (B.4.1) by Result Framework document (RFD) of CBEC 2015-16. However no trend values were indicated by CBEC upto FY 2014-15. A success indicator was fixed as a percentage of cases pending beyond 6 months, although there are more than 36,000 cases with bond value exceeding ₹ 108389.37 crore. Even for FY 2015-16, CBEC would

consider its performance excellent if 40 percent of PA cases remain pending beyond six months.

Despite Chairman, CBEC citing (05 August 2015) improving ease of doing business as a key mission of the Government, the targets set by CBEC for PA cases to improve tax payer services seems inadequate.

Information on provisional assessments was called for but was not furnished by the Commissionerates, Directorate of Data management, CBEC. Ministry may like to furnish the all India position to audit from April 2011 to March 2015.

**Internal controls and monitoring mechanism are inadequate to guard against misuse of the provisional assessment facility/procedure.**

#### **2.6 Improper maintenance of records**

In terms of para 14 of Appraising Manual, Vol. II each provisional assessment made is required to be entered in a Provisional Duty (PD) Register (Form 321 CBR). All particulars relating to such cases right from registration to their finalisation i.e., the name of the importer, description of goods, bill of entry number, value of goods, reasons for provisional assessment, duty payables, particulars of bonds and their validity period, etc., were to be recorded. Columns 16 & 22 of the format were specifically meant for duty amount on provisional/final assessment. The register also provided for recording of date of receipt of document, test results etc. On finalisation of the cases, particulars regarding refund/collection of differential duty were to be recorded and the bonds closed.

Scrutiny of records in 42 Commissionerates, revealed that the PD Bond Register, an essential and basic record for effective monitoring of provisional assessment was not being maintained in the prescribed format and wherever maintained, all the columns except one or two were kept blank. Important details remained unrecorded and these registers were not being submitted to AC nor were forwarded at monthly intervals to internal audit department (IAD).

On this being pointed out, the Delhi Commissionerate replied (May 2015) that maintenance of physical records was abandoned since introduction of EDI as all information was available on system. However, despite the information stated to be available in the system, all the Commissionerates were unable to extract the statistical data such as total number of assessments *vis a vis* number of provisional assessments, number of assessments finalised and pendency position of provisional assessments for the period 2011-14.

Ahmedabad Commissionerate authorities stated that necessary instructions have been issued to ensure that all the manually processed provisional assessment cases are to be updated in the module.

ICD, Durgapur authorities stated that all the columns of the PD Register were being maintained except the column "validity of PD Bond".

The reply is not acceptable because at the time of audit it was noticed that all the columns in the PD register were not filled and the reasons for resorting to provisional assessment were also not maintained.

**2.6.1** In all 42 Commissionerates, better monitoring mechanism and internal control are required for tracking outcome of provisionally assessed cases, revalidation of bonds etc. which resulted in undue delay in finalisation of provisional assessments and blockage and postponement of Government revenue as illustrated in **Annexure 7**.

## **2.7 Pendency of cases in Call Book Register**

According to Board's Circular No.53/1990-Cx issued in September 1990 read with Circular No.385/18/1998-Cx dated 30<sup>th</sup> March 1998, Call Book cases shall be reviewed on monthly basis for submitting quarterly report to competent authority to watch progress of disposal of cases kept in Call Book.

Scrutiny of records in four Commissionerates<sup>12</sup> revealed that 961 cases were kept in Call Book register which were provisionally assessed pending finalization. Therefore these cases have not been included in the monthly statement of pending cases and have escaped the monitoring by CBEC as listed in **Annexure 8**.

The department stated (September 2015) that all the BsE would be finalized expeditiously.

## **2.8 Incorrect reporting of pendency of PD bonds**

Performance of Commissionerates relating to disposal of work during a month would be compiled in the form of MTR and sent every month to Chief Commissioner of Customs for onward transmission to Director General of Inspection, CBEC.

Audit scrutiny of PD Bond registers and MTRs in 15 Commissionerates<sup>13</sup> revealed that against pendency of 9663 PD bonds, 4770 PD bonds were reported in MTR. It shows that the department had either over reported or under reported the number of bonds as well as bond value of pending cases of

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<sup>12</sup> Gujarat (Custom House, Jamnagar), Kerala (Kochi), Uttar Pradesh (Noida), Mumbai (imports)

<sup>13</sup> Kandla, Mundra, Jodhpur, Chennai Air, Indore, Mumbai(Import I&II, Export I&II (NCH Zone-I)), NS-I,NS-III,NS-V(JNCH Zone II, Imports & Exports(ACC Zone III)),Kolkata

provisional assessments. Incorrect reporting was an indication of lack of monitoring and internal control mechanism in the department.

NCH, Mumbai replied that (July 2015) the PD Bond register and MTR was updated and rectified. Final reply was awaited (January 2016).

Audit is of the view that internal control and monitoring mechanism may be strengthened for effective mapping of the process of provisional assessments up to final assessment stage.

Ahmadabad Commissionerate authorities stated (September 2015) that concerned formations were directed to reconcile the figures.

## **2.9 Difference between the data of assessment groups and SVB/SIIB**

Special Valuation Branch (SVB) specialises in investigation of transactions involving special relationship and certain special features having bearing on value of imported goods. Suspected cases of under valuation due to relationship between seller and buyer are referred for investigation and determination of assessable value.

As per the data received from SVB, Mumbai 437 cases pertaining to ACC Mumbai and 467 cases pertaining to JNCH, Mumbai totaling to 904 cases were pending finalization up to March 2015. However, the MTR for the month of March 2015 showed the pendency as 100 and 584 cases respectively for ACC and JNCH Mumbai (total 684 cases). Lack of coordination and periodic reconciliation between assessment group and SVB/SIIB led to discrepancy in cases reported through MTRs.

Ministry may furnish all India data on total SVB/SIIB cases for the period 2011-12 to 2013-14 and their current status.

Audit is of the view that the mechanism of SVB may be strengthened for early determination of valuation for ensuring timely finalization of provisional assessment cases.

Reply of the department was awaited (January 2016).

## **Major audit findings**

### **2.10 Compliance to rules, regulations and procedures relating to collection of Customs Duty needs to be augmented**

#### **2.10.1 Irregular resorting to provisional assessment**

As per Section 18(1) of Customs Act, 1962, provisional assessment is applicable in cases where:

- (a) the importer or exporter is unable to make self-assessment;
- (b) the proper officer deems it necessary to subject any imported goods or export goods to any chemical or other test;

(c) the proper officer deems it necessary to make further enquiry even though importer/exporter had produced all necessary documents;

(d) the importer or exporter had not produced necessary documents/information.

Chapter 7 (Para 3) of CBEC's Customs Manual prescribes that the provisional assessments should be finalized well within 6 months except project imports.

Scrutiny of records in 13 Commissionerates<sup>14</sup>, however, revealed that 173 bills of entry were not eligible for provisional assessment as requisite clarifications/documents were available with the department. Despite having all the documents/clarifications, the department resorted to provisional assessment leading to postponement of recovery of duty for a period ranging from 1 to 4 years. Few cases are listed in **Annexure 9**.

### **2.11 Monitoring of PD Bond and its Value**

CBEC issued instructions in July 1991 for maintenance of (i) common bond cell to maintain uniformity and taking care of disputes arising out of legal/technical points, (ii) to enforce invoking of bonds on expiry of prescribed time limit, (iii) Responsibility fixing on customs house agents for non-compliance with conditions of bond, (iv) Computerization of bond discharge liability (v) safe custody of original bond in cash section.

However, test check revealed that there was no separate Common Bond and BG Cell functioning at NCH, New Delhi for accepting and discharging bond despite Board instructions.

Further, as per Regulation 4 of Customs (Provisional Duty Assessment) Regulations, 2011, bonds executed may be covered with a surety of a Scheduled Bank. The proper officer may require that the bond to be executed under these regulations may be with such surety or security, or both, as he deems fit. A sum not exceeding 20 per cent of the provisional duty is to be deposited with the proper officer.

From the format of the bond and procedure prescribed audit did not get an assurance as to:

- i. The additional useful information which is captured by the bond over and above the prescribed Export/Import documents.
- ii. The additional security/safeguard provisions strengthened by the bond / BG submitted by the Exporter/importer in the light of the measures envisaged under the ease of doing business.

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<sup>14</sup>Rajasthan(Jodhpur), Tamil Nadu (Chennai Sea, Chennai Air),Chandigarh(Ludhiana),Maharashtra(Mumbai- JNCH Zone II(3),West Bengal( Kolkata(Port, Air port, ICD( CE) Durgapur)

## 2.12 Improper execution of Provisional Duty (PD) Bonds

Scrutiny of records of 34 Commissionerates<sup>15</sup> revealed that in 180735 cases PD bonds (₹ 366478.86 crore) were taken for full assessable value instead of differential duty. In 7 Commissionerates<sup>16</sup> in 6196 cases for a bond value of ₹ 26816.38 crore, bonds were obtained for total duty provisionally assessed or assessable value, instead of the value for the amount equivalent to difference between the duty as may be finally assessed and the duty provisionally assessed.

In Bengaluru Commissionerate, duty in respect of one Bill of Entry was debited against two bonds in contravention of the provisions.

In four cases under Ludhiana Commissionerate bonds were not obtained at the time of provisional assessment.

Hyderabad Commissionerate replied that (August 2015) bonds were taken for assessable value which was higher than differential duty as the differential duty was not ascertainable at the time of provisional assessment. The reply was not acceptable since higher bond value gives incorrect picture of Revenue which was due to Government subject to finalisation of provisional assessments. Moreover, it is in contravention of the CBEC policy to put avoidable burden on the Importer/Exporter in the form of higher bond value. The reply from other Commissionerates has not been received (January 2016). Analysis of ICES 1.5 transactional data for the period 2011-12 and 2012-13 revealed that out of total 6535736 BsE filed, 435672 BsE were provisionally assessed out of which in 355239 BsE (81.53%) bond were taken for the amount more than or equal to the assessable value by violating of Provisions of Customs (Provisional Duty Assessment) Regulations.

Further, in 55888 BsE (12.82%) bond were taken for the amount less than the 5% of the assessable value. More interestingly in 95 BsE bond amount was nil and in 767 BsE bond amount ranged between ₹ 1/- to ₹ 10/.

Transactional data for the period 2013 onwards has not been provided to Audit by the CBEC which would have brought out more such cases.

As per existing provisions of the Customs Act, a PD bond is to be executed for difference between duty that might be finally assessed and provisional duty assessed. Since final duty could not be assessed at the time of provisional assessment, it may be prudent to adopt a fixed percentage of the assessable value for executing PD bond.

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<sup>15</sup> Gujarat(Kandla,Khodiyar,Jamnagar,Mundra), Rajasthan(Jodhpur),Bengaluru(ACC,ICD,NCH(Manguluru)),Chennai(Air,Sea,Tuticorin,Kerala(Kochi),Delhi(ICD(Import),ICD(Ex),ACC,NCH(Import),ACC NCH(EX),-TKD, ICD-Parpatgunj,Hyderabad,Kolkata port, Kolkata Air, ICD-Durgapur,Lucknow(Noida,Kanpur),Mumbai(NCH Zone(4),JNCH Zone II(3),ACC Zone-III(2)

<sup>16</sup>Ahmadabad, Jamnagar, Kandla, Mundra, Jodhpur Ludhiana and,NCH Mumbai

Kolkata Commissionerate accepted the observation and stated that efforts would be made to follow the provisions in future. ACC, Jaipur stated that PD Bonds were taken for full assessable value to safeguard the revenue.

The Ministry may like to review the data and provide the status of PD bonds as on 31 March 2015.

### **2.13 Non-revalidation of PD bonds**

As per Regulation 2(2) of Customs (Provisional Duty Assessment) Regulations, 2011 an importer or exporter shall execute a bond for an amount equal to the differential duty and the bond shall continue in force till finalisation of assessment to safeguard the revenue. Bonds executed are valid only for the period mentioned therein unless renewed within validity period.

Audit scrutiny revealed that 44673 Provisional Bills of Entry with bond value of ₹ 16471.11 crore executed by importers in 15 Commissionerates<sup>17</sup> had already expired during 2005-06 to 2013-14 though these provisional assessments have not been finalized.

At NCH Mangaluru Commissionerate, 43 bonds for a value of ₹ 1190 crore executed by M/s. Total India Ltd got expired between 2009-2014. However, the department had not initiated action for revalidation.

Non initiation of action to revalidate bonds defeated the purpose of obtaining the bonds.

Reply from the department has not been received (January 2016).

### **2.14 Excess Debit in Bond Account**

Bonds are executed to safeguard the Government revenue. Excess debit to bond than its actual value may lead to loss of revenue when an importer/exporter fails in payment of differential duty on finalisation of assessments.

At ICD, Bengaluru Commissionerate M/s. BEML Limited had executed a bond for ₹ 68.31 Cr. under Project Imports. In addition to imports made at the ICD, 90 Telegraphic Release Advices (TRAs) have been received from other ports for clearance at the ICD. Total amount debited in the bond ledger was of ₹ 73.88 crore. Thus, the total debits exceeded the bond value to an extent of ₹ 5.57 crore.

In reply, department stated that compliance would be furnished in due course. Further reply is awaited (January 2016).

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<sup>17</sup> Gujarat (ICD- Khodiyar and Kandla), Rajasthan (Jodhpur), Karnataka (ACC, ICD, NCH (Mangalore)) Tamil Nadu (Air, Sea, Tuticorin), Kerala (Kochi), Uttar Pradesh (Noida, Kanpur), Maharashtra (2) and Ludhiana



### **2.15 Irregular cancellation of Bonds**

As per Regulation 2 of Customs (Provisional Duty Assessment) Regulations, 2011, bonds shall be kept live till the finalisation of provisional assessment.

In Chennai Sea Customs, an importer M/s Ivax Paper Chemicals Limited, Medak, on finalization of assessment (July 2013) paid the differential duty and interest of ₹ 6.49 lakh was yet to be paid. However, the department cancelled the PD bond (July 2014) pending realisation of interest. Reply of the department was awaited (January 2016).

### **2.16 Non/short execution of Bank Guarantee (BG)**

As per Regulation 4 of Customs (Provisional Duty Assessment) Regulations, 2011, bonds executed may be covered with a surety of a Scheduled Bank.

Audit scrutiny in 19 Commissionerates<sup>18</sup> revealed that in 116259 cases bonds for a value of ₹ 28679.48 crore were executed without any surety or security or Bank Guarantee.

In reply the Dy. Commissioner of Customs, ICD Khodiyar under Ahmadabad Commissionerate stated that the proper officer had the discretion to take a decision regarding surety. Generally as a matter of practice, exemption from Bank Guarantee, and fixed deposit were given only to manufacturers/Star trading houses, reputed trading houses etc.

Audit is of the view that fixed percentage of surety/security deposit should be made mandatory for all provisional assessments to elicit early response from the importers/exporters for finalization.

Reply from other commissionerates is awaited (January 2016).

### **2.17 Non-revalidation of Bank Guarantee (BG)**

As per Regulation 4 of Customs (Provisional Duty Assessment) Regulations, 2011, a BG shall be executed by an importer or exporter in respect of any goods and such BG shall continue in force till finalisation of assessment to safeguard the revenue. BG executed is valid only for the period mentioned therein unless renewed within the validity period.

Out of 42 Commissionerates, data on Bank guarantees was furnished by eight Commissionerates<sup>19</sup> representing the value of bonds and Bank Guarantees

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<sup>18</sup>Gujarat(Khodiyar, Kandla, Mundra),Rajasthan (Jodhpur), Uttar Pradesh (Noida, Kanpur) Tamil Nadu (Tuticorin),Punjab and Haryana(Ludhiana), Odisha (Bhubaneshwar), Maharashtra ((Import I&II, Export I&II(NCH Zone-I)), NS-I,NS-III,NS-V(JNCH Zone II,Imports &Exports) (ACC Zone III)),, Karnataka(1)

<sup>19</sup>Karnataka (ACC, NCH (Manguluru)), Tamil Nadu (Chennai Air, Sea, Tuticorin), Ludhiana, Uttar Pradesh (Noida), ICD, Durgapur, West Bengal

(BG) obtained in respect of provisional assessments. The details are given in table below:

**Table: Bond value and Bank Guarantee**

Year	No. of cases	Bond value (Cr.₹)	No. of cases	BG value (Cr.₹)
2011-12	15029	23998	1820	5.31
2012-13	23207	29746	1535	1.65
2013-14	26116	29168	3295	3.10
Total	<b>64352</b>	<b>82912</b>	<b>6650</b>	10.06

The Ministry may review such cases and provide All India data on the Bank Guarantees executed during the period 2011-12 to 2013-14 for Provisional Assessments and their status as on 31<sup>st</sup> March 2015.

Audit scrutiny revealed that 848 Bank Guarantees executed by importers in 26 Commissionerates<sup>20</sup> for ₹ 450.22 crore had expired (up to July 2015) and the same were not revalidated although these assessments have not been finalized. Few cases are listed in **Annexure 10**.

As per the said Regulation, the Bank Guarantee should be kept live till finalisation of assessment to safeguard the revenue. Non initiation of action to renew the Bank guarantee before expiry defeated the purpose of safeguarding the Government revenue.

Reply of the department was awaited (January 2016).

### **2.18 Non/Short obtaining of Security Deposit**

As per Regulation 2(2) of Customs (Provisional Duty Assessment) Regulations, 2011, security deposit of such sum not exceeding 20 per cent of provisional duty assessed by the proper officer is to be deposited by the importer/exporter.

Audit scrutiny revealed that, in 6 Commissionerates<sup>21</sup>, in 222 cases, security deposit was not obtained/short obtained to the extent of ₹ 21.48 crore.

At ICD Mathilakam under the jurisdiction of Kochi Commissionerate, in 10 cases security deposits were collected @20% of differential duty instead of Provisional duty assessed resulting in short collection of security deposit of ₹ 0.39 crore.

<sup>20</sup>Gujarat (Khodiyar, Kandla, Mundra, ),Karnataka (Bengaluru, ICD, NCH, ACC),Tamilnadu (Sea Kerala,(Kochi), Chandigarh (Ludhiana), Delhi (Exp(2) ,Imp(2)), Telangana (Hyderabad) Odisha (Bhubaneswar), Uttar pradesh (Noida, Lucknow) Maharastra (Mumbai, (Import I&II, Export I&II( NCH Zone-I), NS-I,NS-III,NS-V(JNCH Zone II) ,Imports & Exports(ACC Zone III)), West Bengal, Kolkata

<sup>21</sup> Tamil Nadu (Chennai Sea, Calicut), Odisha (Bhubaneswar) Uttar Pradesh(Kanpur, Noida),West Bengal(Durgapur CE)

In respect of ICD, Durgapur (Kolkata), the department while admitting the observations stated that all PD Bond would be accepted with proper surety and security in future.

Reply of the department was awaited (January 2016).

### **2.19 Non/Short submission of PD Bond in case of warehoused goods**

As per Section 18(2) (b) of Customs Act, 1962, in the case of warehoused goods, the proper officer may, where duty finally assessed is in excess of duty provisionally assessed, require the importer to execute bond binding himself for a sum equal to twice the amount of the excess duty. Thus goods for assessable value worth ₹ 20 lakh (twice the bond amount i.e. ₹ 10 lakh) remained unprotected.

In four Commissionerates<sup>22</sup> in 46 cases bonds were short executed for a value of ₹ 0.10 crore.

Reply of the department was awaited (January 2016).

Ministry may provide the data on security deposit obtained on all India basis.

### **2.20 Other Issues of operational malfunction**

#### **2.20.1 Non/ Short levy of Extra Duty Deposit (EDD)**

With a view to elicit early response from importers in cases of valuation disputes, Board issued orders vide Circular No. 11/2001- Cus. dated 23/2/2001 for payment of EDD@ 1% of assessable value while referring the case to Special Valuation Branch (SVB). If the importer does not furnish complete reply to the questionnaire issued by SVB within 30 days of receipt thereof, EDD has to be increased to 5 % till the date of submission of reply and the assessment has to be completed within four months from the date of receipt of reply.

Scrutiny of records in 4 Commissionerates<sup>23</sup> revealed that non-furnishing of reply to questionnaire by the importers in 62 cases entailed recovery of differential EDD of ₹ 1.06 crore @ 4% of assessable value which has not been done. Few cases are listed in **Annexure 11**.

#### **2.20.2 Short levy of duty due to under valuation**

Section 14 of Customs Act read with rule 10 of Valuation (Determination of Value of Imported Goods) Rules, 2007 provides for valuation of goods imported.

Scrutiny of records under 4 Commissionerates<sup>24</sup> revealed that assessments in respect of 9 cases were made provisionally at lower value due to incorrect

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<sup>22</sup> Delhi (Import, Export-NCH, Import-ICD,TKD) and Chennai Air Customs

<sup>23</sup> Jodhpur, Delhi(PPG), Noida, Hyderabad

<sup>24</sup> Jodhpur, Visakhapatnam, Bhubaneswar, Kolkata Port

valuation or mis-classification which resulted in non/short levy of duty amounting to ₹ 10.52 crore including interest. Some of the cases are listed in **Annexure 12.**

### **2.20.3 Irregular refund of duty on short landed goods**

As per CBEC circular No.6/2006 dated 12.01.2006 read with circular No.96/2002 Cus. dated 27.12.2002, all cases where customs duty is leviable on advalorem basis, the assessment of bulk liquid cargo should be based on invoice price which is the price paid or payable for the imported goods i.e., transaction value, irrespective of quantity ascertained through shore tank measurement or any other manner and wherever customs duty is leviable at specific rate, the determination of quantity would be relevant for levy of customs duty.

Further, where goods are short landed, entire quantity of the goods as originally declared in the bill of entry provisionally assessed should be finally assessed without making any deduction for the short landed quantity. Duty should be adjusted on the entire consignment and refund on the short landed goods subsequently granted in due course on fulfillment of the conditions for such refunds.

In Kochi Commissionerate, an importer M/s Indian Oil Corporation Ltd imported Motor Spirit in four Bills of Entry. As per shore tank report the quantity received was lesser than the quantity shown in the Bill of Lading.

Audit scrutiny revealed that in these cases, customs duty was assessed on advalorem basis on proportionate transaction value of shore tank quantity determined by the department which was irregular. In terms of aforesaid Board circular in cases where the customs duty was leviable on advalorem basis as in the instant case, the invoice price (transaction value) irrespective of quantity ascertained through shore tank measurement was to be considered for assessment. This resulted in short levy of duty of ₹ 3.40 crore. Further, the department determined duty erroneously during finalisation and refunded ₹ 0.18 crore resulting in aggregate loss of revenue of ₹ 3.58 crore.

The matter was reported to the Ministry in October 2015, their response has not been received (January 2016).

### **2.21 Loss of revenue due to non- levy of penalty for short landed goods**

As per section 116 of Customs Act, 1962, if any goods loaded in a conveyance for importation into India are not unloaded at their place of destination in India, or if quantity unloaded is short of quantity to be unloaded at the destination, and failure to unload or deficiency is not accounted for to satisfaction of the AC/DC of customs, person-in-charge of the conveyance shall be liable to a penalty not exceeding twice the duty that would have been

chargeable on goods not unloaded or deficient goods, as the case may be, had such goods been imported. Further, according to Para 7 of Board's circular No.96/2002-Cus.dated 27 December 2002, liability of master/agent would continue to be fixed by comparing ship's ullage quantity at the port of discharge with ship's load port ullage quantity or Bill of Lading quantity if the former was not made available by the master/agent.

Scrutiny of records under 4 Commissionerates<sup>25</sup> revealed that non-levy of penalty on shipping agents in 58 cases resulted in loss of revenue of ₹ 0.65 crore. Some of the cases are listed in **Annexure 13**.

### **2.22 Non-levy of interest on finalisation of provisional assessment**

Under the provisions of section 18(3) of Customs Act 1962, the importer or exporter shall be liable to pay interest, consequent to the final assessment order at the rate fixed by Central Government under Section 28AA of Customs Act, 1962 from the first day of the month in which the duty is provisionally assessed till the date of payment thereof.

Scrutiny of records in 6 Commissionerates<sup>26</sup> revealed that non levy of interest on finalisation in 33 cases resulted in loss of revenue of ₹ 0.13 crore.

Reply of the department was awaited (January 2016).

### **2.23 Non-levy of penalty for failure to comply with provisions**

As per Regulation 5 of Customs (Provisional Duty Assessment) Regulations, 2011, if any importer or exporter contravenes provisions of regulations or abets such contravention or who fails to comply with any provisions of regulations, shall be liable to pay penalty up to fifty thousand rupees.

Audit scrutiny in units falling under Ludhiana and Bhubaneswar Commissionerates revealed that, in 123 cases either test reports/actual user certificates as required or other documents were not produced by the importers within the stipulated period. Non-compliance to the provisions attracted penalty up to ₹ 50, 000/- in each case.

Reply of the department was awaited (January 2016).

### **Cases of delays in finalisation of Provisional assessments causing loss of revenue to the exchequer**

#### **2.24 Delay in/Non-finalisation of provisional assessment despite receipt of required documents/chemical report/valuation report**

As per Para 3.1 of Chapter 7 of CBEC's Customs Manual, provisional assessments are to be finalised within 6 months. However in cases of involving machinery contracts or large project imports, where imports take place over

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<sup>25</sup> Jodhpur, Kochi, Ludhiana, Vijayawada

<sup>26</sup> Jamnagar, Sea Chennai, Kochi, Visakhapatnam, Ludhiana, Bhubaneswar

long period, assessments has to be finalised within 6 months from the date of import of last consignment covered by the contract.

Scrutiny of records in 36 Commissionrates in 36837 cases involving bond value of ₹ 108389.37 crore revealed that the pendency of cases ranged from 1 to 10 years as detailed below.

**Table: Reasons for pendency of provisional assessments**

Sl. No	Reasons for delay	No. of cases	Bond value (Cr ₹)	Delay in years
1	Pendency for want of ullage report/ original documents	10882	71673.82	1-8
2	Pendency for want of chemical report.	3252	10153.22	1-7
3	Pendency for want of correct valuation(SVB)	11641	14977.58	1-10
4	Non availability of end use certificate	1202	1136.30	1-3
5	Cases pending in court	102	87.98	1-3
6	Cases pending due to non completion of internal audit	50	8.68	Not quantified
6	Others	9708	10351.79	1-10
	<b>Total</b>	<b>36837</b>	<b>108389.37</b>	

Few cases of Delay in/non-finalisation of provisional assessments are listed in **Annexures 14 to 17.**

**2.25 Delay in /Non finalisation of provisional assessment pending receipt of required documents/chemical report/valuation report.**

At Krishnapatnam Port, under the jurisdiction of Customs (Preventive) Commissionerate, Vijayawada, 259 cases pertaining to the period from April 2011 to March 2014 were not finalized pending receipt of documents/chemical reports/ valuation report.

Department replied (August 2015) that the cases were pending due to non-receipt of original documents from importers, valuation reports from SVB and investigation reports from DRI.

In Jamnagar Commissionerate, in respect of 18 BsE with an assessable value of ₹ 7224.42 crore, two importers viz. M/s. Bharat Oman Refineries Ltd., Jamnagar and M/s. Shree Digvijay Cement Co. Ltd., have not submitted their original documents to customs authority, even after a lapse of one to one and half year. The department had not taken any follow-up action to finalise the assessments.

Thus in both categories goods with bond value of ₹ 108389.37 crore remained unprotected.

Reply of the department was awaited (January 2016).

## 2.26 Non-adjudication of Show Cause Notices

As per Section 28AAA(3) of Customs Act,1962, when an SCN is issued to an importer/exporter, he shall furnish reply within 30 days from the date of receipt of such notice and the case is to be adjudicated within 1 year from the date of notice.

Scrutiny of records in 4 Commissionerates<sup>27</sup> revealed that though SCNs were issue in 67 cases between December 2011 and September 2013, the same were not finalized so far. Delay ranging from 1 year to three years led to non-realisation of duty amounting to ₹ 2.70 crore apart from extending undue financial benefit to the importers. Few cases are listed in **Annexure 18**.

## 2.27 Delay in finalisation of provisional assessments on project imports

Under Regulation 7 of the Project Imports Regulations, 1986 the importer shall submit a statement indicating the details of goods imported together with necessary documents within three months from the date of last import for home consumption. In case the importer fails to do so, the department shall invoke the bond/undertaking cash security/bank guarantees executed in this regard, issue notice for demand of duty/penalty. The department shall finalise the assessment within 60 days from the date of submission of the required documents vide Board Circular No 22/2011 - Customs dated 4.5.2011.

Scrutiny of records in 10 Commissionrates<sup>28</sup> revealed that in 139 cases importers did not submit requisite documents though the last import took place between 2005 to 2014. In two cases under Kandla Commissionerate, the last import was made between 2011 to2012. However, action to invoke the Bank Guarantee of ₹ 0.40 crore was not initiated by the department.

Department stated (August 2015) that efforts were underway to finalise project import cases.

## 2.28 Non/delayed realisation of differential duty on final assessment

Section 28AAA of Customs Act, 1962 stipulates that where any duty has not been levied or short levied or erroneously refunded or any interest payable has not been paid or part paid on finalisation of assessment, the proper officer shall within one year from the relevant date serve notice and such person shall pay duty or interest demanded within thirty days.

Scrutiny of records in 5 Commissionerates<sup>29</sup> revealed that in 21 cases, final assessments were made belatedly despite submission of test reports or other

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<sup>27</sup> Chennai Sea, Mumbai( NCH(3))

<sup>28</sup> Kandla, ICD- Bengaluru, NCH-Manguluru, Chennai sea, Ludhiana, Visakhapatnam, Mumbai(NCH(3)JNCH(1))

<sup>29</sup> Chennai Air, Ludhiana, Visakhapatnam, Mumbai(ACC, Exports),Kolkata(Dump data)

relevant documents/certificates, which resulted in loss of revenue ₹ 64.23 crore and undue financial accommodation to importers. Few cases are listed in **Annexure 19**.

### **2.29 Delay in completion of investigation and finalisation of assessment by Special Valuation Branch (SVB)**

As per CBEC circular No. 11/2001-Cus dated 23.2.2001, the investigation and finalisation of assessment by the Special Valuation Branch should be completed within 4 months from the date of reply of the importer to the questionnaire issued by the Special Valuation Branch.

Scrutiny of records in 24 Commissionerates<sup>30</sup> revealed that out of 10664 cases, involving bond value of ₹ 12489.62 crore were pending since 2004 to 2014 for a period ranging from 1 to 10 years for want of valuation reports/price verification from SVB/SIIB or DRI etc. Few cases are listed in **Annexure 20**.

Reply of the department was awaited (January 2016).

### **2.30 Conclusion**

The audit of provisional assessments of customs duty has revealed abnormal delay in finalization of provisional assessment and consequent delay in realisation of revenue. More than 36000 cases with bond value exceeding ₹ 108389.37 crore were pending beyond 6 months for collection of Customs Revenue.

There were several cases of non-compliance of Customs rules, regulation relating to provisional assessment, provisional duty bond and bank guarantee management. There was continuance of cases of operational malfunction and delays in finalization of the assessments pointed out in earlier audit report.

The module for finalisation of provisional assessment launched under ICES.1.5 with effect from April, 2014 needs to be streamlined with all its functionalities. Audit noticed issues worth ₹ 545.92 crore alongwith the issue of execution of bonds valued at ₹ 28679.48 crore without any security or Bank Guarantee, in addition to the systemic deficiencies which could not be quantified.

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<sup>30</sup>Gujarat (Khodiyar,Kandla,Mundra,Jamnagar), Rajasthan (Jodhpur), Karnataka ACC,ICD,NCH), Tamil Nadu (Air,Sea,Tuticorin), Punjab & Haryana (Ludhiana), Telangana (Hyderabad), Andhra Pradesh (Vijayawada), Maharastra (Import I&II, Export I&II(NCH Zone-I)), NS-I,NS-III,NS-V(JNCH Zone II,Imports&Exports)(ACC Zone III), Madhya Pradesh (Gwalior,Indore)



## **CHAPTER III**

### **RE-EXPORT OF IMPORTED/RE-IMPORTED GOODS**

#### **3.1 Introduction**

Re-export is sending back goods imported for specific purposes like jobbing, execution of a contract, servicing/repairing of machineries, display in fair/exhibition etc. It also happens when indigenously manufactured goods were returned back after export and re-imported for repairing/reprocessing etc. due to reasons such as defective, not meeting buyer's requirement etc.

Various customs notifications were issued allowing duty exemption or duty concession on import of goods under different circumstances, provided such goods are re-exported within specified period. In order to ensure that the goods are re-exported, the importers are required to furnish bonds undertaking to pay duty exempted at the time of importation in the event of failure to comply with the condition to re-export goods within specified time. The bonds are cancelled when the importer had re-exported the goods and complied with the conditions of the notification. Follow-up action by Customs after such import is important till the cancellation of Bond. Failure to fulfill any of the conditions of the notifications entails payment of duty that was exempted or remitted at the time of import/re-import.

#### **3.2 Relevant Notifications/Provisions/Rules**

Section 69 of Custom Act read with Notification No. 46-Cus dated 01.02.1963 allows goods imported and warehoused but not cleared for home consumption to be re-exported without payment of duty.

According to section 74 of Customs Act 1962, when duty-paid imported goods are re-exported in used or unused condition within two years, the importer may claim refund of import duty up to maximum 98 % of the Customs duties paid at the time of importation as duty drawback. The rates of drawback for used goods and conditions thereof are prescribed in Notification No.19/65 dated 6-2-1965, as amended, and are governed by the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995.

#### **3.3 Audit Objectives**

To ensure-

- (A) Compliance with the conditions of the notifications, relevant provisions under the Act, Rules and regulations
- (B) Re-Export Bonds are finalised without undue delay and without causing loss of revenue to the exchequer and

(C) Internal controls and monitoring mechanism are in place to guard against misuse of re-export notifications.

### **3.4 Scope and Coverage**

Out of the 94 Customs Commissionerates, Bills of Entry (BsE)/ Shipping Bills (SBs) and related records/documents pertaining to 36 Commissionerates (**Annexure 21**) covering the period from 2012-13 to 2014-15 (import upto June 2014) were selected for conducting audit on Re-export of Imported/re-imported goods.

Out of 36 Commissionerates selected, 34 Commissionerates provided the information sought by audit to varying extent and the remaining 2 Commissionerates<sup>31</sup> had not furnished any information.

Information on the aspects which were called for but was not furnished by the Commissionerates could not be incorporated in this report. Ministry may furnish the all India position from 2012-13 to 2014-15 to audit.

### **3.5 Sample Selection**

All Bills of Entry/Shipping Bills related to re-import/re-export cases with assessable value of above ₹ 15 lakh were selected; while 10 % of cases with assessable value less than ₹ 15 lakh were checked in audit.

### **3.6 Statistical information**

Out of the 60849 cases of imports/re-import made during the period from 2012-13 to 2014-15 through 34 Commissionerates under different notifications (referred in 1.1 above); Audit test checked 15950 cases (26.21%).

In the years 2012-13 the volume of Re-export cases in the 34 commissionerates was 4536 cases with money value of ₹ 2043 crore involving duty element of ₹ 336 crore while for the year 2013-14 it was 4751 cases with money value ₹ 3094 crore and duty element of ₹ 739 crore.

Audit pointed irregularities involving duty impact of ₹ 308.26 crore (including duty drawback) with assessable value of ₹ 1144.51 crore in only 700 cases where as several cases based on systemic lacuna, failure of internal controls, operational malfunctioning, deficiencies in ICES 1.5 & monitoring failures could not be not quantified because of incomplete information.

The table given overleaf furnishes details of number of cases test checked notification wise vis-a vis assessable value and duty involved in these cases.

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<sup>31</sup> NCH, Mangalore & ICD Patparganj.

**Table: Number of cases test checked and assessable value**

Notfn.	Total No. of cases	No. of cases where irregularities found	% of total	Total Ass. Value (₹ in lakh)	Ass value of cases with irregularities (₹ in lakh)	% of total	Total Duty involved (₹ in lakh)	Duty element of cases with irregularities. (₹ in lakh)	% of total
03/89	1599	102	6.38	37313.09	6074.8	16.28	3277.16	1492.05	45.53
157/90	1719	15	0.87	103097.35	896.66	0.87	47207.92	189.10	0.40
104/94	812	52	6.40	32942.73	1215.06	3.69	2201.49	304.71	13.84
134/94	119	2	1.68	1971.74	27.07	1.37	423.36	7.00	1.65
153/94	1253	34	2.71	20374.22	1536.94	7.54	2461.44	374.08	15.20
158/95	1571	132	8.40	67814.91	9067.25	13.37	8652.35	2332.83	26.96
32/97	1523	71	4.66	92801.87	1099.00	1.18	27347.69	256.17	0.94
27/08	396	165	41.67	17356.09	12073.39	69.56	4077.10	211.56	5.19
12/12	295	-	-	140038.80	-	-	11845.50	-	-
<b>Total</b>	<b>9287</b>	<b>573</b>	<b>6.16</b>	<b>513710.80</b>	<b>31990.17</b>	<b>6.23</b>	<b>107494.01</b>	<b>5167.50</b>	<b>4.81</b>

In the above table it was observed that maximum irregularities were found (41.7%) in case of Notification no. 27/08-cus with the condition that re export has to take place within three to eighteen months from the date of import subject to payment of corresponding prescribed percentage of duties (5 % to 40 %).

In three notification viz. 03/89 -cus, 104/94-cus and 32/97-cus, where unlimited extension power has been granted to AC/DC, out of 3954 cases test checked (assessable value of ₹ 1631 crore) with duty impact of ₹ 328 crore, irregularities were noticed in 225 cases (5.69%), involving assessable value of ₹ 84 crore (5.14%) with duty impact of ₹ 21 crore (6.25%).

In notification 32/97-cus, out of 1523 cases test checked involving assessable value of ₹ 928 crore with duty impact of ₹ 273 crore, irregularities were found in 71 cases (4.66%) involving assessable value of ₹ 11 crore (1.18%) with duty impact of ₹ 2.56 crore (0.94%).

In case of the notification 158/95-cus where re-export has to take place within a period of six months to three years from the date of import under specified condition, there was the highest value of duty impact (₹ 23 crore) in 132 cases with irregularities.

Further, 1035 cases where goods worth ₹ 379.18 crore with duty foregone amount of ₹ 98.35 crore under four Commissionerates (Mumbai zone I, II & III; Bengaluru) could not be examined due to non-production of records.

In case of Notification no. 12/12-cus details of imports made have not been provided to audit by the Commissionerates except ICD- Khodiyar, ACC-Bangaluru, Chennai(Sea), Cochin (Sea) and Mumbai-Import(I). While, NCH,Delhi and ICD,Tughlakabad commissionerates have not provided the records.

Ministry may like to review all the cases including the cases of non production of records.

### **3.7 Pendency of Bond finalization**

Bond management is obtained to adequately safeguard the customs duties, in the event of failure of the importer/exporter to meet the condition of the re-export/import of the goods. Audit noticed that Statistical reports/returns (monthly/quarterly/ annual) showing number of pendency of un-cancelled bonds, with value and duty forgone were not generated thereby impacting their monitoring by higher management in the field formation and the CBEC. Out of total 60849 cases (34 Commissionerates), total number of 22807 bonds (37.48%) remained un-cancelled in 29 Commissionerates; of which 3626 number pertains to the year 2012-13, 3342 in 2013-14 and 15839 in 2014-15. While, 1388 bonds prior to the period 2012-13 were also pending cancellation as on 31.03.2015. Thereby indicating that re-exports had not been made entailing recovery of duty benefits availed.

Notification- wise pendency of Bond finalisation and reasons for pendency in finalization could not be commented upon in view of improper/inadequate maintenance of records. In 19 Commissionerates where incomplete records exist, evidences of re-exports were not recorded in 433 cases involving duty of ₹ 52.20 crore.

A macro analysis of the bond management indicates inadequate internal control and laxity on part of the Commissionerates and its monitoring by the CBEC which may have imminent revenue implication.

Ministry may like to review all these cases and furnish the present status to audit.

### **3.8 Audit Findings:**

In all the 34 Commissionerates audited, monitoring mechanism and internal controls employed in managing re-export cases, bond cancellation etc. in compliance of re-import/re-export conditions involving exemptions and remissions are illustrated below notification wise.

### **3.9 Exemption to goods when re-imported into India for repairs or for reconditioning, re-processing, refining, remaking (Notification No. 158/95-Cus dated 14.11.1995)**

Notification no. 158/95-cus dated 14 November 1995, exempts goods which were manufactured in India, when re-imported within three years for repairs, reconditioning and within one year for reprocessing or refining or re-marking from whole of the basic customs duty and the additional duty of customs provided that the importer executes a bond and binds himself to re-export such goods within six months from the date of their import or permissible extended period and to pay the duty leviable thereon in the event of failure to do so.

The cases noticed are narrated in the following paragraphs and listed in **Annexure 22 to 32.**

#### **3.9.1 Failure to recover duty on non-submission of evidence of re-export**

In 19 commissionerates, in case of 151 consignments of various items valued at ₹ 84.96 crore and re-imported between February 2009 and June 2014 availing of the duty exemption benefit, the importers neither submitted any proof of re-export of the goods nor sought any extension of time. The department did not initiate action to recover duty exemption of ₹ 23.25 crore availed by the importers. The notification allowing duty free importation with re-export conditions has also not specified any period for submission of proof of re-export for discharge of the bond.

In response to audit observations-

- (i) Commissionerate of customs, Kolkata (Port) informed (24.08.2015) that the entire amount of ₹6.84 lakh was recovered (June 2015) from M/s Chaitanya Refactory Pvt Ltd, against imports made under two bills of entry of September 2013.
- (ii) Agra Commissionerate informed (June 2015) as against imports under one bills of entry that the goods were re-exported from other port and the party was asked to submit the shipping bill.

The Commissionerate of Central Excise, Agra informed (August 2015) that the importer had deposited proportionate drawback of ₹ 10.38 lakh (duty + Interest) on short re-exported 6152 pairs of shoes. The department further stated that being a registered Central Excise manufacturer there was no involvement of customs duty on goods exported under the claim of drawback and subsequently re-imported for repair/re-conditioning.

The reply is not acceptable because failure to re-export under Custom notification 158/95 attract payment of customs duty even in case of

indigenously manufactured goods which had been exported and subsequently re-imported in the event of failure to re-export.

Ministry may like to consider providing time limit for submission of proof of re-export in all the notifications with re-export conditions. In case the proof of re-export is not submitted within the specified time limit then a mechanism to deliver demand notice and recover customs duty leviable may be put into practice.

Reply from the department for the remaining cases is awaited (January 2016).

### **3.9.2 Duty free re-importation allowed after expiry of specified re-import period**

As per serial No. (2) of the notification re-import of goods for reprocessing or refining or similar such processes is allowed when imported within one year from the date of exportation provided the importer executes a bond that such processes shall be carried out in a factory under Central Excise control.

In two commissionerates {ICD Khodiyar under the Ahmedabad Commissionerate and Chennai (Sea)}, the department incorrectly assessed the goods under serial no 2 of notification 158/95-cus, although the goods were re-imported after a lapse of one year from initial exportation. The cases are listed in **Annexure 22 and 23**.

Reply from the department is awaited (January 2016).

### **Re-importation allowed under inappropriate serial number of the notification**

#### **3.10 Re-import of goods for reprocessing**

(a) M/s Graphite India Ltd. has re-imported (October 2013) "graphite electrodes with nipples, UHP grade," under notification no. 158/95, (Sl. no. 1) through ICD, Durgapur availing exemption of duty of ₹ 144.53 lakh. Audit scrutiny revealed that although the goods were actually re-imported for reprocessing as mentioned in import documents/correspondences and that there was a processing loss of material (1.442 MT) during processing, such goods was incorrectly allowed clearance under Sl. no.(1) instead of applicable Sl. no. (2). Moreover, as these goods were re-imported after a period of more than one year from initial exportation, thus, were ineligible under Sl. no. (2) of the notification. Accordingly, the duty exemption availed of ₹ 1.45 crore was incorrect and recoverable.

The department in their reply (August 2015), justified benefit allowed under Srl No. 1 of the notification without providing any documentary evidence.

The departments reply is not tenable because as per the documents made available to audit there was processing loss of 1.442 MT of material which

substantiates the audit contention that the goods were actually reprocessed hence ineligible for re-import after one year under Sl. No. 1. Few cases are listed in **Annexure 24 to 26**.

### **3.11 Incorrect grant of exemption – Re-export to another agency**

M/s Graphite India Ltd had re-imported electrodes of various grade valued at ₹ 9.82 crore under three bills of entry and was allowed clearance through ICD, Durgapur under Sl. no. 01 of notification no. 158/95, availing exemption of duty of ₹ 2.36 crore.

The importer availed drawback at the time of initial export in all cases but subsequently re-exported the goods under seven shipping bills to different buyers. Application of Notification no. 158/95 is irregular as such cases wherein drawback has been availed are regulated under notification no. 94/96-cus. dated 16.12.96 which allows exemption to re-imported goods exported under duty drawback.

Therefore, the duty exemption of ₹ 236.38 lakh allowed on re-import under notification No.158/95-cus was incorrect.

On this being pointed out the department justified (September 2015) benefit allowed as there is no condition regarding re-export to the same original overseas buyer and also stated that the case is revenue neutral as drawback on graphite electrode is paid on quantity basis.

The department reply is not acceptable because notification No. 158/95-cus does not regulate re-import of cases wherein drawback has been paid. Moreover the department's contention that the case is revenue neutral is erroneous; as drawback rate and the re-export value may not be same on the first export date and re-export date. The drawback rate was 4% and 5% advalorem (FY 11 - FY 13) while it was 2.4% or ₹ 8 /Kg (FY 14-15) indicating an excess grant of drawback at the time of first export which was not recovered.

Few other cases noticed are listed in **Annexure 27-28**.

Ministry response is awaited (January 2016).

### **3.12 Delayed re-export of goods**

In terms of notification No.158/95-cus dated 14 November 1995, goods which are manufactured in India and re-imported for reprocessing or refining or remarking etc. are exempt from payment of duty, subject to the condition that the goods are re-exported within six months from the date of re-importation or such extended period not exceeding a further period of six months. In the event of failure to comply with the aforesaid condition, the importer is liable to pay the duty exempted along with interest.

Test check of records revealed that in the cases illustrated below and listed in **Annexure 29**, goods were re-exported either after the maximum permissible period or after the stipulated period of six months without obtaining extension.

**3.12 (i) Re-export of goods after maximum permissible period**

M/s Rane (Madras) Ltd. and two others re-imported (December 2011 to November 2012) Assembly gear Box, steering valued at ₹1.25 crore through Chennai Sea Customs under Notification 158/95. The goods were re-exported between June 2014 and June 2015 i.e. after expiry of maximum permissible period of one year from the date of re-import. The department had neither enforced the bank guarantee nor initiated action to recover the duty foregone amount of ₹ 37.51 lakh.

This was pointed to the Ministry in October 2015, their response is awaited (January 2016).

**3.12 (ii) Re-export after stipulated period without obtaining extension**

In five Commissionerates (Mundra, ICD-Khodiar, Ahmedabad, Cochin, ICD-Bengaluru and ACC, Devanahalli), it was noticed that goods valued at ₹ 7.10 crore in 8 cases were re-exported after the stipulated period of six months involving exemption of duty of ₹ 1 crore. A case is illustrated below and two cases are listed in **Annexure 29**.

(i) M/s Steel Cast Ltd. and two others re-imported 'Alloy steel casting rough steel casting' and other articles valued at ₹ 6.68 crore between December 2012 and April 2014 under customs notification 158/95 through Mundra port and ICD- Khodiar under Mundra and Ahmedabad Commissionerate respectively. The goods were re-exported (September 2013 to February 2015) after expiry of six months without obtaining extension from the competent authority. Since the conditions of the notification were not fulfilled, the importer was ineligible for exemption of duty of ₹ 90.92 lakh.

Reply from the department is awaited (January 2016).

**3.13 Non levy of customs duty on goods short re-exported**

In two Commissionerates {Jodhpur and Chennai (Sea)}, it was noticed that goods valued at ₹ 4.72 crore in 4 cases were short re-exported. Exemption of duty on goods not re-exported worked out to ₹ 33.63 lakh. The cases are listed in **Annexure 30**. Other irregularities noticed are listed in **Annexure 31-32**.



### **3.14 Comments on application of notification No.158/95**

In view of foregoing observations in respect of notification No.158/95, it is felt that no explicit condition was provided in the notification –

- i) as to re-export of goods to the same agency from whom the goods was re-imported,
- ii) restricting drawback or benefit under any export promotion schemes formulated by the DGFT, while re-exporting the goods in fulfillment of condition of the notification and
- iii) the authority to decide whether the goods were re-imported were for repair, reconditioning (sl. No. 1) or reprocessing, refining or re-marking etc (sl. No.2) as the condition against such activity under sl. No.1 & 2 was different.

### **3.15 Exemption to goods imported for execution of an export order placed on the importer by the supplier of goods for jobbing (Notification No. 32/97-Cus dated 1 April 1997)**

The notification exempts duty on goods imported for execution of an export order provided the said goods after jobbing work are re-exported to the supplier or to any other person which the supplier may specify, within six months from the date of clearance or within such extended period. Moreover, the importer was required to fulfill prescribed conditions/procedures. In the event of failure to fulfill the conditions the importer has to pay the duty leviable on the goods so imported.

Further, as per clause (v) of the notification, the jobbing is to be undertaken in accordance with the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996.

Audit noticed-the irregularities illustrated below and listed in **Annexure 33-36**.

### **3.16 Failure to recover duty on non-submission of evidence of re-export**

In six Commissionerates (Kolkata (Port), ACC, Kolkata, Chennai (Air), Cochin (Air) and Mumbai zone-III), in case of 41 consignments of various items valued at ₹ 6.67 crore and imported between March 2009 and June 2014 for jobbing availing benefit of duty exemption under aforesaid notification, the importers neither submitted any proof of re-export of the goods nor sought any extension of time. The department did not initiate action to recover exemption of duty of ₹ 1.57 crore availed on these imports.

### **3.17 Delayed re-export of goods**

M/s Armor Plast imported 8 consignments of “Stainless steel tubes” and “stainless steel sty lets” valued ₹4.92 crore between August 2013 to May 2014

through Air Cargo Complex, Devanahalli, Bengaluru under notification no. 32/97-cus. Scrutiny revealed that goods valued ₹ 3.55 crore were re-exported after jobbing after the stipulated period of six months without obtaining extension. Since the importer has not fulfilled the condition of the notification, he is not eligible for exemption of duty of ₹ 102.31 lakh availed against delayed export of goods after jobbing.

### **3.18 Short re-export of goods after jobbing**

M/s Armor Plast and other two imported Stainless steel tubes, capacitor, integrated circuit, resistors and other articles under 43 bills of entry between October 2012 and May 2014 through Air Cargo Complex, Devanahalli, Bengaluru under customs Notification No. 32/97-Cus dated 1 April 1997. Scrutiny revealed that these imported goods valued at ₹ 2.79 crore were not fully consumed during jobbing. Duty implication on short re-export of goods worked out to ₹ 77.88 lakh in 43 cases.

### **3.19 Temporary import of machinery, equipment and tools on lease for re-export at concessional rate of duty (Notification No. 27/2008-Cus dated 1-3-2008)**

In terms of the aforesaid notification (as amended), leased machinery, equipment and tools temporarily imported for use are eligible for concessional rate of duties, if they are re-exported within six months or within such extended period not exceeding one year from the date of import. In the event of failure, the importer is liable to pay the differential duty, along with interest.

The importer is required to execute a bond with a Bank guarantee undertaking to re-export the said goods within above specified period but not exceeding 18 months from the date of import.

### **3.20 Non-fulfilment of the conditions of Notification No.-27/2008-Cus**

In four commissionerates (Kolkata (Port), Kolkata (Airport), Bengaluru and Mumbai zone III), scrutiny revealed that 8 consignments of Sand and Water Pump Machinery and accessories and other items valued at ₹ 6.97 crore imported (April 2009 to June 2014) availing benefit of duty exemption under aforesaid notification (as amended), the importers neither submitted any proof of re-export of the goods nor sought any extension of time except in one case. The department did not initiate action to recover exemption of duty of ₹ 1.81 crore availed on these imports.

### **3.21 Incorrect grant of exemption**

M/s Tupperware India (Pvt) Ltd. imported (2011 to 2014) used steel mould valued ₹ 192 crore through Chennai Sea Customs under 27/2008 for manufacture of Plastic Kitchenware and Tableware.

Scrutiny revealed that there was no contract or lease agreement between the importer and the supplier, as required for availing benefit under the notification. In absence of such documents, the importer was not eligible for benefit of exemption of duty under the notification amounting to ₹ 46.50 crore.

Reply of the department is awaited (January 2016).

### **3.22 Exemption to import of containers of durable nature (Notification No. 104/94-Cus. dated 16-3-1994)**

The notification exempts containers of durable nature from whole of the duty of customs and whole of the additional duty leviable, subject to the conditions that containers are re-exported within six months from the date of their importation or as extended by the Deputy/Assistant Commissioner for a further period. The importer is required to execute a bond binding him to pay the duty leviable in the event of failure to fulfill the condition of the notification.

Board issued Circular no. 83/98-Customs dated 5-11-1998 prescribing monitoring mechanism with guidelines for granting of extension. Another circular no. 31/2005 dated 25.07.2005 was issued by the Board for a uniform procedure to be followed for temporary importation of containers.

### **3.23 Failure to recover duty on non-submission of evidence of re-export of containers (shipping agents)**

Under three Commissionerates {Kolkata (Port), CCP, Vijaywada and Chennai (Sea)}, durable containers valued at ₹ 685.99 crore imported (January 2012 to June 2014) under notification 104/94 availing exemption of duty of ₹ 190 crore, the shipping agents failed to produce evidence of re-export within the stipulated period of six months including the cases where re-export period was extended.

No action was initiated by the Container Cell to recover duty (January 2016).

### **3.24 Failure to recover duty on non-submission of evidence of re-export of containers (importers)**

In five Commissionerates (Kolkata (Port), Ludhiana, Mumbai zone I, Mumbai zone II and Mumbai zone III), M/s Ceratizit India Pvt. Ltd. and 13 others imported (October 2010 to June 2014) durable containers valued ₹ 13.63 crore

under 56 bills of entry without payment of duty availing benefit of Notification no. 104/94-cus to the extent of ₹ 3.59 crore on these imports.

The importers failed to produce evidence of re-export within the stipulated period of six months including the cases where re-export period was extended. The department did not initiate action to enforce the Bonds to recover duty forgone.

### **3.25 Goods re-exported after expiry of stipulated period**

Board's Circular No. 83/98- Customs dated 05.11.1998 provided that Assistant/Deputy Commissioner may grant extension for further three months and Commissioner of Customs may grant further extension for another six months. A case noticed is illustrated below and few cases are listed in **Annexure 37 and 38.**

**3.25 (i)** M/s Lauren Engineers & Constructors (I) Pvt. Ltd. imported 'Transportation racks' valued at ₹ 1.46 crore during June-July 2012 under Mundra Commissionerate under customs notification no. 104/94.

Scrutiny revealed that the goods were re-exported in May 2013 i.e. after an expiry of more than six months without obtaining extension by the competent authority. Duty exemption availed by the importer worked out to ₹ 37.05 lakh.

### **3.26 Absence of monitoring mechanism for duty free import of containers**

Besides instructions for a uniform procedure to be followed for temporary importation of containers, Board's Circular no. 31/2005 dated 25.07.2005, stated that the Directorate of System and Data Management is in the process of developing a module for automatic matching of imported and export of containers within permissible time. According to the circular, till development of the module, process of monitoring should be done manually in respective Customs Houses. However, it was noticed that the module for matching imported and export containers is yet to be developed and implemented.

In absence of the module, examination of existing manual system of matching containers imported and re-exported in the three commissionerates revealed the deficiency in the system as under:

(i)The Container Cell under the Kolkata (Port) Commissionerate could not devise any system and lacked an effective monitoring of import of containers & their subsequent re-export. This is evident as the Container Cell is not in a position to ascertain at any point of time, the no. of containers which have not been re-exported within the stipulated period of six months. Consequently, no demand could be raised in compliance of the provision of the exemption notification and instructions issued by the Board.

This is also evident from the reply of the department (08.06.2015) that there is no mechanism to identify container-wise non-fulfillment of re-exports condition, as envisaged in the above referred notification.

(ii) Chennai Commissionerate could not devise any system to update the pendency position of the containers in the ICES immediately on re-export of the containers. This is done only on manual updating of details of re-export of containers in the system. This resulted in huge pendency in the system.

(iii) In Commissioner of Customs (Preventive) Vijayawada, under Hyderabad Commissionerate, no manual monitoring mechanism regarding re-export of imported containers has been developed by the department to comply with the condition of the notification as well as bond executed.

### **3.27 Exemption to goods imported for display or use at fair, exhibition, demonstration, seminar, congress and conferences or similar events (Notification No. 3/89-Cus dated 9-1-89)**

The notification exempts duties of customs on goods (Schedule I) imported for display or use at fair, exhibition etc. (Schedule II) provided the import is recommended by the concerned Ministry of Govt. of India. The importer is required to execute a bond undertaking to re-export the goods within six months from the date of official closure of the concerned event or within such extended period. In the event of failure to re-export, the importer is liable to pay the duty leviable but for exemption.

### **3.28 Failure to re-export goods after exhibition/festivals**

In six commissionerates {Kolkata (Port), Mumbai zone II, Mumbai zone III, Chennai (Sea), Cochin and Kolkata (Airport)}, 105 consignments of Testing Equipments and other items valued at ₹ 65.93 crore imported between August 2009 and January 2014 for display or use at fair, exhibition etc. availing benefit of duty exemption under notification No. No. 3/89-Cus dated 9-1-89. The importers neither submitted any proof of re-export of the goods nor sought any extension of time. The department did not initiate action to recover exemption of duty of ₹ 16.17 crore availed on these imports.

This was pointed to the department/Ministry in June/September 2015, their response has not been received (January 2016).

### **3.29 Exemption to goods imported for carrying out repairs, reconditioning, re-engineering, testing, calibration or maintenance**

According to notification No.134/94-Cus., dated 22-6-1994, goods imported for carrying out repairs, reconditioning or reengineering are exempted from custom duties subject to the conditions that the repair, reconditioning or reengineering is undertaken in accordance with the provisions of section 65 of the Customs Act, 1962 and the goods repaired, reconditioned or reengineered

are exported. A case regarding non fulfillment of prescribed conditions is listed in **Annexure 39**.

**3.30 Exemption to goods of foreign origin for repairs and returns, theatrical equipments, pontoons, photographic filming, sound recording etc. (Notification No. 153/94-Cus.dated 13.7.1994)**

Under the notification (serial No.1), goods of foreign origin imported for repairs and return are exempted from duty subject to fulfilment of conditions specified therein. The importer is required to execute a bond binding him to pay on demand the duty leviable at the time of importation but for exemption in case of failure to re-export the same within prescribed time.

**3.31 Non- recovery of duty from importers on failure to re-export**

In ten commissionerates (Kolkata (Port), CCP-Kolkata, Ahmedabad, ICD, Bengaluru, ACC, Bengaluru, Ludhiana, Cochin, ACC, Hyderabad, Mumbai zone II and Mumbai zone III), 56 consignments of Spherical Roller Bearings and various other items of foreign origin valued at ₹ 17.08 crore imported between December 2010 and June 2014 availing benefit of duty exemption under aforesaid notification, the importers neither submitted any proof of re-export of the goods nor sought any extension of time. The department did not initiate action to recover exemption of duty of ₹ 4.18 crore availed on these imports. One more case noticed is listed in **Annexure 40**.

**3.32 Exemption on import of various other goods with the condition to re-export (Notification No. 12/2012-Cus dated 1-3-2002 and other notifications)**

As per Notification, duty on goods falling under chapter 85, 88, 89 & 95 of the Customs Tariff and specified at Sl. No. 449 of the Notification when imported, are exempt from payment of custom duty subject to re-export of the goods within six months (condition no. 74). The importer is required to execute a bond undertaking to re-export the goods within the specified period. In the event of failure to re-export, the importer is liable to pay the duty leviable but for the exemption.

**3.33** Audit scrutiny revealed that M/s Space Application Center imported (March 2012) one set of 'CNC 3D Co-ordinating measuring machine' valued at ₹ 3.25 crore through Mumbai Custom Zone II Commissionerate availing duty exemption of ₹ 84.02 lakh under the aforesaid notification (Sl.no.449).

The importer neither submitted any proof of re-export of the goods nor sought any extension of time. The department did not initiate action to recover exemption of duty of ₹ 0.84 crore availed on this import.

## **Other issues of operational malfunction**

### **3.34 Non re-exportation of imported food items not permitted clearance for home consumption**

According to Section 25 of The Food Safety and Standards Act (FSSAI), 2006, no person shall import into India any unsafe or misbranded or sub-standard food or any article of food in contravention of provision of the Act and the rules and regulations made there under. To implement this provision, Board (CBEC) in Circular No. 58/2001-Cus dated 25 October, 2001 prescribed that where the food items fail to confirm tests done in the specified laboratories, the customs authority shall ensure that the goods are re-exported out of the country by following the usual adjudication procedure or destroyed.

Audit scrutiny revealed that in 11 cases food items like basmati rice, yellow peas, cashew nuts etc. imported between November 2011 and January 2015 through Commissioner of Customs (Port), Kolkata the items failed to conform to the prescribed standards of FSSAI. On adjudication by the Commissioner/Jt. Commissioner of customs, the food items were permitted to re-export on payment of penalty within the period specified therein and the proof of re-export is to be submitted to the department. However, in no case evidence of re-export of the imported goods was submitted to the department.

Therefore, the directives of the Board in the aforesaid Circular have not been adhered to in spirit by ensuring that the imported goods valued at ₹ 2.69 crore were either re-exported or destroyed by the customs authority.

Reply of the department is awaited (January 2016).

### **3.35 Clearance of imported warehoused goods for re-exports**

According to section 69 of Customs Act, 1962, any warehoused goods may be exported to a place outside India without payment of import duty if a shipping bill or a bill of export has been presented, the export duty, penalties, rent, interest and other charges payable in respect of such goods have been paid and an order for clearance of such goods for exportation has been made by the proper officer.

Section 2(44) of Chapter 1 of the Customs Act, 1962, defined "Warehoused goods" as goods deposited in a warehouse and "warehouse" means a public warehouse appointed under section 57 or a private warehouse licensed under section 58 {definition section 2(43) *ibid*}. The cases of non compliance and systemic deficiencies are highlighted below.

### **3.36 Waiver of physical warehousing for re-exports**

In three commissionerates (Kolkata (Port), Kolkata (Airport) and ICD, Durgapur), scrutiny of records revealed that exports of 10 consignments

valued at ₹ 4.53 crore imported for warehousing between December 2013 and February 2015 were allowed clearance for exports under section 69 of Customs Act, 1962 without warehousing. In all cases, physical warehousing of goods was waived by the Assistant. /Dy. Commissioner of Customs.

As the subject goods were not warehoused the provisions of Section 69 of the Customs Act, 1962 would not be applicable. Therefore, clearance of imported non-warehoused goods under Section 69 without payment of duty was in contravention of the provision of the Customs Act involving customs duty at the time of warehousing ₹ 1.56 crore.

(i) The Jt. Commissioner of Customs, ICD, Durgapur stated (August 2015) that since the goods were ready for export, shifting/carrying the goods to warehouse prior to export would have incurred unnecessary cost, the proper officer waived the formalities of physical warehousing prior to export to facilitate trade. Further, chargeability of duty in such case was discussed.

(ii) The Assistant Commissioner, Import Bond, Commissionerate of Customs, Kolkata (port) stated that the goods under warehousing bill of entry is considered as deemed warehouse goods, even without physical storage in a warehouse.

The contention of the department (ICD Durgapur & Import Bond as mentioned in (i) & (ii) above) is not acceptable as the provision of Customs Act in this regard is very clear that the goods were leviable to duty on importation. However, when goods were exported from warehouse, duty was not to be paid. Thus, if the goods were not warehoused (physically), it was irregular to allow goods to clear without payment of duty. In other words, benefit of section 69 is not available if the goods were not warehoused (physically). Further, there is no concept of deemed warehoused goods under Customs Act 1962.

### **3.37 Declaration for claiming Chapter-3 benefit on re-exports of warehoused goods**

As per paragraph 3.17.2 (ii) of Foreign Trade Policy 2009-14, exports of imported goods covered under Para 2.35 of FTP are ineligible for Duty Credit Scrip entitlement for VKGUY, FMS, FPS (including MLFPS) and Status Holders Incentive Scrip.

M/s Sunrise Stainless Pvt. Ltd and M/s Apex Plasticon under Ahmedabad Commissionerate were allowed to re-export imported (December 2014 to February 2015) warehoused goods without payment of duty. Both the exporters were allowed to declare that they shall claim benefit under Chapter-3 in 17 Shipping Bills (December 2014 to March 2015) for FOB value of ₹ 6.51 crore. Further, M/s Sunrise Stainless Pvt. Ltd. mentioned in its export



invoices/packing list that the goods are of Indian origin despite the fact that the goods were imported. Since the goods were of foreign origin, the claim/grant of Chapter-3 benefits of FTP on imported goods and claiming such goods as Indian goods were irregular.

Reply from the department is awaited (January 2016).

### **3.38 Re-export under section 69 not identifiable in Shipping Bills**

Exports of imported goods under Section 69 are governed by conditions under two Notifications, viz. No.45-Cus. dated 01.02.1963 & No. 46-Cus. dated 1.2.1963. In Chennai Commissionerate, it was noticed that the Shipping bills filed under Section 69 for re-export of warehoused goods is a free shipping bill and hence was not marked for assessment. Presently, there is no provision in ICES 1.5 to identify a shipping bill as exports made under Section 69. In the absence of identification, it was not possible for the assessing officer (except by checking the item description) to identify the shipping bill as exports made under Section 69 and ensure fulfillment of the conditions of the notification.

Accordingly, it was suggested that a separate field be provided in the Export Module to enable the assessing officer to identify it as exports made under Section 69. The department has accepted this recommendation and informed that the same is being taken up with DG (System) for implementation.

### **3.39 Re-export of warehoused goods not ensured**

Test check of warehouse bond register of Mumbai Customs Zone-I (NCH) & Zone-II (JNCH) revealed that the imported warehoused goods were granted permission for re-export and provisional entries were made in the Bond Register. However, details of actual re-exports particulars were neither entered into the register nor proof of re-export was placed on record. The bonds were also shown lying un-cancelled. Thus, it was not ensured that the imported goods involving duty of ₹ 4.41 crore and ₹ 5.95 crore respectively, warehoused under these two commissionerates were actually re-exported.

Reply from the department is awaited (January 2016).

### **3.40 Drawback on re-export of duty paid imported goods**

Section 74 of the Customs Act, 1962 provides for grant of duty drawback if the goods are re-exported as such or after use within 18 to 24 months of date of clearance. In case of Section 74 (1) and 74(2), identification of goods on which duty was paid and determination of use is of utmost importance. Further, payment of drawback in both the cases is governed by the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995. The instances of non compliance and systemic deficiencies are highlighted below and seven cases (Money value ₹ 37.78 lakh) are listed in **Annexure 41-45**.

### **3.41 Authorization of drawback without a speaking order**

As per Para 3.1 of Board's Circular No. 46/2011– Customs dated 20 October, 2011 and para 2 of Circular No. 35/2013-Customs dated 5<sup>th</sup>September, 2013, while sanctioning Duty Drawback under section 74 or otherwise, it was to be ensured that in all cases the Assistant/Deputy Commissioner of Customs shall pass a speaking order following the principles of natural justice, giving detailed reasons with regard to establishing the identity or otherwise of the goods under re-export, and determination of use, if any.

Test check of drawback sanction files in four commissionerates revealed that in 42 cases drawback of ₹ 2.64 crore was sanctioned without passing of speaking order in contravention of the aforesaid instructions.

(i) The Jt. Commissioner of Customs, ICD, Durgapur referred (20.08.2015) drawback sanction order issued on 30.06.2014 construing it mistakenly as a speaking order, although the intention of issue of speaking order and its content was made clear in Board's Circular No. 46/2011– Customs dated 20<sup>th</sup> October, 2011.

(ii) The Assistant. Commissioner of Customs, Kolkata Airport (DBK) informed (September 2015) that no Speaking Order was issued till July 2013 in ACC due to communication gap in flow of information to executive officers.

However, Board's instruction was followed after July 2013.

The Commissioner of Custom (Preventive), Kolkata stated (October 2015) that there was no requirement of issuance of speaking order as drawback claims were processed and sanctioned after thorough scrutiny.

The reply is not acceptable as the speaking order was to be passed in all cases of drawback claim under section 74 as per Board circular dated 20 October 2011.

### **3.42 Authorization of drawback at a higher rate without determining use of export goods**

In addition to conditions of Section 74 (1), Rule 4 (a) (iii) of Re-export of Imported Goods Rules, 1995 requires that the shipping bill/bill of export should bear a declaration that the goods imported were not taken into use.

In two Commissionerates, scrutiny of records revealed that exports of 11 consignments imported between July 2012 and May 2014 were allowed Drawback at the rate of 98 per cent of import duty under section 74 (1) of Customs Act, 1962 without determination of use being recorded. Such cases are illustrated below.

(i) ICD, Durgapur sanctioned drawback of ₹ 99.38 lakh in May 2014 to M/s Graphite India for export of 408 MT ‘electrode grade calcined pitch needle coke’ in October 2013. The goods were earlier imported in January 2013 on payment of duty of ₹ 101.41 lakh. The sanctioning authority allowed 98 per cent of the duty paid at the time of import, as duty drawback.

Scrutiny revealed that there was no examination report recorded by the proper officer of the customs at the time of export in compliance of Rule 5(2) (a) of Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995. Further, drawback at the rate of 98 per cent under Section 74 (1) of the Customs Act, 1962 was allowed without such examination report on the triplicate copy of the shipping bill including use of imported goods and without issue of speaking order.

In absence of examination report indicating that the goods were not put to use and considering the length of period between clearance date of import and export (above 9 months), drawback was payable in terms of Notification No. 19/65 dated 6-2-1965 at reduced rate of 70 per cent of duty paid on import, which worked out to ₹ 0.71 crore (70% of ₹1.02 crore). This resulted in excess payment of drawback of ₹ 0.28 crore (₹ 0.99 crore - ₹ 0.71 crore).

The Jt. Commissioner of Customs, ICD, Durgapur stated (20.08.2015) that examination was done by the proper officer but the report was not endorsed inadvertently in the triplicate copy of the shipping bill. Since such omission not only indicate non adherence to prescribed procedure, but had financial implication too as rate of drawback was to determined on use of goods, which was also not mentioned.

(ii) Test check revealed that In 10 cases, Drawback Cell under the Commissioner of Customs, (Preventive), West Bengal, sanctioned drawback of ₹ 82.92 lakh between March and October 2014 under Section 74 of the Customs Act, 1962 at the rate of 98 per cent of import duty paid at the time of import, without issue of speaking order and without determining use of export goods. Further scrutiny revealed that neither the exporters declared their goods as unused, nor the examination report in the shipping bills bear any mention on use of the goods that was exported.

Drawback payable at reduced rate under notification 19/65 dated 6.02.65 could not be ascertained in absence of detailed calculation sheet showing bill of entry wise duty paid on importation.

The Commissioner of Custom (Preventive), West Bengal stated (October 2015) that from the shipping bills and other documents it could be stated that consignments were re-exported in “as such condition”.

The reply is not acceptable because no documents were furnished to audit substantiating that the consignment were re-exported in “as such condition”. Further, shipping bill and examination report did not state that the goods were in unused condition.

### **3.43 Refund of duty drawback after exclusion of Education Cess**

In terms of Finance Act, Education Cess and Secondary and Higher Education Cess were levied on all imported goods as duties of customs from 9 July, 2004 and 1 March 2007 respectively. Further, it is provided that the provisions of Customs Act, 1962 and the rules regulations made there under, including those relating to refunds and exemptions from duties and imposition of penalties, shall apply in relation to the levy and collection of Education Cess on imported goods as they apply in relation to the levy and collection of duties of customs on such goods.

Scrutiny of records of duty drawback sanctioned under Section 74 revealed that Commissioner of Customs, Kolkata (Airport & Admn.) (from 2013-14 onwards) and ICD, Durgapur allow Drawback refund of both the Education Cess paid at the time of import where as other two major Commissionerates i.e. Kolkata (Port) and Preventive, West Bengal did not allow refund of education cess. Thus, there was a variation in practice of payment of duty drawback under these four commissionerates which could have been avoided by issue of proper clarification by the Board.

In reply Assistant. Commissioner of Customs, Kolkata Airport (ACC) informed (September 2015) that the practice of deducting education cess was till July 2013 in ACC due to misconception, however, after the period duty drawback was calculated on the amount of duty including education cess.

The Commissioner of Customs (Preventive), West Bengal stated (October 2015) that the issue would be taken care of in future.

### **3.44 Governance, Risk and Control issues:**

Quality of Data, Management, Internal control & Monitoring by the Commissionerates and the CBEC was assessed based on the information made available by the audited entities, information available in the official website of CBEC and ICES 1.5 data available with audit till May 2015 only. Audit observations are as follows:

**(A)** In order to obtain a holistic picture on Re-Export cases for the period 2012-2014 (upto June 2014) audit had made efforts to collect data/information for analysis from the following websites/reports:

- (1) [www.cbecddm.gov.in](http://www.cbecddm.gov.in) (CBEC)

- (2) Annual Reports of the Ministry of Finance for the years 2013-14 & 2014-15.
- (3) Result Framework Document of the CBEC, Ministry of Finance for 2015-16.

Audit could not locate the pan India data on Re-export of goods in the aforesaid websites/documents. The Result Framework document does not identify the Re-export cases as one of the success indicators for the assessment function although there were un-cancelled bonds exceeding 22807 numbers pending as on June 2014. Cases of re export from SEZ zones, EOUs (comprising almost 25% of the trade) were not captured at all by the CBEC-Customs EDI, ICES. Similarly, license conditions affected by non compliance of re export/ re import conditions could not be correlated at the systems level since the DGFT (EDI) was not connected with the ICES. Only 31% of the trade covered by the Commissionerates was audited. Despite inability and reluctance to provide relevant information to audit by Commissionerates/CBEC, observations worth Rs 308.26 crore of irregularities were noted essentially on matters of non compliance with a material bearing on Customs revenue. Several other cases of internal control malfunction and at systemic level could not be quantified because of lack of necessary records.

**(B) Deficiencies in the ICES 1.5 of CBEC- Customs**

The data directory of ICES 1.5 comprises 273 tables (column heads) which covers all the information/figures present in Bills of Entry, Shipping Bills, IGMs & EGMs. An analysis of dump data (ICES 1.5) available for the period from April 2012 to May 2013 in respect of Re-Export cases revealed the following:

- (i) There is no mechanism to monitor export of goods imported through Bills of Entry with re-export condition. Further, the system does not have the mechanism to incorporate the re-export particulars subsequently, for a particular B/E, with a re-export condition.
- (ii) The validity of Imports against re-export notifications which specify furnishing of mandatory certificates could not be analysed through ICES as in many instances such details are not present in the ICES. It is also to be noted that there have been instances where column heads for such certificates are present in the transactional data; but, they are blank and as a result audit cannot ascertain whether they have been furnished or not. Analysis of ICES 1.5 transactional data for the year 2012-13 revealed that in 9939 nos. of items under 830 nos. of Bills of Entry involving Duty Forgone amounting to ₹ 75.92 crore were cleared without production of mandatory certificate to the effect that the goods were imported for the purpose of the events only as prescribed in the Notifications.

**(iii)** It was observed that in four commissionerates (Ahmedabad, Kandla, Mundra and Jamnagar) the details of duty free Warehoused goods already re-exported have not been entered in the EDI system, as a result of which the web ledger shows these cases as live or not cancelled.

In four commissionerates (Mumbai Zone I, II, III & Bengaluru) the department failed to produce records of 1036 cases where goods worth ₹ 379.92 crore was imported under five exemption notifications availing exemption of duty of ₹ 98.66 crore. Accordingly, the eligibility to get exemption as also re-exports effected in fulfilment of the condition of the notifications could not be examined in audit.

Scrutiny of ICES import data pertaining to Commissioner of Customs (Airport & Admn.), Kolkata between December 2011 and January 2014 revealed that M/s Immersive Technologies and 14 others imported light fixtures, colour ledger, laptop etc. valued at ₹ 6.67 crore without payment of duty while availing benefit of the notification 157/90. Duty exempted on these goods worked out to ₹ 1.56 crore.

No record showing re-export of those goods was produced to audit. Further, in absence of prescribed procedure including submission of bond, re-export of imported goods has not been followed up by the Unit resulting in considerable amount of duty payable but for exemption remaining unguarded.

Kolkata (Airport) Commissionerate authorities intimated (September 2015) that three importers had submitted proof of re-export, while in 12 cases letters sent were returned undelivered.

**(iv)** In Kolkata Port & Airport Commissionerates, it has been observed that data entered in registers differed from those present in the ICES system; as a result audit could not rely on the data for compilation of this report.

**(C) Inadequate Internal controls and monitoring mechanism to safeguard misuse of procedure**

**(i) Role of Internal Audit Department (IAD)**

In four Commissionerates (Kolkata Port, Airport, Preventive (WB), Patna), it was noticed that the Internal Audit Department was not exercising any check in respect of monitoring of fulfillment of re-export conditions made under various re-export notifications as also maintenance of proper records.

Kolkata (Airport) Commissionerate authorities stated (October 2015) that internal audit department does not conduct audit of any section or group of the commissionerate. It is merely a co-ordinating unit between various sections/groups and Custom Receipt Audit.

**(ii) Absence of effective monitoring mechanism**

Audit noticed that there were no separate common Bond and BG cell in Commissionerates for accepting and discharging bond in re-export cases despite Boards instructions.

Customs authority allowing exemption of duty is responsible for monitoring fulfillment of re-export condition embodied in the notifications. However, in seven Customs Commissionerates (Kolkata Port, Airport, Preventive (WB), Mumbai, Lucknow, ICD Tughlakabad, and ICD, Patparganj), ineffective monitoring of re-export cases was noticed which led to large number of re-export bonds pending action for cancellation from 2009 onwards.

No mechanism was in place for monitoring re-export cases by calling for documents from the importers immediately after expiry of the stipulated period or issuing demand notices, wherever necessary. There is no prescribed report/return on cases of re-exports pending finalization facilitating monitoring of such cases.

Finalisation of re-export bonds was also not available in the ICES system of Customs.

There was no module in the ICES to link the Bill of entry of import/ Re-import with the corresponding shipping bills of Re-export.

**(iii) Inadequacy in maintenance of records**

Inadequate maintenance of the records relating to re-export cases viz. Re-export Bond Registers, Bank Guarantee Registers etc. were noticed in the following customs Commissionerates:

In three Customs Commissionerates (Petrapole LCS under Preventive (WB), ICD Ludhiana, Jogbani LCS under Patna Commissionerate), no re-export bond register was maintained.

The Commissioner of customs (Preventive), West Bengal intimated (October 2015) that re-export bond register is being maintained henceforth.

In seven Commissionerates (Kolkata Port, Kolkata Airport, Mundra, Mumbai Customs Zone II, ICD Dadri in NOIDA , ICD Tughlakabad and ICD Patparganj) Re-export Bond Registers were maintained for recording cases of imports under different exemption notifications with condition to re-export. But the entries in the Registers, in most cases, were without essential details like Notification Nos., date of expiry of re-export period, duty forgone etc., without which monitoring of re-export cases could not be facilitated.

In ICD Ludhiana, Drawback claim Register was not maintained properly. In most of the cases date of submission of drawback claim was not mentioned.

Audit could not ascertain the facilitation percentage checks prescribed for DG (Audit) in re-export cases cleared through ICES 1.5.

In the light of the foregoing, it is evident that the internal control system of the CBEC is lax in terms of prescribing necessary records, system of maintenance of prescribed records, frequent monitoring of the records at respective levels, parallel assessment by the internal audit and taking corrective actions on the aberrations where found.

### **3.45 Conclusion**

Audit observations based on only 26 percent of the trade transactions reported ₹ 308.26 crore of irregularities noted essentially on matters of non compliance of conditions of notifications, provisions of the Act or instruction issued by the board, with a material bearing on Customs revenue.

The ICES system which is used to process the customs transaction does not currently have the functionality to manage the re export cases along with managing the Bonds. ICES did not capture cases of re export from SEZs, EOUs comprising almost 25% of the trade. Similarly, license conditions affected by non compliance of re export/ re import conditions could not be correlated at the systems level since the DGFT (EDI) was not connected with the ICES. Further ICES does not have a validation check to ensure that benefit of exemption under the relevant notifications were not extended to ineligible imports/exports; or deficiencies managed as a result of cancellation of re export bonds; not matching of containers imported with those re-exported; late submission of re-export documents and non closure of bonds.



## **CHAPTER IV**

### **ASSESSMENT OF CUSTOMS REVENUE**

We found from test check (August 2010 to March 2014) of records, a few cases of incorrect assessment of customs duties having revenue implication of ₹ 53.65 crore. They are described in the following paragraphs.

#### **Non recovery of TED refund amount sanctioned on the basis of the forged and fabricated documents**

**4.1** As per paragraph 8.3 (c) of Foreign Trade Policy (FTP), 2004-09, the supply of goods by main/sub-contractors, qualifying as deemed export in terms of paragraph 8.2 of FTP, are eligible for benefits of refund of terminal excise duty (TED) subject to terms and conditions as prescribed in Handbook of Procedure (HBP), Vol-I. In terms of provisions of paragraph 8.3.1 (iv) of HBP, Vol-I., the claim for TED refund in respect of supplies (deemed export) under categories mentioned in paragraphs 8.2 (d) to 8.2 (j) of FTP may be filed either on the basis of proof of supplies effected or payment received.

The application or the documents used in support of such claim if found to contain any false or fraudulent or misleading statement shall attract penal provision under Rule 7 of Foreign Trade (Regulation) Rules 1993 including refusal to grant further scheme benefits in future. To implement these provisions, Directorate General of Foreign Trade, New Delhi, issued (31 December 2003) instruction under paragraph 3 of 'Guidelines for Maintaining the Denied Entities List (DEL)' to initiate action for:

- (a) lodging complaint with the local police under the Indian Penal Code (IPC) for fraud/forgery
- (b) transfer the file to the enforcement division for investigations/adjudications, subsequent to the action of placing the firm in the DEL
- (c) suspension of the IE Code of the firm and
- (d) enquiry into the case by the head of the office and submit the report within 15 days to the Headquarters to indicate if connivance of any officials was found in perpetrating the fraud.

M/s Senbo Engineering Ltd., Kolkata, was sanctioned refund of TED by the Additional DGFT, Kolkata in numerous cases during 2008-09 and 2009-10 for supplies made to M/s Delhi Metro Rail Corporation Ltd. (DMRC) on the basis of the project authority certificate and certificate of payment issued/ signed by Sh S. S Padmanavan, Chief Engineer on behalf of the project authority (viz., M/s DMRC). However, subsequent verification of the document by the DGFT office revealed that the refund of TED was claimed by the applicant on the

basis of the forged and fabricated documents because M/s DMRC confirmed that the project authority certificate and certificate of payment were not issued by them and Sri S. Padmanavan was never posted with M/s DMRC. Accordingly, DGFT, Kolkata issued show cause notices to applicant in 10 cases with the directions to refund TED amount paid along with 15 per cent interest for fraudulently availing the benefit. The action in line with paragraph 3 of 'Guidelines for maintaining the Denied Entities List' was not available on the records.

However, further scrutiny revealed that in respect of another eight cases, refund of TED amounting to ₹ 4.43 crore, claims for which were accompanied by similar documents signed by the same person (Sh. S. Padmanavan, Chief Engineer as mentioned above), neither any SCN/demand notice were issued nor any action as envisaged in the Rule 7 of Foreign Trade (Regulation) Rules 1993 and DGFT instruction/guidelines dated 31 December 2003 was initiated against the firm. The firm has been put on the DEL on 10 October 2014.

On being pointed out (May 2014/ July 2015), the DGFT, New Delhi, Ministry of Commerce intimated (August 2015) that besides recovery (June 2014) of ₹ 19.33 lakh in one case from M/s Senbo Engineering Ltd., Order-in- Original has been issued (June 2015) in another nine cases. In remaining nine cases the firm has been granted time up to 30 September 2015 as per their request for refund of duty and interest. However, the reply is silent about action initiated under IPC or conduction of enquiry for corrective action to avoid such fraudulent claims.

The fact remains that neither the department initiated corrective action under relevant law nor conducted any enquiry as desired under the aforesaid guidelines to rule out connivance, if any, of the officials in perpetuating the fraud. This may lead to loss to the exchequer and also occurrence of such cases in future could not be ruled out.

#### **Non recovery of customs cost recovery charges**

**4.2** The Government of India, Ministry of Finance, Department of Revenue, New Delhi vide letter no.A11018/9/91 Admn., IV dated 1 April 1991, had directed to recover the cost in respect of posts created on cost recovery basis at uniform rate of 1.85 times of monthly average cost of the posts plus DA, CCA, HRA and transport allowance etc. in advance.

Further, CBEC circular no.52/1997-cus dated 17 October 1997 provides that the Commissioner of Customs would accept the deposit of advance cost recovery charges for the number of staff which will be actually posted in the said formation. Advance deposit may be made for the staff for three months.

Audit examination of records of ICD, Dadri and Loni under Customs Commissionerate, Noida revealed that the custodian of two Container Freight Stations (CFSS) viz. CMA CGM Logistic Park and All Cargo Logistic Park Ltd., at ICD Dadri and the custodian of ICD, Loni had not paid customs cost recovery charges of ₹ 3.35 crore for the period from April 2013 to March 2015 and ₹ 4.02 crore from April 2012 to March 2015 respectively. The department, however, had not taken any action to collect the dues from the custodians.

On this being pointed out (June 2014 to April 2015), the department stated (March/May 2015) that requests of all the three custodians for exemption under CBEC instructions F.No.434/17/2004-cus.IV dated 12 September 2015 are pending with CBEC and hence they were not paying the cost recovery charges to the department. Though, they are being asked regularly to deposit the cost recovery charges. In case of ICD, Dadri it was also stated that to safeguard of revenue, both custodians had submitted the undertakings that all the arrears of cost recovery charges till the date of waiver shall be paid by them.

The reply of the department is not acceptable in view of the paragraph 2 of F.No.434/17/2004-cus.IV dated 12 September 2005 which clearly stipulates that the waiver of cost recovery charges would be prospective with no claim for past period. Besides, circular no.52/1997-cus stipulates that an advance deposit should be made for the staff for three months. Thus, there is no statutory provision for relaxing the custodians to deposit the dues on the basis of the undertakings.

The Assistant Commissioner, Noida Custom Commissionerate intimated (October 2015) that M/s CMA CGM Logistic Park and M/s All Cargo Logistic Park Ltd., had paid ₹ 50 lakh and ₹ 29 lakh respectively for the period 2013-14.

The cost recovery charges for the remaining period are recoverable from the custodians.

The matter was reported to the Ministry in July 2015, there response is awaited (January 2016).

#### **Short recovery of customs supervision charges due to non revision of MOT rates**

**4.3** Merchant Overtime (MOT) charges were increased by more than 100 per cent with effect from October 1998 by revising the existing rates prescribed in Regulations of 1968 consequent to 3 to 3.5 times pay hike of the Central Government employees after implementation of recommendations of the 5<sup>th</sup> Pay Commission.

After implementation of recommendations of the 6<sup>th</sup> Pay Commission in August 2008, basic pay of Central Government employees was again hiked by 2.42 to 3.23 times as compared to the pay prescribed by 5<sup>th</sup> Pay Commission. However, corresponding revision of MOT rates has not been carried out so far by the Board and accordingly MOT charges are still being levied at rates prescribed in September 1998. Board did not contemplate periodical revision of the MOT rates subsequent to the revision of pay scales on implementation of the Pay Commission's recommendations.

Scrutiny of the MOT collection records at the office of the Additional Commissioner of Customs, Mini Custom House, Haldia under Kolkata (Port) Commissionerate revealed short recovery of customs supervision charges to the extent of ₹ 712.07 lakh during April 2013 to March 2014 due to non revision of the MOT fee.

When we pointed this out (October 2014), the Assistant Commissioner of Customs, Mini Custom House, Haldia stated (January 2015) that no specific instruction has yet been received from the higher authority regarding revision of MOT fee.

Ministry of Finance, Department of Revenue, CBEC in their Action taken note for audit observation raised in Audit Report No.12 of 2014 (Audit para no.4.6, DAP A102/2012-13) stated (July 2015) that issue of revision of MOT charges is under consideration.

The fact remains that indecision on the revision of MOT charges is leading to recovery at reduced rates.

The matter was reported to the Ministry in September 2015, there response is awaited (January 2016).

#### **Inadequate amendment in rules and notification resulted in incorrect availing of Cenvat credit**

**4.4** Government of India, Ministry of Finance, Department of Revenue (TRU I) vide serial no. 4.1 read with serial no. 4.3 (b) of its DO letter dated 28 February 2011 (issued on Budget day), has withdrawn exemptions from central Excise duty on about 130 entries as incorporated in Central Excise notification no.1/2011-CE dated 1 March 2011 and introduced a nominal duty of 1 per cent (later revised to 2 per cent in March 2012) on these items with the condition that no credit of duty paid on such items used as input and input services would be taken. Accordingly, for the implementation of the 1 percent scheme a proviso was inserted below Rule 3 (1) (i) of the Cenvat Rules 2004 on 1 March 2011 disallowing Cenvat credit on such goods. 'Coal' classifiable under Tariff heading CTH 2701 was also not eligible for Cenvat credit being one

of the 130 items disallowed Cenvat credit vide aforesaid notification no. 1/2011-CE. (serial no.28 of the notification).

Subsequently, 'Coal' was leviable to concessional duty of excise at the rate of 2 per cent under notification no.12/2012-CE (serial no.67) dated 17 March 2012 (as amended) with the condition that no Cenvat credit has been taken in respect of the inputs or input services used in the manufacture of these goods (condition No. 25).

Import of coal is allowed at countervailing duty (which is equivalent to excise duty) rate of duty of 2 per cent under notification no.12/2012-Cus (serial no.123) dated 17 March 2012. However, the condition of non-availment of Cenvat credit was not mentioned in the customs notification no.12/2012-Cus, although it was specifically mentioned in condition no.25 of the Central Excise notification no.12/2012-CE. Both these notifications (12/1012-CE and 12/2012-cus) were issued in March 2012. Impact of this inadequate amendment was that a manufacture was not entitled to avail Cenvat credit of duty paid on 'Coal' procured from domestic market but was incorrectly entitled to avail it on imported 'Coal'. The lacuna in the Custom notification is being exploited by the manufacturers as narrated below.

M/s Shri Lonsen Kiri Chemicals Industries Ltd., (100 per cent EOU) falling under the jurisdiction of Superintendent of Central Excise, Range II, Division II, Vadodara-I purchased (October 2013 to March 2014) 22.30 MT of 'Non coking coal' imported by M/s Adani Enterprises Ltd., Dahej and availed ₹ 7.18 lakh Cenvat credit of excise duty at the rate 2 per cent charged by the supplier (M/s Adani Enterprises Ltd). This resulted in incorrect availing of Cenvat credit of ₹ 7.18 lakh due to inadequate amendment in Cenvat credit Rules and Customs notification.

When we pointed this out (May 2014), the Superintendent (Central Excise) reported (May 2014) that the audited entity has reversed the amount of Cenvat credit wrongly availed.

Further audit enquiry revealed that M/s Adani Enterprises Ltd had passed on Cenvat credit (being Dealer/importer could not claim Cenvat credit benefit) amounting to ₹ 235.50 lakh on imported coal during the period 17 March 2015 to 31 March 2015 to its clients which included various manufacturers/ second stage dealers. Accordingly, these manufacturers/ second stage dealers availed of Cenvat credit benefit because of the lacuna in custom notification.

Board may to protect revenue consider rectificatory amendment of the Custom notification in consonance with the Cenvat credit Rules 2004 to administer Cenvat Credit benefit on 'Imported coal' as well as procurements made from domestic market.

Ministry may like to review all such cases for appropriate action.

The issue was flagged to the Ministry in October 2015, there response is awaited (January 2016).

#### **Imports cleared without levying or short levying the applicable anti dumping duty**

**4.5** As per section 9A of the Customs Tariff Act, 1975, where any article is exported from any country to India at less than its normal value, then upon the import of such article into India, the Central Government may, by a notification, impose an anti dumping duty. Accordingly, anti dumping duty was imposed from time to time on goods like 'Float glass,' Phosphoric acid, and Polypropylene when these were imported from specified countries like Indonesia, Korea RP, Taiwan, and Singapore.

We found that assessing officers cleared 22 consignments of such goods imported by M/s Asahi India Ltd., and 10 others from these specified countries without levying or short levying applicable anti dumping duty of ₹ 90.06 lakh.

The ICD, Rewari authorities in respect of import of 'Float glass,' by M/s Asahi India Ltd. stated (September 2013/June 2014) that goods imported were float glass of tinted type (light green) as per test report. Accordingly, no anti dumping duty was leviable on the goods imported.

The reply of the department is not acceptable as test report furnished relates to goods imported in the year 2011. While goods objected were imported in 2012. The manufacturer had described the goods as float glass of tinted type in the certificate of origin and bill of landing, but the importer had mentioned light green float glass in bill of entries to evade anti dumping duty. Hence goods imported from Indonesia are float glass of tinted type on which anti dumping duty was leviable. The department however raised (June 2014) a protective demand. Further progress is awaited (January 2016).

Reply in respect of imports made from JNCH, Nhava Sheva, Mumbai by 10 importers is awaited (January 2016).

#### **Imports cleared without levying the applicable safeguard duty**

**4.6** As per section 8B of the Customs Tariff Act, 1975, where any article is imported into India in such increased quantities and under such conditions so as to cause serious injury to domestic industry, then the Central Government may, by a notification, impose a safeguard duty on that article. Accordingly, safeguard duty was imposed from time to time on goods like tubes, pipes and hollow profiles, Seamless of iron, alloy or non alloy steel (CTH 7304), 'Decy1 alcohol (Ecorol 10/98)' and 'Myristic /Myristy 1 saturated fatty alcohol' (CTH

290517/382370) when these were imported from specified countries like People's Republic of China, Indonesia and Denmark.

Twenty consignments of such goods imported by M/s Yogesh Hydraulics Pvt. Ltd., and 12 others from these specified countries were cleared without levying applicable safeguard duty of ₹ 80.49 lakh.

Ministry in their reply (December 2015/January 2016) reported issue of Demand cum show cause notices to five importers (M/s Neogen Chemicals Ltd, M/s Quent Chem, M/s Sigent Chemical Corporation Pvt. Ltd, M/s Soofi Traders and M/s Esteem Industries Pvt. Ltd) and recovery of ₹ 7.34 lakh from M/s Pushp Sons Fibrol Pvt. Ltd. Reply in remaining cases is awaited (January 2016).

#### **Short levy of additional duties of customs due to misclassification of RSP**

**4.7** Additional duty of Customs equivalent to excise duty (CVD), leviable under Section 3 (1) of the Customs Tariff Act, 1975, is calculated as a percentage of the value of imported article determined under Section 14 (1) of the Customs Act, 1962 and duty of customs chargeable under Section 12 of the Customs Act, 1962. In case an imported article is required under the provisions of the Legal Metrology Act, 2009 to declare on the package thereof the retail sale price (RSP) of such article, the value of the imported article shall be deemed to be the RSP declared on the imported article less the amount of abatement.

Where there is reasonable doubt that the declared value does not represent the transaction value, the declared value may be rejected by the proper officer under Rule 12 of the Custom Valuation (Determination of Value of Imported goods) Rules, 2007 and the value be determined by proceeding sequentially in accordance with rules 4 to 9.

M/s Lenovo India Pvt. Ltd., and four others imported (May to November 2011) 21 consignments of 'Laptop computers LCD Monitors and Softwares' through Chennai Sea and Air Commission rates. The goods were assessed to countervailing duty equivalent to excise duty on the declared value of RSP allowing applicable abatement specified in notification no.49/2008–Central Excise (N.T.) dated 24 December 2008.

Audit noticed that the RSP declared was much less than the imported cost of the goods resulting in mis-declaration of RSP. However, the assessing officer had not rejected the declared value (RSP) and also not followed the method of determination of value as per Custom Valuation (Determination of Value of Imported goods) Rules, 2007 for levy of CVD. Moreover, In-built system in the ICES 1.5 module had failed to detect such mis-declaration and to take appropriate action. Thus, non-observance of the Rules in determination of

value of imported goods had resulted in short levy of duty amounting to ₹ 54.10 lakh.

On this being pointed out (March 2012), the department stated (June 2012) that one of the importers M/s Samsung India Electronics Private Limited had paid (May 2012) the duty of ₹ 0.87 lakh along with interest of ₹ 0.06 lakh. Reply in respect of other importers is awaited (January 2016).

### **Import of foreign liquor**

**4.8** Foreign liquor falling under Chapter 22 of the Customs Tariff is being imported from different countries through various customs ports of India and warehoused at the port of imports filing Warehousing Bills of Entry (BEs or Into –Bond BEs) and giving Bonds/BG for the duty assessed. Importers then seek trans-shipment of the warehoused goods to another destination under execution of trans-shipment Bond/BG. The goods are transferred under Transfer Bond, accompanied by a 'Shipping Bill for Export of Duty-Free goods Ex-Bond' and a document in the form of Annexure-3 (Application for transfer of goods from one warehouse to another port), giving details of description, quantity, value and duty on the goods. However, no copies of into –Bond B/Es, invoices, etc. are sent for the transferred goods. After the transferred goods are received and re-warehoused at the destination port, the custodian (destination port) issues re-warehousing certificate (RWC) to the originating warehouse (Customs), which then cancels the bond/BG.

A study of the system of import of liquor on payment of duty compared with duty free imports, the price at which liquors were sold by duty free shops, system of re-warehousing, extent of computerisation of transshipment of goods etc; at Sea Customs, Chennai, Kochi, ICD, Kolkata Port, Kolkata Airport, Mumbai and ACC, Bangalore, Duty Free Shops at Chennai, Bangalore and Kolkata; for the period 2012-13 to 2014-15 was conducted.

Audit findings are illustrated below:

### **Excess/shortage of imported liquor in accounting**

**4.8.1 (i)** Audit scrutiny and analysis of data furnished by Duty Free Shop, AirPort and Air Cargo Commissionerate, Bangalore revealed that there was an excess of 25322 units of liquor in respect of 199 articles of various brand. Similarly, there was a shortage of 161121 units in respect of 307 articles of various brands. The duty ₹ 23.82 crore foregone on shortage of units is recoverable with interest.

**4.8.1 (ii)** Similarly, in Chennai Sea Port, on arrival of goods they were assessed as warehouse bill of entry at the customs EDI and taken directly to Container Freight Station (CFS) at Virugambakkam, Chennai. The goods were unloaded



there and bonded for the bill of entries received in a consignment. As and when requirement of stock arises for the importers {Indian Tourism Development Corporation (ITDC) and United Duty Free Retail Shop (UDFRS)}, the goods were ex-bonded in piecemeal through Customs Houses which was either issued to Duty Free Shop or transferred to other places in the State where these firms have branches. For ex-bonding the goods, two manual registers are maintained viz. (a) warehouse bonded register and (b) transshipment bond register at Sea Customs, Chennai.

The Bonded Warehouse Register contains bill of entry -wise details of liquors ex-bonded and issued or transferred to duty free shop or other branches. The receipt, issue and balance for each category of liquor are recorded in this Register. The Transshipment Bond Register contains the details of “Transfer” of goods (aggregate quantity – Assorted liquors) which is the sum total of different quantity/category of liquor taken from multiple Bill of Entries. The contra debit posting is made in the Bonded Warehouse Register for each category of liquor issued.

In principle, the aggregate quantity transferred and recorded in the Transit Bond Register (TBR) with Transit Bond Number (T.B.No.) should tally with the assorted quantities taken from different Bill of Entries/Bond on a given date. Comparison of the details available in the above registers disclosed that there is a difference in quantity to the extent of 6215 numbers during the period from 1 April 2012 to 31 March 2014, representing the shortage of goods. The minimum value for the shortage of goods works out to ₹ 37.29 lakh and the duty/addl. duty thereon worked out to ₹ 40.27 lakh (calculated at 100 percent import duty) aggregating to ₹ 77.56 lakh.

#### **Under valuation of liquors**

**4.8.2 (i)** United Duty Free Retail Shop (UDFRS) and ITDC- (a Government of India Undertaking) imported foreign made liquors (duty free) on the arrangement that these imported liquors were to be sold through Duty free shops functioning under their control. Comparison of rates between the importers who cleared the goods after payment of duty (details obtained from ICES 1.5 transactional data) and the rate at which the same liquor was imported by ITDC (Duty free shop) revealed that in 30 instances (where the difference is more than 10 per cent) during 2012-13, the liquor cleared on payment of duty were undervalued to the extent of ₹ 26.15 lakh and the duty/additional duty (4 per cent) thereon worked out to ₹ 41.84 lakh aggregating to ₹ 67.99 lakh. No guidelines value of Directorate General of Valuation (DGOV) was produced to audit.

**4.8.2 (ii)** Further, M/s Pernod Ricard India Pvt Ltd., M/s. Diageo India Pvt. Ltd., M/s. Bacardi India Pvt. Ltd., United Spirits Limited under Mumbai Commissionerate had imported liquor from their related parties, named M/s. Pernod Ricard Gulf, M/s. Diageo Brands BV, M/s. Tradall S.A., M/s. White and Mackay Limited respectively. In view of the business interest between importer and exporter and lack of arms length transaction the transaction values declared by those related parties may be reviewed vide Rule 3 of the Customs Valuation (Determination of Value of Imported Goods). The undervaluation involved in imports by these importers from related party was ₹ 4.84 crore.

**4.8.2 (iii)** Some of the imports made through Mumbai Commissionerate in the case of unrelated party were also at a lower value compared to import prices of M/s. DFS India Pvt. Ltd. The undervaluation in test checked BEs on comparison to M/s. DFS India Pvt. Ltd. and unrelated imports was ₹ 1.08 crore.

The total under valuation was ₹ 5.92 (4.84 +1.08) crore, involving duty of ₹ 9.47 crore.

**4.8.2 (iv)** In Kochi commissionerate, scrutiny of import data for the period 2012-13 to 2014-15 revealed that in July 2014, M/s M & B Associates imported John Barr Scotch Whisky (40%) from M/s Peter Justesen Company; the goods were assessed at the rate of ₹ 268 per unit. Whereas M/s Cochin International Airport also imported the same brand of whisky from the same seller during July 2014 and the goods were assessed at the rate of and ₹ 361 per unit by the department. Assessment of the goods imported by M/s M & B Associates were undervalued to the extent of ₹ 93 per unit in comparison to the value declared by M/s Cochin International Airport. Undervaluation of the goods by M/s M & B Associates resulted in short levy of ₹ 1.98 lakh in respect 1200 units.

#### **Failure to obtain re-warehousing certificate**

**4.8.3 (i)** Air India limited had imported 2250 carton of 'Tiger beer' through Sea customs, Chennai from Singapore vide Warehouse BE (No.9654940 dated 23 March 2013) valued at ₹ 10.13 lakh. The goods were cleared without payment of duty on 01 April 2013. The same goods were transferred to another warehouse situated at Air port Chennai vide Transshipment Bond No. 328 on 28 March 2013 (Bond No.2000445235 dt.28.03.2015). Scrutiny of Transshipment Bond register revealed that the Transshipment Bond remained pending for want of re-warehousing certificate from authority to whom the goods were sent. No action was taken by Chennai (Sea) Customs authorities to obtain the re-warehousing certificate for the goods sent or recovery of

import duty ₹ 10.14 lakh with applicable interest on the liquor imported duty free by M/s Air India (October 2015).

#### **4.8.3 (ii) Partial computerisation of Warehouse Bill of Entry transactions**

After the initial filing of Warehouse Bill of Entry with Bonding, through the EDI System, the subsequent processes such as Ex-bonding of goods in piecemeal quantities through Customs House authorities and issuance of the same to Duty Free Shop or transferring the same to other places in the State where these firms have branches were carried out only through entries in the manual registers (warehouse bonded register and transit bond register). No attempt was made by the Department to computerise the transshipment of goods and make them as part of the EDI system. Manual filing of ex-bond BEs was allowed because linking with the originally filed EDI into-Bond BE was not possible in the EDI system in cases where the clearance had to be made from a different EDI Port. The business mapping for computerisation of warehouse bill of entry is thus incomplete. NCH, Delhi has confirmed during the audit that there was no linkage between the 'ex bond BEs' filled manually with corresponding 'Into bond BEs' filed electronically in the ICES system.

#### **Sales in Duty Free Shop**

**4.8.4** Procurement price of foreign liquor by Duty Free Shops and their selling price were compared in Bangalore, Chennai and Kolkata.

Scrutiny revealed that the import price of the articles and sale of those goods by the DFS, Airport and Air Cargo Commissionerate, Bangalore (2012-13 to 2014-14) varied from 2.5 percent to 873 percent over the import price. United duty Free Retail Shop (UDFRS) under Chennai Sea Commissionerate sold (January – February 2014) 18 different liquor items over and above their cost to the extent averaging 200 percent. India Tourism Development Corporation (ITDC) under Chennai Sea Commissionerate also sold 25 different liquor item (December 2014) higher than their cost averaging 239 percent. Similarly, in DFS at Kolkata the sale price was noticed to be higher by an average of 250 percent as compared to the procurement price. In Mumbai, it was observed that the average value declared by the M/s DFS India Ltd. on its imports was 107 percent higher than other importers of similar goods.

The guideline values for various commodities fixed by Directorate General of Valuation, Mumbai are not available in DGOV website and were not produced to audit for comparison of import price with the selling price. Transaction data relating to Chapter 22 of CTH was not made available by Director General of System and Data Management (System) for carrying out detailed audit.

In our opinion Present Market Value (PMV) enquiries may be done on selected sample of articles of imported liquor for fair assessment of goods where there was huge variation in import price and selling price.

**4.8.5** To summarize, system and monitoring of accounting of stock of imported liquor, application of valuation rule for related parties, monitoring of re-warehousing certificates for goods released under trans-shipment bond, partial/incomplete computerisation of Warehouse Bills of Entry in the EDI system, comparison method of import price with the selling price by the DFS are inadequate. A small sample audit revealed over pricing of imported liquor at an average of 177 percent (ranging from 14-340 percent), undervaluation to the tune of ₹ 6.66 crore involving duty of ₹ 11.07 crore. The stock was found in excess by 26617 units and there was shortage of stock to the tune of 6288 units valued at ₹ 5.67 crore.

CBEC may examine the points highlighted and take appropriate remedial action. Reply of the Ministry has not been received (January 2016).

#### **Functioning of Special Valuation Branch (SVB) of Customs Commissionerate**

**4.9** The 'Special Valuation Branch' (SVB) is an institution specialising in investigation of transactions involving related parties and certain special features having bearing on value of import goods. SVBs are located only at five Custom Houses (i.e.) Chennai, Kolkata, Delhi, Bangalore and Mumbai and any decision taken in respect of a particular case in any of these Custom Houses is followed by all other Custom Houses / formations. All cases to be registered in the SVB for Special investigation should be with the specific approval of the concerned commissioner.

CBEC delegated functional control of SVBs to the office of the DGOV in December 2012<sup>32</sup> to closely monitor the pendency of cases in SVBs, approve the initiation of SVB enquiries and supervise investigations. The investigations and finalization of the assessments are to be completed within four months from the date of reply to the questionnaire issued by the SVB<sup>33</sup>. Delay in finalizing cases registered with SVB also defeats the purpose for which SVBs are established and also leads to accumulation of provisional assessment cases in the department delaying collection of government revenue.

**4.9.1** As per the Circular 11/2001-customs dt.23.02.2001, SVBs are required to investigate the following types of cases in addition to 'related party' transactions:

- i) Additions required to be made on account of 'Royalty or Licence Fees'

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<sup>32</sup> Circular No. 29/2012 CUS dated 7.12.2012

<sup>33</sup> Circular No. 11/2001- Customs dt.23.02.2001

- ii) Additions on account of value of any part of the proceeds of the subsequent resale or disposal or use of goods accruing to the seller.
- iii) Addition on account of any other payment actually made or to be made as a condition of sale of imported goods.

Further it was emphasized that the cases should not be routinely referred to SVB for further investigation whenever the relationship as per valuation rules is declared by the importer without doing preliminary scrutiny regarding the value having been influenced by relationship. SVB would handle the investigation into valuation of such importer.

**4.9.2** An audit of SVB at Bangalore, Chennai, Kolkata and Delhi was undertaken to get an assurance about compliance of the mandate; efficiency and effectiveness of the systems and procedure. The observations are narrated below:-

Audit of DGOV revealed that following irregularities which have to be addressed.

- Difference between the data of assessment groups and SVB.
- Non-Short levy of EDD.
- Non finalization of assessments despite completion of SVB investigation.
- Delay in /Non- finalization of provisional assessment pending receipt of valuation report.
- Delay in completion of investigation and finalization of assessment by SVB.

DGOV in their response stated that though functional control of SVBs was given to DGOV with intention to strengthen SVBs, it remained only on paper in the absence of any administrative instructions in this regard from the Board. It was observed that though all SVBs sent report of pendency to DGOV on quarterly basis, DGOV did not take any action on such reports.

In reply to audit, DGOV further stated that the issue of pendency was being followed up with respective commissioners and necessary instructions were being issued from time to time. All SVBs are under administrative control of Customs Commissionerate and DGOV did not have any control over posting, leave, APAR, etc. of the officers working in SVBs. DGOV also stated that there was acute shortage of officers in SVBs.

**4.9.3** As per CBEC circular cases of import/export by related parties are to be referred to SVB for valuation of the imports/exports. However, audit scrutiny revealed that there were instances of import of foreign liquor (Mumbai Commissionerate) and export of gold jewellery between related parties which

have not been referred to SVB. These cases have been reported to the Ministry separately by Audit.

Few cases are illustrated below:

**4.9.3 (i)** M/s Pernod Ricard India Pvt Ltd., M/s. Diageo India Pvt. Ltd., M/s. Bacardi India Pvt. Ltd., United Spirits Limited under Mumbai Commissionerate, had imported from their related parties, named M/s. Pernod Ricard Gulf, M/s. Diageo Brands BV, M/s. Tradall S.A., M/s. White and Mackay Limited respectively. In view of the business interest between importer and exporter and lack of arms length transaction the transaction values declared by those related parties may be reviewed vide Rule 3 of the Customs Valuation (Determination of Value of Imported Goods) The undervaluation involved in imports of the illustrative case from related party was ₹ 4.84 crore.

**4.9.3 (ii)** Similarly, under the 20:80 scheme of gold import, plain gold jewellery, bangles or medallions with negligible or no value addition were exported to related parties. Even cases of export of 24 carats gold jewellery were noticed. In many cases plain jewellery were exported within same day or within 1 to 3 days of receipt of gold. Some of the remittances were being received very next day, which does not seem to be possible in case of genuine jewellery exports. This also meant that scrap and crude products were exported in the guise of plain jewellery by these agencies who were importing high quantities of gold by repeated exports at very short intervals, so as to maximise their domestic sale entitlement against 80 percent component of 20:80 scheme. There were reports from DRI on such modus operandi.

Ministry may review such cases under intimation to audit.

Similarly, issues regarding delay in finalisation of Provisional assessments and subsequent short/ non-levy of duty because of difference in SVB data, finalisation of SVB investigation, valuation reports etc were separately reported to the Ministry by Audit. Ministry response has not been received (January 2016).

#### 4.9.4 Pendency of Cases

As at the end of June 2015, a total of 894 fresh cases and 118 Renewal cases were pending in SVBs, Bangaluru, Kolkata and Delhi only. Age wise analysis is detailed below.

Cases	Upto 3 months	3 to 6 months	6 to 12 months	1 to 3 years	More than 3 years	Total
New Cases	18	16	26(Bangaluru) +99(Delhi)	145(Bangaluru) +214(Delhi) +32(Kolkata)	208(Bangaluru) +73(Delhi) +63(Kolkata)	894
Renewal Cases	27	18	7	48	18	118

Few cases were observed as pending since 2006 onwards in SVB, Bangalore.

Cases on levy of provisional assessment in Special valuation cases have been reported in the Chapter on Provisional Assessment.

On enquiring for reasons for non-finalizing of the cases within the prescribed time, SVB, Delhi stated that in most of the cases the parties concerned had not responded either to SVB questionnaire or to the further queries raised despite increasing Extra Duty Deposit (EDD) from 1 percent to 5 percent. As the Board circulars/instructions do not envisage any further enhancement in the EDD, no further action was taken in such cases. SVB, Delhi further informed that the matter was taken up with the O/o the Chief Commissioner (Delhi Zone) for inclusion of the issue in Chief Commissioners conference scheduled in August 2015. The outcome of Chief Commissioners' conference was not furnished to Audit. (October 2015). However, reasons for pendency were not forthcoming from SVB, Kolkata, Bangaluru and Chennai.

#### 4.9.5 Delay in finalization of the cases

Audit noticed there were instances in Chennai, Delhi, Kolkata and Bangalore of delay in finalisation despite issue of Order in Original, receipt of replies, receipt of application, Delay in finalization beyond the prescribed time, delay in issue of EDD circular, delay in enhancement of EDD to 5 percent. Few cases are illustrated below:

**4.9.5 (i)** In SVB, Bangalore, in two cases, although the importers applied prior to three months of expiry of OIO, the cases were finalized with a delay ranging from 17 months to 27 months.

Sl.No.	Name of the importer	Date of expiry of OIO	Date of receipt of documents	Date of issue of OIO	Delay
1.	Dirak India Panel Fitting (P) Ltd.	8.3.13.	November 2012	18.2.2015	27 Months
2	Paykel Healthcare India P(P)	26.12.13	September 2013	27.2.2015	17 Months

**4.9.5 (ii)** Based on the Orders-in-original the concerned assessing groups were instructed to finalise the BsE ( 11 Nos) for imports made by M/s. Rice Lake Weighing Systems India Limited, Chennai However, it was noticed that the 11 BEs were still pending finalization. Duty amounting to ₹ 7.77 lakh along with interest of ₹ 4.30 lakh (up to August 2015) is recoverable. Similar imports may also be reviewed and finalised.

Delay in finalizing cases registered with SVB also defeats the purpose for which SVBs are established and also leads to accumulation of provisional assessment cases in the department delaying collection of government revenue.

**4.9.5 (iii)** In, Order in Original (O I O) No 25435 /2014 dated 15.5.2014, issued in the case relating to M/s Hanil Tube India Private Limited, Technical Service

Fee of ₹ 459.03 lakh paid to foreign supplier was added to the assessable value.

The OIO despatched on 15.5.2014 was not appealed against by the importer. However after SVB alerts were issued, the importer by letter dated 14<sup>th</sup> July 2015 informed SVB that the order had not been served in accordance with Section 153 of the Customs Act, 1962. However, due to non serving of the Order, the assessment group (Group II of Chennai Sea Customs) could not finalize (Note dated 16.7.2015) the bill of entry and subsequent imports. This resulted in non collection of duty of ₹ 87.08 lakh and applicable interest thereon.

Delay in finalizing cases registered with SVB defeated the purpose for which SVBs are established and also leads to accumulation of provisional assessment cases in the department delaying collection of government revenue.

**4.9.5 (iv)** CBEC, instructed<sup>34</sup> that where supporting/relied upon documents in reply to the questionnaire issued are not submitted within 30 days from the date of receipt then EDD would be increased 1% to 5%.

A test check of cases pending in SVB, Bangalore, Kolkata, Chennai and Delhi revealed that there were 37 cases wherein EDD @ 5% had not been levied though the cases are pending for periods ranging from 1 to 3 years.

A case is illustrated below:

Audit scrutiny in SVB, Delhi revealed that various importers imported goods between November 2013 to October 2014 through 22 consignments from related parties on which EDD was either not paid or paid at the rate of 1 to 5% of customs duty instead of the transaction value, which resulted in short levy of EDD amounting to ₹ 10.12 lakh.

**4.9.5 (v)** CBEC instructed<sup>35</sup> that the cases referred to SVB are to be decided within 4 months. However, in SVB, Chennai cases referred to SVB prior to the date of circular dated 23 March 2001 are still pending.

**4.9.5 (vi)** Incorrect reference by assessment group to SVB was noticed in SVB, Chennai in respect of Assessment group 7 Air Customs Chennai relating to M/s Stora Enso Inpac Delta India Private Ltd.

**4.9.5 (vii) Internal Audit not conducted**

CBEC delegated functional control of SVBs to the office of the Director General of Valuation (DGOV) in December 2012<sup>36</sup> to closely monitor the pendency of

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<sup>34</sup> circular no 11/2001 dated 23.3.2001

<sup>35</sup> circular no 11/2001 dated 23.3.2001

<sup>36</sup> Circular No. 29/2012 CUS dated 7.12.2012



cases in SVBs, approve the initiation of SVB enquiries and supervise investigations.

The DGOV conducted inspection of SVB, Chennai in October 2007 and thereafter no inspection report had been issued by DGOV indicating lack of monitoring control.

**4.9.6** Inadequate recognition of related party transactions and delay in finalising cases registered with SVB defeats the purpose for which SVBs were established. It had led to accumulation of provisional assessment/EDD cases in the department, hindering collection of Government revenue. Similarly, the DGOV also does not have sufficient control and monitoring wherewithal for optimal implementation of the Special Valuation Rules.

#### **Delay in updation of foreign currency exchange rate**

**4.10** The updating of rates of central excise duty and the central excise notification directories are delegated to the Jawaharlal Nehru Custom House (JNCH), Nhava Sheva, the updating of rates of customs duty and the customs notification directories are delegated to Chennai Sea Customs and similarly, updating of the notification relating to exchange rate of foreign currencies has been assigned to Inland Container Depot, Patpargunj by CBEC. Several cases of inadequate directory updating observed by audit have been mentioned in different chapters of the audit report.

During the course of audit it was noticed that notification no. 82/2015-Custom (NT) dated 25 August 2015 effective from 26 August 2015 effecting the change in the rate of foreign currency was delayed by 11 hours and 45 minutes in updating in the system. By the time the amendment was carried out, 357 Bill of Entries were filed at various port of custom by taking old exchange rate.

The Board on being informed issued advisory to the field offices for taking necessary action to safeguard the revenue due to late updating of directory.

CBEC in its reply (January 2014) had stated that DG (System) was working on a module for daily updating of exchange rates with SBI to get an automatic resolution. CBEC further added (February 2014) that testing of daily exchange rate update message had been completed.

However, audit observed that the delay in updating the notification in the ICES system still persisted (September 2015), thus the claim of the Board could not be substantiated.



## **CHAPTER V**

### **DUTY EXEMPTION/REMISSION SCHEMES**

The Government may exempt wholly or part of customs duties for import of inputs and capital goods under an export promotion scheme through a notification. Importers of such exempted goods undertake to fulfill prescribed export obligations (EO) as well as comply with specified conditions, failing which the full rate of duty becomes leviable. During test check (October 2013 to October 2015) of records, a few illustrative cases noticed where duty exemptions were availed of without fulfilling EOs/conditions are discussed in the following paragraphs. The total revenue implication in these cases is ₹ 168.94 crore.

#### **Non recovery of drawback where export proceeds are not realised**

**5.1** In terms of the provisions of Section 75(1) of the Customs Act, 1962 read with the sub-rule 16A (1) of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, where an amount of drawback has been paid to an exporter but the sale proceeds in respect of such export goods have not been realised within the time allowed under the Foreign Exchange Management Act (FEMA), 1999, such drawback amount is to be recovered. Sub-rule 16A (2) also stipulates that if the exporter fails to produce evidence in respect of realisation of export proceeds within the period allowed under the FEMA, 1999 or as extended by the Reserve Bank of India (RBI), the Assistant/Deputy Commissioner of Customs shall issue a notice to the exporter for production of evidence of realisation of export proceeds, failing which, an order shall be passed to recover the amount of drawback paid to the claimant.

To monitor the export proceeds of value upto \$25,000 only, the Central Board of Excise and Custom (Board) vide Circular No.5/2009 dated 2 February 2009 introduced an in-house monitoring mechanism for export proceeds realization and prescribed the procedure to be followed by the exporters.

The circular emphasized for creation of a special cell for management of declarations by the exporters and monitoring of exports proceeds realization. In cases where export proceeds have not been realized notices are to be issued by Customs to recover drawback paid.

Comparing RBI XOS with Export data (up to 31<sup>st</sup> March 2013) in four Customs Commissionerates (Chennai Sea, Chennai Air, Tuticorin and Coimbatore) revealed that the export proceeds were not realised in respect of 619 shipping bills for which drawback payments of ₹ 9.12 crore had been made. The non-realisation of export proceeds has also been confirmed with the DGFT database. All these shipping bills were dated on or before 31 March 2013, due to which the available time limit for export proceeds realisation is already

over. Hence, in these cases, the drawback paid is recoverable with interest as per the aforesaid Drawback provisions.

On this being pointed out (October 2015), the department stated (November 2015) that notices have been issued to concerned exporters under Chennai (Sea) and Tuticorin Commissionerates.

Ministry response is awaited (January 2016).

#### **Excess DEPB credit due to application of incorrect DEPB credit rate**

**5.2** The DEPB credit rates, as intimated by Public notice from time to time, are stored and updated.

Audit scrutiny of data of DEPB entitlements revealed that though the applicable credit rate was fetched from the DEPB rate directory the rate awarded was higher than the applicable rate in 32 records, which led to excess duty credit amounting to ₹ 23.78 lakh. Out of the above incorrect duty credits amounting to ₹ 12.41 lakh were observed in 10 records related to RLA Ahmedabad alone.

This was pointed to the Department/ Ministry in September/October 2015 their reply is awaited (January 2016).

#### **Incorrect discharge of advance authorization**

**5.3** As per paragraph 4.1.3 of the FTP- 2009-14, an Advance Authorization (AA) is issued to allow duty free import of inputs for (i) Physical Exports (including exports to SEZ), (ii) Intermediate supplies, (iii) Supply of goods to the categories mentioned in paragraph 8.2(b), (c), (d), (e), (f), (g), (i), and (j) of FTP, treated as Deemed Export and (iv) Supply of 'stores' on board of foreign going vessel.

The imported goods against the aforementioned Advance Authorization were exempted from all imported duties, including safeguard duty and anti-dumping duty leviable thereon under sections 8B and 9A of the said Customs Tariff Act, 1975, under notification no.96/2009-cus dated 11 September 2009 and 112/2009-cus dated 29 September 2009. The Export Obligation (EO) of the Authorization issued under notification no.96/2009-cus was to be fulfilled, in terms of condition 1(viii), by physically exporting their manufactured goods as per paragraph 4.1.3 (i) of FTP or by supplying their resultant products to exporters in terms of paragraph 4.1.3 (ii) of FTP. In case of failure to fulfil the conditions of Notifications, the Authorization holder was liable to pay the duty along with applicable interest in terms of condition (1) (iv) of the notification.

The notification no.112/2009-cus dated 29 September 2009, while allowing aforementioned duty exemption on imported goods against AA issued under

paragraph 4.1.3 (iii) of FTP, has limited the duty benefits by specifying, at paragraph 2, that the exemption from Safeguard Duty and Antidumping Duty shall not be available in respect of materials required for supplies of final goods covered under Sub-Clause (a), (b), (c), (i) and (j) of clause (iii) of the explanation appended to the notification, which includes supply of goods to Export Oriented Units under Sub-Clause (iii)(b).

M/s Kalpana Plastics Ltd., Kolkata and two other importers were granted (January 2010 to August 2012) five Advance Authorizations by the office of the Zonal DGFT, Kolkata with endorsement of customs notification no.96/2009-Customs dated 11 September 2009 on it against which they imported goods through Kolkata Port Commissionerate by availing duty exemption of ₹ 2.63 crore under notification no.96/2009-cus. However, scrutiny of related Export Obligation Discharge Certificates (EODC) issued by the ZDGFT, Kolkata and Statements of Supply/Export furnished by the Authorization holders to ZDGFT, Kolkata and Customs revealed that the EO of the aforesaid five Authorizations were discharged against their supply of goods to an EOU unit (viz., M/s Tara Holdings Pvt. Ltd.), which in terms of paragraph 8.2 (b) of the FTP is considered as Deemed Export. However, as the EO under notification no.96/2009-cus could only be discharged by physical exports or intermediate supplies made by the importer, the discharge of EO in the objected cases against the deemed export supplies was incorrect for which the importers were liable to pay total duty of ₹ 2.63 crore along with the applicable interest of ₹ 86.99 lakh in terms of condition (iv) of Notification *ibid*. The irregularity was also not noticed by the customs department who, in turn, cancelled (August 2012) the Bonds and the respective Bank Guarantees without recovering any duty from the importers.

The issue was initially taken up with Customs in October 2013 and subsequently reported to DGFT, Kolkata in May 2014. The DGFT, Kolkata in their reply (September 2014) contended that the objected Authorizations were redeemed on the basis of the Deemed export supplies as the firm had actually applied for Advance Authorization for Deemed export categories but the customs notification no.96/2009 was automatically endorsed on the copy of Authorization generated through DGFT server. The department was informed (March 2015) that their reply is not sustainable because neither the endorsement of notification no.96/2009-cus on all the objected Authorizations were amended till the date of audit/issue of EODC nor recovery of antidumping duty of ₹ 18.41 lakh applicable on the imported materials under notification no.11/2008-cus dated 23 January 2008 (as amended) was ensured at the time of deemed export supply to the EOU in compliance to the notification no.112/2009-cus justifying their argument.

The Custom Department while intimating (March and May 2015) the issue of demand notices to all the importers contended that the notification no.96/2009-cus also covers deemed export as it only specifies that the EO has to be discharged by exporting goods, which does not mean that the finished goods have to be physically exported.

The Customs Department was informed (June 2015) that their reply is not tenable because the export, as defined under Section 2(18) of Customs Act, 1962 means “taking out of India to a place outside India” which definitely means physical export but does not include the deemed Export supplies as specified under paragraph 4.1.3 (iii) of FTP covering the supplies to EOU located within India. Moreover, audit contention was also obvious from the fact that a separate notification no.112/2009-cus dated 29 September 2009 was already issued for allowing duty benefit on imports against Advance authorization issued for deemed Export under paragraph 4.1.3 (iii) of FTP.

Ministry of Commerce in respect of M/s Kalpana Plastics Ltd stated (August 2015) that supplies were made to EOU as deemed as such exempted from payment of all duties including antidumping duties.

The reply is not acceptable because supplies to EOUs are not exempted from antidumping and safeguard duties under notification No. 112/2009-cus (sub para 2 refers).

Ministry of Finance (Drawback Division) replied (January 2016) that:

- i) Para 3 of notification No. 112/2009-cus specifically provides for exemption to materials required for manufacture of final goods supplied to EOUs from the ADD.
- ii) The FTP provides for different allowable means for fulfilling the EO under the self contained AA scheme. No provision in FTP bars combining of exports/ supplies by different allowable means. Even the DGFT’s application form ANF 4 J and redemption form ANF 4F both refer to products or items as “exported/supplied”.
- iii) Notifications issued by Revenue including notification Nos 96/2009-cus and 112/2009-cus are required to be applied in the context of the scheme.
- iv) Exemption was in accordance with the FTP hence duty is not recoverable.

The reply of Ministry of Finance is not acceptable to Audit because:

- i) Para 3 of notification 112/2009-cus is for supply of imported goods “as such” to EOU and not for the supply of manufactured goods of AA holder to EOU. In the instant case the imported goods were not supplied “as such”,

rather final goods were supplied to EOU. Therefore, para 2 of notification 11/2009-cus read with explanation (b) annexed to the notification was applicable which specifically disallows exemption from safeguard and ADD in respect of materials supplied to EOUs/STP/EHTP which are required for final goods. Accordingly, ADD was recoverable if final goods as in the instant case are supplied by AA holder to EOU.

ii) The FTP only lays down different category of exports for which AA could be issued. However, the AA has to be issued Custom notification wise/export category wise as evident from paras 4.20, 4.20.2 of HBP, Vol. I.

The redemption form ANF 4F of AA refers to product or items as “exported/supplied” because the same form is used for redemption of all categories of AA. However, the guidelines annexed require separate set of procedures/documents for redemption of AA for Physical exports and deemed exports.

iii) Separate Customs notifications were issued (96/2009-cus and 112/2009-cus) to regulate exemption to AA for physical exports and deemed exports respectively which are binding on respective AA holders.

iv) Accordingly, duty exemption is regulated by compliance to conditions of notifications under which AA were issued. Failure to fulfill such conditions necessitates recovery of duty.

Reply in respect of remaining units is awaited (January 2016).

#### **Undue benefit to ineligible firm under SHIS scheme**

**5.4** Paragraph 3.10.3 of Handbook of Procedure (HBP), Vol-I, 2009-14 envisaged that if an applicant has availed Zero Duty EPCG Authorization during the year 2012-13, he shall not be eligible for Status Holders Incentive Scrip (SHIS) for exports made during that year.

Audit scrutiny revealed that M/s Raj Overseas, Panipat under Joint Director General of Foreign Trade, Panipat had taken the benefit of Zero duty EPCG scheme (Duty saved ₹ 0.59 crore) during 2012-13. However, the firm was also allowed benefit under SHIS scheme amounting to ₹ 1.41 crore for the exports made during the year 2012-13 (SHIS Licence No.3310027774 dated 30 September 2013) in contravention to aforesaid provision. This resulted into incorrect grant under SHIS scheme amounting to ₹ 1.41 crore which is recoverable from the licensee.

On this being pointed out (November 2013), the department stated (June 2014) that assessee had been directed to surrender the said amount. Further progress is awaited (January 2016).

### **Grant of SHIS duty credit for services rendered beyond the application period**

**5.5** In terms of paragraph 3.16.1 (b) of the Foreign Trade Policy (FTP) 2009-14, Status Holders of sectors specified in paragraph 3.16.4 shall be entitled to a Duty Credit Scrip at the rate of 1 per cent on Free on Board (FOB) value of exports made during the period from 2009-10 to 2012-13. As per paragraph 3.10.3 (a) of Handbook of Procedure (HBP) Vol-I, 2009-14, the last date for filing Status Holders Incentive Scrip (SHIS) application for exports made during 2009-10 to 2012-13 shall be 31 March of 2011/ 2012/2013/2014 respectively.

Audit scrutiny of the SHIS licences issued by the Regional Licensing Authority (RLA), Coimbatore revealed that in respect of 18 applications filed by 17 exporters during the year 2011-12/2013-14, the duty credit scrips were granted on exports made beyond the financial year for which the applications were made, resulting in excess grant of SHIS credit to the tune of ₹ 43.58 lakh, which is recoverable with interest.

On this being pointed out (January 2015), the department reported (March 2015) recovery of excess duty credit of ₹ 28.46 lakh from 14 exporters. Reply in respect of remaining three cases is awaited (January 2016).

### **Grant of SHIS duty credit scrip to companies already issued Zero duty EPCG and vice-versa**

**5.6.** Status Holders Incentive Scrip (SHIS) can be applied for in the year subsequent to year of export. As per Para 3.10.3 (b) of the HBP, in case an applicant has availed Zero Duty EPCG authorisation during the year 2014-15, they shall not be entitled to SHIS for that year (i.e. for export made during the respective previous year. Such SHIS applications will be rejected and Para 9.3 (late cut for delay in filing application) shall also not be applicable.

Scrutiny of cases revealed that 74 SHIS scrips for duty credit of ₹ 61.57 crore were irregularly issued in cases where Zero duty EPCG authorisation had already been issued to the same firm in the same year.

Audit noticed that licenses/scrip had been incorrectly issued in nine cases under seven<sup>37</sup> RLAs. However, in some cases the process was not mapped in the application and licenses/scrip were cancelled before issue indicating that the database of the Central Server was not updated at the time of cancellation of the licenses/scrip.

RLA, Ahmedabad stated (September 2015) that the firm has been directed to submit SHIS licence for further necessary action.

Reply from RLA, Surat, Gandhidham, Bangalore, Varanasi, Kochi and Ludhiana is awaited (January 2016).

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<sup>37</sup> Bengaluru, Ahmedabad, Surat, Gandhidham, Varanasi, Kochi and Ludhiana



### **Irregularities in grant of duty credit under VFFM schemes**

**5.7** Chapter-3 schemes viz. Vishesh Krishi Upaj Yojana (VKUY), Focus Market Scheme (FMS), Focus Product Scheme (FPS) and Market Linked Focus Product Scheme (MLFPS) are jointly known as the VFFM schemes.

#### **Excess grant of duty credit under VFFM schemes due to grant of entitlements on FOB values in excess of custom supplied values**

**5.7(a)** Under the FTP most of the benefits to exporters are based on Shipping Bill information. After the online filing and clearance of Shipping Bills the information is communicated by Customs to DGFT.

Test check of License files in RLA, Amritsar, Panipat, Ludhiana, Chandigarh, Vadodara, Ahmedabad, Surat, Rajkot, Hyderabad and Kolkata revealed that all the items of each SB of similar description and falling under the same CTH, admissible to the same rate of VFFM credit, had been clubbed under one serial number against each SB. This had resulted in mis-match of FOB value of SBs at item level, as claimed in the VFFM applications, in comparison to the Customs values at item level. In the case of 122,106 Shipping bill records (22,453 License files), duty credit of ₹ 720.46 crore were clubbed under one serial number which could not be verified with the customs certified FOB values of the SB items at item level.

Similarly, Audit noticed that in two cases (RLA, Ahmedabad), the same Shipping Bills were used in different applications on which duty credit scrip under different schemes of Chapter 3 of the FTP were granted, resulting in incorrect duty credit. Reply from RLA, Ahmedabad is awaited.

This was pointed to the Ministry in October 2015, their reply is awaited (January 2016).

#### **5.7(b) Different FOB values of same SB item for VFFM Schemes and DEPB Scheme**

Same shipping bills could be used for duty credit entitlement under DEPB Scheme of chapter 4 of the FTP and simultaneously for VFFM scheme under Chapter-3.

A comparison of the FOB values of such SBs which had been used for availing two different scheme benefits, viz. DEPB and VFFM, during the period 2014-15, revealed that in 44 cases (RLA, Kolkata, Mumbai, Chennai, New Delhi, Ahmedabad, Cochin and Pune) where same item were used in the both the schemes, the FOB values were different, even the Bank Realisation Certificate (BRC) number, date of the SB also matched, indicating that the claims under both schemes were made post-realisation claims.

Duty credit calculated on the lower of the two FOB values, allowed excess duty credit of ₹ 5.20 crore in the above 44 cases.

Audit observed that the FOB values were modified after considering values as per Shipping Bill or the bank realization information available in the relevant tables, indicating the need to improve input control to avoid grant of excess duty credit.

Cross checking of eight License files in RLA, Kolkata revealed that there was a mismatch of item level FOB value of SB items as claimed in the VFFM applications, when compared with DEPB item level values, because of clubbing of all items of each SB of similar description falling under the same CTH with same rate of VFFM credit under one serial number against VFFM claims.

Thus, there was inadequate compliance to ensure submission and recording of crucial data like FOB value of SB at item level for grant of duty credit benefits.

This was pointed to the Department/Ministry in August/October 2015, their reply is awaited (January 2016).

#### **5.7(c) Grant of duty credit under VFFM schemes where Export date is incorrect**

Shipping bills (SBs) information relating to VFFM duty entitlement claims revealed that export date was before the Let export order (LEO) date for 160018 SBs. Duty credit under VFFM schemes amounting to Rs.959.37 crore was allowed against 160018 such SBs during the period 2014-15.

Test check revealed that in 2342 SBs of VFFM under RLA Panipat, Chandigarh, and Visakhapatnam duty credit of ₹ 5.62 crore was allowed wherein Export date was before the LEO/ shipping bill date given as export date instead of LEO date.

Reply from RLA, Panipat, and Visakhapatnam is awaited (January 2016).

#### **Domestic Tariff Area (DTA) clearances**

**5.8** As per serial no.3 of the table annexed to notification no.23/2003-CE dated 31 March 2003 read with condition 3 (i), if the goods cleared by a 100 per cent EOU in DTA are manufactured wholly from the raw materials manufactured in India, it will be liable to pay duty equal to excise duty leviable under section 3 of the Central Excise Act, 1944 and in case the unit uses the imported raw materials, excise duty equal to aggregate of duties of customs is payable as provided at serial no.2 of the aforesaid notification. Section 53 of the Special Economic Zones (SEZ) Act, 2005 specifically state that a SEZ shall be deemed to be a territory outside the customs territory of India for the purpose of undertaking the authorized operations.

Paragraph 9.21 of the FTP defines DTA as area within India which is outside SEZ and EOU/EHTP/STP/BTP. Further, section 30 the SEZ Act, 2005 stipulates that any goods removed from a SEZ to the DTA shall be chargeable to duties of customs including anti dumping, countervailing and safeguard duties under the Customs Tariff Act, 1975, where applicable as leviable on such goods when imported. Thus, procurement of goods from SEZ is mandated to be treated as import and such procurement could not be treated as 'indigenous procurement' for the purpose of paying excise duty under serial no.3 of aforesaid notification.

Audit noticed that M/s Shri Ambica Polymer Pvt. Ltd., (EOU), under the jurisdiction of Central Excise Commissionerate, Ahmedabad III, during 2010-14, cleared its finished goods (HDPE/PP Woven fabric/waste generated) in DTA on payment of Central Excise duty under serial no.3 of aforesaid notification. However, the principal raw materials (Polypropylene and Masterbatch) of finished goods were procured from M/s Reliance Industries Ltd., Jamnagar, a SEZ unit. The audited entity incorrectly treated the supplies received from SEZ unit as raw materials procured from India and discharged its duty liability on finished goods accordingly under serial no.3 of notification above instead of serial no.2 which resulted in short payment of duty to the tune of ₹ 54.14 lakh.

On this being pointed out (May 2014), the superintendent (CE) Central Excise & Customs forwarding (September 2014) response of the unit contested the audit observation on following grounds:-

- a) Section 30 of the SEZ Act, 2005 has no applicability to the clearances made by an EOU for which provisions of Central Excise Act and Rules should be adhered to.
- b) Honorable High Court of Gujarat in case of Essar Steel Ltd. Vs. UOI {2010 (249) ELT 3 (GUJ)} specifically mentioned (paragraph 20) that SEZ is located within India.
- c) Honorable High Court of Gujarat in case of Varsha Exports Vs. UOI [2000 (71) ECC 834] has also pronounced that Kandla free trade zone is a part of India.

Reply of the department is not tenable in view of the following facts:-

- (i) Since the EOU procured its raw material from the SEZ unit, the transaction has to be seen in context of section 30 of the SEZ Act which has a direct impact on the duty structure for DTA clearance of the EOU. Hence, it is inappropriate to say that SEZ Act has no applicability on DTA clearance of the EOU.

(ii) The issue decided by the High Court in case of M/s Essar Steel Ltd., was entirely different as it dealt with issue of levy of export duty on supplies to SEZ units and the wordings of the case should be read in that context only. Also, section 30 of the SEZ Act clearly stipulates that levy of duties of customs on DTA clearance of goods by SEZ units which clearly show that those supplies are treated as imports. For these transactions, bills of entry were also filed which is an import document.

The High Court pronouncement, in case of M/s Varsha Exports is not relevant to the above audit observation since it pertains to the period before enactment of SEZ Act 2005 (Even Kandla SEZ was known as 'Kandla free trade zone (KFTZ)' during the period of the judgment.

**5.9** As per paragraph 6.8 (a) of Foreign Trade Policy (FTP) 2009-14, units, other than gems and jewellery units, may sell goods upto 50 per cent of FOB value of exports, subject to fulfillment of positive NFE, on payment of concessional duties. Within entitlement of DTA sale, unit may sell in DTA, its products similar to goods which are exported or expected to be exported from units. Units which are manufacturing and exporting more than one product can sell any of these products into DTA, up to 90 per cent of FOB value of export of the specific products, subject to the condition that total DTA sale does not exceed overall entitlement.

M/s Godavari Bio Refineries Ltd., a 100 per cent EOU was issued LOP in April 2011 (as amended) for manufacture and export of chemicals viz 'Crotonaldehyde, Paraldehyde, Ethyl Acetate', etc. The unit cleared into DTA during 2013-14 to 2014-15 products viz "Paraldehyde" classifiable under CTH 29122990 and "Acetaldehyde" classified under CTH 29121200 valued at ₹ 2.04 crore and ₹ 3.98 crore respectively. Even though no exports were made of the products cleared in DTA during this period. As products 'Paraldehyde' and 'Ethyl Acetate' were not exported during 2013-15, DTA clearance made on concessional rate of duties is irregular. Accordingly, the differential duty of ₹ 52.06 lakh on DTA clearance is recoverable.

On this being pointed out (March/July 2015), the Ministry replied (January 2016) that the licensee fulfilled the condition regarding achievement of positive NFE during the relevant period and the products cleared in DTA are similar goods as stipulated in Para 6.8(a) of FTP 2009-14. Therefore the licensee could sell these products into DTA subject to the condition that total DTA sale does not exceed overall entitlement.

The reply is not acceptable Audit is not objecting to DTA clearances of these products either because of non-achievement of NFE or exceeding the overall entitlement. Because DTA clearances of the "specific" product are allowed

within prescribed percentages of its FOB value only when the product is actually exported. Here reliance on the word “specific” in paragraph 6.8(a) of FTP is of prime consideration to decide eligibility of its clearance in DTA apart from fulfillment of other conditions. In the instant case the products in question were not exported during the relevant period but were cleared in DTA.

#### **Issue of Licenses to firms in the Denied Entity List (DEL)**

**5.10** A Denied Entity List (DEL) is maintained as per provisions of Enforcement Division of DGFT Circular vide F.No. 18/24//HQ/99-2000/ECA II dated December 31, 2003, read with Rule 7 of Foreign Trade (Regulation) Rules 1993. An IEC holder is refused any further License if put under DEL for any violation of the FTP or FTDR Act.

Audit scrutiny revealed that in 349 cases test checked from records at 17 RLAs<sup>38</sup> the Department issued License with duty credit / cif value of ₹ 80.78 crore without checking the DEL status at the time of issue of license.

In response to the audit queries RLA Moradabad, Panipat and Ludhiana stated that licenses/scrip were issued after removal from DEL which is incorrect because the firms were issued licenses without withdrawing them from DEL (Central Server).

Further, issuance of licenses to entities in DEL, keeping DEL order in abeyance was not in order, since as per Circular of December 2003 and provision of Foreign Trade (Regulation) Rules 1993, an IEC holder could not be issued a license, once black listed under DEL.

Moreover, it was noticed from the RLA replies that insertion into and removal from DEL was not being updated into the central DEL database promptly, which has resulted in creation of an unreliable DEL list.

The DGFT EDI system did not have proper mapping of the business rules for barring entities in DEL from submitting e-COM applications or for issuance of authorisation/duty credit scrip to such entities. DEL status is being checked manually on a case-to-case basis, leading to lapses and irregular issuance of licenses.

Reply from RLA Chennai, Coimbatore, Cochin, Madurai, Hyderabad, Kolkata, Mumbai, Surat, Ahmedabad, Vadodara, Kanpur, Delhi and Jaipur is awaited (January 2016).

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<sup>38</sup>17 RLA: Kolkata, Chennai, Coimbatore, Cochin, Kochi, Madurai, Vadodara, Ahmedabad, Rajkot, Jaipur, Hyderabad, Mumbai Delhi, Kanpur, Moradabad, Panipat, Ludhiana.,



## CHAPTER VI

### INCORRECT APPLICATION OF GENERAL EXEMPTION NOTIFICATIONS

The Government under section 25 (1) of the Customs Act, 1962 is empowered to exempt either absolutely or subject to such conditions as may be specified in the notification, goods of any specified description from the whole or any part of duty of customs leviable thereon. Some illustrative cases of non-levy/short levy of duties aggregating ₹ 1.52 crore due to incorrect grant of exemption noticed (October 2013 to January 2015) are discussed in the following paragraphs.

#### **Incorrect exemption of CVD without required test report**

**6.1** In terms of notification no.7/2012-CE dated 17 March 2012, as amended by notification no.8/2013 dated 1 March 2013, 'All goods of cotton, not containing any other textile material' falling under Chapters 61, 62 and 63 of the Central Excise Tariff Schedule (except 6309 00 00 and 6310) attract countervailing duty (CVD) equivalent to Central Excise duty at the concessional rate of 6 per cent ad valorem instead of the tariff rate of 12 per cent ad valorem.

The CBEC vide circular no.23/2004-cus dated 15 March 2004, issued instruction that in cases where 25 percent of samples are required to be sent for testing hazardous dyes to the Textiles Committee Laboratory under the Ministry of Commerce, the testing for composition should also be done at the Textile Committee laboratory to avoid duplication. However, where no test of azo hazardous dyes are required as per the DGFT notification, the testing for composition should be carried out at the Central Revenue Control Laboratory (CRCL) - in house testing laboratory.

Audit scrutiny of imports of readymade garments through the Petrapole Land Custom Station (LCS) for the period from 1 April 2013 to 31 March 2014 revealed that garments declared as made of cotton were routinely allowed benefit of assessment at concessional CVD rate of 6 per cent instead of the tariff rate of 12 per cent without drawal of 25 percent of samples and testing thereof to confirm the composition of the goods. Instead, a combined Azo dye cum Composition test report from Bangladesh University of Textiles (BUT), Dhaka, filed by the importers, was relied upon to allow the benefit of concessional rate of CVD. However, the BUT, Dhaka was not approved as a testing agency for acceptance of fabric composition tests, either by the CBEC or the DGFT. Accordingly, grant of CVD exemption of ₹ 41.75 lakh in 42 test checked imports without required test report, was irregular.

On this being pointed out (March 2014), the Customs department contended (February 2015) that the BUT, Dhaka's pre-shipment certificate was acceptable as it was an accredited entity to issue the said certificate because the Deputy High commission for the people's Republic of Bangladesh informed the Customs that BUT, Dhaka was authorized by the Government of Bangladesh to issue the certificate regarding Azo and hazardous dyes.

The Department was informed (April 2015) that their reply was not tenable because the pre-shipment certificate was required as per conditions of Import Policy and instructions issued by Ministry of Commerce and Ministry of Finance (March 2004) to ensure absence of the hazardous dye in the imported textiles & Textiles articles and not for composition i.e textile/non-texturised or containing material other than cotton. But in none of the above mentioned instructions, the MoC/MoF instructed to accept the Textile/Textile articles composition certification in these Pre-shipment certificates.

Audit is flagging the issue not about presence of hazardous dyes in the imported material but clearance of the imported textile material at concessional rate of duty without testing composition of textile material i.e. "Whether containing textile material other than cotton or not" for which pre shipment certificate of BUT is not sufficient. Tests for composition of imported textile/textile articles have to be carried out either at the In-house Central Revenue Control Laboratory (CRCL) or Textiles Committee laboratory under the Ministry of Commerce for deciding textile material content.

Ministry in their reply (December 2015) reported that after review of similar cases SCNs have been issued to concerned importers for differential duty amounting to ₹ 1.14 crore which includes amount of ₹ 41.75 lakh pointed out by audit.

### **Incorrect exemption of Basic customs duty**

**6.2** 'Projectors' that are solely or principally used in an automatic data processing system are classifiable under Custom Tariff Heading (CTH) 85286100. Whereas other projectors which are capable of working with automatic data processing machines as well as television and video are classifiable under CTH 85286900.

M/s MIRC Electronic Ltd., had imported (March to June 2013) eight consignments of 'Projectors' of various models through ACC, Mumbai. These goods were classified under CTH 85286100 and assessed at concessional rate of duty under serial no.17 of notification no.24/2005-cus dated 1 March 2005.



Audit noticed from the products catalogue that the imported models of 'Projectors' were having video input and Composite Video input provision and hence could be used with an automatic processing system as well as with Television and Videos. Accordingly, the imported goods merited classification under CTH 85286900 and leviable to BCD at the rate of 10 per cent. Thus, extending the benefit of aforesaid exemption notification and the misclassification resulted in short levy of duty of ₹ 40.85 lakh.

On this being pointed out (July 2015), the Ministry while not admitting the observation stated (December 2015) that as per the catalogue submitted by the importer, the projector models imported (112i, 114i ST) does not have S-Video input. However, to protect the revenue interest a demand cum less charge notice has been issued to the importer. Documentary evidence in support of their reply has not been furnished.

The reply is not tenable because the website of the supplier [www.infocus.com/projetors/IN114](http://www.infocus.com/projetors/IN114) or IN112 clearly specifies that these projectors have S-Video connections.

**6.3** Similarly, M/s PID Pvt. Ltd., and four others had imported (March to June 2013) seven consignments of 'Projectors' of various models through ACC, Mumbai. These goods were classified under CTH 85286100 and assessed at concessional rate of duty under serial no.17 of notification no.24/2005-cus dated 1 March 2005.

Audit noticed from the products catalogue that the imported models of 'Projectors' were having video input and Composite Video input provision and hence could be used with an automatic processing system as well as with Television and Videos. Accordingly, the imported goods merited classification under CTH 85286900 and leviable to BCD at the rate of 10 percent. Thus, extending the benefit of aforesaid exemption notification and the misclassification resulted in short levy of duty of ₹ 14.66 lakh.

This was pointed to the Department/Ministry in April 2014/July 2015, their reply has not been received (January 2016).

#### **Exemption to Pre-painted coils of iron or non alloy steel**

**6.4** 'Flat rolled products of iron or non alloy steel' are classifiable under Chapter 72 in accordance with the specification therein. Further as per serial no.334 of notification no.12/2012-cus dated 17 March 2012 (as amended) BCD on all goods other than seconds and defective falling under Customs tariff heading (CTH) 7210 is leviable at the rate of 7.5 per cent. While, seconds and

defectives goods falling under Chapter 72 are leviable at the rate of 10 per cent.

M/s Garg Sales Corporation imported (May to July 2014) 14 consignments of 'MS Pre-painted in coils/MS Defective Pre-painted in coils' through ICD, Tughlakabad. The goods were classified under CTH 72109090 and assessed to concessional duty BCD at the rate of 5 per cent after granting benefit of serial no.330 of aforesaid notification.

Audit scrutiny revealed that aforesaid goods are not eligible for benefit under aforesaid serial no.330, rather are covered under serial no.334 of the notification except seconds and defective and leviable to BCD at the rate of 7.5 per cent. Thus, incorrect grant of notification benefit had resulted in short levy of duty amounting to ₹ 28.03 lakh.

This was pointed to the Department/Ministry in August 2014/July 2015, their reply is awaited (January 2016).

#### **Refund of special additional duty without fulfillment of conditions**

**6.5** The additional duty of custom (SAD) collected at the rate of 4 per cent under sub-section (5) of Section-3 of the Custom Tariff Act, 1975 on goods imported into India for subsequent sale may be refunded to the importer subject to compliance with the conditions of the notification no.102/2007-cus dated 14 September 2007. The conditions 2(b) of notification specify that refund of SAD is available only if the importer, while issuing the invoices for sale of the imported goods, shall specifically indicate in the invoice that in respect of the goods covered therein, no credit of the additional duty of customs levied under sub section (5) of section 3 of the Customs Tariff Act, 1975 shall be admissible.

To ensure the compliance of this condition the importers were required to submit the copy of the sale invoices in terms of condition 2(e) (ii) of the aforesaid notification. However, on representation from the importers to minimize the paper work, the CBEC vide circular no.16/2008-cus {Para 2(iii)} dated 13 October 2008 decided to accept the copy of the sale invoices in the electronic form (including the form of CD) subject to submission of a paper declaration by the applicant indicating the invoice numbers contained in the media and subscribing to their truthfulness.

M/s. A. M. Cables Pvt. Ltd. and four other importers were sanctioned (August 2012 to May 2014) ₹ 13.96 lakh by the Kolkata (Port) Commissionerate as refund of SAD paid on their imported goods which were claimed to be subsequently sold in India. In all these cases, except one, the applicants had

submitted the copy of sale invoices in the electronic form in CD, as an evidence of sale of their imported goods. However, scrutiny of the sale invoices of all these cases revealed that none of these sale invoices raised by the applicants on the buyers of the imported goods had the endorsement of the non-admissibility of Cenvat credit on it, as required under condition 2(b) of the notification dated 14 September 2007. These claims of refund did not fulfil the prescribed conditions of notification dated 14 September 2007 accordingly, grant of SAD refund of ₹ 13.96 lakh was irregular.

On this being pointed out (October 2013, January 2014/January 2015) the department intimated (December 2014) recovery of ₹ 3.51 lakh from two importers (M/s A.M. Cables Pvt. Ltd., and M/s Select Marketing overseas Enterprise). In respect of other three importers, the department contended (June 2015) that the importers in their replies expressed helplessness in including the required endorsement on the soft copy of sale invoices as there was no option of affixing self declaration on the soft copy of sale invoices, for which a self declaration on importer's letter head with the required endorsement enclosed with the invoices was accepted by the department for fulfilment of the requirement of conditions of notification.

The Department was informed (June 2015) that importer's contention that the required endorsement was not possible in the soft copy of the sale invoice was not correct as similar endorsement was found to be there in the soft copy of sale invoices submitted in respect of other refund claims. Moreover, a separate self declaration/endorsement by importers on their letter head along with the sale invoices does not fulfil the motive behind the requirement of said endorsement as per prescribed conditions of aforesaid notification dated 14 September 2007, as it could not stop the buyers from availing the CENVAT credit on such purchase invoices which may result in double refund. Response of the department was awaited (January 2016).

The matter was reported to the Ministry in September 2015, their response is awaited (January 2016).

#### **Exemption to 'Tricycles, scooters, pedal cars and similar wheeled toys and parts thereof**

**6.6** 'Tricycles, scooters, pedal cars and similar wheeled toys dolls' etc. are classifiable under Customs tariff heading (CTH) 9503 and assessable to BCD at the rate of 10 per cent.

M/s National Impex imported (July 2013 to March 2014) 'Toy children bike/Scooter Car, Tricycles' through ICD, Tughlakabad. The imported goods

were classified under CTH 95030090 and assessed to BCD at the rate of 10 per cent with tariff concessions of 43 per cent under notification no.72/2005 dated 22 July 2005 (serial no.427 of part A).

Audit scrutiny revealed that benefit of serial no.427 of part A of aforesaid notification is applicable to goods other than 'Tricycles, scooters, pedal cars and similar wheeled toys, dolls, carriages weapons and parts' thereof. However, in the instant case the imported goods were baby tricycles/children toy, car/scooters etc. and similar wheeled toys of a kind used as ride on vehicles for children and thus do not eligible for benefit of serial no.427 of part A of custom notification no.72/2005. Thus incorrect grant of notification benefit resulted in short levy of duty amounting to ₹ 12.49 lakh.

On this being pointed out (July 2015), the Ministry reported (December 2015) issue of demand cum show cause notice to the importer.

## CHAPTER VII MIS-CLASSIFICATION OF GOODS

During test check (August 2014 to June 2015) of records, we noticed that assessing officers mis-classified various imported goods which caused short levy/non levy of customs duties of ₹ 1.70 crore. They are discussed in the following paragraphs.

### **Non levy of safeguard duty due to misclassification**

**7.1** As per the notification no.3/2014-cus (safeguard) dated 28 August 2014, dehydol i.e. saturated fatty alcohol (C12-C14) falling under CTH 382370 originating in, or exported from Thailand and imported into India is subject to levy of safeguard duty at the rate of 20 per cent ad valorem. 'Dehydol saturated fatty alcohols' merit classification under Customs tariff heading (CTH) 38237090 and attract safeguard duty.

Audit scrutiny revealed that M/s BASF India Ltd. had imported (November /December 2014) five consignments of 'Dehydol' from Thailand through JNCH, Nhava Sheva, Mumbai. The imported goods were classified under Customs tariff heading (CTH) 38249090 as 'Chemical for Allied industry – other' instead of under CTH 382370 and assessed without levy of Safeguard duty. There was no evidence of payment of safeguard duty through manual challan either. This had resulted in non levy of safeguard duty of ₹ 71.69 lakh.

The matter was pointed to the Department/Ministry in March/ 2015, their response is awaited (November 2015).

### **Shilajit misclassified as 'Other – mineral substances not elsewhere specified'**

**7.2** 'Mineral waxes' e.g. Shilajit are classifiable under Customs tariff heading (CTH) 27 and attract Countervailing duty (CVD) at the rate of 14 per cent.

M/s S.K. Trading Company and four others imported (July 2013 to January 2015) 21 consignments of 'Shilajit stone (Mineral product)' through ICD, Tughlakabad. Audit scrutiny revealed that the item was misclassified under CTH 25309099 as 'Other – mineral substances not elsewhere specified' and exempted from levy of CVD. However, Shilajit stone known as asphaltum is classifiable under CTH 27149090 as 'Other-asphaltites and asphaltic rocks' attract CVD at the rate of 14 per cent. This resulted in short levy of duty amounting to ₹ 25.45 lakh.

This was pointed to the Department/Ministry in January/ 2015, their reply is awaited (January 2016).

### **Rice mill rubber roller misclassified as rice mill machinery**

**7.3** 'Rice mill rubber rollers/Paddy de-husking rubber rollers' are classifiable under Customs tariff heading (CTH) 40169990 as 'Other articles of rubber' and leviable to basic customs duty at 10 per cent. The CBEC (Board) in their circular no.2/1990-CX.3 dated 11 January 1990 also clarified that 'Rubber rolls' used in 'Rice mill' merit classification under CTH 4016. Further, Central Excise notification no.12/2012 (serial no.155) dated 17 March 2012 clearly specifies classification of 'Rice rubber rolls' for 'Rice machinery' under CTH 4016.

M/s KBM International and three others imported (August 2013 to January 2014) 21 consignments of 'Rice mill rubber rollers/Paddy de-husking rubber rollers' through Sea Customs, Chennai. The goods were incorrectly classified under CTH 84379020 as 'Parts of rice mill machinery' and assessed to basic customs duty at the rate of 7.5 per cent/2.5 per cent/nil rate prevalent during the period of import. Thus, incorrect classification resulted in short levy of duty of ₹ 23.03 lakh.

On this being pointed out (June 2014), the department stated (August 2014/February 2015) that demand notices have been issued to all the four importers (M/s KBM International, M/s Om Rubbers, M/s Nirmala Agencies and M/s Srinivas Mill stores). The department also stated that the classification of 'Rubber roller' under CTH 4016, based on Central Excise notification no.12/2012 dated 17 March 2012 was not legal and correct and the goods were to be classified as per the Interpretative Rule read with section note and chapter note.

The reply of the department is not acceptable because:-

- (i) The Board in their circular no.2/1990-CX.3 has clarified that 'Rubber roller' used in 'Rice Mill' merit classification under CTH 4016.
- (ii) As per 3 (a) of the Interpretative Rules, the heading which provides the most specific description should be preferred to headings providing a more general description. 'Rubber roller' is more specific than 'Parts of Rice mill machinery'.

(iii) Even though 'Rubber roller' is made up of metal and rubber, the generic description of the imported articles is 'Rubber roller' and hence, the classification of the goods has to be made as 'Articles of rubber' under CTH 4016.

(iv) In the case of Collector Vs. Kohinoor Rubber Mills – 1993 (67) ELT 816 (Tribunal) it was held that Rice rubber rolls are classifiable under sub-heading 4016.99. This decision was upheld by the Hon'ble Supreme Court as reported in 1997 (92) ELT 36 (SC).

This was communicated to the Department/Ministry in June/ 2015, their response is awaited (June 2015).

The Ministry had accepted (November 2015) similar observation pointed in Audit Report No. 8 of 2015 (sub paragraph No. 6.8).

#### **'Woven fabrics' misclassified as 'Other woven fabrics' containing synthetic filaments**

**7.4** 'Woven fabrics' containing 85 per cent or more by weight of polyester filaments are classifiable under Customs tariff heading (CTH) 540761/540769 and leviable to BCD at the rate of 10 per cent or ₹ 36 per sqm whichever is higher.

M/s J&J Overseas Inc. imported (July/September 2014) three consignments of 'Polyester viscose fabric containing 90 per cent polyester filament yarn and 10 per cent viscose yarn' through ICD, Tughlakabad. Audit examination revealed that imported goods were classified under CTH 54077200 as 'Other woven fabrics' containing 85 per cent or more by weight of synthetic filaments-dyed and BCD was levied at ₹ 24 per sqm instead of higher rate of 10 per cent or ₹ 36 per sqm. This resulted in short levy of duty amounting to ₹ 13.77 lakh.

This was pointed out to the Department/Ministry in December 2014/, their reply is awaited (January 2016).

#### **'Articles of wood' misclassified as 'wooden sticks' for manufacture of walking sticks**

**7.5** 'Articles of wood' classifiable under Customs tariff heading (CTH) 4421 attract CVD at the rate of 12 per cent.

M/s Shree Sai Overseas imported (April 2014 to July 2014) six consignments of 'Wooden sticks (size 74 mm to 114 mm) through ICD, Tughlakabad. The department classified the imported goods under CTH 44042010 as 'Wooden sticks, roughly trimmed but not turned, bent or otherwise worked suitable for

manufacture of walking sticks, tool-handles, split pole etc', and exempted it from CVD. As the imported wooden sticks being very small in size (74-114 mm) are unsuitable for manufacturing of walking sticks etc, hence are classifiable under CTH 44219090 as 'Other articles of wood' attracting CVD at the rate of 12 per cent. Further, the country of origin certificate also confirms that the imported goods are classifiable under CTH 44219090. Thus misclassification resulted in short levy of duty of ₹ 13.14 lakh.

Ministry reported (December 2015), issue of demand notice for ₹ 13.14 lakh. Further progress is awaited.

#### **'Crude palm stearin' misclassified as 'Other Oil'**

**7.6** The Board vide customs circular no.31/2011 dated 26 July 2011 had clarified that 'Crude palm stearin' shall be assessed under CTH 38231111 and instructed its field formations to finalise all the pending cases accordingly. Accordingly, 'RBD palm kernel stearin' classifiable under Customs tariff heading (CTH) 38231112 attracts BCD at the rate of 20 per cent.

M/s Cargill India Pvt. Ltd., imported (April 2012) one consignment of 'RBD palm kernel stearin' through JNCH, Nhava Sheva. The department assessed the goods under CTH 15132910 levying BCD at the rate of 7.5 per cent instead of 20 per cent. This has resulted in short levy of duty of ₹ 11.55 lakh.

On this being pointed out (May 2015), the Ministry reported (January 2016) issue of demand cum show cause notice to the importer.

#### **'Vegetable saps and extracts' misclassified as 'Other acyclic, alcohols and their halogenated derivatives'**

**7.7** 'Vegetable saps and extracts' are classifiable under CTH 1302 and attract BCD at the rate of 15 per cent.

M/s Oriflame India Pvt. Ltd., imported (October 2013 to November 2014) 'TYROSTAT 09 (Water, Glycerin, Rumex Occidental extract)' through ICD, Tughlakabad. Audit scrutiny revealed that imported goods were classified as 'Other acyclic, alcohols and their halogenated, sulphonated, nitrated or nitroated derivatives' under CTH 29054900 and levied BCD at the rate of 7.5 per cent. Imported goods of the herb 'Rumex Occidental' are vegetable extracts and therefore merit classification under CTH 1302 instead of under CTH 2905. This resulted in short levy of duty amounting to ₹ 11.27 lakh.



This was brought to the notice of the Department/Ministry in December 2014, their reply is awaited (January 2016).

**New Delhi**  
**Dated:**

**(DR. NILOTPAL GOSWAMI)**  
**Principal Director (Customs)**

**Countersigned**

**New Delhi**  
**Dated:**

**(SHASHI KANT SHARMA)**  
**Comptroller and Auditor General of India**



# ANNEXURES



**Annexure 1: Duty evasion cases detected by DRI (Scheme-wise)**

(Reference Paragraph 1.17)

Cr.₹

S.No	Scheme	FY 11		FY 12		FY 13		FY 14		FY 15	
		No. of cases	Duty	No. of cases	Duty	No. of cases	Duty	No. of cases	Duty	No. of cases	Duty
1	Misuse of End-Use & Other Notification.	26	100.55	54	304.84	39	67.79	38	1211.67	18	110.18
2	Misuse of EPCG	10	3.33	6	25.72	13	179.55	22	583.08	49	289.11
3	Undervaluation	197	132.12	184	466.17	210	282.43	140	432.71	85	285.64
4	Mis-declaration	91	110.19	111	844.44	298	2392.26	102	224.22	52	172.42
5	Drawback	102	81.42	13	25.93	71	1590.14	17	80.50		
6	Misuse of EOU/EPZ/SEZ	4	0.04	6	9.66	7	39.07	3	6.90	6	37.50
7	Misuse of DEPB	34	3.80	26	23.93	16	22.77	5	3.09		
8	Misuse of DEEC/ Advance licence	18	264.62	1	0.10	6	139.73	1	0	11	1077.15
9	Others	99	130.40	97	27.43	49	28.92	366	570.55	186	953.54
	<b>Total</b>	<b>581</b>	<b>826.47</b>	<b>498</b>	<b>1728.22</b>	<b>709</b>	<b>4742.66</b>	<b>694</b>	<b>3112.72</b>	<b>407</b>	<b>2925.54</b>

**Annexure 2: SEIZURES OF SPECIFIED COMMODITIES**

(Reference Paragraph 1.18)

Cr.₹

S. No	Commodity	FY 11		FY 12		FY 13		FY 14		FY 15	
		ALL INDIA	DRI	ALL INDIA	DRI	ALL INDIA	DRI	ALL INDIA	DRI	ALL INDIA	DRI
I	Machinery parts	249.76	106.61	133.71	113.34	69.50	38.78	563.18	535.67	447.10	444.34
II	Veh./Vessel/Air-crafts	24.89	1.13	415.40	274.61	306.08	191.15	472.89	327.29	62.66	54.09
III	Gold	9.34	0.25	46.43	8.25	99.35	44.80	692.35	245.92	1119.11	274.80
IV	Narcotic drugs	58.33	16.72	1711.93	1653.81	969.16	194.84	451.98	209.00	290.59	102.41
V	Electronic items	167.04	21.49	189.98	4.06	71.66	13.14	37.85	19.48	17.98	6.54
VI	Foreign Currency	3.83	1.36	35.55	0.27	9.96	0.06	14.49	5.97	25.09	3.65
VII	Diamonds	11.52	1.00	24.66	15.50	9.46	5.00	6.62	5.27	14.81	10.50
VIII	Indian Currency	2.11	1.16	18.20	0.31	4.87	2.44	5.20	2.12	3.71	1.30
IX	Indian fake currency	1.81	1.50	2.64	2.19	2.24	2.02	1.13	1.09	1.24	0.64
X	Fabric/silk yarn etc	187.7	36.45	158.79	52.38	49.89	5.45	24.03	1.04	41.78	9.13
XI	Computers/parts	5.29	2.26	4.99	1.19	18.6	0.36	0.46	0	1.78	1.38
XII	Bearings	0.14	0	6.10	1.98	0.32	0	0.47	0	0.89	0
XIII	Watches/parts	4.31	3.06	7.30	2.78	8.88	1.41	1.17	0	2.44	0.06
XIV	Misc./other	1749.63	620.27	0	0	0	0	0	0		
	<b>Total</b>	<b>2475.70</b>	<b>813.26</b>	<b>2755.68</b>	<b>2130.67</b>	<b>1619.97</b>	<b>499.45</b>	<b>2271.82</b>	<b>1352.85</b>	<b>2029.18</b>	<b>908.84</b>
	<b>Value of Imports</b>	<b>1683467</b>	<b>1683467</b>	<b>2345463</b>	<b>2345463</b>	<b>2669162</b>	<b>2669162</b>	<b>2715434</b>	<b>2715434</b>	<b>2737087</b>	<b>2737087</b>
	<b>% Total Seizures to Value of Imports</b>	<b>0.15</b>	<b>0.05</b>	<b>0.12</b>	<b>0.09</b>	<b>0.06</b>	<b>0.02</b>	<b>0.08</b>	<b>0.05</b>	<b>0.07</b>	<b>0.03</b>

## Annexure 3

(Reference Paragraph 1.27)

(₹ in lakh)

Sl. No.	Draft Audit Paragraph	Field office name	Brief subject	Amt. Objected	Amt. Accepted	Amt. Recovery	Name of the Commissionerate/ DGFT/DC
1	A1	Kochi	Non fulfillment of export obligation under EPCG scheme	6.05	6.05	14.20	JDGT, Kochi
2	A2	Kochi	Short levy of duty due to incorrect adoption of exemption notification	13.00	13.00	15.30	Customs House, Kochi Central Excise & Customs, Thiruvananthapuram
3	A3	Delhi	Misclassification of imported goods resulted in short levy of duty	18.32	18.32	19.79	ICD, Tughlakabad, Delhi
4	A4	Delhi	Short levy of duty due to excess abatement on RSP	10.67	10.67	10.74	ICD, Tughlakabad, Delhi
5	A5	Delhi	Non levy of anti dumping duty	30.64	30.64	32.00	ICD, Tughlakabad, Delhi
6	A6	Delhi	Short levy of duty due to misclassification	10.29	10.29	11.50	ICD, Tughlakabad, Delhi, ICD, Patparganj, Delhi
7	A7	Delhi	Short levy of duty due to incorrect grant of notification benefit	11.22	11.22	5.50	ICD, Tughlakabad, Delhi
8	A8	Delhi	Short levy of duty due to misclassification	11.25	11.25	13.28	ICD, Tughlakabad, Delhi
9	A9	Hyderabad	Short levy of duty due to incorrect adoption of currency	12.18	12.18	12.82	Custom House, Visakhapatnam
10	A11	Mumbai	Non levy of anti dumping duty	19.10	19.10	21.32	JNCH, Mumbai
11	A12	Mumbai	Irregular allowance of duty credit under VKGUY scheme	30.42	30.42		DGFT, Mumbai
12	A13	Mumbai	Non levy of safeguard duty	22.81	22.81	23.99	JNCH, Mumbai

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Sl. No.	Draft Audit Paragraph	Field office name	Brief subject	Amt. Objected	Amt. Accepted	Amt. Recovery	Name of the Commissionerate/ DGFT/DC
13	A14	Ahmedabad	Incorrect grant of VKGUY duty credit for export of ineligible item	34.45	34.45	35.45	RLA, Ahmadabad
14	A15	Ahmedabad	Excess grant of duty credit under VKGUY scheme	13.33	13.33	16.97	RLA, Ahmedabad & Surat
15	A16	Ahmedabad	Incorrect counting of ineligible exports towards fulfillment of export obligation under EPCG Scheme	51.62	51.62		RLA, Rajkot
16	A17	Ahmedabad	Excess grant of SFIS duty credit due to non imposition of late cut	16.96	16.96	1.16	RLA, Ahmedabad
17	A18	Hyderabad	Non fulfillment of export obligation under EPCG Scheme	170.00	170.00	340.00	JDGFT, Hyderabad
18	A19	Bangalore	Misclassification of goods resulted in short debit in licence/payment of customs duty	24.90	24.90	36.45	ACC, Bangalore
19	A20	Bangalore	Non fulfillment of export obligation under EPCG scheme	166.00	166.00		RLA, Bangalore
20	22	Ahmedabad	Incorrect duty payment of goods cleared in DTA	12.01	12.01	13.69	Central Excise, Range III, Division III Ankleshwar, Commissionerate Surat II
21	23	Bangalore	Short levy due to incorrect classification	9.72	9.72	12.11	ICD, Benaglore
22	25	Chennai	Grant of SFIS duty credit for services rendered beyond the application period	13.91	13.91	17.13	RLA, Chennai
23	26	Chennai	Excess grant of duty credit under VKGUY scheme	10.54	10.54	14.26	Tuticorin (Sea) port



Sl. No.	Draft Audit Paragraph	Field office name	Brief subject	Amt. Objected	Amt. Accepted	Amt. Recovery	Name of the Commissionerate/ DGFT/DC
24	27	Chennai	Short levy of basic customs duty due to misclassification	15.59	15.59	18.09	Air Customs, Chennai
25	28	Chennai	Grant of duty credit on ineligible items under VKGUY Scheme	88.96	88.96	72.44	JDGFT, Coimbatore
26	29	Chennai	Short levy of customs duty due to misclassification	12.65	12.65		Chennai (Sea)
27	30	Chennai	Non payment of duty on written off goods by an EOU	19.75	19.75	37.14	Central Excise, Chennai
28	31	Chennai	Short levy of customs duty due to incorrect application of exemption notification	10.93	10.93		Chennai (Sea)
29	32	Chennai	Non application of reduced rate resulting in excess grant of VKGUY duty credit	14.12	14.12	10.86	JDGFT, Coimbatore
30	33	Kochi	Irregular issue of status holder incentive scheme	8.53	8.53	11.18	JDGFT, Kochi
31	35	Delhi	Short levy of duty due to non assessment of duty of High sea sales price	10.24	10.24	2.82	UCD, Tughlakabad, Patparganj, Delhi
32	37	Kolkata	Irregular grant of benefits of SHIS scheme on ineligible exports	76.86	76.86		DGFT, Kolkata
33	38	Kolkata	Irregular grant of benefits of project import regulation 1986 on imported spares	1680.00	1680.00		Customs (Port) Kolkata

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Sl. No.	Draft Audit Paragraph	Field office name	Brief subject	Amt. Objected	Amt. Accepted	Amt. Recovery	Name of the Commissionerate/ DGFT/DC
34	39	kolkata	Irregular refund of SAD without proof of payment of appropriate sales tax	11.06	11.06	10.87	Kolkata (Port)
35	40	Bangalore	Short levy due to misclassification	9.06	9.06	11.37	ACC, Bangalore
36	41	Bangalore	Non fulfillment of export obligation under Advance authorization licence	17.26	17.26		ACC, Bangalore
37	42	Delhi	Short levy of duty due to misclassification	10.85	10.85	6.89	ICD, Tughlakabad (Import/Export), NCH (Import)
38	43	Delhi	Short levy of anti dumping duty	12.03	12.03	13.02	ICD, Tughlakabad, Delhi
39	44	Bangalore	Short levy of duty due to incorrect application of exemption notification	16.69	16.69	14.14	ACC, Bangalore
40	45	Delhi	Short levy of duty due to short declaration of RSP	99.61	99.61		NCH, Delhi
41	46	Jaipur	Non payment of concessional duties of customs resulted in short payment of duties	11.06	11.06	16.17	Central Excise Commissionerate, Alwar
42	47	Bangalore	Misclassification of goods resulted in short debit in licence	17.17	17.17	25.06	ACC, Bangalore
43	49	Bangalore	Non fulfillment of export obligation	360.00	360.00		ICD, Benaglore
44	50	Bangalore	Non fulfillment of export obligation	12.26	12.26		ICD, Benaglore
45	51	Mumbai	Non levy of anti dumping duty	23.00	23.00	24.11	JNCH, Mumbai
46	53	Mumbai	Non levy of anti dumping duty	40.27	40.27	112.19	JNCH, Mumbai

Sl. No.	Draft Audit Paragraph	Field office name	Brief subject	Amt. Objected	Amt. Accepted	Amt. Recovery	Name of the Commissionerate/ DGFT/DC
47	54	Chennai	Incorrect sanction of SHIS on time barred application	47.27	47.27		JDGFT, Coimbatore
48	56	Chennai	Grant of SHIS duty credit script to ineligible export items	122.00	122.00	122.00	JDGFT, Coimbatore
49	57	Chennai	Short levy of duty due to misclassification	77.36	77.36		Chennai (Sea)
50	58	Chennai	Short collection of duty due to misclassification	59.69	59.69		Chennai (Sea)
51	61	Gwalior	Realisation of cost recovery charges for customs staff at the instance of Audit	15.92	15.92	15.92	ICD, Ratlam
52	65	Chennai	Incorrect availment of concessional rate of duty on DTA clearances by an EOU	222.00	222.00	251.00	Central Excise, Chennai 1 Commissionerate
53	66	Chennai	Short collection of duty due to misclassification	12.89	12.89		Chennai (Sea)
54	67	Kolkata	Excess payment of drawback due to misclassification of export goods	82.52	82.52	2.02	Dy. Commissioner of Customs, Drawback Cell, West Bengal, Kolkata
55	68	Kolkata	Irregular grant of benefits of SHIS scheme on ineligible exports	17.05	17.05	17.54	ADGFT, Kolkata
56	69	Kolkata	Non recovery of inadmissible drawback	17.92	17.92	17.00	Asstt. Commissioner of Customs, Drawback cell (Preventive), Custom House, Kolkata
57	71	Hyderabad	Short levy of duty on import of coal	15.90	15.90	15.94	Customs House, Visakhapatnam
58	72	Hyderabad	Non levy of anti dumping duty due to incorrect classification	16.57	16.57		ICD, Hyderabad

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Sl. No.	Draft Audit Paragraph	Field office name	Brief subject	Amt. Objected	Amt. Accepted	Amt. Recovery	Name of the Commissionerate/ DGFT/DC
59	73	Chennai	Short levy of duty due to misclassification	10.52	10.52		Chennai (Sea)
60	74	Chennai	Incorrect grant of SHIS duty credit to restricted items	17.55	17.55	17.55	JDGFT, Chennai
61	76	Chennai	Non/Incorrect application of late cut on belated application resulting in excess grant	11.62	11.62	10.82	JDGFT, Coimbatore
62	78	Hyderabad	Non recovery of Merchant Overtime charges	15.05	15.05	15.05	Customs (Preventive), Vijayawada
63	79	Jaipur	Irregular grant of SFIS	31.28	31.28	22.90	Jt.DGFT, Jaipur
64	80	Jaipur	Irregular grant of zero duty export promotion capital goods authorizations	330.00	330.00	276.00	JDGFT, Jaipur
65	82	Kolkata	Discharge of advance authorization without full recovery of duty	48.74	48.74		DGFT, Kolkata
66	83	Kolkata	Excess payment of drawback due to misclassification of export dish amplifiers	19.44	19.44	14.05	Dy. Commissioner of Customs, Drawback Cell, West Bengal, Kolkata
67	84	Mumbai	Incorrect refund of drawback	13.24	13.24	13.24	DGFT, Mumbai
68	86	Mumbai	Non fulfillment of pre import	11.13	11.13	11.13	DGFT, Mumbai
69	88	Chennai	Short levy of duty due to misclassification	30.34	30.34		Chennai (Sea)
70	89	Ahmedabad	Incorrect refund of CST on imported goods	15.84	15.84		Development Commissioner, KASEZ
71	90	Ahmedabad	Incorrect refund of CST on imported goods	17.03	17.03		Development Commissioner, KASEZ

Sl. No.	Draft Audit Paragraph	Field office name	Brief subject	Amt. Objected	Amt. Accepted	Amt. Recovery	Name of the Commissionerate/ DGFT/DC
72	92	Chennai	Grant of SHIS duty credit to ineligible goods	121.16	121.16		JDGFT, Chennai
73	95	Delhi	Short levy of duty due to excess abatement on RSP	10.45	10.45	7.46	ICD, Tughlakabad, Delhi
74	97	Delhi	Short levy of duty due to incorrect declaration	10.18	10.18	11.30	ICD, Tughlakabad, Delhi
75	100	Mumbai	Non levy of safeguard duty	10.66	10.66	11.83	JNCH, Mumbai
76	103	Kochi	Non levy of education cess and secondary education cess	10.36	10.36		Central Excise & Customs, Ernakulam
77	104	Hyderabad	Non fulfillment of export obligation under EPCG scheme	68.22	68.22	171.00	JDGFT, Hyderabad
78	109	Chennai	Short levy of duty due to misclassification	27.10	24.53		Chennai (Air)
79	110	Kolkata	Irregular grant of project import benefit due to incorrect registration of contract	23.99	23.99	23.99	Customs House, Kolkata
80	111	Chennai	Loss of revenue in extending undue benefit to EOU in grant of SHIS duty credit	3300.00	3300.00	7.16	JDGFT, Chennai
				<b>8158.33</b>	<b>8155.76</b>	<b>2108.91</b>	

**Annexure 4**

**(Reference paragraph 2.3)**

Sl.No.	Name of the state	No. of Commissionerates	Name of the Commissionerates
1	Gujarat	4	ICD, Khodiyar, Ch, Sikka, Jamnagar, CH, Kandla, MP &SEZ, Mundra
2	Rajasthan	1	Jodhpur
3	Karnataka	3	ACC Bengaluru, ICD Bengaluru, NCH, Mangaluru
4	Chandigarh	1	Ludhiana
5	Tamil Nadu	3	Sea Chennai, Air Chennai, Tuticorin
6	Kerala	1	Kochi
7	Andhra Pradesh	2	Visakhapatnam, Vijayawada
8	Telangana	1	Hyderabad
9	Odisha	1	Bhubaneswar
10	West Bengal	5	Kolkata Port, Kolkata Air, ICD Durgapur, Siliguri, West Bengal (Preventive),
11	Meghalaya	1	Shillong
12	Uttar Pradesh	2	Noida, Kanpur
13	Maharashtra	9	Import I&II, Export I&II(NCH Zone-I)), NS-I,NS-III,NS-V(JNCH Zone II,IMPORTS&EXPORTS(ACC Zone III)
14	Delhi	5	Import,ICD(Export),ACC,NCH(Import),ACC,NCH (Export) Tughlakabad, ICD ParpatgunJ, Delhi,
15	Madhya Pradesh	3	Bhopal, Gwalior, Indore
	<b>Total</b>	<b>42</b>	

**Annexure 5**

**(Reference paragraph 2.3)**

Sl.No.	Name of the state	No. of Commissionerates	Name of the Commissionerates
1	Gujarat	4	ICD, Khodiyar, Ch, Sikka, Jamnagar, CH, Kandla, MP &SEZ, Mundra
2	Rajasthan	1	Jodhpur
3	Karnataka	3	ACC Bengaluru, ICD Bengaluru, NCH, Mangaluru
4	Chandigarh	1	Ludhiana
5	Tamil Nadu	3	Sea Chennai, Air Chennai, Tuticorin
6	Andhra Pradesh	2	Visakhapatnam, Vijayawada
7	Telangana	1	Hyderabad
8	Odisha	1	Bhubaneswar
9	Uttar Pradesh	2	Noida, Kanpur
10	Delhi	5	Import,ICD(Export),ACC,NCH(Import),ACC,NCH(Export) Tughlakabad, ICD ParpatgunJ, Delhi,
11	Madhya Pradesh	3	Bhopal, Gwalior, Indore
	<b>Total</b>	<b>26</b>	

**Annexure 6**

**(Reference paragraph 2.3)**

Sl.No.	Name of the state	No. of Commissionerates	Name of the Commissionerates
1	Kerala	1	Kochi
2	West Bengal	5	Kolkata Port, Kolkata Air, ICD Durgapur, Siliguri, West Bengal (Preventive),
3	Meghalaya	1	Shillong
4	Maharashtra	9	Import I&II, Export I&II(NCH Zone-I)), NS-I,NS-III,NS-V(JNCH Zone II,IMPORTS&EXPORTS(ACC Zone III)
	<b>Total</b>	<b>16</b>	

**ANNEXURE 7 Improper maintenance of records (Refer para No. 2.6.1)**

Sl. No.	Commissionerate	Brief subject	Whether accepted
1	NCH Mumbai	Printing inks (CTH 3215) Assessment pending finalization despite direction from SIIB.	No reply.
2.	-do-	Provisional assessment was not finalized (Two BEs- Printing Ink) despite receipt of Test report in Sept. 2013.	No reply.
3	Chennai (Air)	M/s Wellwin Industry Ltd.- Case not finalized despite SIIB orders dt.23.12.05	No reply.
4	Ludhiana	Two exporters- Prov. assessed value was not informed by the Custom department to the concerned DGFT which may lead to excess claim of incentive under FPS.	No reply.

**ANNEXURE 8: Pendency in call Book Register (Refer para No. 2.7)**

Sl.No.	Commissionerate	Brief subject	Whether accepted
1	Kochi	697 PD bonds (period 2009 to 2013) were pending in the Call Book register which was reviewed only once in July 2014 in contravention of the instructions.	No reply.
2	NCH, Mumbai	M/s Pioneer Agri Techno Scan & Exports Pvt.Ltd.- Case not entered in the Call Book Register. The BG had expired in December 2001, letter for renewal of BG written by the department only in October 2014.	No reply.
3	Custom House, Sikka, Jamnagar Commissionerate	Bills of entries (252 Nos.) on the issue of inclusion or otherwise of Pull back Tug Charges, Port Tonnage charges in the assessable value were incorrectly included in the Call Book Register.	No reply.
4	-do-	Cases finalized after including pull back charges (M/s Reliance Industries Ltd.) after retrieving from Call Book, however similar cases (M/s Bharat Oman Refineries Ltd- 120 BEs) were not finalized.	No reply.

**ANNEXURE 9 Major audit findings - Irregular resorting to provisional assessment**

(Refer para 2.10.1)

Sl.No.	Commissionerate	Brief subject	Whether accepted
1	JNCH, Mumbai	“Nigerian Gum Arabic (Asafoetida) classified under CTH 1310200 was provisionally assessed and manual filing of BsE was allowed at the request of the Association of Importers. The matter was taken up with the Board for necessary amendment so as to avoid manual filing of BE and provisional assessment. However, no action was initiated at Board level towards amendment or to finalise the assessment at field level. Resorting to provisional assessment on the grounds of limitations in EDI system was not a specified situation under the provisions of section 18.	No reply.
2	ICD, Kanakpura, Jodhpur	PVC Resin were incorrectly classified and incorrectly resorted to provisional assessment which led to postponement of duty and undue financial advantage to the importer.	No reply.
3	ICD, Jodhpur	No uniformity in assessments. In some cases final assessment were made even though the mandatory end use certificate was not submitted by the importer. While in other (five cases) the goods were assessed provisionally pending receipt of end use certificates.	No reply.
4	Ludhiana	Two BEs were provisionally assessed without stating the reason for such assessment.	No reply.

**ANNEXURE 10: Non-revalidation of Bank Guarantee (BG)**

(Refer para 2.17)

Sl.No.	Commissionerate	Brief subject	Whether accepted
1	ACC, Hyderabad	The BG (₹ 12.48 crore) executed by M/s Vuppalamritha Magnetic Components Ltd, was not revalidated before its expiry i.e., 10.02.2012.	No reply.
2	Customs (Preventive) Bhubaneswar	BGs executed during the period from 2009 to 2011 by two importers viz. M/s Brahmani River Pellets Ltd and M/s GMR Kamalanga Energy Ltd., for a value of ₹ 8.26 crore with validity up to 08.03.2013 were not renewed even though the cases were yet to be finalised	No reply.
3	Chennai (Sea)	M/s Falcon Tyres Ltd,- Assessment made provisionally in June 2011 by executing a PD bond and a BG for ₹ 0.41 crore (valid up to 28.6.2012) was not revalidated. The case was yet to be finalized (January 2016).	No reply.
4	JNCH, Mumbai	M/s Nickunj Exim Enterprises Pvt. Ltd., - BGs (25% of value of goods ) given by the importer involving ₹ 0.8 crore had expired by 28.11.2014 and another six BGs involving ₹ 0.3 crore had expired by 24.1.2015 but were not revalidated. The cases were yet to be finalized (January 2016).	No reply.



**ANNEXURE 11: Non/Short levy of Extra Duty Deposit (EDD) (Refer para 2.20.1)**

Sl.No.	Commissionerate	Brief subject	Whether accepted
1	ICD Loni, Noida Commissionerate	Two provisional assessment cases with assessable value of ₹ 23.66 crore were pending before SVB since 2010. EDD was not enhanced to 5% despite non-receipt of reply from the Importer within stipulated period.	No reply.
2	ICD, Hyderabad	156 SVB cases were pending finalisation as on 31 March 2014 pertaining to the period 2005-2014. However, due to non-production of files, the fact of issue of questionnaire by the assessing group, receipt of reply from the importer within 30 days and enhancement of EDD @5% could not be verified.	No reply.

**ANNEXURE 12: Short levy of duty due to under valuation (Refer para 2.20.2)**

Sl.No.	Commissionerate	Brief subject	Whether accepted
1	ICD, Concor and Thar Dry port, Jodhpur, under, Jodhpur Commissionerate	Incorrect adoption of value by classifying the goods (Bitumen 60/70(VG30) under CTH 27149090) at the time of final assessment resulted in short levy of duty of ₹ 23.93 lakh.	The department stated that the case was pending before Appellate authority.
2	Visakhapatnam	In one case incorrect adoption of exchange rate at 44.70 per USD instead of 44.85 per USD at the time of finalization resulted in short collection of duty and interest of ₹ 0.05 crore.	Recovery proceedings have been initiated.
3	Dhamra Division, under Bhubaneswar	Mis-classification of coal as steam coal instead of bituminous coal (19 consignments) at the time of provisional assessment resulted in short levy of ₹ 10.16 crore. Non-finalization of these cases resulted in blockage of Government of revenue.	Assessments could not be finalized due to non-receipt of final documents from importers.

**ANNEXURE-13: Loss of revenue due to non- levy of penalty for short landed goods****(Refer para 2.21)**

Sl.No.	Commissionerate	Brief subject	Whether accepted
1	Kochi	M/s Petronet LNG Ltd-Penalty of ₹ 0.45 crore was not levied on person-in-charge of the conveyance for short landed goods.	No reply.
2	Vijayawada Customs	Palmolein oil imports at Krishnapatnam Port- Penalty of ₹ 0.11 crore was not levied on person-in-charge of the conveyance for short landed goods.	No reply.

**ANNEXURE 14: Non-finalization of assessment despite receipt of test reports**

(Refer para 2.24)

Sl.No.	Commissionerate	Brief subject	Whether accepted
1	Dhamra Customs Division under Bhubaneswar Commissionerate	M/s Saraogi Udyog(P) Ltd.-Non-finalization of the assessments despite receipt of test reports resulted in postponement of collection of differential duty of ₹ 0.50 crore along with interest.	No. reply.
2	Kolkata Port	Twenty one cases of import of Synthetic Rubber/PVC Floor Sweep etc., for bond value of ₹ 4.35 crore and assessable value of ₹ 4.35 crore were pending finalisation for a period ranging from 17 months to 48 months (December 2015) despite receipt of results of test reports from CIPET, Haldia.	Department stated that cases were being pursued with SVB and the importer for finalization.

**ANNEXURE 15: Non-finalization of assessment despite receipt of documents**

(Refer para 2.24)

Sl.No	Commissionerate	Brief subject	Whether accepted
1	ICD, Sanathnagar, Hyderabad	M/s ICICI Bank Ltd,- Matter for getting the clarification on admissibility of benefit under SFIS licence was addressed the JDGFT on 2.2.2015, i.e. after a gap of 18 months. On receipt of reply from JDGFT dated 25.02.2015, a demand notice for payment of duty of ₹ 0.25 crore along with interest of ₹ 0.07 crore was issued (11.03.2015). The duty was yet to be recovered.	Recovery proceedings had been initiated. (December 2015).

**ANNEXURE 16 Non- finalisation of assessment despite receipt of DRI orders**

(Refer para 2.24)

Sl.No	Commissionerate	Brief subject	Whether accepted
1	JNCH, Mumbai	Imported goods viz. Plastic regrind/ lumps/ agglomerates etc assessed provisionally on the basis of DRI alert were pending from Jan 2011 to May 2015 despite receipt of Director General of Valuation orders dated 10.1.2014 to follow Custom Valuation Rules, 2007 and finalise the assessments.	The department stated (August 2015) that finalization in ICES 1.5 would take same more time.

**ANNEXURE 17 Non-finalization of assessment despite completion of SVB investigation (Refer para 2.24)**

Sl.No.	Commissionerate	Brief subject	Whether accepted
1	Kolkata	Cases assessed provisionally (204 cases) against SVB bond amounting to ₹ 26.50 crore were still pending finalisation despite completion of investigation by SVB. Further, two cases had been assessed provisionally despite SVB investigation being finalised at a date prior to filing of bill of entry.	No reply.
2	Kanpur	10 cases with assessable value of ₹ 46.54 crore in ICD, Juhi and 15 cases with assessable value of ₹ 30.50 crore in ICD, Panki Kanpur were pending finalisation despite Appellate Tribunal order (February 2006) granting liberty to both sides to approach the tribunal for quantification of duty. However, the Tribunal was not approached.	It was stated that the cases were still pending at the CESTAT. The reply was not acceptable as the department did not follow the directions of the appellate Tribunal in finalisation of the cases.

**ANNEXURE 18: Non-adjudication of Show Cause Notices (Refer para 2.26)**

Sl.No.	Commissionerate	Brief subject	Whether accepted
1	Chennai Sea	SCNs issued to M/s Noyyal Common Effluent Treatment Company Ltd and M/s. Teamec Chlorates Limited on 24.01.2012 and 15.12.2011 respectively were not adjudicated even after a lapse of more than 3 years. Non adjudication of Show Cause Notices led to blockage of revenue of ₹ 0.88 crore (Differential Duty ₹ 0.38 crore and interest of ₹ 0.50 crore).	No reply.

**ANNEXURE 19: Non/delayed realisation of differential duty on final assessment**

(Refer para 2.28)

Sl. No.	Commissionerate	Brief subject	Whether accepted
1	Chennai Air	M/s. Vuppalamritha Magnetic Components Ltd., Secunderabad - On finalization of provisional assessment ADD amounting to ₹ 32.86 crore along with applicable interest was levied. The importer paid a part of the demand, ₹ 1.38 crore in March 2011. The balance demand of ₹ 31.49 crore and interest of ₹ 31.33 crore was yet to be collected.	No reply.
2	Kolkata	In 11 cases of import of 3,48,035 kgs PVC Flex Film from China between 9 <sup>th</sup> March and 1 <sup>st</sup> August 2011 anti dumping duty was assessed provisionally. Despite confirmation as to leviability of the ADD, non-finalization of assessment resulted in blockage of government revenue amounting to ₹ 85.35 lakh for over three years.	No reply.
	Visakhapatnam	M/s Nirnidhi Marketing (P) Ltd- Duty demand along with interest of ₹ 0.25 crore confirmed (February 2013) has not been recovered.	Recovery proceedings had been initiated.

**ANNEXURE 20: Delay in completion of investigation and finalisation of assessment by Special Valuation Branch (SVB)**

(Refer para 2.29)

Sl.No.	Commissionerate	Brief subject	Whether accepted
1	ICD, Hyderabad, and ACC Hyderabad	328 SVB cases pertaining to the period December 2005 to March 2014 were pending finalization for want of valuation reports from SVB Chennai.	Department stated (September 2015) that action was initiated to finalize the cases.
2	ICD, Khodiyar, Ahmadabad	The four cases referred to General Agreement on Tariff and Trade (GATT) for valuation were yet to be finalized. Also 1 BE dated 29 June 2013 was yet to be forwarded to the GATT Cell.	-do-
3	JNCH, Mumbai	M/s Andreas STIHL- Special Investigation and Intelligence Branch (SIIB) order dated 25.10.2013 for clearing of consignments on provisional basis by obtaining PD bonds and revenue deposit equivalent to 20% of differential duty was not followed.	No reply.
4	Chennai Sea	Imports of steel secondary material and tin waste were pending final assessment since April 2010 due to downward revision of international prices inspite of representations from trade. However, Director General of Valuation was yet to decide the case resulting in delay in finalization. Thus, imports worth of ₹ 14977.58 crore remained unprotected.	No reply.

**Annexure 21****Statement showing list of Commissionerates****(Refer para 3.4)**

S.No.	Name of Office	Sl No. of commissionerates	Name of Commissionerate
1	O/o the DGA (C ), Kolkata	1	Kolkata (Port)
		2	Kolkata (Airport)
		3	Preventive, West Bengal
		4	Siliguri
		5	ICD, Durgapur
2	O/o the PDA (C ), Ahmedabad	6	Ahmedabad ( in r/o ICD Khodiyar
		7	Kandla
		8	Mundra
		9	Jamnagar (in r/o CH Pipavav)
		10	Jodhpur
3	O/o the PDA (C ), Chandigarh	11	Ludhiana
4	O/o the PDA (C ), Hyderabad	12	Hyderabad
		13	Vijayavada
		14	Vishakapatnam
5	O/o the PDA (C ), Bangalore	15	Air cargo Complex
		16	ICD
		17	New Customs House Mangalore
6	O/o the DGA (C ), Chennai.	18	Chennai Sea
		19	Chennai Air
		20	Tuticorin Sea
		21	Cochin Sea
		22	Chochin Air
7	O/o the DGA (C ), Mumbai	23	Import I
		24	Import II
		25	Export I
		26	Export II
		27	General
8	O/o the DGA(CR ), New Delhi	28	Pr. Comm. of Cus. (Import) ICD, Tughlakabad
		29	Comm. of Cus. (Export) ICD, Tughlakabad
		30	Comm. of Cus. (Import) New Customs House
		31	Comm. of Cus. (Export) New Customs House
		32	Comm. of Cus. , ICD, Patparganj
9	O/o the PDA (C ), Lucknow	33	Kanpur
		34	Agra
		35	Noida
		36	Patna

**Annexure 22: Re-importation after expiry of specified re-import period**

(Refer para 3.9.2)

Sl. No.	Commissionerate	Brief Subject	Department Reply
1	ICD Khodiyar under Ahmedabad Commissionerate	Goods valued at ₹ 21.22 lakh re-imported (November 2013) by M/s Meghmani Pigments and M/s Crystal Quinone Pvt. Ltd. incorrectly under serial no. 2 of notification 158/95-cus even though one year had expired from the date of initial export of the goods. Duty saved as per Bond was ₹ 5.49 lakh.	No. Reply.
2	Chennai (Sea)	M/s Tube Investments of India-1732 numbers of bicycle pars/frames which were exported in October 2012, were re-imported (February 2014) after a lapse of one year and three months from initial exports in contravention of the provision of customs notification 158/95 (Sl.No.2). Duty exemption inadmissible in this case worked out to ₹6.35 lakh	No. Reply.

**Annexure 23: Import of foreign goods under notification No.158/95**

(Refer para 3.9.2)

Sl. No.	Commissionerate	Brief Subject	Department Reply
1	ACC, Bengaluru	M/s Wave Axis Technologies Pvt. Ltd. imported (November 2013) foreign goods (Form Spring and parts of compressor) and in incorrectly availed duty exemption amounting to ₹ 3.81 lakh. Because import of goods manufactured in India are only eligible for exemption. Moreover, the goods were not re-exported within the stipulated period. Duty forgone ₹ 3.81 lakh was recoverable.	No. Reply.

**Annexure 24: Re-import of goods for reprocessing**

(Refer para 3.10)

Sl. No.	Commissionerate	Brief Subject	Department Reply
1	Ludhiana	M/s. Kings Exports, Ludhiana re-imported (October 2014) parts for Roofing Framework Structure of steel availing duty exemption of ₹ 0.45 Lakh (Notification No. 158/95, Sl No.1) for repairs. As the specifications of goods were to be changed, the goods were required to be re-processed, which is covered under sl. No. 2 of the notification. However, benefit under Sr. no. 2 of the Notification was inadmissible because goods were re-imported after expiry of one year from initial export.	Interim reply.

**Annexure 25: Re-import of goods for re-marking****(Refer para 3.10)**

Sl. No.	Commissionerate	Brief Subject	Department Reply
1	ICD, Sabarmati, Gujarat	M/s Sandvik Asia Pvt. Ltd re-imported (April 2013) seamless stainless steel pipes for re-marking was allowed exemption under serial no 1 of the notification instead of. under Sl. No. 2 of the notification. Accordingly, re-import after expiry of one year from exportation (October 2010) are ineligible under Sl. No. 2. Therefore, the importer was not eligible for grant of exemption of ₹ 2.40 lakh.	No. Reply

**Annexure 26:Undue benefit to importers allowing change in notification****(Refer para 3.10)**

Sl. No.	Commissionerate	Brief Subject	Department Reply
1	ICD Khodiyar, Ahmedabad	M/s Mangalam Alloys Ltd. had re-imported (January 2014) 'Stainless steel of fasteners hexagon nuts of different sizes' availing duty exemption of ₹7.41 lakh under notification no. 158/95. Subsequently, the exporter expressed (December 2014) their inability to re-export the goods and requested reassessment of the bill of entry under Notification No. 94/1996 dated 16 December 1996. The department had not initiated any action for recovery of duties under notification no.158/95.	Department stated that the case was reassessed on the request of the exporter. Reply of the department is not acceptable in view of the Supreme Court decision in the case of Commissioner of Customs, Calcutta Versus Indian Rayon & Industries Ltd. 2008 (229) E.L.T. 3 (S.C.) wherein it was held that the original assessment done under 158/95 notification cannot be altered subsequently, for giving benefit under another notification (94/1996).
21	Ahmedabad	M/s Jagson Colorchem Ltd. had re-imported (June 2014) 'Synthetics Organics dyes reactive black' valued at ₹ 94.70 lakh without payment of duty under customs notification 158/95. The importer subsequently (September 2014) paid duty (CVD, Edu. cess plus SAD) of ₹ 15.96 lakh plus interest but did not pay basic custom duty forgone as they requested reassessment under notification no. 94/1996 and agreed to surrender the export benefits. No action was initiated by the department (April 2015). Since the case could not be reassessed under another notification (94/1996), BCD of ₹ 8.52 lakh was recoverable.	No. Reply.

**Annexure 27:Re-export to another agency and Drawback on re-export**

(Refer para 3.11)

Sl. No.	Commissionerate	Brief Subject	Department Reply
1	Chennai Sea	M/s Sai Marine Exports Pvt. Limited re-imported (December 2014) frozen shrimps from Belgium availing benefit under sl. No. 2 of the notification. The firm availed drawback of ₹ 2.13 lakh at the time of initial export in July 2014 and did not refund the drawback on re-import. The goods were re-exported (February 2015) to another firm in USA and again drawback of ₹ 2.89 lakh availed on re-export. Since the importer availed drawback against initial export and the re-imported goods were not re-exported to the same buyers/customers abroad, such cases could not be eligible for benefit under notification no. 158/95.	No. Reply.

**Annexure 28:Re-exported goods not matching with the re-imported goods**

(Refer para 3.11)

Sl. No.	Commissionerate	Brief Subject	Department Reply
1	Chennai (Sea)	M/s Caterpillar India Pvt. Ltd., re-imported four Customs notification 158/95 (Sl.No.1). The goods were re-exported in September 2013 and the Re-export Bond/BG was cancelled on 27.12.13. Scrutiny revealed that the Part No. of the engines re-exported under one shipping bill was different from that of re-imported. Duty foregone on re-import of the engine amounting to ₹ 5.20 lakh stood recoverable.	No. Reply.
2	Kolkata (Port)	M/s Kisna Fishing Accessories (P) Ltd., re-imported (September 2013) sports fishing goods availing benefit under Notification 158/95. Scrutiny of the re-exported shipping bill revealed that the re-exported goods differed in quantity, weight and invoice value from that of re-imported goods. Moreover, the Bill of Entry (B/E) no. of re-imported goods mentioned in the SB was different from the B/E no. through which goods were actually re-imported. Duty exemption benefits amounting to ₹ 3.83 lakh was recoverable from the importer.	



**Annexure 29: Delayed re-export of goods****{Refer para 3.12 (ii)}**

Sl. No.	Commissionerate	Brief Subject	Department Reply
1	Cochin	M/s. Spark Controls re-imported goods in May 2013 but re-exported after expiry of the stipulated re-export period without obtaining extension from the department. Duty exemption was ₹ 6.44 lakh.	The bond and BG was cancelled in July 2014.
2	ICD Bengaluru and ACC, Devanahalli	Goods re-imported by M/s Micro Finish Valves and three others between October 2012 and April 2014 were re-exported between April 2013 and November 2014 after expiry of the stipulated re-export period without obtaining extension. This involved exemption of duty of ₹ 3.03 lakh.	No reply.

**Annexure 30: Non levy of customs duty on goods short re-exported (Refer para 3.13)**

Sl. No.	Commissionerate	Brief Subject	Department Reply
1	Jodhpur	Goods re-imported by M/s PSV Polymers Pvt. Ltd. and two others between January 2013 and February 2014 were partly re-exported (8.11 to 24.24 per cent) involving duty exemption of ₹ 26.83 lakh in three cases.	₹ 0.54 lakh including interest of ₹ 0.13 lakh had been recovered from one of the importer. Reply in respect of remaining two cases is awaited (January 2016).
2	Chennai (Sea)	M/s Sundaram Fastners Ltd.,-Against re-import of 30,000 pieces of 'Hex Con Rod Bolt' only 500 pieces were re-exported and no documentary evidence was available for remaining 29,500 pieces. Duty forgone amounting to ₹ 6.80 lakh was recoverable.	No reply.

**Annexure 31: In-sufficient Bank Guarantee****(Refer para 3.13)**

Sl. No.	Commissionerate	Brief Subject	Department Reply
1	Cochin	Analysis of the EDI import data from November 2011 to April, revealed that in case of 5 importers, bank guarantees were short executed by ₹ 1.81 lakh.	No reply.

**Annexure 32: Non enforcement of Bank Guarantee****(Refer para 3.13)**

Sl. No.	Commissionerate	Brief Subject	Department Reply
1	Chennai Sea	M/S. Farida Shoes Ltd. As the importer failed to re-export the goods the department had directed (September 2014) the Bank to enforce the four bank guarantees aggregating ₹ 10.54 lakh after expiry of their validity period. The Bank Guarantees have not been enforced even after issue of reminder to Bank in November 2014.	No reply.

**Annexure 33: Grant of incorrect exemption for jobbing**

**(Refer para 3.15)**

Sl. No.	Commissionerate	Brief Subject	Department Reply
1	Kolkata (Port)	M/s Vajra Machineries Pvt. Ltd.- Goods were supplied by/imported from M/s DAERYUK INTL., USA, were exported to M/s MINL Limited, Nigeria i.e. not re-exported to the same supplier. Further the goods were re-exported after expiry of stipulated re-export period without obtaining any extension of time. Thus, the goods imported does not merit for exemption of duty. Duty recoverable worked out to ₹14.29 lakh (as per EDI Import data).	The department admitted the issue and stated that the importer is liable to pay duty.

**Annexure 34:Export of goods after jobbing without utilizing inputs/raw materials imported duty free under notification 32/97**

**(Refer para 3.15)**

Sl. No.	Commissionerate	Brief Subject	Department Reply
1	Chennai (Sea)	M/s.Woory Automotive India Pvt. Ltd. - Scrutiny of shipping bills mentioned in the End Use Certificate revealed that the Bills of entry nos. contained therein were different from that of B/E nos. under which goods were imported for jobbing. Thus, the duty free raw materials were not utilized in the execution of job work and resultant goods were not re-exported. Hence, the importer was liable to pay duty foregone amount of ₹ 29.89 lakh along with interest.	No reply.

**Annexure 35:Non-achievement of minimum value addition**

**(Refer para 3.15)**

Sl. No.	Commissionerate	Brief Subject	Department Reply
1	Chennai Sea	M/s Corvine Chemicals & Pharmaceuticals Ltd. and Arul Rubbers Pvt. Ltd- The importer failed to achieve the minimum value addition of 10% as required under condition (v) of the notification. Accordingly, he was liable to pay duty of ₹ 14.05 lakh along with interest.	No Reply.

**Annexure 36: Goods re-exported not matched with the goods imported****(Refer para 3.15)**

Sl. No.	Commissionerate	Brief Subject	Department Reply
1	Air Cargo Complex, Devanhally, Bengaluru	M/s Armor Plast - Goods re-exported after jobbing in February 2013 were articles of plastics, lens, green power etc, i.e. not made out of the imported stainless steel tubes. As the condition of the notification was not fulfilled, duty exemption availed ₹ 3.04 lakh was recoverable.	No Reply.

**Annexure 37: Goods re-exported after expiry of stipulated period****(Refer para 3.25)**

Sl.No	Commissionerate	Brief Subject	Department Reply
1	Noida	M/s Honda Cars India Ltd,- Goods imported in July 2012 were re-exported in April 2013 (beyond nine months from date of import) on obtaining extension granted by the Assistant /Deputy Commissioner, which was irregular as per Board's Circular dated 05.11.1998. The bonds were discharged and cancelled on 02.07.2014.	No Reply.
2	Mumbai Zone II	M/s Tulsi Impex Ltd. Re-exported 13 flexi-tanks after expiry of one year from the date of import including extension (up to 15.01.2015). Further, Assistant /Deputy Commissioner extended the period for further six months in contravention to the Board's Circular dated 05.11.1998. Duty exempted ₹ 0.74 Lakh.	No Reply.

**Annexure 38: Short re-export of containers****(Refer para 3.25)**

Sl. No.	Commissionerate	Brief Subject	Department Reply
1	ICD, Dadri, Noida	M/s India Yamaha Motors Pvt Ltd –Against import of 504 number of. durable containers (June 2013, only 396 containers were re-exported within the stipulated period resulting in short re-export of 108 containers. The importer is liable to pay duty of ₹ 3.37 lakh along with the interest.	Records were not readily available and reply will be submitted.

**Annexure 39: Non- recovery of duty in case of failure to re-export under notification  
3/89-cus (Refer para 3.29)**

Sl. No.	Commissionerate	Brief Subject	Department Reply
1	Airport Kolkata	Paharpur Cooling Towers (P) Ltd.- Export documents not submitted. Duty foregone ₹ 1.01 lakh.	Department stated that as the notification does not specify the time limit to re-export the goods except at serial no.10 of the table annexed to the notification 134/94. Therefore it was presumed for all types of imports made under this notification. The reply is not acceptable as the bond executed by the importer clearly specifies the time limit for re-exportation as one month. Moreover, three years period allowed under serial no.10 of the table is applicable for imports made for repairs/re-conditioning / re-engineering and not for testing purpose as in the instant case.

**Annexure 40: Clearance of imported goods ineligible for exemption (Refer para 3.31)**

Sl. No.	Commissionerate	Brief Subject	Department Reply
1	Customs(Port), Kolkata	M/s Brahmaputra Cracker and Polymer Limited, Dibrugarh, Assam -The item, imported and cleared together with the goods of project import was declared as wrongly shipped /supplied. Since these wrongly supplied goods were neither for repair and return nor covered under any of the other categories of articles mentioned in the notification, thus, ineligible for exemption of duty under the Notification. This has resulted in irregular exemption of duty amounting to ₹ 6.64 lakh.	No reply.

**Annexure 41: Irregular grant of Drawback under section 74 (1) and (2) of the Act**

**(Refer para 3.40)**

Sl. No.	Commissionerate	Brief Subject	Department Reply
1	Ahmedabad	M/s Truetzchler India Pvt. Ltd. was allowed ₹ 11.15 lakh 40% duty drawback in January 2014. Although, the imported good was re-exported after 18 months, as such not eligible for drawback.	An amount of ₹ 13.44 lakh includes interest of ₹ 2.29 lakh was recovered.
2	Ahmedabad	M/s Supernova Engineers Ltd. was allowed (August 2014) drawback at the rate 98 per cent of import duty amounting to ₹ 3.27 lakh on the used good re-exported after expiry of 18 months	

**Annexure 42: Grant of duty drawback without testing the chemical re-exported****(Refer para 3.40)**

Sl. No.	Commissionerate	Brief Subject	Department Reply
1	Kolkata (Port).	M/s United Phosphorus Limited, Haldia was allowed drawback amounting to ₹ 11.28 lakh on re-export back of chemical ('Mithylene Dibromide 99% min.')	An amount of ₹ 13.44 lakh includes interest of ₹ 2.29 lakh was recovered.

**Annexure 43: Payment of drawback without triplicate copy of shipping bill****(Refer para 3.40)**

S.No.	Commissionerate	Brief Subject	Department Reply
1	Kolkata (Port).	M/S Larsen & Tubro Ltd was paid drawback of ₹ 7.38 lakh under section 74 on the basis of photocopy of Shipping Bill and on obtaining an Indemnity Bond from the claimant since the original Triplicate copy of the Shipping Bill remained misplaced, as stated by the importer.	No reply.
	NSCBI Airport, Kolkata	M/s Schlumberger Asia Services Ltd was paid drawback of ₹ 3.29 lakh under section 74 on the submission of photocopy of Shipping Bill and on obtaining an Indemnity Bond from the claimant since the original Triplicate copy of the Shipping Bill remained misplaced, as stated by the importer.	No reply.

**Annexure 44: Irregular grant of Drawback under section 74 on manufactured goods****(Refer para 3.40)**

Sl. No.	Commissionerate	Brief Subject	Department Reply
1	Ahmedabad	M/s Shivam Enterprise - Grant of drawback (September 2014) at the rate of 98 per cent amounting to ₹ 0.46 lakh under section 74 (1) of the Act for cylinders re-exported after manufacturing activity ('TEFLON/PTEE coating).	The department informed recovery of drawback amounting to ₹ 0.41 lakh along with interest of ₹ 0.05 lakh.

**Annexure 45 Incorrect grant of drawback under section 74 of Customs Act in cash instead of re-crediting in respective licence**

**(Refer para 3.40)**

<b>Sl. No.</b>	<b>Commissionerate</b>	<b>Brief Subject</b>	<b>Department Reply</b>
1	Mundra	M/s A International P. Ltd. and M/s A Innovative International Ltd. were sanctioned drawback of ₹ 2.84 lakh in cash under section 74 of the Act on re-export on imported goods despite the fact that an amount of ₹1.09 lakh was originally debited in DEPB and FMS scripts at the time of import. Non re-crediting the proportionate duties in the respective scripts resulted in incorrect grant of drawback to the tune of ₹ 0.88 lakh.	The department stated (June 2015) that duty debited through DEPB was paid in cash as the scheme was closed by the Government in 2011. The reply of the Department is not tenable since the HBP provision provides for re-credit of the DEPB scrip in case of re-export of goods.