CHAPTER –IV
ASSESSMENT OF CUSTOMS REVENUE

We found from test check (June 2011 to March 2013) of records for the period April 2008 to February 2013, a few cases of incorrect assessment of customs duties having revenue implication of ₹ 86.53 crore. They are described in the following paragraphs.

Assessing officer allowed clearance of hazardous electronic waste into India which may have caused immeasurable damage to the environment

4.1 According to Rule 13 of the Hazardous wastes (Management, Handling and Trans-boundary movement) Rules 2008 (effective from 24 September 2008), notified under Environment (Protection) Act 1986, import of hazardous waste from any country to India shall not be permitted for disposal. However, import of the same, except those mentioned in its Schedule-IV, shall be permitted with prior permission of concerned authorities for recycle, recovery or reuse. Any of such goods imported illegally shall be re-exported by importer within 90 days from the date of arrival in India, under the supervision of concerned State Pollution Control Board (Rule-17).

Import of Electrical and Electronic Assemblies and their waste, listed under Part-A and Part-B of Schedule-III of aforementioned Rules at A1180 & B1110, for recycling, recovery and reuses, requires a license to import from Director General of Foreign Trade (DGFT) and prior written permission from Ministry of Environment & Forest (MoEF), as per Rule-14. Further, as per Para 2.17 of Foreign Trade Policy (FTP) 2004-09/2009-14, all second hand personal Computers/Laptops, Photocopier machines, Air Conditioners, Diesel Generating sets could be imported only against a license issued by DGFT. In this regard, Ministry of Finance had also issued instructions from time to time (letter dated 24 August 2009, 15 October 2009 and 3 December 2009 and Circular No.27/2011-Cus dated 4 July 2011) for implementation of decisions of MoEF issued under the aforementioned Rules.

M/s Bhawani Enterprise and 89 others imported (between October 2008 and July 2011) for re-use of 185 consignment of Old and used Computer, Hard Disk, Photocopier, Printer, Printing machines, Color printing machines and Paper cutting machines etc., through the Commissionerate of Customs (Port) Kolkata, involving assessable value of ₹ 32.37 crore. The goods were imported without MoEF permission and valid licence from DGFT as required under aforementioned Rules 2008/FTP, and were accordingly confiscated by the Customs authority.

Audit scrutiny of 24 such case files confirmed absence of MoEF permission and licence from DGFT, whereas in rest of the import cases the files were not produced to Audit. Instead of re-exporting these goods, the department allowed clearance of all such imported goods on payment of duty thereby violating the

aforementioned restrictive clause/prohibitions on the import of hazardous electronic goods and defeating the motive of MoEF in framing the Hazardous Wastes (Management, Handling and Trans-boundary Movement) Rules, 2008, to protect the environment.

Deputy Commissioner of Customs, Customs House, Kolkata stated (October 2011) that such imports were disallowed after issue of the CBEC circular dated July 2011 but did not comment on the reasons for allowing the said imports prior to the date of issue of CBEC circular despite existence of the aforesaid Rules 2008 and instructions from the Ministry of Finance in this regard.

The fact remains that due to lack of effective coordination between Customs Officer (CBEC) and State/Central Pollution Control Boards, imports of hazardous waste valued at ₹ 32.37 crore were allowed which may have caused immeasurable damage to the environment.

Ministry's response was awaited (March 2014).

Incorrect updation of EDI system resulted in short levy of CVD

4.2 The Finance Bill 2012 was introduced in Lok Sabha on 16 March 2012. As such, changes in the Excise duty and Customs duty rates, if any, were to be effective from the mid-night of introduction of Finance Bill i.e. 16 March 2012. Therefore, if there were any change in the Excise duty rates it would normally be effective from the 17 March 2012, unless otherwise stated in any notification or as part of the provisions of Finance Bill 2012.

Government of India enhanced the rate of Central Excise duty (CVD) from 10 per cent to 12 per cent for all the goods falling under tariff headings 8607, 8608 and 8609 vide notification no.18/2012-CE dated 17 March 2012. Subsequently, Finance Bill 2012 was passed by the Parliament which received the assent of the President on 28 May, 2012.

Scrutiny of Bills of Entry and Import/Export data relating to ICD Tughlakabad, ICD Patparganj, NCH, Delhi, Kolkata (Port), Kolkata (Airport), Custom Houses, Kochi and Whitefield -Bangalore, Air Commissionerate, Devanhalli for the period May 2012 to March 2013 revealed that various importers imported different items falling under Customs tariff heading (CTH) 8607- Parts of Railway or Tramway Locomotives or Rolling stock, 8608- Railway or Tramway track fixtures and fittings, Mechanical signalling and CTH 8609- Containers specially designed and equipped for carriage. The imported goods were assessed to CVD at the rate of 6 per cent, instead of at the rate of 12 per cent under aforesaid Finance Act.

Further, it was observed that although the aforesaid Commissionerates levied CVD at the proposed enhanced rate of 12 per cent during the period from 17 March 2012 to 27 May 2012 but the same was incorrectly reduced to 6 per cent after the assent of the Act by the President on 28 May 2012. Thus, incorrect

updation of the notification Directory in the ICES database by the department resulted in short levy of duty aggregating to ₹ 30.17 crore.

Deputy/Assistant Commissioner of ICD, Tughlakabad, Patparganj and NCH Custom House, New Delhi intimated (April/May 2013) recovery of ₹ 1.86 crore along with interest of ₹ 7.34 lakh. Reply from other Commissionerates had not received (February 2014). No accountability was fixed for the erroneous updation of notification Directory.

Ministry's response had not been received (March 2014).

Assessing officer levied inadmissible Education cess on Clean Energy cess

4.3 Notification No. 03/2010-CEC dated 22 June 2010 provided for levy of 'Clean Energy Cess' at the effective rate of Rs. 50 per Metric Ton on import of coal.

Further, Notification Nos. 28/2010-CE and 29/2010-CE, both dated 22 June 2010, exempted this 'Clean Energy cess' from levy of education cess and higher education cess. As a result, education cess and higher education cess was exempted on the 'Clean Energy Cess' payable as additional duty of customs {leviable under Section 3 (1) and 3 (3)} of the Customs Tariff Act 1975] on import of coal.

At Custom House (MPSEZ), Mundra and Kandla falling under the jurisdiction of Kandla Commissionerate, imports of coal were subjected to education/ Higher education cess on Clean Energy cess, in violation of the aforesaid exemption notification. The amount of excess levy of education cess/higher education cess in respect of 260 bills of entry test checked worked out to ₹ 15.30 crore.

Assistant Commissioner of Custom, Kandla stated (September 2011 to April 2012) that the excess levy of cess was due to error in the Remote EDI System (ICES 1.5) which calculated the Education cess on its own and no option was available with their office to delete the same from the system. It was further stated (April 2012) that cess on additional duty of customs has been removed after implementation of the Budget changes (2012-13) and hence cess on additional duty is not being calculated now.

Director (ICD), Ministry of Finance stated (January 2014) that Education cess on Clean Energy cess was not being collected since 18 March 2012 after change of computation logic in ICES 1.5. It was further stated that DG (Systems) has been advised to ensure consistency of the ICES 1.5 with prevalent legal position to avoid such instances.

Audit maintained that this irregularity took place on account of lack of updation of the ICES 1.5 by DG (System) New Delhi, though the matter was being pointed out by audit since June 2011.

Analysis of ICES 1.5 all India import data revealed that in 475 consignments of coal imported through Mumbai, Kolkata, Hyderabad and Tuticorin Commissionerate, education cess and higher education cess have been levied on Clean Energy cess payable as additional duty of customs.

Accordingly, Ministry was requested (November 2013) to review all such cases and intimate their status, besides recovering short levies noticed, if any. Ministry's response had not been received (March 2014).

Assessing officer did not levy applicable anti dumping duty

4.4 As per serial no.3 of notification no.81/2011-cus dated 24 August 2011, anti dumping duty (ADD) is leviable at the rate of US$ 3.87 per kg on 'Polytetrafluroethylene (PTFE)', if country of origin is China PR and produced by any producer except as specified and exported to India.

M/s Blast Carboblocks Pvt. Ltd., and three others had imported (August 2011 to February 2013) through JNCH, Mumbai, Chennai (Sea), Air Custom Cargo Ahmedabad, ICD, Kodiyar (Gujarat) and ICD, Dadri, 31 consignments of 'PTFE' originated and exported from China PR. The department cleared imported goods without levying anti dumping duty. This resulted in non levy of anti dumping duty of ₹ 1.63 crore.

Assistant Commissioner IAD (Import), JNCH reported (April 2012) issue of demand notices to M/s Blast Carborlocks Pvt. Ltd., and M/s Kota Industries Products Pvt. Ltd., for anti dumping duty amounting to ₹ 9.64 lakh.

Ministry's response had not been received (March 2014).

Assessing officers failed to realize cost recovery charges for Customs staff posted

4.5 According to paragraph 3 of Circular no. 68/95-cus dated 15 June 1995, licence to any private warehouse may be granted under Section 58 of Customs Act, 1962 subject to the condition that the applicant agrees to take the services of the Customs Officers on Cost-Recovery (CRO) basis, if services of the Customs Officers are required on a continuous basis or on payment of Merchant Overtime (MOT)/Supervision charges, as the case may be.

Regulation 2 (C) (ii) of (Fees for rendering services by Customs officers) Regulations 1998, provides that a MOT fee shall be levied and paid, at the prescribed rates, by the importers/ exporters/ assessees who are availing the services of Customs officers beyond 'Customs Area' or after 'Working Hour' within 'Customs Area'. The 'working hour' has been defined under the Regulation-2(d) as the duty hours prescribed by the Commissioner of Customs in his jurisdiction for normal customs work.

4.5.1 Audit scrutiny of records at International Terminal Building, NSCBI Airport, Kolkata under the Kolkata Airport Commissionerate revealed that cost recovery charges in respect of customs staff posted round the clock for

monitoring the storage and sale of duty free imported goods from two Private Bonded Warehouse cum Duty Free Shop (DFS) of M/s. Flemingo Duty Free Shop Pvt. Ltd, located at the NSCBI Airport, were not being recovered from the licensee. The licensee initially paid the MOT fees upto December 2009, in terms of the undertaking given under condition 15, but requested for payment of CRO charges instead of MOT fees thereon. However, neither CRO charges nor MOT fees were collected from the licensee from January, 2010 onward. As the customs staff supervised the DFS round the clock, the cost of services rendered was to be collected on CRO basis for the period beyond working hours, which in this case is taken as normal working hours (10.00 AM to 6.30 PM), as prescribed by the Commissioner of Customs in his jurisdiction or as exists in Central Government Offices in absence of any order of Commissioner prescribing working hours for staff posted at NSCBI, Airport as confirmed by the Department (October 2012). The total cost charges recoverable for the period (January 2010 to September 2012) amounted to ₹ 1.22 crore.

Assistant Commissioner of Customs (Airport & Admn.) NSCBI Airport, Kolkata intimated (October 2012 and December 2012) having issued demand notice but reiterated comments made by DFS authorities that CRO charges are not payable based on CBEC letter dated 26 May 2010 because DFS authorities interpreted that the working hour at NSCBI International Airport was 24x7.

The Department's reply is to be viewed in the context of the fact that CBEC letter dated 26 May 2010 only clarified that in respect of DFS at the airport/port premises the service charge is applicable only against rendering of customs services beyond 'working hours'. As there is no notification/circular/public notice issued by the jurisdictional Commissioner of Customs prescribing 24x7 working hours for the NSCBI International Airport, which is essential in terms of 2(d) of the "Customs (Fees for rendering services by Customs officers) Regulation, 1998" for deciding exemption from CRO/MOT fees. The Circular no.22/2012-cus dated 7 August 2012 issued by CBEC facilitating 24X7 Customs working provides clearance in respect of some Air Cargo complexes (excluding Kolkata Airport) and some seaports, for a limited Customs operation purpose. Accordingly, CRO charges are to be recovered from M/s Flemingo DFS Pvt. Ltd. for the customs service rendered beyond eight hours, considering it as working hours as prescribed by the Commissioner of Customs within his jurisdiction. Ministry's response had not been received (March 2014).

4.5.2 Similarly, cost recovery charges remained unrealised from Inland Container Depot (ICD) Bhadohi which was established on 29 July 2004 with Central Warehousing Corporation (CWC) Bhadohi on cost recovery basis.

Audit scrutiny revealed that a sum of ₹ 47.16 lakh was outstanding against CWC Bhadohi towards cost recovery charges for the period April 2011 to 31 March 2012 in respect of customs staff posted at ICD Bhadohi. Neither ICD Bhadohi

raised any bills against CWC for recovery charges nor were records maintained. Also these charges were not deposited in advance, as required.

Assistant Commissioner, ICD, Bhadoi stated (March 2012) that records regarding cost recovery of ICD staff were being maintained by Central Excise and Customs Division-I, Allahabad. The Division authorities intimated (November 2013) that the total outstanding amount of cost recovery for the period 2010 to 2013 was ₹ 2.18 crore.

The fact remains that cost recovery charges amounting to ₹ 2.18 crore for customs staff posted at ICD, Bhadoi remained unrealized. Ministry's response had not been received (March 2014).

4.5.3 As per Regulation 5 (2) of "Handling of Cargo in Customs Areas Regulations, 2009," prescribing the guidelines for appointment of custodians for Inland Container Depot (ICD) and Container Freight Station (CFS), and clarification issued under paragraph 5.3 of Board's circular no. 13/2009-cus dated 23 March 2009, the custodian shall bear the cost of customs staff posted at the ICD/CFS, unless specifically exempted by an order of the Government of India in the Ministry of Finance. Further, as per Ministry of Finance instructions issued in September 2005, the cost of the posts created on cost recovery basis is to be recovered at the uniform rate of 1.85 times of monthly average cost of the post, plus DA, CCA, HRA, etc.

The Regulation 4 of aforementioned Regulations read with paragraph 4.1 of circular no.13/2009-cus dated 23 March 2009 clearly stipulates that Customs Cargo Service providers already approved (existing custodians) on or before the date of coming into force of these regulations shall comply with the conditions of these regulations within a period of three months or such period not exceeding a period of one year as the Commissioner of Customs may allow from the date of coming into force of these Regulations.

Audit scrutiny of records of the Customs Division, Guwahati under the Shillong Commissionerate revealed that cost recovery charges in respect of customs staff posted at ICD, Amingaon were not being recovered from the custodian, the Container Corporation of India (CONCOR), even though they were neither exempted by an order of the Government of India in the Ministry of Finance nor they fulfilled the laid down norms for consideration for waiver for Cost recovery charges by the Ministry because total number of containers handled by the said ICD during last four financial years i.e from 2008-09 to 2011-12 was only 2440, 2954, 2285 & 2600 TEUs[11] respectively against the performance benchmark of 7200 TEUs per annum required under the Ministry of Finance instructions issued in September 2005. The total cost recoverable for the period October 2010 to May 2012 amounted to ₹ 94.69 lakh.

[11] The twenty foot equivalent unit (TEU) is an inexact unit of cargo capacity often used to describe the capacity of container ships and container terminals.

The Commissioner of Customs (Preventive), NFR, Shillong drawing attention to circular no.52/1997-cus dated 17 October 1997 stated (April 2013) that the ICD, Amingaon was set up prior to issue of the circular and therefore it does not come under the purview of this circular. However, the department did not offer their comments on applicability of "Handling of Cargo in Customs Areas Regulations, 2009" to ICD.

The department's reply is to be viewed in the context of the fact that Board circular of 1997 has become immaterial after issue of "Handling of Cargo in Customs Areas Regulations, 2009" and explicit clarification issued under CBEC Circular No. 13/2009-Cus dated 23 March 2009, expressly reiterating that all ICD/CFS, existing or new, has to comply with the provisions of aforesaid Regulations 2009.

Ministry's response had not been received (March 2014).

Central Board of Excise & Customs (Board) had not revised long overdue Merchant Overtime (MOT) rates

4.6 MOT rates were increased by more than 100 per cent with effect from October 1998 by revising the existing rates prescribed in Regulations of 1968 consequent to 3 to 3.5 times pay hike of the Central Government employees after implementation of recommendations of the 5th Pay Commission.

After implementation of recommendations of the 6th Pay Commission in August 2008, basic pay of Central Government employees was again hiked by 2.42 to 3.23 times as compared to the pay prescribed by 5th Pay Commission. However, corresponding revision of MOT rates has not been carried out so far by the Board and accordingly MOT charges are still being levied at rates prescribed in September 1998. Board did not contemplate periodical revision of the MOT rates subsequent to the revision of pay scales on implementation of the Pay Commission's recommendations.

Audit scrutiny revealed that six[12] custom houses and one[13] Central Excise range collected total MOT charges of ₹ 494.54 lakh during period 2008-09 to 2011-12 at rates under aforesaid Regulations 1998. Non revision of MOT rates even after a lapse of more than 14 years have resulted in earning of less revenue.

The customs authorities of Navalkhi, Sikka, Porbandar and Pipavav Customs Houses while agreeing (October 2012 to August 2013) with the audit opinion for periodical revision of MOT rates, stated that the matter pertained to Board/Ministry.

[12] Navlakhi, Sikka, Jamnagar, Veraval, Porbandar, Pipavav
[13] Central Excise Assessment Range (AR) V, Division V, Commissionerate-Ahmedabad-II

Assessing officer incorrectly allowed Project import benefits

4.7 All items of machinery and all components or raw materials required for the manufacture of such machinery imported for initial setting up of a unit or the substantial expansion of an existing unit of a specified industrial plant are covered under Custom Tariff Heading 98.01 and are chargeable to concessional rate of duty in terms of Regulation 2 of Project Import Regulations (PIR), 1986. 'Substantial expansion', as defined under Regulation 3(b) of PIR-86, means an expansion which will increase the existing installed capacity by not less than 25 per cent.

M/s Telco Construction Equipment Company Ltd., imported (March 2004) 'Hydraulic Shovel' through Commissionerate of Customs (Port), Kolkata vide Bill of Entry No.183545 dated 1 March 2004 for supply to Bina OC Singrauli Coalfileds of Northern Coalfileds Limited which was allowed the benefits of concessional duty under the Project Import Regulations, 1986. Audit observed from the documents submitted by the importer for finalization of the contract that the Shovel was to be utilized to achieve the past production capacity of 5 million tones per annum of the mine which had reduced to 3 million tones per annum. In order to achieve this, the Shovel was required as an additional quantity of equipment, for which the importer had registered the said Project contract under PIR.

As the goods were imported for achieving only its past production capacity without increasing the existing installed capacity, it was apparent that the instant project import contract was neither registered for initial setting up of a unit nor for substantial expansion of the existing unit for which imported goods did not qualify for the benefit of concessional duty available under the provisions of Project Import Regulations, 1986. Incorrect extension of the benefit resulted in grant of duty exemption amounting to ₹ 55.03 lakh which was recoverable from the importer.

Assistant Commissioner of Customs (IAD), Custom House, Kolkata stated (November 2012) that a letter has been issued to the importer asking him to deposit the short-levied amount. Further progress was awaited (March 2014).

Ministry's response had not been received (March 2014).

Assessing officer short assessed value of ship imported for breaking

4.8 According to Rule 5 of the Customs Valuation (Determination of value of Imported Goods) Rules 2007, the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued.

Various importers import 'Ships for breaking' (CTH 89080000) at Ship Breaking Yard-Alang (Bhavnagar), value for which was assessed on the lump sum price (including bunker value) declared in the 'Memorandum of Agreement (MOA)'.

The value of the imported ship was arrived after reducing the value of bunker (MGO, Furnace oil, etc.) from the total value declared, as stipulated in Board's circular no.37/1996-cus dated 3 July 1996. The duty to be levied was then arrived separately for ship and bunker, at the applicable rates for both. The effective rate of customs duty leviable on 'Ships for breaking' (CTH 89080000)[14] was higher as compared to that leviable on 'Marine Gas Oil (MGO) (CTH 27101930)[15].

Audit observed that the value of MGO was reduced considerably in international market from November 2008 onwards and the highest rate recorded was US$ 540 PMT till March 2009. However, the assessable value fixed at US$ 825 PMT by the department in August 2008 was reduced only to US$ 725 PMT in December 2008 and no further reduction was made upto June 2009.

Non revision of assessable value of MGO with reference to the reduced price prevailing in market resulted into deduction of higher bunker price from the lump sum price and consequent less realization of duty. The Government may devise some mechanism to review prices of MGO with reference to prevailing international price of MGO for allowance of deduction from total value, which would help in realization of correct duty on the ship value.

The short levy of duty worked out was ₹ 29.27 lakh involved in 44 Bills of entry (BsE) (November 2008/June 2009) considering the highest recorded rate of US$ 540 PMT.

Commissioner of Customs (Preventive), Jamnagar stated (August 2013) that audit adopted MGO price quoted in the website www.bunkerwold.com which is F.O.B. price at Singapore to which freight, insurance and landing charges are required to be added for arriving at the assessable value for duty calculation. It was further stated that as pointed by audit the values of National Import Database (NIDB) is not the legal authentic document but serves only as broad guidelines and there was no requirement in law to discard a transaction value. Customs authorities also stated that prices of MGO/HSD prevailing in Singapore are considered by Audit which is contrary to residual method for valuation under Rule 9 (2) (iii) of Customs Valuation (Determination of values of Imported Goods) Rules 2007.

The department's reply may be viewed in the context of the fact that audit observation is to emphasise on instituting procedure for timely revision so that Government revenue is protected. However, Commissioner of Customs (Preventive), Jamnagar authorities stated (August 2013) that protective demand

[14] Duty on ship included 5 per cent 'basic customs duty (BCD) and 14 per cent 'Additional duty of customs (CVD).

[15] Duty on MGO included 2.5 per cent BCD, ₹ 2 per litre and ₹ 1.60 per litre additional duties of customs and central excise.

cum show cause notices have been issued. Further progress was awaited (March 2014).

Ministry's response had not been received (March 2014).

Assessing officer incorrectly granted drawback on export of goods

4.9 According to Para (V) of Circular no.64/1998- Customs dated 1 September 1998, the export goods purchased by the merchant exporter from the open market shall be treated as having availed the Modvat facility for which the benefit of All Industry rates of Duty Drawback on export of such goods shall be restricted to the Customs allocation only. These provisions were superseded under Para-7 of Circular No. 16/09-Customs dated 25 May 2009 whereby Merchant exporters were also allowed full All Industry rates of Duty Drawback, including excise allocation, subject to furnishing prescribed self declaration at the time of export. However, the aforesaid provisions were made effective from the date of the issue of this circular.

M/s Eastern Traders and two other merchant exporters were sanctioned (May 2008 to February 2010) Customs as well as Central excise portion of Drawback at All Industry rate on goods purchased by them from the local market and exported under 14 shipping bills during the period from December 2007 to April 2009 through Commissionerate of Customs (Preventive), West Bengal. Audit observed that sanction of Central excise portion of Drawback to the merchant exporter was in contravention to the provisions of the aforesaid circular because goods were exported prior to issuance of circular dated May 2009. This resulted in excess payment of drawback amounting to ₹ 25 lakh which needed to be recovered along with applicable interest.

Ministry reported (January 2014) that show cause notices are being issued by Kolkata (Preventive) Commissionerate to recover the drawback sanctioned. Further progress was awaited (March 2014).

4.10 Refund of Customs duty

According to Customs Act, 1962 (CA) any person who has paid the duty of customs or paid any interest, could claim for its refund in the following circumstances:

(a) When the goods are exported after payment of the export duty / cess and the exported goods are returned to the exporter otherwise than by way of resale and the goods are re-imported within one year (Section 26 of CA).

(b) When the imported goods are found to be defective or otherwise not in conformity with the specification agreed upon between the importer and the supplier of goods and the imported goods are exported as such (Section 26A of CA).

(c) Any person who has paid duty on assessment of imported goods and applies for refund of duty consequent on i) remission /abatement of duty due to

pilferage of goods, damage of goods, and deterioration in the value of goods, goods lost or destroyed, ii) Finalization of provisional assessment where the duty is refundable iii) Cash Security Deposit on the finalization of project import, iv) Modification of an adjudication order or decision of lower authority in an appeal case or revision, v) Reduction of duty on reassessment due to wrong application of rate of duty, incorrect classification, adoption of higher valuation (Section 27 of CA).

(d) When additional customs duty at 4 per cent to countervail the sales tax, value added tax, local taxes and other charges was paid on the imported goods and the importer being registered dealer sold the goods on payment of appropriate ST/VAT, he can claim the refund of 4 per cent additional duty as per Notification 102/2007-Cus dated 14 September 2007 as amended.

The department during the year 2012-13 and 2013-14 (upto April 2013) settled 31535 and 6439 claims and refunded an amount of ₹ 1773.37 crore and ₹ 411.71 crore respectively sanctioned by commissionerates under the audit jurisdiction of Director General/ Principal Director, Tamil Nadu, Kolkata, New Delhi, Mumbai, Hyderabad, Ahmadabad, Bangalore and Cochin**.**

Audit test checked 1964 (6 percent) and 6439 (31 percent) numbers of total claims sanctioned during the year 2011-12 and 2013-14 respectively.

4.10.1 Internal Control Mechanism

The refund applications were admitted after scrutiny as to whether all the documents were received in full and complete shape. If any document is wanting, a deficiency memo is issued after scrutiny by the superintendent. The refund claims are then sanctioned by the Assistant Commissioner/Deputy Commissioner. Refund claims above ₹ 5 lakh are sanctioned after pre audit by Internal Audit Department (IAD) while claims below ₹ 5 lakh are subjected to post Audit. The refunds are not automatically triggered by the system and captured in the ICES 1.5 application.

4.10.2 Audit Findings

(a) Sanction of refund on sale of goods prior to date of its import/payment of TR 6 Challan/Out of Charge – ₹ 10.23 lakh

Imported goods could be sold only on payment of duty /out of charge. This would ensure that only the goods imported were actually sold.

Audit noticed 23 instances in seven commissionerates **(Appendix 19)** where refund of additional duty was sanctioned even though sales were effected prior to the date of import of goods (date of landing) /duty payment (payment date of TR6 challan) /Out of charge (goods physically removed). Accordingly, claims amounting to ₹ 10.23 lakh were ineligible for SAD Refund.

The Commissioner of Customs (Air), Chennai reported that a demand notice has been issued for ₹ 0.62 lakh. Deputy Commissioner of Customs St. John, Tuticorin

reported recovery of ₹ 0.43 lakh out of ₹ 0.97 lakh pointed out while in case of M/s Sri Lakosha Polymer Pvt. Ltd. contested audit observation stating (July 2013) that out of charge was given manually on 15 December 2011 due to system failure.

The Department's reply is not acceptable since the goods could be cleared only after payment of duty which was made on 17 December 2011, while sales invoice was dated 16 December 2011. Reply from other commissionerates was awaited (March 2014).

(b) Time barred claims - ₹ 12.05 lakh

According to notification 93/2008-Customs dated 1 August 2008, the refund application is to be submitted before the expiry of one year from the date of payment of the said additional duty.

Audit noticed 11 cases in five commissionerates (**Appendix 20),** wherein the SAD refunds claims received after the prescribed time limit were considered by the department and an amount of Rs. ₹ 12.05 lakh was irregularly refunded.

Kochi Commissionerate in respect of M/s Falcon Glass Palace stated that in terms of Section 9 of General Clauses Act, the actual date of payment should be excluded for computing the period of limitation. It was further stated as per Section 10 of the Act when the last day of a prescribed period falls on a holiday, the act or proceeding shall be considered as done on the next day after the holiday.

The reply is to be viewed in the context of the fact that the date of payment of duty was 1 August 2011 and application was filed on 3 August 2012. The due date of application i.e. 2 August 2012 was not holiday. Accordingly, the refund of ₹ 1.80 lakh granted was irregular.

The Commissioner of Customs (Air) Chennai in case of M/s Dax Net Works Ltd. stated (July 2013) that the claim was submitted within the time limit. The reply is not acceptable because application was initially filed on 31 March 2011 after expiry of one year (18 March 2011) and it was attested by Assistant Commissioner of Customs. Replies in respect of remaining commissionerates have not been received (November 2013).

(c) Sanction of refund claim on sale of goods mis-matched with imported goods – ₹ 17.79 lakh

According to Notification No.102/2007-Customs dated 14 September 2007, the importer is required to provide proof of payment of duty (Bills of Entry), invoice of sales and proof of payment of VAT/Sales Tax along with the refund claims. Comparison of BoE (import) with the sales invoices by audit revealed that there was a mis-match between the goods imported as per BoE and sold as mentioned in the invoice in 21 cases in respect of four commissionerates (Chennai(Air) - 6 cases, Chennai (Sea)- 4 cases, Tuticorin- 6 cases and Customs (Port), Kolkata - 5

cases. This resulted in incorrect sanction of SAD refund amounting to ₹ 17.79 lakh **(Appendix 21)**.

The Commissioner of Customs (Air), Chennai stated (July 2013) that demand notices have been issued to the importers (M/s Roots Multi Clean Ltd and M/s Accel Front line). The Commissioner of Customs, Tuticorin replied (June 2013) that the difference between the description of the item in the BE with respective sales invoice was very minimal. The department further stated that audit contention is noted for future guidance. The reply was not acceptable as there was a difference between bill of entry and sales invoice. Reply in respect of remaining commissionerates is awaited (November 2013).

(d) Incorrect sanction of refunds to manufacturer – ₹ 8.03 lakh

As per Board Circular 34/2010 dated 15 September 2010, if the imported goods on which 4 percent SAD was paid are used by the manufacturer, the benefits of SAD refund is not available. Audit noticed that in 3 cases (Custom House (Port), Kolkata - 1 case, ICD, Sanath Nagar, Hyderabad- 2 cases), the imported goods were not sold as such but further processed and sold. Hence SAD refund sanctioned amounting to ₹ 8.03 lakh was incorrect (**Appendix 22).**

(e) Other interesting points

i. Co-relation sheet not properly matched with cargo.

Audit noticed that in respect of Customs House, Tuticorin (2 cases) correlation certificate of Chartered Accountant was not matched with cargo. Because of this, audit could not ensure that the imported goods mentioned in the sales invoices were actually eligible for refund of SAD (**Appendix 23**).

ii. Electronic Data Interchange (EDI) refund

Status of refund application has to be reflected in the web site of respective custom house as per circular No.6/2008-Cus.dated 28 April 2008. Audit noticed that the status of refund application was not reflected in Kolkata, New Delhi, Ahmedabad and Cochin. Payment of refunds through Real Time Gross Settlement (RTGS) or National Electronic Fund Transfer (NEFT) has not been made in Kolkata Custom House, Custom House Mundra, Inland Container Depot, Kadiyar (PDA, Ahmedabad) and Custom House Kochi. In respect of New Delhi the claims are processed manually. In respect of Kandla (PDA, Ahmedabad) online database does not reflect the correct picture.

The department stated that the system of directly crediting the refund amount to the Bank account of the claimant through RTGS or NEFT system is under the active consideration of the department and the same will be introduced soon. Reply of Department of Revenue was awaited (March 2014).

iii. Sanction of refund to a person other than the original importer

As per notification No.102/2007-Cus, the refund claim has to be preferred by the importer only and not by any other person. Audit noticed that in two refund cases (Customs (Port), Kolkata - M/s Associated Traders & M/s Kishar International Pvt. Ltd.) the refunds amounting to ₹ 21.21 lakh were sanctioned based on the claims made by a person other than the importer which was not in order. Similar refunds in two cases (ICD, Concor, Khanakpura, Jaipur - M/s Lovely Enterprises Pvt. Ltd.) amounting to ₹ 8.83 lakh were noticed.

iv. Delay in Processing of refund applications

Audit noticed that in 16 cases (ICD, Kandiyar, Gujarat- 15 cases, Custom House, Vishakhapatnam, Hyderbad- 1 case) refund applications were processed after delay of more than two years.

The Assistant Commissioner of Customs, Kandla stated that the case was pending for want of some documents and the same was processed as usual pending clearance of requisite documents. The reply was not acceptable as the claim was passed based on incomplete documents.

v. irregular refunds made despite non availability of sales invoices

In terms of 102/2007 dated 14 September 2007 documents like BEs, Challans, and Sales invoices have to be mandatorily enclosed while claiming refunds. Audit noticed in respect of three refunds (Custom House (Port) Kolkata) that the copies of sales invoices were not available. Accordingly, sanction of refund amounting to ₹ 76.93 lakh was not in order (**Appendix 24**).

vi. Refund made despite non availment of certificate

In terms of notification 102/2007 any importer wishing to avail SAD refund is required to pay, on sale of import goods, appropriate ST/VAT and specifically mention in the invoices that no credit of additional duty levied under sub-section (5) of the section 3 of the CT Act, 1975 is admissible. Audit noticed that in one case under Mumbai Commissionerate the aforesaid certificate has not been indicated in the sale invoices. This has resulted in excess payment of refund amounting to ₹ 12.47 lakh.

vii. Proof of ST/VAT payment not available

In Customs House Mundra, ST/VAT returns were not available with the refunds files. Similarly, in ACC, Diggi House, Jaipur one importer has not produced copies of evidence for payment of ST/VAT. Hence, the refund sanction ₹ 4.08 lakh was incorrect.

viii. Refund made on photo copy of Bill of Entry

As per circular No.16/2008 dated 13 October 2008 while claiming refunds importer has to submit duplicate copies of bill of Entry. Audit noticed that refund of ₹ 0.61 lakh was sanctioned to M/s Dhariwal Corporation under ICD Concor, Jodhpur based on the photos copies of BoE.

ix. Sanction of SAD refunds without payment of appropriate CST

M/s Vallabhdas & Co. under Custom House, Cochin sold imported goods under CTH 3103 without payment of ST/VAT as these commodities were exempted under KVAT Act 2005, but still got the refund of SAD amounting to ₹ 4.86 lakh paid at the time of import **(Appendix 25)**. Audit noticed that there was no evidence from the importer of having paid CST/VAT or furnishing any certificate from sales tax authorities regarding the payment of CST/VAT. Moreover, the importer instead of furnishing CA certificate for unjust enrichment submitted self declaration which was not valid for refund purpose. This has resulted in incorrect refund of ₹ 4.86 lakh.

x. Delay in issue of deficiency memo

Audit noticed in Air Cargo Complex, Devanahalli, Bangalore that the refund applications were filed within due dates with incomplete documents. However, deficiency memo were issued belatedly ranging from one to three years. Subsequently, refund was sanctioned after furnishing complete documents.

xi. Post audit of refunds

As per paragraph 4.4 of circular 24/2007 dated 2 July 2007, all refunds sanctioned above ₹ 5 lakh has to be pre-audited before issue of refunds. Audit noticed that in Kandla Custom House the IAD could not quantify the exact number of cases due for post audit and the number of cases post audited.

xii. More than one claim by an importer in a month

As per Circular No. 6/2008-Cus it was stipulated that there would be single refund claim submitted by importer per month. Audit noticed that in respect of Customs House, Kandla claimants have filed more than one claim during a month which was admitted by the department.

xiii. Sanction of double claim of refunds- ₹ 0.47 lakh

Audit noticed that M/s Hi-Tech KK Mfg. Co., Kolkata was sanctioned refund of ₹ 2.39 lakh by Assistant Commissioner, Customs, Air Cargo Complex, Diggi House, Jaipur vide O.I.O.No. 2/2012 dated 21 April 2012 towards excess payment of customs duty due to enhancement of assessable value of goods. However, the same bill of entry was quoted for SAD refund claim and refunded (vide O.I.O.No. 6/2012 dated 12 June 2012 and O.I.O.No. 9/2012 dated 25 July 2012).