CHAPTER II
DUTY EXEMPTION 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 fulfil certain export obligations (EO) as well as comply with specified conditions, failing which the applicable normal duty becomes leviable. A few illustrative cases where duty exemptions were availed of without fulfilling EOs/conditions, are discussed in the following paragraphs. The total revenue implication in these cases is Rs. 24.30 crore. These observations were communicated to the Ministry through 42 draft audit paragraphs. The Ministry/department has accepted (till January 2010) the audit observations in 31 draft audit paragraphs with a revenue implication of Rs. 14.07 crore, of which Rs. 3.53 crore has been recovered.

2.1 Export oriented units (EOUs)/Export processing zone (EPZ) scheme

Short/non-levy of education cess on DTA clearances

Education cess was imposed on imported and indigenous goods with effect from 9 July 2004 in terms of section 91, 92 and 94 of Finance Act, 2004. It is levied on imports as duty of customs (customs education cess) at two stages on (i) additional duty of customs (CVD) and (ii) on total duties of customs consisting of basic customs duty (BCD) and CVD plus customs education cess on CVD at (i) above. It is also levied as duty of excise (central excise education cess) on clearances of excisable goods at the same rate on total excise duty.

Further, as per section 3 (1) of the Central Excise Act, 1944, the total excise duty in the case of sale of goods by 100 per cent export oriented unit (EOU) in domestic tariff area (DTA) shall be equal to the aggregate of duties of customs leviable under the Customs Act, 1962, as if the goods were imported into India. The duties of customs consisting of BCD, CVD and customs education cess in two stages at (i) and (ii) above, thus shall be the aggregate duties of customs, to be collected in terms of the aforesaid section 3 (1) of the Central Excise Act as excise duty and on this central excise duty education cess is leviable.

2.1.1 M/s South Asian Petrochem Ltd. and M/s Manaksia Ltd. the two EOUs under the jurisdiction of the Development Commissioner (DC), 'Falta Special Economic Zone (FSEZ)', sold their goods (PET resin and foils/coils/sheets of aluminium) in DTA during the financial year 2006-07, while availing of the concessional BCD in terms of notification no. 23/2003-CE dated 1 March.2006 (as amended), read with paragraph 6.8 of the Foreign trade policy (FTP) 2004-09. The goods were cleared by paying the BCD, the CVD and customs education cess in the above two stages. However, the education cess at stage (ii) as mentioned above was not considered for calculation of aggregate duties of customs while collecting the same as total excise duty on

which central excise education cess was also leviable in terms of Finance Act, 2004. This resulted in short levy of education cess of Rs. 1.01 crore.

On this being pointed out (June 2008), the department issued (November/December 2008), two show cause notices to the EOUs for recovery of education cess short levied. Further progress has not been intimated (January 2010).

The matter was reported to the Ministry (August 2009); its response has not been received (January 2010).

2.1.2 M/s Jain Irrigation Systems, Jalgaon, an EOU under Santacruz electronic export promotion zone (SEEPZ), Mumbai was issued 'Letter of permission (LOP)' in March 2006 to manufacture 'extruded, moulded, and fabricated plastic goods including micro irrigation products/systems'. The EOU had cleared goods in Domestic tariff area (DTA) valued at Rs. 191.15 crore during the period April 2005 to March 2008. Audit scrutiny revealed that the goods were cleared by paying the BCD, the CVD and customs education cess in the above two stages. However, education cess was not levied on the aggregate duties of customs while collecting the same as total excise duty on which central excise education cess was also leviable in terms of Finance Act, 2004. This resulted in short levy of education cess of Rs. 86.95 lakh.

The matter was reported to the Ministry (September 2009); its response has not been received (January 2010).

2.1.3 M/s Responsive Industries Ltd. an EOU under SEEPZ, Mumbai was issued LOP in February 2002 to manufacture 'PVC Vinyl flooring/PVC leather cloth/PVC film sheet etc'. The EOU had cleared goods in DTA valued at Rs. 177.79 crore during the period April 2005 to March 2008.

The duty paid by 100 per cent EOUs for making clearance into DTA was the duty of excise, the education cess and higher education cess was payable. Audit scrutiny of the DTA sales invoices revealed that the education cess on aggregate duties i.e. excise duty arrived at was not paid. This resulted in non-levy of education cess amounting to Rs. 57.88 lakh.

On the matter being pointed out (February 2009), the department stated (May 2009) that 'Show cause notices (SCN)' have been issued to the unit, for the months of January 2008 to February 2008 and also for subsequent periods. However, the department also stated that SCN could not be issued covering the extended period of limitation since the licencee is availing benefits under the notification 23/2003 CE dated 31 March 2003 from time to time.

The department was informed (June 2009) that its contention was not tenable as in the case of EOUs, the department could raise demand for the extended period by invoking the provisions of the bond executed by the EOU. Its further response had not been received (January 2010).

The matter was reported (October 2009) to the Ministry; its response has not been received (January 2010).

2.1.4 M/s Meghmani Organics Ltd. (Agro Division, Unit-II), a 100 per cent EOU falling under Surat-II central excise commissionerate, paid excise duty of Rs. 7.60 crore on DTA clearances of Rs. 46.44 crore made between

May 2005 and April 2007. Audit scrutiny revealed that education cess was not levied on the excise duty collected. This resulted in non-levy of education cess of Rs. 16.33 lakh.

On this being pointed out (August 2008), the department reported (March 2009) that a SCN demanding education cess of Rs. 32.65 lakh for the period May 2005 to January 2008 has been issued to the importer. Further progress has not been intimated (January 2010).

The matter was reported (September 2009) to the Ministry; its response has not been received (January 2010).

Incorrect reimbursement of 'Central Sales Tax'

As per paragraph 6.11 (c) of the FTP 2004-09, EOUs are entitled to full reimbursement of 'Central Sales Tax (CST)' on purchases made from DTA for production of goods. In terms of clause 2 (a) of Appendix 14-I-I of the Hand Book of Procedures (HBP) Volume-1, admissibility of the reimbursement is subject to the condition that the supplies from DTA must be utilised by the EOU for production of goods meant for export and/or utilised for export products.

2.1.5 M/s South Asian Petrochem Ltd. and two other EOUs functioning under the jurisdiction of the DC, FSEZ, Kolkata (Airport) commissionerate were granted reimbursement of CST amounting to Rs. 10.46 crore on raw materials/consumables procured and utilised by these assessees in production of PET resin/hawai chappal sheet, coil and dust of aluminium between 2005-06 and 2007-08. However, this amount also included reimbursement of Rs. 3.67 crore on sale of finished products back in DTA. This resulted in excess reimbursement of CST amounting to Rs. 3.67 crore.

On this being pointed out (August 2009), the Ministry of Commerce, concurring with the comments of the FSEZ authorities stated (December 2009) that the FTP allowed reimbursement of CST on procurement of goods manufactured in India and did not impose any restriction on goods cleared in the DTA. Further, it was stated that clause 2 (a) of Appendix 14-I-I of the HBP used the phrase 'meant for export' and not actual export. It further added that use of the expression 'and/or' between 'meant for export' and 'utilised for export production' in the said clause indicated that the intention to use indigenous raw material for manufacture of goods intended for export was sufficient to avail of reimbursement of CST.

The FSEZ added that the ambiguity in the policy paragraph 2 (a) & (b) of Appendix 14-I-I was taken care of in the FTP 2009-14 incorporating necessary changes thereby allowing benefits to supplies from DTA for production of goods instead of allowing benefits for exports. Accordingly, the refund of CST allowed earlier to the EOU was not warranted.

The reply of the Ministry/department is not tenable because the Board, through its circular nos. 74/01 (cus) dated 4 December 2001 and 10/09 (cus) dated 25 February 2009, had clarified that all the deemed export benefits were to be extended on the principle that the goods were used in the manufacture of finished products which were subsequently exported. In the case of subsequent sale of finished goods back into DTA, the circulars also prescribed the refund of the deemed export benefits already availed of against goods

procured from indigenous sources. Moreover, the reimbursement of CST was made for DTA clearances during the period 2005-06 to 2007-08 under the then prevalent FTP provisions and the changes made in FTP 2009-14 were not applicable to those DTA clearances.

2.1.6 Audit scrutiny revealed that M/s Meta Copper & Alloys Ltd. Upasnagar, Goa, an EOU, received CST refund amounting to Rs. 8.20 crore on the material procured and utilised for the entire production during the period from 2001-02 to 2007-08. The unit was also permitted to sell 50 per cent of the f.o.b. value of goods in DTA. During the period from 2001-02 to 2007-08, it made DTA sales of Rs. 549.39 crore, and exports worth Rs. 1,391.33 crore. As the reimbursement of CST was permissible only in respect of the exported goods, excess reimbursement of CST amounting to Rs. 2.32 crore on DTA sales was recoverable.

On the matter being pointed out (August 2009), the Ministry of Commerce, concurring with the comments of SEEPZ, Mumbai authorities, stated (December 2009) that the reimbursement of CST for the supply of goods from DTA to EOU was without distinction, whether the goods were used for export or for clearances in DTA.

The Ministry further stated that the ambiguity in the policy paragraph 2 (a) & (b) of Appendix 14-I-I was taken care of in the FTP 2009-14 incorporating necessary changes thereby allowing benefits to supplies from DTA for production of goods.

The Ministry/department's reply is not tenable as reimbursement of CST is admissible only in respect of goods meant for export and not in respect of goods produced for DTA sales. Moreover, the changes made in FTP 2009-14 are not applicable to the DTA clearances of the period 2001-02 to 2007-08.

Non-achievement of net foreign exchange earning/non-fulfilment of export obligation

As per paragraph 6.5 of the FTP read with paragraph 6.10.1 of the HBP Vol.-I, EOU shall be positive Net Foreign exchange (NFE) earner and it shall be calculated cumulatively in blocks of five years, starting from the commencement of production. As per paragraph (3) (d) (ii) of notification No. 52/2003-Cus dated 31 March 2003, in case of failure to achieve the said positive NFE, the duty forgone proportionate to the ratio of unachieved portion of NFE to the positive NFE is to be recovered alongwith interest. In addition, the unit is liable to pay penalty under section 11 (2) of the Foreign Trade (Development and Regulation) Act, 1992.

2.1.7 M/s Vibgyor Paints Pvt. Ltd. Thane, an EOU under the DC, SEEPZ, Mumbai was issued a LOP in July 2001 for manufacture of industrial paints, decorative paints and resin. The unit imported raw materials worth Rs. 12.11 crore during 2001-02 to 2005-06, while the FOB value of exports during 2002-03 to 2005-06 was Rs. 13.92 crore. However, scrutiny of the annual performance report for the year 2005-06 revealed that export proceeds amounting to Rs. 4.69 crore were outstanding for realisation. This resulted in non-achievement of positive NFE, the shortfall amounted to Rs. 2.88 crore. As per provisions of the aforesaid notification, the duty foregone proportionate to the shortfall in positive NFE was Rs. 1.13 crore.

On this being pointed out (October 2007), the department confirmed a demand (December 2008) of Rs. 1.13 crore. However, the unit went in appeal (January 2009) against the order. Outcome of the case is awaited (January 2010).

The matter was reported (September 2009) to the Ministry; its response has not been received (January 2010).

2.1.8 M/s Mizoram Venus Bamboo Products Pvt. Ltd. Aizawl an EOU under Shillong commissionerate was issued a LOP by the licensing authority, Kolkata in July 2003 for setting up a 100 per cent EOU by importing/procuring from indigenous sources, capital goods valuing Rs. 30.07 lakh with the obligation to manufacture and export its entire production and achieve positive NFE for a period of five years from the date of commencement of production. The LOP was revised subsequently in May 2004, enhancing the value of capital goods to Rs 3.69 crore. Against this revised limit, the unit imported/procured between September 2003 and November 2006, capital goods valued at Rs. 6.45 crore with duty foregone amounting to Rs. 2.79 crore. Except for an unsuccessful trial run in the year 2006, the unit could not put to use the capital goods for manufacture of any export product. The unit was accordingly liable to pay duty of Rs. 2.79 crore alongwith applicable interest.

On this being pointed out (November 2008), the Customs department intimated (March 2009) that a SCN demanding duty of Rs. 2.79 crore besides interest was being issued. The DC, FSEZ issued (April 2009) a show cause notice to recover penalty under Foreign Trade (Development and Regulation) Act, 1992. Further progress has not been intimated (January 2010).

The matter was reported (September 2009) to the Ministry; its response has not been received (January 2010).

2.1.9 M/s Peedee Dyechem Industries Pvt. Ltd. an EOU under SEEPZ, Mumbai was issued a LOP in June 2002 to manufacture and export 'Reactive black', 'Reactive navy blue', 'Reactive gold yellow' and 'Reactive orange'. Against the duty free import of raw materials worth Rs. 5.72 crore, the unit exported goods worth Rs. 9.37 crore and was allowed to debond in April 2007 by the Development Commissioner SEEPZ without the levy of any penalty considering the achievement of positive NFE. Audit scrutiny revealed that out of goods exported worth Rs. 9.37 crore, an amount of Rs. 4.28 crore was not realised by the unit. Accordingly, there was shortfall in positive NFE of Rs. 62.57 lakh on which customs duty of Rs. 24.53 lakh was recoverable.

On this being pointed out (October 2007), the department stated (July 2009) that the unit had achieved positive NFE as there was no provision in the FTP and HBP regarding deduction of unrealised foreign exchange amount from the FOB value of exports for the purpose of calculation of NFE.

The reply of the department is not tenable because as per guidelines for monitoring the performance of EOU units (Appendix- 14 IG of the HBP, Vol.-I) read with RBI regulations, the DC will monitor foreign exchange realisation in co-ordination with the concerned General Manager of the RBI. Further, the RBI regulations provide that export proceeds are required to be realised within a period of six months. Non-realisation of foreign exchange at the time of

debonding in effect means that the EOU was not a positive net foreign exchange earner.

This was communicated to the department in August 2009; its response has not been received (January 2010).

The reply of the Ministry has not been received (January 2010).

2.1.10 M/s Milsoft Technology Ltd. Kochi, a STP unit under customs commissionerate, Kochi having a private bonded warehouse licence, imported capital goods worth Rs. 25.36 lakh (March 2002/January 2003) without payment of duty under 100% EOU Scheme. The warehouse licence had expired on 20 November 2003. The unit had neither renewed the licence nor installed the imported machinery in the bonded premises of the unit as stipulated in the notification no. 52/2003-cus dated 31 March 2003. The company also failed to achieve the prescribed export obligation within a period of five years. As the company had violated all the stipulated conditions, it was liable to pay duty foregone amounting to Rs. 14.41 lakh and interest of Rs. 14.58 lakh (upto September 2009).

On this being pointed out (June 2004/July 2008), the department stated (November 2008) that a demand notice had been issued (July 2007) for non-fulfilment of export obligation and violation of licence condition and another show cause notice was also issued (November 2008) for non-installation of the capital goods in the bonded premises.

Further progress has not been intimated (January 2010).

The reply of the Ministry has not been received (January 2010).

Irregular DTA sale

As per clause (f) and (g) of Appendix 14-I-H of the HBP Vol.-I, an EOU may be permitted advance DTA sale subject to certain terms and conditions. Such sale may be made on monthly basis as per clause (c) of the said Appendix, if the EOU has the status of a Premier Trading House as defined in paragraph 3.5.2 of the FTP.

2.1.11 M/s Tara Holdings Pvt. Ltd. an EOU, was issued a LOP in March 2005 by the DC, FSEZ for manufacture/export of polyethylene (PE) compounds, 'Hawai Chappal' etc. using imported/indigenous raw materials. Advance DTA sale permission for Rs. 5 crore was given by the DC, FSEZ in July 2007. Against advance DTA sale permission, the unit cleared entire production of 'Hawai Chappal' valued Rs. 19.10 crore in DTA on monthly basis (as a premier trading house) during the period from April to July 2008, on payment of central excise duty at concessional rate in terms of notification no. 23/2003-CE dated 31 March 2003 (serial number 4) read with paragraph 6.8 (a) of the FTP. This resulted in excess DTA sale of Rs. 14.10 crore on which central excise duty of Rs. 99.67 lakh was recoverable.

On this being pointed out (June 2008), the DC and the Excise department justified the duty concession (August and October 2008) on the ground that it was covered under permission for advance DTA sale, which was granted to the EOU in July 2007. The reply is not tenable because there was excess DTA clearance over that permitted and these have not been adjusted against subsequent entitlements.

The reply of the Ministry has not been received (January 2010).

Irregular DTA clearance of surplus/obsolete capital goods

As per paragraph 6.15 (b) of the FTP 2004-09, an EOU may dispose off the obsolete/surplus capital goods and spares in DTA on payment of applicable duties. Further, in terms of paragraph 6.35 of the HBP Vol.-I, clearance of capital goods including second hand goods in DTA was allowed as per FTP under the EPCG Scheme. However, according to paragraph 6.18 (d) of FTP, an EOU may be permitted by the DC to clear the capital goods on payment of duty under the prevailing EPCG scheme only on exit from the EOU scheme, as a one time option.

2.1.12 Audit scrutiny revealed that M/s Bosch Ltd. an EOU in Nasik was issued LOP in November 2004 for manufacture of 'Common Rail Injector Parts and components' by the DC, SEEPZ, Mumbai. In February 2007, the unit was allowed to debond surplus capital goods on payment of appropriate duty by the assistant commissioner of central excise & customs, Nasik. The unit had cleared capital goods, including spare parts worth Rs. 3.09 crore at concessional rate of five percent under EPCG scheme. Since the unit did not exit from the EOU scheme under one time option as provided under paragraph 6.18 of FTP, the grant of EPCG benefit was not in order. This resulted in undue benefit of Rs. 81.62 lakh.

On this being pointed out (June 2008), the department stated (March 2009) that the provisions of paragraph 6.18 (d) are not applicable in the case because there was no intention of the unit to exit from the EOU scheme. The department further added that surplus capital goods were cleared as per paragraphs 6.15 (b) of the FTP and paragraph 6.35 of the HBP, which allowed clearance of surplus capital goods in DTA on payment of the applicable duties and clearances were also allowed under the EPCG scheme respectively.

The reply of the department is not tenable because DTA clearances under paragraph 6.15 (b) were allowed only on payment of applicable duties which were applicable as in the instant case DTA clearances were made on a concessional rate of duty. Further, clearances under paragraph 6.35 could only be made as per the FTP under the EPCG scheme by those EOUs which exercised one time option to exit from the scheme. Since the unit did not exercise this option to exit from the scheme, the grant of EPCG benefit was irregular. This was communicated to the department/Ministry in June/October 2009; their responses have not been received (January 2010).

Irregular DTA sale of waste generated during manufacturing process

In terms of first proviso to paragraph 3 of notification no. 52/2003-cus dated 31 March 2003, as amended, where non-excisable finished goods including waste produced by an EOU are allowed to be sold in the DTA, no exemption shall be available in respect of inputs utilised for manufacture of such finished goods including waste. Further, paragraph 6.8 (j) of the FTP 2004-09, provides that in the case of DTA sale of goods manufactured by an EOU, where basic duty and additional duty of customs (CVD) are 'nil', such goods shall be treated as non-excisable for the purpose of payment of duty.

2.1.13 M/s Pacific Cotspin Ltd. an EOU under the commissionerate of customs (Air), Kolkata, manufacturing cotton yarn from an admixture of

indigenous raw cotton with duty-free imported raw cotton, was allowed to clear 'cotton waste' (arising out of the production process) in DTA between 6 September 2004 and 31 March 2008 under the notification no. 23/2003-CE dated 31 March 2003 at 'nil' rate of central excise duty. Since effective basic duty and CVD under the notification were 'nil' for DTA sale, cotton waste was non-excisable in terms of paragraph 6.8 (j) of the FTP 2004-09. Therefore, customs duty was leviable on the imported inputs (raw cotton) utilised for production of non-excisable finished goods and resultant bye-products (cotton waste) under the notification no. 52/2003-cus dated 31 March 2003 as amended. The incorrect grant of exemption resulted in non-levy of duty of Rs. 56.25 lakh.

On this being pointed out (June 2008), the department stated (July 2009) that it was issuing a demand notice.

The reply of the Ministry has not been received (January 2010).

Excess import of inputs in violation of 'Standard input output norms (SION)'

According to SION, for the manufacture and export of one MT 'Polyester (PET) Chips (high pressure moulding grade/Bottle grade)', import of 0.3350 MT of 'Ethylene Glycol/Monoethylene Glycol (MEG)' is permitted.

2.1.14 M/s South Asian Petrochem Ltd. an EOU under the Kolkata (Airport) commissionerate was issued a letter of permission by the Ministry of Industry in January 1998 for manufacture of 'Polyester chips'. The unit during the period July 2007 to March 2008 had consumed 36,239.99 MT of duty free 'MEG' against the permissible quantity of 35,823.34 MT of 'MEG' as per SION, for production of 'bottle grade polyester chip'. This resulted in excess consumption of 416.65 MT of 'MEG' on which customs duty amounting to Rs. 52.50 lakh was recoverable alongwith interest.

On this being pointed out (June 2008), the Assistant DC, FSEZ reported (April 2009) that the excess quantity of 1.28 MT consumed was adjusted from the permissible quantity of import during subsequent period.

The Ministry in its response stated (December 2009) that a show cause notice demanding duty of Rs. 52.50 lakh had been issued.

Details of recovery had not been received (January 2010).

Incorrect grant of exemption

As per paragraph 6.2 (b) of the Export Import Policy (EXIM) 2002-07, an EOU may import or procure from the DTA without payment of duty, all types of goods including capital goods required for its activities with the permission of the Development Commissioner.

2.1.15 M/s Elpro International Ltd. an EOU under SEEPZ, Mumbai was issued a LOP in May 2001 for manufacture of 'zinc oxide discs'. The LOP was amended (October 2001) to allow indigenous procurement of the export product i.e. 'zinc oxide discs' without the payment of central excise duties. The unit had procured 2.98 lakh 'zinc oxide discs' of assessable value of Rs. 2.63 crore during the period from 2002-03 to 2006-07 on which duty of Rs. 42.12 lakh was forgone. As the LOP was issued to the unit for

manufacture of 'zinc oxide discs', indigenous procurement of the same product was not in order and amounted to the violation of policy provisions. This resulted in loss of revenue of Rs. 42.12 lakh.

On this being pointed out (October 2007), the Assistant DC, SEEPZ stated (June 2009) that indigenous procurement of zinc oxide discs was allowed to execute an export order for manufacture of "Surge Arrester" (a broadband product) by October/November 2001 which is an assembly of various items including 'zinc oxide disc.' The department further stated that unit's trial production of 'zinc oxide disc' was to start from December 2001, while the export order was to be executed before it.

The department's reply is not tenable because:-

➢ There is no provision in the policy to grant permission for procurement of goods, which were allowed in the LOP for manufacturing and export.

Further, as per provisions of paragraph 6.34 of the HBP Vol.-I, the DC may permit broad banding for similar goods and activities mentioned in the LOP or to provide for backward or forward linkages to the existing line of manufacture. In this case, manufacture had not even started in October 2001 and hence, the broad banding permission given before the start of trial production was not in order.

➢ Moreover, the unit continued to procure 'zinc oxide discs' indigenously upto 2006-07 during which the unit's 'zinc oxide disc' manufacturing unit was working. Hence, the justification on grounds of export urgency as cited by the department is unacceptable.

The reply of the Ministry has not been received (January 2010).

2.2 Advance licencing scheme

Non-fulfilment of export obligation on finalisation of adhoc norms

As per paragraph 4.7 of HBP Vol.-I, 2004-09, advance authorisation shall be issued, where SION are not fixed, based on self declaration and an undertaking by the applicant for a final adjustment as per adhoc norms/SION fixed by the 'Advance Licensing Committee (ALC)'.

In terms of paragraph 4.24 of HBP Vol.-I (2004-09), the advance licence holder has to submit the documents in fulfillment of the export obligation (EO) within two months from the date of expiry of the EO period. According to paragraph 4.28 of HBP, Vol.-I, in the case of default in fulfillment of export obligation, the licencee is required to pay to the customs authorities, the customs duty on value of the unutilised imported material alongwith interest.

2.2.1 M/s Niyaz Apparels, Chennai was issued an advance authorisation (September 2005) under self declared norms for the import of 100 % cotton twill printed fabric (6, 18,800 Sq. Meters) and 100 % cotton twill peach fabric (1,76,800 Sq. Meters). The self declared norm was approved by the ALC in their meeting held on 24 November 2005. The licencee applied for the import of 6,12,000 yards of 100 per cent 'Cotton tapes' as the third item of import in the licence. The licensing authority allowed the third item in the import list and amended the c.i.f. value of the licence to Rs. 5.27 crore and the FOB value

to Rs. 6.93 crore. Accordingly, the adhoc norms based on two items of import, approved earlier in November 2005, were rejected and the licencee was directed (December 2006) to surrender the licence to incorporate the amendment. But the licencee did not surrender the licence.

Audit scrutiny revealed that the RLA neither informed the customs authority about the rejection of the norm nor took any further action to regularise the case under paragraph 4.28 of the HBP. The export obligation period expired on September 2007. The licencee neither applied for extension of the EO period nor submitted the documents for fulfillment of export obligation.

On verification of the import details at the Chennai sea customs commissionerate, it was noticed that the licencee had registered the licence with it and had imported raw materials total valued at Rs. 3.60 crore before rejection of approval by the ALC. For these imports the licencee was liable to pay a duty of Rs. 73.37 lakh alongwith interest.

On this being pointed out (November 2008), the department reported (July 2009) that the firm had been placed under denied entity list (July 2009). Further progress has not been intimated (January 2010).

The matter was reported (October 2009) to the Ministry; its response has not been received (January 2010).

2.2.2 M/s Futura Polyesters Ltd. (Futura fibres division), Chennai was granted two advance authorisations (November 2005 and February 2006) under self declaration norms by the RLA, Chennai for a total c.i.f. value of Rs. 21.61 crore for import of six items of raw materials against the export of 4,000 MT of 'Polyester Chips (High Pressure Moulding Grade)'. The adhoc norms for these licences were approved by the ALC which allowed the import of these items as per SION H206. The amended norms allowed import of three items only with lesser quantity than that allowed in the advance authorisations.

Verification of records at Chennai (sea) commissionerate revealed that the licencee had actually imported 1,41,400 kgs of 'Monoethylene Glycol' and 879 kgs of 'Antimony Trioxide' in excess of the quantity permissible under SION H206 and was accordingly liable for payment of duty of Rs. 20.22 lakh alongwith interest.

On this being pointed out (October 2009) to the Ministry of Commerce, the Zonal JDGFT, Chennai on its behalf reported (December 2009) that the licencee had regularised excess import of one item while refuting excess import of other two items against the licence. The matter was under examination. In respect of another licence, the ZJDGFT stated that the licence has been redeemed after prescribed EO was fulfilled.

2.3 Export promotion capital goods (EPCG) scheme

Non-fulfilment of export obligation

According to paragraphs 6.11 and 6.12 read with paragraph 6.19 of the HBP Vol.-I, 1997-02, an EPCG licencee is permitted to import capital goods at concessional rate of customs duty and required to achieve the prescribed block

wise proportionate export obligation over the specified period. For monitoring of its export obligation, the licencee should submit to the licensing authority block wise report, periodically, on the progress made in fulfillment of the export obligation. In the event of failure to discharge a minimum of 25 per cent of the export obligation prescribed for any particular block of two years for two consecutive blocks, the licencee will be liable to pay forthwith the whole duties of customs alongwith applicable interest.

2.3.1 M/s Sun Fibre optics, an erstwhile EOU unit, on conversion was issued (February 2001) an EPCG licence by the RLA, Bangalore to import capital goods worth Rs. 1.05 crore with an EO of Rs. 5.23 crore to be fulfilled within a period of eight years. The licencee imported (February/April 2000) capital goods worth Rs. 1.04 crore under the EOU scheme and saved duty amounting to Rs. 52.62 lakh on coming over to the EPCG scheme. Audit scrutiny revealed that the licencee did not furnish all the prescribed block wise reports for fulfillment of export obligation, even after two months of the expiry of the validity (April 2009) of the licence. Accordingly, the licencee was liable to pay the customs duty foregone amounting to Rs. 52.62 lakh and interest of Rs. 65.12 lakh (upto May 2009).

On this being pointed out to the Ministry of Commerce (August 2009), the JDGFT, Bangalore reported (December 2009) on its behalf that the licencee had submitted export documents towards fulfillment of export obligation and the case was under examination.

2.3.2 M/s Rubber wood (India) Pvt. Ltd. Kottayam, Kerala was issued (August 2000) an EPCG licence by the RLA, Cochin with a c.i.f. value of Rs. 1.17 crore against an export obligation of Rs. 5.83 crore to be fulfilled within a period of eight years. The EO was later revised to Rs. 6.05 crore against the actual import of goods worth Rs. 1.21 crore. Audit scrutiny revealed that the licencee failed to fulfill the prescribed block wise export obligation for the 3rd & 4th block years. The licencee exported goods worth Rs. 1.83 crore against the prescribed EO of Rs. 6.05 crore till the expiry of the validity (August 2008) of the licence. Accordingly, it was liable to pay the proportionate customs duty foregone amounting to Rs. 16.92 lakh alongwith interest.

On the matter being pointed out (September 2008), the RLA stated (March 2009) that a show cause notice had been issued (October 2008) for non-fulfillment of EO. The department further added (March 2009) that the unit being under a World Bank aided project, was fully exempt from the payment of customs duties on import of capital goods and the licencee had already approached the policy relaxation committee (Committee), New Delhi for waiving the EO, a decision on which was pending (April 2009).

The reply of the department is not tenable because for availing of exemption under the world bank aided project, the project has to be approved by the Government of India (GOI) and the importer has to produce at the time of clearance of such goods a duty exemption certificate from an officer not below the rank of deputy secretary to the GOI, regarding usage of these goods for execution of the project. These conditions have not been fulfilled in the instant case. Additionally, outcome of the request made to the Committee has also not been intimated (January 2010).

This was reported (August 2009) to the Ministry; its response has not been received (January 2010).

Incorrect redemption of the licence

Notification 28 (RE-2003)/2002-07 dated 28 January 2004 stipulates that the licencee can opt for re-fixation of the balance EO based on eight times of the duty saved amount for the c.i.f. value in proportion to the balance EO under the scheme.

2.3.3 The exports through third party were allowed, provided the name of the EPCG licencee is mentioned on the shipping bills. The Bank realisation certificate (BRC), GR declaration, export order and invoice should be in the name of the third-party exporter. If the licencee fails to discharge the EO, he is required to pay the applicable duties of customs in addition to interest (paragraph 5.14 of the HBP Vol.-I).

M/s Abhinandan International Pvt. Ltd. Kolkata was issued (November 1999) an EPCG licence by the JDGFT, Kolkata to import capital goods for c.i.f. value of US$ 2,53,261 under zero duty EPCG scheme for use in the manufacture and export of 'Ready-made garments' with EO of US$ 15,19,566 (six times the c.i.f. value) to be discharged over a period of six years. The licencee imported (December 1999) 19 items of capital goods valued at US$ 1,88,396 through the commissionerate of customs (Port), Kolkata, and claimed fulfillment of EO of US$ 11,30,376 calculated on the basis of actual c.i.f. value utilised. The licence was redeemed in February 2007.

Audit scrutiny, however, revealed that the licencee had imported (December 1999) another consignment of eight items of capital goods worth US$ 42,372 but did not declare the fact to the licensing authority. The total value of imports was actually US$ 2,30,768 instead of US$ 1,88,396, as declared by the licencee. Accordingly, the correct EO worked out to US$ 13,84,608 instead of US$ 11,30,376 arrived at incorrectly, reckoning utilisation of the lower c.i.f. value. Further, the EO of US$ 11,30,376 fulfilled included third-party exports of US$ 3,22,547 for which valid export documents were not available and, therefore, these exports became ineligible for the fulfillment of EO. As a result, the actual value of the eligible exports was US$ 8,21,767.38, which was 59.35 per cent of the EO (US$ 13,84,608). This resulted in short fulfillment of EO by 40.65 per cent. Accordingly, the duty saved amounting to Rs. 22.55 lakh alongwith interest of Rs. 27.48 lakh was recoverable from the licencee.

On this being pointed out (February 2008), the JDGFT, Kolkata withdrew (March 2008) the EO discharge certificate and requested the firm to pay customs duty with interest. Subsequently, audit scrutiny (March 2009) revealed that a circular for refusal of further licence alongwith show-cause notice for penal action under section 9 and 11 of the Foreign Trade (Development & Regulation) Act, 1992 had been issued to the firm in December 2008.

2.4 Vishesh krishi gram udyog yojana (VKGUY) scheme

In terms of paragraph 3.8.2.2 (c) of the FTP 2004-09, as amended, the exports made by the SEZ units and EOUs during 2006-07 are not entitled for duty

credit entitlement under the VKGUY scheme. Further, in terms of paragraph 3.8.2.1 of the FTP 2004-09, as amended in 2007, the export incentive was extended to EOUs with effect from 1 April 2007, subject to the condition that such units shall not avail of direct tax benefits and also subject to the applicability of other conditions prescribed in paragraph 3.8.2.2.

2.4.1 M/s A.R. Gherkins Pvt. Ltd. Chennai and M/s AVT Natural Products Ltd. Chennai, both 100% EOUs operating under the control of the Development Commissioner, MEPZ were issued nine VKGUY scrips for a total credit of Rs. 30.94 lakh by the RLA, Chennai in consideration of exports made by these units during the period from 1 April 2006 to 31 March 2007. Audit observed that as the exports considered for duty credit benefits had been made by the EOU units during the period 2006-07, the issue of these scrips were not in order in terms of paragraph 3.8.2.2 (c) of the FTP as amended in 2006 and the credit amounting to Rs. 30.94 lakh was recoverable alongwith interest.

On this being pointed out (October 2009) to the Ministry of Commerce, the Zonal JDGFT, Chennai reported (December 2009) on its behalf that in case of M/s A.R. Gherkins Pvt. Ltd. an amount of Rs. 3.92 lakh out of Rs. 26.42 lakh had been adjusted. Further progress in recovery of the balance Rs. 22.50 lakh has not been intimated (January 2010).

In respect of M/s AVT Natural products, the Zonal JDGFT, Chennai stated that on the firm's request, the JDGFT, Cochin had been directed to adjust an amount of Rs. 4.52 lakh alongwith interest from the claims submitted to them (JDGFT, Cochin) by the firm.

2.4.2 As per notification no. 15 (RE – 2006)/2004-2009 dated 27 June 2006 read with notification no. 45 (RE – 2006)/2004-09 dated 9 February 2007, pulses and Skimmed milk powder were placed under negative list for exports with immediate effect respectively.

Audit scrutiny revealed that in the case of a VKGUY scrip issued (August 2007) to M/s C.M.S. Balan & Co by the RLA, Madurai and another VKGUY scrip issued (August 2008) to M/s Omviskar Exports, Chennai by the RLA, Chennai, the duty credit included credits of Rs. 11.13 lakh sanctioned for export of pulses made through 18 shipping bills (SBs) after a prohibition was imposed on their export, resulting in irregular sanction.

Similarly in the case of a VKGUY scrip issued (July 2007) to M/s Hatsun Agro Product Ltd. Chennai by RLA, Chennai, the duty credit included Rs. 6.18 lakh sanctioned for the export of skimmed milk powder made through three SBs during February 2007, after a prohibition was imposed on the export of skimmed milk powder resulting in irregular sanction.

On these being pointed out (October 2009) to the Ministry of Commerce, the RLAs (Madurai & Chennai) stated (May/November 2009) on its behalf that in respect of VKGUY scrips issued for pulses, Rs. 10.18 lakh had been recovered from the two exporters by adjusting the amount sanctioned in other VKGUY scrips. Details of recovery of the balance duty credit of Rs. 0.95 lakh from M/s Omviskar Exports, Chennai was awaited. In respect of VKGUY scrip issued for skimmed milk powder, it was stated (February 2009) that a letter

had been issued to the licencee for repayment of credit of Rs. 6.18 lakh alongwith interest. Further progress had not been intimated (January 2010).

2.5 Project imports

Non-levy of education cess

The Board's circular no. 521/192/91 Cus (TU), dated 8 March 1994 stipulates that short recovery of duties, if any, noticed in respect of provisional assessment cases, should be realised without waiting for final assessment.

2.5.1 M/s Orissa Hydro Power Corporation Ltd. Bhubaneswar and M/s Vemagiri Power Generation Ltd. Rajahmundry had registered licences under Project Import scheme, 1986 to import machinery and equipment for the expansion of the existing 360 MW power project and for setting up combined cycle power project at Vemagiri and Rajahmundry respectively. The two licencees had imported 13 consignments of goods during January 2005 to May 2006. These goods were provisionally assessed without levying education cess on the additional duty. This resulted in non-levy of education cess of Rs. 36.98 lakh which was recoverable alongwith interest of Rs. 21.37 lakh.

On this being pointed out (August 2007), the department stated (September 2008) that Rs. 19.41 lakh was recovered from M/s Vemagiri Power Generation Ltd. and demand notices were issued to M/s Orissa Hydro Power Corporation Ltd. for Rs 17.57 lakh in respect of remaining 10 BEs.

The reply of the Ministry has not been received (January 2010).

2.6 Duty entitlement passbook (DEPB) scheme

Irregular grant of DEPB scrip

Paragraph 4.3.1 of the FTP 2004-09, stipulates that DEPB scrip shall be available against such export products and at such rates as may be specified by the DGFT by way of public notice. However, as per DEPB code 90/22D, in the absence of any notified rate by the DGFT, the DEPB scrip at the rate of one per cent shall be available for the export products packed in any packing material.

The SION has been prescribed for export of variants of 'Guar' gum and menthol.

2.6.1 Audit scrutiny of DEPB authorisations issued by the JDGFT, Jaipur revealed that in 34 cases the JDGFT had issued DEPB authorisation for export of such variants of guar & menthol, which were not covered under SION descriptions. This has resulted in irregular grant of DEPB credit amounting to Rs. 16.98 lakh.

On this being pointed out (February 2009), the department stated (February 2009) that the firms had been asked to comply with the audit observation. Further progress has not been received (January 2010).

The reply of the Ministry has not been received (January 2010).

2.7 Other cases

Eighteen other cases of non-fulfilment of export obligation, excess grant of credit, non-payment of duty despite receipt of insurance claimed, incorrect redemption of the licences, ineligible imports, etc, having total financial implication of Rs. 3.90 crore, were pointed out in audit. The department had accepted (till January 2010) observation in 15 cases and reported recovery of Rs. 3.19 crore in 12 cases.