

CHAPTER II

DUTY EXEMPTION/REMISSION SCHEMES

The Government may exempt wholly or part of customs duties for import of inputs and capital goods under an export promotion scheme through a notification. Importers of such exempted goods undertake to fulfill certain export obligations (EO) as well as comply with specified conditions, failing which the full rate of duty becomes leviable. During test check (February 2011 to December 2013) of records pertaining to the period April 2007 to March 2013, a few illustrative cases noticed where duty exemptions were availed of without fulfilling EOs/conditions are discussed in the following paragraphs. The total revenue implication in these cases is ₹ 139.06 crore.

2.1 Inadmissible payment of Deemed exports benefit

Paragraph 8.2(d) of Foreign Trade Policy provides that supply of goods to projects financed by multilateral or bilateral agencies/funds as notified by Department of Economic Affairs, Ministry of Finance under International Competitive Bidding (ICB) in accordance with procedures of those agencies/funds, where legal agreements provide for tender evaluation without including customs duty is regarded as deemed exports and is entitled to deemed export benefits from Regional offices of DGFT. The guidelines on ICB prescribed that evaluation should not include customs duty, excise duty, sales tax and any other similar taxes.

National Highways Authority of India (NHAI) awarded contracts to contractors for execution of works related to construction, rehabilitation and upgradation of highways etc. As per clause 14.3 of the instructions to bidders forming part of contract agreement, all duties/taxes and other levies payable by the contractor under the contract, or for any other cause, as of the date 28 days prior to the deadline for submission of bid, shall be included in the rates and prices and the total bid price submitted by the bidder and the evaluation and comparison of bids by the employer shall be made accordingly. It implies that the contract price includes the component of excise duty on the raw materials consumed for the project.

Audit scrutiny of the deemed export claim files for the period from 2007-08 to 2010-11 provided to Audit by the office of the Addl. Director General of Foreign Trade, New Delhi revealed that NHAI had regulated payments to the contractors as per the terms of the contract. Further, Addl. DGFT also reimbursed ₹ 34.50 crore to these contractors as deemed export benefits in respect of material used by them for execution of aforesaid works. This resulted in double benefit of duty to the contractor i.e., through payment received from NHAI inclusive of duty as well as reimbursement of Deemed export benefit from office of Addl. DGFT.

Additional Director General of Foreign Trade, Ministry of Commerce and Industry stated (February 2013) that this issue has already been examined in Policy Interpretation Committee (PIC) in its meeting held on 07 October 2002 and it was clarified by PIC that deemed export benefits could not be denied to these firms. Moreover, the duties are refunded by the Government only once and there has been no duplication in the refund. If supplies are classified as deemed exports, then duties actually paid have to be refunded, as per deemed export scheme. Further, paragraph 2.3 of FTP clearly states that on the matter relating to interpretation of policy, the decision of DGFT shall be final and binding. Therefore, this decision by the DGFT has been implemented by the Regional Licensing Authority.

The reply of the department is to be viewed in the context of the fact that the contract price of each work was inclusive of all duties and taxes against the guidelines of ICB contracts. Further, the decision of the PIC to permit refund of deemed export benefits to the contractors in these cases despite payment of duties by the project authority to the same contractors was incorrect. Thus, grant of deemed export benefits of ₹ 34.50 crore to the contractors by the Department was inadmissible.

Director General of Foreign Trade, New Delhi in December 2013 stated that reply of Headquarters (Ministry of Commerce and Industry) will be sent in due course. Further progress was awaited (March 2014).

2.2 Advance authorisation Scheme

Regional Licensing Authority (RLA), Hyderabad did not recover duty forgone for non fulfillment of export obligation

2.2.1 In terms of Chapter 4 of the Foreign Trade Policy, Advance authorizations (AAs) are issued for duty free import of raw materials, for such quantity as specified in the Standard Input Output Norms (SION), for manufacture and export of the finished products.

As per paragraph 4.22 of Handbook of Procedure (HBP), VI -I 2004-09, export obligation under an advance licence shall be fulfilled within a period of 36 months and further extension of one year is allowable. If the export obligation (EO) is not fulfilled, the licence holder shall for regularization, pay to the customs authorities, customs duty on the unutilized value of imported material along with interest (Paragraph 4.28 of the HBP).

M/s BHEL, was issued an advance licence (May 2009) by JDGFT, Hyderabad for a c.i.f. (cost, insurance, freight) value of ₹ 547.08 crore. The licensee imported (June 2000), 'Flange to Flange Gas Turbine' and the duty forgone was ₹ 26.66 crore.

Audit scrutiny revealed that though the period of export obligation was completed in May 2012, neither the assessee had fulfilled the EO nor sought any

extension for the same. Accordingly, duty of ₹ 26.66 crore was recoverable from the licensee.

DGFT, New Delhi stated (2013) that RLA has been advised to take up the matter with BHEL. DGFT, New Delhi further added that the matter was also brought to the notice of GM (Projects) BHEL, Noida. Further progress was awaited (March 2014).

Regional licencing Authority, Kolkata did not recover duty for non fulfillment of EO

2.2.2 As per paragraph 4.24 of the HBP, licensee is required to submit requisite documents in support of discharge of EO within two months from the date of expiry of EO period. In the case of failure to fulfil EO, the licensee shall pay customs duty on unutilized imported materials along with interest.

M/s Bhushan Power & Steel Ltd, Kolkata, was issued a Duty Free Import Authorisation (DFIA) license (April 2007) by the Regional Licencing Authority (RLA), Kolkata, for duty free import of 'Raw materials' valued at ₹ 99.88 crore with an obligation to export 40002 MT of 'Cold rolled galvanized non-alloy steel sheets and wide coils' worth ₹ 140.66 crore. Against the import (June 2007) of 735.691 MT of zinc metal' worth ₹ 10.40 crore through Commissionerate of Customs (Port), Kolkata, the licensee exported (between March and April 2007) only 2172.77 MT of goods worth ₹ 9.26 crore against prescribed EO, thereby failing to fulfil the export obligation. As per Standard Input Output Norms (SION), only 53.327 MT zinc (considering minimum coating range of 30-49 gm/m² in absence of specific mention in shipping bills) was required for galvanisation of 2172.77 MT export goods. Thus, to regularize the failure to fulfil the EO, custom duty of ₹ 2.69 crore on 'zinc metal' (682.364 MT) imported in excess along with interest of ₹ 2.10 crore was recoverable from the licensee.

DGFT, New Delhi reported (November 2013) that the firm had deposited customs duty of ₹ 2.12 crore on the quantity of zinc imported in excess by debiting Status Holder Incentive Scheme (SHIS) licence and paid interest of ₹ 1.89 crore in cash (May 2012 & January 2013). Accordingly, the department had regularised the case (February 2013).

In response to audit's query on recovery of differential duty, DGFT, New Delhi forwarded (November 2013) copies of 10 commercial invoices furnished by the licensee for actual consumption of zinc. On perusal of the invoices furnished it was found that all except one invoice either did not have zinc coating specification or had coating specification of Z-12 which made actual consumption of zinc in the export product far less than claimed. Accordingly, balance customs duty of ₹ 56.69 lakh was recoverable from the licensee. Further progress was awaited (March 2014).

RLA, Madurai irregularly clubbed Advance Authorizations which caused duty benefit of ₹ 18.51 lakh to the licensee

2.2.3 As per Para 4.20 of Hand Book of Procedures (HBP) Vol. I, (2004-09) the Advance authorization (AA) holder has the facility of clubbing of authorizations for redemption / regularization without further utilizing them for import or export. This facility of clubbing is available only for AA(s) where there is shortfall in fulfillment of export obligation and which is sought to be clubbed with an AA (s) which is valid for import. The import validity of the authorization is 24 months and the export obligation (EO) has to be fulfilled within 36 months (Paragraph 2.12 of Foreign Trade Policy).

M/s Madura Coats Limited applied (August and December 2010) for two separate clubbing of AA issued in April 2009 with that of three other AA (s) issued in June/August 2005 and May 2006 in each case. The Authorization holder imported the entire quantity of raw materials viz., Polyester Filament yarn and Polyester staple fibre, free of duty but did not fulfill the export obligation by export of Polyester sewing thread in respect of the AA issued in April 2009 in both the cases. The import validity of the other three authorizations issued in June/August 2005 and May 2006 sought for clubbing in each case, had already expired and the export obligation was fulfilled in all those AA(s) individually. However, in both the cases of clubbing, all the four Authorizations were clubbed and irregularly redeemed (January and December 2011).

As the three AA (s) issued in June/August 2005 and May 2006 which were sought to be clubbed with the AA issued in April 2009 were not valid for imports, those three AA (s) could not be clubbed. Moreover, the export obligation against those three AA(s) had already been fulfilled individually. On completion of EO itself, all the other three AA (s) should have been redeemed individually in both the cases of clubbing. There was no reason to involve these three AA (s) into the process of clubbing. The irregular clubbing resulted in non-recovery of customs duty of ₹ 18.51 lakh on excess import of raw materials.

DGFT, New Delhi stated that as per RLA, Madurai, EO has been fulfilled after clubbing with the licence dated April 2009 and there was no excess import.

DGFT, New Delhi reply has to be viewed in the context of the fact that clubbing for Advance Authorization (s) is allowable where there was shortfall in fulfillment of export obligation and Authorization (s) sought to clubbed with was valid for import. But in the instant case, three out of four Advance Authorization (s) clubbed were not valid for import. Accordingly, these three licences were not eligible for clubbing.

2.3 Export Oriented Units (EOUs)/ Export Processing Zones (EPZs)

Assessing officers did not levy anti dumping duty on 'Polypropylene (PP)' imports

2.3.1 Import of 'Polypropylene (PP)' from Oman, Saudi Arabia and Singapore attracts provisional anti-dumping duty at the prescribed rate under notification no. 82/09-cus dated 30 July 2009. Subsequently, based on the final findings by the Designated Authority, definitive ADD on such imports was imposed at the rate of 322.57 US\$MT vide notification no.119/2010-cus dated 19 November 2010, with retrospective effect from the date of imposition of the provisional ADD i.e. 30 July 2009. Further, in terms of section 30 (a) of the Special Economic Zone (SEZ) Act, 2005, any goods removed from SEZ to the Domestic Tariff Area (DTA), shall be chargeable to duties of customs including anti dumping duty under the Customs Tariff Act, 1975, wherever applicable, as leviable on such goods when imported.

Fifty consignments of 'Polypropylene' (CTH 39021000) imported through Kolkata (Port), Chennai (Sea) Commissionerates and ICD Dadri by M/s Sai Industries Pvt. Ltd., a FSEZ unit operating under the control of Zonal Development Commissioner (ZDC), Eastern Zone and six others were cleared without levy of anti dumping duty, in contravention of the codal provisions. This resulted in non levy of anti dumping duty of ₹ 7.41 crore.

The Assistant Commissioner of Customs (Airport & Administration), Kolkata confirmed (July 2013) a demand of ₹ 18.83 lakh in respect of M/s Sai Industries. Ministry reply in respect of other importers was awaited (March 2014).

Assessing officer did not levy countervailing duty on DTA clearances

2.3.2 As per proviso (1) of Section 5A of Central Excise Act, the benefits of duty exemption notifications issued under the Section 5A shall not be applicable to excisable goods produced or manufactured in the Special Economic Zone (SEZ) and cleared in any place in India, unless the said exemption notification specifically provides for extension of the benefit of exemption to such clearances from SEZ

Three Falta SEZ units viz., M/s. ~~W~~sol Energy System Pvt. Ltd., M/s. ~~N~~kram Solar Pvt. Ltd & M/s. Gupta Infotech, under the control of Zonal Development Commissioner (ZDC), Eastern Zone availed exemption from Countervailing Duty (CD) on clearance (FY 2010-11) of their manufactured products in India under Central Excise notifications no.6/2006-CE dated 1 March 2006, issued under Section 5A of the Central Excise Act, which did not specifically provide for duty exemptions on goods manufactured in the SEZ units and cleared in DTA. Thus, grant of CD exemption to the extent of ₹ 4.22 crore on the aforementioned sale was incorrect, as it was in contravention to the proviso (1) of Section 5A of Central Excise Act.

The Assistant Commissioner of Customs, FSEZ Falta contesting the audit observations stated (July 2013) that countervailing duty which is taken for calculating import duty is different from Central Excise duty imposed on the goods manufactured in India. Accordingly, audit incorrectly objected to CD exemption benefit to DTA sale by the unit.

It was further stated that for removal of goods from SEZ to DTA, provision of section 30 of the SEZ Act, 2005 will prevail over section 5A of the Central Excise Act and such goods are chargeable to duties of customs including anti dumping, countervailing and safeguard duties under Customs Tariff Act, 1975 as leviable on such goods when imported. As the SEZ is considered a "foreign territory", applicability of the section 5A of the Central Excise Act could not be extended to DTA sale by SEZ unit.

The reply may be viewed in the context of the fact that section 3 (1) of the Customs Tariff Act, 1975 clearly defined CD as "a duty equal to the excise duty for the time being leviable on a like article produced or manufactured in India". Accordingly, for levy or exemption of CD, provisions of notification issued under Central Excise Act which regulates CD rate (as was normally done in case of imports) are expressly applicable on DTA clearances by SEZ under SEZ Act, 2005. Ministry's reply was awaited (March 2014).

Central Excise, Range-I, Rishra Division, Kolkata authorities did not levy anti dumping duty on DTA clearances

2.3.3 According to Sub-Section 2A of Section 9A of the Customs Tariff Act, 1975, read with the Para 6.8 (a) of Foreign Trade Policy (2009-14), goods imported by the Export Oriented Units (EOUs) are exempted from anti-dumping duty subject to the condition that if the article imported is either cleared as such into domestic tariff area (DTA) or used in the manufacture of any goods that are cleared into the DTA, then in such case anti-dumping duty shall be levied on that portion of the article so cleared or so used as was leviable when it was imported into India.

M/s Royal Touch Fablon Pvt. Ltd., an EOU under jurisdiction of Development Commissioner (DC), Falta SEZ and Kolkata IV Central Excise Commissionerate sold 'PP bags, PP Twisting Yarn & PP Scraps' valued at ₹ 33.13 crore in DTA during April 2009 to March 2011 on payment of central excise duty under the notification no.23/2003-CE dated 31 March 2003. Audit noticed that the unit manufactured their items using indigenous raw materials and PP granules/resins imported from Saudi Arabia & Singapore with country of origin as Saudi Arabia thereby attracting anti dumping duty under notification no.119/2010-cus dated 19 November 2010. But at the time of the DTA sale of said manufactured PP Bags, PP Twisting Yarn & PP Scrap, anti dumping duty of ₹ 1.39 crore, leviable on the portion of imported PP granules/resins used in the manufacture of the finished products, was not levied in terms of the aforesaid provisions.

The Central Excise Range-I, Rishra Divison, Nizam Palace, Kolkata authorities initially contested (December 2012) the audit observation on the ground that the total quantity of imported goods attracting anti dumping duty was consumed by the total exports effected during the relevant period as claimed by the unit, but subsequently intimated (March 2013/May 2013) acceptance of audit observation on the ground of the unit's failure to submit supporting document in favour of their claim for which a Show Cause Cum Demand Notice was in the process of issuance. Ministry's response was awaited (March 2014).

Assessing Officer Raigadh Commissionerate, Maharashtra did not levy applicable anti dumping duty on DTA clearances

2.3.4 Sodium Tripoly Phosphate (STPP)' classified under CTH 28353100 originating in or exported from China is leviable to anti dumping duty at the prescribed rates (notification no.58/2011-cus dated 8 July 2011). However, in terms of sub-section 2 (A) of section 9A of the Customs Tariff Act, 1975, anti dumping duty is not levied on import of STPP by an EOU. But an amount equal to anti dumping duty forgone on the goods at the time of import by an EOU, shall be paid on the equivalent quantity of goods used for manufacture of any goods which are cleared into DTA or such quantity of goods which are cleared as such into DTA (Board circular no.12/2008-cus dated 24 July 2008).

M/s Deva Drill Tech. (I) Ltd., an 100% export oriented unit under the jurisdiction of Raigadh Commissionerate, Maharashtra was issued letter of permission (LOP) for manufacture of chemical products such as 'Dispersants, dissolvers' etc. This unit imported 300 MT of STPP duty free between August to September 2011 from China without levy of anti dumping duty. The unit subsequently cleared (September 2011) in DTA 287.15 MT of raw-materials viz. STPP (CTH 2835.31.00) valued at ₹ 1.41 crore on payment of full customs duty of ₹ 27.71 lakh.

Audit scrutiny revealed that the anti dumping duty was not levied on DTA clearances in contravention to aforesaid provisions of the Customs Act. This resulted in non levy of anti dumping duty to the extent of ₹ 72.78 lakh.

This was brought to the notice of the Ministry in August 2013; their reply was awaited (March 2014).

Assistant Development Commissioner, Cochin did not recover duty for non fulfillment of export obligation

2.3.5 Paragraph 6.6 (c) of Handbook of Procedures (HBP), 2009-14 provides that, in case of import of spices covered by chapter 9 of ITC (HS), Appendix 14-1-C of Foreign Trade Policy (FTP) for value addition purpose, such as crushing/grounding/sterilization process, export obligation (EO) shall be fulfilled within 120 days from the date of importation of first consignment. However, for imports completed up to 31 December 2008, export obligation period shall be 150 days from the date of clearance.

M/s Vlabhdas Anji Ltd., Klenchery, Kchi had imported nine consignments (1,63,850 kg) of 'Turmeric' (under chapter 9 of ITC HS) during August to December 2009. Scrutiny of records showed that the unit could export 90556.20 kgs of goods utilizing 95322.82 kgs of imported 'Turmeric' including permissible waste generation of 4766.62 kgs (5 per cent) within the stipulated EO period. Accordingly, the unit was liable to pay cumulative duty amounting to ₹ 15.53 lakh and interest on unutilized Turmeric (68527.18 kgs).

The Deputy Commissioner of Central Excise, Muvattupuzha Division, Kerala, stated (January/November 2012) that 120 days of EO period is to be calculated from the date of re-warehousing and not from the date of filing of BE. Accordingly, the unit had fulfilled the EO within the time specified in the FTP for the items.

The department reply is to be viewed in the context of the fact that HBP clearly provides for fulfillment of EO in respect of import of spices within 120 days from the date of importation of first consignment and not from date of re-warehousing. Further, date of clearance is considered for counting EO period only in cases of imports of spices completed up to 31 December 2008, while in the instant case imports were made after December 2008.

Assistant Development Commissioner, Cochin Special Economic Zone (CSEZ) stated (January 2013) that the matter has been taken up with the Ministry of Commerce and Industry. Ministry's response was awaited (March 2014).

2.4 Promotional measures (Focus Product Scheme including Market Linked Focus Product Scheme)

The Focus Product Scheme (FPS) was introduced in the year 2006 with a view to boost the export of certain sectors and expand employment opportunities. The scheme is administered by Regional Authorities (RAs) under the Director General of Foreign Trade (DGFT), Ministry of Commerce. Authorisations (earlier known as licences) are issued by the jurisdictional Regional Authorities (RA). For export with effect from 1 April 2008, some products of high export intensity (which were not covered in the Focus Product List) were also incentivized provided that the goods are exported to notified country (known as Market Linked Focus Product Scheme).

Paragraphs 3.15 to 3.15.3 of the FTP read with paragraph 3.9 of the HBP V.I., 2009-14 deals with the entitlement and procedure for filing applications for grant of benefit under Focus Product Scheme and Market Linked Focus Product Scheme.

Audit selected 13 RAs⁷ located in eight⁸ different States for test check of authorizations issued during the year from 2010-11 to 2012-13. During this

⁷ Ahmedabad, Bhopal, CLA-Delhi, FT Section-SEZ Gandhidham, Hyderabad, Jaipur, Kolkata, Mumbai, Nagpur, Raipur, Rajkot, Surat and Vadodara

period, total 81547 authorizations involving duty credit of ₹ 6047.87 crore were issued by these 13 RAs, of which audit test checked 4632 (5.7 percent) authorizations involving duty credit of ₹ 1010.26 crore (17 percent) on random sampling basis. FPS/MLFPS benefits are available to various sectors of industries and hence we took sample of different sectors which includes textile, handicrafts, engineering, pharmaceuticals etc.

2.4.1 Audit findings

In the audited sample we scrutinized the processes from receipt of application to issue of authorization (duty credit scrip). Stage wise audit findings are discussed in the succeeding paragraphs:

Application and verification of documents

Audit noticed that in the following cases documents submitted by the exporters while applying for duty credit scrip were not scrutinized properly and invalid documents were accepted for issue of authorisation.

2.4.2 Non application of late cut on belated applications resulting in excess grant of duty credit

As per Paragraph 3.11.9 of HBP 2009-14, application shall be filed within a period of 12 months from the date of export or within six months from the date of realization of foreign exchange or within three months from the date of printing/release of SB, whichever is later. Belated application attracts late cut under Paragraph 9.3 of HBP. As per PC No.26/(RE-99)/1999-2000 dated 9 August 1999, it was clarified that wherever the exporter submits deficient documents, the date of submission of such documents would be treated as date of application and the initial application shall not be considered in time and shall be subjected to late cut or rejection, as the case may be.

Audit scrutiny of records at five RAs (Ahmedabad, Hyderabad, Jaipur, Mumbai and Surat) revealed that even though applications were submitted beyond prescribed date, late cut was not imposed/short imposed by RAs in 42 cases resulting in excess grant of duty credit of ₹ 15.24 lakh (**Appendix 5**).

Director General of Foreign Trade stated (February 2014) that:-

- i. RA, Ahmedabad had issued letters to the firms for recovery;
- ii. RA Surat had asked nine firms to surrender the excess amount of credit, otherwise it would be adjusted from their future claims;
- iii. RA Hyderabad had recovered the excess credit from M/s Biological Ltd. and M/s Suruavanshi Spinning Mills and had issued reminders to M/s Glochem Industries, M/s Imperial Garments and M/s HSIL.

⁸ Andhra Pradesh, Chhattisgarh, Delhi, Gujarat, Madhya Pradesh, Maharashtra, Rajasthan and West Bengal

RA Jaipur reported (August and December 2013) recovery of ₹ 0.15 lakh.

2.4.3 Incorrect consideration of invalid Shipping Bills having no declaration of availing chapter-3⁹ benefits on it

As per Paragraph 3.11.8 of HBP 2010-11 for availing benefits of Chapter-3 schemes for export from 1 June 2008, exporter is required to make a declaration on free SB that they will be claiming the benefits as admissible under Chapter 3 of FTP. In respect of Shipments under Chapter 4 to 6 schemes (including drawback), this declaration was not required (except for the exports from 1 January 2011 to 2 June 2011). The provisions of declaration were also explained in PN No.82/2009-14 dated 16 July 2010 and in checklist prescribed in Trade Notice No. 3/AM13 dated 03 July 12 by Office of the Addl. DGFT, Mumbai. The provision for declaration was introduced so as to check the valuation of goods by the Customs authority at the time of exportation. Further, as per Circular No.1/2009-Customs dated 13 January 2009, separate examination norms have been prescribed for shipments under export promotion schemes.

Audit observed at following seven RAs that though the SBs did not contain declaration of intention of availing Chapter-3 benefits, these SBs were considered for granting duty credit resulting in consideration of invalid SBs for duty credit of ₹ 1329.27 lakh (**Appendix 6**).

RA	Authorisations wherein invalid SBs considered	Period of exports	Duty credit (lakh ₹)
Ahmedabad	19	January 2011 to May 2011	890.27
FT Section, SEZ Gandhidham	08	January 2011 to May 2011	46.89
Hyderabad	09	October 2009 to July 2011	150.61
Jaipur	74	January 2011 to May 2011	126.05
Kolkata	01	April 2009 to August 2009	0.61
Rajkot	13	January 2011 to May 2011	62.88
Surat	09	January 2011 to May 2011	51.96
	133		1329.27

In respect of exports made between 1 January 2011 and 2 June 2011 under Chapter-4 to 6 of Foreign Trade Policy schemes, declaration on SB was made mandatory. However, through PC No.13 (RE-2012)/2009-14 dated 31 January 2013, this provision was relaxed for applications pending with RAs/fresh application which was required to be filed upto 30 April 2013. But prior to 31 January 2013, there was no provision to consider such SBs for duty credit in absence of declaration. However, in above cases, authorizations were issued prior to 31 January 2013 resulted in granting FPS authorizations, based on invalid documents.

Director General of Foreign Trade stated (February 2014) that:-

⁹ Chapter 3 of Foreign Trade Policy

- i. RA, Hyderabad had recovered ₹ 0.15 lakh from M/s Neuland Labs Ltd., while in other cases of M/s Aurobindo Pharma Ltd and M/s Hritik Exim it was stated that the duty scrips have been issued against EOU SBs, hence eligible for consideration. However, copies of SBs were not furnished by the DGFT. Reply would be verified by Audit.
- ii. RA, Kolkata reported recovery of ₹ 0.61 lakh along with interest ₹ 0.23 lakh.
- iii. RA, Jaipur had issued letters to the firms in all 74 cases to surrender benefits and recovered ₹ 0.36 lakh in three cases.

2.4.4 Grant of duty credit to EOUs without obtaining evidence of non-availing of direct tax benefits

As per Paragraph 3.17.2 (i) of FTP 2009-14 benefits of FTP Chapter-3 schemes are not available to EOUs/EHTPs/BTPs who are availing direct tax benefits/exemption. This has also been clarified in detail in PC No.56 (RE-2008)/2004-2009 dated 21 January 2009 that while applying for authorization (i) EOUs who have completed the exemption period will submit the evidence to that effect and (ii) EOUs who have not completed the exemption period are required to produce evidence to this effect from the jurisdictional Income Tax Authorities that they would not be claiming direct tax exemption. Under Section 10B of the Income tax Act, direct tax exemption was extended to EOUs for financial year upto 2010-11.

Audit noticed in five cases (three cases at RA, Ahmedabad, one each at RA, Hyderabad and at RA, Jaipur) that though the applicants were EOUs, no evidence was obtained by RAs evidencing the completion of exemption period/certificate from the IT authority and five authorizations involving duty credit of ₹ 54.31 lakh (**Appendix 7**) were issued to three exporters against the exports effected during the year 2010-11.

DGFT stated (February 2014) that RA, Ahmedabad and Jaipur had issued letters to the firms for recovery, while the firm under RA, Hyderabad had submitted a certificate regarding non-availing of IT benefit from IT authorities.

2.4.5 Authorization issued without obtaining self declaration

Hand-made carpets and other textile floor coverings, covered under Chapter 57 of ITC (HS) Code, are eligible for duty credit scrip under FPS at the rate of 5 per cent for exports made with effect from 23/02/2009. Before 23/02/2009, these were eligible for duty credit scrip under FPS at different rates.

Ministry in their circular (PC No.21/2009-14 dated 12/01/2010), clarified that if the description of the export product on the export document is only 'cotton bathmats/rugs or machine made cotton bathmats/rugs or machine tufted cotton bathmats/rugs', the exports of the same should be considered for the benefit for exports made from 23 February 2009 onwards and earlier, under FPS, after

obtaining a self declaration from the exporter. For exports from 12 January 2010 the declaration was made mandatory to be given on SB. However, again in PC No.23/RE (2010)/2009-14 dated 21 February 2011 it was clarified that self declaration will only be required and there is no need to give declaration on SB. The declaration mainly contains that in the manufacturing activity sufficient man power was used rendering the goods eligible under 'hand-made' category.

Between 2010-11 and 2012-13, RA, Jaipur issued 21 authorisations involving duty credit of ₹ 1.63 crore (**Appendix 8**) against export of aforesaid product without obtaining self declaration from the exporters resulting in incorrect issue of authorisations.

DGFT stated (February 2014) that one firm surrendered excess amount and in the remaining cases declarations were subsequently submitted by the firms.

The fact remains that the authorizations were issued without obtaining requisite documents.

2.4.6 Irregular grant of benefit under MLFPS without proof/incorrect proof of landing of export consignments in specified market

As per Paragraph 3.8.2 of HBP, under MLFPS the applicant shall be required to submit any one out of six prescribed proof for landing of export goods.

(i) In following two cases audit noticed that authorizations were issued by RAs without obtaining any proof of landing of the goods in the exported country resulting in incorrect issue of authorization involving duty credit of ₹ 21.31 lakh.

Name of RA	Name of exporter	Authorisation No./Date	Duty credit (lakh ₹)
Ahmedabad	Bodal Chemicals Ltd.	810095763 dated 25/01/11	11.43
Kolkata	Amrit Exports Pvt. Ltd	0210143160 dated 08/06/2010	9.88

RA, Ahmedabad accepted the observation while RA, Kolkata directed the exporter to submit the proof of landing or to pay back the duty credit with interest.

(ii) In another case RA, Kolkata issued Authorisation (No. 0210148291 dated 21/09/2010) for duty credit of ₹ 40.80 lakh to M/s. Electrosteel Castings Ltd. against exports effected through 15 SBs (FOB value: ₹ 20.40 crore) to Algeria. Exporter submitted landing certificates, as required under paragraph 3.8.2 of HBP from M/s Samsara Shipping Pvt. Ltd., (an agent of M/s Mediterranean Shipping Co. SA). Audit scrutiny revealed that the certificates issued by a local agent of the Shipping liners, neither disclosed their authority nor the source of information on the basis of which the certificate had been issued, as required under Para 3.8.2 of HBP. Further, the documents submitted by the exporter were photocopies of certificates which were without name and designation of the signatory and without number and date of issue. This has resulted in irregular issue of duty credit of ₹ 40.80 lakh.

DGFT, New Delhi stated (February 2014) that RA, Ahmedabad had issued letter to the firms for recovery and M/s Electosteel Casting Ltd., under RA, Kolkata had furnished revised landing proof of goods at the Port of destination.

2.4.7 Incorrect splitting of authorization

As per Paragraph 3.11.4 of HBP 2010-11, split certificates of duty credit scrip subject to a minimum of ₹ 5 lakh each and multiples thereof may also be issued, on request at the time of application with different port of registration. After issue, request of split shall be permitted with same port of registration as appearing on the original scrip. The above procedure shall be applicable only in respect of EDI enabled port.

At RA, Surat, M/s. Khan Textiles, Surat applied for duty credit scrip of ₹ 14.45 lakh as against export of ₹ 733.18 lakh effected through Nhava Sheva Sea port, Mumbai. It was, however, noticed that the exporter was issued two duty credit scrips of which one involves duty credit less than ₹ 5 lakh (Authorization No.5210033267 dated 04/01/2011 for ₹ 4.45 lakh). This has resulted in incorrect issue of split certificate.

RA, Surat has accepted the observation.

Similarly at RA, Hyderabad against three applications for issue of split authorization, 14 split authorisations were issued (2010-11 and 2012-13). However, these include three split authorizations involving duty credit amount below ₹ 5 lakh. Total duty credit involved in these three authorizations was ₹ 9.97 lakh (**Appendix 9**).

DGFT, New Delhi in respect of RA, Hyderabad stated (February 2014) that once the applicant opts for split certificate the computer system automatically calculates the split certificate in multiples of ₹ 5 lakh each. As such they could not amend the value of split certificate.

Audit maintained that EDI system should be in conformity with the extant provisions of FTP/HBP.

2.4.8 Non filing of separate application for year wise exports/port wise exports

As per Paragraph 3.11.10 of HBP 2010-11, shipments from EDI Ports and Non-EDI Ports could not be clubbed in one application. Port of registration for EDI enabled ports shall be the port of export. In case of exports through non-EDI port, the port of registration shall be the relevant non-EDI port of exports. Accordingly, separate application shall be filed for each non-EDI port. Further, as per prescribed format ANF 3C for application under Chapter 3 schemes, separate application for year wise exports was required to be filed.

(i) At four RAs (Ahmedabad, Hyderabad, Jaipur and Surat), in case of nine authorizations issued between 2010-11 and 2012-13, applicants had clubbed the

SBs pertaining to the year different than that mentioned in the application period. Total duty credit involved in these SBs which pertains to different years was ₹ 27.42 lakh (**Appendix 10**).

DGFT, New Delhi stated (February 2014) that RAs, Ahmedabad and Hyderabad had issued letters to the firms for recovery.

In respect of RA, Surat it was stated that no application fee is required to be submitted by the firm and multiple applications could be filed without imposition of late cut. It was also contested that there was no change in the FTP 2009-10 and 2010-11. Hence, benefits were granted without insisting for filing of separate application year wise.

Department's reply may be viewed in the context of the fact that non filing application on year wise basis was against the codal provisions.

(ii) At CLA-Delhi one applicant (authorization no. 510278301 dated 31/11/2010 total duty credit of ₹ 1.48 lakh) clubbed the exports of Dadri port (non EDI Port) with exports of EDI enabled port Delhi Air Cargo resulting in acceptance of incorrect application.

DGFT, New Delhi stated (February 2014) that RA, New Delhi had directed the firm to refund the amount.

(iii) At RA Jaipur authorisation No. 1310041978 dated 24/01/13 for duty credit of ₹ 5.78 lakh was issued to M/s Latiyal Handicrafts Pvt. Ltd., Jodhpur. However, in this claim there were nine Shipping Bills, of which eight Shipping Bills were pertaining to EDI Mundra port and one Shipping Bill (SB No.104 dated 28.02.11-duty credit ₹ 0.99 lakh) was relating to non-EDI port i.e. RAJSICO, Basni, Jodhpur. Thus, issue of one authorisation clubbing the shipments made from EDI and Non-EDI ports was contrary to the aforesaid provisions.

RA, Jaipur stated (August 2013) that the said provisions were amended vide PN No. 100 dated 21 November 2008.

The reply is not acceptable because the aforesaid PN was nPot related to filing of the separate applications.

2.4.9 Issue of authorization against export of ineligible goods

Under FPS, benefits are available to those goods which are notified in Appendix 37D of HBP from time to time. In audited sample we noticed in following cases that ineligible goods were considered for grant of duty credit.

(a) Incorrect issue of authorizations due to belated action to define 'technical textile'

As per serial no. 33 of Table-4 of Appendix 37D of HBP 2009-14, 'Technical textile – woven fabrics of synthetic filament yarn' falling under Chapter 5407 of ITC (HS) Code was eligible for duty credit. Thus, benefits were extended only to

'technical textiles' falling under ITS (HS) Code 5407. Upto 20 October 2011, the 'technical textile' was not defined, however, through Policy Circular(PC) No. 42 (RE-2010)/2009-14, dated 21 October 2011, it was notified by the DGFT, New Delhi, that only 33 products as listed under the said PC were eligible for benefits under 'Technical textile' category for export from 01 April 2011. It was clarified that a technical textile is a textile product manufactured for non-aesthetic purposes, where function is the primary criterion. Technical textiles include textiles for automotive applications, medical textiles, geo-textiles, agro textiles and protective clothing like heat and radiation protection for fire fighter clothing, molten metal protection for welders, stab protection and bulletproof vests and spacesuits, tent fabrics etc. It was also directed through aforesaid PC to effect the recovery in the cases where exporter had availed undue benefits for exports effected from 01 April 2011. Thus, no action to recover the undue benefits already granted to the non-technical textiles products exported prior to 01 April 2011, were proposed in this PC.

At RA, Surat, it was observed in respect of 70 authorizations that though the SB did not contain description of the goods as 'technical textile' these authorizations were issued with duty credit of ₹ 760.22 lakh by considering only chapter heading (5407). Audit scrutiny revealed that exporter has classified the goods mainly under Chapter headings 54071039, 54075490, 54075119, 54075290, 54079400 with description of goods mainly as 'Dyed and printed fabrics made from 100% polyester filament yarn, texturised yarn with or without embroidery and with or without metalized yarn'. Moreover, benefits to these headings were not covered in 33 technical textile goods as defined subsequently in PC dated 21 October 2011 which is evident that these products were non-technical textile fabrics. Also, in PC dated 21 October 2011, no action was proposed to recover the incorrect duty credit already granted to the non-technical textile goods for exports effected prior to 01 April 2011 resulting in grant of undue duty credit of ₹ 760.22 lakh (**Appendix 11**).

In another 23 authorizations (duty credit ₹ 183.93 lakh) issued by RA, Surat and three authorisations (duty credit ₹ 58.62 lakh) issued by RA, Kolkata involving exports prior to 01 April 2011, it was noticed that though the description/chapter headings in the shipping bills, invoices of the documents clearly revealed that goods exported were saree, salwar kameez, duppata fabrics etc., these SBs were considered for duty credit of ₹ 242.55 lakh. RAs could have disallowed the benefits on the basis of descriptions mentioned in these SBs, however, goods were considered as 'technical textiles' by RAs merely because SB depicted the classification under ITC (HS) Code 5407 (**Appendix 12**).

DGFT, New Delhi stated (February 2014) that benefits were available to all goods of ITC (HS) Code 5407. It was further stated that when benefits were extended to ITC (HS) Code 5407, all goods falling under their sub-heading also qualify for the benefits. It was also contested that as per Policy Circular No.42 (RE-

2010)/2009-14, dated 21 October 2011 non-technical textile goods exported prior to 01 April 2011 were also eligible for duty credit.

The fact remains that the department failed to:

- i) define the technical textile in initial stage and
- ii) propose action to recover undue benefits already availed by the exporters for the exports effected prior to 1 April 2011,
- iii) disallow the benefits even in the cases where supporting documents revealed that goods exported were not technical textiles.

(b) Grant of duty credit to engineering goods claimed as handicraft product

Goods covered under Table 5 of Appendix 37D were granted duty credit equivalent to 5 per cent of FOB value of exports. However, as per Note in Table 5 (New Handicraft Products), the benefit of exports of all items included in the Table shall be admissible only for handicraft products. Further, as per the said Note, if any doubt arises on the issue, the Export Promotion Council for Handicrafts (EPCH) shall certify that the export product is a handicraft product. 'Threaded rods/articles' (ITC (HS) Code 7318900) were eligible at Sl. No. 52 of Table 5 of Appendix-37D.

M/s Mangal Steel Enterprises, Kolkata, a steel and allied industrial company was issued four duty credit scrips of ₹ 39.55 lakh between August 2010 and May 2011 for exports of different engineering products (FOB value: ₹ 887.52 lakh) covered under 115 shipping bills, by the RA, Kolkata. Duty credit was claimed against serial no. 52 of Table-5. It was observed that in 99 SBS (FOB value : ₹ 722.77 lakh) exporter, inter alia, exported 'galvanized mild steel full threaded rods', an engineering product made of iron/steel and claimed duty credit ₹ 36.14 lakh. There was no indication either in the shipping bills or in the customs authenticated invoices evidencing that these goods manufactured and exported in bulk (13,94,400 pcs, 1552.85 MT), were 'handicraft' product. RA had neither called for any document from the exporter nor was matter taken up with the Central Excise-Custom authority/EPCH to ascertain the actual category of the goods resulting in issue of duty credit of ₹ 36.14 lakh without verification.

DGFT, New Delhi stated (February 2014) that FPS benefit is based on ITC (HS) Codes and the firm had exported product which was covered by the aforesaid serial number.

Reply may be viewed in the context of the fact that the item exported required an EPCH certificate for its categorization under 'handicraft product'.

(c) Grant of duty credit to ineligible goods

Audit noticed at RA, Jaipur that 16 authorizations were issued to the four exporters in respect of 91 Shipping Bills (duty credit ₹ 41.09 lakh), though in the

shipping bills/invoices description of the goods/ITC code were different than the eligible ITC code as mentioned in Appendix 37D. Two cases are illustrated below:

i) As per serial no. 143 of Table-7 of Appendix- 37D read with serial no. 75 of Table-4 of Appendix 37D of HBP 2009-14 'Grinding Balls and similar articles for mills of malleable cast iron' falling under chapter 73259100 of ITC Code is eligible for duty credit under FPS. However, in 10 cases goods having description of goods as 'High chromium grinding media balls 60 mm' and classified under ITC (HS) Code 73261100 were considered for duty credit.

(ii) As per serial no. 245 of Table-I, of Appendix 37-D of HBP 2009-14, ITC Code 63026090-'Toilet linen and kitchen linen of terry towelling or similar terry fabric of cotton' was eligible for duty credit under FPS. However, in three cases goods having descriptions of goods as 'cotton made ups toilet linen and kitchen linen of terry toweling of cotton' classified under ITC (HS) Code 63026000 was considered for duty credit.

Thus, the authorisations were issued against these ineligible ITC (HS) code which resulted in issue of incorrect duty credit of ₹ 41.09 lakh (**Appendix 13**).

RA, Jaipur stated (October 2013) that due to non-updation of software with the Customs department goods classified under old and revised ITC HS were allowed by DGFT. Thus, non-updation of the software and requisite control resulted in issue of incorrect duty credit.

(d) Grant of duty credit to ineligible handicrafts goods

Dy. DGFT, DoC, Policy Section-PC3, Udyog Bhawan, New Delhi vide letter dated 23 May 2012 issued a clarification on admissibility of benefits under Focus Product Scheme in respect of ITC HS Code 73262090 of 'Iron Reindeer XII Gold Mosaic' with reference to RA, Jaipur's letter No.13/JDG/POL/AM12/57 dated 03 May 2012, directing that the exported product under ITC HS Code 73262090 has to fulfill the condition of being a 'Handicraft Product' and the firm may be requested to obtain a certificate from the Development Commissioner (Handicrafts), Ministry of Textiles as per Note given in Table 5 of Appendix 37D.

In spite of specific instructions/provision in Appendix 37D, audit noticed that RA, Jaipur issued two authorisations to M/s Hitech Exports, Jodhpur without obtaining a certificate from the DC (Handicrafts) resulting in incorrect grant of duty credit of ₹ 5.50 lakh.

Similarly in SB No. 5563 dated 30 March 2010 there was a remark of customs authority (ICD Jodhpur) that 'Handicraft item subject to verification from DC Handicraft', however, no action was taken to obtain certificate from DC (Handicrafts) and this SB was considered for duty credit of ₹ 0.18 lakh in authorization No.1310041113 dated 24/09/12 issued to M/s Bothra International, Jodhpur.

RA, Jaipur stated (July 2013) that EPCH certification was required only in doubtful cases.

Reply may be viewed in the context of the item exported which required an EPCH certificate for its categorization under 'handicraft product'.

(e) Other cases of grant of duty credit to ineligible goods

Other miscellaneous cases of grant of duty credit to ineligible goods are detailed below:

RA	Goods exported	Duty credit (lakh ₹)	Reasons of ineligibility
Ahmedabad	Organic red Chili powder/woven fabrics	0.67	1. Benefit was available to 'Red chilly' 2. woven fabrics of ITC (HS) Code mentioned in SB, was not 'technical textile' as per PC No.42 dt. 21/10/2011.
Ahmedabad	re-exported goods	1.51	Re-exported goods not eligible for duty credit under Paragraph 3.17.2(ii) of FTP 2010-11.
Hyderabad	Goods of ITC (HS) Code 30049099 & other	0.72	RA adopted different ITC (HS) code for granting duty credit-(RA has accepted the observation)
Mumbai	Hangers- ITC (HS) Code 39269099	0.46	Exporter exported 'hanger' along with eligible goods Apparel/garments.
Mumbai	Plates in coil-ITC(HS) Code-72085100	4.07	Steel plates in 'Coil' form exported as per SBs though not allowable under sl. no. 214 of Table 4 of Appendix-37D.
Surat	PTY – ITC (HS) Code 52052310	0.68	Claimed duty credit for ITC (HS) code 54023300 but included one SB involving ineligible ITC (HS) code-52052310.
Total excess duty credit		8.11	

Authorisation wise details are given in **Appendix 14**.

DGFT, New Delhi reported (February 2014) that RAs, Ahmedabad, Hyderabad, Surat and Mumbai accepted the audit observation. RA, Hyderabad adjusted ₹ 0.88 lakh against the DEPB surrendered, while RA, Mumbai reported (September 2013) recovery of ₹ 0.62 lakh from M/s Zeus International.

2.4.10 Grant of duty credit for SB involving deficient classification

Under FPS scheme goods are notified in Appendix 37D of HBP from time to time. While notifying the goods, ITC (HS) code (2-8 digit level) also notified along with description of the goods. Further, as per Customs Manual, 2001 [Para II (m) of Chapter-3] amendment in the shipping bills after 'let export order' can be allowed by the Additional Commissioner/Joint Commissioner of Customs in charge of the export. As per the proviso to Section 149 of the Customs Act, 1962, amendment to SB can be allowed after export goods have been exported, only on the basis of documentary evidence which was in existence, at the time the goods were exported.

In the following cases, audit noticed that though there were discrepancies in classification of exported goods, benefits were extended to the exporter.

2.4.11 Grant of duty credit due to misclassification of 'coronary stent system'

As per serial No. 59 under Table 1 of Appendix 37D, 'Instruments and Appliances used in medical, surgical, dental or veterinary sciences including scientific

apparatus, other electro-medical apparatus and sight-testing instruments' falling under ITC (HS) Code 9018 are eligible for duty credit at the rate of 2 per cent of FOB value. Same item was also eligible for duty credit at the rate of 2.5 per cent if exported under advance authorization scheme under serial no. 4 of Table 9.

At RA, Surat following six authorizations were issued to M/s. Sahajanand Medical Technologies Ltd., Surat between September 2010 and March 2012 against the exports of 'coronary stent systems' exported between April 2009 and March 2011.

Authorisation no/dated	FOB Value (in lakh)	Duty credit (in lakh)	No of SBs	ITC (HS) Code as per SB
5210031907 dtd 14/9/10	598.28	14.66	35	39,8407,9022,9018
5210031779 dtd 30/8/10	590.67	11.80	39	39,8407,9022,9018
5210037759 dtd 24/1/12	275.06	5.43	22	9018
5210037696 dtd 18/1/12	83.55	1.67	8	9018
5210038840 dtd 8/8/12	259.61	5.19	27	9018
5210039575 dtd 19/3/12	287.03	5.63	19	9018
	2094.20	44.38	150	

Out of above, in first two authorizations the 'coronary stent systems' were classified under different Chapters 39, 84, 9018, 9022, 9018 as against the eligible heading of 9018. Due to discrepancies in classification, the RA has obtained an affidavit from the exporter that the said goods are of chapter 9018 (i.e the goods which are eligible for FPS benefit) and in an affidavit, the exporter stated that the goods exported were 'coronary stents' of chapter 9018. However, as per ITC (HS) Code heading 90183990 which is claimed by the exporter for duty credit, covers 'cardiac catheter' which was actually one of the raw material for manufacture of 'coronary stent' system. In subsequent exports involved in four authorisations, exporter modified the ITC (HS) Code to 9018. However, grant of duty credit was not correct in all cases due to following audit observations:

- i. In first five FPS authorizations involving 131 shipping bills, 86 free shipping bills/advance authorization-EPCG shipping bills, were required for declaration of availing chapter-3 benefits, however there were no declarations on the shipping bills, but duty credit was granted.
- ii. The exporter has exported the 'coronary stents' of various types which falls under chapter 9021 i.e. devices, appliances which are worn, carried or implanted into body' as per the judgments which are based on Harmonized System for nomenclature (HSN) for classification of goods. Though there were discrepancies in classification and mandatory declarations were not given on SBs, customs authorities were not approached and authorizations with credit of ₹ 44.38 lakh were issued.

DGFT, New Delhi stated (February 2014) that RA, Surat had asked for explanation from the firms and a detailed reply would be sent to audit on its receipt.

2.4.12 Acceptance of invalid amendments to SBs for issue of authorisation

Under PN No. 80 (RE-2010)/2009-14 dated 13/10/2011 'Castor Oil and its fractions (other than edible grade)' falling under ITC (HS) Code 15153090 were allowed benefits of FPS under serial no.247 of Table-4 for exports from 01/04/11.

During the year 2012-13, Foreign Trade Section functioning under Development Commissioner, SEZ Gandhidham issued five FPS authorizations involving duty credit of ₹ 61.66 lakh to M/s. Kndla Agro & Chemicals Pvt. Ltd., against 25 SBs pertaining to January and February, 2012. Scrutiny of SBs (Mundra and Kndla Port) revealed that in the SBs, exporter had classified the 'castor oil' under ITC (HS) Code 15099099 under which 'olive oil' is classifiable. Due to incorrect classifications, these SBs were got amended by changing the ITC (HS) Code from 15099099 to 15153090 with the approval of Superintendent of Customs. These amendments to SBs were considered for grant of duty credit by RA though these amendments were not made by proper authority of customs (Additional/Joint Commissioner of Customs). No records establishing the fact that amendments done after following proper procedures were available on record. In case of authorization No. 3710001974, it was found that exports were effected from Kndla port, however exporter produced the amendment letter which was signed by Superintendent of Customs, Custom House, Mundra. Subsequently on query by RA, exporter submitted amendment letter signed by Custom authority, Kndla.

Grant of duty credit on the basis of these improper/deficient amendment letters resulted in incorrect issue of authorizations for duty credit of ₹ 61.66 lakh **(Appendix 15)**.

Consequent upon the audit observations, Foreign Trade Development Officer, SEZ Gandhidham took up the matter with the respective customs authority to ascertain the genuineness of amendment letters. Reply from Custom authority, Mundra is awaited (March 2014).

2.4.13 Issue of authorization without obtaining proof of amendment to SB from customs authority

As per PN No.60/2008 dated 6 August 2008 'washers non-threaded covered under ITC (HS) Code 73182200' was made eligible for FPS benefits for exports from 1 April 2008.

At RA, Wdodara audit observed that M/s. Suchi Fasteners Pvt. Ltd. was issued two authorizations in 2010-11 against exports of 'Stainless Steel washers of different grades'. The benefits were claimed under serial no. 13 of Table-11 as inserted through aforesaid PN. This serial no. covers the 'washers non-threaded'

of ITC (HS) Code 73182200 and not the goods classified and exported under ITC (HS) code 73182990 in the SBs. This resulted in issue of duty credit of ₹ 19.09 lakh without ascertaining the actual descriptions of the goods.

RA, Vadodara replied that goods covered under Code 7318 covers threaded and non-threaded items. Under entries from 73182100 to 73182990 'non-threaded' goods are covered. Hence, benefits are available for both the headings of 73182990 and 73182200.

Department's reply is to be viewed in the context of the benefits prescribed under Appendix which are very specific to chapter headings and goods falling under headings 73181500, 7318600, 17181900, 73182200, 73182300 would only qualify for FPS benefits. Further, though there were discrepancies in classification, neither the matter was taken up with the concerned customs authority nor the exporter submitted any proof of amendment to SBs from customs authority as required under the provisions of Customs Manual, 2001 (Para II (m) of Chapter-3).

2.4.14 Manner of calculation of duty and FOB value

As per Paragraph 3.11.11 of HBP 2009-14, authorisation shall be granted on FOB value of exports. FOB value of exports shall be taken from the SB (FOB value in free foreign exchange declared on the Shipping Bill and converted into Indian Rupees at the Monthly Customs rate of exchange on the date of LEO). Further as per Paragraph 3.17.3 of FTP 2009-10, FOB shall include agency commission upto 12.5 per cent.

In following cases we found that due to incorrect consideration of FOB value/exchange rate, excess duty credit of ₹ 5.24 lakh was issued.

RA	No. of authorisation	Excess duty credit (lakh ₹)	Reasons of excess duty credit
Ahmedabad	03	0.70	Exchange rate prevailing on LEO date not considered for FOB value
CLA-Delhi	03	1.11	Agency commission in excess of 12.5% considered
FT Section, SEZ-Gandhidham	01	1.79	Improper enhancement in value of goods considered in FOB value
FT Section, SEZ-Gandhidham	05	1.49	'Quality allowance' considered in FOB
FT Section, SEZ-Gandhidham	02	0.15	Exchange rate prevailing on LEO date not considered for FOB value
	14	5.24	

DGFT, New Delhi stated (February 2014) that RA, New Delhi had directed M/s Om Shree Anand Foods (P) Ltd. and M/s Threepence Craft to return the excess duty credit, while in case of M/s A.B. Enterprise after re-examination it was found that agency commission allowed was at the rate of 12 percent.

RA, Ahmedabad stated (January 2014) that exchange rate prevailing on the date of LEO was considered.

The reply is to be viewed in the context of the fact that the exchange rate considered by the department was not the exchange rate notified by the Customs department on the date of LEO.

Incorrect application of rate of entitlement

Audit observed in following cases that rate of duty credit was not applied at correct rate or bonus duty credit were issued to ineligible goods, resulting in grant of excess duty credit.

2.4.15 Incorrect grant of bonus duty credit

As per note below Table-7 (as notified through PN No.33/(RE.2010)/2009-14 dated 15 February 2011) entries at serial nos. 157 to 169 was granted bonus duty credit of 2 per cent and total duty credit at the rate of 7 per cent was eligible for these goods. However, benefit of bonus duty credit was applicable for exports affected from 01 January 2011.

- i. At RA, Jaipur audit observed in two authorisations that bonus duty credit was granted to the exporters in the cases where date of exports was prior to 01 January 2011 resulting in issue of excess duty credit of ₹ 4.32 lakh (**Appendix 16**).
- ii. Similarly, at RA, Ahmedabad audit observed in authorization No. 810119147 dated 07 March 2013 that for two SBs applicant claimed benefits of bonus duty credit under serial nos. 1 and 6 of Table-7 for goods of ITC (HS) code 73269099/74199990, however, these serial nos. did not provide bonus duty credit against these ITC (HS) codes. This resulted in grant of excess duty credit of ₹ 0.44 lakh (**Appendix 16**).

DGFT, New Delhi stated (February 2014) that RA, Ahmedabad had issued letters to the firm for recovery.

RA, Jaipur contested (January 2014) the audit observation on the ground that PN No. 2 dated 23 August 2010 allowed duty credit at the rate of 7 percent w.e.f. 1 April 2010.

Reply is not acceptable because, for exports made from 1 January 2011 PN No. 33 dated 15 February 2011 was applicable.

2.4.16 Improper internal control mechanism to monitoring pre-realisation cases

Under FPS, the exporter can apply for duty credit also prior to realization of FE. As per Paragraph 3.11.12 of HBP 2010-11 read with PC No. 76 (RE-2008)2004-09 dated 30/03/2009, all the pre-realization cases are to be monitored by RA concerned with respect to realization of export proceeds. The procedure

prescribed in Para 4.45 shall apply, mutatis mutandis, to freely transferable duty credit scrips issued under Chapter 3 on the pre-realization basis. In case no RBI extension is produced, RA shall initiate action for recovery. RA concerned shall maintain scheme-wise, exporter-wise details of BG/LUT including its amount and the date of expiry in all such cases for regular monitoring and follow up action.

In following cases audit noticed that pre-realisation cases were not monitored properly.

RA	Cases not monitored/ improperly monitored	Duty credit (lakh ₹)
Ahmedabad	01	34.52
Hyderabad	148	2125.68
Jaipur	13	138.68
Kolkata	16	363.44
	178	2662.32

Few cases are illustrated below:

- i. At RA, Ahmedabad audit noticed that M/s. Arvind Ltd. was issued authorization no. 0810113000 dated on 26 June 2012 involving duty credit of ₹ 34.52 lakh against FE of ₹ 17.26 crore. The exporter executed LUT on 11 June 2012. The exporter had not submitted any statement against proof of realization of export proceeds which was required to be submitted after every three months from the date of issue of authorization. Even after completion of one year, neither the RA had called for BRCs nor did the exporter submit any proof towards realization of export proceeds/extension approval by RBI. This has resulted in improper monitoring of foreign exchange for which duty credit of ₹ 34.52 lakh was granted. RA, Ahmedabad replied that audit objection has been accepted.

RA, Ahmedabad stated (January 2014) that letter has been issued to the firm for furnishing proof of realization.

- ii. Thirteen authorisations involving duty credit of ₹ 138.68 lakh were issued by RA Jaipur wherein firm applied on pre-realisation basis. Scrutiny revealed that the exporters did not submit the evidences of realization of export proceeds which were to be submitted after every three months from the date of issue of authorization. However, neither action was initiated by RA to call for BRCs, nor any extension of approval from RBI was submitted by the exporters. Out of these 13 cases, in four cases the validity of LUTs executed by the exporters had also expired. At RA, Jaipur we also noticed that LUT registers were not maintained properly which were required to be maintained as per PC No. 76 (RE-2008)2004-09 dated 30 March 2009. This pointed towards the improper internal control for monitoring pre-realisation cases. DGFT, New Delhi

stated (February 2014) that RA, Jaipur had sent letters to the firms for recovery.

- iii. Similarly RA, Kolkata issued six transferable duty scrips (Nos. 0210141151 to 0210141156 dated 23 April 2010) to M/s Rajib Daga for ₹ 25.27 lakh on pre-realisation basis for export of apparels to USA under MLFPS. However, even after expiry of 12 months from the date of issuance of the scrip the firm had not submitted BRC nor submitted documents from RBI allowing extension in this regard. Reply from RA, Kolkata is awaited (March 2014).
- iv. Other 10 cases of RA, Kolkata and list of cases of non-monitoring of pre-realisation cases by RA, Jaipur and Hyderabad are given in **Appendix 17**.

DFGT, New Delhi stated (February 2014) that M/s Shivam Iron and Steel Co. Ltd. and M/s Pankaj Kumar Agrawal had submitted Bank Realisation Certificate and action has been initiated for recovery against M/s Laxminarayan Udyog Pvt. Ltd. and M/s Maithan Alloys Ltd.

Utilization of duty credit by the exporter

Audit has noticed that in following two cases FPS authorizations were incorrectly allowed to be used by the RA/Customs authority.

2.4.17 Clean energy cess was allowed to debited from FPS authorisation

Notification No. 3/2010-CEC dated 22 June 2010 provides levy of Clean Energy Cess (CEC) at the rate of ₹ 50/MT on indigenously produced coal. As per Tax Research Unit (TRU)'s letter No.354/72/2010-TRU dated 24 June 2010, payment of CEC was required to be paid in cash. Subsequently, Notification No. 26/2010-Central Excise (N.T.) dated 29 June 2010 also inserted proviso in Cenvat Credit Rules, 2010 for disallowing the use of Cenvat credit for payment of CEC. It was also clarified in the TRU's letter that CEC is also leviable on imported coal by virtue of Section 3(1) of Customs Tariff Act, 1975 as a Countervailing duty (CD). Thus, as per aforesaid provisions and as CD paid through FPS is Cenvatable, CEC on imported coal is also required to be paid in cash.

At Custom House, Kandla, audit noticed that during 2010-11 to 2012-13, two importers M/s. WSPUN India Ltd. and M/s. BGH Exim Ltd. imported coal through 13 consignments. It was noticed that customs duty was paid by the importers by using duty credit of FPS authorizations. However, while debiting customs duties, CEC of ₹ 30 lakh was also debited from the authorizations though the same was required to be paid in cash. This has resulted in incorrect exemption to utilize the FPS authorization for payment of CEC of ₹ 29.62 lakh (**Appendix 18**).

Custom authority, Kandla issued recovery notices to the firms in October 2013.

2.4.18 Incorrect permission to use duty credit for payment of interest/FOB value

As per Paragraph 3.17.11 of FTP 2009-14 read with Paragraphs 4.28 (ii) & (v) of HBP 2009-14, duty credit scrip issued under Chapter-3 schemes can also be used/debited towards payment of customs duty in case of export obligation (EO) defaults under authorizations issued under Chapters 4 and 5 of FTP. However, penalty/interest shall require to be paid in cash.

Audit observed at RA, Ahmedabad that M/s. Sandvik Asia Pvt. Ltd. was issued MLFPS duty scrip No. 810103738 dated 29/09/2011 with duty credit of ₹ 46.63 lakh. As per six amendment sheets issued to the above authorization between 23/09/11 to 08/08/12, we noticed that exporter had defaulted in five advance authorizations and was liable to pay customs duty/interest on defaults. The RA had allowed to use the FPS authorization for payment of customs duty. However, interest portion was also allowed to be debited from the duty credit available in the FPS authorization though the same was required to be paid in cash. This has resulted in incorrect permission to utilize the FPS authorization to the extent of ₹ 11.36 lakh. RA, Ahmedabad accepted the audit observation and issued recovery letters.

2.4.19 Conclusion on Focus Product Scheme including Market Linked Focus Product Scheme

Audit of FPS in 13 RAs has revealed systemic as well as operational weaknesses relating to issue of duty credit certificates and their proper utilization. Broadly, this relates to insufficient scrutiny of documents, grant of duty credit to ineligible goods, application of incorrect rate, poor consultations with other agencies in cases of disputed classification/description of goods, grant of duty credit on the basis of insufficient documents and improper monitoring of cases where authorizations were issued on pre-realisation basis. The above discrepancies did not serve the purpose and objective for which the reward and incentive scheme was designed under the Foreign Trade Policy.

2.5 Vishesh Krishi and Gram Udyog Yojana (VKGUY) etc

Assessing officer; Chennai (Sea) Commissionerate did not levy interest on delayed clearances of warehoused goods

In terms of sub-Section 2 (ii) of Section 61 of the Customs Act, 1962 read with notification no. 18/2003 – cus (N.T.) dated 1 March 2003, interest shall be payable at 15 per cent on the duty assessed at the time of clearance of warehoused goods for the period from the expiry of ninety days till the date of payment of duty.

Central Board of Excise and Customs in its circular No. 26/2007-Customs dated 20 July 2007 clarified that even in respect of warehoused goods cleared on payment of duty by debit under Duty Entitlement Pass Book (DEPB) Scrip, interest is chargeable on such duty debited as if duty was paid in cash since

Cenvat credit or duty drawback is available even when the additional duty of Customs is debited under DEPB Scrip on par with those goods where duty was paid in cash.

2.5.1 M/s Ashok Leyland Ltd., and various others cleared (February to November 2011) 188 consignments of 'warehoused goods' through Chennai (Sea) Commissionerates after expiry of prescribed period on payment of customs duty by debiting the duty credit scrips issued under various export promotion schemes, including DEPB. However, warehousing interest for delayed clearances was not paid resulting in non-payment of interest amounting to ₹ 68.54 lakh.

Chennai (Sea) Commissionerate reported (September 2013) recovery of ₹ 22.12 lakh in 58 consignments. Ministry's response in respect of remaining consignments was awaited (March 2014).

Regional licensing authority, Kolkata incorrectly debited customs duties from scrips which benefitted the licensee to the tune of ₹ 10.67 lakh

2.5.2 As per Paragraph 3.17.5 of the FTP, 2009-14, Duty Credit Scrips (Licences) issued under Chapter 3 (Promotional Measures) of the Foreign Trade Policy (FTP) 2009-14 viz., Served From India Scheme (SFIS), Kishik Gram Udyog Yojana (KUY), Focus Market Scheme (FMS), Focus Product Scheme (FPS), Market Linked Focus Product Scheme (MLFPS) and Status Holders Incentive Scrip (SHIS), could be used for import of any freely importable inputs and capital goods. However, duty on import of items listed in Appendix 37B of the Handbook of Procedures (HBP) Vol. -I. shall not be permitted to be debited from such licences.

M/s Jajodia Exports, Kolkata and three others had imported 'Irrigation Pump sets/harvesters/tractors/threshers' meant exclusively for Agricultural Irrigation through Custom House, Kolkata Port Commissionerate, on which entire Customs Duty, except for the 4 per cent additional customs duty component was paid by debit against KUY/FPS licences, all issued under Chapter 3 of FTP.

However, as 'Irrigation Pumps/harvesters/tractors/threshers' are included in aforesaid Appendix 37 B, they are not eligible for debiting import duty against any of the scrips issued under Chapter 3 of the FTP. Accordingly debit of customs duty against KUY/FPS licences was incorrect. This resulted in non-realisation of customs duty amounting to ₹ 2.10 crore along with interest which is recoverable.

Assistant Commissioner (Internal Audit department), Kolkata intimated (June 2013) that Demand notice has been issued to the importer M/s Jajodia Exports, Kolkata. Ministry's reply in respect of other importers was awaited (March 2014).