EXECUTIVE SUMMARY

We conducted a performance audit on levy of excise duty on pharmaceutical products (Chapter 30 of Central Excise Tariff Heading) to evaluate the adequacy of provisions of the Act, Rules and instructions in ensuring proper assessment, collection and allocation of revenues.

We found a few system and compliance weaknesses relating to the assessment and collection of duty. The key findings and related recommendations are: -

- Assessment of allopathic physician samples was based on transaction value under section 4 instead of on MRP based value under Section 4A. To ensure uniformity, the Government may consider amending the Act and the Rules to provide for a uniform system of assessment of medicines cleared as physician sample or for trade. In 38 such cases, we found Rs. 5.67 crore of revenue has been foregone.
- Ayurvedic and Homeopathic products are not covered by MRP based assessment under section 4A although they were sold at MRP. To check against the undervaluation of Ayurvedic and Homeopathic products, the Government needs to bring these commodities under MRP based assessment (section 4A). In 26 such cases, we found that Rs. 37.79 crore of revenue has been foregone.
- The percentage of cenvat to PLA (duty paid in cash) in respect of pharmaceutical products increased by 52.75 per cent from 74.17 in 2005-06 to 113.30 in 2006-07. In four commissionerates, duty payment by cenvat during 2006-07 and 2007-08 was significantly higher than that paid by PLA (498 to 1,718 per cent). The excessive use of cenvat credit compared to cash duty payment indicates a risk of misuse of cenvat by these manufacturers. Since we have also identified incorrect use of Rs. 91.79 crore of cenvat credit, the issue requires examination. We recommend that the Government may ascertain the reasons for the increasing incidence of duty payment by cenvat credit, take necessary corrective action and use cenvat to PLA ratio as a risk factor based on which internal audit/investigation may be undertaken.
- Rates of abatement were not reduced despite reduction in applicable state taxes (post removal expenses). The Government should rationalise the rate of abatement allowed on products under section 4A assessment consequent to the various changes that have taken place in the rates of taxes. The estimated revenue loss on this account was Rs. 684.38 crore.
- Boxes of medicines with printed MRP were treated as quantity discounts and bonus quantities and were cleared without payment of duty. These were packaged along with duty paid medicines. The Government may amend the enabling Rules, to levy duty on such products which are cleared free of duty under the guise of quantity discount, bonus scheme, etc. but

which have MRPs printed and are sold in the market at MRP. In two cases observed in audit, the revenue loss was estimated to be Rs. 8.62 crore.

- The benefit of reduction in excise duty rates was not passed on to consumers, despite instructions of the Government of India. The NPPA should review its price monitoring mechanism to make it effective in timely detecting such cases. The Government should include penal provisions in the Drugs (Prices Control) Order, 1995 (DPCO) for the manufacturers of pharmaceutical products who do not pass on the benefit of duty reduction to the consumers. We found that the consumers were overcharged Rs. 9.82 crore in 17 cases by way of non reduction of medicine prices.
- The Department officers have to do an initial scrutiny of all the returns and thereafter a detailed scrutiny upto five per cent of total returns received is to be done by the departmental officers within three months of the date of receipt. We found that the scrutiny was not done. The process of selection and mandatory scrutiny of all returns is required to be streamlined.
- Several cases were noticed where the manufacturers of pharmaceutical products did not pay the applicable service tax of Rs. 182.81 crore. We recommend that the excise and service tax returns be integrated to mitigate the risk of evasion of duties/tax and the Government has agreed to address the issue while introducing the GST. In the light of our findings, we suggest that in the interim the Government can make it mandatory that manufacturers should declare on their excise returns, whether they have provided any output services or received any service from foreign service providers.
- We noticed instances where prices of scheduled drugs were not arrived at by manufacturers as per the formula prescribed by the Government of India. The NPPA should review all cases of prices of pharmaceutical products where 'Maximum Allowable Post-manufacturing Expenses (MAPE)' was required to be restricted to the prescribed cap. The excess amount charged by the manufacturers of such pharmaceutical products should be recovered. We found that in five cases, the consumers were overcharged Rs. 32.07 crore by way of non reduction of medicine prices.