PREFACE

This Report for the year ended March 2011 has been prepared for submission to the President of India under the Article 151(1) of the Constitution of India.

Audit of Revenue Receipts – Indirect Taxes of the Union Government is conducted under section 16 of the Comptroller and Auditor General of India (Duties, Powers and Conditions of Service) Act, 1971.

The Report presents the results of audit of receipts of central excise duties.

The observations included in this Report have been selected from the findings of the test check conducted during 2010-11, as well as those which came to our notice in earlier years but were not included in the previous Reports.

EXECUTIVE SUMMARY

This Report contains 30 paragraphs, with a revenue implication of ₹ 45.47 crore. We had issued another 129 paragraphs involving money value of ₹ 112.53 crore to the department/Ministry on which rectificatory action was taken in the form of issue of show cause notices, adjudication of show cause notices and recovery of ₹ 46.60 crore. A few significant findings included in this Report are mentioned in the following paragraphs:-

Chapter I: Central Excise Receipts

- In the last five audit reports (including the current year's report), we had included 699 audit paragraphs involving ₹ 2,555.46 crore. Of these, the Government had accepted audit observations in 518 audit paragraphs involving ₹ 1,485.77 crore and had recovered ₹ 195.09 crore.

{Paragraph 1.13.1}

Chapter II: Cenvat credit

- Cases of suo-moto availing of cenvat credit, cenvat credit utilised for payment of tax on input service, separate accounts for common inputs used in dutiable/exempted goods not maintained, availing of cenvat credit on ineligible capital goods, non-reversal of cenvat credit, non-reversal of un-utilised credit, excess availing of cenvat credit etc., were noticed in audit. Duty involved in these cases was ₹ 25.36 crore.

{Paragraphs 2.1 to 2.12}

Chapter III: Valuation of excisable goods

- Instances of undervaluation due to non-inclusion of additional consideration in value, incorrect determination of cost of excisable goods, short payment of duty due to misclassification etc., were noticed. Duty levied short in these cases amounted to ₹ 17.57 crore.

{Paragraphs 3.1 to 3.3}

CHAPTER I
CENTRAL EXCISE RECEIPTS

1.1 Tax administration

The collection and administration of central excise duties have been vested with the Central Board of Excise and Customs (the Board). The field formations consist of 97 Commissionerates of central excise who have been authorised to collected central excise duties within their jurisdiction.

1.2 Results of audit

This Report contains 30 paragraphs, featured individually or grouped together, arising from test check of records maintained in departmental offices and premises of the manufacturers. The revenue implication of these paragraphs is ₹ 45.47 crore. In four out of these 30 paragraphs, involving revenue of ₹ 7.16 crore, the department/Ministry had accepted the contention of audit but the rectificatory action was pending. In addition to these, we had issued another 129 paragraphs involving money value of ₹ 112.53 crore, on which the department/Ministry had already taken rectificatory action in the form of issue of show cause notices, adjudicating show cause notices and recovery of ₹ 46.60 crore.

1.3 Trend of receipts

Revenue projected through annual budget and actual receipts from central excise duties during the years 2006-07 to 2010-11 is exhibited in the following table and graph:-

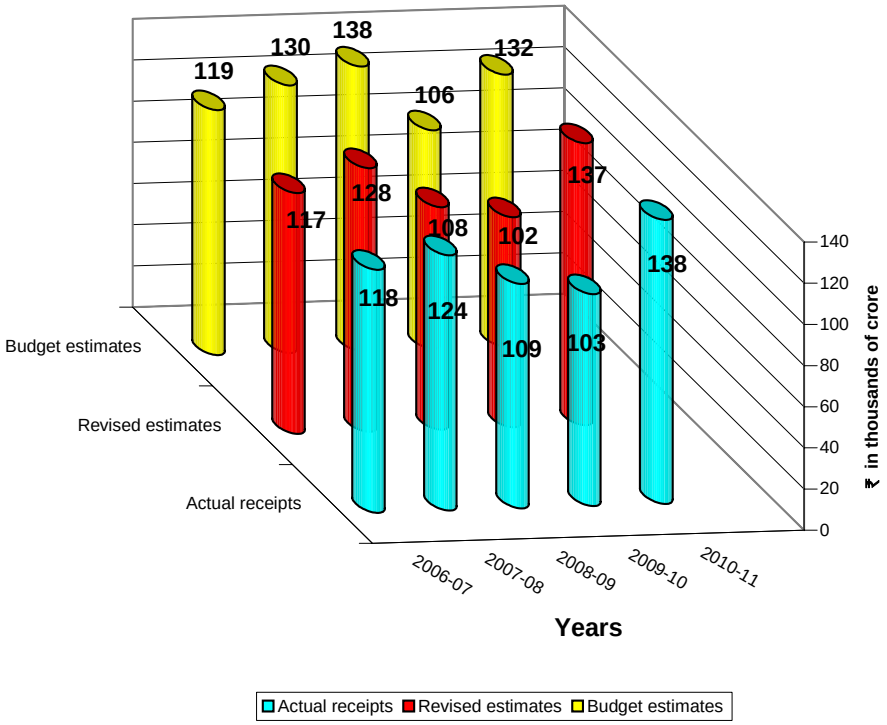
Table no. 1

(Amounts in crore of ₹)

Year	Budget estimates	Revised estimates	Actual receipts*	Difference between actual receipts and budget estimates	Percentage variation
2006-07	1,19,000	1,17,266	1,17,613	(-) 1,387	(-) 1.17
2007-08	1,30,220	1,27,947	1,23,611	(-) 6,609	(-) 5.07
2008-09	1,37,874	1,08,359	1,08,613	(-) 29,261	(-) 21.23
2009-10	1,06,477	1,02,000	1,02,991	(-) 3,486	(-) 3.27
2010-11	1,31,510	1,37,263	1,37,901	(+) 6,391	(+) 4.86

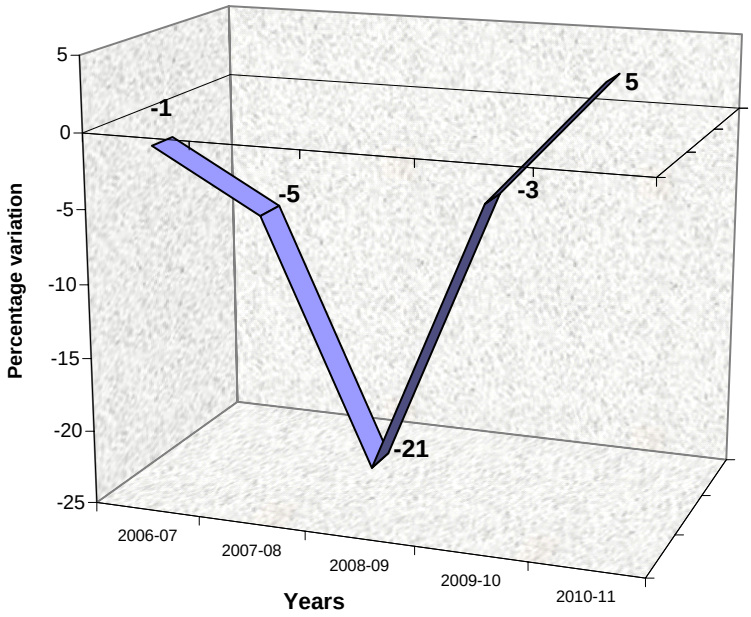
* Figures as per the Finance Accounts

Graph 1: Central Excise Receipts - Budget, Revised and Actual



Upto 2009-10, the actual receipts were lower than the budget estimates. During the period 2006-07 to 2007-08, the variation between the actual collections and the budget estimates was within 10 per cent. However, it was significantly higher at 21 per cent during 2008-09. In 2009-10 the variation came down to 3.27 per cent. In 2010-11, the collection exceeded the budget estimates by 4.86 per cent. The percentage variation between the actual receipts and the budget estimates during the years 2006-07 to 2010-11 is depicted in the following graph: -

Graph 2: Percentage variation of actual receipts over budget estimates



1.4 Value of output vis-à-vis central excise receipts

The values of output* from the manufacturing sector vis-à-vis receipt of central excise duties through personal ledger account (cash collection) during the years 2006-07 to 2010-11 are given in the following table and graph:-

Table no. 2

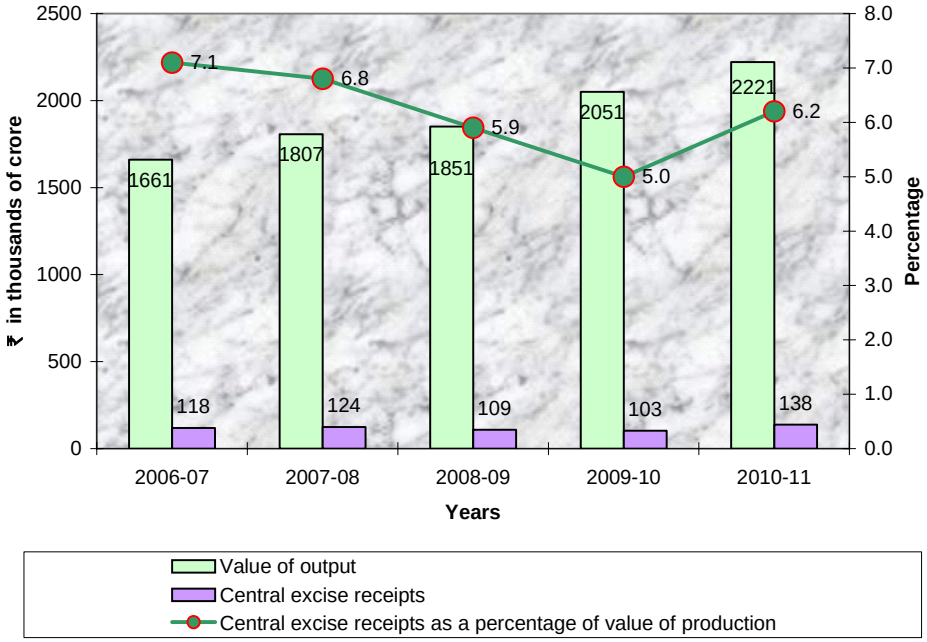
(Amounts in crore of ₹)

Year	Value of output*	Central excise receipts	Central excise receipts as a percentage of value of production
2006-07	16,61,297	1,17,613	7.08
2007-08	18,07,491	1,23,611	6.84
2008-09	18,50,871	1,08,613	5.87
2009-10	20,50,765	1,02,991	5.02
2010-11	22,20,979	1,37,901	6.21

Estimated figure, Source: Central Statistical Organisation, Government of India.

***** Includes value of all goods produced during the given period including net increase in work-in-progress and products for use on own account. Valuation is at producer's values that is the market price at the establishment of the producers. As separate figures of value of production by small scale industry units and for export production were not available, these have not been excluded from the value of output indicated.

Graph 3: Central excise receipts and value of production



The foregoing table reveals that value of output had increased by a factor of 1.34 during the years 2006-07 to 2010-11 and the corresponding increase in the central excise receipts was by a factor of 1.05 upto 2007-08. It had decreased by a factor of 0.9 in 2008-09, 2009-10 and in 2010-11 it had increased by a factor of 1.17. Accordingly, the central duties had generally kept steady pace with the value of output except for 2008-09 and 2009-10 when there was reduced growth in receipts compared to respective previous years.

1.5 Central excise receipts vis-à-vis cenvat credit utilised

A comparative statement showing the details of central excise duty paid in cash through personal ledger account (PLA) and through cenvat credit account during the years 2006-07 to 2010-11 is given in the following table and graphs: -

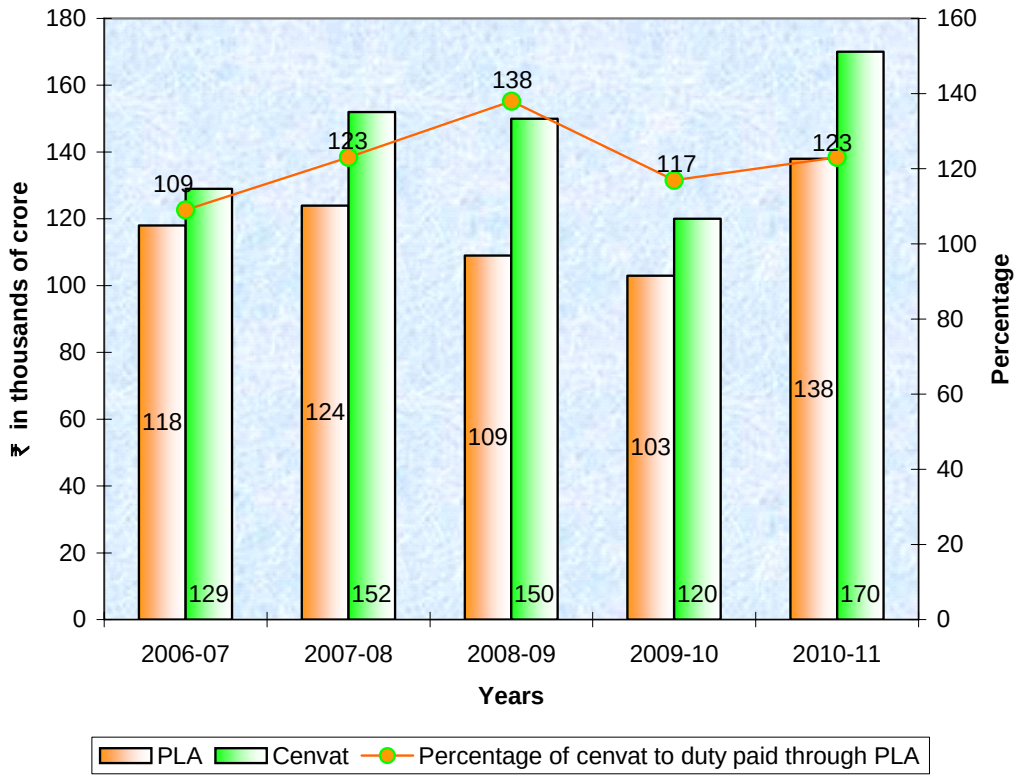
Table no. 3

(Amounts in crore of ₹)

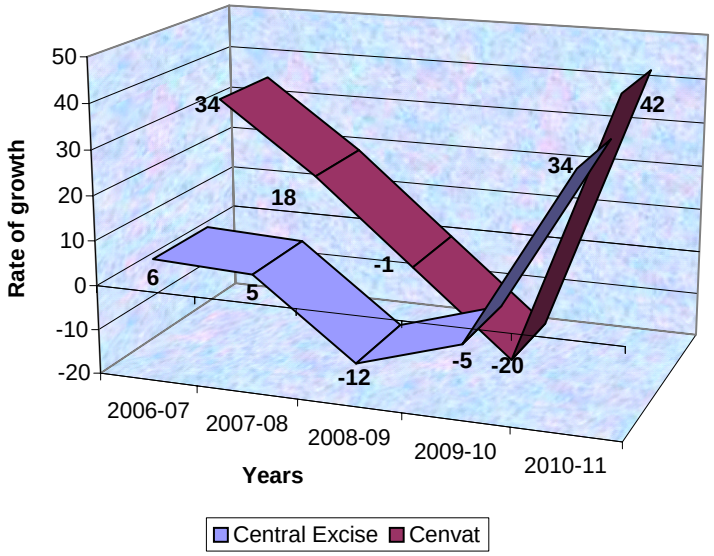
Year	Central excise duty paid through PLA		Central excise duty paid through cenvat credit*		Duty paid from cenvat credit as percentage of duty paid through PLA
	Amount	Percentage increase from previous year	Amount	Percentage increase from previous year	
2006-07	1,17,613	5.74	1,28,698	33.99	109.42
2007-08	1,23,611	5.10	1,52,210	18.27	123.14
2008-09	1,08,613	(-) 12.14	1,50,361	(-) 1.21	138.44
2009-10	1,02,991	(-) 5.30	1,19,982	(-) 20.20	116.50
2010-11	1,37,901	33.90	1,70,058	41.74	123.32

* Figures furnished by the Ministry

Graph 4: Central excise receipts (PLA) and Cenvat



Graph 5: Rate of growth of Central excise receipts (PLA) and Cenvat



The figures indicated that while the central excise receipts (in cash) had gone up by 17 per cent during the years 2006-07 to 2010-11, duty payment through cenvat during the same period had increased by 32 per cent. Except for the year 2009-10, the cenvat credit duty receipts have increased at a faster pace than the actual receipts through PLA. We have reported on the irregular availing and utilisation of cenvat credit in chapter II of this report and in similar chapters in earlier years' audit reports.

1.6 Cost of collection

The expenditure incurred during the year 2010-11 in collecting central excise duty and service tax alongwith the corresponding figures for the preceding four years is given in the following table and graph:-

Table no. 4

(Amounts in crore of ₹)

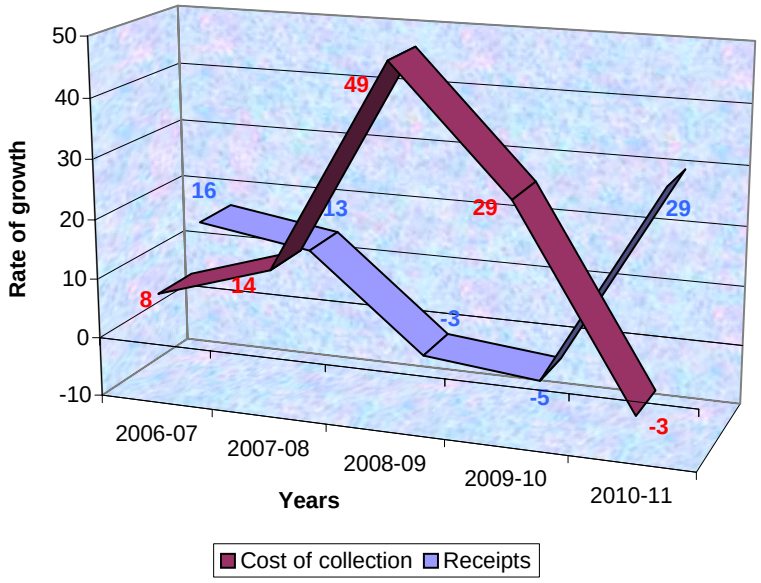
Year	Receipts from central excise and service tax				Expenditure on collection $		Cost of collection as a percentage of receipts
	Receipt from central excise	Receipt from service tax	Total	Percentage increase	Amount*	Percentage increase over the previous year	
2006-07	1,17,613	37,598	1,55,211	15.59	974.49	8.15	0.63
2007-08	1,23,611	51,301	1,74,912	12.69	1,107.28	13.62	0.63
2008-09	1,08,613	60,940	1,69,553	(-) 3.06	1,650.27	49.04	0.97
2009-10	1,02,991	58,422	1,61,413	(-) 4.80	2,126.97	28.89	1.32
2010-11	1,37,901	71,016	2,08,	29.43	2,072.20	(-) 2.58	0.99

			917				

* Figures as per the Finance Accounts

$ Expenditure figures are the total expenditure incurred for collection of both central excise duty and service tax as segregated expenditure figures are not maintained by the Ministry

Graph 6: Percentage growth in receipts and cost of collection



The figures show that after steep increases in 2008-09 and 2009-10, the expenditure on collection has reduced in 2010-11 and forms 0.99 per cent of the total receipts.

1.7 Refund of central excise

A comparative statement showing the details of refund of central excise during the years 2008-09 to 2010-11 is given in the table below.

Table no.5

(Amounts in crore of ₹)

Year	Refund		Interest on refund	
	Number of cases	Amount	Number of cases	Amount
2008-09	14,572	2,284.30	34	15.94
2009-10	32,881	2,107.58	72	1.56
2010-11	16,842	1,064.00	61	8.46

Figures furnished by the Ministry

The figures indicated that interest on refunds was paid only in a negligible number of cases.

1.8 Outstanding demands

The number of cases and amounts involved in demands for excise duty outstanding for adjudication/recovery as on 31 March 2010 and 31 March 2011 are mentioned in the following table:-

Table no. 6

(Amounts in crore of ₹)

Pending decision with	As on 31 March 2010				As on 31 March 2011			
	Number of cases		Amount		Number of cases		Amount	
	More than five years	Less than five years	More than five years	Less than five years	More than five years	Less than five years	More than five years	Less than five years
Adjudicating officers	15	14,242	4.89	12,649.62	63	13,431	26.18	12,383.15
Appellate Commissioners	440	6,361	60.87	3,373.74	676	6,518	85.21	1,793.32
Board	19	10	12.99	17.65	172	11	12.61	10.63
Government	9	181	0.17	32.07	158	47	15.04	3.57
Tribunals	2,213	10,423	4,705.67	92,376.17	3,436	11,066	5,392.85	16,845.88
High Courts	982	1,631	1,035.83	14,613.45	1,410	1,488	7,017.14	2,144.94
Supreme Court	169	212	588.78	5,292.60	293	284	705.10	1,416.00
Pending for coercive recovery measures	5,713	8,037	2,008.62	3,352.44	4,134	4,766	2,128.77	2,480.52
Total	**9,560**	**41,097**	**8,417.82**	**1,31,707.74**	**10,342**	**37,611**	**15,382.90**	**37,078.01**

Figures furnished by the Ministry

A total of 47,953 cases involving duty of ₹ 52,460.91 crore were pending as on 31 March 2011 with different authorities, of which 28 per cent in terms of number of cases were with the adjudicating officers of the department.

1.9 Fraud/presumptive fraud cases

The position of fraud/presumptive fraud cases alongwith the action taken by the department against the defaulting assessees during the period 2008-09 and 2010-11 is shown below:-

Table no. 7

(Amounts in crore of ₹)

Year	Cases detected		Demand of duty raised	Penalty imposed		Duty collected	Penalty collected	
	Number	Amount	Amount	Number	Amount	Amount	Number	Amount
2008-09	1,161	1,433.91	968.68	133	93.36	81.12	43	0.30
2009-10	1,284	1,691.15	1,515.55	127	35.49	97.55	43	0.19
2010-11	1,245	5,372.00	5,170.00	147	192.00	150.00	64	0.45
Total	**3,690**	**8,497.06**	**7,654.23**	**407**	**320.85**	**328.67**	**150**	**0.94**

Figures furnished by the Ministry

The foregoing table indicates that while a total of 3,690 cases of fraud/presumptive fraud were detected during the years 2008-11 by the department involving duty of ₹ 8,497.06 crore, it raised a demand of

₹ 7,654.23 crore and recovered ₹ 328.67 crore (4.29 per cent) out of it. Similarly, out of a penalty of ₹ 320.85 crore that was imposed, the department could recover only ₹ 0.94 crore (0.29 per cent).

1.10 Commodities contributing major revenue

Commodities which yielded revenue of more than ₹ 1,000 crore during 2010-11 alongwith corresponding figures for 2009-10 are mentioned in the following table:-

Table no. 8

(Amounts in crore of ₹)

Sl. No.	Budget head	Commodity	2009-10 (Actual)	2010-11 (Actual)	Percentage variation of actual over previous year	Percentage share in total collection
1.	36	Refined diesel oil	23,130.05	30,412.41	31.48	22.05
2.	34	Motor spirit	24,809.45	26,770.91	7.91	19.41
3.	40	All others falling under chapter 27	12,510.38	15,348.23	22.68	11.13
4.	102	Iron and steel	8,479.16	12,634.34	49.00	9.16
5.	27	Cigarettes and cigarillos of tobacco or tobacco substitutes	9,555.67	11,175.34	16.95	8.10
6.	31	Cement clinkers, cement all sorts	5,185.09	7,458.16	43.84	5.41
7.	128	Motor cars and other motor vehicles for transport of persons	3,958.34	5,000.73	26.33	3.63
8.	30	All other falling under chapter 24	2,745.96	2,818.45	2.64	2.04
9.	119	All other machinery, articles and tools falling under chapter 84	1,876.01	2,798.15	49.15	2.03
10.	38	Furnace oil	2,445.72	2,595.61	6.13	1.88
11.	61	Plastic and articles thereof	1,354.86	2,367.88	74.77	1.72
12.	140	Miscellaneous	878.50	2,284.14	160.00	1.66
13.	130A	All other motor vehicles	1,218.15	2,023.33	66.10	1.47
14.	103	Articles of iron and steel	1,306.62	1,846.51	41.32	1.34
15.	45	Organic chemicals	825.04	1,520.96	84.35	1.10
16.	17	Cane or beet sugar and chemically pure sucrose in solid form	1,278.20	1,297.36	1.50	0.94
17.	60	Miscellaneous chemical products	792.58	1,272.76	60.58	0.92
18.	29	Chewing tobacco	1,062.05	1,053.10	(-) 0.84	0.76

Figures furnished by the Ministry.

1.11 Internal audit of assessees by department

The number of central excise units, due for internal audit, units planned and units audited by internal audit parties of the Commissionerates, during 2010-11, is shown in the following table:-

Table no. 9

Slab of annual duty (PLA+CENVAT)	Total number of units	Number of units due for internal audit	Number of units planned	Number of units audited	Short fall in audit of units due (in percentage)
Mandatory units					
More that ₹ 3 crore (Category A)	7,009	6,829	6,652	5,733	16.05
Non-mandatory units					
Between ₹ 1 crore to ₹ 3 crore (Category B)	9,169	4,681	4,577	3,929	16.06
Between ₹ 50 lakh to ₹ 1 crore (Category C)	9,213	2,040	2,832	2,319	Excess of 13.68
Less than ₹ 50 lakh (Category D)	88,261	11,690	7,558	6,361	45.49

Figures furnished by the Ministry.

The above table indicates that the shortfall was high for the category A units (mandatory units) and category B units (high revenue non-mandatory units) whereas category C units (low revenue non-mandatory units) were covered in excess of norms. Even in the audit planning, the category C units were planned beyond the numbers due. This indicated a trend of covering more non-mandatory units at the cost of mandatory units.

1.12 Remission of revenue

Central excise duty remitted and written off due to various reasons for the years 2009-10 and 2010-11 is shown in the following table:-

Table no.10

(Amounts in crore of ₹)

		2009-10		2010-11	
		Number of cases	Amount	Number of cases	Amount
Remitted due to :					
(a)	Fire	10	2.38	5	0.50
(b)	Flood	0	0.00	0	0.00
(c)	Theft	0	0.00	0	0.00
(d)	Other reasons	54	0.85	102	0.90
Written off due to :					
(a)	Assessees having died leaving behind no assets	5	0.41	2	0.05
(b)	Assessees untraceable	36	0.25	100	13.97
(c)	Assessees left India	0	0.00	0	0.00
(d)	Assessees incapable of payment of duty	3	0.01	4	0.04
(e)	Other reasons	23	0.49	29	0.54
Total		**131**	**4.39**	**242**	**16.00**

Figures furnished by the Ministry

1.13 Impact of audit reports

1.13.1 Revenue impact

During the last five years (including the current year's report), we reported 699 audit paragraphs involving central excise duty totalling ₹ 2,555.46 crore. Of these, the Government had accepted audit observations in 520 audit paragraphs involving ₹ 1,485.77 crore and had recovered ₹ 195.09 crore. The details are shown in the following table:-

Table no. 11

(Amounts in crore of ₹)

Year of Audit Report	Paragraphs included		Paragraphs accepted and /or rectificatory action taken						Recoveries effected					
			Pre printing		Post printing		Total		Pre printing		Post printing		Total	
	No.	Amount	No.	Amount	No.	Amount	No.	Amount	No.	Amount	No.	Amount	No.	Amount
2006-07	152	1,195.36	118	57.30	5	998.81	123	1,056.11	59	23.57	26	13.47	85	37.04
2007-08	163	717.49	104	156.27	20	36.88	124	193.15	41	43.13	7	4.18	48	47.31
2008-09	75	156.84	41	48.30	4	1.58	45	49.88	24	27.59	1	0.51	25	28.10
2009-10	150	327.77	91	62.07	4	6.92	95	68.99	55	29.12	4	6.92	59	36.04
2010-11	159	158.00	133*	117.64	--	--	133	117.64	67	46.60	--	--	67	46.60
Grand Total	**699**	**2,555.46**	**487**	**441.58**	**33**	**1,044.19**	**520**	**1,485.77**	**246**	**170.01**	**38**	**25.08**	**284**	**195.09**

* In 129 out of the 133 accepted cases, rectificatory action has been taken by the department by way of issue of show cause notices, adjudication or recoveries.

1.13.2 Amendment to Act/Rules

The Government made amendments in Act/Rules addressing the issues/concerns raised by us through audit reports. The amendment has been briefly mentioned in the following table:-

Table no.12

Reference of audit report (AR) paragraph	Issue raised by audit	Amendment to Act/Rules etc.
Paragraph 2.5 of AR 30 of 2010-11	Absence of provision for proportionate reversal of credit in respect of inputs written off partially.	With effect from 1 March 2011, Rule 3 (5B) was amended to require a manufacturer or service provider to pay an amount equivalent to the CENVAT credit taken in respect of inputs or capital goods even where the value of such inputs or capital goods was written off partially.
Paragraph 2.1 of AR 11 of 2010-11	Different system for valuation of medicines, cleared as physician samples and as sold in the market, resulted in undervaluation and consequent short collection of duty on physician samples.	A circular was issued by the department on 19.02.2010 clarifying that the valuation of physician samples be done under section 4A of Central Excise Act, 1944.
Paragraph 2.2 of AR 11 of 2010-11	Allopathic medicines were shifted to MRP base levy with effect from 08.01.2005. However, ayurvedic and homeopathic medicine continue to be assessed under section 4 resulting in short collection of duty.	MRP based assessment under section 4A was extended to all medicaments (including ayurvedic, unani, siddha, homoeopathic or bio chemic systems) manufactured exclusively in accordance with the formulae prescribed in the authoritative book specified in the first schedule to the Drug and Cosmetic Act, 1940 vide notification dated 24.12.2011.
Paragraph 5.1 of AR 23 of 2010-11	Where cenvat credit was availed on various input services for the use in manufacture of	Rule 6 of the Cenvat Credit Rules, 2004 was amended retrospectively vide Section 73 of the

Table no.12

Reference of audit report (AR) paragraph	Issue raised by audit	Amendment to Act/Rules etc.
	dutiable and exempted goods or services, and the credit was proportionately reversed for input services attributable to exempted goods, interest was not paid citing multiple judicial pronouncements. There were different interpretations and consequently Commissionerates were not charging interest uniformly.	Finance Act, 2010 and after sub-rule 6 of the said rules, sub rule 7 was inserted which provided for payment of interest at the rate of 24 per cent per annum from the due date till the date of payment of the amount equivalent to cenvat credit attributable to input or input services used in or in relation to manufacture of exempted goods. The issue of differing interpretations had been also been settled by judgment of Supreme Court in the case of M/s Ind-swift Laboratories Ltd. {2011 (265) ELT 3 (SC)}. Board had also issued Circular No.942/03/2011-CX dated 14.3.2011 clarifying that Board's view has been endorsed by Supreme Court.
Paragraph 5.3.1 of AR 23 of 2010-11	Non-recovery of interest on differential duty.	There was absence of provision in Central Excise law to issue show cause notice for recovery of interest under Section 11A of Central Excise Act 1944. This has been remedied with the Finance Act 2011 by amending section 11A.

1.14 Follow-up on audit reports

Public Accounts Committee, in their Ninth Report (Eleventh Lok Sabha) desired that remedial/corrective action taken notes (ATNs) on all paragraphs of the Reports of the Comptroller and Auditor General, duly vetted by us, be submitted to them within a period of four months from the date of the laying of the audit report in Parliament.

Review of outstanding action taken notes on paragraphs relating to central excise contained in earlier audit reports on indirect taxes indicated that while there was no pendency in submission of remedial Action Taken Notes (ATNs) in respect of Ministry of Finance and Ministry of Textile, the Ministry of Commerce and Industry had not submitted remedial action taken notes in eight paragraphs. The delay in response in these cases ranged from four months to 89 months. Summarised position of outstanding action taken notes is depicted in the following table:-

Table no.13

No. of ATNs pending	Related audit paragraph and audit report	Name of the Ministry
8	12.1 of 11 of 2004, 11.3 of 11 of 2005, 15.2 of 7 of 2007, 8.2 of CA 7 of 2008, 7.3 (001C, 002C) of CA 20 of 2009-10 and 7.2 (1C, 2C) 23 of 2010-11	Ministry of Commerce and Industry

CHAPTER II
CENVAT CREDIT

Under cenvat credit scheme, credit is allowed for duty paid on 'specified inputs/capital goods' and service tax paid on 'specified input services' used in the manufacture of finished goods. Credit can be utilised towards payment of duty on finished goods subject to the fulfilment of certain conditions. We communicated to the Ministry, 17 cases of irregular availing/utilisation of cenvat credit involving revenue of ₹ 25.36 crore, as mentioned in the following paragraphs. The Commissionerate/Ministry had accepted (December 2011) the audit observations in two draft audit paragraphs involving revenue of ₹ 4.40 crore.

2.1 Suo-moto availing of cenvat credit

Section 11B of the Central Excise Act, 1944 provides that any person claiming refund of any duty of excise and interest, if any, paid on such duty, may make an application for such refund to the jurisdictional divisional officer before the expiry of one year from the relevant date. There is no provision for suo-moto availing of credit.

CESTAT in the case of M/s Comfit Sanitary Napkins (I) Ltd. {2004 (174) ELT 220} also held that the assessee could not take suo-moto refund/credit but should follow the procedure laid down under section 11B of the above Act. This view was also upheld by the larger bench of CESTAT in the case of BDH Industries Ltd. {2008 (229) ELT 364 (Tri - LB)}.

2.1.1 The Finance (No.2) Act, 2004, provided that, with effect from 1 April 2003, cenvat credit taken on payment of Additional Duties of Excise (Goods of Special Importance Act), 1957 {AED (GSI)} could be utilised for payment of basic excise duty, provided such AED (GSI) was paid on or after 1 April 2000. In terms of section 124 of the Finance Act, 2005 (amendment of Act 23 of 2004), wrongly availed and utilised credit of AED (GSI) was required to be recovered with interest in 36 equal installments.

M/s J.K. Tyre & Industries Ltd., in Indore commissionerate, had availed credit of ₹ 11.87 crore of Additional Excise Duty (AED) that had been paid prior to 1 March 2000. It utilised this entire credit towards payment of excise duty in the months of March 2003 and April 2004, which was irregular and translated to duty not paid. Thereafter, in compliance to the letter of the Assistant Commissioner, Central Excise, Division, Gwalior dated 26 May 2005, the assessee deposited the duty with interest in 36 equal installments through TR-6 challans from July 2005 to June 2008. However, in June 2008, it credited back ₹ 11.87 crore suo-moto, thereby neutralising the incorrectly utilised cenvat credit. This was not correct, as the assessee, instead of taking suo-moto credit, should have filed a claim for refund as provided in section 11B of

Central Excise Act. The irregular credit had to be regularised through a refund claim and interest was also payable.

When we pointed this out (April 2010), the Commissionerate stated (April 2010) that section 11 B of the Central Excise Act, 1944 was applicable only for refund of duty of excise, and not for restoration of any other claim of the cenvat credit wrongly debited.

The reply of the Commissionerate was not correct. This issue had been dealt with at length in the case of BDH Industries Ltd. {2008 (229) ELT 364 (Tri-LB)} where it held that the debit entry made in the accounts was towards payment of duty and therefore refund of these amounts had to be considered as refund of duty and it clearly emerged that all types of refund have to be filed under section 11B of the Central Excise Act and no suo-moto refund can be taken.

The reply of the Ministry had not been received (December 2011).

2.1.2 M/s GAIL (India) Ltd., in Indore commissionerate, engaged in the manufacture of L.P.G., Pentane, Propane, Naptha etc. paid excise duty (including cess) of ₹ 19.41 lakh in excess through Personal Ledger Account (PLA) in the month of March 2007. In the subsequent month of April 2007, the assessee adjusted the same suo-moto without following the procedure of filing a refund claim under provisions of section 11B of the Act. This resulted in non-payment of duty of ₹ 19.41 lakh for the month of April 2007.

When we pointed this out (August 2008 and December 2010), the Ministry stated (December 2011) that the excess was brought about by an incorrect debit entry in PLA due to clerical error and in the summary of the PLA, the assessee had shown the correct amount of debit.

The reply of the Ministry was not correct. After making the incorrect debit entry in the PLA, the closing balance was shown as "nil" in March 2007. The nil opening balance had also been carried forward in the PLA. Further in ER-1 for April 2007, the amount of ₹ 19.41 lakh was clearly shown as 'excess duty adjusted/paid during previous period'.

2.2 Separate accounts for common inputs used in dutiable/exempted goods not maintained

Rule 6 (2) of Cenvat Credit Rules, 2004 enunciates that a manufacturer who avails of cenvat credit of common inputs/services and manufacturers both dutiable and exempted goods, has to maintain separate accounts for receipt and issue of inputs/services for both categorization of final products. However, if the manufacturer opts not to maintain separate accounts, then he shall pay an amount equal to ten per cent (five per cent from 7 July 2009) of the price of the exempted final products or pay proportionate duty by exercising option under sub rule 3(A) of the rule ibid.

2.2.1 M/s Hi-Tech Carbon, in Allahabad commissionerate, engaged in the manufacture of dutiable product (Carbon Black) and non-dutiable product (steam), availed cenvat credit on a common input, Carbon Black Feed Stock oil. Separate accounts were not maintained for this common input. The assessee cleared non-dutiable goods worth ₹ 9.76 crore during April 2008 to March 2010 without paying 10/5 per cent duty amounting to ₹ 79.06 lakh. This amount was recoverable with interest of ₹ 15.17 lakh and penalty.

When we pointed this out (August 2010), the Commissionerate intimated (January 2011) that a show cause notice was issued.

The reply of the Ministry had not been received (December 2011).

2.2.2 M/s Tata Motors Ltd., in Pune I commissionerate, having manufacturing unit for exempted goods at Uttarakhand and dutiable goods at Pune, availed service tax credit at its corporate office to the extent of ₹ 13.36 crore on the common services utilised in manufacture of exempted goods as well as dutiable goods. The common services were also used in Engineering Research Centre (ERC), trading of goods and doing job work for others which were non-taxable services. The assessee had opted for proportionate payment specified under Rule 6(3A) in respect of the exempted clearance attributable to the Uttarakhand plant and reversed credit amount of ₹ 1.21 crore for the year 2008-09. However, the assessee did not reverse the proportionate credit on common input services utilised in respect of ERC, trading of goods and on job work which worked out to ₹ 2.06 crore.

When we pointed this out (March 2010), the Ministry admitted the audit observation and intimated (November 2011) that the show cause cum demand notice for ₹ 4.60 crore for the period April 2008 to March 2010 was under process of issue.

2.2.3 Board vide circular dated 28 October 2009 clarified that subsequent to the amendment in Section 2(d), of the Central Excise Act, 1944, bagasse, aluminum/zinc dross and other such products, termed as waste, residue or refuse, which arise during course of manufacture and were capable of being sold for consideration, would be excisable goods and chargeable to payment of duty.

Recovery of duty in respect of these goods was to be effected for the period after the budget of 2008. In case of nil rate of duty, or exemption from duty, cenvat credit taken on inputs used for manufacture of dutiable and exempted goods, was required to be reversed proportionately under Rule 6 of Cenvat Credit Rules, or 5 per cent of the sale amount was to be paid.

M/s SBEC Sugar Ltd., in Meerut I commissionerate and M/s K. M. Sugar Mills Ltd., in Allahabad commissionerate, engaged in the manufacture of sugar, molasses, chemicals (dutiable goods) and bagasse, rectified spirit (exempted goods) availed cenvat credit on common inputs but neither reversed proportionate credit on the clearance of bagasse and rectified spirit nor paid five per cent of the sale amount. Therefore, the assessees were liable to pay duty of ₹ 2.79 crore and interest thereon of ₹ 42.55 lakh.

When we pointed this out (February 2011), the Commissionerate intimated that a show cause notice was issued to M/s K. M. Sugar Mills Ltd. in July

2011. Reply in respect of M/s SBEC Sugar Ltd. was awaited (December 2011).

The reply of the Ministry had not been received (December 2011).

2.2.4 Rule 6(6) of the Cenvat Credit Rules, provides that sub-rule (1), (2) and (3) ibid shall not be applicable in case the exempted goods are cleared to certain specified categories.

M/s Schwing Stetter (India) Pvt. Ltd., in LTU Chennai commissionerate cleared five numbers of concrete mixing plants for ₹ 1.70 crore between February and March 2010 to M/s Punj Lloyd Ltd. Gurgaon without payment of duty in terms of notification dated 14 June 2006 pertaining to holders of "Served from India Scheme (SFIS)" Certificate. Since this scheme was not covered by exception in Rule 6(6) ibid, the assessee was liable to pay 5 per cent of the value of exempted goods amounting to ₹ 8.50 lakh alongwith interest.

When we pointed this out (November and December 2010 and July 2011), the Commissionerate stated (September 2011) that they were aware of the issue right from September 2008, the date on which tax payer sought clarification from the department and issued show cause notice for ₹ 11.90 lakh in February 2011 to protect the Government revenue.

The reply showed that the show cause notice was issued (February 2011) only after we pointed out the issue in November 2010.

The reply of the Ministry had not been received (December 2011).

2.3 Availing of cenvat credit on ineligible capital goods

Capital goods for the purpose of allowing credit of duty is defined in rule 2(a)(A) of the Cenvat Credit Rules, 2004.

The Board in their instruction dated 8 July 2010 clarified that cenvat credit on capital goods is available only on items which are excisable goods covered under the definition of capital goods under the Cenvat Credit Rules, 2004 and used in the factory of the manufacturer.

2.3.1 M/s NALCO, in Bhubaneswar I commissionerate, engaged in the manufacture of calcined alumina availed and utilised cenvat credit of ₹ 4.27 crore on various construction materials like HR Plates, HR Sheets in coil forms, PMP plates etc. treating them as capital goods during the period between 2008-09 and 2009-10. The cenvat credit availed of ₹ 4.27 crore was not admissible and recoverable with interest.

When we pointed this out (February 2011), the Ministry accepted the audit observation and stated (October 2011) that show cause notice was under process of issue.

2.3.2 M/s SAIL-ISP, M/s Phillips Carbon Black Ltd. in Bolpur commissionerate and M/s Rashmi Metaliks Ltd. in Haldia commissionerate, engaged in manufacture of iron & steel products, carbon black etc., availed

cenvat credit of ₹ 49.98 lakh between April 2006 and March 2009, on sleepers, towers and tippers, treating them as capital goods. We observed that

- M/s SAIL-ISP availed cenvat credit on mono block sleepers (sub-heading 68109990) and pre-stressed concrete sleepers (sub-heading 68101190), which were basically used for construction of railway tracks for movement of railway rakes, which extended beyond the factory premises.
- M/s Phillips Carbon Black Ltd. availed credit on lattice type towers (sub-heading 73089090) for transmission of electricity beyond the factory premises.
- M/s Rashmi Metaliks Ltd. availed cenvat credit on tipper/automobiles (sub-heading 87042319) for movement of materials.

Since these items were neither specified under the definition of capital goods nor were used for the manufacture of final product, the credit of duty availed was incorrect and was recoverable with interest.

When we pointed this out (between November 2009 and February 2010), the Commissionerate (September 2010) admitted the audit observation and stated that a show cause notice of ₹ 24.82 lakh, covering the period from January 2009 to June 2009 was issued to M/s SAIL-ISP (January 2011) and that of ₹ 8.91 lakh was issued to M/s Phillips Carbon Black Ltd. (June 2010).

In the case of M/s Rashmi Metaliks Ltd., the Commissioner, admitted the audit observation in January 2011. Subsequently, the Additional Commissioner, intimated (March 2011) that even if tipper was not covered under the definition of capital goods, the same would come under the purview of 'input'.

The reply was not correct since the tippers were neither covered under capital goods nor inputs as per the definitions under rule 2(a) and 2(k) of the Cenvat Credit Rules, 2004. Further, the Tribunal, in the case of M/s Ganta Ramanaiah Naidu {2010 (15) STR 10 (Tri-Bang)}, had held that cenvat credit on tipper (Chapter 87) was not admissible either as capital goods or inputs.

The reply of the Ministry had not been received (December 2011).

2.3.3 M/s Hindustan Zinc Ltd., in Jaipur II commissionerate, engaged in manufacture of zinc concentrates availed cenvat credit of ₹ 32.96 lakh on items like channel, Angle, HR Sheet & HR Plates etc. during the period from 2007-08 to 2009-10 by treating them as capital goods. Since these items were not covered under the definition of capital goods, the cenvat credit of ₹ 32.96 lakh was not admissible and recoverable alongwith interest.

When we pointed this out (December 2010), the Commissionerate stated (March 2011) that the matter of admissibility of cenvat credit on the items referred by us such as MS Angles, Channels, Steel plate etc had already been decided in favour of assessee by the Rajasthan High Court {2007 (214) ELT 510 (Raj.)}, holding that goods brought in factory for use in upkeep and maintenance of plant & machinery would be treated as capital goods. It was further stated that the Supreme Court also upheld the view of the Rajasthan

High Court by dismissing the SLP filed by the department against the judgement.

The case cited by the Commissionerate was not applicable since the items referred under the judgement were used for upkeep and maintenance of plant and machinery while the items pointed out by us in the instant observation were used in construction of fabricated structures. Hence, the availment of cenvat credit was irregular.

The reply of the Ministry had not been received (December 2011).

2.4 Non-reversal of cenvat credit

Rule 3 of Cenvat Credit Rules, 2004 stipulates that a manufacturer or producer of final products shall be allowed to take CENVAT credit of specified duties paid on any input or capital goods received in the factory of manufacture of final product. The term "input" is defined in Rule 2(k) of the said rules which inter alia includes goods used in or in relation to manufacture of a final product.

2.4.1 M/s IOC (AOD) in Dibrugarh commissionerate, wrote off the stock of indirect materials value of ₹ 2.44 crore during 2007-08 to 2009-10. As these materials were not used in or in relation to the manufacture of duty payable goods, the cenvat credit of ₹ 40.23 lakh taken on such materials was irregular, which was recoverable with interest.

We pointed this out to the Commissionerate/Ministry in March 2011/October 2011. Their reply had not been received (December 2011).

2.4.2 M/s National Engineering Industries Ltd., in Jaipur I commissionerate, engaged in manufacture of ball/tapper roller bearing, axle box and their components recovered cost of raw material amounting to ₹ 1.25 crore in 184 cases from job workers/suppliers during April 2007 to March 2009 as they had supplied defective material. The recovery was effected by issue of debit notes. Since the material costing ₹ 1.25 crore could not be used for final production as it had become defective and its cost recovered, the proportionate cenvat credit availed thereon amounting to ₹ 16.25 lakh was required to be reversed.

When we pointed this out (February/March 2010), the Commissionerate stated (July 2010) that the amount recovered by the assessee was not attributable to short receipt of material from the job worker but was a reduction of job work charges. The department further stated (April 2011) that to safeguard the revenue a show cause notice was issued to the assessee on November 12, 2010.

The reply of Commissionerate was not in consonance with the assessee's statement in the debit notes that due to receipt of defective items, the cost of raw material was being recovered from the job worker.

The reply of the Ministry had not been received (December 2011).

2.5 Non-reversal of un-utilised credits

Rule 3(1) of the Cenvat Credit Rules, 2004, stipulates that a manufacturer or producer of final products or a provider of taxable service shall be allowed to take cenvat credit and in terms of rule 3(4)(b), the credits so availed could be utilised for payment of duty/tax on dutiable goods/taxable services.

M/s Gagal Cement Works Barmana, ACC Unit I and II in Chandigarh I commissionerate, engaged in the manufacture of cement (sub-heading 2523.29) started clearing cement without payment of duty under area based exemption with effect from 3 May 2005 and 4 April 2006 respectively. These two units had accumulated credit of ₹ 40.41 lakh in their cenvat accounts from prior periods when they had been availing cenvat credit and paying duty on clearance of cement. Records revealed that these un-utilised balances had not been reversed.

When we pointed this out (April 2007 and January 2009) the Commissionerate stated (May 2007) that as per rule 3(4)(a) of the Cenvat Credit Rules, 2004, credits could be utilised for payment of duty on clinker.

The reply of the Commissionerate was not correct. Only that portion of the credit balance which related to inputs attributable to manufacture of clinker could be utilised for paying duty. The portion of the balance related to cement manufacture had to be reversed as cement had become an exempted item.

The reply of the Ministry had not been received (December 2011).

2.6 Non-reversal of cenvat credit on inputs/capital goods cleared as such

Rule 3(5) of Cenvat Credit Rules, 2004 prescribes that when inputs or capital goods, on which cenvat credit has been availed, are removed as such from the factory or premises of the provider of output service, the manufacturer of the final products or provider of output service, as the case may be, shall pay an amount equal to the credit availed in respect of such inputs or capital goods.

M/s Amcor Pet Packaging Asia Pvt. Ltd., under Pune III commissionerate, took cenvat credit of ₹ 18.73 lakh on capital goods viz. cavity injection moulds and related spare parts imported in the year 2002. The cavity injection moulds, on which cenvat credit of ₹ 15.04 was taken, were removed from the factory in the year 2005 but amount equal to cenvat credit originally taken was not paid / reversed in full.

We pointed this out in September 2009. Reply had not been received from the Commissionerate. The Ministry stated (November 2011) that the matter was under examination.

2.7 Cenvat credit availed on inadmissible input service

Rule 3 of Cenvat Credit Rules, 2004, provides that a manufacturer of final products may take credit of service tax paid on any input service received by him if such service is used in the manufacture of final products. As per Rule 2(1)(ii) ibid, the term 'input service', for purpose of allowing credit inter alia, includes activities relating to business such as accounting, financing, credit rating, share registry, security and inward transportation of inputs etc. Welfare benefits such as health insurance coverage, outdoor catering, transportation under Rent-a-cab operator etc extended by employer to employees, air travel services, event management services do not come within the ambit of input service, as such services have no nexus to manufacturing operations.

M/s Hindustan Petroleum Corporation Ltd., Visakhapatnam in Visakhapatnam I commissionerate, engaged in the manufacture of petroleum products availed credit of input service tax for ₹ 29.12 lakh on services relating to waltair park, yarada park sodeso pass services etc. during the period 2009-10. The availing of cenvat credit on above input services was irregular, as these input services were not directly or indirectly related to the manufacture of final products. Therefore, assessees were liable to pay ₹ 29.12 lakh alongwith interest.

When we pointed this out (March 2011), the Ministry while not admitting the audit observation stated (November 2011) that the services pertinent to the employees were to be treated as indirectly being used in or in relation to the manufacture of final products as the employees were integral part of the assessee undertaking the excisable activity.

The reply of the Ministry was not correct since the services relating to parks, colonies and pass services were not covered under definition of rule 2(l) of Cenvat Credit Rules, 2004.

2.8 Improper distribution of cenvat credit

Rule 2(m) of Cenvat Credit Rules, 2004, defines the term 'input service distributor' as an office of the manufacturer or producer of final products or provider of output service, which receives invoices issued under rule 4A of the Service Tax Rules, 1994, towards purchases of input services and issue invoice, bill or challan for purpose of distributing the credit of service tax paid on the said services to such manufacturer or producer or provider, as the case may be. As per rule 3 of Service Tax (Registration of Special Category of Persons) Rules, 2005, the ISD has to obtain a registration number under the said rule in addition to a registration under rule 4 of the Service Tax Rules, 1994.

M/s Poggen AMP, Nagarsheth Powertonics Ltd., Unit I, Vatva, in Ahmedabad I commissionerate engaged in manufacture of cleated stamping,

die cast rotor etc., availed cenvat credit of ₹ 14.82 lakh for service tax paid by the head office at Vatva for the services of general nature utilised in its own unit as well as utilised by unit II Vatva and Kheda during the period April 2005 to March 2008. We found that the head office was not registered with the department as ISD. Hence passing on the credit of ₹ 14.82 lakh by the head office to the assessee was irregular, which was required to be recovered alongwith interest.

When we pointed this out (February 2009), Commissionerate stated (November 2010) that a show cause notice had been issued.

The reply of the Ministry had not been received (December 2011).

2.9 Incorrect availment of cenvat credit

Rule 6(1) of the Cenvat Credit Rules, 2004 stipulates that no credit of specified duty shall be allowed on inputs, which are used in the manufacture of final product which are exempt or are chargeable to 'nil' rate of duty.

The Board circular dated 4 January 1991 clarified that an assessee had no option to pay duty on his own volition, where the goods were fully exempted. In case he paid any amount in the name of excise duty, which was not leviable by law, the amount so paid would be in the nature of deposit with the Government.

M/s Desai Cement Co Pvt. Ltd., in Goa commissionerate, engaged in the manufacture of portland slag cement was also selling ground slag after crushing granulated blast furnace slag. During the period April 2007 to June 2009, the slag procured as input was used both for manufacture of cement, which was dutiable and ground slag, which was non-dutiable as it had not been generated by a manufacturing process. Cenvat credit of ₹ 13.46 lakh was availed on input quantity of 25,706.71 tonne used exclusively for generation of ground slag. During this period, the assessee cleared ground slag on payment of duty. From July 2009, it discontinued the payment of duty on clearance of ground slag as the process did not amount to manufacture as defined under Section 2 (f) of the Central Excise Act, 1944.

Going back to the period April 2007 to June 2009, the assessee paid duty on the clearance of ground granulated blast furnace slag of his own volition although duty was not actually payable. Therefore, as per Board circular of 1991, the amount so paid was not excise duty and had to be treated as deposit and hence, the cenvat credit availed of ₹ 13.46 lakh had to be recovered with interest.

When we pointed this out (August 2010) the Commissionerate did not accept the audit observation and stated (September 2010) that ground granulated slag was an excisable commodity and it could not be treated as non-excisable merely because it was obtained out of a process not amounting to manufacture. It also opined that granulated slag was an input and the assessee had rightly availed credit on the same.

The reply of the Commissionerate was not correct. Although ground granulated slag was excisable, in the instant case it was non-dutiable and was to be cleared at nil duty. Therefore, the cenvat credit of inputs attributable to its manufacture was required to be reversed as per rule 6(1) of Cenvat Credit Rules, 2004.

The reply of the Ministry had not been received (December 2011).

2.10 Availing of cenvat credit on ineligible inputs

As per explanation 2 to Rule 2(k) of Cenvat Credit Rules, 2004, input includes goods used in the manufacture of capital goods, which are further used in the factory of the manufacturer but shall not include cement, angles, channels, centrally twisted deform bar or thermo mechanically treated bar and other items used for construction of factory shed, building or laying of foundation, or making of structures for support of capital goods.

M/s Triveni Engineering and Industries Ltd., (Alcho-chemical Division) in Meerut II commissionerate, availed cenvat credit of ₹ 10.31 lakh on items like M.S. angles, channels, shapes and sections, M.S. Plates etc., treating them as inputs. Since these structural items were not eligible to be treated as inputs, the cenvat credit of ₹ 13.11 lakh was recoverable from the assessee with interest and penalty.

When we pointed this out (April 2010), the Commissionerate accepted the observation and intimated (November 2010) that a show cause notice was under process of issue.

The reply of the Ministry had not been received (December 2011).

CHAPTER III
VALUATION OF EXCISABLE GOODS

Duty at ad valorem rates is charged on a wide range of excisable commodities. Valuation of such goods is governed by section 4 of the Central Excise Act, 1944, read with the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. Valuation of specified excisable goods is governed by their retail sale price under section 4A of the above Act. We communicated to the Ministry, 8 cases of short levy of duty due to incorrect valuation involving revenue of ₹ 17.57 crore, as mentioned in the following paragraphs. The Commissionerate had accepted (December 2011) the audit observation in one draft audit paragraph involving revenue of ₹ 8.84 lakh.

3.1 Non-Inclusion of additional consideration in value

Section 4(3)(d) of the Central Excise Act, 1944 stipulates that transaction value of goods chargeable to central excise duty would not include the amount of duty of excise, sales tax and other taxes, actually paid or actually payable on such goods.

The Board had clarified (30 June 2000) that tax deferred at the time of transaction and subsequently held as not payable was not deductible from the assessable value. The CEGAT, in the case of M/s. Andhra Oxygen Pvt. Ltd. v/s CCE (Tribunal-Kolkata) {2003 (156) 239} held that sales tax collected from buyers and not paid to the sales tax department because it was exempted under the Sales Tax Act, would be considered as additional consideration flowing to the assessees. Rule 6 of the Central Excise Valuation Rules, 2000 stipulates that in cases where price was not the sole consideration, the assessable value would be based on the aggregate of the price and money value of the additional consideration flowing directly or indirectly from the buyer to the assessee.

3.1.1 The Government of Maharashtra introduced the package incentive scheme for deferred payment of sales tax whereby the assessee was allowed to collect sales tax from the buyer, retain it and repay it after a prescribed period of deferral. The Government of Maharashtra further amended the provisions of Sales Tax Act and issued a notification in November 2002 providing additional incentive for premature repayment of deferred sales tax liability.

M/s Three M Paper Mfg. Co. Ltd., in Kolhapur, M/s Uttam Galva Steels Ltd., in Raigad, M/s Racold Thermo Ltd., in Pune I and M/s ISMT Ltd., in Pune III commissionerates, engaged in manufacture of various excisable goods, opted for premature payment of sales tax during the years 2006-10 under the aforesaid scheme. They received cumulative discount of ₹ 121.15 crore due to premature/pre-payment of sales tax liability accrued at net present value. Sales

tax amount collected but not paid to the Government was an additional income and was liable to be added to the assessable value. Non-inclusion of this additional income resulted in short levy of duty of ₹ 16.11 crore which was recoverable with interest.

When we pointed this out (between August 2010 and March 2011), the Commissionerate in three cases stated (between March and August 2011) that in view of the Board's clarification dated 12 March 1998, sales tax was deductable from the wholesale price for determination of assessable value under section 4(4)(d)(ii) of the Act.

The reply of the Commissionerate was not correct in view of the Board circular dated 30 June 2000 and the CEGAT decision cited.

The reply of the Ministry had not been received (December 2011) in the instant case. It had admitted similar audit observation in cases reported in para 2.1.1 of Audit Report No.23 of 2010-11.

3.1.2 As per section 4(1) of Central Excise Act, 1944, the assessable value of excisable goods is normally the transaction value. The Board vide its letter dated 30 June 2000 clarified that cash discount or prompt payment discount would not form part of the transaction value unless such discount had actually been passed on to the buyer of the goods, which was further reaffirmed by Board's Circular dated 1 July 2002.

M/s Birla Tyres Ltd., in Bhubaneswar I Commissionerate, engaged in the manufacture of tyres, tubes falling under chapter 40 cleared 22,87,916 nos. of different sizes of tyres, tubes and flaps to M/s Tata Motors Ltd. It paid duty after reducing the purchase order value by 1.45 per cent to 2.53 per cent towards bill discounting charges. The bill discounting charges were payable by the buyer to the bank as bank charges on the basis of agreement between the assessee and the buyer. Since the deductions from the purchase price were paid by the buyer to the banker as bank charges on behalf of the assessee, it was an inadmissible deduction from the assessable value as it was not in the nature of cash discount/prompt payment discount and had not been passed on to the buyer. This resulted in short levy of duty of ₹ 1.22 crore during 2008-09 to 2009-10.

When we pointed this out (September 2009), the Commissionerate stated (March 2010) that the value was governed by transaction value as defined in section 4 of the Central Excise Act, 1944 read with Board's circular dated 30 June 2000 regarding discount not forming part of assessable value. The Commissionerate also intimated (April 2011) that three show cause cum demand notices for ₹ 3.10 crore covering the period from April 2005 to September 2010 was issued.

The reply of the Commissionerate was not correct since the bank charge was paid by the buyer on behalf of the assessee. The net effect was that the buyer had actually not received any discount.

The reply of the Ministry had not been received (December 2011).

3.2 Incorrect determination of cost of excisable goods

Rule 8 read with proviso to rule 9 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 envisages that where excisable goods are not sold by the assessee but are consumed by it or by a related person of the assessee in the manufacture of other articles, the assessable value of such goods shall be one hundred and ten per cent of the cost of production or manufacture of such goods. Further, the Board had clarified (13 February 2003) that the value of goods consumed captively should be determined in accordance with the Cost Accounting Standard (CAS-4) method only.

M/s TATA Steel Ltd., in Bhubaneswar II commissionerate, engaged in manufacture of High Carbon Ferro Manganese under chapter 72, transferred 16979.67 tonne of HC Ferro Manganese during 2008-09 on stock transfer basis to its sister unit i.e. M/s Tata Steel, Jamshedpur for captive consumption. As per Board circular dated 13 February 2003, the value of goods consumed captively should have been determined in accordance with the Cost Accounting Standard (CAS-4) and certified by Cost Accountant. We observed that the assessee had not determined the value in accordance with the CAS-4. It had paid duty on transfer price prepared on quarterly cost basis price ranging between ₹ 23,000 per tonne to ₹ 28,125 per tonne. This method of valuation was not in accordance with the Board's instructions. Hence, the total duty paid of ₹ 5.28 crore was subject to review. The department was required to instruct the assessee to carry out the exact calculation and recover differential duty, if any.

When we pointed this out (October 2011), the Ministry stated (December 2011) that a reference had been made to the policy wing of the Board for further examination.

3.3 Other cases

3.3.1 Short payment of duty due to misclassification

Central Excise Tariff 2009-10, under heading 4802 covers 'uncoated paper and paperboard of a kind used for writing, printing or other graphic purposes, and non–perforated punch card and punch tape paper in rolls or rectangular (including square) sheets of any size, other than paper of chapter heading 4801 or 4803, hand made paper and paper board'.

M/s Sampark Industries Ltd., in Noida commissionerate, engaged in manufacture and sale of metallised paper, classified it under tariff item 48026920 (Poster paper). The total sale value during April 2008 to July 2009 was ₹ 3.20 crore, on which the assessee paid excise duty at the rates of 8 per cent and 4 per cent. The assessee manufactured metallised paper, which did not fall under the category of 'uncoated' paper. It should had been classified

under tariff item 48115900, which covers paper, paperboard, cellulose fibers, coated, impregnated etc., with excise duty rates ranging between 14 per cent and 8 per cent. The incorrect classification resulted in short payment of excise duty of ₹ 15.38 lakh which was recoverable alongwith interest.

We pointed this out to the Commissionerate/Ministry in March 2011/October 2011. Their reply had not been received (December 2011).

3.3.2 Non-payment of duty

Rule 4 of the Central Excise Rules, 2002 stipulates that no excisable goods, on which any duty is payable, shall be removed without levy of duty from any place, where they are produced or manufactured or from a warehouse, unless otherwise provided in the Act/Rules.

M/s Neo Carbons Pvt. Ltd., in Patna commissionerate, engaged in the manufacture of Calcined Petroleum Coke, fabricated capital goods namely Rotary Klin with complete accessories for its own use. After using in his factory, the assessee cleared it to another unit without payment of duty. The process carried out by the assessee in fabricating Rotary Klin was a manufacturing process, hence duty should have been paid at the time of removal of goods. However, the assessee cleared capital goods worth ₹ 61.81 lakh without payment of duty during June 2005 to March 2009. This resulted in non-payment of duty alongwith education cess of ₹ 5.97 lakh which was recoverable with interest of ₹ 2.47 lakh.

When we pointed this out (July 2008), the Ministry stated (December 2011) that opinion had been sought from the policy wing of the Board.

CHAPTER IV
MISCELLANEOUS ISSUES

We communicated to the Ministry five cases of non-recovery of interest and cess not levied or demanded involving revenue of ₹ 2.54 crore as mentioned in the following paragraphs. The Ministry had accepted (December 2011) the audit observation in one draft audit paragraph involving revenue of ₹ 66.32 lakh.

4.1 Non-recovery of interest under cenvat credit rules

As per Rule 14 of the Cenvat Credit Rules, 2004, where the cenvat credit has been taken or utilised wrongly, the same alongwith interest shall be recovered from the manufacturer or the provider of the output service under the provisions of sections 11 A and 11AB of the Excise Act or sections 73 and 75 of the Finance Act, 1994.

Board in its circular dated 3 September 2009, has clarified that interest shall be recoverable when credit has been wrongly availed, even if it has not been utilised. This view of the Board has also been endorsed by the Apex Court in the case of Ind-Swift Laboratories Ltd. {2011 (265) ELT 3 (SC)} which was reiterated in circular dated 14 March 2011.

4.1.1 M/s Vardhman Fabrics (a unit of Vardhman Textile Ltd.), in Bhopal Commissionerate, availed wrong/excess credit of ₹ 9.60 crore on capital goods/service tax. Although the assessee paid back the wrong/excess credit availed during the period from 30 September 2007 to 31 August 2009, it did not pay applicable interest amounting to ₹ 1.06 crore.

When we pointed this out (September 2010), the Commissionerate intimated (June 2011) that a show cause notice for recovery of interest against cenvat credit wrongly taken was under process.

The reply of the Ministry had not been received (December 2011).

4.1.2 M/s Alok Industries Ltd., in Vapi Commissionerate, availed excess cenvat credit of service tax of ₹ 5.10 crore during October 2007 to March 2008. The assessee subsequently reversed the excess credit. However, it did not pay the interest of ₹ 66.32 lakh on the wrongly availed credit.

When we pointed this out (August 2010), the Ministry accepted our observation and intimated (September 2011) that issue of show cause notice was under process.

4.2 Non-levy of cess on textiles and textile machinery

As per section 5(A)(1) of the Textile Committee Act, 1963, read with the Ministry of Commerce notification dated 1 June 1977, cess on textiles and textile machinery manufactured in India is leviable at the rate of 0.05 per cent ad valorem. The authority to collect such cess is vested with the 'Textile Committee' constituted under section 3 of the afore mentioned Act.

4.2.1 Test check of records of three assessees engaged in the manufacture of textile material/machinery in the Union Territory of Dadra and Nagar Haveli, in Ahmedabad I commissionerate, indicated that they did not pay applicable cess of ₹ 46.50 lakh on processed fabrics and textile machinery valued at ₹ 929.90 crore and cleared between April 2004 and May 2007. The Textile Committee also did not take any action to collect the applicable cess.

The matter was brought to the notice of Textile Committee between February and November 2010 and their reply was awaited (December 2011).

The reply of the Ministry of Textiles had not been received (December 2011).

4.2.2 M/s Dicitex Décor and M/s Manohar Processors in Thane-II commissionerate, manufactured manmade fabrics, embroidery fabrics, chenille fabrics etc. valuing ₹ 376.94 crore during the period from 2004 -05 to 2006-07 but did not pay the applicable cess amounting to ₹ 18.84 lakh leviable thereon.

When we pointed this out (July 2009), the Textile Committee intimated (April 2011) issue of show cause notice to both the assessees.

The reply of the Ministry of Textiles had not been received (December 2011).

4.3 Non-payment of cess on cement

Section 9(1) of the Industries (Development and Regulation) Act, 1951 read with Cement Cess Rules, 1993 made there under, stipulates that every manufacturer producing cement in cement plants of capacity not lower than 99,000 tonne per annum based on rotary kiln and 66,000 tonne per annum based on vertical shaft kiln, shall pay cess at the rate of Re. 0.75 per tonne of cement manufactured and removed from the factory. Rules 3 and 4 of the said Rules further stipulate that every manufacturer of cement, who is liable to pay cess shall submit to the 'Development Commissioner' for cement industry, under the Ministry of Commerce and Industry, Government of India, a monthly return relating to stocks of cement produced and removed during the preceding month and shall remit the amount of cess to the said authority by 15th of the following month.

Eight manufacturers of cement in Shillong and Guwahati commissionerates, cleared 22.19 tonne of cement manufactured in their factories during the period from 2007-08 to 2009-10 without payment of cess. The installed capacity of these factories, based on rotary kilns, was in excess of 99,000 tonne per annum and cess was payable as per provisions cited ibid. The total cess not paid by these eight assessees amounted to ₹ 16.65 lakh.

When we pointed this out (April 2011), the Ministry of Commerce & Industry intimated (October 2011) that they had requested the assessees to remit the unpaid cess amount as pointed out by us.

New Delhi **(SUBIR MALLICK)**
Dated : **Principal Director**
(Central Excise and Service Tax)

Countersigned

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

Glossary of terms and abbreviations

Abbreviated form	Expanded form
Board	Central Board of Excise and Customs
CAS	Cost Accounting Standard
CESTAT	Customs, Excise & Service Tax Appellate Tribunal
commissionerate	Commissionerate of central excise
ELT	Excise Law Times
EOU	Export Oriented Unit
Ltd.	Limited
PLA	Personal ledger account
Pvt.	Private
the Ministry	The Ministry of Finance