

## Chapter VII Thematic audit

### A. Disposal of seized and confiscated goods

#### 7.1. Introduction

Section 110 of the Customs Act, 1962 stipulates that an officer of Customs could seize any goods, if he has reason to believe that the goods are liable to confiscation under the said Act. Further, improperly imported or attempt to improperly export goods defined under Section 111 and 113 of the Customs Act, 1962 are also liable to confiscation.

The person from whom the goods are seized is issued a Show cause notice (SCN) (under Section 124 of the Act) usually within six months (Section 110 (2) of the Act), otherwise the goods shall be returned to the person from whose possession they were seized.

After confiscation, the goods become the property of the Central Government and Government could sell/auction the goods. The Disposal Manual of the Department classified the seized and confiscated goods into four categories<sup>20</sup>:

- (i) Category-I ( Goods to be disposed of immediately after seizure);
- (ii) Category-II (Goods to be disposed of after following the procedures under Section 110 (1A) of the Act;
- (iii) Category-III (Goods to be disposed of within six months from the date of seizure or before the date of expiry);
- (iv) Category- IV (All other goods not listed in the above three categories).

Records of 19 Commissionerates (**Appendix 34**) in 11 states viz. Assam, Uttar Pradesh, Delhi, Bihar, Gujarat, West Bengal, Karnataka, Meghalaya, Rajasthan, Madhya Pradesh and Maharashtra, pertaining to the period 2010-11 to 2012-13, were reviewed to evaluate the efficiency of the system in ensuring timely disposal and realization of reasonable value; assess the loss of revenue/blockage of revenue due to non-disposal or delayed disposal, and identify weaknesses in the system leading to delays.

The total amount of seizures at All India level during the period 2010-11 to 2012-13 was in the range of ₹ 1857 crore to ₹ 2476 crore (**Appendix 4**). Maximum rise was in Narcotic Drugs, Machinery/Parts, Fabrics/Silk Yarn etc., Electronic Items, and Vehicles/Vessel/Air Crafts etc.

#### 7.2 Audit Findings

As per data furnished by the department, the total value of un-disposed goods (Category I, II, III & IV) in 19 Commissionerates as on 31 March 2013 was

<sup>20</sup> Circular F No. 711/31/83-LC (AS) dated 22.05.1984.

₹ 466.24 crore. Of these, ₹ 78.30 crore worth goods (Category I, II & III) were perishable having short life span and ₹ 387.94 crore<sup>21</sup> worth goods were of other categories (Category I)

Audit scrutiny of records revealed that during the period 2010-11 to 2012-13, the department was able to dispose of less than 36 per cent of the goods seized during the period. The Commissionerates with high holdings were Mumbai ₹ 298.82 crore<sup>22</sup>, Delhi ₹ 59.26 crore<sup>23</sup>, Uttar Pradesh ₹ 39.31 crore<sup>24</sup>, Madhya Pradesh ₹ 27.91 crore<sup>25</sup> and Rajasthan ₹ 25.84 crore<sup>26</sup>. Further audit observations have been discussed in succeeding paragraphs:

### 7.3 Documentation and maintenance of records

As per Disposal Manual, proper records/registers are required to be maintained for monitoring of confiscated and seized goods. Audit appraisal revealed the following discrepancies:

(i) No records of these cases were maintained by the Deputy Commissioner, Mandideep, Assistant Commissioner, Gwalior and Superintendent (Preventive), Indore. The department accepted the audit observation.

(ii) The Commissionerate of Customs Jaipur, ICD RAJSICO, Sanganer furnished 'NIL' information regarding seized and confiscated goods during last three years upto 2012-13, even though audit scrutiny revealed that goods having value of ₹ 165.05 lakh and ₹ 64.55 lakh were seized/ confiscated during 2010-11 and 2011-12 respectively. This indicated not only non-maintenance of database/registers of seized and confiscated goods but also poor quality of documentation.

(iii) No records/registers were maintained by the Bangalore Commissionerate. Reasons for non-maintenance of the records were not furnished to Audit.

(iv) In case of Addl. Commissioner, IGI Terminal III, Delhi, the goods of category-I worth ₹ 20.72 lakh were disposed of during 2010-11 but not reflected in their MIS due to oversight.

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<sup>21</sup> Those Commissionerates which did not categorize value of goods have been taken in other category.

<sup>22</sup> Commissioner, Customs, (zone -I) Mumbai ₹ 83.41 crore, Commissioner, Customs, (zone -II) Mumbai ₹ 166.02 crore and Commissioner, Customs, (zone -III) Mumbai ₹49.39 crore.

<sup>23</sup> Commissionerate, Customs, Air Cargo, Delhi ₹ 9.98 crore, Commissionerate, Customs, I&D, Delhi ₹ 0.95 crore, Commissionerate, Customs, ICD, T10, Delhi ₹ 1.23 crore and Addl. Comm. IGI, Terminal-III, Delhi ₹ 47.11 crore.

<sup>24</sup> Commissionerate, Customs (Preventive), Lucknow ₹ 22.31 crore, Commissionerate, Jaipur ₹10.09 crore, Commissionerate, NOIDA ₹ 0.29 crore and Commissionerate, Ghaziabad ₹6.62 crore.

<sup>25</sup> Commissionerate, Indore ₹ 2.06 crore and Commissionerate, Bhopal ₹ 25.84 crore.

<sup>26</sup> Commissionerate, Customs Jodhpur.

(v) In respect of Addl. Commissioner of Customs, Delhi (IGI, Terminal-III), it was noticed that Preventive II Branch communicated (July 2012) disposal of 31 gold biscuits weighing 3614.600 gms., by Disposal branch which had already been disposed of through State Bank of India by the Office of the Commissioner of Customs (Preventive-Disposal) during 1997-98. This reflected not only lack of coordination between two branches, but also indicated deficiencies in their Management Information System.

#### **7.4 Non-projection of targets of revenue realization**

Formulation of the targets for disposal of confiscated and seized goods is a prerequisite for effective and meaningful monitoring of progress of collection of revenues.

Audit scrutiny, however, revealed that no targets were fixed during 2010-11 to 2012-13 by any of the Commissionerates except Bangalore and Patna. The total revenue realization during the period 2010-11 to 2012-13 was found to be ₹ 71.34 crore (**Appendix 35**).

#### **7.5 Adjudication**

Board has prescribed<sup>27</sup> specific time frames, within which the officers would complete adjudication in the cases which relate to seizure alone.

The Commissioner or Additional/Joint Commissioner of Customs is required to complete adjudication within one year from the date of service of the Show cause notice.

Audit scrutiny revealed that nine Commissionerates did not adhere to the aforesaid provisions and there were delays in adjudication ranging from 1 to 204 months in respect of 65 cases (**Appendix 36**) having seizure value of ₹ 3317.57 lakh.

The Assistant/Deputy Commissioner of Customs is required to complete adjudication within six months from the date of service of the show cause notice.

Audit scrutiny revealed that six Commissionerates did not adhere to the aforesaid provisions during the period 2010-11 to 2012-13, resulting in delays in adjudication ranging from 1 to 23 months in respect of 343 cases having seizure value of ₹ 271.40 lakh (**Appendix 37**).

The Superintendent of Customs was to complete adjudication within three months from the date of service of the show cause notice.

Two Commissionerates, however, did not comply with the aforesaid provisions during 2010-11 to 2012-13 resulting in delays in adjudication from one to 24

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<sup>27</sup> Circular No.3/2007-Cus. Dated 10.01.2007.

months in respect of 268 cases having seizure value of ₹ 24.92 lakh (**Appendix 38**).

Thus, the department failed to ensure compliance with the prescribed provisions in respect of adjudication during 2010-11 to 2012-13. Commissioner, Customs (Preventive) Lucknow admitted (August 2013) the delay as pointed out by Audit.

#### **7.6 Joint Pricing Committee**

The CBEC circular (12/2006-Customs dated 20 February 2006) prescribed the guidelines for valuation and disposal of seized and confiscated goods. As per the guidelines, a Joint Pricing Committee (JPC) shall be constituted in each Customs Commissionerate entrusted with the responsibility of disposal of seized and confiscated goods. The JPC shall comprise Additional/Joint Commissioner, Deputy/Assistant Commissioner, Superintendent in charge of disposal along with Deputy/Assistant Commissioner and Superintendent holding any other charge.

The JPC shall determine the Fair Price of the goods to be disposed of through auction-cum-tender. The Fair Price should be fixed by ascertaining the probable price of such goods in the wholesale market and subtracting from it a discount of 5 per cent to 10 per cent representing the profit of the buyer at the auction-cum-tender. The wholesale market price of the goods offered for sale and the margin of profit shall be ascertained by Government Approved Valuer alone and not by Customs staff. Further, the auction-cum-tender shall be held every month.

During 2010-11 to 2012-13, JPC did not have the prescribed composition in Commissionerate of Customs, Mumbai and Commissionerate of Customs (Preventive) Patna. As a result, the seized goods worth ₹ 836.96 lakh were lying without disposal from 1986 to 2012 (**Appendix 39**).

In Commissionerate of Customs, Jodhpur during 2010-11 to 2012-13, no auction-cum-tender notice was invited for disposal of seized/confiscated goods. Further, in contravention of CBEC circular, the goods were disposed of on the strength of the price inquired by the customs staff without any auction-cum-tender resulting in under recovery of ₹ 10.14 lakh (**Appendix 40**).

In Commissionerate of Customs (Export) Mumbai, 9960 pieces of Earphones worth ₹ 9.96 lakh were disposed of (March 2013) for ₹ 3.51 lakh through e-auction without ascertaining the fair price from the Government approved valuer resulting in under recovery of ₹ 6.45 lakh.

#### **7.7 Non disposal of seized / confiscated goods**

The CBEC in their instructions (450/97/2010-Cus.IV dated 22 July 2010) directed that each Customs formation will constitute a 'Task Force' for a one time comprehensive review for expeditious disposal of all un-cleared/unclaimed cargo and asked for progress made in disposal along with age-wise break up of pending cargo that was ripe for disposal as on 31 December 2010. CBEC in their

instructions also reiterated that in cases where consignments are detained by Customs, all pending actions such as investigation, adjudication and related court proceedings should be taken up for completion without delay. As per the instructions it was responsibility of the Commissioners to ensure the expeditious disposal of such cargo on regular basis. Whether this was reviewed in the Chief Commissioners meeting or separately by CBEC to see if the envisaged aim was achieved has not been furnished by the Ministry (March 2014).

Section 142 of the Customs Act, 1962 provides for recovery of sums due to the Government after disposal of seized goods. The details of the seized/confiscated goods have been exhibited in **Appendix 34**.

### 7.8 Category I-Goods to be disposed of immediately after seizure.

As per CBEC guidelines, the goods under the Category-I should be disposed of immediately after seizure by the Custodian of the goods after issue of notice to the owners and obtaining orders from the Competent Authority, as these goods are highly perishable having shelf life of only three months and become unfit for human consumption after this period.

As on 31st March 2013, perishable goods worth ₹ 3.69 crore under Category-I were not disposed of in 19 Commissionerates across the country. In this regard, Audit observed the following:

(i) In four Commissionerates, perishable goods worth ₹ 311.84 lakh were lying un-disposed since 1997 contrary to the prescribed provisions/ guidelines resulting in non-realization of revenue amounting to ₹ 311.84 lakh as stated below:

Sl. No.	Commissionerate	Lying at	Items	Quantity	(Lakh ₹)	
					Value	Lying since
1.	Customs, Central Excise & Service Tax, Ghaziabad	ICD, Loni	Non-basmati rice	541.076 MT	289.34	2009 to 2010
2.	Customs (Preventive), Kolkata	Shed I & II	Cigarette	1 case	0.88	2011
3.	Customs, Mumbai		Cigarette		16.65	2010
4.	Customs, Delhi	ICD, PPG	Herbs & herbal products	5 cases	4.49	1997
			Rice	1 case	0.48	2010
Total					311.84	

The Deputy Commissioner Customs, ICD Loni Ghaziabad replied (November 2013) that the goods would be produced before the Government approved valuers and would be disposed of at the earliest possible.

### 7.9 Loss due to delayed disposal of seized/confiscated goods

In three Commissionerates, due to delay in disposal process, Government suffered loss worth ₹ 8.36 lakh as detailed below:

(i) In Commissionerate of Customs, Bhopal, the department seized (October 2010) 20 bags of cigarettes with imposable duty worth ₹ 4.80 lakh but due to non-disposal within stipulated time period, it became unfit for human consumption as certified by CTRI Rajahmundry. Besides, this resulted in revenue loss of ₹ 4.80 lakh.

(ii) In Commissionerate of Customs, Jodhpur, perishable goods were seized (during June to October 2009 and March to August 2010) worth ₹ 0.61 lakh and were lying at the seizing unit even after the date of its expiry. Besides becoming unfit for human consumption, it resulted in revenue loss worth ₹ 0.61 lakh.

(iii) In Commissionerate of Customs, Patna other perishable goods seized during 2010 worth ₹ 2.95 lakh were disposed of by way of destruction (at Forbesganj Division) after its expiry date.

#### **7.10 Category II-Goods to be disposed of after following the procedure under Section 110 (1A) of Customs Act, 1962**

This category covers the goods notified under Section 110 (1A) of the Customs Act, 1962 viz. gold, silver, diamonds, precious/semi precious stones, currency (Indian and Foreign), red sanders, all electronics goods and liquor etc. and any other notified goods. As on 31st March 2013, goods worth ₹ 95.48 crore of category-II were pending for disposal in 19 Commissionerates across the country. In this regard, Audit observed the following:

(i) In 10 Commissionerates, perishable goods (Electronics goods) worth ₹ 5737.71 lakh are lying as of date in the godown for disposal from 1 to 31 years in disregard of the aforesaid provisions and guidelines (**Appendix 41**). This resulted in blockage of Government revenue.

(ii) In Jodhpur Commissionerate intimated that Order-in-Original for seized goods valued at ₹ 65.31 lakh has been issued (December 2013). Disposal process would be completed by March 2014. As regards goods lying at Agra Division (₹ 3.36 lakh), they were seized during the period 1991 to 2002 and became obsolete in nature and after re-pricing by the Joint Pricing Committee (JPC) the disposal proceedings are expected to be completed by March 2014.

(iii) In six Commissionerates, perishable goods worth ₹ 259.41 lakh were lying un-disposed since 1985 to 2012 contrary to the provisions/guidelines resulting in blockage of Government revenue. The details have been exhibited in **Appendix 42**.

Deputy Commissioner, Custom, ICD Loni Ghaziabad intimated that the matter was pending before the Hon'ble CESTAT and the Commissioner (Appeal) and as and when the cases attain finality, necessary action in consultation with State Pollution Board would be taken for disposal of the confiscated goods.

(iv) In Commissionerate of Customs (Preventive), Patna, vehicles worth ₹ 486.69 lakh were awaiting disposal since 1998 to 2012. As these vehicles have

been parked in the open at Forbesganj, Motihari, Muzaffarpur and Patna, they are bound to deteriorate after passage of time which may result in fetching lesser amount of revenue.

**(v)** In Commissionerate of Customs (Zone -I) Mumbai, 40 seized and confiscated vehicles valuing ₹ 350.75 lakh were lying un-disposed since 1987. The present value of these vehicles would be almost negligible.

**(vi)** In Commissionerate of Customs, Bhopal, gold worth ₹ 8.40 lakh weighing 286.30 gram was seized in September 1981 but was lying un-disposed till date.

**(vii)** Similarly, in Commissionerate of Customs, Indore, 3.297 kg gold worth ₹ 8.20 lakh was lying since June 1981 and 1046.016 kg of Silver worth ₹ 72.17 lakh was lying un-disposed since April 1989 due to non-adjudication.

**(viii)** In Commissionerate of Customs, Mumbai, gold, silver, precious stones and foreign currency etc. worth ₹ 2569.22 lakh were lying un-disposed at the end of March 2013. However, out of above, ₹ 1716.18 lakh pertains to pendency of more than three years.

**(ix)** In Commissionerate of Customs (Preventive), Patna, silver scraps valuing ₹ 0.10 lakh was lying un-disposed since 2010 at Muzaffarpur Division.

**(x)** As per CBEC guidelines, the goods should not be withdrawn from auction-cum-tender on flimsy grounds and all post-auction/tender offers, even if these are for amounts higher than the successful bid, shall be strictly disregarded and not taken cognizance of in any manner.

Audit scrutiny of the records of the Commissioner, Customs (Preventive), Lucknow revealed that about 17.55 MT of red sander wood having book value of ₹ 55.52 lakh seized during 2003 to 2008 were lying in the godowns of Lucknow, Gorakhpur and Nautanwa Customs Divisions respectively. The department confiscated these goods and proffered (December 2010) to State Forest Corporation (Corporation) for disposal. In the auction (January 2011), 58 bidders participated and the highest bid offered was of ₹ 59.46 lakh. Besides, the highest bidder had also deposited ₹ 12 lakh with the Corporation as advance.

The Corporation intimated (13 January 2011) the department that another bidder could not participate in the auction process due to late arrival and had offered (11 January 2011) rates that would fetch a value of ₹ 2 lakh to ₹ 3 lakh higher than the highest rates received on 10 January 2011. It was also intimated by the Corporation that the latter bidder had also submitted six Bank Drafts worth ₹ 2 lakh each which were prepared after the date of auction. Accordingly, the Corporation requested (January 2011) the department for cancellation of auction process on the plea that the latter bid would fetch more revenue. Although the former bid was more than that of the book value, the Department agreed to the Corporation's request and the auction was cancelled (February 2011). However, the goods are still lying un-disposed in the godown (March

2014). Non-compliance with the CBEC guidelines led to blockage of funds of ₹ 55.52 lakh.

#### **7.11 Loss due to delayed disposal of seized/confiscated goods**

Government suffered revenue loss of ₹ 113.40 lakh in two Commissionerates due to delay in disposal process as narrated below:

(i) 18.715 MT of PVC adhesive sheeting/vinyl printing materials worth ₹ 7.27 lakh, was later estimated at ₹ 80.03 lakh by the Department, were seized and confiscated on mis-declaration (January 2012) and were lying for disposal at ICD, Loni under Ghaziabad Commissionerate. The joint inspection (January 2013) following the CESTAT order revealed that 50 per cent of goods had become damaged. This resulted in not only wastage of goods but also revenue loss worth ₹ 80.03 lakh to the public exchequer due to the laxity of the Commissionerate.

Deputy Commissioner, Custom, ICD Loni, Ghaziabad intimated that the matter is pending before the Hon'ble CESTAT.

(ii) In Commissionerate of Customs (Airport) Mumbai, contraband items (Carbo Platin) of 1557 gm worth ₹ 33.37 lakh having expiry date of 19 May 2012 were seized (January 2011). Although the items were adjudicated on 09 April 2012 well before the expiry date, the disposal order was issued only after the date of expiry (on 24 July 2012). Consequently, the department suffered revenue loss of ₹ 33.37 lakh due to non-disposal within the specified time frame.

#### **7.12 Category III-Goods to be disposed of within six months from the date of seizure or where the date of expiry is indicated well before that date.**

Category-III goods should be disposed of within six months of their seizure or well before the date of expiry where indicated.

As of 31st March 2013, goods worth ₹ 8.53 crore of Category-III were lying in godowns pending disposal in 19 Commissionerates. In this regard, audit observations are discussed below:

(i) In four Commissionerates, goods worth ₹ 206.37 lakh were lying undisposed since 1988 to 2012 contrary to the aforesaid provisions/instructions (**Appendix 43**). Besides becoming unfit for human consumption, non-disposal of these medicines resulted in revenue loss of ₹ 206.37 lakh to the exchequer.

(ii) Scrutiny of the records of four Commissionerates revealed that seized and confiscated goods worth ₹ 647.06 lakh (**Appendix 44**) were awaiting disposal since 2001 even after becoming ripe for disposal contrary to the prescribed provisions/instructions resulting in blockage of Government revenue.



### 7.13 Loss due to delayed disposal of seized/confiscated goods

In four Commissionerates, Government suffered loss worth ₹ 48.83 lakh due to delay in disposal as discussed below:

(i) In Commissionerate of Customs (NER) Shillong under Shillong Customs Division, the seized/confiscated medicines worth ₹ 26.81 lakh (fair price) were not sold on third auction price of ₹ 8.70 lakh conducted in December 2011, as the price was too low. The medicines were not sold thereafter within the date of expiry and thus became unfit for human consumption resulting in loss of ₹ 8.70 lakh.

Department stated (June 2013) that the bid was rejected as the highest bid of ₹ 8.70 lakh was too meagre for consideration.

(ii) In Commissionerate of Customs (Preventive), Patna, medicines worth ₹ 23.25 lakh were disposed of by way of destruction at Forbesganj and Motihari Division after expiry date resulting in loss to the exchequer.

(iii) The Commissionerate of Customs (Export), Mumbai seized (October 2003) 250 packages containing drugs which were sub-standard and spurious and hence these drugs were destroyed (September 2011) without following the due process prescribed under Section 110 (1B) of the Customs Act, 1962. Further, destruction was carried out after eight years of seizure and without confiscation under Section 113(d) of the Customs Act, 1962.

(iv) Scrutiny of records of Malda Customs Division under Commissionerate of Customs (Preventive), West Bengal, revealed that medicines worth ₹ 16.88 lakh seized during May 2009 to November 2010, were rendered unfit for human consumption due to absence of proper infrastructure for storage.

### 7.14 Category IV All other goods

All other goods not listed in the above three categories come under this category. The disposal of goods falling under this category has to be effected after completion of all due formalities and when finality is reached about the disposal of the goods.

On 31 March 2013, goods worth ₹ 387.94 crore under category-IV were pending for disposal in 19 Commissionerates across the country.

Audit observed the following:

(i) Scrutiny of the records of eight Commissionerates revealed that the goods under Category IV (machinery, refrigeration gas, shoes and others) worth ₹ 5513.93 lakh were seized/confiscated (**Appendix 45**) but were lying without disposal since 1987 even after becoming ripe for disposal contrary to the provisions/instructions resulting in blockage of Government revenue.

Paragraph 16.8 (a) of the Manual on Disposal of seized and confiscated goods of the department prescribed that all wild life trophies, animal parts, products etc.

where no case is pending in a Court of law may be offered to the Regional Wildlife authorities situated at Delhi, Mumbai, Chennai and Kolkata or the Chief Wildlife Warden of the State for the purpose of using the same as specimens for Government Organizations, public museums for education and awareness purpose.

Scrutiny of the records of the Commissionerate of Customs, (Preventive) Mumbai revealed that 42 pieces of elephant tusk were confiscated (1992). Although the prosecution process was complete by 1995 and no appeal was pending, the Commissionerate did not pursue the matter with the Wildlife authorities for handing over the elephant tusks after October 2010. Thus, due to lackadaisical approach of the Commissionerate, the elephant tusks are still lying with them.

#### **7.15 Loss due to theft/pilferage and shortage of seized/confiscated goods**

As per Board's Circular No.393/91/98-Cus (AS) dated 12 November 98, the custodian/officer in-charge of godown should take adequate precautions against theft and pilferage and keep watch over the condition of the goods. Further, all Chief Commissioners and Commissioners should pay personal attention to ensure that the guidelines/safeguards prescribed for custody, disposal of seized/confiscated goods including valuables are enforced scrupulously in their jurisdiction, so as to avoid instances of loss or theft or misappropriation or substitution of the goods.

(i) In Commissionerate of Central Excise, Siliguri Customs Division, the department suffered loss of revenue worth ₹ 81.30 lakh due to theft of medicines (cough syrups), Chinese mobiles, cloths and other goods during 2010-11 to 2011-12.

(ii) Eight cases of theft of goods during 2008 to 2012 worth ₹ 17.96 lakh were noticed at Petrapole Customs Circle under the Commissionerate of Customs (Preventive) West Bengal. Moreover, goods valued ₹ 0.92 lakh were also found short (December 2012) at the time of handing over and taking over of charge of the godown.

(iii) Scrutiny of records of Special Disposal Cell under Commissionerate of Customs (Port), Kolkata revealed that 48929 pieces of Integrated Circuits were short delivered to the buyer for which refund of ₹ 2.19 lakh was sanctioned. The shortage of goods could not be accounted for by the department.

(iv) In Commissionerate of Customs Patna, 490 bags of fertilizers valuing ₹ 2.62 lakh at Muzaffarpur Division were found be short during delivery of e-auction of October 2012.

#### **7.16 Other observations**

Audit observed deficiencies in sale of goods below the reserve price, prolonged auction process, misclassification of confiscated goods, and non-compliance with

the provisions of the Act regarding levy of penalty and delay in the disposal order. Some illustrative cases are as follows:

(i) Scrutiny of the records of the Customs Division, Lucknow of Commissionerate Customs (Preventive) Lucknow revealed that the following confiscated goods were sold much below the seizure value and reserve price of the JPC due to delay in forwarding the case in JPC and auction procedure resulting in loss to the exchequer:

(lakh ₹)

Sl. No.	Description of goods	Seizure value	Date of seizure	JPC's fair price	Sold at	Sold on	Remarks
1.	Cosmetic Items	2.02	07.11.09	1.07	0.23	13.04.11	The NCCF offered quite low price, which was not accepted and after lapse of one year, the Department went (March 2011) for auction and in 2 <sup>nd</sup> auction, highest bid worth ₹ 35,500 was received but goods were finally sold in 3 <sup>rd</sup> auction.
2.	Readymade garments	34.39	11.03.08	11.52	10.09	17.03.11	The goods were confiscated in Feb 2009 but after delay of 18 months, the goods were proffered (Dec 2010) to the JPC.
3.	Misc Indian goods	0.93	Feb 2010	0.85	0.36	27.07.12	The Deptt. went in auction in June 2012 after delay of eight months from non-acceptance of offer of NCCF in Nov 2011.

(ii) In Commissionerate of Customs (Port), Kolkata, due to failure of the JPC to fix a realistic price and non-acceptance of the highest bid in the third auction (₹ 28.50 lakh), ceramic goods were sold in the 8<sup>th</sup> auction at ₹ 14.41 lakh resulting in loss of revenue to the tune of ₹ 14.09 lakh (₹ 28.50 lakh - ₹ 14.41 lakh).

(iii) In Malda Customs Division under the Commissionerate of Customs (Preventive), West Bengal, incorrect fixation of the selling price of vest and T-shirts by the Asstt. Commissioner (SB) Kolkata on account of mis-classification of seized/confiscated garments under CTH 6107 instead of CTH 6109 resulted in loss of ₹ 8.24 lakh as compared to the JPC price of these garments under CTH 6109.

(iv) In Commissionerate of Customs, Delhi (ICD, PPG and TD), 1460 containers of imported items (fabric, shoes, electronic goods, motor cycle, hazardous food stuff, chemicals etc.) having short span of life and reduced value with passage of time were lying without disposal from 1990 to 2012. The value of goods was not intimated by the Department.

**(v)** In Commissionerate of Customs, (Export), Mumbai, the Department seized Pan Masala containing tobacco packed in 1500 bags worth ₹ 226.07 lakh on improper export. The case was adjudicated (December 2011) and the goods confiscated by imposing a lump-sum penalty of ₹ 10 lakh, which was less than three times the value of the goods in contravention of Section 114 (i) of the Customs Act, 1962.

**(vi)** In Commissionerate of Customs, (Export-ACC), Mumbai, four packages containing 5 ISCO Arriscope lenses worth ₹ 50 lakh were seized in 2003 and were sold (March 2013) at ₹ 3.10 lakh through e-auction, which resulted in loss of ₹ 46.90 lakh due to delay of 17 months in issue of the disposal order (January 2009) after the final order (July 2007) of CESTAT, 22 months delay in valuation from date of disposal order as well as 48 months in final disposal from the date of disposal order.

Paragraph 6.5 of Disposal Manual provides that the highest bid in the auction-cum-tender shall be accepted by the Chairman of the JPC if the bid is more than or equal to or close (not less than by five per cent to 10 per cent) to the fair price. Otherwise, the goods shall be put up for auction-cum-tender the second time. However, if the goods are not being sold in the first two auction-cum-tenders, the goods shall be sold at the highest bid obtained in the third auction-cum-tender subject to the highest bid being more than 80 percent of the fair price.

In this regard, Audit observed the following:

**a)** In Bangalore Commissionerate, in respect of the seized (March 2008) electronics goods having seizure value of ₹ 27.35 lakh, the JPC fixed the fair price of ₹ 7.73 lakh and the goods were put to e-auctions two times. In the second e-auction, the highest bid of ₹ 5.02 lakh was accepted by the department and goods were sold off. The highest bid of the second e-auction was less than 35 per cent from the JPC fair price and its acceptance was in contravention of the aforesaid provisions. Reasons for not recommending for the third e-auction and acceptance of the low bid were not furnished by the Commissionerate.

**b)** In Commissionerate of Customs (Zone -II) Mumbai, the goods (Four Toyota Camry cars) having assessable value of ₹ 27 lakh were confiscated (May 2010) and were valued at ₹ 16 lakh (May 2012) by the Government approved valuer and the first e-auction was held during May 2012. Further, till March 2013, the goods were e-auctioned 13 times, but the bid amount was not accepted by the Department and the goods were lying in the godown in contravention of the provisions of the circular which specifically states that the goods shall be sold in third auction-cum-tender. If any lot remains unsold after the third auction, the Commissioner should ascertain whether the JPC has good reasons for the goods remaining unsold. But no such action has been initiated by the Department so far.

c) In Commissionerate of Customs, Mumbai, 100 lots of different goods, mainly perishable goods (chemicals, machinery parts, PVC resin, yarn, plastic film and light fuel oil etc.) were not auctioned even after 25<sup>th</sup> auction and goods were lying with Department since 1997 (plastic film, machinery) to 2012 (electronic goods) for disposal.

Non-disposal of the aforesaid goods due to laxity of the department resulted in loss to the public exchequer, as goods are bound to deteriorate over the period and would fetch a lesser or nil price ultimately.

d) 3360 imported polished marble slabs worth ₹ 22.44 lakh were seized and confiscated (March 2006) at ICD, Dadri under NOIDA Commissionerate. The JPC fixed (17 January 2008) the fair price as ₹ 11.83 lakh, but it was re-fixed (3 December 2008) by the JPC as ₹ 24.19 lakh without recording any reasons.

It was further observed that e-auction was held three times (on 20 January 2009, 26 February 2009 and 12 March 2009 respectively) in which the rates came around the first JPC price but the Department did not accept the bidder-quoted price. Besides, e-auction dated 26 February 2009 was cancelled by the Department on 13 March 2009 i.e. after third e-auction and thereafter, no e-auction has been held till date and goods are still lying with the Department. The departmental inspection (December 2007) revealed that the marble would become yellowish over the period of time.

e) In four Commissionerates, there was a difference between the book value and actual sale proceeds resulting in under recovery of ₹ 151.51 lakh as tabulated in **Appendix 46**.

#### **7.17 Delivery of goods auctioned**

Disposal Manual of the Department prescribed three working days as Free Period beyond the last date of payment. The Commissioner at his discretion may allow further time for taking delivery but not exceeding 10 days. In case of any default in lifting of goods by the buyers within the prescribed free time limit, the goods may be lifted only after payment of Ground Rent by the buyer to the Principal (Commissioner).

Scrutiny of the records of the Customs Division, Gorakhpur, under Commissionerate, Customs (Preventive) Lucknow for the year 2012-13 revealed that a notice for public auction of 15 of vehicles lying at the Division's godown, was issued (January 13) by the Division Office after the JPC meetings held on 5 March 2012 and 24 September 2012. The tender for public auction was opened on 24 January 2013 and seven vehicles out of the 15 vehicles were lifted by the bidders on 7 February 2013 and one vehicle on 21 February 13 after delay of more than 10 days of the allowed free period for which no ground rent was recovered.

In Commissionerate of Customs, Preventive Mumbai, two lots of Ladies handbags were put in e-auction (December 2010) and the rates of ₹ 0.31 lakh and ₹ 12.22 lakh respectively were offered in e-auction by a bidder who deposited (January 2011) security money worth ₹ 3.13 lakh with the Department but did not lift the goods. Thus, the Department was required to forfeit the security amount and call for further e-auction but no such action was initiated.

In Commissionerate of Customs, Patna the Muzaffarpur Division did not recover any ground rent for delay of 20 to 200 days in lifting the goods after the issue of delivery order from successful bidders.

#### **7.18 Conclusion**

The system of disposal of seized and confiscated goods by the department was characterized by lack of proper maintenance of records, inadequate quality of documentation, non-projection of targets, delays in adjudication as well as non-compliance with the prescribed guidelines resulting in delays in disposal of the goods, blockage of storage space and loss to the public exchequer.

## **B. Import General manifest and Export General manifest**

### **7.19 Introduction**

Section 30 of the Customs Act, 1962 prescribes that the person-in-charge of a vessel or an aircraft carrying imported goods or his agent as per section 148 of the Act shall deliver to the proper officer, an IGM in the prescribed form prior to the arrival of a vessel/aircraft at a custom station or 12 hours after arrival of a vehicle. The time limit for filing the manifest is extendable on sufficient cause on proper officer's satisfaction failing which person in-charge is liable to penalty not exceeding ₹ 50,000. Import manifest or report is permitted to be amended or supplemented, if it is held that it is incorrect or incomplete but with no fraudulent intention. No order could be given to the master of a vessel for unloading any imported goods until an import manifest has been delivered or the proper officer is satisfied that there was sufficient cause for not delivering it under section 31.

Export General Manifest (EGM) is a similar declaration to be filed under section 41 by the steamer agents on behalf of the master of the vessel/aircraft before sailing of the vessel. This would contain complete details of all cargo loaded on board as well as carried as bottom cargo, destination wise list of crew members with details of their personal property, ships stores etc.

The Central Board of Excise and Customs (Board) have made regulations under section 157 read with section 30 of the Import Manifest (Aircraft) Regulations, 1976 / Import Manifest (Vessels) Regulations, 1971, for filing import manifests and prescribed the forms in which they should be filed. Accordingly, import manifests are to be filed in duplicate, covering all the goods carried in the aircraft/vessel. The manifest in respect of a vessel is to consist of:

(i) an application for entry inwards—Form I (ii) a general declaration—Form II (iii) a cargo declaration—Form III (iv) a vessels stores list—Form IV (v) a list in Form V of property (private) in the possession of the master, officers and crew.

Mis-declaration in the aforesaid documents attracts penal provisions under Sections 111 (f) and 112 of the Customs Act, 1962.

Audit test checked the IGM/EGM filed in 14 Custom Houses under 11 Customs Commissionerate during 1 April 2010 to 31 March 2013 (**Appendix 47**).

### **7.20 Audit Findings**

#### **7.20.1 Non receipt/Delayed receipt of IGM from Import (Noting) Department**

As per Paragraph 3 (Appendix A, Sl.No.1) of the Manifest Clearance Department (MCD) manual, the IGMs have to be received in the MCD from the Import Department, within 60 days of the entry inwards of the vessel. In order to ensure that all IGMs are received punctually, the MCD shall, in terms of Paragraph 5 of the MCD manual, maintain a register of Receipt of Import

General Manifests' and enter all the manifests therein in the order of rotation number, with the date of receipt mentioned against the respective entries

Test check of records in four custom houses at Kolkata, Mangalore, Erwar & Bangalore revealed that out of 19366 IGMs filed in Import Department through EDI system during the period from April 2010 to March 2013, 15266 IGMs (79 percent) were not received by MCD (**Appendix 48**).

The Commissionerate of Customs (I&), New Delhi intimated (June 2013) that the information on receipt of the IGMs were not available as MCD has become defunct after introduction of EDI system.

In Andhra Custom House delay upto 47 days (beyond prescribed period of time limit of 60 days) in sending 1347 IGMs to MCD ranging was noticed. The Department in their reply (June 2013) stated that necessary action has been taken for correction of the said procedural lapses.

In Andhra Custom House discrepancy was also noticed in the number of IGMs sent by Import Noting Department to MCD and number of IGMs received as per records of MCD during 2010-11 to 2012-13. Audit sought reconciliation of above discrepancy from the concerned sections. In reply, Import Noting section confirmed its figures, whereas the MCD section stated that the difference in figures was attributed to the receipt of IGMs by the MCD after two months (**Appendix 49**).

Audit maintained that the observations were indicative of lack of co-ordination/effective follow up action between the two departments. The department accepted (December 2013) the observation and assured for precaution in future. Ministry's reply was awaited (March 2014).

#### **7.20.2 Non-levy of penalty for late filing of IGMs**

Under Section 30(1) of the Customs Act, 1962, the import manifest is required to be submitted prior to arrival of a vessel or aircraft. If the import manifest is not delivered to the proper officer within the prescribed time and if the proper officer is satisfied that there was no sufficient cause for such delay, person-in-charge or any person acting as an agent is liable to penalty not exceeding ₹ 50,000.

Audit scrutiny revealed late filing of 1992 IGMs in five custom houses at Kolkata, Hyderabad, Ahmedabad, Mangalore and Bangalore for a period ranging from 1 to 23 days after arrival of aircraft/vessel for which penalty leviable to the extent of ₹ 9.96 crore was not imposed (**Appendix 50**).

Custom House, Air Cargo Complex (ACC), Ahmedabad informed (September 2013) that no penalty was leviable in respect of 178 IGMs as the proper authority was satisfied with the reasons for late submission of IGM. However, the department did not furnish the cause for delay in IGM filing based on which they decided not to impose penalty.



Commissionerate of Customs (Airport), Kolkata stated (July 2013) that action in this regard has been initiated.

Hyderabad-II Commissionerate stated (July 2013) that delay may be due to upgradation of EDI from 1.0 version to 1.5 during August to September 2011. However, audit noticed that there was delay even after upgradation of EDI beyond September 2011.

Commissionerate of Custom, Mangalore replied (July 2013) that the date of berthing of the vessel has to be considered instead of date of arrival. Reply is to be viewed in the context of the fact that IGM is to be filed before arrival of the vessel as per Section 30 (1) of the Custom Act. Ministry's reply was awaited (March 2014).

### **7.20.3 Non levy of penalty for short landed goods under Section 116 of the Customs Act**

As per paragraph 70 of the MCD Manual prompt and expeditious steps need to be taken by the MCD against Steamer Agents for imposition and realization of penalty, in respect of short landed goods which are not accounted for by them, under section 116. Accordingly, as per Section 116 of Customs Act 1962, the person in charge of the vessel/conveyance or his agent is liable to penalty not exceeding twice the amount of duty that would have been chargeable on the goods not unloaded or the deficient goods, as the case may be, had such goods been imported.

Test check of records in four Customs Houses at Kolkata, Ahmedabad, Erwar and Tughlakabad ICD revealed short landing of goods in 82 cases. Penalty amounting to ₹ 37.88 lakh was ascertained in respect of 18 cases of short landed goods whereas same was not ascertainable in respect of remaining 64 short landing cases due to non availability of duty figure (**Appendix 51**).

Custom House, Air Cargo Complex (ACC), Ahmedabad stated that short landed goods under 6 IGMs were received on a later date and BE was filed for full quantity for which full duty was paid. Hence, Government's revenue was fully protected and no penal action was warranted.

Department's reply may be viewed in the context of the fact that there exist penal provision in Custom Act for short landed goods only which could not be made good by importing the remaining quantity of short landed goods on a later date.

Kolkata Port Commissionerate reported (July 2013/ January 2014) that out of 74 cases, penalty was realized in 6 cases, in 5 cases penalty was imposed, Out Turn Reports (OTRs) have been received in 14 cases and 9 cases are under process (**Appendix 52**).

This is indicative of non-compliance to the provisions of MCD Manual and lack of co-ordination between the monitoring Departments. Ministry's reply was awaited (March 2014).

**7.20.4 Non receipt/delayed receipt of Out Turn Reports (OTRs)/Cargo Segregation Reports (CSRs) from Port Authority/Airport Authority**

As per Paragraph 3 (Appendix A, Sl. No. XI) of the MCD manual, OTR/ Cargo Segregation Reports are to be received in MCD from the Port Trust authorities/Airport authorities in the first week of second month from the date of arrival of the vessel. On receipt of the OTR, the MCD is to issue Letter of Calls to the steamer agents on account of short landed goods. MCD is to pursue the supply of OTR from the Port Trust authorities so that correlating the goods in the IGM and OTRs may not be abnormally delayed and to assure that possibility of non-imposition of penalty for short landing of goods is ruled out.

In Kolkata Custom House under Kolkata (Port) Commissionerate, out of 7378 IGMs filed during the year 2010-11 to 2012-13, OTR in respect of 6111 IGMs were not received in MCD from Port authorities for which the penal action leviable for short landing of imported goods, if any, could not be ascertained in audit.

Custom House, Kolkata (Port) intimated (January 2014) that 588 nos of 'Nil' OTR and 14 nos of short landed OTR were received from Port authority between August and December 2013 against 6111 objected IGMS. However, action taken by the department against short landed OTR was not furnished (March 2014).

Similarly, in respect of Kolkata (Airport) Commissionerate, it was noticed from the statement of IGM filed that 22818 IGMs were filed but the department could not produce any Cargo Segregation Report (CSR) in respect of these IGMs.

In Mahakhatnam Port, OTRs in 64 cases were received in MCD after a delay of 6 to 582 days from the date of expiry of 60 days from the arrival of the vessel.

Custom House Mahakhatnam (Port) accepted the observation.

In Custom House Andhra, under Ktch Commissionerate, OTRs in respect of IGMs were neither received nor pursued by the MCD with the Port authority during FY 2010-11 to 2012-13.

Department accepted (December 2013) the observation and assured for future compliance.

In the Air Cargo Complex, RGI Airport under Hyderabad-II Commissionerate, 5899 CSRs were not received against 25820 IGMs filed during FY 2010-11 to 2012-13. The department replied (July 2013) that the difference was due to non-submission of CSRs by custodians in respect of aircrafts where no cargo was landed.

The reply is not in consonance with the provisions of MCD Manual whereby the custodians are required to submit CSRs in respect of each IGM to ensure proper tracking of imported goods. Ministry's reply was awaited (March 2014).

#### **7.20.5 Non issue or delays in issue of letters of calls**

As per Paragraphs 62, 63, 64 and 65 of the Manual of MCD, the Manifest Clearance Department after scrutiny of the manifest ascertains the deficiency in the unloading of the imported goods, by reconciliation of the manifest with the OTRS, submitted by the Port Trust authority and in case of short landing of imported goods identified, issue Letter of Call (LOC) calling for explanation for the short-landed goods, within 120 days of arrival of the vessel. Delays in issue of LOCs could affect the recovery of penalty u/s 116 from the agent concerned.

In 17 cases at Makhapatnam Custom House and Mangalore Custom House delays ranging from 26 days to 235 days beyond 120 days were noticed in issuing of LOCs (**Appendix 53**).

Custom House Makhapatnam (Port) accepted the observation. Ministry's reply was awaited (March 2014).

#### **7.20.6 Adjudication and levy of penalty u/s 116 of the Customs Act, 1962**

Chapter V of the MCD manual deals with adjudication and levy of penalty under Section 116 of the Customs Act. The MCD in custom house is to take timely and expeditious steps against steamer agents for imposition and realization of penalty against short landed goods as per section 116 of Custom Act. According to Para 86 (a) of the MCD manual, the penalties imposed by the adjudicating authority are required to be realized expeditiously and effort should be made to recover outstanding amounts of penalties. In case of long outstanding penalty, the provision of section 142 should be invoked to recover penalties.

In Kolkata Custom House under Kolkata Port Commissionerate audit noticed that in 5 cases de-novo adjudication were not taken up and in 3 cases the department did not complete adjudicating formalities for imposition of penalty of ₹ 30.81 lakh (**Appendix 54**).

Department intimated (December 2013) that 3 cases involving penalty of ₹ 24.09 lakh were adjudicated, out of which one case involving penalty of ₹ 23.32 lakh was dropped, whereas two cases were confirmed with realization of ₹ 0.20 lakh in one case.

In another 3 cases at Makhapatnam Custom House, penalty aggregating to ₹ 28.17 lakh was levied but the same remained unrealized as the steamer agents had preferred appeal against the levy of penalty (**Appendix 55**).

Failure of the Department to pursue the cases vigorously resulted in undue financial accommodation to importers. Ministry's reply was awaited (March 2014).

#### **7.20.7 Uncleared/unclaimed imported cargo lying with the custodian after unloading**

Under Section 48 of the Customs Act, 1962, if imported goods are not cleared for home consumption, warehousing or transshipment within 30 days of their landing or within such extended time as the Assistant Commissioner of Customs may allow or if the title to any imported goods is relinquished, such goods may after notice to the importer and with the permission of the proper officer be sold by the person having custody thereof. The duty involved should be given to the customs from the realised sale proceeds, as per provision of Section 150 (2) of Customs Act, 1962.

Test check of records at seven custom houses revealed that 8727 imported consignments were uncleared /unclaimed as on March, 2013 which led to non-closure of at least 2348 IGMs. Further, this also led to blockage of revenue which could be ascertained to the extent of ₹ 21.89 crore in 246 consignments where Bill of Entry was filed. However, the extent of blockage of revenue due to non-disposal of uncleared goods in rest of the cases could not be ascertained as the department did not furnish the assessable value of the uncleared goods **(Appendix 56)**.

#### **7.20.8 Non-levy of Penalty on un-manifested / improperly imported goods**

According to section 32 of the Customs Act, 1962, imported goods required to be mentioned in an import manifest shall not, except with the permission of the proper officer, be unloaded at any customs station unless they are specified in such manifest for being unloaded at that customs station. Any dutiable or prohibited goods required to be mentioned in an import manifest which are not so mentioned and brought from a place outside India shall be liable to confiscation under Section 111 (f) of the Act *ibid*. In addition, as per section 112 of the Act, the person involved in any act for which the goods were liable for confiscation under section 111, shall be liable, in the case of dutiable goods, other than prohibited goods, to a penalty not exceeding the duty sought to be evaded on such goods or five thousand rupees, whichever is greater.

Test check of records at Air Cargo Complex, Ahmedabad revealed that one un-manifested cargo was received with cargo of IGM No.304195 dated 22 July 2012 and was subsequently cleared vide BE No.7421149 dated 18 July 2012 on payment of duty of ₹ 3.10 lakh under IGM No.305809 dated 26 July 2012, although it did not cover the imported goods. However, the penalty of ₹ 3.10 lakh leviable in this un-manifested case was not imposed.

Custom House Air cargo Complex, Ahmedabad furnishing EDI screenshot stated (September 2013) that both Master Airways Bill (MAB) (No 61860415191) and

BE (No 7421191 dated 18 July 2012) were reflecting IGM No (305809 dated 26 July 2012) which indicates that the goods under MAMW are contained in IGM (No 305809).

Department reply is to be viewed in the context of the fact that IGM report (Hard Copy) of M/s 'Singapore Airlines Cargo PTE Ltd' for IGM No 304195 dated 22 July 2012 clearly showed the MAMW No 6186051519 as Cargo received unmanifested and the list of AMW annexed with IGM No 305809 dated 26 July 2012 does not contain the above MAMW number. Ministry's reply was awaited (March 2014).

In Custom House Mangalore, 22 IGMs were amended to include un-manifested imported goods without adjudication and levy of Penalty, as required under Circular No.13/2005-Cus dated 11 March 2005 (**Appendix 57**).

Department stated (July 2013) that as per Circular No. 44/2005-Cus dated 24 November 2005, the adjudication is required only in case of major amendment involving fraudulent intention or substantial revenue implication.

Audit is of the view that as the amendment in the quantity of goods already declared is covered under major amendments category specified in Circular No.13/2005-Cus, all such cases need to be adjudicated before amendment. Ministry's reply was awaited (March 2014).

In Air Cargo Complex, Kolkata, it was noticed that 9308 packages were landed excess during 2010-11 to 2012-13, but no penal action was found to be initiated by the department.

#### **7.20.9 Non closure of IGMs**

Chapter VI of MCD manual provides a time limit of 10 months (from the date of entry of the vessel) for closure of IGMs with the approval of Assistant/Deputy Commissioner of Customs (MCD) when all cargo imported under an IGM have been cleared on payment of duty or free of duty according to the notifications/orders in force, or on satisfactory accountal by way of transshipment permit or otherwise. If for any reason a few of the imports covered by an IGM are not cleared for long time, the manifest is closed after transferring the outstanding items to the "pending register/disposal register" for watching the disposal.

Year wise details of IGMs filed in EDI and their outstanding position during 2001-11 to 2012-13 in respect of 8 Custom Houses were as under:-

Year	IGMs filed	IGMs closed	IGMs pending
2010-11	35521	13089	22432
2011-12	33688	13348	20340
2012-13*	32453	12759	19694

Some of the cases mentioned against 2012-13 may still have some time for closure as prescribed time limit is 10 months.

The statistics from eight Custom Houses revealed that the closure of IGMs did not keep pace with their receipt resulting in increase in the number of pendency. The high pendency of IGMs showed that the purpose of the laid down procedure for timely closure of IGM had not been fulfilled which in turn increases the possibility of pilferage, deterioration, damage etc., and consequential loss of revenue to the customs department.

Some illustrative cases are mentioned below:-

(a) Scrutiny revealed that none of the 7378 IGMs filed in Kolkata Custom House under Kolkata (Port) Commissionerate and 22,818 IGMs filed in Air Cargo Complex, NSCBI Airport under Kolkata (Airport) Commissionerate during the financial year 2010-11, 2011-12, 2012-13 were found closed (**Appendix 58**) (Source: EDI Import data received from the department). Kolkata Port Commissionerate stated (July 2013) that EDI system requires upgradation as there is no provision in EDI system to close the IGM at present.

(b) The Commissionerate of Customs (I&), New Delhi intimated (June 2013) that the information on closure of the IGMs were not available as MCD has become defunct after introduction of EDI system.

(c) Custom House, Kandla stated (December 2013) that 2343 nos. of IGMs were pending for closure as on 31 March 2013.

Ministry's reply was awaited (March 2014).

#### **7.20.10 Other cases of operational malfunction**

##### **i. Absence of Inward Date against IGMs**

On arrival of the vessel, the shipping line needs to approach the Preventing Officer for granting Entry Inwards. Section 31 of the Customs Act, 1962 requires that the Master of the vessel shall not permit unloading of any imported goods until an order is given by the proper Officer granting Entry Inwards to such vessel. Normally, Entry Inwards is granted only after the IGM is delivered. The date of Entry Inward is crucial for determining the rate of duty in case of filing of prior Bill of Entry, as provided in Section 15 of the Customs Act, 1962. However, unloading of items like accompanied baggage, mail bags, animals, perishables and hazardous goods are exempt from this stipulation.

Test check of EDI records of Kolkata (Port) Commissionerate revealed that inward date was not mentioned in 318 IGMs out of 7378 IGMs filed in Kolkata Custom House during 2010-11, 2011-12 and 2012-13.

Similar test check of EDI records of Kolkata (Airport) Commissionerate revealed that inward date was not mentioned against 5906 IGMs out of 22818 IGMs filed at Air Cargo Complex, NSCBI Airport during 2010-11, 2011-12, 2012-13.

Commissionerate of Customs (Airport) Kolkata stated (July 2013) that where passenger flight is not carrying any cargo, question of submission of inward date

does not arise. Further, when cargo is not cleared through system, inward dates are not submitted in those cases.

The Department reply is to be viewed in the context of the fact that inward date was absent even against 1582 IGMs where flight was carrying cargo.

The Commissionerate of Customs (Port) Kolkata intimated (July 2013) that the lapse was on the part of AC/DC, NSD, Budge Budge and were asked to feed the inward date in the system for the entire vessel irrespective of their status. Ministry's reply was awaited (March 2014).

**ii. Non-accountal of manually filed Bills of Entry and Bills of Entry particulars of clearances made by SEZ units against IGM in the EDI.**

MCD Manual lays down the procedure for closing of IGMs by posting Bills of Entry against the IGM lines of the respective IGM and placing the respective Bills of Entry, Transshipment Permits in the Ship's file. The purpose of accounting of imports can also be achieved electronically by ensuring that all the clearances of imported goods are reflected in the EDI, against the respective lines of the IGMs.

Test check of IGM status in EDI at ACC, RGI Airport, under Hyderabad-II Commissionerate, revealed that clearances of imported goods through Manual Bills of Entry in 50 cases and clearance of imported goods by SEZ units in 20 cases were not reflected/fed against the respective lines of the IGM and status was shown as 'Bills of Entry not filed'. Similar cases were also noted in Makhapatnam Customs Commissionerate. Thus, due to non-accountal of such clearances in the EDI, the IGMs remain pending for closure for indefinite period although imports have been completed, resulting in increase in pendency of IGM closure.

Hyderabad-II Commissionerate stated (June 2013) that action has been initiated for uploading the data of manual Bills of Entry but expressed inability to upload the SEZ import data as the same is assessed at the respective SEZ.

The Department's contention is misplaced because in SEZ clearances also the customs authority at Port/Airport can enter the details of the pre assessed Bill of Entry against which the goods were cleared from the Port/Airport to SEZ unit enabling timely closure of IGMs.

**iii. Deficiency in maintenance of records and monitoring mechanism**

Audit attempted to evaluate operations and check functioning of controls in a bid to identify weaknesses/strength of monitoring mechanism prescribed in MCD manual. However, shortcomings were noticed in the following areas:-

**iv. Inadequate maintenance of records**

Audit scrutiny revealed that records relating to receipt of IGM in MCD section from Import (Noting) Department were not adequately maintained. Persuasion in case of pending receipts of IGMs from Import Noting Department was also not

being done on a regular basis. After introduction of EDI system, MCD should not have waited for hard copy from Import (Noting) Department in respect of IGM filed through EDI for further action, as copy of the same may be obtained from EDI system itself. Records of uncleared/unclaimed imported cargo lying with the custodian after unloading were also not available with customs. Ministry's reply was awaited (March 2014).

**v. Non-adherence to the provisions of MCD Manual and need for its revision**

Audit observed that in almost all MCD the practice of opening ship's files IGM wise and their closure was not being followed scrupulously leaving the cargo landed at port/airport from a vessel un-accounted for years together. Consequently, the provision of MCD manual is not being followed, nor the department issued any fresh instructions in this regard after introduction of the EDI system. It was also felt that after introduction of the EDI system, various provisions of MCD Manual became redundant as MCD intervention was not required at different steps, provided a provision is made in the EDI system for closure of IGM. In Commissioner of Customs (I&), New Delhi, MCD has almost become defunct after introduction of EDI, as the requirement of opening a Ship file against each IGM and their timely closure to ensure realization of all government revenue on imported goods is not being followed up. In view of this, provisions of the MCD Manual need to be reviewed and revised. Ministry's reply was awaited (March 2014).

**7.21 Insufficient monitoring controls in EDI**

ICES application of Customs introduced in 1998, provided for the facility to file IGM and EGM electronically but till date the application has failed to develop software for closure of IGM electronically. System has also not been developed to take care of/feed the data of manual clearances in the EDI data to enable timely closure of IGMs. Ministry's reply was awaited (March 2014).

**7.22 Out-Turn Reports (OTRs) from Port Trust authority**

In Kolkata (Port) Commissionerate, audit noticed that sending of OTRs by Port Trust authority to Customs was not being monitored centrally, as OTRs were directly sent to MCD from different berths at the Kolkata Port causing considerable delay in locating the IGMs against which OTR has not been issued. This, in turn, delays issue of letter of calls and imposition of penalty to the Steamer/shipping agents in case of reported short landings. Moreover, there is no system for attaching tally-sheets with OTRs on a regular basis in case of short/excess landed goods. As a result, such OTRs were not accepted as a valid document for imposition of penalty against concerned steamer agents for short-landing of goods either at adjudication or appellate authority level.



Custom House Kolkata (Port) intimated (January 2014) that efficiency in maintenance of records have already been made by the staff of MCD. Ministry's reply was awaited (March 2014).

### **7.23 Conclusion**

The test audit of 14 Custom Houses under 11 Customs Commissionerate has revealed instances of violations of rules and procedures framed to give effect to the provisions in the Customs Act regarding filing/closure of IGMs.

Audit also noticed departure from the provisions of MCD manual in receipt of IGMs, in opening of Ship files, issue of LOC, timely receipt of OTR, non levy of penalty for short landed goods or clearance of un-manifested goods.

Audit found that the procedure for filing and closure of IGMs was not being scrupulously followed as per the codal provisions which may weaken the monitoring control over landing/movement of goods and collection of assessed duty/penalty.

## C. Public and private bonded warehouses

### 7.24. Introduction

Warehousing is a facility allowed to importers to defer payment of duty on imported goods for a period permissible under the Customs Act, 1962 till their actual clearance on payment of appropriate duty to other warehouses or their supply to foreign going vessel or aircraft as provision or store. The statutory provisions of warehousing are contained in sections 57 to 73 of the Customs Act, 1962.

Records for three years from 2010-2011 to 2012-2013 maintained in Custom houses relating to 50 public and 76 private bonded warehouses (**Appendix 59**) appointed/licenced by Customs and Central Excise Department in 20 Commissionerates (**Appendix 60**) were examined during April 2013 to June 2013.

### 7.25 Audit findings are in the succeeding paragraphs:

#### 7.25.1 Excess holding of goods in warehouse

Public bonded warehouses are appointed under section 57 while private bonded warehouses are licenced under section 58 of Customs Act, 1962. At the time of grant or renewal of a licence, the maximum stock in terms of value of goods and duty that can be stored in the warehouse are specified in the licence by the Customs department, wherein it is stipulated that the value of goods stocked in the warehouse and duty thereon should not at any point of time exceed the ceilings specified.

Test check revealed that in nine cases of four<sup>28</sup> Commissionerates excess stock amounting to ₹ 270.69 crore was held during the period 2010-13.

Illustrative cases are narrated below:

(a) Records of M/s PSL Ltd., a Private bonded warehouse under Ahmedabad Commissionerate, revealed that maximum value of goods permitted for warehousing was Rs.20 crore. However, goods amounting to 91.28 crore were warehoused.

(b) In five warehouses under Tuticorin Commissionerate, the stock held was excess to the extent of ₹ 179.30 crore.

#### 7.25.2 Insufficient insurance coverage of warehoused goods

According to guidelines issued by Ministry of Finance, Department of Revenue vide their Circular No.99/95 dated 20 September 1995 in case of Private warehouses, warehoused goods are to be insured by the warehouse keeper against theft, pilferage, fire, accidents, other natural calamities, risk against rioting etc. at least for a value equal to the customs duty by a comprehensive

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<sup>28</sup> Tuticorin - 5 cases; ₹ 179.30 crore, Mundra-1case ₹ 72.41 crore, IGI Airport (New Delhi)- 1 case; ₹ 4.98 crore & JNCH, Mumbai – 2 cases; ₹ 14 crore}

insurance policy drawn in favour of the Commissioner of Customs. Similar guidelines for safeguarding revenue in respect of Public warehouses were not in existence except for a clause in the appointment/renewal of licence to the effect that the licence holder would be solely responsible for the safe custody of the bonded goods.

Audit scrutiny revealed that in 15 warehouses (5 public and 10 private) in five Commissionerates (Mumbai NCH, Mumbai JNCH, Pune, Jaipur and Chennai) there had been violations in this regard. Insurance policies of only ₹ 269.25 crore were taken and were woefully insufficient to safeguard duty amount of ₹ 819.96 crore. Insurance policy involving duty of ₹ 2924.92 crore in case of seven Public (Pune-1, Chennai-5, Jaipur-1) and 17 private warehouse (Chennai- 12, Gwalior-2, Pune- 3) of three Commissionerates (Chennai, Jaipur and Pune) was not drawn in favour of Commissioner of Customs but in favour of warehouse keepers.

Illustrative cases are narrated below:-

(a) Audit scrutiny revealed that in respect of Public / Private bonded warehouses licenced by the Chennai Commissionerate the comprehensive insurance policy taken by the warehouse-keepers for the insured amount of ₹ 2824.82 crore was not drawn in favour of the Commissioner of Customs. Instead the same was insured in their favour or in some other insurer's name which is contrary to the aforesaid provisions. This was brought to the notice of the department/Ministry in June /December 2013; their reply was awaited (March 2014).

(b) In a Public bonded warehouse under Mumbai-I Commissionerate the customs duty on stock held in the warehouse as on 31st March 2013 was ₹ 591.88 lakh against the insured value of ₹ 165.10 lakh resulting in inadequate insurance coverage and consequent risk of loss of duty. This was pointed out to the department/Ministry in May /December 2013. Ministry's reply was awaited (March 2014).

### **7.25.3 Loss due to theft, fire, shortage etc.**

Test check of records of M/s Central Warehousing Corporation, Wshi under Mumbai- I Commissionerate revealed that in Public bonded warehouse, due to inadequate provisions for safeguard by the warehouse keepers according to aforesaid instructions (only 3 Home guards and 5 watchmen were deployed), theft of 250 meter of cable wire occurred leading to loss of revenue to the tune of ₹ 2 lakh and loss of ₹ 15 lakh occurred due to fire in which 6525 sulphur bags were destroyed.

### **7.25.4 Irregular/non- extension of warehousing period**

According to section 61 of the Customs Act, 1962, the warehousing period prescribed is one year initially subject to its being extended by the Commissioner

of Customs up to six months, and by the Chief Commissioner of Customs for a further period as he may deem fit. The application for such extension is to be made in the prescribed format at least 15 days prior to the expiry of warehousing period, but there is no time limit for extension prescribed for by the Chief Commissioner.

- i. Audit scrutiny of Central Warehousing Corporation (Mumbai) revealed that M/s SMS Central System Pvt. Ltd imported "Xray system" amounting to ₹ 6.66 crore from USA and had entered into Bonded Warehouse on 16 December 2011. Despite expiry of bond period on 11 December 2012, the bond was neither further extended nor the goods were cleared for home consumption. No records for extension of the bond were available. This resulted in loss of revenue to the extent of ₹ 179.86 lakh (duty) and ₹ 32.37 lakh interest thereon.
- ii. M/s Flemingo DFS Ltd was granted extension for first time up to 7 September 2011 (file no. S/13-22/11-12 dated 31 May 2011). Further, on the expiry of the said bond a second extension was granted till 6 December 2011 (file no. S/13-22/11-12 dated 14 November 2011). Audit noticed that goods (11 pieces of Amarula Cream) remaining in the stock were sold on 7 December 2011 i.e. after expiry of the warehousing period. No certificate regarding extension of the bond was available.

#### **7.25.5 Non submission/deficient warehousing bonds**

According to section 59 of the Customs Act, 1962, the importer warehousing the goods is required to execute a bond binding himself to a sum equal to twice the amount of the duty assessed on such goods. Further, according to provisions of section 73 of the Act, these bonds are to be cancelled when all amounts due have been paid or the goods are duly accounted for.

- i. Audit scrutiny revealed that in 289 cases under Mumbai Commissionerate bonds for ₹ 446.56 crores only were executed against the required bonds at twice the amount of duty amounting to ₹ 553.10 crore.
- ii. Audit of records of Central Warehousing Corporation of M/s Jaquar and Company Pvt. Ltd. Unit –II Bhiwadi, and M/s Lloyd Electric & Engineering Ltd. 146 (B&) Bhiwadi showed that they had executed bond for ₹ 20 crores whereas the bond had to be executed for a sum equal to twice the amount of duty assessed on such goods amounting to ₹ 70.12 crores.
- iii. M/s Bilcare Limited (Pune Commissionerate) had warehoused goods executing three Bonds vide Nos. 2000203249, 2000221353, 2000242635 dated 12 December 2011. The importer had ex-bonded all the goods from the warehouse but bonds were not cancelled resulting in non compliance of provisions of section 73 by the Customs Department.

When pointed out by Audit (June 2013), the department stated (June 2013) that the bonds have been cancelled.

#### **7.25.6 Non-levy/short levy of duty on clearance of warehoused goods for home consumption**

As per Section 15 of the Customs Act, 1962 the rate of Customs duty applicable is the rate on the date on which the goods are actually removed from the warehouse. However, when the warehousing period or the extended warehousing period has expired, the duty payable was with respect to the date when the warehousing/extended warehousing period expired and not the actual date of removal. In so far as value for assessment of duty for warehoused goods is concerned, it is not required to be re-determined and it is the original value as determined at the time of filing of Into-Bond Bill of Entry and assessments before warehousing.

(i) Audit scrutiny revealed that in case of M/s ~~Wd~~ power Energy Pvt.Ltd under Chennai Air commissionerate the duty and interest at the time of ex-bonding was short collected to the tune of ₹ 0.25 crore **(Appendix 61)**.

(ii) Similarly in case of ex-bond clearance made by M/s. Stylish Cement Products Pvt. Ltd at Bengal Bonded ~~W~~arehouse Association (BB~~W~~) warehouse at ~~K~~olkata, the importer paid the duty prevalent on the date of clearance of goods (after expiry of the bonding period) instead of payment of duty at the rate applicable on the date of expiry of bonding period i.e. deemed date of removal from the warehouse, which was in contravention to the circular no. 31/97 Cus. This resulted in short levy of duty and interest amounting to ₹ 6.44 lakh **(Appendix 61)**.

#### **7.25.7 Non levy/short levy of interest on clearance of warehoused goods**

If the warehoused goods remain in the warehouse beyond the initial warehousing period on account of extension or otherwise, interest is payable on the duty at the time of their clearance from the warehouse.

(i) Audit scrutiny of records of ~~CW~~ ~~K~~lamboli & others in JNCH Commissionerate, Mumbai in respect of M/s Cipla Limited & others revealed that the interest to the tune of ₹ 1.07 crore was not levied/short levied on clearance after the initial warehousing period of 90 days.

(ii) Similarly, scrutiny of records of M/s Hazel Mercantile Ltd. ~~K~~andla, a Private bonded warehouse in Ahmedabad, and M/s Central ~~W~~arehouse Corporation (CFS) (Adalaj), Ahmedabad, a Public bonded warehouse for the period of 2010-11 to 2012-13 revealed that the warehoused interest amounting to ₹ 6 lakh was short levied/non levied in case of clearance of goods after the initial period of 90 days **(Appendix 62)**.

Further, analysis of ICES 1.5 all india import data for the period April 2011 to March 2013 also revealed incorrect calculation of warehousing interest by ICES 1.5 application.

#### **7.25.8 Irregular clearance of warehoused goods**

Central Board's of Excise and Customs Circular No. 473/291/88-cus W, dated 3 October 1988 read with Para 19.4 of chapter 9 of Customs manual prescribed the procedure for clearance of warehoused goods. As per its provisions, Bill of Entry in which the total value of goods exceeds ₹ 1 lakh should be invariably countersigned by the AC/DC in charge of the bonded warehouse. Further, all ex-bond Bills of Entry in respect of which there is any re-assessment done by the Superintendent should be countersigned by the AC/DC.

(i) Audit scrutiny of records of the Private Bonded warehouse of M/s J.K Tyre & Industries Ltd. Ankroli, Rajsamand, Rajasthan for the period of 2010-13, revealed that ex-bond Bills of entry involving assessable value exceeding ₹ 1 lakh were cleared from the Bonded warehouse on assessment by the Superintendent, without being counter signed by the AC/DC in charge. Thus, clearance of warehoused goods exceeding ₹ 1 lakh without countersignature of AC/DC having value of ₹ 6.92 crore involving duty of ₹ 1.62 crore was irregular.

(ii) M/s Bil Care Limited (Pune Commissionerate) had imported PVA Films and warehoused it under bond vide B/E No. 3602573 dtd. 25 May 2011 in ICD Dighi. In the month of March 2012, 9 pellets of PVA Films were cleared (ex-bond B/E vide no. 6351502 dtd. 24 May 2012) leaving 3 pellets warehoused. Due to some error in the entry a certificate of amendment was issued in June 2012 after a lapse of one month from the date of final removal of goods (May 2012). The goods were removed with B/E No which never existed and were neither regularised by proper amendment.

#### **7.25.9 Time expired uncleared goods awaiting disposal action**

If the warehoused goods are not removed within the prescribed period, the proper officer has to demand full amount of duty chargeable on account of such goods together with all penalty, rent, interest and other charges payable in respect of the goods and the importer shall pay the demand and clear the goods (Section 61 (b) of the Customs Act, 1962). In case of failure to pay the amount demanded, the importer is liable for recovery action under section 142. Besides, the Assistant/Deputy Commissioner of Customs is required to immediately proceed to detain the goods and take action for recovery of duty by auctioning the goods according to the provisions of Section 72 of the Customs Act, 1962.

Test check of records in 11 Commissionerates (Hyderabad -II, Indore, NCH-Delhi, Tuticorin, Chennai (Sea), Chennai (Air), JNCH, Mumbai, NCH-Mumbai, Pune, Kolkata Custom House and Bangalore-Krwar) revealed that 6491 cases of time expired warehoused goods amounting to ₹ 1056.47 crore were awaiting disposal action for a period ranging from one to more than 20 years. With the passage of

time the goods were losing their commercial value and a considerable amount of revenue had also been blocked in the form of customs duty and interest thereon **(Appendix 63)**.

#### 7.25.10 Age wise analysis of un-disposed goods

Of the aforesaid time expired goods, age-wise analysis of 6491 cases involving revenue of ₹ 105646 crore awaiting disposal action in 11 Commissionerates is tabulated as under:-

(Cr. ₹)			
Years	No. of cases	Assessable value of the goods	Duty and interest involved
More than 20	653	1964	2404
Between 10 & 20	2382	30777	13975
Between 5 & 10	901	3554	1947
Between 1 & 5	2555	69351	6542
Total	6491	105646	24868

#### Illustrated cases are discussed below:-

(i) Audit scrutiny of records of C.W. Public Bonded Warehouse Pithampur, Dist. Dhar (M.P.), revealed that six time barred bonded goods amounting to total duty of ₹ 35.51 lakh against assessable value of ₹ 31.92 lakh were pending for disposal since March 1990.

(ii) In 261 cases goods warehoused in Public and Private bonded warehouses under Chennai Customs Commissionerate, involving a total duty of ₹ 37.41 crore were awaiting disposal for a period ranging up to 339 months from the date of expiry of warehousing period.

(iii) In C.W. Vashi under NCH Commissionerate (Mumbai) seven consignments of Motor vehicles valued at ₹ 0.53 crore imported (November 2011) were not cleared after the expiry of warehouse period and expiry of bond. Customs duty involved in these cases amounting to ₹ 340.24 crore and interest amounting to ₹ 33.37 lakhs was recoverable.

#### 7.25.11 Loss of revenue due to delay in auction/sale of uncleared goods

Test check revealed that in the case of 811 consignments of goods valued at ₹ 474.41 crore imported through five Commissionerates and warehoused in public and private customs bonded warehouses were not cleared, as such the Department detained the same to be sold through auction. With the passage of time the goods lost their commercial value with loss of duty and interest amounting to ₹ 146.73 crore **(Appendix 64)**.

(i) Audit scrutiny of records of M/s C.W. Vashi & Klamaboli revealed that 122 cases involving a total duty of ₹ 22.01 crores were awaiting disposal for period ranging up to 112 months from the date of expiry of warehousing period.

(ii) During test check of Warehouse Register maintained at Import Bond section, Custom House, Kolkata it was noticed that 334 cases of imported goods warehoused during the period from June 1979 to March 2012, involving customs duty of at least ₹ 83.81 crore were lying uncleared even after expiry of warehousing period permissible under Section 61 of Customs Act, 1962.

#### **7.25.12 Non recovery/short recovery of establishment charges**

According to regulation No.4 (v) of manufacture and other operations in Warehouse Regulations 1966, read with Ministry of Finance instructions issued in April 1991, the cost of establishment charges in respect of posts created on cost recovery basis, shall be equivalent to 1.85 times the average cost of the post i.e average pay of the post and allowances including dearness allowance and other allowances.

(i) In Commissioner of Customs, Makhapatnam, arrears of cost recovery charges of ₹ 1.94 crores from M/s Hindustan Shipyard Ltd (ship manufacturing Bonded Warehouse), Makhapatnam, for the period from March 2004 to March 2013, were pending realization.

(ii) In respect of M/s Central Warehousing Corporation Wshi under Mumbai Commissionerate, establishment charges for the period 1996 to 2011 were not recovered/short recovered by Customs Department from warehouse keepers to the extent of ₹ 0.98 crores.

#### **7.25.13 Short recovery of Merchant Overtime Fees**

Test check revealed that in respect of five<sup>29</sup> bonded warehouses establishment charges to the extent of ₹ 2.42 crore for the period 2010 to 2013 were not recovered/short recovered from warehouse keepers by the Customs Department.

#### **7.25.14 Non-furnishing of Re-warehousing Certificates**

According to section 67 read with notification No.59-Cus dated 1 February 1963, if the warehoused goods are removed from one warehouse to another, in a different town for re-warehousing, the importer should execute a bond and give bank guarantee, binding himself to produce within three months or within the extended period, a certificate issued by the proper officer that the goods have arrived at the place of destination, failing which the bond equal to the amount of import duty leviable on such goods shall stand forfeited.

Test check revealed that in respect of three Commissionerates in 334 cases warehoused goods amounting to ₹ 19.08 crore had been removed to warehouses in different towns, during the period 2010 to 2013. Neither had re-warehousing certificates been produced by the proper officer nor had the Department taken action to forfeit the outstanding bonds/bank guarantees.

<sup>29</sup> M/s Sterlite Ind. Ltd- Tuticorin; ₹ 0.88 lakh, C.W. Wshi -Mumbai; ₹ 0.98 crore, Raghava warehouse-Hyderabad; ₹ 0.05 lakh, J.K. Tyre Ind. Jaipur; ₹ 0.06 lakh & C.F.S, Pimpri/ICD, Dighi- Pune; ₹ 1.44 crore)



Customs duty amounting to ₹ 20.54 crore (Chennai -275 cases; ₹ 19.08 crore, Hyderabad- 58 cases; ₹ 0.35 crore and Ahmedabad- 1 case ₹ 1.11 crore) involved in these cases remained unrealized.

Cases are illustrated below:

(i) A test check of transfer Bond register maintained by the Chennai Sea Commissionerate, for the period ( 2010 – 2011) to (2012-2013) revealed that re-warehousing certificates for the receipt of goods at the warehouses/EOU in different stations had not been received in respect of 275 Transfer Bonds as on June 2013. Of this, customs duty amounting to ₹ 19.08 crore remained unrealized in respect of Transfer Bonds pertaining to the period 2010 – 2011 to 2012-2013. Even though Customs department informed the concerned Assistant Commissioner of Central Excise about the non-receipt of re-warehousing certificates, no follow-up action was taken to recover the duty as assured by the importers in the transfer bonds.

(ii) In the case of M/s Raghava Warehouse, (Hyderabad) it was noticed that in 58 cases the re-warehousing certificates have not been received although the three month period as stipulated has already expired. The duty recoverable for non-furnishing of re-warehousing certificate within 3 months, worked out to ₹ 0.35 crore. When brought to notice, it was replied that the objection would be looked into.

(iii) During scrutiny of records of Public bonded warehouse M/s Central Warehouse Corporation (CFS) Adalaj, Ahmedabad, for the period of 2010-11 to 2012-13, it was noticed that 154 MTS Melamine having value of ₹ 1.11 crore was transferred on ownership basis vide Ex-bond bill of entry, to M/s Durferrit Asea Pvt. Ltd. (EOU) Andhra Pradesh. There were no records of re-warehousing certificate received.

#### **7.25.15 Storage of goods in warehouse beyond the permissible period**

As per section 61 of the Customs Act, 1962, the warehousing period of goods deposited in a warehouse or in any other warehouse to which they may be removed, is as under:

- i. Capital goods intended for use in any EOU, may be kept for five years.
- ii. Goods other than the capital goods intended for use in any EOU, may be kept for three years.
- iii. Any other goods may be kept for one year.

The said warehousing period may be extended, on sufficient cause being shown, by the Commissioner of Customs, for a period not exceeding six months and by the Chief Commissioner of Customs for such further period as he may deem fit. Further, as per paragraph 4 of circular no. 47/2002- Cus. dated 29 July 2002, before consideration of a request for extension of warehousing period, Custom Houses

should ensure that the interest accrued on the goods in the preceding period are paid by the applicants before further extension is permitted.

M/s Maithan Ispat Ltd., Jajpur (Orissa) was permitted extension of warehousing periods of their goods stored under the Chief Commissioner of Customs, Kolkata thrice but accrued interest of ₹ 0.40 crore as per aforesaid circular was not collected by the department before grant of the said three extensions. This was brought to the notice of the department in June 2013, their reply is awaited (March 2014). Ministry's reply was awaited (March 2014).

#### **7.25.16 Goods pending clearance under section 49 of Customs Act**

Section 49 of Customs Act, 1962 provides that in the case of any imported goods, whether dutiable or not, entered for home consumption, the Assistant Commissioner of Customs or Deputy Commissioner of Customs is satisfied on the application of the importer that the goods cannot be cleared within a reasonable time, the goods may, pending clearance, be permitted to be stored in a public warehouse, or in a private warehouse if facilities for deposit in a public warehouse are not available; but such goods shall not be deemed to be warehoused goods for the purposes of this Act, and accordingly the provisions of Chapter IX shall not apply to such goods.

(i) Forty three consignments with assessable value of ₹ 185.94 lakh and involving duty of ₹ 3.40 crore warehoused during 2010 to 2013 under section 49 of the Customs Act, 1962, in private warehouses of JNCH Commissionerate, were awaiting clearance. With the passage of time these were losing their commercial value and also blocking Government revenue amounting to ₹ 3.40 crore. Though these goods were mentioned in the monthly statements of time barred goods furnished by the custodian to the Customs Department, no disposal action was taken by the Department as per section 48 of the Customs Act (**Appendix 65**).

(ii) Scrutiny of monthly bond statement submitted by CW warehouse Import & Export, Kolkata for the month of March 2013, revealed that 46 consignments of imported goods amounting to ₹ 11.17 crore involving duty amount of at least ₹ 0.20 crore were kept in the warehouse during 1980 to 2002 under Section 49 of Customs Act, 1962 but were lying undisposed even after expiry of more than 11 to 32 years (**Appendix 66**).

#### **7.26 Audit of warehouses**

As per Circular No.52/98-Cus., dated 27 July 1998, Bonded warehouses shall be audited once in six months. In the course of audit, all the consignments which continue to lie in warehouse after expiry of the warehousing period should be taken up for scrutiny in order to guard against deterioration, substitution or other unlawful removal.

(i) In case of CONCOR, Hyderabad when the details of audit were called for, it was replied that the information would be submitted. And in case of M/s

Raghava Warehousing and Logistics Services Pvt. Ltd, it was replied that the departmental audit was not conducted.

(ii) In Delhi Commissionerate it was observed that only five units were visited once in three years, the remaining 55 units were not visited at all despite the fact that all the units visited had brought to light cases of deficiencies. Therefore, the frequency of visits of Special Investigation and Intelligence Branch (SIIB) inspections may be increased to safeguard Government revenue.

(iii) It was observed that in Indore Commissionerate, Custom revenue of ₹ 33.43 crore was received by the department from three bonded warehouses during the period 2010-11 to 2012-13 (Public Bonded warehouse, Pithampur; ₹ 1.39 crore, Private Bonded warehouse, Pithampur; ₹ 1.21 crore and Private Bonded warehouse, Ghatabillod; ₹ 30.83 crore), but no audit was conducted of any of the warehouses.

### **7.27 Improper control over warehoused goods**

Provisions of section 62 of the Customs Act, 1962 read with provisions of Customs Manual stipulate that warehoused goods should not be removed from the warehouse without the permission of proper officer. Preventive officer of customs is to accompany the importer/agent with the key of customs lock and is to put his signature in the bond stock register maintained in the warehouse. The private warehouse keeper has to submit statement report of receipt, issue, balance in bond to customs bond department to locate time expired goods lying in warehouses and to ensure that there is no discrepancy in the stock of Custom house record vis-à-vis warehouse record.

(i) Audit scrutiny of records of Central Warehousing Corporation of M/s Jaquar and Company Pvt. Ltd. Unit –II Bhiwadi, and M/s Lloyd Electric & Engineering Ltd. 146 (B&) Bhiwadi under Jaipur commissionerate for the period of 2010-11 to 2012-13 revealed (June 2013) that the Preventive Officer did not accompany the importer/custodian on the dates of entry/removal of warehoused goods which was evidenced by the fact that the Bond-stock register was not bearing signature of the Preventive officer. Thus there is a lapse in preventing risk of substitution and un-lawful removal of warehoused goods.

(ii) In Mumbai Commissionerate in respect of 1 Public and 5 private warehouses, it was noticed that the statement report of receipt, issue, and balance in bond was not submitted to Customs Bond Department. Non-submission of monthly report leads to improper control of warehouse goods. This was pointed out and accepted by the department.

(iii) The Ex-bond clearances need to be entered in the 'Warehouse Bill Register', and the entries need to be signed by the Bond Officer indicating the supervision of the removal of the warehoused goods. However, it was seen from the Warehouse Register furnished by M/s Container Corporation of India Ltd (CONCOR), and M/s Central Warehousing Corporation (CWC), under ICD,

Sanatnagar, Hyderabad –II Commissionerate, that in some cases listed under this para, the register showed 'none'/'only part' of the stock as cleared as at the end of the year. However, on verification by Audit in the EDI System, it was found that the stocks were completely cleared from the warehouse.

(iv) Similarly, scrutiny of records of private bonded warehouse M/s Indo Nippon Chemicals Co. Pvt. Ltd. (Kndla), for the period of 2010-11 to 2012-13 revealed that signature of Preventive officer (PO) was not found in the Bond Stock register which signifies the fact that the PO had not accompanied the importer/custodian on the dates of entry/removal/clearance of the warehoused goods.

#### **7.28 Non authentication of into bond bills of entry/ex-bond bills of entry**

Scrutiny of warehouse stock registers maintained by Commissionerates of Ahmedabad, Chennai, Jaipur and Hyderabad revealed instances of non-attestation of entries relating to Into-bond bills of entry and ex-bond clearances.

Illustrative case is narrated below:

Test check of warehouse stock register maintained at Public and Private bonded warehouses under the control of Chennai Sea Commissionerate revealed that there were five instances of non-attestation of entries relating to Into-Bond and Ex-Bond Bills of Entries. There was also no indication in the register to show that the Bond Superintendent has checked the entries of the register once a month.

#### **7.29 Improper maintenance of records and lack of effective monitoring mechanism**

Provisions in the manual envisaged that it was mandatory for the warehouses to submit status reports relating to consignments pending for one year and above and cross check position in the Custom house where the warehousing bills of entry originated. Further, Customs Preventive manual prescribed that the bond superintendent should check bond stock registers at least once a month and the officers posted in private bonded warehouses were required to send every month a statement of receipts, issues and balances in bond.

Audit of the procedures revealed that in most of the Commissionerates these instructions were not being followed, monitoring was weak and maintenance of records was improper. Monthly receipt/Issue/Balance statements were not given by the warehouse keeper. Bond Registers were not attested by the Superintendents/Preventive Officers.

(i) The scrutiny of Bond Registers at the Bond Section, NCH , New Delhi for the period 2010-13 revealed that the double duty bond registers were not properly maintained, not signed by the officer regularly, and were not checked by the Bond Superintendent monthly. Further, the officers posted at the Private Bonded Warehouses had also not been sending monthly statement to the Bond

Department on the last day of every month showing Receipt/issue and balances in hand.

(ii) In respect of M/s Taj Sats Air Catering under Goa Commissionerate and M/s Indo Rama Synthetics of Nagpur Commissionerate, monthly statement of receipt/issue and balances were not furnished monthly to the Bond Department. In the absence of such basic control measures, there is little assurance on the Department to guard against the risk of substitution of warehoused goods and their unlawful removal.

### **7.30 Conclusion**

Audit of the procedures revealed that in most of the Public Warehouses under the Commissionerates test checked, monitoring was weak and maintenance of records was improper. There was insufficient coverage of inspection/audit by Departmental officers and customs audit parties. Non-initiation of action under section 72 of the Customs Act, 1962 also resulted in blockage of large amount of Government revenue, which would inevitably turn into loss with the passage of time due to deterioration, substitution and loss of commercial value of goods.

The audit check has also revealed several instances of violation of rules, regulations and procedures framed under the Customs Act, 1962 relating to warehousing and clearance of goods. Unjustified extensions and lack of timely and effective action for preventing misuse of the facilities led to blockage of substantial revenue.

Audit maintained that the Department should improve the compliance to rules and regulations laid down and strengthen its internal controls.

**New Delhi**

**Dated:**

**(NILOTPAL GOSWAMI)**

**Principal Director (Customs)**

**Countersigned**

**New Delhi**

**Dated:**

**(SHASHI KANT SHARMA)**

**Comptroller and Auditor General of India**