

CHAPTER IV ASSESSMENT OF CUSTOMS REVENUE

We found from test check (August 2010 to March 2014) of records, a few cases of incorrect assessment of customs duties having revenue implication of ₹ 53.65 crore. They are described in the following paragraphs.

Non recovery of TED refund amount sanctioned on the basis of the forged and fabricated documents

4.1 As per paragraph 8.3 (c) of Foreign Trade Policy (FTP), 2004-09, the supply of goods by main/sub-contractors, qualifying as deemed export in terms of paragraph 8.2 of FTP, are eligible for benefits of refund of terminal excise duty (TED) subject to terms and conditions as prescribed in Handbook of Procedure (HBP), Vol-I. In terms of provisions of paragraph 8.3.1 (iv) of HBP, Vol-I., the claim for TED refund in respect of supplies (deemed export) under categories mentioned in paragraphs 8.2 (d) to 8.2 (j) of FTP may be filed either on the basis of proof of supplies effected or payment received.

The application or the documents used in support of such claim if found to contain any false or fraudulent or misleading statement shall attract penal provision under Rule 7 of Foreign Trade (Regulation) Rules 1993 including refusal to grant further scheme benefits in future. To implement these provisions, Directorate General of Foreign Trade, New Delhi, issued (31 December 2003) instruction under paragraph 3 of 'Guidelines for Maintaining the Denied Entities List (DEL)' to initiate action for:

- (a) lodging complaint with the local police under the Indian Penal Code (IPC) for fraud/forgery
- (b) transfer the file to the enforcement division for investigations/adjudications, subsequent to the action of placing the firm in the DEL
- (c) suspension of the IE Code of the firm and
- (d) enquiry into the case by the head of the office and submit the report within 15 days to the Headquarters to indicate if connivance of any officials was found in perpetrating the fraud.

M/s Senbo Engineering Ltd., Kolkata, was sanctioned refund of TED by the Additional DGFT, Kolkata in numerous cases during 2008-09 and 2009-10 for supplies made to M/s Delhi Metro Rail Corporation Ltd. (DMRC) on the basis of the project authority certificate and certificate of payment issued/ signed by Sh S. S Padmanavan, Chief Engineer on behalf of the project authority (viz., M/s DMRC). However, subsequent verification of the document by the DGFT office revealed that the refund of TED was claimed by the applicant on the

basis of the forged and fabricated documents because M/s DMRC confirmed that the project authority certificate and certificate of payment were not issued by them and Sri S. Padmanavan was never posted with M/s DMRC. Accordingly, DGFT, Kolkata issued show cause notices to applicant in 10 cases with the directions to refund TED amount paid along with 15 per cent interest for fraudulently availing the benefit. The action in line with paragraph 3 of 'Guidelines for maintaining the Denied Entities List' was not available on the records.

However, further scrutiny revealed that in respect of another eight cases, refund of TED amounting to ₹ 4.43 crore, claims for which were accompanied by similar documents signed by the same person (Sh. S. Padmanavan, Chief Engineer as mentioned above), neither any SCN/demand notice were issued nor any action as envisaged in the Rule 7 of Foreign Trade (Regulation) Rules 1993 and DGFT instruction/guidelines dated 31 December 2003 was initiated against the firm. The firm has been put on the DEL on 10 October 2014.

On being pointed out (May 2014/ July 2015), the DGFT, New Delhi, Ministry of Commerce intimated (August 2015) that besides recovery (June 2014) of ₹ 19.33 lakh in one case from M/s Senbo Engineering Ltd., Order-in- Original has been issued (June 2015) in another nine cases. In remaining nine cases the firm has been granted time up to 30 September 2015 as per their request for refund of duty and interest. However, the reply is silent about action initiated under IPC or conduction of enquiry for corrective action to avoid such fraudulent claims.

The fact remains that neither the department initiated corrective action under relevant law nor conducted any enquiry as desired under the aforesaid guidelines to rule out connivance, if any, of the officials in perpetuating the fraud. This may lead to loss to the exchequer and also occurrence of such cases in future could not be ruled out.

Non recovery of customs cost recovery charges

4.2 The Government of India, Ministry of Finance, Department of Revenue, New Delhi vide letter no.A11018/9/91 Admn., IV dated 1 April 1991, had directed to recover the cost in respect of posts created on cost recovery basis at uniform rate of 1.85 times of monthly average cost of the posts plus DA, CCA, HRA and transport allowance etc. in advance.

Further, CBEC circular no.52/1997-cus dated 17 October 1997 provides that the Commissioner of Customs would accept the deposit of advance cost recovery charges for the number of staff which will be actually posted in the said formation. Advance deposit may be made for the staff for three months.

Audit examination of records of ICD, Dadri and Loni under Customs Commissionerate, Noida revealed that the custodian of two Container Freight Stations (CFSs) viz. CMA CGM Logistic Park and All Cargo Logistic Park Ltd., at ICD Dadri and the custodian of ICD, Loni had not paid customs cost recovery charges of ₹ 3.35 crore for the period from April 2013 to March 2015 and ₹ 4.02 crore from April 2012 to March 2015 respectively. The department, however, had not taken any action to collect the dues from the custodians.

On this being pointed out (June 2014 to April 2015), the department stated (March/May 2015) that requests of all the three custodians for exemption under CBEC instructions F.No.434/17/2004-cus.IV dated 12 September 2015 are pending with CBEC and hence they were not paying the cost recovery charges to the department. Though, they are being asked regularly to deposit the cost recovery charges. In case of ICD, Dadri it was also stated that to safeguard of revenue, both custodians had submitted the undertakings that all the arrears of cost recovery charges till the date of waiver shall be paid by them.

The reply of the department is not acceptable in view of the paragraph 2 of F.No.434/17/2004-cus.IV dated 12 September 2005 which clearly stipulates that the waiver of cost recovery charges would be prospective with no claim for past period. Besides, circular no.52/1997-cus stipulates that an advance deposit should be made for the staff for three months. Thus, there is no statutory provision for relaxing the custodians to deposit the dues on the basis of the undertakings.

The Assistant Commissioner, Noida Custom Commissionerate intimated (October 2015) that M/s CMA CGM Logistic Park and M/s All Cargo Logistic Park Ltd., had paid ₹ 50 lakh and ₹ 29 lakh respectively for the period 2013-14.

The cost recovery charges for the remaining period are recoverable from the custodians.

The matter was reported to the Ministry in July 2015, there response is awaited (January 2016).

Short recovery of customs supervision charges due to non revision of MOT rates

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

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

Scrutiny of the MOT collection records at the office of the Additional Commissioner of Customs, Mini Custom House, Haldia under Kolkata (Port) Commissionerate revealed short recovery of customs supervision charges to the extent of ₹ 712.07 lakh during April 2013 to March 2014 due to non revision of the MOT fee.

When we pointed this out (October 2014), the Assistant Commissioner of Customs, Mini Custom House, Haldia stated (January 2015) that no specific instruction has yet been received from the higher authority regarding revision of MOT fee.

Ministry of Finance, Department of Revenue, CBEC in their Action taken note for audit observation raised in Audit Report No.12 of 2014 (Audit para no.4.6, DAP A102/2012-13) stated (July 2015) that issue of revision of MOT charges is under consideration.

The fact remains that indecision on the revision of MOT charges is leading to recovery at reduced rates.

The matter was reported to the Ministry in September 2015, there response is awaited (January 2016).

Inadequate amendment in rules and notification resulted in incorrect availing of Cenvat credit

4.4 Government of India, Ministry of Finance, Department of Revenue (TRU I) vide serial no. 4.1 read with serial no. 4.3 (b) of its DO letter dated 28 February 2011 (issued on Budget day), has withdrawn exemptions from central Excise duty on about 130 entries as incorporated in Central Excise notification no.1/2011-CE dated 1 March 2011 and introduced a nominal duty of 1 per cent (later revised to 2 per cent in March 2012) on these items with the condition that no credit of duty paid on such items used as input and input services would be taken. Accordingly, for the implementation of the 1 percent scheme a proviso was inserted below Rule 3 (1) (i) of the Cenvat Rules 2004 on 1 March 2011 disallowing Cenvat credit on such goods. 'Coal' classifiable under Tariff heading CTH 2701 was also not eligible for Cenvat credit being one

of the 130 items disallowed Cenvat credit vide aforesaid notification no. 1/2011-CE. (serial no.28 of the notification).

Subsequently, 'Coal' was leviable to concessional duty of excise at the rate of 2 per cent under notification no.12/2012-CE (serial no.67) dated 17 March 2012 (as amended) with the condition that no Cenvat credit has been taken in respect of the inputs or input services used in the manufacture of these goods (condition No. 25).

Import of coal is allowed at countervailing duty (which is equivalent to excise duty) rate of duty of 2 per cent under notification no.12/2012-Cus (serial no.123) dated 17 March 2012. However, the condition of non-availment of Cenvat credit was not mentioned in the customs notification no.12/2012-Cus, although it was specifically mentioned in condition no.25 of the Central Excise notification no.12/2012-CE. Both these notifications (12/1012-CE and 12/2012-cus) were issued in March 2012. Impact of this inadequate amendment was that a manufacture was not entitled to avail Cenvat credit of duty paid on 'Coal' procured from domestic market but was incorrectly entitled to avail it on imported 'Coal'. The lacuna in the Custom notification is being exploited by the manufacturers as narrated below.

M/s Shri Lonsen Kiri Chemicals Industries Ltd., (100 per cent EOU) falling under the jurisdiction of Superintendent of Central Excise, Range II, Division II, Vadodara-I purchased (October 2013 to March 2014) 22.30 MT of 'Non coking coal' imported by M/s Adani Enterprises Ltd., Dahej and availed ₹ 7.18 lakh Cenvat credit of excise duty at the rate 2 per cent charged by the supplier (M/s Adani Enterprises Ltd). This resulted in incorrect availing of Cenvat credit of ₹ 7.18 lakh due to inadequate amendment in Cenvat credit Rules and Customs notification.

When we pointed this out (May 2014), the Superintendent (Central Excise) reported (May 2014) that the audited entity has reversed the amount of Cenvat credit wrongly availed.

Further audit enquiry revealed that M/s Adani Enterprises Ltd had passed on Cenvat credit (being Dealer/importer could not claim Cenvat credit benefit) amounting to ₹ 235.50 lakh on imported coal during the period 17 March 2015 to 31 March 2015 to its clients which included various manufacturers/ second stage dealers. Accordingly, these manufacturers/ second stage dealers availed of Cenvat credit benefit because of the lacuna in custom notification.

Board may to protect revenue consider rectificatory amendment of the Custom notification in consonance with the Cenvat credit Rules 2004 to administer Cenvat Credit benefit on 'Imported coal' as well as procurements made from domestic market.

Ministry may like to review all such cases for appropriate action.

The issue was flagged to the Ministry in October 2015, there response is awaited (January 2016).

Imports cleared without levying or short levying the applicable anti dumping duty

4.5 As per section 9A of the Customs Tariff Act, 1975, where any article is exported from any country to India at less than its normal value, then upon the import of such article into India, the Central Government may, by a notification, impose an anti dumping duty. Accordingly, anti dumping duty was imposed from time to time on goods like 'Float glass,' Phosphoric acid, and Polypropylene when these were imported from specified countries like Indonesia, Korea RP, Taiwan, and Singapore.

We found that assessing officers cleared 22 consignments of such goods imported by M/s Asahi India Ltd., and 10 others from these specified countries without levying or short levying applicable anti dumping duty of ₹ 90.06 lakh.

The ICD, Rewari authorities in respect of import of 'Float glass,' by M/s Asahi India Ltd. stated (September 2013/June 2014) that goods imported were float glass of tinted type (light green) as per test report. Accordingly, no anti dumping duty was leviable on the goods imported.

The reply of the department is not acceptable as test report furnished relates to goods imported in the year 2011. While goods objected were imported in 2012. The manufacturer had described the goods as float glass of tinted type in the certificate of origin and bill of landing, but the importer had mentioned light green float glass in bill of entries to evade anti dumping duty. Hence goods imported from Indonesia are float glass of tinted type on which anti dumping duty was leviable. The department however raised (June 2014) a protective demand. Further progress is awaited (January 2016).

Reply in respect of imports made from JNCH, Nhava Sheva, Mumbai by 10 importers is awaited (January 2016).

Imports cleared without levying the applicable safeguard duty

4.6 As per section 8B of the Customs Tariff Act, 1975, where any article is imported into India in such increased quantities and under such conditions so as to cause serious injury to domestic industry, then the Central Government may, by a notification, impose a safeguard duty on that article. Accordingly, safeguard duty was imposed from time to time on goods like tubes, pipes and hollow profiles, Seamless of iron, alloy or non alloy steel (CTH 7304), 'Decy1 alcohol (Ecorol 10/98)' and 'Myristic /Myristy 1 saturated fatty alcohol' (CTH

290517/382370) when these were imported from specified countries like People's Republic of China, Indonesia and Denmark.

Twenty consignments of such goods imported by M/s Yogesh Hydraulics Pvt. Ltd., and 12 others from these specified countries were cleared without levying applicable safeguard duty of ₹ 80.49 lakh.

Ministry in their reply (December 2015/January 2016) reported issue of Demand cum show cause notices to five importers (M/s Neogen Chemicals Ltd, M/s Quent Chem, M/s Sigent Chemical Corporation Pvt. Ltd, M/s Soofi Traders and M/s Esteem Industries Pvt. Ltd) and recovery of ₹ 7.34 lakh from M/s Pushp Sons Fibrol Pvt. Ltd. Reply in remaining cases is awaited (January 2016).

Short levy of additional duties of customs due to misclassification of RSP

4.7 Additional duty of Customs equivalent to excise duty (CVD), leviable under Section 3 (1) of the Customs Tariff Act, 1975, is calculated as a percentage of the value of imported article determined under Section 14 (1) of the Customs Act, 1962 and duty of customs chargeable under Section 12 of the Customs Act, 1962. In case an imported article is required under the provisions of the Legal Metrology Act, 2009 to declare on the package thereof the retail sale price (RSP) of such article, the value of the imported article shall be deemed to be the RSP declared on the imported article less the amount of abatement.

Where there is reasonable doubt that the declared value does not represent the transaction value, the declared value may be rejected by the proper officer under Rule 12 of the Custom Valuation (Determination of Value of Imported goods) Rules, 2007 and the value be determined by proceeding sequentially in accordance with rules 4 to 9.

M/s Lenovo India Pvt. Ltd., and four others imported (May to November 2011) 21 consignments of 'Laptop computers LCD Monitors and Softwares' through Chennai Sea and Air Commission rates. The goods were assessed to countervailing duty equivalent to excise duty on the declared value of RSP allowing applicable abatement specified in notification no.49/2008–Central Excise (N.T.) dated 24 December 2008.

Audit noticed that the RSP declared was much less than the imported cost of the goods resulting in mis-declaration of RSP. However, the assessing officer had not rejected the declared value (RSP) and also not followed the method of determination of value as per Custom Valuation (Determination of Value of Imported goods) Rules, 2007 for levy of CVD. Moreover, In-built system in the ICES 1.5 module had failed to detect such mis-declaration and to take appropriate action. Thus, non-observance of the Rules in determination of

value of imported goods had resulted in short levy of duty amounting to ₹ 54.10 lakh.

On this being pointed out (March 2012), the department stated (June 2012) that one of the importers M/s Samsung India Electronics Private Limited had paid (May 2012) the duty of ₹ 0.87 lakh along with interest of ₹ 0.06 lakh. Reply in respect of other importers is awaited (January 2016).

Import of foreign liquor

4.8 Foreign liquor falling under Chapter 22 of the Customs Tariff is being imported from different countries through various customs ports of India and warehoused at the port of imports filing Warehousing Bills of Entry (BEs or Into –Bond BEs) and giving Bonds/BG for the duty assessed. Importers then seek trans-shipment of the warehoused goods to another destination under execution of trans-shipment Bond/BG. The goods are transferred under Transfer Bond, accompanied by a 'Shipping Bill for Export of Duty-Free goods Ex-Bond' and a document in the form of Annexure-3 (Application for transfer of goods from one warehouse to another port), giving details of description, quantity, value and duty on the goods. However, no copies of into –Bond B/Es, invoices, etc. are sent for the transferred goods. After the transferred goods are received and re-warehoused at the destination port, the custodian (destination port) issues re-warehousing certificate (RWC) to the originating warehouse (Customs), which then cancels the bond/BG.

A study of the system of import of liquor on payment of duty compared with duty free imports, the price at which liquors were sold by duty free shops, system of re-warehousing, extent of computerisation of transshipment of goods etc; at Sea Customs, Chennai, Kochi, ICD, Kolkata Port, Kolkata Airport, Mumbai and ACC, Bangalore, Duty Free Shops at Chennai, Bangalore and Kolkata; for the period 2012-13 to 2014-15 was conducted.

Audit findings are illustrated below:

Excess/shortage of imported liquor in accounting

4.8.1 (i) Audit scrutiny and analysis of data furnished by Duty Free Shop, AirPort and Air Cargo Commissionerate, Bangalore revealed that there was an excess of 25322 units of liquor in respect of 199 articles of various brand. Similarly, there was a shortage of 161121 units in respect of 307 articles of various brands. The duty ₹ 23.82 crore foregone on shortage of units is recoverable with interest.

4.8.1 (ii) Similarly, in Chennai Sea Port, on arrival of goods they were assessed as warehouse bill of entry at the customs EDI and taken directly to Container Freight Station (CFS) at Virugambakkam, Chennai. The goods were unloaded

there and bonded for the bill of entries received in a consignment. As and when requirement of stock arises for the importers {Indian Tourism Development Corporation (ITDC) and United Duty Free Retail Shop (UDFRS)}, the goods were ex-bonded in piecemeal through Customs Houses which was either issued to Duty Free Shop or transferred to other places in the State where these firms have branches. For ex-bonding the goods, two manual registers are maintained viz. (a) warehouse bonded register and (b) transshipment bond register at Sea Customs, Chennai.

The Bonded Warehouse Register contains bill of entry -wise details of liquors ex-bonded and issued or transferred to duty free shop or other branches. The receipt, issue and balance for each category of liquor are recorded in this Register. The Transshipment Bond Register contains the details of “Transfer” of goods (aggregate quantity – Assorted liquors) which is the sum total of different quantity/category of liquor taken from multiple Bill of Entries. The contra debit posting is made in the Bonded Warehouse Register for each category of liquor issued.

In principle, the aggregate quantity transferred and recorded in the Transit Bond Register (TBR) with Transit Bond Number (T.B.No.) should tally with the assorted quantities taken from different Bill of Entries/Bond on a given date. Comparison of the details available in the above registers disclosed that there is a difference in quantity to the extent of 6215 numbers during the period from 1 April 2012 to 31 March 2014, representing the shortage of goods. The minimum value for the shortage of goods works out to ₹ 37.29 lakh and the duty/addl. duty thereon worked out to ₹ 40.27 lakh (calculated at 100 percent import duty) aggregating to ₹ 77.56 lakh.

Under valuation of liquors

4.8.2 (i) United Duty Free Retail Shop (UDFRS) and ITDC- (a Government of India Undertaking) imported foreign made liquors (duty free) on the arrangement that these imported liquors were to be sold through Duty free shops functioning under their control. Comparison of rates between the importers who cleared the goods after payment of duty (details obtained from ICES 1.5 transactional data) and the rate at which the same liquor was imported by ITDC (Duty free shop) revealed that in 30 instances (where the difference is more than 10 per cent) during 2012-13, the liquor cleared on payment of duty were undervalued to the extent of ₹ 26.15 lakh and the duty/additional duty (4 per cent) thereon worked out to ₹ 41.84 lakh aggregating to ₹ 67.99 lakh. No guidelines value of Directorate General of Valuation (DGOV) was produced to audit.

4.8.2 (ii) Further, M/s Pernod Ricard India Pvt Ltd., M/s. Diageo India Pvt. Ltd., M/s. Bacardi India Pvt. Ltd., United Spirits Limited under Mumbai Commissionerate had imported liquor from their related parties, named M/s. Pernod Ricard Gulf, M/s. Diageo Brands BV, M/s. Tradall S.A., M/s. White and Mackay Limited respectively. In view of the business interest between importer and exporter and lack of arms length transaction the transaction values declared by those related parties may be reviewed vide Rule 3 of the Customs Valuation (Determination of Value of Imported Goods). The undervaluation involved in imports by these importers from related party was ₹ 4.84 crore.

4.8.2 (iii) Some of the imports made through Mumbai Commissionerate in the case of unrelated party were also at a lower value compared to import prices of M/s. DFS India Pvt. Ltd. The undervaluation in test checked BEs on comparison to M/s. DFS India Pvt. Ltd. and unrelated imports was ₹ 1.08 crore.

The total under valuation was ₹ 5.92 (4.84 +1.08) crore, involving duty of ₹ 9.47 crore.

4.8.2 (iv) In Kochi commissionerate, scrutiny of import data for the period 2012-13 to 2014-15 revealed that in July 2014, M/s M & B Associates imported John Barr Scotch Whisky (40%) from M/s Peter Justesen Company; the goods were assessed at the rate of ₹ 268 per unit. Whereas M/s Cochin International Airport also imported the same brand of whisky from the same seller during July 2014 and the goods were assessed at the rate of and ₹ 361 per unit by the department. Assessment of the goods imported by M/s M & B Associates were undervalued to the extent of ₹ 93 per unit in comparison to the value declared by M/s Cochin International Airport. Undervaluation of the goods by M/s M & B Associates resulted in short levy of ₹ 1.98 lakh in respect 1200 units.

Failure to obtain re-warehousing certificate

4.8.3 (i) Air India limited had imported 2250 carton of 'Tiger beer' through Sea customs, Chennai from Singapore vide Warehouse BE (No.9654940 dated 23 March 2013) valued at ₹ 10.13 lakh. The goods were cleared without payment of duty on 01 April 2013. The same goods were transferred to another warehouse situated at Air port Chennai vide Transshipment Bond No. 328 on 28 March 2013 (Bond No.2000445235 dt.28.03.2015). Scrutiny of Transshipment Bond register revealed that the Transshipment Bond remained pending for want of re-warehousing certificate from authority to whom the goods were sent. No action was taken by Chennai (Sea) Customs authorities to obtain the re-warehousing certificate for the goods sent or recovery of

import duty ₹ 10.14 lakh with applicable interest on the liquor imported duty free by M/s Air India (October 2015).

4.8.3 (ii) Partial computerisation of Warehouse Bill of Entry transactions

After the initial filing of Warehouse Bill of Entry with Bonding, through the EDI System, the subsequent processes such as Ex-bonding of goods in piecemeal quantities through Customs House authorities and issuance of the same to Duty Free Shop or transferring the same to other places in the State where these firms have branches were carried out only through entries in the manual registers (warehouse bonded register and transit bond register). No attempt was made by the Department to computerise the transshipment of goods and make them as part of the EDI system. Manual filing of ex-bond BEs was allowed because linking with the originally filed EDI into-Bond BE was not possible in the EDI system in cases where the clearance had to be made from a different EDI Port. The business mapping for computerisation of warehouse bill of entry is thus incomplete. NCH, Delhi has confirmed during the audit that there was no linkage between the 'ex bond BEs' filled manually with corresponding 'Into bond BEs' filed electronically in the ICES system.

Sales in Duty Free Shop

4.8.4 Procurement price of foreign liquor by Duty Free Shops and their selling price were compared in Bangalore, Chennai and Kolkata.

Scrutiny revealed that the import price of the articles and sale of those goods by the DFS, Airport and Air Cargo Commissionerate, Bangalore (2012-13 to 2014-14) varied from 2.5 percent to 873 percent over the import price. United duty Free Retail Shop (UDFRS) under Chennai Sea Commissionerate sold (January – February 2014) 18 different liquor items over and above their cost to the extent averaging 200 percent. India Tourism Development Corporation (ITDC) under Chennai Sea Commissionerate also sold 25 different liquor item (December 2014) higher than their cost averaging 239 percent. Similarly, in DFS at Kolkata the sale price was noticed to be higher by an average of 250 percent as compared to the procurement price. In Mumbai, it was observed that the average value declared by the M/s DFS India Ltd. on its imports was 107 percent higher than other importers of similar goods.

The guideline values for various commodities fixed by Directorate General of Valuation, Mumbai are not available in DGOV website and were not produced to audit for comparison of import price with the selling price. Transaction data relating to Chapter 22 of CTH was not made available by Director General of System and Data Management (System) for carrying out detailed audit.

In our opinion Present Market Value (PMV) enquiries may be done on selected sample of articles of imported liquor for fair assessment of goods where there was huge variation in import price and selling price.

4.8.5 To summarize, system and monitoring of accounting of stock of imported liquor, application of valuation rule for related parties, monitoring of re-warehousing certificates for goods released under trans-shipment bond, partial/incomplete computerisation of Warehouse Bills of Entry in the EDI system, comparison method of import price with the selling price by the DFS are inadequate. A small sample audit revealed over pricing of imported liquor at an average of 177 percent (ranging from 14-340 percent), undervaluation to the tune of ₹ 6.66 crore involving duty of ₹ 11.07 crore. The stock was found in excess by 26617 units and there was shortage of stock to the tune of 6288 units valued at ₹ 5.67 crore.

CBEC may examine the points highlighted and take appropriate remedial action. Reply of the Ministry has not been received (January 2016).

Functioning of Special Valuation Branch (SVB) of Customs Commissionerate

4.9 The 'Special Valuation Branch' (SVB) is an institution specialising in investigation of transactions involving related parties and certain special features having bearing on value of import goods. SVBs are located only at five Custom Houses (i.e.) Chennai, Kolkata, Delhi, Bangalore and Mumbai and any decision taken in respect of a particular case in any of these Custom Houses is followed by all other Custom Houses / formations. All cases to be registered in the SVB for Special investigation should be with the specific approval of the concerned commissioner.

CBEC delegated functional control of SVBs to the office of the DGOV in December 2012³² to closely monitor the pendency of cases in SVBs, approve the initiation of SVB enquiries and supervise investigations. The investigations and finalization of the assessments are to be completed within four months from the date of reply to the questionnaire issued by the SVB³³. Delay in finalizing cases registered with SVB also defeats the purpose for which SVBs are established and also leads to accumulation of provisional assessment cases in the department delaying collection of government revenue.

4.9.1 As per the Circular 11/2001-customs dt.23.02.2001, SVBs are required to investigate the following types of cases in addition to 'related party' transactions:

- i) Additions required to be made on account of 'Royalty or Licence Fees'

³² Circular No. 29/2012 CUS dated 7.12.2012

³³ Circular No. 11/2001- Customs dt.23.02.2001

- ii) Additions on account of value of any part of the proceeds of the subsequent resale or disposal or use of goods accruing to the seller.
- iii) Addition on account of any other payment actually made or to be made as a condition of sale of imported goods.

Further it was emphasized that the cases should not be routinely referred to SVB for further investigation whenever the relationship as per valuation rules is declared by the importer without doing preliminary scrutiny regarding the value having been influenced by relationship. SVB would handle the investigation into valuation of such importer.

4.9.2 An audit of SVB at Bangalore, Chennai, Kolkata and Delhi was undertaken to get an assurance about compliance of the mandate; efficiency and effectiveness of the systems and procedure. The observations are narrated below:-

Audit of DGOV revealed that following irregularities which have to be addressed.

- Difference between the data of assessment groups and SVB.
- Non-Short levy of EDD.
- Non finalization of assessments despite completion of SVB investigation.
- Delay in /Non- finalization of provisional assessment pending receipt of valuation report.
- Delay in completion of investigation and finalization of assessment by SVB.

DGOV in their response stated that though functional control of SVBs was given to DGOV with intention to strengthen SVBs, it remained only on paper in the absence of any administrative instructions in this regard from the Board. It was observed that though all SVBs sent report of pendency to DGOV on quarterly basis, DGOV did not take any action on such reports.

In reply to audit, DGOV further stated that the issue of pendency was being followed up with respective commissioners and necessary instructions were being issued from time to time. All SVBs are under administrative control of Customs Commissionerate and DGOV did not have any control over posting, leave, APAR, etc. of the officers working in SVBs. DGOV also stated that there was acute shortage of officers in SVBs.

4.9.3 As per CBEC circular cases of import/export by related parties are to be referred to SVB for valuation of the imports/exports. However, audit scrutiny revealed that there were instances of import of foreign liquor (Mumbai Commissionerate) and export of gold jewellery between related parties which

have not been referred to SVB. These cases have been reported to the Ministry separately by Audit.

Few cases are illustrated below:

4.9.3 (i) M/s Pernod Ricard India Pvt Ltd., M/s. Diageo India Pvt. Ltd., M/s. Bacardi India Pvt. Ltd., United Spirits Limited under Mumbai Commissionerate, had imported from their related parties, named M/s. Pernod Ricard Gulf, M/s. Diageo Brands BV, M/s. Tradall S.A., M/s. White and Mackay Limited respectively. In view of the business interest between importer and exporter and lack of arms length transaction the transaction values declared by those related parties may be reviewed vide Rule 3 of the Customs Valuation (Determination of Value of Imported Goods) The undervaluation involved in imports of the illustrative case from related party was ₹ 4.84 crore.

4.9.3 (ii) Similarly, under the 20:80 scheme of gold import, plain gold jewellery, bangles or medallions with negligible or no value addition were exported to related parties. Even cases of export of 24 carats gold jewellery were noticed. In many cases plain jewellery were exported within same day or within 1 to 3 days of receipt of gold. Some of the remittances were being received very next day, which does not seem to be possible in case of genuine jewellery exports. This also meant that scrap and crude products were exported in the guise of plain jewellery by these agencies who were importing high quantities of gold by repeated exports at very short intervals, so as to maximise their domestic sale entitlement against 80 percent component of 20:80 scheme. There were reports from DRI on such modus operandi.

Ministry may review such cases under intimation to audit.

Similarly, issues regarding delay in finalisation of Provisional assessments and subsequent short/ non-levy of duty because of difference in SVB data, finalisation of SVB investigation, valuation reports etc were separately reported to the Ministry by Audit. Ministry response has not been received (January 2016).

4.9.4 Pendency of Cases

As at the end of June 2015, a total of 894 fresh cases and 118 Renewal cases were pending in SVBs, Bangaluru, Kolkata and Delhi only. Age wise analysis is detailed below.

Cases	Upto 3 months	3 to 6 months	6 to 12 months	1 to 3 years	More than 3 years	Total
New Cases	18	16	26(Bangaluru) +99(Delhi)	145(Bangaluru) +214(Delhi) +32(Kolkata)	208(Bangaluru) +73(Delhi) +63(Kolkata)	894
Renewal Cases	27	18	7	48	18	118

Few cases were observed as pending since 2006 onwards in SVB, Bangalore.

Cases on levy of provisional assessment in Special valuation cases have been reported in the Chapter on Provisional Assessment.

On enquiring for reasons for non-finalizing of the cases within the prescribed time, SVB, Delhi stated that in most of the cases the parties concerned had not responded either to SVB questionnaire or to the further queries raised despite increasing Extra Duty Deposit (EDD) from 1 percent to 5 percent. As the Board circulars/instructions do not envisage any further enhancement in the EDD, no further action was taken in such cases. SVB, Delhi further informed that the matter was taken up with the O/o the Chief Commissioner (Delhi Zone) for inclusion of the issue in Chief Commissioners conference scheduled in August 2015. The outcome of Chief Commissioners' conference was not furnished to Audit. (October 2015). However, reasons for pendency were not forthcoming from SVB, Kolkata, Bangaluru and Chennai.

4.9.5 Delay in finalization of the cases

Audit noticed there were instances in Chennai, Delhi, Kolkata and Bangalore of delay in finalisation despite issue of Order in Original, receipt of replies, receipt of application, Delay in finalization beyond the prescribed time, delay in issue of EDD circular, delay in enhancement of EDD to 5 percent. Few cases are illustrated below:

4.9.5 (i) In SVB, Bangalore, in two cases, although the importers applied prior to three months of expiry of OIO, the cases were finalized with a delay ranging from 17 months to 27 months.

Sl.No.	Name of the importer	Date of expiry of OIO	Date of receipt of documents	Date of issue of OIO	Delay
1.	Dirak India Panel Fitting (P) Ltd.	8.3.13.	November 2012	18.2.2015	27 Months
2	Paykel Healthcare India P(P)	26.12.13	September 2013	27.2.2015	17 Months

4.9.5 (ii) Based on the Orders-in-original the concerned assessing groups were instructed to finalise the BsE (11 Nos) for imports made by M/s. Rice Lake Weighing Systems India Limited, Chennai However, it was noticed that the 11 BEs were still pending finalization. Duty amounting to ₹ 7.77 lakh along with interest of ₹ 4.30 lakh (up to August 2015) is recoverable. Similar imports may also be reviewed and finalised.

Delay in finalizing cases registered with SVB also defeats the purpose for which SVBs are established and also leads to accumulation of provisional assessment cases in the department delaying collection of government revenue.

4.9.5 (iii) In, Order in Original (O I O) No 25435 /2014 dated 15.5.2014, issued in the case relating to M/s Hanil Tube India Private Limited, Technical Service

Fee of ₹ 459.03 lakh paid to foreign supplier was added to the assessable value.

The OIO despatched on 15.5.2014 was not appealed against by the importer. However after SVB alerts were issued, the importer by letter dated 14th July 2015 informed SVB that the order had not been served in accordance with Section 153 of the Customs Act, 1962. However, due to non serving of the Order, the assessment group (Group II of Chennai Sea Customs) could not finalize (Note dated 16.7.2015) the bill of entry and subsequent imports. This resulted in non collection of duty of ₹ 87.08 lakh and applicable interest thereon.

Delay in finalizing cases registered with SVB defeated the purpose for which SVBs are established and also leads to accumulation of provisional assessment cases in the department delaying collection of government revenue.

4.9.5 (iv) CBEC, instructed³⁴ that where supporting/relied upon documents in reply to the questionnaire issued are not submitted within 30 days from the date of receipt then EDD would be increased 1% to 5%.

A test check of cases pending in SVB, Bangalore, Kolkata, Chennai and Delhi revealed that there were 37 cases wherein EDD @ 5% had not been levied though the cases are pending for periods ranging from 1 to 3 years.

A case is illustrated below:

Audit scrutiny in SVB, Delhi revealed that various importers imported goods between November 2013 to October 2014 through 22 consignments from related parties on which EDD was either not paid or paid at the rate of 1 to 5% of customs duty instead of the transaction value, which resulted in short levy of EDD amounting to ₹ 10.12 lakh.

4.9.5 (v) CBEC instructed³⁵ that the cases referred to SVB are to be decided within 4 months. However, in SVB, Chennai cases referred to SVB prior to the date of circular dated 23 March 2001 are still pending.

4.9.5 (vi) Incorrect reference by assessment group to SVB was noticed in SVB, Chennai in respect of Assessment group 7 Air Customs Chennai relating to M/s Stora Enso Inpac Delta India Private Ltd.

4.9.5 (vii) Internal Audit not conducted

CBEC delegated functional control of SVBs to the office of the Director General of Valuation (DGOV) in December 2012³⁶ to closely monitor the pendency of

³⁴ circular no 11/2001 dated 23.3.2001

³⁵ circular no 11/2001 dated 23.3.2001

³⁶ Circular No. 29/2012 CUS dated 7.12.2012

cases in SVBs, approve the initiation of SVB enquiries and supervise investigations.

The DGOV conducted inspection of SVB, Chennai in October 2007 and thereafter no inspection report had been issued by DGOV indicating lack of monitoring control.

4.9.6 Inadequate recognition of related party transactions and delay in finalising cases registered with SVB defeats the purpose for which SVBs were established. It had led to accumulation of provisional assessment/EDD cases in the department, hindering collection of Government revenue. Similarly, the DGOV also does not have sufficient control and monitoring wherewithal for optimal implementation of the Special Valuation Rules.

Delay in updation of foreign currency exchange rate

4.10 The updating of rates of central excise duty and the central excise notification directories are delegated to the Jawaharlal Nehru Custom House (JNCH), Nhava Sheva, the updating of rates of customs duty and the customs notification directories are delegated to Chennai Sea Customs and similarly, updating of the notification relating to exchange rate of foreign currencies has been assigned to Inland Container Depot, Patpargunj by CBEC. Several cases of inadequate directory updating observed by audit have been mentioned in different chapters of the audit report.

During the course of audit it was noticed that notification no. 82/2015-Custom (NT) dated 25 August 2015 effective from 26 August 2015 effecting the change in the rate of foreign currency was delayed by 11 hours and 45 minutes in updating in the system. By the time the amendment was carried out, 357 Bill of Entries were filed at various port of custom by taking old exchange rate.

The Board on being informed issued advisory to the field offices for taking necessary action to safeguard the revenue due to late updating of directory.

CBEC in its reply (January 2014) had stated that DG (System) was working on a module for daily updating of exchange rates with SBI to get an automatic resolution. CBEC further added (February 2014) that testing of daily exchange rate update message had been completed.

However, audit observed that the delay in updating the notification in the ICES system still persisted (September 2015), thus the claim of the Board could not be substantiated.