

Chapter 2 : Adequacy of existing systems and procedures

2.1 Trends in revenue collection

An effective tax administration would include systems in place to analyse trends in revenue collection including through Cenvat utilisation, particularly in major sectors. We requested the Commissionerates (November 2013) to provide us the details of any such analysis done in respect of automobiles and automotive parts manufacturing sector. Thirty-nine out of the selected 40 Commissionerates⁶ intimated that they had not undertaken any analysis of the sector. Gurgaon Commissionerate informed that regular sectoral analysis of automobile industry and automotive components is being conducted.

Table No.1

Revenue collection in respect of Automotive sector

(Amount in crore of rupees)

Year	No. of units	Duty paid through PLA	Duty paid through Cenvat	Total duty paid	Percentage of Cenvat to PLA
2010-11	2,610	4,280.85	15,414.94	19,695.79	360.09
2011-12	3,018	5,184.13	20,228.60	25,412.73	390.20
2012-13	3,247	6,942.44	24,451.77	31,394.21	352.21

Source: Figures furnished by 34 Commissionerates.

Data collected from 34 Commissionerates⁷ showed a decline in revenue in eight Commissionerates⁸ during 2011-12 in comparison to 2010-11 and in ten Commissionerates⁹ during 2012-13 in comparison to 2011-12 from this sector. Six Commissionerates¹⁰ are yet to furnish information.

2.2 Scrutiny of returns and assessments

As per rule 12(1) of Central Excise Rules, 2002, a monthly return (Form ER- 1) is to be submitted by every assessee indicating, *inter alia*, details of production and removal of goods. This return is subjected to scrutiny by the department. The purpose of preliminary scrutiny of returns is to ensure

⁶Ahmedabad-II, Aurangabad, Bengaluru-LTU, Bengaluru-I, Bhopal, Bhubaneswar-I, Bhubaneswar-II, Calicut, Chennai-LTU, Chennai-II, Chennai-III, Chennai-IV, Daman, Delhi-LTU, Delhi-I, Delhi-II, Ghaziabad, Gurgaon, Haldia, Hyderabad-I, Hyderabad-IV, Indore, Jaipur-I, Jamshedpur, Kochi, Kolkata-II, Kolkata-IV, Kolkata-VI, Ludhiana, Meerut-I, Mumbai-LTU, Nagpur, Nasik, Noida, Pune-I, Raipur, Rajkot, Thiruvananthapuram, Vadodara-II and Visakhapatnam-II

⁷Ahmedabad-II, Aurangabad, Bengaluru-LTU, Bengaluru-I, Bhopal, Bhubaneswar-I, Bhubaneswar-II, Calicut, Chennai-LTU, Chennai-II, Chennai-III, Chennai-IV, Daman, Delhi-LTU, Delhi-I, Delhi-II, Gurgaon, Haldia, Hyderabad-I, Hyderabad-IV, Indore, Jaipur-I, Jamshedpur, Kochi, Kolkata-II, Kolkata-IV, Kolkata-VI, Ludhiana, Pune-I, Raipur, Rajkot, Thiruvananthapuram, Vadodara-II and Visakhapatnam-II

⁸Bhubaneswar-II, Delhi-II, Delhi-LTU, Gurgaon, Jaipur-I, Kolkata-IV, Kolkata-VI and Thiruvananthapuram

⁹Ahmedabad-II, Bhubaneswar-I, Bhubaneswar-II, Calicut, Delhi-LTU, Hyderabad-I, Jamshedpur, Kochi, Kolkata-II and Vadodara-II

¹⁰Ghaziabad, Meerut-I, Mumbai-LTU, Nagpur, Nasik and Noida

arithmetic accuracy of duty computation, completeness (permanent account number (PAN), description of the item, registration details of the unit etc.), timeliness (timely submission of return and timely payment of duty) and to identify non-filers and stop filers. Based on identified risks, selected returns may be scrutinised in detail to ensure the correctness of assessment (correctness of classification, valuation and Cenvat credit) made. As per rule 12(2)(a) of Central Excise Rules, 2002, an Annual Financial Information Statement (Form ER-4) is to be submitted by assessees paying duty of ` one crore or more per annum either through Personal Ledger Account (PLA)/Cenvat or both together. As per rule 9A (1) of Cenvat Credit Rules, 2004, information relating to principal inputs (Form ER-5) is to be submitted annually by assessees paying duty of ` one crore or more per annum either through PLA/Cenvat or both together. As per rule 9A(3) of Cenvat Credit Rules, 2004, a monthly return of receipt and consumption of each of the principal inputs (Form ER-6) is to be submitted by assessees paying duty of ` one crore or more per annum either through PLA/Cenvat or both together. As per rule 12(2A)(a), all assessees, except manufacturers of *biris* and matches without aid of power and reinforced cement concrete, are required to submit an annual return (Form ER-7) regarding Annual Installed Capacity.

Non-submission of return prescribed under Central Excise Rules on or before due date is a violation of Central Excise Rules. Hence, penalty may be imposed under rule 27 of Central Excise Rules, 2002.

Audit requested selected Ranges under the identified Commissionerates to furnish the data on ER-1, ER-4, ER-5, ER-6 and ER-7 returns filed with them during the last three years, in order to seek an assurance that the scrutiny exercise of returns and assessments is properly managed. In response, Audit received data from Ranges under 39 Commissionerates (other than from Nagpur). An analysis of the data received is shown below:-

2.2.1 ER-1 returns (Monthly return for production and removal of goods and other relevant particulars and Cenvat credit)

Table No.2

Status of submission of ER-1 returns

(Amount in lakh of rupees)

Year	Returns due	Returns received	Returns not received	Returns received by due date	Returns received after due date	Amount of penalty	
						Levied	Recovered
2010-11	24,320	24,201	119	23,780	421	0.38	0.32
2011-12	28,423	28,338	85	27,901	437	1.35	1.00

2012-13	31,634	31,558	76	30,904	654	1.16	0.91
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Source: Figures furnished by Commissionerates

We observed as follows;

- 280 ER-1 returns were not received in Gurgaon and Nasik Commissionerates, during the years 2010-11 to 2012-13.

The Ministry intimated in respect of Gurgaon Commissionerate (October 2014) that remedial action is being taken.

- In Jaipur-I and Bengaluru-I Commissionerates, 65 and 70 ER-1 returns respectively were received after due date during the years 2010-11 to 2012-13. However, no penalty was levied in any of these cases.

In respect of Jaipur-I Commissionerate, the Ministry intimated (October 2014) that in 48 cases, penalties have been deposited by the assesseees. In the remaining cases, show cause notices have been issued.

In respect of Bengaluru-I Commissionerate, the Ministry stated (October 2014) that late filing was not intentional or deliberate but due to lack of providing standard units of measurement in Automation of Central Excise and Service Tax (ACES).

- During the years 2010-11 and 2012-13, 96 per cent of the returns received were subject to preliminary scrutiny and 3 per cent returns were subject to detailed scrutiny.
- Only 7 Commissionerates¹¹ (out of the selected 40) conducted detailed scrutiny of returns during 2010-11 to 2012-13.

We also noted the following discrepancies on examining a sample of returns in the selected ranges;

(i) M/s Caparo Maruti Ltd. in Delhi-LTU Commissionerate is engaged in the manufacture of motor vehicle parts. We observed that there were differences between the closing balance and opening balance of the quantity of finished goods in ER-1 returns of June-July 2012 and December 2012-January 2013. Further, there was a difference of ` 0.09 lakh in respect of opening and closing balance of Cenvat credit during the months of February and March 2012.

We pointed this out in December 2013.

The Ministry intimated (October 2014) that the assessee had deposited the

¹¹Ahmedabad-II, Bengaluru-I, Chennai-II, Chennai-III, Chennai-IV, Indore and Pune-I

duty liability of ` 0.21 lakh and reversed the Cenvat credit of ` 0.09 lakh alongwith interest of ` 0.05 lakh and ` 0.04 lakh respectively.

(ii) During the course of scrutiny of ER 1 of M/s Denso Haryana Pvt. Ltd., Gurgaon, we noticed that the assessee paid interest on Central Excise duty paid owing to issue of supplementary invoices in March and June 2013 at the rate of 13 per cent instead of 18 per cent.

We pointed this out in December 2013.

The Ministry intimated (October 2014) that the assessee had deposited ` 0.10 lakh.

(iii) On scrutiny of ER-1 returns and challan files of M/s Kerala Automobiles Ltd., in Thiruvananthapuram Commissionerate, we observed that the assessee had not fulfilled duty liability amounting to ` 9.07 lakh during 2012-13.

We pointed this out in January 2014.

The Ministry admitted the audit observation (October 2014).

2.2.2 ER-4 returns (Annual financial information statement)

Table No.3

Status of submission of ER-4 returns

(Amount in lakh of rupees)

Year	Returns due	Returns received	Returns not received	Returns received by due date	Returns received after due date	Amount of penalty	
						Levied	Recovered
2010-11	737	649	88	615	34	0.23	0.23
2011-12	903	789	114	759	30	0.30	0.30
2012-13	1,049	877	172	832	45	0.05	0.05

Source: Figures furnished by Commissionerates

We observed as follows;

- In Ludhiana and Jamshedpur Commissionerates, 32 and 11 ER-4 returns respectively were received after the prescribed due date during the period 2010-11 to 2012-13. However, no penalty was levied by the department.

The Ministry intimated (October 2014) in respect of Ludhiana Commissionerate that the divisional-in-charge had been directed to take necessary action.

- In Ludhiana Commissionerate, 26 ER-4 returns were not received. However, the department did not impose any penalty in these cases.
- In Aurangabad Commissionerate, 132 ER-4 returns were not received. However, the department imposed a meagre penalty of ₹ 0.01 lakh.

Aurangabad Commissionerate stated (August 2014) that rule 27 of Central Excise Rules, 2002 do not provide for levy of mandatory penalty for late filing or non-filing of ER-4 returns.

We note that the only provision covering imposition of penalty in such cases of delayed submission is a provision for general penalty imposable under rule 27 of the Central Excise Rules. Besides, there is no provision in the Central Excise Rules corresponding to rule 7C of the Service Tax Rules requiring payment of late fees unless waived.

Recommendation No. 1

The Ministry should include a provision in the Central Excise Rules requiring assesseees to pay late fees (unless waived on showing sufficient reasons) in case of non-compliance with provisions requiring filing of periodical returns by a specified date.

We also noted the following discrepancies on examining a sample of returns in the selected ranges;

M/s Sharda Motor Industries Ltd., in Delhi-LTU Commissionerate is engaged in the manufacture of motor vehicle parts. We observed that there were differences between the closing balance and opening balance of quantity of principal inputs and finished goods in ER-4 returns of 2010-11 to 2012-13. Further, Cenvat credit figures in ER-1 and ER-4 returns for the same period also did not tally.

We pointed this out in December 2013.

Similarly, scrutiny of ER-4 returns of M/s Rasandik Engineering Industries India Ltd., in Delhi-LTU Commissionerate, revealed that the closing balance of all items of raw material consumed in the manufactured goods (i.e. C.R. Sheet, C.R. coils, etc.) as shown in ER-4 return of 2011-12 did not match with the opening balances of ER-4 return of 2012-13.

We pointed this out in February 2014.

In case of M/s Minda Industries Ltd., in Pune-I Commissionerate, while scrutinising records of ER-4 returns for 2011-12 and 2012-13, we observed

that there was difference in opening and closing stock of finished goods, which resulted in improper filing of ER-4 returns.

We pointed this out in January 2014.

The Ministry stated (October 2014) that these assesseees had filed the revised returns based on the audit observations.

However, it is noted that unlike the provision in rule 7B of the Service Tax Rules for filing of revised Service Tax returns, there is no provision for filing any revised returns under rule 12 of the Central Excise Rules, 2002.

Recommendation No. 2

The Ministry should include a provision in the Central Excise Rules, 2002 enabling filing of revised Central Excise returns within a prescribed period.

During the Exit Conference on 21 October 2014, Member (Central Excise), CBEC indicated that with GST due to be introduced soon, CBEC is not encouraging many changes at this point of time. Unlike Service Tax, such provisions may also not be necessary in Central Excise given the nature of assesseees and the well-established systems already in place.

2.2.3 ER-5 returns (Cenvat - Annual return of information relating to principal inputs)

Table No.4

Status of submission of ER-5 returns

(Amount in lakh of rupees)

Year	Returns due	Returns received	Returns not received	Returns received by due date	Returns received after due date	Amount of penalty	
						Levied	Recovered
2010-11	697	545	152	516	29	0.05	0.05
2011-12	861	723	138	679	44	0.13	0.13
2012-13	988	772	216	734	38	0.11	0.11

Source: Figures furnished by Commissionerates

We observed as follows;

- In Gurgaon, Ludhiana and Nasik Commissionerates, 63, 34 and 63 ER-5 returns respectively were not received. However, the department did not impose any penalty on the assesseees.

The Ministry intimated (October 2014) in respect of Gurgaon and Ludhiana Commissionerates that remedial action is being taken.

- In Ludhiana Commissionerate, 41 ER-5 returns were received after the due date. However, the department does not impose any penalty in these cases.
- In Aurangabad Commissionerate, 146 ER-5 returns were not received. However, the department imposed a meagre penalty of ₹ 0.02 lakh.

Aurangabad Commissionerate stated (August 2014) that the Rules do not provide for levy of mandatory penalty for late filing or non-filing of ER-5 returns.

We note that the only provision covering imposition of penalty in such cases of delayed submission is a provision for general penalty imposable under rule 15A of the Cenvat Credit Rules. Besides, there is no provision in the Cenvat Credit Rules corresponding to rule 7C of the Service Tax Rules requiring payment of late fees unless waived.

We await the Ministry's reply (October 2014).

We reiterate the recommendation in Para 2.2.2 that the Ministry should include a provision in the relevant Rules requiring assesseees to pay late fees (unless waived on showing sufficient reasons) in case of non-compliance with provisions requiring filing of periodical returns by a specified date.

2.2.4 ER-6 returns (Cenvat–Monthly return of information relating to principal inputs)

Table No.5

Status of submission of ER-6 returns

(Amount in lakh of rupees)

Year	Returns due	Returns received	Returns not received	Returns received by due date	Returns received after due date	Amount of penalty	
						Levied	Recovered
2010-11	8,217	7,215	1,002	7,015	200	0.12	0.12
2011-12	10,186	9,036	1,150	8,803	233	0.06	0.06
2012-13	11,768	10,265	1,503	9,967	298	0.26	0.26

Source: Figures furnished by Commissionerates

We observed as follows;

- In Gurgaon, Ludhiana and Nasik Commissionerates, 1,135 ER-6 returns were not received. However, the department did not impose any penalty on these cases.

The Ministry intimated (October 2014) that in respect of Gurgaon and Ludhiana Commissionerates the department is taking remedial action.

- In Bengaluru-I Commissionerate, 330 ER-6 returns were not received. However, department did not impose any penalty on these cases.

The Ministry intimated (October 2014) that the department is taking remedial action.

- In Pune-I Commissionerate, 271 ER-6 returns were received after due date. However, the department imposed a meagre penalty of ` 0.21 lakh.

Ministry intimated (October 2014) that on reconciliation with Division's actual figure, the late filers are 322 and penalty of ` 0.24 lakh have been recovered in 30 cases. In the remaining cases the remedial action has been taken.

- In Jaipur-I Commissionerate, 117 ER-6 returns were received after the due date. However, the department did not impose any penalty.

- In Aurangabad Commissionerate, 1,357 ER-6 returns were not received. However, the department imposed a meagre penalty of ` 0.01 lakh.

Aurangabad Commissionerate stated (August 2014) that the Rules do not provide for levy of mandatory penalty for late filing or non-filing of ER-5 returns.

We note that the only provisions which may cover imposition of penalty in such cases of delayed submission are provisions for general penalty imposable under rule 27 of the Central Excise Rules/rule 15A of the Cenvat Credit Rules. Besides, there is no provision in the Central Excise Rules/Cenvat Credit Rules corresponding to rule 7C of the Service Tax Rules requiring payment of late fees unless waived.

We await the Ministry's response (October 2014).

As indicated earlier, Audit opinion is that the Ministry should include a provision in the Central Excise Rules requiring assesseees to pay late fees (unless waived on showing sufficient reasons) in case of non-compliance with provisions requiring filing of periodical returns by a specified date.

2.2.5 ER-7 returns (Annual Installed Capacity Statement)

Table No.6

Status of submission of ER-7 returns

(Amount in lakh of Rupees)

Year	Returns due	Returns received	Returns not received	Returns received	Returns received	Amount of penalty	
						Levied	Recovered

			received	by due date	after due date		
2010-11	1,925	1,181	744	1,124	57	0.15	0.15
2011-12	2,299	1,411	888	1,358	53	0.13	0.13
2012-13	2,576	1,607	969	1,548	59	0.07	0.07

Source: Figures furnished by Commissionerates

We observed as follows;

- In Gurgaon, Ludhiana and Nasik Commissionerates, a total of 302 ER-7 returns were not received. However, the department did not impose any penalty on these cases.

The Ministry intimated (October 2014) in its response relating to Gurgaon Commissionerate that filing of ER-7 return is mandatory. In respect of Ludhiana Commissionerate, the Ministry stated that the department is taking remedial action.

- In Pune-I and Aurangabad Commissionerates, a total of 1,992 ER-7 returns were not received. However, the department imposed a meagre penalty of ` 0.08 lakh.

Pune-I Commissionerate while admitting the observation stated (June 2014) that penalty of ` 0.24 lakh has been recovered in two cases.

Aurangabad Commissionerate stated (August 2014) that rule 27 of Central Excise Rules, 2002 does not provide for levy of mandatory penalty for late filing or non-filing of ER-7 returns.

We note that the only provision covering imposition of penalty in such cases of delayed submission is a provision for general penalty imposable under rule 27 of the Central Excise Rules. Besides, there is no provision in the Central Excise Rules corresponding to rule 7C of the Service Tax Rules requiring payment of late fees unless waived.

We await the Ministry's response (October 2014).

As indicated in earlier paragraphs, the Ministry should include a provision in the Central Excise Rules requiring assessee to pay late fees (unless waived on showing sufficient reasons) in case of non-compliance with provisions requiring filing of periodical returns by a specified date.

2.3 Internal Audit

As per paragraph 9 of the Central Excise Audit Manual, 2008, the assessee master file is to be prepared and updated by audit cell in each Commissionerate. A list of documents as indicated in Annexure A therein and

details of assessee as per Annexure B is to be kept in each assessee master file. Paragraph 10.1.2 of the Manual, further prescribes as follows;

- (i) all units paying annual revenue over ` 3 crore are to be audited every year;
- (ii) units paying duty between ` 1 crore and ` 3 crore are to be audited once in two years;
- (iii) units paying duty between ` 1 crore and ` 50 lakh are to be audited once in five years; and
- (iv) 10 per cent of the units with revenue less than ` 50 lakh are to be audited every year.

2.3.1 Creation of master files

The status of creation of master files received from 30 Commissionerates is depicted below. Ten Commissionerates¹² have not furnished this information.

Table No.7

Status of creation of master files

Year	No. of units for whom the master files created	No. of units for whom the master files not created
2010-11	1,606	800
2011-12	1,908	1,018
2012-13	2,072	1,116

Source: Figures furnished by Commissionerates

We observed that Ludhiana, Chennai-III and Jamshedpur Commissionerates did not create assessee master files for 241, 372 and 269 assessees respectively. We pointed this out between December 2013 and January 2014. The department stated (March 2014) the following as reasons for non-maintenance of assessee master files (i) files not maintained in respect of non-mandatory units, (ii) data not provided by assessees, (iii) there was no static audit cell, (iv) lack of manpower etc.

The Ministry intimated (October 2014) that in respect of Chennai-III Commissionerate, master files have been created in respect of units falling under mandatory category and master files in respect of all other units would be created soon.

2.3.2 Coverage of units for internal audit

¹² Ahmedabad-II, Bengaluru-I, Bengaluru-LTU, Ghaziabad, Meerut-I, Mumbai-LTU, Nagpur, Nasik, Noida and Vadodara-II

The status of coverage of units for internal audit received from 29 Commissionerates is depicted in the table furnished below. Eleven Commissionerates¹³ are yet to furnish this information.

Table No.8

Coverage of units by internal audit

Year	Units paying duty above ` 3 crore (PLA+ Cenvat)		Units paying duty between ` 1 crore and ` 3 crore (PLA+ Cenvat)		Units paying duty between ` 50 lakh and ` 1 crore (PLA+ Cenvat)		Units paying duty less than ` 50 lakh (PLA+ Cenvat)	
	No. of units due for audit	No. of units covered	No. of units due for audit	No. of units covered	No. of units due for audit	No. of units covered	No. of units due for audit	No. of units covered
2010-11	416	401	147	149	101	109	216	239
2011-12	559	537	219	206	121	116	202	175
2012-13	762	709	199	171	121	109	212	163

Source: Figures furnished by Commissionerates; categories are based on annual duty payments.

We observed as follows in respect of functioning of Internal audit wing of the Commissionerates:

(i) As per paragraph 12.3.1 of Central Excise Audit Manual, 2008 and paragraph 9.5.1 of Service Tax Audit Manual, 2011, a register of units planned for audit in the prescribed format is to be maintained in order to monitor the different stages of execution of audit, ensure that all units allotted to an Audit Group have been audited and that audit reports have been issued on time.

Bengaluru-LTU Commissionerate maintained the Audit Plan register but had no entries in it for the period January 2010 to March 2012. Further, for the period upto December 2009, the register did not contain entries relating to date of submission of Internal Audit Report (IAR) to audit cell, Audit Report Number, date of issue of IAR, actual dates of audit, date of issue of IAR. Consequently, it was not possible to monitor, from these registers, whether the mandatory units had been audited as per the guidelines (every unit to be audited once in two years for LTU) and audit reports issued on time. Further,

¹³ Ahmedabad-II, Bengaluru-LTU, Chennai-II, Chennai-LTU, Ghaziabad, Meerut-I, Mumbai-LTU, Nagpur, Nasik, Noida and Vadodara-II

the register was not updated and entries had been made only for the first quarter of 2013-14.

We pointed this out in July 2014.

The Ministry stated (October 2014) that the Audit Plan Register was maintained in computer and the hard copy of the same has been pasted in the prescribed register subsequently.

(ii) Further, we observed that Audit module of ACES was not being used for audit planning and execution by Commissionerates.

We pointed this out in July 2014.

The Ministry stated (October 2014) that though the audit module under ACES has been functioning, there are many lacunae which make the module practically unworkable. Further, the hard copies of the documents received from the assesseees are voluminous documents which require additional staff for digitisation.

(iii) EA2000 audit of M/s Mahindra UGINE Steel Company Ltd. of Nasik Commissionerate was conducted in September-October 2011 covering the period October 2010 to September 2011. It was observed that an audit observation was raised in the Audit Report regarding inadmissible Cenvat credit of ` 3.60 lakh on capital goods. The amount was paid by the assessee in September 2011 after the paragraph was raised. Accordingly, the audit paragraph was settled by the internal audit section. However, we observed that the audit paragraph was settled without recovery of interest, though interest had been recovered from the same assessee in respect of other observations on availing of inadmissible Cenvat on input services and raw material.

We pointed this out in February 2014.

The Ministry intimated (October 2014) that show cause notice is being issued.

2.4 Anti-evasion measures

Preventive and intelligence work in the Commissionerates is entrusted to officers called 'Preventive Intelligence Officers'. Generally, three to four Superintendents and 20 to 25 Inspectors are posted under one Assistant/Deputy Commissioner who supervises and monitors the day-to-day work and activities of these officers both for preventive and intelligence duties. The work of preventive officers includes collection of intelligence, transit checks, organising searches in the factory, office as well as residence, investigations and other works.

Audit sought to examine efficacy of anti-evasion measures undertaken by the selected Commissionerates particularly with reference to the automotive sector. In response to our query, Rajkot, Vadodara-II and Bengaluru-I Commissionerates intimated (January-February 2014) that three, five and four cases respectively were registered during the period 2010-13 by anti-evasion wing and show cause notices were also issued. Gurgaon Commissionerate intimated (June 2014) that on the basis of reference received from Faridabad Commissionerate, necessary investigation was conducted and Government dues of ` 1.09 crore recovered. The other Commissionerates reported nil cases registered during the period 2010-11 to 2012-13.

We await the Ministry's response (October 2014).

2.5 Collective sharing of intelligence reports

An important function of the Preventive Wing in Commissionerates is co-ordination of preventive intelligence activities of the officers throughout the Commissionerate, maintenance of proper liaison with other Commissionerates of Central Excise as well as Customs, the Directorate General of Revenue Intelligence and allied departments of the Government as well as building up of centralised records on anti-evasion activities at the Commissionerate Headquarters.

In order to examine the effectiveness of performance of the Preventive Wings, over the last three years, we sought certain details including aspects such as relating to information collection from own department and other departments, sharing of information etc. In response to our query, Rajkot, Ahmedabad-II and Gurgaon Commissionerates intimated (between January and July 2014) that they liaison with the Customs department, Director General Revenue Intelligence (DGRI) etc. However, the remaining Commissionerates intimated that no such exercise was undertaken by them.

We await the Ministry's response (October 2014).

2.6 Outstanding demands

Short payment or non-payment of duty on any excisable goods is to be recovered by issuing show cause notice under Section 11 A to be followed up with its adjudication and recovery proceeding. The period of limitation for issue of show cause notice is one year in normal cases and five years in case of short levy/non-levy due to fraud, collusion etc. The Central Excise officer is required to adjudicate the demand notice within six months in the former

case and within one year in the latter case, where it is possible to do so, after the issue of show cause notice.

We tabulated data on outstanding demands furnished by 17 Commissionerates¹⁴ as on 31 March 2014 is as follows;

Table No.9
Status of outstanding demands
(Amount in crore of Rupees)

Sl. No.	Delay in adjudication	No. of cases	Amount
1.	More than 5 years	40	177.74
2.	Between 3 and 5 years	42	9.77
3.	Between 1 and 3 years	105	141.17
4.	Less than 1 year	54	258.88

Source: Figures furnished by 17 Commissionerates

Audit observed that,

- In 40 cases, revenue of ` 177.74 crore is pending adjudication for more than five years.
- In Indore Commissionerate, 82 cases involving ` 199.78 crore were pending adjudication.
- In Delhi-LTU Commissionerate, 30 cases involving ` 179.49 crore were pending adjudication.

The above observations indicate that notwithstanding the prescribed timelines, several instances of long delays in adjudication continue in most Commissionerates.

2.7 Absence of provision in the rules

As per rule 2(l) of the Cenvat Credit Rules, 2004, 'input service' includes services used in relation to procurement of inputs and inward transportation of inputs or capital goods and outward transportation upto the place of removal etc. Further, rule 3 (1) of the Cenvat Credit Rules, 2004, provides

¹⁴ Bengaluru-I, Bhopal, Bhubaneswar-I, Chennai-IV, Delhi-LTU, Delhi-I, Hyderabad-I, Hyderabad-IV, Indore, Jaipur-I, Jamshedpur, Mumbai-LTU, Noida, Pune-I, Rajkot, Vadodara-II and Visakhapatnam-II

that the manufacturer or producer of final products or provider of taxable service shall be allowed to take credit of Service Tax on input service received by the manufacturer of final product. Although rule 3(5) provides for reversal of credit taken on inputs or capital goods removed as such, there is no corresponding provision under the Rules requiring payment of the amount equal to the credit of Service Tax paid on input services. These services could include custom house agent's services, clearing and forwarding agents' services, transportation availed for procurement/transportation of inputs or capital goods etc. Non-existence of such provision resulted in unintended benefit to the manufacturer.

During test check of records of 44 cases in 17 Commissionerates¹⁵, we observed that assessee had cleared inputs as such and reversed the Cenvat credit availed on inputs. However, proportionate value of Service Tax credit on input services of ` 87.37 crore was not reversed due to absence of suitable provision in Cenvat Credit Rules, 2004. A few illustrative cases are given below:

2.7.1 M/s General Motors India Pvt. Ltd., in Vadodara-II Commissionerate, is an assessee engaged in the manufacture of motor vehicles. The assessee cleared inputs (as such) valued at ` 168.45 crore during the period 2010-11 to 2012-13 which constituted between 5.48 and 19.02 per cent of the total purchases of inputs. The assessee reversed the Cenvat credit of inputs availed of on these inputs. However, we observed that the assessee had not reversed the Cenvat credit on input services availed during same period due to non-existence of suitable provision for reversal of Cenvat credit of input services. This resulted in unintended benefit of ` 15.16 crore to the manufacturer.

We pointed this out in January 2014.

We await the Ministry's response (October 2014).

2.7.2 M/s Hero Motocorp Ltd., in Gurgaon Commissionerate, is engaged in the manufacturing of two-wheelers and parts thereof. The assessee reversed the excise duty including cess thereon of ` 49.45 crore on inputs cleared as such during the period 2010-11 to 2012-13. We observed that the assessee reversed the Cenvat credit equal to credit availed at the time of purchase of raw material, but the proportionate credit of Cenvat credit of input services availed at the time of purchase of raw material was not reversed. The non-existence of suitable provision in the rules for reversal of Cenvat credit of

¹⁵ Ahmedabad-II, Aurangabad, Chennai-ST, Daman, Ghaziabad, Gurgaon, Hyderabad-I, Jaipur-I, Meerut-I, Mumbai-LTU, Mumbai V, Nagpur, Nasik, Noida, Pune-I, Rajkot and Vadodara-II

input services resulted in unintended benefit of ` 4.41 crore for the period from 2010-11 to 2012-13 to the manufacturer.

We pointed this out in March 2014.

The Ministry stated (October 2014) that in a few cases, clearance of inputs by this assessee to third parties, was treated as an exempted service and the assessee is reversing proportionate Cenvat credit as per rule 6(3) of Cenvat Credit Rules.

We observe that the reply of the Ministry is not specific to the lacuna pointed out in the Rules.

Recommendation No. 3

The Ministry may insert a provision in Cenvat Credit Rules, to reverse the proportionate Cenvat credit of input services at the time of clearance of input/capital goods 'as such'.

The Ministry intimated (October 2014) that the matter is under examination and decision would be intimated in due course.

During the Exit Conference on 21 October 2014, Member (Central Excise), CBEC noted that quantification of input services requiring reversal would be a tedious process and may not be significant enough to warrant such inclusion.

2.8 Splitting up of rebate claims to avoid pre-audit

CBEC Circular dated 16 May 2008 envisages that all refund/rebate claims involving an amount of ` 5 lakh or above should be subjected to pre-audit at the level of Jurisdictional Commissioner.

During test check of rebate claim files for the year 2012-13 of M/s Osho Gears and Pinions Ltd., and M/s Emson Gears Ltd., in Ludhiana Commissionerate, we observed that these assessees had submitted rebate claims totalling ` 33.95 lakh on a single day. Each individual claim was below ` 5 lakh. We observed that notwithstanding the fact that these claims were in respect of goods exported on the same day under the same shipping bill, these were permitted to be filed as separate claims. These claims were sanctioned by the Division concerned. We observe that the non-consideration of the total amount claimed on one day as a single claim could result in pre-audit not being conducted as per the extant provisions.

The avoidance of pre-audit not only contravenes the instructions of the Board but also increases the probability of excess grant of rebate.

We pointed this out in January and March 2014.

The Ministry stated (October 2014) that the assessee cleared their goods under various ARE-1s and various shipping bills. The goods have been exported under separate ARE-1. There is no statutory bar in filing ARE-1 wise rebate claim, irrespective of the fact that there is only one shipping bill or more. For excise purpose, ARE-1 is the relevant statutory export document.

Recommendation No. 4

The Ministry may consider inserting a provision in the Central Excise Rules for pre-audit of all such claims submitted on the same date (or within a prescribed period) where the total value of rebate claims exceeds `5 lakh.

The Ministry intimated (October 2014) that the matter is under examination.

During the Exit Conference on 21 October 2014, Member (Central Excise), CBEC informed that instructions to field would be reiterated emphasizing the need to undertake pre-audit as per the Circular in all instances where risk involved was high. He stated that the automotive sector was not a sector identified as a high risk area.