

CHAPTER II

PROVISIONAL ASSESSMENTS (CUSTOMS)

2.1 Introduction

Provisional Assessment (PA) is a facilitation measure given to the importer/exporter under the provisions of Customs Act 1962 to avoid hardship by way of payment of demurrage charges or other financial losses.

In addition, with the introduction of self-assessment system in the Finance Act, 2011, the importer or exporter is mandatorily required to self-assess the duty in terms of Section 17 of the Customs Act, 1962. This self-assessment is subject to verification by the proper officer of the Customs. In case an importer or exporter is unable to make self-assessment, he may, request the proper officer in writing for the assessment of the imported goods or export goods. In such cases and in other circumstances such as non-availability of relevant information or documents or due to any other reasons mentioned in Section 18 of the Customs Act, 1962, the proper officer wherever deems it necessary to make further enquiry may direct that the duty is to be assessed provisionally and allow clearance of such goods by taking bond with appropriate security as withholding clearance of goods.

2.2 Audit Objectives

The audit was conducted to evaluate whether;

- (i) there was compliance to rules, regulations and procedures framed under Customs Act, 1962, Customs (Provisional Duty Assessment) Regulations, 2011 and Appraising Manual.
- (ii) provisional assessments are finalised without undue delay and without causing loss of revenue to the exchequer and
- (iii) internal controls and monitoring mechanism are in place to guard against misuse of provisional assessment facility.

2.3 Scope and Coverage

There are 94 Customs Commissionerates. Out of which Bills of Entry (BsE)/ Shipping Bills (SBs) and related records/documents pertaining to 42 Commissionerates (**Annexure 4**) on pan India basis covering the period from 2011-12 to 2013-14 were selected for conducting audit on provisional assessments.

Out of 42 Commissionerates selected, 26 Commissionerates (**Annexure 5**) provided the information sought by audit to varying extent and the remaining 16 Commissionerates (**Annexure 6**) had not furnished any information. However, all the 42 Commissionerates were audited by the various field formations of Customs Receipt Audit wing.

Information on these aspects was called for but was not furnished by the Commissionerates. Ministry may like to furnish the all India position from April 2011 to March 2015.

2.4 Sample Selection

All Bills of Entry/Shipping Bills provisionally assessed with assessable value of above 5 crore, 50 per cent of bills valuing 1 crore to 5 crore (Maximum 1000 cases) and 25 per cent of bills valuing up to 1 crore (Maximum 1000 cases) were selected for audit.

Table 2.1: Total assessments vis-a-vis provisional assessments

Year	Total No. of bills entry/shipping bills presented & assessed		Bills of entry/shipping bills assessed provisionally			Percentage of provisional assessments to total assessments	Percentage of Assessable value to total assessable value
	No.	Assessable value (Cr. ₹)	No.	Assessable value (Cr. ₹)	Bond value (Cr. ₹)		
2011-12	2178496	965841	110298	382991	68485	5.06	39.65
2012-13	2172426	1337098	137568	602488	68910	6.33	45.06
2013-14	1718783	1257364	143675	662216	62012	8.36	52.67
Total	6069705	3560303	391541	1647695	199407		

Source: Data sourced from DG (Systems) in respect of Tamil Nadu, Karnataka and Delhi states. Data provided by units/compiled by audit was adopted in Gujarat, Rajasthan Andhra Pradesh, Telangana, Odisha, Punjab, Haryana and Uttar Pradesh. Data was not furnished by 15 Commissionerates¹¹.

Analysis of provisional assessments revealed that the percentage of provisionally assessed cases increased from 5.06 to 8.36 during the period April 2011 to March 2014. Likewise, percentage of assessable value to total assessable value has increased from 39.65 during 2011-12 to 52.67 during the year 2013-14.

Table 2.2: Cases provisionally assessed vis-a-vis finalized

Year	Cases provisionally assessed		Cases finalised	
	No.	Bond value (Cr. ₹)	No.	Bond value (Cr. ₹)
2011-12	50475	64075	6877	24062
2012-13	48096	72620	12363	30783
2013-14	21468	53874	9214	21215
Total	120039	190569	28454	76060

Source: Data was sourced from DG (Systems) in respect of Tamil Nadu, Kerala and Karnataka. Data was not furnished by the department in Maharashtra, West Bengal and Meghalaya states.

1. Bond value does not include the value of 3152 bonds (provisionally assessed) and 1659 bonds (finally assessed) in respect of Punjab and Haryana states.

¹¹West Bengal (Kolkata Port, Kolkata Air, ICD Durgapur, Siliguri- Preventive), Meghalaya (Shillong), Maharashtra (NCH Zone-I(4), NCH Zone II(3), ACC Zone III(2),

2. *Data for the year 2013-14 was furnished / compiled only for two months i.e., April and May 2013 as no data was received for remaining months from DG (System), CBEC, hence the lesser number of provisional assessments and their bond value. However, the percentage of provisional assessments finalised for two months for the year 2013-14 was 43 percent while it was 14 and 26 percent for the years 2011-12 and 2012-13.*

2.5 Systemic lacunae and poor quality of data maintained by CBEC on Provisional Assessments

2.5.1 The Customs Act, 1962 mandates filing of electronic declarations both for import and export. Manual filing is generally allowed only in exceptional cases where it is not feasible to file electronic declarations due to non availability of Electronic Data Interchange (EDI) or operational issues relating to EDI. In such cases approval of Commissioner of Customs is required.

Manual finalization of provisional assessments still continued subsequent to issue of Standing Order 05/2014 dated 02/06/2014. Further, the ICES 1.5 module did not incorporate the provisional Assessment module with all its functionality.

Ministry in its earlier response had reported that “in order to ensure compliance with mandatorily filing of BEs and SBs electronically, CBEC vide F.No.401/ 81/2011-CUS.III dated 4th May 2011 had issued instructions that only in the rarest of rare and genuine cases manual processing and clearance will be allowed and further the Authority of permitting manual documents shall be vested only with the Commissioner of Customs”.

2.5.2 Audit noticed deficiencies in the provisional assessment monitoring system under ICES 1.5 version

Directorate of Systems and Data Management had launched a module for finalization of PA Bills of Entry in ICES 1.5 in April 2014 for online finalization of provisionally assessed bills and to monitor the pendency in finalization of provisionally assessed BsE/SBs. The module was being implemented from February 2015 in four commissionerates only.

However, audit noticed that there was no provision to watch pendency of provisional assessments, receipt of test report documents, revalidation of bond or Bank Guarantee (BG) etc from the system. Further the following deficiencies resulted in lack of monitoring of Provisional Assessment cases.

- i. No provision existed in the system to distinguish provisional duty bonds against bonds executed for various other schemes. The reasons for resorting to provisional assessment such as pendency of receipt of test report, valuation or any specific reason could not be ascertained from the system.

- ii. Details such as date of finalization, reasons for non-finalization, revalidation of Bond/BG, details of provisional duty paid, final duty assessed could not be generated from the existing modules in EDI.
- iii. Manual finalization of provisional assessments still continued subsequent to issue of Standing Order 05/2014 dated 02/06/2014.
- iv. Final assessments were made manually up to November 2014 and as such the data on the pending provisional assessments shown in the EDI system did not match with the actual pendency position. Data as per EDI system and physical data maintained in the registers needs reconciliation.
- v. Lapsed/cancelled bonds do not get reflected in the Bond Ledger/Bond Module in ICES module.
- vi. Separate reports on number of bills of entry/shipping bills assessed provisionally and finalized could not be generated from the EDI system.
- vii. Report on age-wise registration and pendency of provisional assessments could not be generated.
- viii. Module for levy of Extra Duty Deposit (EDD) does not exist and the same is being levied manually.
- ix. This module was unable to generate monthly reports, group-wise (within Commissionerate) and consolidated report for the Commissionerate.
- x. At ACC, Bengaluru, 1455 bills of entry filed under 34 bonds were closed during March 2015. However, the fact of their closure under bond management module could not be verified from the EDI system.
CBEC may like to examine the impact of the above audit observations on its facilitation measures pan India.

2.5.3 To obtain a holistic picture of provisional assessments for the period 2011 to 2014, audit could not find out the All India data from the CBEC web site (www.cbec.ddm) or from Annual Reports of the Finance Ministry. Therefore no trend analysis could be done because of the poor quality of data maintained by the CBEC.

Subsequent to the audit recommendation during the previous audit report 2006-07, a time frame of six months for finalisation of provisional assessments was introduced. Present audit for the period 2011 to 2014, however, revealed that abnormal delays continued despite introduction of the time frame.

With an objective to improve tax payer services, finalization of provisional assessments was considered as the action point (B.4.1) by Result Framework document (RFD) of CBEC 2015-16. However no trend values were indicated by CBEC upto FY 2014-15. A success indicator was fixed as a percentage of cases pending beyond 6 months, although there are more than 36,000 cases with bond value exceeding ₹ 108389.37 crore. Even for FY 2015-16, CBEC would

consider its performance excellent if 40 percent of PA cases remain pending beyond six months.

Despite Chairman, CBEC citing (05 August 2015) improving ease of doing business as a key mission of the Government, the targets set by CBEC for PA cases to improve tax payer services seems inadequate.

Information on provisional assessments was called for but was not furnished by the Commissionerates, Directorate of Data management, CBEC. Ministry may like to furnish the all India position to audit from April 2011 to March 2015.

Internal controls and monitoring mechanism are inadequate to guard against misuse of the provisional assessment facility/procedure.

2.6 Improper maintenance of records

In terms of para 14 of Appraising Manual, Vol. II each provisional assessment made is required to be entered in a Provisional Duty (PD) Register (Form 321 CBR). All particulars relating to such cases right from registration to their finalisation i.e., the name of the importer, description of goods, bill of entry number, value of goods, reasons for provisional assessment, duty payables, particulars of bonds and their validity period, etc., were to be recorded. Columns 16 & 22 of the format were specifically meant for duty amount on provisional/final assessment. The register also provided for recording of date of receipt of document, test results etc. On finalisation of the cases, particulars regarding refund/collection of differential duty were to be recorded and the bonds closed.

Scrutiny of records in 42 Commissionerates, revealed that the PD Bond Register, an essential and basic record for effective monitoring of provisional assessment was not being maintained in the prescribed format and wherever maintained, all the columns except one or two were kept blank. Important details remained unrecorded and these registers were not being submitted to AC nor were forwarded at monthly intervals to internal audit department (IAD).

On this being pointed out, the Delhi Commissionerate replied (May 2015) that maintenance of physical records was abandoned since introduction of EDI as all information was available on system. However, despite the information stated to be available in the system, all the Commissionerates were unable to extract the statistical data such as total number of assessments *vis a vis* number of provisional assessments, number of assessments finalised and pendency position of provisional assessments for the period 2011-14.

Ahmedabad Commissionerate authorities stated that necessary instructions have been issued to ensure that all the manually processed provisional assessment cases are to be updated in the module.

ICD, Durgapur authorities stated that all the columns of the PD Register were being maintained except the column "validity of PD Bond".

The reply is not acceptable because at the time of audit it was noticed that all the columns in the PD register were not filled and the reasons for resorting to provisional assessment were also not maintained.

2.6.1 In all 42 Commissionerates, better monitoring mechanism and internal control are required for tracking outcome of provisionally assessed cases, revalidation of bonds etc. which resulted in undue delay in finalisation of provisional assessments and blockage and postponement of Government revenue as illustrated in **Annexure 7**.

2.7 Pendency of cases in Call Book Register

According to Board's Circular No.53/1990-Cx issued in September 1990 read with Circular No.385/18/1998-Cx dated 30th March 1998, Call Book cases shall be reviewed on monthly basis for submitting quarterly report to competent authority to watch progress of disposal of cases kept in Call Book.

Scrutiny of records in four Commissionerates¹² revealed that 961 cases were kept in Call Book register which were provisionally assessed pending finalization. Therefore these cases have not been included in the monthly statement of pending cases and have escaped the monitoring by CBEC as listed in **Annexure 8**.

The department stated (September 2015) that all the BsE would be finalized expeditiously.

2.8 Incorrect reporting of pendency of PD bonds

Performance of Commissionerates relating to disposal of work during a month would be compiled in the form of MTR and sent every month to Chief Commissioner of Customs for onward transmission to Director General of Inspection, CBEC.

Audit scrutiny of PD Bond registers and MTRs in 15 Commissionerates¹³ revealed that against pendency of 9663 PD bonds, 4770 PD bonds were reported in MTR. It shows that the department had either over reported or under reported the number of bonds as well as bond value of pending cases of

¹² Gujarat (Custom House, Jamnagar), Kerala (Kochi), Uttar Pradesh (Noida), Mumbai (imports)

¹³ Kandla, Mundra, Jodhpur, Chennai Air, Indore, Mumbai(Import I&II, Export I&II (NCH Zone-I)), NS-I,NS-III,NS-V(JNCH Zone II, Imports & Exports(ACC Zone III)),Kolkata

provisional assessments. Incorrect reporting was an indication of lack of monitoring and internal control mechanism in the department.

NCH, Mumbai replied that (July 2015) the PD Bond register and MTR was updated and rectified. Final reply was awaited (January 2016).

Audit is of the view that internal control and monitoring mechanism may be strengthened for effective mapping of the process of provisional assessments up to final assessment stage.

Ahmadabad Commissionerate authorities stated (September 2015) that concerned formations were directed to reconcile the figures.

2.9 Difference between the data of assessment groups and SVB/SIIB

Special Valuation Branch (SVB) specialises in investigation of transactions involving special relationship and certain special features having bearing on value of imported goods. Suspected cases of under valuation due to relationship between seller and buyer are referred for investigation and determination of assessable value.

As per the data received from SVB, Mumbai 437 cases pertaining to ACC Mumbai and 467 cases pertaining to JNCH, Mumbai totaling to 904 cases were pending finalization up to March 2015. However, the MTR for the month of March 2015 showed the pendency as 100 and 584 cases respectively for ACC and JNCH Mumbai (total 684 cases). Lack of coordination and periodic reconciliation between assessment group and SVB/SIIB led to discrepancy in cases reported through MTRs.

Ministry may furnish all India data on total SVB/SIIB cases for the period 2011-12 to 2013-14 and their current status.

Audit is of the view that the mechanism of SVB may be strengthened for early determination of valuation for ensuring timely finalization of provisional assessment cases.

Reply of the department was awaited (January 2016).

Major audit findings

2.10 Compliance to rules, regulations and procedures relating to collection of Customs Duty needs to be augmented

2.10.1 Irregular resorting to provisional assessment

As per Section 18(1) of Customs Act, 1962, provisional assessment is applicable in cases where:

- (a) the importer or exporter is unable to make self-assessment;
- (b) the proper officer deems it necessary to subject any imported goods or export goods to any chemical or other test;

(c) the proper officer deems it necessary to make further enquiry even though importer/exporter had produced all necessary documents;

(d) the importer or exporter had not produced necessary documents/information.

Chapter 7 (Para 3) of CBEC's Customs Manual prescribes that the provisional assessments should be finalized well within 6 months except project imports.

Scrutiny of records in 13 Commissionerates¹⁴, however, revealed that 173 bills of entry were not eligible for provisional assessment as requisite clarifications/documents were available with the department. Despite having all the documents/clarifications, the department resorted to provisional assessment leading to postponement of recovery of duty for a period ranging from 1 to 4 years. Few cases are listed in **Annexure 9**.

2.11 Monitoring of PD Bond and its Value

CBEC issued instructions in July 1991 for maintenance of (i) common bond cell to maintain uniformity and taking care of disputes arising out of legal/technical points, (ii) to enforce invoking of bonds on expiry of prescribed time limit, (iii) Responsibility fixing on customs house agents for non-compliance with conditions of bond, (iv) Computerization of bond discharge liability (v) safe custody of original bond in cash section.

However, test check revealed that there was no separate Common Bond and BG Cell functioning at NCH, New Delhi for accepting and discharging bond despite Board instructions.

Further, as per Regulation 4 of Customs (Provisional Duty Assessment) Regulations, 2011, bonds executed may be covered with a surety of a Scheduled Bank. The proper officer may require that the bond to be executed under these regulations may be with such surety or security, or both, as he deems fit. A sum not exceeding 20 per cent of the provisional duty is to be deposited with the proper officer.

From the format of the bond and procedure prescribed audit did not get an assurance as to:

- i. The additional useful information which is captured by the bond over and above the prescribed Export/Import documents.
- ii. The additional security/safeguard provisions strengthened by the bond / BG submitted by the Exporter/importer in the light of the measures envisaged under the ease of doing business.

¹⁴Rajasthan(Jodhpur), Tamil Nadu (Chennai Sea, Chennai Air),Chandigarh(Ludhiana),Maharashtra(Mumbai- JNCH Zone II(3),West Bengal(Kolkata(Port, Air port, ICD(CE) Durgapur)

2.12 Improper execution of Provisional Duty (PD) Bonds

Scrutiny of records of 34 Commissionerates¹⁵ revealed that in 180735 cases PD bonds (₹ 366478.86 crore) were taken for full assessable value instead of differential duty. In 7 Commissionerates¹⁶ in 6196 cases for a bond value of ₹ 26816.38 crore, bonds were obtained for total duty provisionally assessed or assessable value, instead of the value for the amount equivalent to difference between the duty as may be finally assessed and the duty provisionally assessed.

In Bengaluru Commissionerate, duty in respect of one Bill of Entry was debited against two bonds in contravention of the provisions.

In four cases under Ludhiana Commissionerate bonds were not obtained at the time of provisional assessment.

Hyderabad Commissionerate replied that (August 2015) bonds were taken for assessable value which was higher than differential duty as the differential duty was not ascertainable at the time of provisional assessment. The reply was not acceptable since higher bond value gives incorrect picture of Revenue which was due to Government subject to finalisation of provisional assessments. Moreover, it is in contravention of the CBEC policy to put avoidable burden on the Importer/Exporter in the form of higher bond value. The reply from other Commissionerates has not been received (January 2016). Analysis of ICES 1.5 transactional data for the period 2011-12 and 2012-13 revealed that out of total 6535736 BsE filed, 435672 BsE were provisionally assessed out of which in 355239 BsE (81.53%) bond were taken for the amount more than or equal to the assessable value by violating of Provisions of Customs (Provisional Duty Assessment) Regulations.

Further, in 55888 BsE (12.82%) bond were taken for the amount less than the 5% of the assessable value. More interestingly in 95 BsE bond amount was nil and in 767 BsE bond amount ranged between ₹ 1/- to ₹ 10/.

Transactional data for the period 2013 onwards has not been provided to Audit by the CBEC which would have brought out more such cases.

As per existing provisions of the Customs Act, a PD bond is to be executed for difference between duty that might be finally assessed and provisional duty assessed. Since final duty could not be assessed at the time of provisional assessment, it may be prudent to adopt a fixed percentage of the assessable value for executing PD bond.

¹⁵ Gujarat(Kandla,Khodiyar,Jamnagar,Mundra), Rajasthan(Jodhpur),Bengaluru(ACC,ICD,NCH(Manguluru)),Chennai(Air,Sea,Tuticorin,Kerala(Kochi),Delhi(ICD(Import),ICD(Ex),ACC,NCH(Import),ACC NCH(EX),-TKD, ICD-Parpatgunj,Hyderabad,Kolkata port, Kolkata Air, ICD-Durgapur,Lucknow(Noida,Kanpur),Mumbai(NCH Zone(4),JNCH Zone II(3),ACC Zone-III(2)

¹⁶Ahmadabad, Jamnagar, Kandla, Mundra, Jodhpur Ludhiana and,NCH Mumbai

Kolkata Commissionerate accepted the observation and stated that efforts would be made to follow the provisions in future. ACC, Jaipur stated that PD Bonds were taken for full assessable value to safeguard the revenue.

The Ministry may like to review the data and provide the status of PD bonds as on 31 March 2015.

2.13 Non-revalidation of PD bonds

As per Regulation 2(2) of Customs (Provisional Duty Assessment) Regulations, 2011 an importer or exporter shall execute a bond for an amount equal to the differential duty and the bond shall continue in force till finalisation of assessment to safeguard the revenue. Bonds executed are valid only for the period mentioned therein unless renewed within validity period.

Audit scrutiny revealed that 44673 Provisional Bills of Entry with bond value of ₹ 16471.11 crore executed by importers in 15 Commissionerates¹⁷ had already expired during 2005-06 to 2013-14 though these provisional assessments have not been finalized.

At NCH Mangaluru Commissionerate, 43 bonds for a value of ₹ 1190 crore executed by M/s. Total India Ltd got expired between 2009-2014. However, the department had not initiated action for revalidation.

Non initiation of action to revalidate bonds defeated the purpose of obtaining the bonds.

Reply from the department has not been received (January 2016).

2.14 Excess Debit in Bond Account

Bonds are executed to safeguard the Government revenue. Excess debit to bond than its actual value may lead to loss of revenue when an importer/exporter fails in payment of differential duty on finalisation of assessments.

At ICD, Bengaluru Commissionerate M/s. BEML Limited had executed a bond for ₹ 68.31 Cr. under Project Imports. In addition to imports made at the ICD, 90 Telegraphic Release Advices (TRAs) have been received from other ports for clearance at the ICD. Total amount debited in the bond ledger was of ₹ 73.88 crore. Thus, the total debits exceeded the bond value to an extent of ₹ 5.57 crore.

In reply, department stated that compliance would be furnished in due course. Further reply is awaited (January 2016).

¹⁷ Gujarat (ICD- Khodiyar and Kandla), Rajasthan (Jodhpur), Karnataka (ACC, ICD, NCH (Mangalore)) Tamil Nadu (Air, Sea, Tuticorin), Kerala (Kochi), Uttar Pradesh (Noida, Kanpur), Maharashtra (2) and Ludhiana

2.15 Irregular cancellation of Bonds

As per Regulation 2 of Customs (Provisional Duty Assessment) Regulations, 2011, bonds shall be kept live till the finalisation of provisional assessment.

In Chennai Sea Customs, an importer M/s Ivax Paper Chemicals Limited, Medak, on finalization of assessment (July 2013) paid the differential duty and interest of ₹ 6.49 lakh was yet to be paid. However, the department cancelled the PD bond (July 2014) pending realisation of interest. Reply of the department was awaited (January 2016).

2.16 Non/short execution of Bank Guarantee (BG)

As per Regulation 4 of Customs (Provisional Duty Assessment) Regulations, 2011, bonds executed may be covered with a surety of a Scheduled Bank.

Audit scrutiny in 19 Commissionerates¹⁸ revealed that in 116259 cases bonds for a value of ₹ 28679.48 crore were executed without any surety or security or Bank Guarantee.

In reply the Dy. Commissioner of Customs, ICD Khodiyar under Ahmadabad Commissionerate stated that the proper officer had the discretion to take a decision regarding surety. Generally as a matter of practice, exemption from Bank Guarantee, and fixed deposit were given only to manufacturers/Star trading houses, reputed trading houses etc.

Audit is of the view that fixed percentage of surety/security deposit should be made mandatory for all provisional assessments to elicit early response from the importers/exporters for finalization.

Reply from other commissionerates is awaited (January 2016).

2.17 Non-revalidation of Bank Guarantee (BG)

As per Regulation 4 of Customs (Provisional Duty Assessment) Regulations, 2011, a BG shall be executed by an importer or exporter in respect of any goods and such BG shall continue in force till finalisation of assessment to safeguard the revenue. BG executed is valid only for the period mentioned therein unless renewed within the validity period.

Out of 42 Commissionerates, data on Bank guarantees was furnished by eight Commissionerates¹⁹ representing the value of bonds and Bank Guarantees

¹⁸Gujarat(Khodiyar, Kandla, Mundra),Rajasthan (Jodhpur), Uttar Pradesh (Noida, Kanpur) Tamil Nadu (Tuticorin),Punjab and Haryana(Ludhiana), Odisha (Bhubaneshwar), Maharashtra ((Import I&II, Export I&II(NCH Zone-I)), NS-I,NS-III,NS-V(JNCH Zone II,Imports &Exports) (ACC Zone III)),, Karnataka(1)

¹⁹Karnataka (ACC, NCH (Manguluru)), Tamil Nadu (Chennai Air, Sea, Tuticorin), Ludhiana, Uttar Pradesh (Noida), ICD, Durgapur, West Bengal

(BG) obtained in respect of provisional assessments. The details are given in table below:

Table: Bond value and Bank Guarantee

Year	No. of cases	Bond value (Cr.₹)	No. of cases	BG value (Cr.₹)
2011-12	15029	23998	1820	5.31
2012-13	23207	29746	1535	1.65
2013-14	26116	29168	3295	3.10
Total	64352	82912	6650	10.06

The Ministry may review such cases and provide All India data on the Bank Guarantees executed during the period 2011-12 to 2013-14 for Provisional Assessments and their status as on 31st March 2015.

Audit scrutiny revealed that 848 Bank Guarantees executed by importers in 26 Commissionerates²⁰ for ₹ 450.22 crore had expired (up to July 2015) and the same were not revalidated although these assessments have not been finalized. Few cases are listed in **Annexure 10**.

As per the said Regulation, the Bank Guarantee should be kept live till finalisation of assessment to safeguard the revenue. Non initiation of action to renew the Bank guarantee before expiry defeated the purpose of safeguarding the Government revenue.

Reply of the department was awaited (January 2016).

2.18 Non/Short obtaining of Security Deposit

As per Regulation 2(2) of Customs (Provisional Duty Assessment) Regulations, 2011, security deposit of such sum not exceeding 20 per cent of provisional duty assessed by the proper officer is to be deposited by the importer/exporter.

Audit scrutiny revealed that, in 6 Commissionerates²¹, in 222 cases, security deposit was not obtained/short obtained to the extent of ₹ 21.48 crore.

At ICD Mathilakam under the jurisdiction of Kochi Commissionerate, in 10 cases security deposits were collected @20% of differential duty instead of Provisional duty assessed resulting in short collection of security deposit of ₹ 0.39 crore.

²⁰Gujarat (Khodiyar, Kandla, Mundra,),Karnataka (Bengaluru, ICD, NCH, ACC),Tamilnadu (Sea Kerala,(Kochi), Chandigarh (Ludhiana), Delhi (Exp(2) ,Imp(2)), Telangana (Hyderabad) Odisha (Bhubaneswar), Uttar pradesh (Noida, Lucknow) Maharastra (Mumbai, (Import I&II, Export I&II(NCH Zone-I), NS-I,NS-III,NS-V(JNCH Zone II) ,Imports & Exports(ACC Zone III)), West Bengal, Kolkata

²¹ Tamil Nadu (Chennai Sea, Calicut), Odisha (Bhubaneswar) Uttar Pradesh(Kanpur, Noida),West Bengal(Durgapur CE)

In respect of ICD, Durgapur (Kolkata), the department while admitting the observations stated that all PD Bond would be accepted with proper surety and security in future.

Reply of the department was awaited (January 2016).

2.19 Non/Short submission of PD Bond in case of warehoused goods

As per Section 18(2) (b) of Customs Act, 1962, in the case of warehoused goods, the proper officer may, where duty finally assessed is in excess of duty provisionally assessed, require the importer to execute bond binding himself for a sum equal to twice the amount of the excess duty. Thus goods for assessable value worth ₹ 20 lakh (twice the bond amount i.e. ₹ 10 lakh) remained unprotected.

In four Commissionerates²² in 46 cases bonds were short executed for a value of ₹ 0.10 crore.

Reply of the department was awaited (January 2016).

Ministry may provide the data on security deposit obtained on all India basis.

2.20 Other Issues of operational malfunction

2.20.1 Non/ Short levy of Extra Duty Deposit (EDD)

With a view to elicit early response from importers in cases of valuation disputes, Board issued orders vide Circular No. 11/2001- Cus. dated 23/2/2001 for payment of EDD@ 1% of assessable value while referring the case to Special Valuation Branch (SVB). If the importer does not furnish complete reply to the questionnaire issued by SVB within 30 days of receipt thereof, EDD has to be increased to 5 % till the date of submission of reply and the assessment has to be completed within four months from the date of receipt of reply.

Scrutiny of records in 4 Commissionerates²³ revealed that non-furnishing of reply to questionnaire by the importers in 62 cases entailed recovery of differential EDD of ₹ 1.06 crore @ 4% of assessable value which has not been done. Few cases are listed in **Annexure 11**.

2.20.2 Short levy of duty due to under valuation

Section 14 of Customs Act read with rule 10 of Valuation (Determination of Value of Imported Goods) Rules, 2007 provides for valuation of goods imported.

Scrutiny of records under 4 Commissionerates²⁴ revealed that assessments in respect of 9 cases were made provisionally at lower value due to incorrect

²² Delhi (Import, Export-NCH, Import-ICD,TKD) and Chennai Air Customs

²³ Jodhpur, Delhi(PPG), Noida, Hyderabad

²⁴ Jodhpur, Visakhapatnam, Bhubaneswar, Kolkata Port

valuation or mis-classification which resulted in non/short levy of duty amounting to ₹ 10.52 crore including interest. Some of the cases are listed in **Annexure 12.**

2.20.3 Irregular refund of duty on short landed goods

As per CBEC circular No.6/2006 dated 12.01.2006 read with circular No.96/2002 Cus. dated 27.12.2002, all cases where customs duty is leviable on advalorem basis, the assessment of bulk liquid cargo should be based on invoice price which is the price paid or payable for the imported goods i.e., transaction value, irrespective of quantity ascertained through shore tank measurement or any other manner and wherever customs duty is leviable at specific rate, the determination of quantity would be relevant for levy of customs duty.

Further, where goods are short landed, entire quantity of the goods as originally declared in the bill of entry provisionally assessed should be finally assessed without making any deduction for the short landed quantity. Duty should be adjusted on the entire consignment and refund on the short landed goods subsequently granted in due course on fulfillment of the conditions for such refunds.

In Kochi Commissionerate, an importer M/s Indian Oil Corporation Ltd imported Motor Spirit in four Bills of Entry. As per shore tank report the quantity received was lesser than the quantity shown in the Bill of Lading.

Audit scrutiny revealed that in these cases, customs duty was assessed on advalorem basis on proportionate transaction value of shore tank quantity determined by the department which was irregular. In terms of aforesaid Board circular in cases where the customs duty was leviable on advalorem basis as in the instant case, the invoice price (transaction value) irrespective of quantity ascertained through shore tank measurement was to be considered for assessment. This resulted in short levy of duty of ₹ 3.40 crore. Further, the department determined duty erroneously during finalisation and refunded ₹ 0.18 crore resulting in aggregate loss of revenue of ₹ 3.58 crore.

The matter was reported to the Ministry in October 2015, their response has not been received (January 2016).

2.21 Loss of revenue due to non- levy of penalty for short landed goods

As per section 116 of Customs Act, 1962, if any goods loaded in a conveyance for importation into India are not unloaded at their place of destination in India, or if quantity unloaded is short of quantity to be unloaded at the destination, and failure to unload or deficiency is not accounted for to satisfaction of the AC/DC of customs, person-in-charge of the conveyance shall be liable to a penalty not exceeding twice the duty that would have been

chargeable on goods not unloaded or deficient goods, as the case may be, had such goods been imported. Further, according to Para 7 of Board's circular No.96/2002-Cus.dated 27 December 2002, liability of master/agent would continue to be fixed by comparing ship's ullage quantity at the port of discharge with ship's load port ullage quantity or Bill of Lading quantity if the former was not made available by the master/agent.

Scrutiny of records under 4 Commissionerates²⁵ revealed that non-levy of penalty on shipping agents in 58 cases resulted in loss of revenue of ₹ 0.65 crore. Some of the cases are listed in **Annexure 13**.

2.22 Non-levy of interest on finalisation of provisional assessment

Under the provisions of section 18(3) of Customs Act 1962, the importer or exporter shall be liable to pay interest, consequent to the final assessment order at the rate fixed by Central Government under Section 28AA of Customs Act, 1962 from the first day of the month in which the duty is provisionally assessed till the date of payment thereof.

Scrutiny of records in 6 Commissionerates²⁶ revealed that non levy of interest on finalisation in 33 cases resulted in loss of revenue of ₹ 0.13 crore.

Reply of the department was awaited (January 2016).

2.23 Non-levy of penalty for failure to comply with provisions

As per Regulation 5 of Customs (Provisional Duty Assessment) Regulations, 2011, if any importer or exporter contravenes provisions of regulations or abets such contravention or who fails to comply with any provisions of regulations, shall be liable to pay penalty up to fifty thousand rupees.

Audit scrutiny in units falling under Ludhiana and Bhubaneswar Commissionerates revealed that, in 123 cases either test reports/actual user certificates as required or other documents were not produced by the importers within the stipulated period. Non-compliance to the provisions attracted penalty up to ₹ 50, 000/- in each case.

Reply of the department was awaited (January 2016).

Cases of delays in finalisation of Provisional assessments causing loss of revenue to the exchequer

2.24 Delay in/Non-finalisation of provisional assessment despite receipt of required documents/chemical report/valuation report

As per Para 3.1 of Chapter 7 of CBEC's Customs Manual, provisional assessments are to be finalised within 6 months. However in cases of involving machinery contracts or large project imports, where imports take place over

²⁵ Jodhpur, Kochi, Ludhiana, Vijayawada

²⁶ Jamnagar, Sea Chennai, Kochi, Visakhapatnam, Ludhiana, Bhubaneswar

long period, assessments has to be finalised within 6 months from the date of import of last consignment covered by the contract.

Scrutiny of records in 36 Commissionrates in 36837 cases involving bond value of ₹108389.37 crore revealed that the pendency of cases ranged from 1 to 10 years as detailed below.

Table: Reasons for pendency of provisional assessments

Sl. No	Reasons for delay	No. of cases	Bond value (Cr ₹)	Delay in years
1	Pendency for want of ullage report/ original documents	10882	71673.82	1-8
2	Pendency for want of chemical report.	3252	10153.22	1-7
3	Pendency for want of correct valuation(SVB)	11641	14977.58	1-10
4	Non availability of end use certificate	1202	1136.30	1-3
5	Cases pending in court	102	87.98	1-3
6	Cases pending due to non completion of internal audit	50	8.68	Not quantified
7	Others	9708	10351.79	1-10
	Total	36837	108389.37	

Few cases of Delay in/non-finalisation of provisional assessments (are listed in **Annexures14 to 17.**

2.25 Delay in /Non finalisation of provisional assessment pending receipt of required documents/chemical report/valuation report.

At Krishnapatnam Port, under the jurisdiction of Customs (Preventive) Commissionerate, Vijayawada, 259 cases pertaining to the period from April 2011 to March2014 were not finalized pending receipt of documents/chemical reports/ valuation report.

Department replied (August 2015) that the cases were pending due to non-receipt of original documents from importers, valuation reports from SVB and investigation reports from DRI.

In Jamnagar Commissionerate, in respect of 18 BsE with an assessable value of ₹ 7224.42 crore, two importers viz. M/s. Bharat Oman Refineries Ltd., Jamnagar and M/s. Shree Digvijay Cement Co. Ltd., have not submitted their original documents to customs authority, even after a lapse of one to one and half year. The department had not taken any follow-up action to finalise the assessments.

Thus in both categories goods with bond value of ₹108389.37 crore remained unprotected.

Reply of the department was awaited (January 2016).

2.26 Non-adjudication of Show Cause Notices

As per Section 28AAA(3) of Customs Act,1962, when an SCN is issued to an importer/exporter, he shall furnish reply within 30 days from the date of receipt of such notice and the case is to be adjudicated within 1 year from the date of notice.

Scrutiny of records in 4 Commissionerates²⁷ revealed that though SCNs were issue in 67 cases between December 2011 and September 2013, the same were not finalized so far. Delay ranging from 1 year to three years led to non-realisation of duty amounting to ₹2.70 crore apart from extending undue financial benefit to the importers. Few cases are listed in **Annexure 18**.

2.27 Delay in finalisation of provisional assessments on project imports

Under Regulation 7 of the Project Imports Regulations, 1986 the importer shall submit a statement indicating the details of goods imported together with necessary documents within three months from the date of last import for home consumption. In case the importer fails to do so, the department shall invoke the bond/undertaking cash security/bank guarantees executed in this regard, issue notice for demand of duty/penalty. The department shall finalise the assessment within 60 days from the date of submission of the required documents vide Board Circular No 22/2011 - Customs dated 4.5.2011.

Scrutiny of records in 10 Commissionrates²⁸ revealed that in 139 cases importers did not submit requisite documents though the last import took place between 2005 to 2014. In two cases under Kandla Commissionerate, the last import was made between 2011 to 2012. However, action to invoke the Bank Guarantee of ₹0.40 crore was not initiated by the department.

Department stated (August 2015) that efforts were underway to finalise project import cases.

2.28 Non/delayed realisation of differential duty on final assessment

Section 28AAA of Customs Act, 1962 stipulates that where any duty has not been levied or short levied or erroneously refunded or any interest payable has not been paid or part paid on finalisation of assessment, the proper officer shall within one year from the relevant date serve notice and such person shall pay duty or interest demanded within thirty days.

Scrutiny of records in 5 Commissionerates²⁹ revealed that in 21 cases, final assessments were made belatedly despite submission of test reports or other

²⁷ Chennai Sea, Mumbai(NCH(3))

²⁸ Kandla, ICD- Bengaluru, NCH-Manguluru, Chennai sea, Ludhiana, Visakhapatnam, Mumbai(NCH(3)JNCH(1))

²⁹ Chennai Air, Ludhiana, Visakhapatnam, Mumbai(ACC, Exports),Kolkata(Dump data)

relevant documents/certificates, which resulted in loss of revenue ₹ 64.23 crore and undue financial accommodation to importers. Few cases are listed in **Annexure 19**.

2.29 Delay in completion of investigation and finalisation of assessment by Special Valuation Branch (SVB)

As per CBEC circular No. 11/2001-Cus dated 23.2.2001, the investigation and finalisation of assessment by the Special Valuation Branch should be completed within 4 months from the date of reply of the importer to the questionnaire issued by the Special Valuation Branch.

Scrutiny of records in 24 Commissionerates³⁰ revealed that out of 10664 cases, involving bond value of ₹ 12489.62 crore were pending since 2004 to 2014 for a period ranging from 1 to 10 years for want of valuation reports/price verification from SVB/SIIB or DRI etc. Few cases are listed in **Annexure 20**.

Reply of the department was awaited (January 2016).

2.30 Conclusion

The audit of provisional assessments of customs duty has revealed abnormal delay in finalization of provisional assessment and consequent delay in realisation of revenue. More than 36000 cases with bond value exceeding ₹ 108389.37 crore were pending beyond 6 months for collection of Customs Revenue.

There were several cases of non-compliance of Customs rules, regulation relating to provisional assessment, provisional duty bond and bank guarantee management. There was continuance of cases of operational malfunction and delays in finalization of the assessments pointed out in earlier audit report.

The module for finalisation of provisional assessment launched under ICES.1.5 with effect from April, 2014 needs to be streamlined with all its functionalities. Audit noticed issues worth ₹ 545.92 crore alongwith the issue of execution of bonds valued at ₹ 28679.48 crore without any security or Bank Guarantee, in addition to the systemic deficiencies which could not be quantified.

³⁰Gujarat (Khodiyar,Kandla,Mundra,Jamnagar), Rajasthan (Jodhpur), Karnataka ACC,ICD,NCH), Tamil Nadu (Air,Sea,Tuticorin), Punjab & Haryana (Ludhiana), Telangana (Hyderabad), Andhra Pradesh (Vijayawada), Maharastra (Import I&II, Export I&II(NCH Zone-I)), NS-I,NS-III,NS-V(JNCH Zone II,Imports&Exports)(ACC Zone III), Madhya Pradesh (Gwalior,Indore)