CHAPTER VII
MISCELLANEOUS TOPICS OF INTEREST

Apart from the cases reported in the foregoing chapters, some interesting cases noticed in audit (including a case of fraud) and involving duty of Rs. 35.24 crore are illustrated in the following paragraphs. These observations were communicated to the Ministry through five draft audit paragraphs. The Ministry/department had accepted (till December 2009) the audit observations contained in two draft audit paragraphs with a financial implication of Rs. 23.85 crore and had further reported recovery of Rs. 21.35 crore.

7.1 Duty not credited to consumer welfare fund

Section 11B of the Central Excise Act, 1944, provides for grant of refund of duty if the incidence of such duty had not been passed on by the manufacturer to any other person. In case, the duty had been passed to any other person, the amount is required to be credited to the consumer welfare fund established under section 12C of the foregoing Act.

M/s Bombay Chemicals Ltd., in Thane I commissionerate, submitted fifteen refund claims amounting to Rs. 13.17 crore for different periods falling between 27 September 1979 and 28 February 1994. After hearing the assessee, the Assistant Collector (Excise), Thane passed an order on 22 March 1995 sanctioning refund of Rs. 67.79 lakh to it, transferring Rs. 10.43 crore (refund relating to duty paid in cash) to consumer welfare fund and leaving balance amount of Rs. 2.07 crore untouched as it related to payment from cenvat credit account. Aggrieved by the order, the assessee filed a writ petition with the Mumbai High Court, which decided (July 2005) to restore the original order and payment of refund of Rs. 67.79 lakh with interest at nine per cent per annum.

Audit noticed (June 2008) that though the original order of March 1995 was restored in July 2005 by the High Court and refund of Rs. 67.79 lakh was paid with interest in January 2006, yet the refund of Rs. 10.43 crore was not credited to the consumer welfare fund.

On this being pointed out (June 2008), the Ministry admitted the audit observation and intimated (November 2009) that Rs. 8.07 crore had been credited to the consumer welfare fund in October 2008 and a cheque for Rs. 2.36 crore has been sent in September 2009 to the Principal Chief Controller of Accounts, New Delhi for crediting to the consumer welfare fund.

7.2 Passing of surplus credit by paying excess duty/exempted duty

The Board clarified on 4 January 1991 that the duty paid in excess of the payable amount was not duty but a deposit with the Government.

M/s Dabur India Ltd. Baddi (Amla Extract Unit), in Chandigarh commissionerate, engaged in the manufacture of khshudhavardhak vati churn, khshudhavardhak imli churn, chyavanprash prakshep special, and

chyavanprash prakshep vishwat (sub-heading 3003.39), cleared these goods for captive use in its sister units on payment of duty on value with margins of profit ranging from 192 to 263 per cent of the cost of production. The incorrect valuation resulted in enhanced payment of duty from cenvat and facilitated the sister units to utilise excess credit aggregating Rs. 6.05 crore during the period from April 2002 to November 2003.

On the matter being pointed out (January 2004 and July 2007), the department stated (November 2008) that the goods were sold to the sister units of the assessee only and the valuation of goods was correctly done under rule 8 of the valuation rules by adopting 110 per cent of the cost of production.

The reply of the department is not tenable as the margin of profit ranged between 192 to 263 per cent as against the statutory provision of 15 per cent/10 per cent, which facilitated the assessee to pass excess credit to its sister units. In terms of the Board's circular dated 4 January 1991, the excess duty paid was a deposit with the Government for which buyers were not eligible for credit.

The reply of the Ministry has not been received (December 2009).

7.3 Incorrect grant of rebate on exported goods

Rule 18 of the Central Excise Rules, 2002, provides rebate of duty paid on excisable goods exported or duty paid on materials used in the manufacture or processing of such goods.

In terms of rule 3 of the Custom, Central Excise Duties and Service Tax Drawback Rules, 1995, a drawback may be allowed on the export of goods at such rate or at such amount as may be determined by the Central Government, provided that where cenvat credit of the duties paid on inputs used in the manufacture of exported goods, has been taken or such duties or taxes have been refunded or rebated either in whole or in part under the Central Excise Act, 1944 or Customs Act 1962, then the drawback is available at reduced rate.

M/s Indorama Synthetics Ltd., (POY unit) MIDC Butibori, in Nagpur commissionerate, manufactured polyester filaments yarn (partially oriented yarn) and polyester staple fibre and exported these goods on payment of duty through cenvat credit, under claim of rebate of duties so paid. During the period from January 2008 to April 2008, the assessee availed of cenvat credit of central excise duties paid on inputs used in the manufacture of exported finished goods. However, at the time of clearance of such finished goods for export under claim of rebate of duties, the assessee reversed the cenvat credit availed of, on inputs and claimed duty drawback at full rate on inputs. Duty drawback of Rs. 15.70 crore at full rate (of 16 per cent of FOB value i.e. value determined for shipment of goods) was paid to the assessee. The assessee was again granted rebate of Rs. 5.09 crore in cash in lieu of duty paid through cenvat credit on the said exported goods. Through this modus operandi, the assessee obtained double benefit of liquidation of cenvat credit in respect of inputs used in manufacture of exported goods, once as duty drawback at full rate in cash and again as rebate of duty on the goods exported by way of

refund in cash. As the assessee had already been granted duty drawback at full rate for the goods exported, he was not entitled for rebate claim in cash on the same goods. This resulted in incorrect grant of rebate of Rs. 5.09 crore for the goods exported during the period from January 2008 to April 2008 alone.

On this being pointed out (November 2008 and January 2009), the department stated (February 2009) that there was no double benefit as such benefit arose only when the same tax was refunded twice. A manufacturer can avail of rebate of duty on inputs, forgo the duty drawback and export the goods under bond (without payment of duty) under rule 19 of the Central Excise Rules, 2002 in which case the effect for the exporter was that the product did not suffer duty on input stage as well as the end product stage. The department further stated that if the Government's intention was to provide any one of the three rebates only, it would have provided exclusion clause in each of these schemes against the remaining two, which was not the case.

The department's reply is not tenable in view of the judgement of the Bombay High Court in the case of M/s Indorama Textiles Ltd., MIDC Butibori v/s Commissioner of Central Excise, Nagpur {2006 (200) ELT 3 (Bom)} which held that in case of export of goods, the assessee was entitled either to rebate of duties paid on inputs or to rebate of duties paid on finished goods. It was ruled that both the rebates could not be availed simultaneously by the assessee. In the said judgement the High Court had ruled that the intention of the legislature was not to simultaneously grant rebate of duty paid on exported goods as well as on inputs used in such goods. In the event that the intention of the legislature was to grant rebate of duty paid on finished excisable goods, there was no propriety to ask the assessee first to pay excise duty on these goods when the department had to refund the same in the form of rebate to an assessee. Further, while passing the rebate claim the jurisdictional sanctioning authority had mentioned that "claimant are availing the facility of cenvat credit under the Cenvat Credit Rules, 2004", so as to make assessee eligible for grant of rebate, whereas in the respective ARE-I[1], the assessee had declared that they had not availed of cenvat credit for eligibility of duty drawback. Further, the jurisdictional range superintendent had also certified that the assessee had not claimed any drawback for this amount. The statements of the different departmental authorities were, accordingly contradictory.

The reply of the Ministry has not been received (December 2009).

7.4 Fraudulent payment of duty

According to the instructions issued by the Board in its circular dated 22 March 1990 and dated 21 November 1994, the Chief Accounts Officers (CAOs) functioning in the Central Excise and Service Tax commissionerates have to ensure accounting of each remittance claimed to have been made by the assessee into the Government account by reconciliation with the revenue receipts maintained by the PAO.

[1] Application for removal of excisable goods for export by air/sea/post/land.

M/s Vijaya Steels Ltd. unit at Peenya, in Bangalore II commissionerate and unit at Nelamangala, in Bangalore III commissionerate, engaged in the manufacture of sponge iron, pig iron and MS rods showed payment of duty of Rs. 76.20 lakh through TR-6 challan numbers 10/31.3.06/11/31.3.06, 18/31.3.06, 8/5.11.06, 9/5.11/06 and 14/5.2.07 during the period from March 2006 to February 2007. Test check of records in audit revealed that these remittances were not traceable in the records of the PAO.

On this being pointed out (July 2008), the department approached (September 2008), the bank and the bank confirmed (November 2008) non-receipt of the amount. Thereafter, the assessee remitted Rs. 76.20 lakh in November 2008 and January 2009. The assessee also paid interest of Rs. 20.11 lakh for delay in payment of duty for more than two years. The TR-6 challans through which the amount claimed to have been paid earlier by the assessee were, accordingly, fraudulent. These fraudulent challans for Rs. 76.20 lakh would have been noticed by the commissionerates, had the reconciliation of revenue receipts been conducted between the account of the CAO and the PAO in the manner prescribed.

On the matter being pointed out again (January 2009), the department intimated (February 2009) that the Bangalore III commissionerate had initiated investigation relating to Nelamangala unit of the assessee, involving Rs. 71 lakh. It also stated that though the reconciliation was not carried out, the amount was remitted later. However, action taken to impose penalty of equal amount of duty under section 11 AC of the Central Excise Act was awaited.

The Ministry admitted the audit observation and stated (November 2009) that the Director (Finance) of M/s Vijaya Steels had been arrested and the case was being proposed for prosecution.

7.5 Duty collected but not paid to the Government

Section 11D (1) of the Central Excise Act, 1944, envisages that every person who is liable to pay duty under the Act or the rules made thereunder and has collected any amount in excess of the duty assessed or determined from the buyer of the goods in any manner as representing the duty of excise, shall forthwith pay the amount so collected to the credit of the Central Government. Where duty has not been paid by reasons of fraud, collusion etc., the person liable to pay duty shall also be liable to pay penalty equal to duty under section 11AC of the Act.

The Director of Health Services Himachal Pradesh, Shimla placed orders for supply of medicines and equipment to M/s Narula Udyog (P) Ltd. Delhi against which goods valuing Rs. 8.16 crore were supplied on their behalf by another company namely M/s Bharat Business Centre, 47 North Avenue, Punjabi Bagh, New Delhi, after charging central excise duty of Rs. 12.43 lakh on invoices during the year 1997-98 and 1998-99. Evidence of payment of duty by way of duty debit particulars was neither available on the invoices nor

were these produced by the supplier of medicines even after six years of the matter being pointed out by audit. Absence of rectificatory action under section 11 D(2) of the Act had not only resulted in loss of revenue of Rs. 12.43 lakh but also in non-levy of penalty of Rs. 12.43 lakh under section 11AC of the Act.

On the matter being pointed out (March 2003), the department intimated (November 2007) that the matter had been taken up with the jurisdictional Commissionerate of Central Excise, Delhi.

The Assistant Commissioner of Central Excise, Division IV, New Delhi further intimated (June 2008) that no such unit had been registered under the jurisdiction of the division. Since duty had been recovered through invoices from the Government of Himachal Pradesh (buyers of medicines) and was not deposited with the Government, the matter required detailed investigation by the department but no such action had been initiated. The department should also consider engaging with investigating authorities to locate this assessee.

The matter was reported to the Ministry in September 2008; its reply has not been received (December 2009).

7.6 Other cases

In 1085 other cases of irregularities involving duty of Rs. 12.66 crore, the Ministry/department had accepted all the audit observations and reported (till December 2009) recovery of Rs.12.31 crore in 1081 cases.

New Delhi **(SUBIR MALLICK)**
Dated : **Principal Director (Indirect Taxes)**

Countersigned

New Delhi **(VINOD RAI)**
Dated : **Comptroller and Auditor General of India**