CHAPTER IV
ASSESSMENT OF CUSTOMS REVENUE

We found from test check (August 2010 to March 2014) of records, a few cases of incorrect assessment of customs duties having revenue implication of ₹ 115.52 crore. They are described in the following paragraphs and two assessment cases are listed in **Annexure 4**.

Irregular extension of warehousing period

4.1 As per Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, Rule-3 (as amended), no drawback shall be allowed on any of the goods falling within Chapter 72 or headings 1006 or 2523 of the first Schedule to the Customs Tariff Act, 1975. Since introduction of the said debarring provisions, several other headings were added or existing ones were deleted by subsequent CBEC notifications, but the heading 1006 continues to exist till date.

M/s Jai Gurudev Industries & warehousing and 113 others exported "Rice in various forms" falling under CTH 1006 through the Commissioner of Customs (Port) Kolkata & Commissioner of customs (Preventive) West Bengal between October 2011 and February 2013 against 789 shipping bills. Scrutiny of Customs ICES data on exports revealed that the department allowed drawback on export of these goods in contravention of the aforementioned provisions of the Drawback Rules, 1995. This has resulted in inadmissible payment of drawback of ₹ 2.27 crore which is recoverable along with interest of ₹ 49.66 lakh from the exporters.

The Kolkata (Port) commissionerate, while not admitting (January/March 2014) the audit observation, intimated (March 2014) that after issue of demand notices, ₹ 38.74 lakh was recovered from 12 exporters against 137 shipping bills and in respect of 165 shipping bills instructions have been issued to bank to stop the payment of drawback of ₹ 45.13 lakh.

The department further stated that subsequent to introduction of aforementioned debarring provisions, the Government of India introduced single 1 per cent duty drawback rate against export of all cereals (including Rice under heading 1006) under chapter heading 10 of Custom Tariff Act, 1975 vide notification no.68/2011-cus (NT) dated 22 September 2011, which was subsequently made 'nil' in respect of heading 1006 (Rice) vide notification no.92/2012-cus (NT) dated 4 October 2012, indicating that during the objected period (i.e. September 2011 to September 2012) the drawback under heading 1006 was not 'nil'. West Bengal (Preventive) commissionerate also contested audit observation on similar lines.

The department was informed (February/March 2014) that their reply was not tenable because drawback at the rate of 1 per cent in respect of Cereals of Chapter – 10 was always there and was also existing at the time of issue of

debarring notification no.64/2008-cus (NT) dated 29 May 2008. The notification no. 92/2012-cus (NT) dated 4 October 2012 only split the single drawback schedule heading in respect of cereals of chapter – 10 into different sub-heading in line with the classification of several cereals (like Wheat, Rye, Barley, Oats, Maize, Rice etc) in the Custom Tariff Act, 1975, out of which drawback on exported Rice (CTH-1006) was shown 'nil' in conformity with the aforementioned debarring provisions. Their response is awaited (January 2015).

Ministry reply has not been received (January 2015).

Extension of warehousing period

4.2 Goods except capital goods and spares shall be utilized by EOU/EHTP/STP/BTP units within a period of three years or as may be extended by Customs authorities {paragraph 6.6 (c) of Handbook of Procedures (HBP) 2009-14}. However, imported tea "shall be" utilized within a period of six months from the date of import. Non-compliance of specified conditions attract recovery of duty foregone involved alongwith interest.

M/s Tata Global Beverages Ltd., Cochin a 100 % EOU cleared (October/ December 2011) 53,376 kg 'Tea' vide three Bills of Entry free of duty under notification no.52/2003-cus dated 31 March 2003. Scrutiny of records revelaed that the unit did not utilize 35,196 kg of Tea within six months as required in FTP. Accordingly, the unit was liable to pay duty amounting to ₹ 74.66 lakh plus interest on 35,196 kg of unutilized quantity of Tea. Instead of initiating action against non-compliance of conditions of import, the department granted extension of warehousing period for a further period of six months, in terms of Section 61 of the Customs Act, 1962 and in accordance with the general conditions of import by EOUs as specified in the FTP and HBP Rules.

The department stated (May 2013) that the Commissioner of Central Excise, Cochin had granted extension of warehousing period based on the extension allowed by the Assistant Development Commissioner subject to the condition that the imported tea is re-exported within the extended period and shall conform to the quality standard stipulated in paragraph 2(v) of Tea (D&E) control order. It was further stated that the extension approved was duly authorized by the Policy Relaxation Committee (PRC) vide Meeting No. 03/AM/09 dated 31 July 2008 and though the extension allowed by the PRC was for one year only, extensions were granted for subsequent exports/consignments after expiry of one year by the Assistant Development commissioner, CSEZ. It was also added that the goods have been re-exported and therefore involved no revenue impact.

The reply of the department that decision of the PRC is applicable to imports made by the firm in October and December 2011 i.e., after the date of issue of decision of PRC dated 31 July 2008 is not acceptable. The decision of PRC has been in respect of a particular import made by the firm and there was no mention of applicability of relaxation to the subsequent imports. Though the PRC in the meeting issued directions to examine general amendment in paragraph 6.7 (c) and 4.22 of HBP after taking the views of the Tea Board, no such amendment has been made yet in respect of conditions specified in paragraph 6.7 (c) {now 6.6 (c) of HBP 2009-14}. Hence, the contention of the department that the PRC has granted extension to all imports made by a specific importer (M/s. Tata Tea Ltd now renamed as M/s Tata Global Beverages Ltd) is also not tenable as no evidence was produced to Audit for verification. There are no provisions in FTP for applying the approval of PRC (July 2008) for subsequent imports.

Ministry response has not been received (January 2015).

Clearance of hazardous Azo dyes into India which may have caused immeasurable damage to the environment

4.3 According to Condition 10 (earlier Condition 11) of Chapter 1A to ITC (HS), 2012 Schedule 1–Import Policy, import of textile and textile articles is permitted subject to the condition that they shall not contain any of the hazardous dyes whose handling, production, carriage or use is prohibited by the Government of India under the provisions of clause (d) of sub-section (2) of Section 6 of the Environment (Protection) Act, 1986 (29 of 1986) read with the relevant rule(s) framed there under. For this purpose, the import consignments shall be accompanied by a pre-shipment certificate from a textile testing laboratory accredited to the National accreditation agency of the Country of Origin. In cases where such certificates are not available, the consignment will be cleared after getting a sample of the imported consignment tested & certified from any of the Indian agencies listed in Ministry of Commerce and Industry Public Notice No.12 (RE-2001)/1997-2002 dated 3 May 2001.

The mandatory requirement of submission of a valid pre-shipment certificate certifying absence of hazardous dyes such as Azo-dyes in the imported textile and textile articles has also been reiterated both by the Ministry of Commerce as well as the Ministry of Finance through DGFT Public Notice Nos. 29(RE-2004)/2002-07 dated 28 January 2004 and 26/2004-09 dated 22 February 2005 and CBEC circular no. 23/2004-cus dated 15 March2004.

Non-fixed, water-soluble Azo dyes could enter human body through perspiration fluid besides oral ingestion, dermal absorption and direct inhalation and could be broken down by certain enzyme systems in the human body. These dyes may undergo reductive cleavage inside the living body to aromatic amines and some of which are proven or suspected

carcinogenic. Therefore, these Azo dyes, which forms about 60 to 70 per cent of the dyes used presently in Bangladesh Textile Sector, are hazardous in nature and were banned in India in 1997 by Ministry of Environment and Forest (MoEF).

Audit scrutiny of documents enclosed with the Manual Bills of Entry relating to imports of various textile and textile articles such as, fabrics, yarns, handloom products like sarees and lungis, readymade garments, etc. from Bangladesh through Petrapole and Changrabandha Land Custom Stations under West Bengal (Preventive) Commissionerate revealed that nearly all such imports were being routinely allowed clearance into India on the basis of pre-shipment test reports from 'Bangladesh University of Textiles (BUT)', Dhaka', an agency not accredited with the Bangladesh Accreditation Board (BAB), the National authority responsible for accreditation in Bangladesh. There are only nine entities accredited by the BAB to certify such goods, and BUT, Dhaka is not one of them. Therefore, every such import should have been allowed clearance only after getting its sample tested and certified from any of the notified Indian testing agencies as per DGFT and CBEC directives which was not done.

A sample check of import data revealed that un-regulated imports of 162 consignments and 283 consignments of Readymade garments and other textile articles valued at ₹ 27.97 crore and ₹ 53.95 crore were allowed through Petrapole and Changrabandha land Customs stations (LCS) during June 2013 and 2013-14 respectively which may have caused immeasurable damage to the environment defeating the motive of MoEF for the protection and improvement of human environment thereby risking public health and safety in India.

The Preventive Commissionerate (WB) stated (September 2014) that it has been accepting Azo Dye testing certificates issued by BUT, Dhaka on the basis of intimation (November 2005) from the Deputy High Commisisoner of Bangladesh on the premise that BUT has been recognised by the Government of Bangladesh to issue certificates.

The department reply may be viewed in the context of the fact that the information provided by the Deputy High Commissioner about BUT is not backed by the evidence authorising it to issue such certificates by the Government of Bangladesh. On the contrary, Government of Bangladesh had specifically set up the BAB in 2006 as the National authority with the responsibility of accredition in Bangladesh.

Ministry response has not been received (January 2015).

Interest paid on terminal excise duty refunds

4.4 Deemed exports shall be eligible for refund of Terminal Excise Duty (TED) paragraph 8.3 (c) of FTP, 2004-09). Further, as per paragraph 8.5.1, simple interest at the rate of 6 per cent per annum will be payable on delay in refund of TED, which have not been settled within 30 days of its final approval for payment by the Regional Authority of Director General of Foreign Trade (DGFT) organization.

Despite repeated highlighting cases of interest payments in earlier Audit Reports the Ministries (Ministry of Commerce/Ministry of Finance) had not taken any remedial action to avoid payments on this count as cases were still being noticed by audit as narrated below:-

Audit scrutiny of TED payment records of office of Joint DGFT, Ludhiana for the period 2010-11 and 2011-12 revealed that in 480 cases, the claims for refunds were not settled within prescribed time limit resulting in payment of interest amounting to ₹ 90.73 lakh.

The Joint DGFT, Ludhiana stated (November 2012/November 2014) that payment of interest was made as per the policy and claims could not be settled because of delay in allocation of funds from the DGFT, New Delhi.

The fact remains that the interest of ₹ 90.73 lakh had to be paid due to delayed payment of TED refunds which had arisen because of lack of coordination between the Regional Licensing authority (RLA) and DGFT, Delhi as well as Ministry of Finance and the same could have been avoided with the timely allocation of funds.

Double refund of central excise duty due to irregular refund of TED

4.5 Supply of goods by a Domestic Tariff Area (DTA) unit to a 100 % EOU will be eligible for refund of Terminal Excise Duty (TED), provided recipient of goods does not avail CENVAT credit/rebate on such goods (paragraph 8.5 of FTP, 2009-14). A declaration to this effect, in Annexure II of Aayaat Niryaat Form (ANF) 8, from recipient of goods, shall be submitted by applicant.

M/s Modern India Con-Cast Ltd, a 100 % EOU under the jurisdiction of the Development Commissioner (DC), Falta SEZ, was paid a TED refund of ₹ 152.99 lakh under two separate refund orders (May 2012 and January 2013) for supply of goods from 56 DTA suppliers under 380 Excise Invoices for the period April to September 2009. However, scrutiny of the entry book of duty credit (Form R.G.23A Part II, maintained under Rule 9 of CENVAT Credit Rules 2004) and the CENVAT return (ER-2 return) enclosed with the application revealed that in respect of 333 Excise Invoices the recipient EOU had also taken CENVAT credit which tallied with the CENVAT credit amount reported in the ER-2 return submitted to the Haldia Central Excise commissionerate. Moreover, at the time of filing application for refund of

TED in Form ANF 8, the claimant EOU had also declared in paragraph 10 (i) that they had availed of CENVAT benefit under Rule 3 of CENVAT Credit Rules, 2004, in respect of raw materials/components received by them. Therefore, the said EOU was not entitled for the refund of TED in view of the aforesaid provisions of FTP.

Thus, grant of TED refund of ₹ 143.61 lakh on the objected 333 supply invoices to the EOU, when the CENVAT credit on such goods was already availed by the recipient EOU, has resulted in double refund of excise duty in the form of TED refund and CENVAT credit which was in contravention to the provisions of FTP.

The matter was reported in March 2014 and also brought to the notice of the Development Commissioner, Falta SEZ and the Haldia Central Excise Commissioner in May & June 2014, their reply has not been received.

Ministry response has not been received (January 2015).

Irregular grant of drawback on exported goods

4.6 Duty drawback as per rates notified every year by the Ministry of Finance shall not be applicable to a product or commodity manufactured or exported by a unit licenced as 100 % EOUs. Such condition could be traced back to General note no.2 (c) of the Drawback Schedule notified vide Ministry of Finance (DR) notification no.31/1999 (NT) dated 20 May 1999 which continued to exist in every subsequent Drawback Schedule notified till September 2013 {notification no.98/2013-cus dated 14 September 2013, condition no.8 (c)}.

M/s Narendra Tea Co. Pvt. Ltd. and five other 100 % EOUs exported (between March 2000 and September 2012) 81 consignments of 'Indian Black Tea' through Kolkata (Port), Commissionerate. Although ineligible for receiving drawback as per the aforementioned notification, the department sanctioned drawback of ₹ 33.40 lakh to these EOUs against exports, which was irregular and recoverable along with interest of ₹ 71.72 lakh from the exporters.

Deputy Commisisoner of Customs (IAD), Custom House, Kolkata intimated (June 2014) recoveries of drawback of ₹ 4.63 lakh besides interest of ₹ 1.24 lakh from one exporter (M/s Madhu Jayanti International Ltd.). Ministry response has not been received (January 2015).

Excess payment of drawback on goods exported

4.7 "Mild-Steel Stranded Wire" classifiable under Customs tariff heading (CTH) 731204 attract drawback at the rate of 3 per cent of FOB value (notification no.68/2011-cus (NT) dated 22 September 2011).

The stranded wires are classifiable under Sub-Tariff Item no.731299 for which drawback was admissible at the rate of 8.1 per cent of FOB value with a drawback cap of ₹ 800/MT, if CENVAT facility was not availed and at the rate of

1 per cent of FOB value with a drawback cap of ₹ 593/MT, if CENVAT facility was availed.

Moreover, as per CBEC circular no.34/95-Cus dated 6 April 1995, a sample should be drawn from every consignment where the amount of drawback per shipping bill is above ₹ 1 lakh and admissibility of the drawback could not be decided on the basis of visual examination of the case.

Scrutiny revealed that in respect of five shipping bills of M/s. U. B. Impex (P) Ltd & M/s. Rayban Metals Pvt Ltd., the Siliguri Customs, Central Excise and Service Tax Commissionerate sanctioned drawback at the rate of 3 per cent on the value of "Un-Galvanised stranded wires" exported during April to September 2012 by classifying them under All-Industry Drawback Schedule tariff item no.731204 as Mild Steel Stranded wire. However, scrutiny of the test reports revealed that the Deputy Chief Chemist, Custom and Central Excise, Custom House, Kolkata in his respective Test report categorically mentioned that as per literatures available with them the export consignment was not made of mild steel as the carbon content of all these export consignment was in the range of 0.72 per cent to 0.74 per cent by weight, which was much more than the maximum permissible carbon content of 0.35 per cent by weight for classification of exported goods as Mild-Steel stranded wire. The department ignored the Test report result and classified the goods under CTH 731204 as Mild Steel stranded wire instead of its classification as 'others' under CTH 731299 for drawback at the rate of 1 per cent, as the exporter has already availed CENVAT credit on raw materials, resulting in excess grant of drawback.

Similarly in respect of another three consignment of "Un-Galvanised stranded wire" exported (January 2012 to September 2012) by M/s. R.B. Agarwall (P) Ltd. drawback was irregularly sanctioned by the same Commissionerate under Drawback Tariff Item no.731204 without any sample testing of exported goods resulting in grant of higher drawback at the rate of 3 per cent instead of at the rate of 1 per cent of the FOB value. This has resulted in excess sanction of drawback of ₹ 8.91 lakh recoverable along with applicable interest of ₹ 1.26 lakh.

On this being pointed out (February 2014), the Deputy Commissioner of Custom (Siliguri Customs Division) stated (March/May 2014) that in the former case the Test report findings were ignored as the sample testing authority did not specify the literature relied upon by them; hence they relied on the definition of Mild Steel from the Wikipedia, according to which Steel containing carbon upto 2 per cent was considered mild steel. Further, department informed that in latter case samples were not drawn in line with the provisions of circular no.34/95-cus dated 6 April 1995, as previous drawn

samples from similar export consignment of the exporter were well within the standard referred by the testing authority.

The department's reply is not tenable because they never asked the testing agency for copy of the literature which clearly indicated that maximum permissible carbon content in an item made up of Mild Steel would not be more than 0.35 per cent by weight. Alternatively, the exported goods also did not fit the referred definition of Mild Steel from the Wikipedia because as per the Test report the mandatory presence of other specified alloying agent of Manganese (1.65 per cent), Copper (0.6 per cent) and Silicon (0.6 per cent) in fixed percentage, along with other elements like Cobalt, chromium etc. with the variable percentage mentioned in the said definition were also absent in the exported goods. Moreover, the circular dated 6 April 1995 or any other provisions under Customs Act, 1962 does not empower the Department to rule out result of a Test report without any contrary Test report from any other agency. In latter cases the sample testing was mandatory in terms of the provisions of the said circular as the drawback sanctioned by the department in the objected cases were more than ₹ 1 lakh each. Deputy Commissioner of Customs, Siliguri Customs Division subsequently issued (May 2014) SCN to the exporter.

Ministry reply has not been received (January 2015).

Refund of additional duty of custom on ineligible goods

4.8 The additional duty of custom (SAD) collected at the rate of 4 per cent on goods imported into India for subsequent sale may be refunded to the importer subject to compliance with the conditions of the notification no.102/2007-cus dated 14 September 2007. The conditions of notification specify, inter alia, that refund of SAD is available only in case the imported goods are subsequently sold on payment of VAT, without carrying out any process. This point was further clarified vide circular no.15/2010-cus dated 29 June 2010 emphasizing that if, the imported and sold goods are classifiable under distinct Custom tariff heading (CTH) then refund of SAD is not admissible.

M/s Bengal Tools Ltd Kolkata, engaged in assembling and selling 'Power Tillers' under Shrachi brand had imported complete Power tillers as well as Power tiller body from China and Diesel engines from China and Thailand and claimed refund of SAD paid on them under notification dated 14 September 2007. While granting refund on imported Power tiller, the department also allowed refund of SAD on imported 'Power tiller body' and Diesel engines (CTH-84089090) which were imported separately from different countries and assembled before clearing the final goods in India as Power tiller (CTH-84329090) with all other accessories. As the imported goods underwent assembling process before sale in India and their CTHs were different from

the final product, the goods sold in India were not the same as the imported goods. Hence, these imported goods were ineligible for refund of SAD. Thus, sanction of refunds on ineligible imports through 21 Bills of Entry under five refund orders issued between September 2010 & June 2011 resulted in excess refund of SAD of ₹ 26.59 lakh**.**

Deputy Commisisoner of Customs, Custom House, Kolkata while agreeing (February 2012/ June 2014) to involvement of assembling process on imported goods before their sale in Indian market justified the grant of refund on the ground that such processing did not tantamount to manufacture.

The department's reply may be viewed in the context of the fact that in the instant case classification nomenclature of the goods imported (CTH 84089090) is distinct from the final product sold in the market (CTH 84329090), accordingly, ineligible for SAD refund as reiterated in the Board circular of June 2010.

Ministry response has not been received (January 2015).

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

4.9 As per section 9A of the Customs Tariff Act, 1975, where any article is exported from any country to India at less than its normal value, then upon the import of such article into India, the Central Government may, by a notification, impose an anti dumping duty. Accordingly, anti dumping duty was imposed from time to time on goods like 'Sodium Ascorbate,' Phosphoric acid, Melamine, and Glass fibre etc. when these were imported from specified countries like Taiwan, Saudi Arabia and China.

We found that assessing officers cleared 23 consignments of such goods imported by M/s Bajaj Healthcare Ltd., and 12 others from these specified countries without levying or short levying applicable anti dumping duty of ₹ 73.00 lakh.

Ministry/department reported recovery of ₹ 7.98 lakh from three importers {(JNCH, Mumbai, ₹ 3.29 lakh - M/s Balaji Impex), (ICD, Tughlakabad, Delhi, M/s Orient Paper and Industries Ltd., ₹ 3.89 lakh along with interest of ₹ 0.60 lakh and M/s Aditya International - ₹ 0.80 lakh)} and issued less charge/show cause notices to two importers {(i) M/s Bajaj Healthcare Ltd., - JNCH, Mumbai and (ii) M/s Classic Prime – JNCH, Mumbai}. Reply in respect of eight importers is awaited (January 2015).

Excess abatement allowed on imported goods

4.10 Government of India had notified commodities which are to be assessed with reference to their retail sale price (RSP) after admitting an abatement as

prescribed against them {notification no. 49/2008-CE (NT) dated 24 December 2008 9 (as amended)}. Against serial no.108, 109 of the aforesaid notification, parts, components and assemblies of vehicles/automobiles falling under any chapter of Customs tariff heading (CTH) and earthmoving machinery/excavators falling under CTH 8429 would be assessed on the basis of their RSP after allowing an abatement of 30 per cent.

M/s Yokohama India Pvt. Ltd., and 27 others imported (August 2013 to March 2014) 99 consignments of 'Car and Truck Tyres with Tubes and Flaps,' Piston sets/earthmoving machinery/excavators' through ICD Tughlakabad. The goods were classified under CTH 4011/8409/8429/8431 and assessed to CVD at the rate of 12 per cent with reference to RSP and allowed abatement of 35 per cent.

Since the Car and Truck Tyres with Tubes and Flaps/Piston sets were parts of the vehicles/automobiles while, earthmoving machinery/excavators parts are classifiable under CTH 8429 therefore CVD should have been allowed abatement of 30 per cent instead of abatement of 35 per cent as per aforesaid notification. Thus, excess allowance of abatement on RSP resulted in short levy of duty amounting to ₹ 33.51 lakh.

Commissionerate of Customs, ICD, Tughlakabad intimated (October/December 2013, September 2014) recovery of ₹ 2.55 lakh along with interest of ₹ 0.32 lakh in 10 consignments and issued (October 2013) protective demands for ₹ 2.71 lakh in respect of 10 consignments. Reply in respect of remaining 79 consignments is awaited.

Ministry response has not been received (January 2015).

Non levy applicable duty

4.11 As per the Commissioner of Customs (Port) Kolkata order (October 2011), the pending valuations (August 2011 onwards) of imported "Polyster coated & Nylon coated fabric" falling outside the list of the DRI/SIB alert notice (May 2011) was to be finalized in line with the practice followed by the Commissioner of Customs, ICD–TKD enhancing the value of imported goods (i) upto the thickness of fabric 0.25 mm to US$ 0.35/meter (ii) Upto the thickness of fabric 0.35 mm to US$ 0.5/meter(iii)beyond the thickness of fabric 0.35 mm to 1.4 times of thickness in US Dollar subject to minimum of 0.5 USD/meter and (iv) in case of Nylon, the enhanced value to be 20 per cent more than that of Polyester. However, the goods falling in the DRI list (fabrics below the thickness of 0.25 mm) was to be valued at the rate prescribed by the DRI (US$0.91/meter). On the basis of this order the department collected differential duty of ₹ 22.27 lakh in respect of 15 provisionally assessed Bills of Entry (BE) in six case files.

M/s. Anukul Enterprise Pvt. Ltd & M/s. MAPSA Tapes Pvt. Ltd. imported (June 2011 to July 2011) "Polyester Fabric with PVC backing" through Kolkata (Port)

Commissionerate and were provisionally assessed (August 2011 to December 2011), due to non-finalisation of valuation of such goods, on submission of PD-Test Bond with the undertaking to pay the difference of the duty if any, on finalization. The test reports of the sample collected from the imported consignments obtained from Regional Laboratory Textile Committee (Kolkata) reported, inter alia, the thickness of the samples ranging from 0.41 mm to 0.58 mm. Considering the thickness of the fabric from the sample test report, the revised value of the imported consignment, as per commissioner of customs order dated 3 October 2011, was found to be much higher than declared in the commercial invoices and corresponding bills of entry which would entail collection of higher customs duty compared to duty provisionally assessed. However, the Department discharged (January 2012 to July 2012) the Provisional duty (PD) Bond along with the corresponding Bank Guarantee in all these cases without collecting the differential duty as mentioned above. This resulted in short levy of ₹ 15.59 lakh which needed to be recovered along with applicable interest.

Assistant Commissioner of Customs, Custom House, Kolkata intimated (December 2012) that the Commissioner of Customs (Port) order of October 2011 was not applicable on the objected Bills of Entry (BsE) as they pertained to period prior to said order. Moreover, as the imported goods did not fall under DRI list they were assessed on the basis of value available in the appraising group.

The department's reply is not tenable because although the objected BsE pertained to period prior to the order dated 3 October 2011 but they were provisionally assessed (August 2011 to December 2011) only on the basis of the Commissioner of Customs order dated 4 August 2011 which were subsequently to be finalised as per the directives issued under order dated 3 October 2011. Moreover, final assessment of 15 BsE pertaining to period before and after the date of objected BsE by the same appraising group on the basis of order dated 3 October 2011 indicates that the said order was applicable on the objected BsE also. This was communicated to the department in March/April 2013, their response is awaited (January 2015).

Ministry reply has not been received (January 2015).