

## **Chapter II**

### **Central Excise Duty on Iron and Steel Products and articles thereof**

#### **2.1 Introduction**

India is the fourth largest steel producer in the world and Iron and steel was among the top three revenue yielding commodities during the year 2012-13. Central Excise Tariff Act, 1985 classifies Iron & Steel under Chapter 72 of the Schedule to the Act, *ibid*. The products of Iron & steel have been classified separately under Chapter 73. Central Excise Duty at the rate of 12 per cent was leviable on Iron and steel and its articles with effect from 19 March, 2012. In addition, Education Cess (with effect from 9 July 2004) at the rate of 2 per cent of the duty and Secondary and Higher Education Cess (with effect from 1 March 2007) at the rate of 1 per cent of the duty is also leviable.

Iron & Steel and its products are generally manufactured in four types of units (i) Integrated steel plants, (ii) Mini steel plants, (iii) Re-rolling mills and (iv) Units manufacturing miscellaneous engineering goods.

#### **2.2 Audit objectives**

The audit objectives were to ensure;

- i. the adequacy and compliance with rules, regulations, notifications, circulars/instructions/trade notices etc. issued from time to time in relation to levy, assessment and collection of excise duty relating to Iron and Steel sector;
- ii. whether the extant provisions of law are being complied with adequately;
- iii. whether there was an effective monitoring and internal control mechanism.

#### **2.3 Audit coverage**

For conducting audit, we selected 35 Commissionerates and subordinate offices functioning under those Commissionerates. Audit examined whether the internal control mechanisms were in place and functioned effectively at the selected Commissionerates, Division and Range offices.

Effectiveness of compliance verification mechanism was test checked at the Range office level through the scrutiny of Excise returns filed by the

assesseees. Compliance with rules and regulations designed for proper assessments and levy and collection of duty was test checked both at the departmental offices and at the premises of some selected assesseees.

The period covered was 2010-11 to 2012-13. We issued the draft report to the Ministry in August 2014.

### Audit findings

We noticed cases of irregular availing of exemption, non-recovery of arrears, non-payment/short payment of duty, irregular availing of Cenvat credit etc. involving revenue of ₹ 24.60 crore. The department accepted (November 2014) the audit observations involving revenue of ₹ 1.39 crore and recovered the same. The major findings are discussed below:

### Department centric issues

#### 2.4 Recovery of arrears

The law provides for various methods of recovery of revenue due to the Government. These include adjusting recoveries against amounts, if any payable to the person from whom revenue is recoverable, recovery by attachment and sale of excisable goods and recovery through the district revenue authority. Recovery of arrears constitutes one of the basic duties of the Central Excise Officers.

Board vide circular dated 1 January 2013 instructed that recovery proceeding shall be initiated against a confirmed demand as prescribed therein.

##### 2.4.1 Non-recovery of unrestrained arrears

In three Commissionerates as per following table, Audit observed that recovery of ₹ 7.94 crore had not been made in 21 cases even after passage of many years from the date of issue of Order-in-Original after adjudication. Audit noticed that only correspondences were being made with assesseees for deposit of the dues, but no coercive actions like identifying the movable or immovable property and their attachment and recovery through district revenue officers were taken to recover the government dues.

Table 2.1

Sl. No.	Commissionerate	No of cases	Unrestrained arrears	Date of Adjudication order
1.	Patna	06	32.02	12/2000 to 12/2010
2	Kanpur	03	213.32	6/2007 to 01/2009
3	Jaipur	12	548.78	8/2011 to 12/2012
	<b>Total</b>	<b>21</b>	<b>794.12</b>	

(₹ in lakh)

We have pointed this out in January 2014 (Jaipur) and in March 2014 (Patna and Kanpur). The Jaipur Commissionerate in its reply (April 2014) reported

recovery in two cases of ₹ 1.17 lakh and stated that in other cases assesseees are being persuaded to pay the dues. The replies of the other two Commissionerates had not been received (December 2014).

We await the reply of the Ministry (December 2014).

#### ***2.4.2 Non recovery of Government revenue despite the final order in favour of the Department***

During scrutiny of records of division-II in Kanpur Commissionerate, it was noticed that the Department had confirmed a demand of ₹ 88.26 lakh against M/s Raj Ratan Industries (now M/s Jai Jagdamba Metalloys Ltd.), Unnao in Kanpur Commissionerate (Uttar Pradesh) in December 2008. The assessee moved to CESTAT which decided the case in favour of the department vide its final Orders dated 7 February 2012. But no action was taken by the department to recover the outstanding amount from the assessee. It had been further noticed that the department on one hand could not recover the above amount; on the other hand they have deleted the above case from their list of pending arrears as the TAR prepared by the division for the month September 2013 was not bearing the above case as pending.

When we pointed this out (October 2013), the Division replied (October 2013) that the party had further filed rectification of mistake application before CESTAT as per judgement of Honourable High Court, Allahabad which has been rejected by the CESTAT vide order dated 21 June 2013. Therefore, the recovery proceedings against the party were being initiated.

The reply of the division confirmed that despite the rejection of the appeal of the assessee for second time by the CESTAT, recovery proceedings against the assessee could not be completed even after the lapse of four months. Further, reply of the Ministry/Commissionerate was awaited (December 2014).

### **Compliance issues**

#### **2.5 Exemption**

Rule 6(1) of Cenvat Credit Rules, 2004 envisages that Cenvat credit shall not be allowed on such quantity of input or input service which is used in the manufacture of exempted goods or for provision of exempted services.

In case the service provider fails to maintain separate accounts relating to taxable and exempted services, then as per rule 6(3), the assessee shall follow either of the following options, as applicable to him, namely:-

- (i) the manufacturer of goods or the provider of output service shall pay an amount equal to six per cent of value of the exempted goods and exempted services; or
- (ii) the manufacturer of goods or the provider of output service shall pay an amount equivalent to the Cenvat credit attributable to inputs and input services used in, or in relation to, the manufacture of exempted goods or for provision of exempted services.

**2.5.1** M/s Singhal Enterprises Pvt. Ltd., Raigarh, in Raipur Commissionerate, for the period 2012-13 manufactured both excisable and non-excisable goods (electricity). The electricity produced was used for captive production, sold to Chhattisgarh State Electricity Board (CSEB) and also used in the township of the assessee. The assessee had not maintained separate accounts for electricity used in the factory and electricity sold outside. As the assessee had not maintained separate accounts, he was liable to pay an amount of ₹ 57.68 lakh (six per cent of exempted sale value). The same was recoverable from the assessee along with interest and penalty as applicable under the rules.

We have pointed this out in February 2014, the reply of the Ministry/Commissionerate had not been received (December 2014).

**2.5.2** M/s Prakash Industries Limited, Champa, in Raipur Commissionerate for the period 2012-13, had sold electricity (exempted goods) aggregating to ₹ 22.34 crore. The assessee had not maintained separate accounts for electricity used in the factory and electricity sold outside and had debited ₹ 58.60 lakh towards reversal of Cenvat credit attributable to exempted sale of goods. In this regard, it is stated that in 2012-13, total sale was ₹ 2215.10 crore, total exempted sale was ₹ 22.34 crore and total credit availed was ₹ 107.57 crore. When value of exempted goods sold divided by total goods sold multiplied by total Cenvat credit taken in the year, amount of reversal stand at ₹ 1.08 crore. Hence, there was short reversal of ₹ 49.87 lakh. The same was recoverable from the assessee along with interest and penalty as applicable under the rules.

We have pointed this out in February 2014, the reply of the Commissionerate had not been received (December 2014).

### **2.5.3 Incorrect availing of exemption notification**

As per Notification dated 16 March 1995, the intermediate product manufactured within the factory is exempt from duty, if it is consumed captively for manufacture of (a) Capital goods as defined in Cenvat Credit Rules, 2004 e.g, those which are eligible for Cenvat credit or (b) used for in or

in relation to manufacture of excisable final products made from inputs which are eligible for Cenvat credit.

M/s Prakash Industries Ltd., Champa in Raipur Commissionerate, engaged in manufacturing of products of Iron & Steel and Articles thereof, Fly Ash Bricks and Coal Tar, had cleared 14,43,850 Nos. Fly Ash Bricks/Blocks for captive consumption valuing ₹ 45.91 lakh (assessable value is based on prevailing market rate) during 2012-13. Further scrutiny of records revealed that the assessee had not paid Central Excise duty on cleared quantity taking benefit of above notification. As the ash bricks/blocks had not been used in manufacture of final products sponge iron, iron billets and silicon manganese, the benefit taken under the notification was irregular. This resulted in short payment of duty of ₹ 5.68 lakh during the said period. The same was recoverable from the assessee along with interest and penalty as required under the Rules/Act *ibid*.

We have pointed this out in February 2014, the Ministry/Commissionerate's reply was awaited (December 2014).

#### **2.5.4 Wrong availing of exemption notification resulting in non-levy of duty**

Notification 16 March 1995 provides for exemption of duty of Excise and additional duty of Excise on goods supplied for defence and other specified purpose, specified in column (2) and subject to the condition specified in column (3) of the table annexed to the said notification. At serial number 21 of the notification, condition specified is that the said goods are supplied for use in construction of warships of the Indian Navy or Coast Guard.

During test check of records for the year 2012-13 of M/s Shah Alloys Ltd., Kalol falling under Ahmedabad III Commissionerate (Gujarat), it was observed that the assessee supplied 80 Metric Tons Armour Steel Plates at the rate of ₹ 1,40,000 per tonne to M/s WWW Defence, Delhi against the Purchase Order. The said supply, based on the Excise Duty Exemption Certificate dated 21 March, 2012 issued by Central Air Command, Allahabad, was made at NIL rate of duty of excise. Further, the assessee, as per Rule 6(3) of Cenvat Credit Rules, 2004 also reversed Cenvat credit at the rate of 6 per cent of the value of supply made.

However, as per the condition stipulated under Sl. No. 21 of the Notification 64/95, the goods have to be supplied for use in the construction of a warship of the Indian Navy or Coast Guard. In this case, the goods were being supplied for construction of Bullet Proof Guard Rooms of Central Air Command, IAF. It was also observed that the kind of supply made and the organisation to which the supply was made, was not mentioned under any

serial number of the Notification mentioned *ibid*. The value of supply made was ₹ 1.12 crore involving duty liability of ₹ 7.12 lakh after deducting the amount of ₹ 6.72 lakh which had already been reversed.

When we pointed this out (October 2013), the Commissionerate replied (December 2013) that differential duty of ₹ 7.11 lakh had been debited by the assessee and interest amount of ₹ 2 lakh remained to be recovered.

We await the reply of the Ministry (December 2014).

## **2.6 Valuation**

### **2.6.1 Non-maintenance of CAS 4 record**

Rule 8 read with proviso to rule 9 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 envisages that where excisable goods are not sold by the assessee but are consumed by it or by a related person of the assessee in the manufacture of other articles, the assessable value of such goods shall be one hundred and ten per cent of the cost of production or manufacture of such goods. Further, the Board had clarified (13 February 2003) that the value of goods consumed captively should be determined in accordance with the Cost Accounting Standard (CAS-4) method only.

Scrutiny of records of M/s Greatweld Steel Grating Private Ltd. in Pune-III Commissionerate for the year 2012-13, revealed that the assessee was clearing goods to its related unit. However, no costing records to determine cost of production had been maintained by the assessee. The assessee was required to determine the cost of production as per CAS-4 for preceding five years and pay differential duty. No SCN had been issued on this issue by the department till the date of audit.

When we pointed this out (January 2014), the Commissionerate issued a show cause notice (May 2014) to the assessee for differential duty of ₹ 44.67 lakh covering the period 2009-10 to 2012-13 along with interest and penalty.

### **2.6.2 Non inclusion of freight charges**

As per section 4(3)(d) of the Central Excise Act, 1944 the term 'transaction value' for the purpose of levy of duty means the price actually paid or payable for the goods when sold and includes any amount that the buyer is liable to pay to the assessee in connection with sale whether payable at the time of sale or at any other time, including the transport insurance charges etc.

The amended Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, further clarifies that if the factory is not the place of removal, the cost of transportation from the factory to the place of removal such as depot, consignment agent's premises etc cannot be excluded for the purpose of determining the value of the excisable goods.

**2.6.2.1** A test check of the records for the period 2010-2013 of M/s AGR Steel Strips Private Limited in Gurgaon Commissionerate revealed that the assessee had transferred stock to their consignment agents with the freight charges amounting to ₹ 1.61 crore.

The freight charges incurred upto the point of sale viz; the place of consignment premises was to be included in the value of the goods. Exclusion of such charges from the assessable value resulted in short levy of duty of ₹ 17.36 lakh.

We have pointed this out in January 2014, the Ministry/Commissionerate's reply was awaited (December 2014).

**2.6.2.2** We noticed that M/s Rimjhim Stainless Limited, in Kanpur Commissionerate, engaged in the manufacture of M. S. Wire Rod and M.S. Wire, M.S. Bars, Stainless Steel Rods, Shapes and Sections etc, cleared finished products from their depots and paid freight and carriage charges of ₹ 5.25 crore during 2010-13. Non-inclusion of these charges in assessable value resulted in short payment of excise duty to the tune of ₹ 64.84 lakh, which was recoverable along with interest.

We have pointed this out in January 2014, The Ministry/Commissionerate's reply was awaited (December 2014).

## **2.7 Cenvat**

### **2.7.1 Irregular availing of Cenvat credit on Custom's cess**

Rule 3 of Cenvat Credit Rules, 2004 does not permit availing of Cenvat credit of education cess and Secondary and Higher Education cess charged on the Basic Customs Duty.

Audit scrutiny of the records of 14 assesseees for the year 2012-13, revealed that they had availed and utilised Cenvat credit of education cess and SHE cess levied on Basic Custom Duty, which was ineligible. The ineligible credit amounting to ₹ 54.88 lakh was recoverable with applicable interest and penalty as detailed below:-

Table 2.2

					(₹ in lakh)
Sl. No	Number of assessee	Commissionerate	Edu. Cess availed	Secondary and Higher Edu. cess availed	Total Cess availed
1	4	Calicut	12.96	6.48	19.44
2	2	Cochin	14.71	7.36	22.07
3	1	Trivandrum	3.56	1.78	5.34
4	2	Bolpur	2.44		2.44
5	3	Kolkata IV	1.82		1.72
6	2	Delhi I	3.77		3.77
<b>TOTAL</b>			<b>39.26</b>	<b>15.62</b>	<b>54.88</b>

We have pointed this out in January 2014, the Ministry/Commissionerate's reply was awaited (December 2014).

### 2.7.2 Irregular availing of Cenvat credit

Rule 2 (l) of Cenvat Credit Rules, 2004, excludes services as specified in (sub-clause (p), (zn), (ztl), (zzm), (zzq), (zzzh), (zzzza) of clause (105) of section 65 of the Finance Act, 1994) from the ambit of input service in so far as they are used for construction of a building or a civil structure or a part thereof and laying of foundation or making of structures for support of capital goods.

**2.7.2.1** M/s Bhushan Power & Steel Limited, Mouzabanjihati in Kolkata-IV Commissionerate (West Bengal) had taken credit on input services used for civil construction works, contravening the provision of the above stated rule.

This resulted in irregular availing of Cenvat credit of ₹ 34.81 lakh (including Education Cess & SHE Cess) for the year 2012-13.

We have pointed this out in November 2013, the Ministry/Commissionerate's reply was awaited (December 2014).

**2.7.2.2** Similarly, three assesseees in Bolpur Commissionerate, namely, M/S. VSP Udyog Pvt Ltd. Durgapur, M/s Shakambhari Ispat & Power Ltd. Madamdih, M/s Sova Ispat Ltd. Bankura and one assessee in Kolkata IV Commissionerate, namely, M/S. Arcvac Forgecast Ltd. Panchghara, availed Cenvat credit of ₹ 16.93 lakh incorrectly contravening the above rule provisions in 2011-13. On this being pointed out M/s VSP Udyog Pvt. Ltd. Durgapur reversed the Cenvat credit of ₹ 11.78 lakh alongwith interest of ₹ 3.07 lakh.

We have pointed this out in November 2013, the Ministry/Commissionerate's reply was awaited (December 2014).

Further, Rule 2 (a) of Cenvat Credit Rules, 2004, excludes some equipment or appliances from the ambit of capital goods which are used in an office.



**2.7.2.3** M/s SAIL IISCO Steel Plant Burnpur in Bolpur Commissionerate had taken credit on tables, chairs etc as capital goods during the period 2012-13 which were used as office furniture, contravening the above mentioned rule. This resulted in irregular availing of Cenvat credit on capital goods amounting to ₹ 5.59 lakh, including cess.

We have pointed this out in November 2013, the Ministry/Commissionerate's reply was awaited (December 2014).

### **2.7.3 Irregular availing/non-reversal of Cenvat credit**

Rule 3(5) of the Cenvat Credit Rules, 2004 stipulates that when inputs or capital goods on which Cenvat credit has been taken, are removed 'as such' from the factory, the manufacturer or output service provider shall pay an amount equal to the credit availed on such input or capital goods.

Irregular availing of Cenvat credit of ₹ 16.56 lakh in respect of input/capital goods was noticed in nine cases out of 40 assesseees selected for examination of records in Jaipur-I, Indore and Ahmedabad – III Commissionerate for the year 2012-13 as detailed below:-

**Table 2.3**

					(₹ in lakh)
Sl. No.	Number of assessee	Commissionerate	Duty Involved	Amount recovered	
1	7	Jaipur - I	12.83	9.73	
2	1	Ahmedabad - III	1.75	0.00	
3	1	Indore	1.98	1.98	
<b>TOTAL</b>			<b>16.56</b>	<b>11.71</b>	

When we pointed this out (November/December 2013), an amount of ₹ 11.71 lakh was recovered in five cases and it was stated that matter would be examined for the remaining cases.

We await the reply of the Ministry (December 2014).

### **2.8 Non-payment/short payment of duty**

Rule 8(3A) of Central Excise Rules, 2002 stipulates that if the assessee defaults in payment of duty beyond thirty days from the due date, as prescribed in sub rule (1), then notwithstanding anything contained in said sub rule (1) and sub rule (4) of rule 3 of Cenvat Credit Rules, 2004, the assessee shall, pay excise duty for each consignment at the time of removal, without utilizing the Cenvat credit till the date the assessee pays the outstanding amount including interest thereon; and in the event of any failure, it shall be deemed that such goods have been cleared without payment of duty and the consequences and penalties as provided in these rules shall follow.

In case of M/s Shaifali Steel Ltd., Kalol in Ahmedabad-III Commissionerate for the period of 2010-11 to 2012-13, it was found that total duty liability as per RG-I Register of the assessee for the months of February 2011, September 2011 and October 2011 was higher than the duty actually paid by him. Duty liabilities as shown in the ER-I returns were also shown less as compared to the RG-I registers. Thus, the returns for the above periods submitted by the assessee were not correct to the extent.

On further scrutiny of records of the assessee, it was found that the duties short paid in the above months were not yet recovered. This resulted in short payment of duty to the tune of ₹ 12.44 lakh as under: -

Table 2.4

(₹ in lakh)			
Month	Duty payable as per RG-I	Duty paid as per ER-I returns	Short payment
February, 2011	59.76	53.81	5.95
September, 2011	83.29	77.90	5.39
October, 2011	32.27	31.17	1.1
<b>Total</b>	<b>175.32</b>	<b>162.88</b>	<b>12.44</b>

When we pointed this out (November 2013), the Commissionerate stated (December 2013) that an amount of ₹ 16.63 lakh, including interest for the month of February 2011 and September 2011 was recovered from the assessee.

## 2.9 Service Tax related issues

### 2.9.1 Non-registration under services on which Service Tax is payable under reverse charge mechanism

“Reverse Charge” of Service Tax was introduced under Rule 2 (1) (d) of the Service Tax Rules, 1994 read with Section 68(2) of the Finance Act, 1994. As per Notification dated 20 June 2012, effective from 1 July 2012, services of security agency service repair and maintenance under works contract, legal services by individual lawyers etc. were brought under the reverse charge. The recipient of service was required to obtain registration and pay Service Tax under the reverse charge as prescribed in the above referred notification. The exemption limit of ₹ 10 lakh was not available for the assessee liable for payment of Service Tax under the reverse charge mechanism.

In respect of five of the 31 cases of assesseees whose records were checked in the Raipur and Bolpur Commissionerate for the year 2012-13, engaged in the manufacturing of Iron & Steel Product falling under Ch. 72 & 73, Audit observed that these assesseees had paid remuneration/commission aggregating to ₹ 89.35 crore to their Directors during the year 2012-13.

However, they had not paid any Service Tax under Reverse Charge Mechanism aggregating to ₹ 10.98 crore as detailed below:-

Table 2.5

				(₹ in lakh)
Sl. No.	Name of the assessee	Name of Commissionerate	Total remuneration paid	Service Tax payable
1.	M/s Jindal Steel & Power Ltd.	Raipur	8,287.00	1,024.23
2.	M/s Prakash Industries Ltd.	Raipur	438.58	54.21
3.	M/s Star Alloy	Raipur	35.00	4.33
4.	M/s Raigarh Ispat & Power Ltd.	Raipur	18.00	2.22
5	M/s. Maithan Alloys Ltd.	Bolpur	156.17	12.53
	<b>Total</b>		<b>8,934.75</b>	<b>1,097.52</b>

We have pointed this out in November 2013 and January 2014, the Ministry/Commissionerate's reply was awaited (December 2014).

### 2.9.2 Non-payment of Service Tax on GTA

As per Rule 2 (1) (d) (i) (B) of Service Tax Rules, 1994, person liable to pay Service Tax in relation to service provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road, is any person who pays or is liable to pay freight either himself or through his agent for the transportation of such goods by road in a goods carriage .

Vide notification dated 1 March 2008 unconditional exemption from tax is provided on 75 per cent of the gross amount charged by the goods transport agency for providing the service.

Scrutiny of Service Tax records for the year 2012-13 of M/s CONCAST Steel and Power Ltd., Jharsuguda in Bhubaneswar-II Commissionerate, registered under GTA (Goods Transport Agency), revealed that transportation charges of ₹ 23.41 crore relating to transportation of inward materials, outward dispatch of finished goods/product etc. were paid by the assessee to the transporters during the period October, 2012 to March, 2013. However, the Service Tax amounting to ₹ 72.32 lakh (12.36 per cent of 25 per cent of ₹ 23.41 crore) had not been paid by the assessee which was recoverable alongwith interest.

When we pointed this out (September 2013), the Commissionerate accepted the audit observation (June 2014) and reported recovery of objected amount alongwith interest of ₹ 12.80 lakh.