

### Chapter 3: Compliance issues

This chapter looks into the aspect of whether benefit of concession/exemptions/remissions under the FTP 2009-14, Custom Act 1962, FTA exemption, RBI circulars for import of precious metals and other specified products had been allowed correctly and the terms and conditions for granting such benefits were fulfilled. It highlights cases of incorrect assessment, classification; along with other cases of mis-invoicing caused financial outflow, non compliance of extant rules, regulations, procedures and operational malfunction.

#### 3.1 Cases of incorrect assessment

##### (A) Penalty not levied for non-compliance of policy circular for import of precious metal by the nominated agencies

DGFT's circular dated 31 March 2009 stipulates that NA/PTH/STH certificate shall be renewed every year based on the validity of the Status Certificate and the performance of NA on an annual basis. The NAs (other than the designated banks nominated by RBI) were required to maintain records of imports of precious metal (both quantity and value) and its distribution for the purpose of exports of value added product as well as for the purpose of domestic consumption. NA had to file returns on monthly basis to the GJEPC, Mumbai. G&JEPC, in turn, was to compile the figures and forward it to DGFT (Hdqs.) by 15th of the subsequent month. At least 10 percent (15 percent from 27 August 2009) of the imports of each entity was to be supplied to the exporters. Full details of transactions were to be provided in cases where the number of transactions in respect of a single importer exceeded ten transactions in a month or the aggregate value of imports exceeded ₹ 254 crore<sup>9</sup> (US\$ 50 million). Further vide Circular No. 24/2009-14 dated 11 February 2010, It was clarified that the minimum 15 percent stipulation stated in above was with respect to the cumulative disbursement of quantum of precious metal imported on half yearly basis and not on the basis of imports against each consignment. Both the circulars dated 31 March 2009 and 11 February 2010 were withdrawn from 1 February 2011.

Audit scrutiny of the Annexure II of the circular dated 31 March 2009 revealed that there was no column to capture the record of quantity supplied to exporters even though the circular said so. In absence of the details of quantity supplied to the exporters in the monthly report, it is difficult to understand how DGFT was able to monitor the stipulated condition of

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<sup>9</sup> Based on exchange rate of 1US\$ = ₹ 50.8761 on 31.03.2009 (The date of issue of DGFT circular).

minimum 10 percent or 15 percent supply of gold to exporters. Few cases of non-compliance are highlighted in Appendix 11.

Audit observed that neither penalty was levied in terms of FTDR Act nor was the license to import precious metal cancelled by DGFT for violation of the policy circular. It was also observed that the Nominated Agencies were not filing monthly returns to GJEPC on regular basis. None of the nominated agencies (except M/s Rajesh Exports) were providing details of quantities supplied to the exporters. They were also not providing details of transactions where the value exceeded US\$ 5 crore.

CBEC in respect of M/s MMTC and M/s STC under ACC Nedumbassery, Cochin, stated (December 2015) that the import by nominated agency/Bank prior to the 20:80 scheme was on payment of appropriate duty. The goods were not warehoused and hence not covered under the CBEC circulars dated 14 October 2009 or the DGFT Policy circular dated 31 March 2009. All the goods cleared through ACC were under Home Consumption BE.

As per the notification dated 8 May 2000, the condition for re-export of goods was 120 days or any extended period as granted by the proper officer. The extension had been duly granted by the proper officer and hence there was no short levy.

Reply of CBEC is not acceptable because import at concessional rate of duty has been permitted subject to conditions of the notification that 15 per cent of the total imports was to be supplied to the exporters. Since the condition remains unfulfilled, concessional rate of duty could not be extended and duty at tariff rate of 10 per cent was to be demanded on the quantity of 578 Kg and differential duty was to be recovered. Also, penalty had to be laid down and imposed for violation of the policy circular.

Further, in absence of a centralized data of the gold actually supplied to the exporters, the utilization aspect at 15 percent of imports could not be verified in Audit. Further, no penalty provisions were laid down in the said circular for non-compliance.

**(B) Irregular import of Gold Dore Bars in Financial Year 2012-13**

(i) RBI vide their circular dated 22 July 2013 imposed certain restrictions on import of gold in to the country and certain condition to be followed by the authorized importers. Circular also laid down that Government of India to issue instruction, if any, to the Custom Authorities/DGFT to operationalize and monitor import restrictions.

Audit scrutiny of the licensee file of M/s CJEX Biochem Pvt. Ltd. under RLA, Mumbai, for import of restricted item Gold Dore Bars revealed that the

application for the authorisation was filed on 12 July 2013 for Import of 2000 Kg of restricted item Gold Dore Bars. The authorisation was issued on 19 August 2013. As per data furnished by the RLA Mumbai only one Authorisation/Licence for restricted item was issued to the said licensee from 2010-11 to 2014-15. However, from the document attached with application it was observed that the licensee imported 5.320 kgs of 99.5 percent purity of gold bars during 2012-13. Since, the Gold Dore Bars was restricted items hence, the above said import of Gold Dore bars was irregular and a penalty under Foreign Trade (Development Regulation) Act, 1992 was also leviable.

DGFT in their reply (December 2015) stated that the ITC (HC) Code for Gold Dore Bars is 71021200 and the item was free for import subject to RBI regulations. The import of this item was restricted for the first time by RBI circular dated 14 August 2015.

Reply of the department is not acceptable since the restriction was imposed with effect from from 22 July 2013.

(ii) Audit scrutiny of records of M/s Parikh Industries Ltd. revealed that the unit was issued authorisations by RA, Mumbai on 13 March 2014 and 24 June 2014 for Import of Gold Dore Bars of 2000 kg and 7200 kg respectively. However, the certificate submitted along with application showed that the licensee had registered as manufacturer of Gold, Silver, Platinum, Rhodium and Jewellery articles in all these certificates and not as a refinery. Since, RBI circular allowed only refineries to import gold dore bars on the basis of licenses issued by the DGFT hence, the above licenses issued to the said licensee were irregular.

DGFT in their reply (December 2015) stated that M/s. Parikh Industries Limited had submitted the documents as manufacturing unit enclosing copy of certificate issued by Maharashtra Pollution Control Board.

Reply of DGFT is only confirms the audit observation. Remedial action taken by the department may be intimated to audit.

**(C) Non-payment of duty on stock of goods**

In terms of SEZ Rules, the unit may opt out of SEZ and such exit shall be subject to payment of applicable duties on the imported or indigenous capital goods, raw materials, components, consumables, spares and finished goods in stock.

DoC disallowed manufacturing of gold medallions and coins from 25 April 2013 and trading activity on Cut and Polished Diamonds by the SEZ units from 31 December 2013.

Two SEZ units M/s Forever Precious Jewellery and Diamonds Limited and M/s Winsome Diamonds and Jewellery Limited (previously named as M/s Suraj Diamonds and Jewellery Ltd.) under MEPZ-SEZ, Chennai were issued (September 2005 and October 2006) LoA initially for manufacture and export of Plain Gold Jewellery and trading of CPD. Subsequently, the units were permitted (September 2009) to manufacture and export “Gold Coins and Medallions” in addition to the items already permitted. The units commenced commercial production in November 2005 and January 2007.

Based on the Ministry’s decision, UAC amended LoAs suitably by disallowing manufacturing activity of gold medallions and coins in May 2013 and CPD in February 2014.

The units stopped their activities during the year 2013-14 and applied (April 2014) for exit, the units had stock of Gold, Silver, Copper, CPD weighing 541.16 grams, 2509.75 Grams, 9732.78 grams and 34931.51 carats respectively, which they were neither able to re-export nor clear in DTA. M/s Winsome Diamonds and Jewellery Limited even requested the MEPZ authorities for disposal of stock.

Since the trading activity on CPD was not permitted with effect from 4 February 2014 and the stock could not be re-exported by M/s Forever Precious Jewellery and Diamonds Limited, duty amounting to ₹ 1.06 crore on the stock of 34931.51 carats of CPD valued at ₹ 41.04 crore (approx.) was recoverable. Also the department failed to hand over the stock of gold and other precious metals to the agency nominated on its behalf and realise the duty amount of ₹ 12.46 lakh.

CBEC in their reply (December 2015) stated that M/s Punjab National Bank, Mumbai had sealed the premises of the units and hence no stock verification could be carried out in these units. Further, CBI, Bank Fraud Cell, Mumbai had registered a case against M/s Forever Precious Jewellery and Diamonds Ltd. and M/s Winsome Diamonds and Jewellery Ltd. and the matter was under investigation. Hence, any action can be initiated only after the investigation was completed.

Final outcome may be intimated to audit.

**(D) Loss of revenue due to incorrect assessment**

Goods having description of “Precious stones (other than diamond) and semi-precious stones whether or not worked or graded but not strung, mounted or set, ungraded precious stones (other than diamond) and semi-precious stones, temporarily strung for convenience of transport” falling under heading 7103, are leviable to the standard rate of duty.

As per notification dated 1 March 2002, standard rate of customs duty at the rate of 15 per cent was applicable on 'Cut and polished coloured gemstones' falling under chapter 71.

Scrutiny of BEs/Courier Import in Jaipur, audit observed that in 215 cases during March 2011 to March 2015 'Cut and polished semi-precious stones' were imported and assessed at concessional rate of duty by extending the benefit of the notification dated 17 March 2012 and 11 July 2014 incorrectly. The importer took the advantage of the discrepancy in the description of goods in the Custom tariff and the notifications. Cut and polished semi-precious stones falling under heading 7103 would be chargeable to full rate of duty as per the tariff rate as concession is not available under notification dated 1 March 2002. This resulted in short recovery of ₹ 3.74 crore.

CBEC in their reply (December 2015) stated that the term cut and polished coloured gem stones under serial no 313 of the notification dated 17 March 2012 includes both cut and polished precious stones as well as cut & polished semi precious stones. This view was also confirmed by the GJEPC and the duty has been charged rightly under Sr. 313 of the notification.

The reply is not acceptable as cut and polished semi-precious stones are chargeable to full rate of duty as per the tariff rates. Concession is not available under notification dated 01 March 2002. Cut and polished semi-precious stones were imported at concessional rate of duty by extending the benefit of the notification incorrectly due to inconsistency in description in Tariff and the Notification.

**(E) Non levy of duty on re-import of rejected jewellery**

FTP allowed exporters of Gems and Jewellery to re-import rejected jewellery.

Audit scrutiny of BEs related to Gems and Jewellery sector in Jaipur revealed that the jewellery was exported on outright/confirmed/sales basis to the buyer in which the ownership of the goods when exported immediately gets transferred to the buyer and the relationship between the seller and buyer is terminated as soon as payment is made and goods are delivered. Audit observed that in 216 cases exporters had exported jewellery on outright sales to the foreign buyers which were, however, re-imported showing them as consignment sale and were assessed at 'nil' rate of duty assuming the goods were sold on consignment sales basis, which was not in order. It is pertinent to mention here that the exported goods on outright sale were finally sold and foreign currency was also realized. Thus at the time of re-importation the goods were required to be assessed afresh by charging full rate of duty. The incorrect assessment resulted in non-levy of duty amounting to ₹ 1.92 crore.

CBEC in their reply (December 2015) stated that goods were previously exported on sale basis or consignment basis or not delivered at the port of destination. The re-import was allowed in terms of provisions of FTP and HBP after establishing that goods were the same which were exported.

Reply is not tenable because as per HBP, an exporter of plain/studded precious metal jewellery is allowed to re-import duty free jewellery rejected and returned by buyer up to 2 per cent of the FOB value of exports in preceding licensing year. Audit has observed that exporters have exported jewellery on outright sale basis and the ownership of the goods when exported on sales basis immediately got transferred to the buyer. Payment was also realized in these cases. Therefore goods exported on outright sale should have been assessed afresh at the time of re-importation.

**(F) Short levy of duty due to irregular DTA clearance of under EPCG scheme**

SEZ Rules, 2006 deals with exit of SEZ units states that the Unit may opt out of SEZ with the approval of DC and such exit shall be subject to payment of applicable duties on the imported or indigenous capital goods, raw materials, components, consumables, spares and finished goods in stock, however for the Unit which has not achieved positive NFE, the exit shall be subject to penalty that may be imposed under the FT (D&R) Act, 1992. Further, the DC may permit the Unit, as one time option, to exit from SEZ Zone on payment of duty on capital goods under the EPCG Scheme subject to the Unit satisfying the eligibility criteria under that Scheme.

M/s Shri Ganesh Jewellery House Limited (Unit I & Unit III), Manikanchan SEZ unit cleared capital goods, imported duty free under SEZ scheme, to its DTA unit on payment of three percent concessional duty of Rs 1.56 lakh under EPCG scheme. The DTA clearance of capital goods (CG) under EPCG scheme was in contravention to the provisions of the SEZ rules as the units were neither exiting nor debonding from SEZ scheme at the time of removal of the said capital goods. Therefore, any clearance of duty free procured CGs from SEZ to DTA unit should have been done on payment of full duty at the time of clearance and not on payment of concessional duty under the EPCG scheme. This resulted in short levy of duty to the tune of Rs 10.69 crore.

Reply of the department is awaited (January 2016).

**(G) Non-recovery of duty forgone in absence of re-exports details**

Under the Custom Act, 1962 import duties of Customs are leviable on all import goods, and no distinction is made whether the goods being imported had discharged duties earlier are being re-imported after exportation for particular purposes. Similarly, even if goods are indigenously manufactured

which had been exported earlier under various export incentive schemes or duty drawback claim or even without any export incentive claim, when these are re-imported they attract the Customs duty leviable on like imported goods unless an exemption notification is issued.

Goods manufactured in India or parts thereof that are re-imported for repairs or reconditioning or reprocessing/refining/remaking etc. are exempt from duty subject to the condition that the re-importation takes place within a specified period; the goods are re-exported within six months of re-importation; the Assistant/Deputy Commissioner of Customs is satisfied as regards the identity of the goods, and certain other conditions ensuring re-export including execution of bonds are fulfilled.

Audit scrutiny of BEs in ACC, Bangalore revealed that nine<sup>10</sup> importers have re-imported goods falling under chapter-71 of CTH having assessable value of ₹ 34.26 crore forgoing duty of ₹ 10.07 crore through 32 BEs for repair and return, exhibition and return. However details of their re-export were not produced. In the absence of re-export proof, duty forgone amount is recoverable.

CBEC in their reply (December 2015) stated that the goods exported were jewellery for exhibition and other purposes, re-imported into India availing eligible exemption under notification dated 16 December 1996 which does not prescribe any condition of subsequent re-export.

Reply is not acceptable in view of the provision of Customs Act stated above.

#### **(H) Irregular clearance of imported gold bars for domestic purpose**

As per RBI circular dated 14 August 2013, read with CBEC circular dated 14 September 2013, SEZ units, EoUs, PTHs and STHs may import gold exclusively for the purpose of exports only and these entities shall not be permitted to clear imported gold for any purpose other than for exports (irrespective of whether they are nominated agencies or not).

M/s Shree Ganesh Jewellery House (I) Ltd, Kolkata, a STH, imported one consignment of Gold Bars (125 kgs) from Kolkata (Airport) on 26 August 2013. However, out of this 125 Kgs, 100 kgs of gold bars were cleared for domestic purpose under two Ex-bond Bills of Entry on 30 August 2013 against payment of Customs duty of ₹ 2.33 crore and ₹ 77.58 lakh respectively contrary to the restrictive condition mentioned above. The Customs department, while

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<sup>10</sup> M/s Anmol Swarn (India) Pvt. Ltd., M/s C.Krishniah Chetty & Sons Pvt. Ltd., M/s Facet Diamond Processing Pvt.Ltd., M/s Indo Star, M/s Nishka Jewel Designers, M/s Peakok Jewellery Ltd, M/s Su-Raj Diamonds And Jewellery Ltd., M/s Titan Industries Ltd., M/s Winsome Diamonds And Jewellery Ltd.

assessing the duty, also overlooked the said restrictions for domestic clearances.

Reply of the department is awaited (January 2016).

### **3.2 Cases of irregular grant of exemptions**

#### **(A) Excess grant of GEM Replenishment Licences**

As per HBP, Gem Replenishment Authorisation shall be valid for import of precious stones, semi-precious and synthetic stones and pearls. FTP provides that Gem Replenishment Authorisation would be available as per scale given in Appendix-12 B of HBP.

Audit scrutiny revealed that RLA Mumbai authorised 86 licences under GEM Replenishment scheme of cif value of ₹ 25.23 crore during 2010-11 to 2014-15. These licenses were issued for import of Real and Cultured Pearls unset/undrilled for the authorisation of cif value at the rate of 65 percent of total FOB value of the export made of the Pearls, instead of 60 percent of FOB value as per scale given HBP. This resulted in excess authorisation of cif value of ₹ 1.94 crore.

Similarly In the case of M/s Mehar Chand Jain & Sons, the RLA, Jaipur, issued Gem REP Authorisation of ₹ 2.15 crore for gold & silver jewellery exported through 11 SBs in the year 2011-12 against which ₹ 3.75 crore was realised. As per the entitlement scale, the exporter was entitled for Gem REP authorization of ₹ 1.87 crore i.e. 50 percent of realised FOB value. Thus, there was an excess grant of Gem Replenishment licence to the tune of ₹ 28.15 lakh.

DGFT in their reply (December 2015) stated that SCN was issued under FTD&R Act, 1992 to the authorisation holders in respect of cases under RA, Mumbai for surrendering the excess entitlements availed.

Final outcome may be intimated to audit.

#### **(B) Non-achievement of value addition under DFIA**

Rajesh Exports was issued DFIA license on 14 August 2013 by JDGFT, Bangalore to import 4809.180 kgs of Gold Bars for cif value of ₹ 1,262.21 crore on a condition that importer need to export 4797.188 kg of "Gold Medallions of 99.5 percent and above fineness" of FOB value ₹ 1,281.16 crore. The cif and FOB value was further amended (12 September 2013) to ₹ 1,262.21 crore and ₹ 1,400.61 crore respectively.

Audit observed that 4809.1725 kg of Gold bar vide 11 BEs was imported through ACC, Bangalore for cif value of USD 213298479.9 by the importer. The duty forgone on the said goods was ₹ 405.07 crore. As per HBP value



addition to be achieved was USD 216497957. The importer exported (through 11 SBs) and realized USD 216448365, there by short realizing of USD 49592 (₹ 29.58 lakh approximately).

Reply of the department is awaited (January 2016).

**(C) Non-achievement of value addition**

Notification dated 5 May 2000, exempts gold/silver/platinum etc. falling under Chapter 71 of CTH, when imported into India by nominated agencies or status holders under the scheme for 'Export Against Supply by Foreign buyer' in terms of FTP, from the whole of the duty of customs and additional duty of customs leviable thereon. In case of non fulfilment of Value Addition or Export Obligation as stipulated in FTP the status holders have to pay the duty on the said import along with interest at the rate of 20 percent per annum from the date of duty free importation till the date of payment of duty.

Further, as per HBP, minimum value addition of 3 percent was required on plain gold jewellery.

(I) M/s Shree Ganesh Jewellery House (I) Ltd, Kolkata, a STH was allowed duty free clearance of 25 Kgs Gold Bars (total duty foregone amount- ₹ 77.07 lakh).

The importer submitted SB dated 07 September 2013 in support of proof of export. However, as per outstanding export realisation statement (XOS) for the period ending 12/2014, the export realisation of FOB value of exports of ₹ 10.13 crore mentioned in the above SB was not made. Therefore, the export value was not to count for Value Addition. Thus, the importer was liable to pay total exempted duty of ₹ 77.07 lakh along with an interest of ₹ 29.81 lakh.

Further, audit scrutiny of the export invoice revealed that the export under the aforementioned SB was also against another 10 Kgs gold-bars procured from The Bank of Nova Scotia, Mumbai. As no export realisation was made against the SB, the export obligation (i.e Value addition) against these golds was also not fulfilled for which the duty exemption was recoverable along with applicable interest.

Reply of the department is awaited (January 2016).

(II) M/s Indusind Bank Ltd, Kolkata and M/s Edelweiss Commodities Services Limited (NA/STH respectively) issued duty free imported warehoused gold bars of 100 Kgs and 20 Kgs to exporters namely M/s Edelweiss Commodities Limited and M/s Edelweiss Commodities Services Limited respectively. The above mentioned exporters exported Plain Gold Jewellery but failed to achieve the minimum value addition of 3 percent

required, resulting in proportionate duty foregone of Rs 3.22 crore along with applicable interest recoverable from the NA/STH.

(III) The unit, M/s Shrenuj & Company Ltd. (Trading Division) was issued a LoA on 08 May 2003 for trading activities of Cut and Polished Diamond, Plain and Studded Gold and Platinum and Silver Jewellery, Alloy and Consumables and the same was again extended on 08 April 2013 for a further period of five years converting it into manufacturing unit from a trading unit. However, APR of 2013-14 filed by the unit revealed that value addition prescribed during 2013-14 i.e., 5 percent for export of studded jewellery was short by ₹ 17.64 crore.

Reply of the department is awaited (January 2016).

**(D) Achievement of NFE**

(i) M/s Rajesh Exports Ltd, a SEZ unit commenced commercial production on 15 November 2007. The unit submitted CA certified APR for the period 2007-08 to 2011-12 (upto September 2012) in Rupee terms adopting RBI daily reference rate for conversion of US\$ and showed the NFE as positive and applied for renewal of LoA. DC, CSEZ accepted the application and renewed the validity for a further period of five years with effect from 15 November 2012.

DC, CSEZ (January 2013) directed the unit to file CA certified APRs in Dollar terms along with computations certified by the authorized Bank for review of performance of the unit. However, the unit did not submit data certified by the authorized Bank as required. Instead, they submitted the statement of imports and exports and claimed a positive NFE of ₹ 118.66 crore for the block of five years based on RBI reference rate.

Audit scrutiny of data regarding import and export of gold made available by CSEZ and stock register of the unit revealed that the unit had actually imported 456862.08 kg of gold having a total cif value of ₹ 87,150.37 crore against which the unit exported 456858.06 kg jewellery with FOB value of ₹ 85,541.26 crore for the period from 15 November 2007 to 14 November 2012. The closing stock of gold at the end of the first block of five years as per stock register was 4.02 Kg. Thus, the unit failed to achieve positive NFE by ₹ 1609.10 crore on with ₹ 215.92 crore duty recoverable and also penalty in terms of FT (D&R) Act. The department failed to cross-verify the details furnished by the Unit with that of the data available in SEZ.

As the unit failed to comply with the DC's directions and instructions of Ministry, the extension granted for a further period of 5 years effective from 15 November 2012, by the approval committee was irregular. Instead the

LoA ought to have been cancelled since the unit misrepresented the facts by furnishing false information regarding achievement of NFE.

After obtaining extension, the unit imported 38037.838 Kgs of gold on which duty forgone was ₹ 594.33 crore which may be recovered with interest as the extension granted was irregular.

Similarly, M/s SJR Commodities and Consultancies Pvt Ltd, Kohinoor Diamonds Pvt. Ltd, JR Diamonds Pvt. Ltd and Su- Raj Jewellery (India) Ltd in Cochin SEZ, opted for exit from SEZ scheme in 2013 consequent on Ministry's decision dated 25 April 2013 disallowing trading activities in Gold including mere manufacturing of gold medallions. All the above units had completed 2-3 years of operation in SEZ and were NFE negative as per APR filed by them. The units had not fully exported and had not realized the value of exported goods thereby resulting in non-achievement of positive NFE and consequently the Units were liable to pay duty of ₹ 24.45 crore. Further, these units were liable to penal action under FT (D&R) Act 1992.

Reply of the department is awaited (January 2016).

(ii) Audit examination revealed that M/s SRS Ltd under NSEZ, Noida had shown exports amounting to ₹ 337.50 crore for the year 2013-14 in APR, instead of ₹ 329.17 crore as per SEZ data. This resulted in excess reporting of NFE amounting to Rs 8.33 crore in APR.

Reply of the department is awaited (January 2016).

(iii) M/s Shree Nnansharda Jewellery, falling under DC (SurSEZ), Sachin, Surat had two divisions one was for manufacturing and other one was for trading, for which separate APRs were filed. Scrutiny of the APRs filed for trading division for the period 2012-13 and 2013-14 revealed that NFE was ₹ 2.01 crore (negative). However, the unit reported cumulative NFE as ₹ 2.06 crore (in positive) in its APR. This resulted in overstatement of NFE of ₹ 4.07 crore.

DC (SurSEZ), Sachin, Surat replied (June 2015) that under the provision of SEZ Act and Rules, unit is required to be positive NFE earner only and it is not necessary to achieve positive NFE for various activities separately.

Reply of the department is not tenable because NFE of separately registered manufacturing and trading units have to achieve separate NFEs.

(iv) M/s Abhinandan Exports, a SurSEZ unit took total realised amount including freight and exchange rate fluctuations into consideration while computing NFE during 2011-12 to 2013-14, instead of considering FOB value which resulted in excess computation of NFE of ₹ 1.96 crore.

On being pointed out (June 2015), department replied (June 2015) that the unit is being directed to file revised APR.

Final outcome may be intimated to audit.

(v) M/s Firestar Diamond International, falling under the DC (SurSEZ), Sachin, Surat, purchased gold worth ₹ 12.05 crore from Bank of Nova Scotia during 2013-14 which were not reflected in cif value of imports shown in APR. This resulted in excess reporting of NFE by ₹ 12.05 crore.

On being pointed out (April 2015), DC (SurSEZ), Sachin, Surat replied (June 2015) that the unit has been directed to file revised APR.

Similarly, M/s Renaissance Jewellery Ltd., a 100 per cent EoU, falling under the jurisdiction of Range-I, City Division, Bhavnagar, Gold bars of value ₹ 130.34 crore purchased from MMTC and from banks were not included in the cif value of imports. This resulted in excess reporting of cumulative NFE by ₹ 130.34 crore. Thus the APRs did not show the actual performance of the unit the NFEE was reported incorrectly in APRs. The department did not have any mechanism to verify the correctness of data in APR.

Reply of the department is awaited (January 2016).

(vi) Similarly, nine units under DC DEZ I and DC SEZ II, Jaipur reported their NFEE in excess by ₹ 27.52 crore either by not including their purchases made from nominated agencies/SEZ units in CIF value of import or including value of export in respect of exhibition/sample in FOB value which were re-imported into India.

Reply of the department is awaited (January 2016).

(vii) As per circulars of RBI dated 20 November 2012, 20 May 2013 and 20 November 2014, the export proceeds are to be realized within a period of 12 month from the date of export so that the correct value of the foreign exchange could be taken for the purpose of calculating NFE.

Audit observed that export proceeds of three SurSEZ units, one unit in EoU under KASEZ Gandhidham, six units in SEZ, Jaipur, seven units in Lucknow and four units in Manikanchan SEZ, Kolkata were pending realization beyond the permissible limit. The total amount of export proceeds pending realisation was ₹ 3,978.27 crore (Appendix 12).

On being pointed out (May-July 2015), DC SurSEZ Sachin Surat replied (June 2015) that it had issued circular regarding export proceeds pending realization. It was further stated that the units had informed that the matter was under correspondence with RBI and Authorised Bank of the unit. Hence,

department had allowed them thirty days to finalise the issue failing which SCN would be issued. Reply from the other DCs is awaited.

**(E) Incorrect fixation of EO of EPCG licences**

An EPCG authorisation holder was allowed import of capital goods for pre-production, production and post production including computer software system, at zero and 3 percent custom duty with export obligation equivalent to 8 times of duty saved on capital goods imported under EPCG schemes to be fulfilled in 8 years reckoned from date of authorisation issue date.

Audit Scrutiny of records of RLA Mumbai revealed that the EPCG Licences redeemed during 2010-11 to 2014-15 had mis-declared the value of capital goods (diamond Scanning Machines imported from M/S Sarin Technologies Ltd, Israel) while filling the application for EPCG licences. M/s Sarin Technologies Ltd, Israel had split-up the invoice of machinery and separately raised the two different invoices for hardware and software till 2012-13 and the licensee considered hardware invoices for calculating the EO while filling the application and the same was accepted by the RLA Mumbai. Therefore licences issued for the machinery till 2012-13 by considering duty saved amount on the reduced CIF value and thereby fixing the Export Obligation on the lower side. Due to non-consideration of software invoice the EO against the licences issued to the twelve licensees (Appendix 13) were fixed short by ₹ 177.85 crore. Department may review all the authorisations and revise the EO under intimation to audit.

CBEC in their reply (December 2015) stated that DGCEI has issued show cause notices in all cases demanding service tax. DRI has issued show cause notices in all cases demanding Customs duty. The subject issue is complex as prima facie both the grounds appear to be reasonable. Law does not debar levy of two taxes on the same transactions. The Hon'ble Supreme Court held in the famous case of BSNL that VAT and service tax can be levied on the same transaction.

Department's reply is not relevant to the issue of non-including CIF value of software while calculating export obligation of EPCG licences.

**(F) Redemption of EPCG licences leading to lower fixation of AEO**

As per HBP exports made against EPCG authorisation, which had not been redeemed, shall not be added up for calculating the average export performance for the purpose of subsequent EPCG authorization.

Audit observed that the EPCG licensees were not filling the application for redemption of licenses in spite of the fulfilment of export obligation as no specific time is prescribed in FTP as well as in HBP for filling of application for

redemption of licenses. This led to lower fixation of average export obligation in subsequent licenses. In our opinion a time frame may be introduced for redemption of EPCG licences after completion of the export obligation.

DGFT in their reply (December 2015) stated that the issue has been addressed in the EPCG Scheme modified on 18 April 2013 and now all exports made towards fulfillment of specific export obligation against any EPCG licence is not be counted towards calculation of average export obligation.

DGFT's reply does not address the issue of providing a time frame for redemption of EPCG licences after fulfilment of EO. This keeps the EODC(s) pending affecting the management of the Bonds by Custom Department and closure of the transaction by DGFT.

#### **(G) Non cancellation of EPCG licences**

FTP and HBP stipulated that the EPCG licence holder (whether registered with Central Excise or not) were to produce a certificate to the concerned licensing authority from the jurisdictional Central Excise authority confirming installation of capital goods at the factory/premises of the licence holder or his supporting manufacturer within six month from the date of completion of imports.

Audit scrutiny revealed that five exporters of Gems and Jewellery under RLA Jaipur, had failed to produce the installation certificate of the capital goods imported under EPCG from the concerned Central Excise authorities/Chartered Engineers within six months from the date of complete importation under six EPCG licences<sup>11</sup> issued during 31 May 2005 to 3 March 2009. The department did not initiate any action against the licensee even after delay of period of default ranging from six to nine years from date of issue of license/authorization. Upon the failure of fulfilling the conditions of HBP, the licenses were liable to be cancelled and custom duty saved amounting to ₹ 55.79 lakh was recoverable along with interest.

Reply of the department is awaited (January 2016).

#### **(H) Incorrect redemption of EPCG license**

As per HBP authorization holders were to furnish evidence of fulfillment of export obligation. Further, exports made against EPCG authorisation, which had not been redeemed, were not to be added up for calculating the average export performance for the purpose of subsequent EPCG authorization.

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<sup>11</sup> 1330001289/31.05.06, 1330001574/23.03.07, 1330001812/20.03.08, 1330001807/19.03.08, 1330002004/16.01.09 and 1330002050/09.03.09

A case of incorrect redemption was noticed in RLA Jaipur. M/s Silvex & Co. India Ltd was issued an EPCG licence on 14 November 2005 involving duty saved amount of ₹ 4.54 lakh for which EO and AEO was fixed at ₹ 27.24 lakh and ₹ 5.78 crore respectively and the License was redeemed in 2009. The imported machinery against the license was installed on 18 April, 2006. However the licensee furnished the SBs pertaining to 19 April 2005 to 12 April 2006 for fulfillment of EO, which was prior to the date of installation of the machinery and could not have been considered for fulfillment of EO. This resulted in incorrect redemption of EPCG licence.

Reply of the department is awaited (January 2016).

### **3.3 Violation of Act, Rules, instructions and governing conditions**

#### **(A) Non-Adherence to Delegation of financial powers**

JDGFT's are empowered to issue a license up to ₹ 1,000 crore. Audit observed that a license (No. 0710107785/10.03.15) was issued to M/s Rajesh Exports Pvt Ltd, Bangalore for a CIF value of ₹ 1,690.02 crore for import of gold dore bars. Further, it was also observed that in other two cases, JDGFT addressed a letter to DGFT, New Delhi seeking approval in respect of two other files. However, no such approval was sought for by the JDGFT in case of licence issued to M/s Rajesh Exports Pvt Ltd. Thus, the licence issued to M/s Rajesh Exports Pvt Ltd. was irregular. Department may take remedial action in this case under intimation to audit.

DGFT in their reply (December 2015) stated that the details have been called from RLA Bangalore. The matter is being submitted to DGFT for post facto approval. Further developments will be informed.

Final outcome may be intimated to audit.

#### **(B) Re-import of rejected jewellery in excess of prescribed limit**

As per HBP, an exporter of Plain/Studded precious metal jewellery was allowed to re-import jewellery rejected and returned by buyer duty free up to two percent of FOB value of exports in preceding licensing year (based on CA certified copy of export of preceding year). In case re-import of duty free rejected jewellery was made in excess of the prescribed limit of FOB value of exports, the exporter was to liable to refund any duty exemption/refund/replenishment benefit availed on inputs used as per customs rules and regulations.

During test check of records of three exporters<sup>12</sup>, audit observed that, during 2010-1 to 2014-15, the exporters re-imported duty free rejected jewellery

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<sup>12</sup> M/s Gosil Exports Pvt. Ltd., Jaipur under Commissioner Customs JGSE Jaipur), M/s Soni International Mfg. Co, F-22, SEZ-1, Sitapur, Jaipur, and M/s GIE Jewels, F-33, SEZ II, Sitapur, Jaipur)

valuing ₹ 72.83 crore in excess of 2 percent of FOB value of export made ranging from 2.96 to 22.10 percent during the preceding licensing year. Re-import of duty free rejected jewellery in excess of the prescribed limit made the exporter liable to refund any duty exemption/refund/replenishment benefit availed on input used in manufacture of jewellery amounting to ₹ 3.27 crore. All these cases may be reviewed and the duty benefit availed may be recovered under intimation to audit.

The department replied that goods exported on consignment basis re-imported if not sold at fairs/exhibition or purchased by buyer. Good on outright sale basis also re-imported due to rejection or repair purpose. The exporter had submitted CA certified figure of export of preceding year for the purpose of re-importation within the limit of 2 percent of FOB value.

The reply of the department only stated the rule position and is not tenable since the exporter in question had not submitted documentary evidence in support of goods re-imported for repair and then re-exported which need verification by the department.

**(C) Non-fulfilling the condition of FTP**

(i) As per FTP, exporter of Gems and Jewellery are allowed to import/procure duty free inputs for manufacturing, if manufactured item of silver jewellery including partly processed jewellery, silverware, silver strips and articles including medallions and coins (excluding legal tender coins and any engineering goods) containing more than 50 percent silver by weight; was exported.

During test check of manufacturing records of exporters<sup>13</sup> in seven cases in Jaipur, audit observed that the exporters purchased duty free silver (purity 0.999 fine) and exported 2570.3 kgs silver jewellery having contents of silver 688.89 kgs (1 to 49 percent by weight). The proportion of silver contents in the exported silver jewellery was less than that prescribed for availing the benefit of importation/procurement of duty free silver. Thus, duty amounting to ₹ 24.70 lakh on the quantity of 688.89 kgs having value of ₹ 2.78 crore is recoverable along with interest.

Audit also observed that RLA, Jaipur issued irregular/excess grant of Gem REP amounting to ₹ 3.87 crore to three exporters<sup>14</sup> against the 35 SBs. The

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<sup>13</sup> M/s Derewala Jewellery Industries Ltd, E-73, EPIP, Sitapura, M/s Vaibhav Global Ltd, EPIP, Jaipur, M/s Derewala Jewellery Mfg. Co Ltd, SEZ-1, Jaipur, M/s Jaipur Silver Jewels Pvt Ltd, F-21, SEZ-1, Jaipur, M/s Millennium Jewels, (100% EOU), EPIP, Jaipur, M/s Mega Jewels (P) Ltd, F-57-58, EPIP, Jaipur and M/S Sagun Gems Pvt. Ltd. SEZ I, Jaipur

<sup>14</sup> Exxotic India, Jaipur, Gosil Exports(P) Ltd., Jaipur and Silvex Images India (P)Ltd. Jaipur.



content of silver in the jewellery exported through these SBs was less than the prescribed norm of 50 percent by weight of total exported quantity.

Reply of the department is awaited (January 2016).

(ii) DoC disallowed trading activity in gold, silver, platinum, other precious metal, diamond and other precious and semi-precious stones by SEZ w.e.f 25 April 2013.

The unit M/s Neogem (I) Ltd. situated in SEEPZ, Mumbai was issued LoA on 5 October 2001 for trading of cut and polished diamond, gold and rough diamond and the LoA was extended in 2008 and 2013 for a further period of five year. Audit observed from APR of the unit that the unit was doing trading activities after the trading activities were disallowed in SEZ by MOC.

Reply of the department is awaited (January 2016).

(iii) The unit M/s Elegant Collection was issued LoA for manufacturing of plain and studded jewellery of gold, platinum and silver. However, audit observed from Tax Audit Report (Form – 3CD) that the unit had sold raw materials i.e., 96 kg Silver and 446.71 carat of Precious Stone during the Financial Year 2012-13 whereas, LoA was granted as a manufacturing unit not as a Trading unit.

Reply of the department is awaited (January 2016).

(iv) LoA was issued in 2008 to the unit M/s Sidd's Jewels Pvt. Ltd. situated in SEEPZ, Mumbai for manufacture and export of Plain and Studded gold, Platinum and silver Jewellery with annual capacity of 48000 pieces. LoA was again extended in 2013 for a period of next five years. Audit scrutiny of Annual Accounts and Tax Audit Report revealed that the unit has exceeded authorised annual capacity during F.Y. 2009-10 to 2013-14 with approximate value of ₹ 1,350.36 crore. A consistently high production over the approved capacity was fraught with risk of unauthorized activity being carried out by the unit. A penalty under FT (DR) Act, 1992 is leviable for violating the condition LoA.

Reply of the department is awaited (January 2016).

(v) LoP was issued to M/s. Rajesh Exports, Bangalore on 09 March 2000 for manufacture and export of Plain Gold/Studded gold jewellery, medallions and coins. LoP was extended on 09 September 2005 for further period of 5 years.

On 17 July 2012 applied for in-principle exit from EoU scheme and applied for NOC from Excise department. Excise department denied NOC to the unit as the LoP was expired in 2010 and the unit had not applied for renewal of LoP.

After denial of Excise department the unit applied for renewal of LoP on 23 August 12 to enable the unit to complete the formalities of de-bonding and exit from the EoU scheme. The unit still continues in the status of EoU without any valid LoP.

Similarly, LoP was granted to the unit M/s Twilight Jewellery Pvt. Ltd. situated in Mumbai as an EoU unit on 12 September 2005 for manufacture and export of Studded and Plain jewellery. The unit had commenced production on 27 January 2006. The unit has requested for extension for a period of five years on 17 February 2011. DC (SEEPZ-SEZ) extended the LoP for a further period of five years i.e., 2011-12 to 2015-16 w.e.f. 1 April 2011.

Audit scrutiny revealed that during the period from 27 January 2011 to 31 March 2011, even though the LoP was expired, the unit was operating as an EoU unit without any LoP and availed all the benefits eligible for an EoU unit. Duty free Raw materials and consumables imported during the above period may be withdrawn.

Reply of the department is awaited (January 2016).

(vi) As per HBP, LoP was to specify item(s) of manufacture/service activity, production capacity, export projection for first five years in \$ terms, foreign exchange outflow, limitations, if any, regarding sale of finished goods, by-products and rejects in DTA and such other matter as may be necessary and also impose such conditions as may be required. As per FTP, LoP was to be construed as an authorization for all purposes.

LoP was issued to M/s Vaibhav Gems Ltd, Jaipur (now M/s Vaibhav Global Ltd) an 100 percent EoU by the DC, NOIDA SEZ for manufacturing of coloured gemstones, studded gold jewellery, silver jewellery, platinum Jewellery etc. Annual production capacity on the basis of maximum utilization of plant and machinery was 60,000 carat of coloured gem stones and 54000 pieces of jewellery (all type) during 2010-11 to 2014-15.

Audit scrutiny of manufacturing record and APRs of the unit revealed that the unit exported colour stone of 2,25,08,574 carats and 1,18,10,592 pieces of jewellery in excess of the installed capacity without any permission to enhance the Annual Production capacity from the jurisdictional DC. Therefore, proportionate duty foregone amount in respect of raw material procured and utilised in manufacturing of goods in excess of annual installed capacity was recoverable from the importer.

Reply of the department is awaited (January 2016).

(vii) As per HBP the EO under EPCG was to be fixed six times of duty saved amount by the licensee to be fulfilled within six years. EO under EPCG was to

be over and above average level of export achieved by the licensee in the preceding three licensing years for the same and similar products within the overall export obligation period including extended period, if any. In case of failure to fulfill EO or any other condition of authorization, authorization holder was to be liable for action under FT (D&R) Act and Customs Act, 1962.

Further, import of capital goods for SSI units could be allowed, subject to fulfillment of EO equivalent to six times of duty saved in 8 years, provided the landed CIF value of such imported capital goods under the scheme did not exceed ₹ 50 lakh and total investment in plant and machinery after such imports does not exceed SSI limit.

In the case of M/s Hari Manufacturing Private Limited, RLA Surat granted an EPCG license involving duty saved amount of ₹ 18.91 lakh . EO for the licence was fixed at ₹ 28.36 lakh instead of ₹ 1.13 crore (six times of the duty saved) resulting in short fixation of EO to the extent of ₹ 85.07 lakh.

Department replied (June 2015) that corrective measures would be taken.

Final outcome may be intimated to audit,

(viii) Similarly in the case of M/s Orobella Jewellery Pvt Ltd, RLA Jaipur had authorized two EPCG licenses during AM-10 and export obligation was fixed at six times to the amount of duty saved which was allowed for SSI units only, however, RLA could not produce any record to substantiate the SSI status of the licensee. Further, the licensee imported CG worth ₹ 51.51 lakh which was not permissible to SSI units. Thus, the unit did not qualify for SSI status and should have discharged EO at eight times instead of six times of the duty saved. This resulted in short fixation of EO by ₹ 26.97 lakh.

Reply of the department is awaited (January 2016).

(ix) Audit observed that the RLA Surat, while issuing the EPCG licenses to the four licensees<sup>15</sup>, the Average export obligation was fixed ₹ 71.74 crore instead of ₹ 127.21 crore, which resulted in short fixation of average export obligation by ₹ 55.73 crore.

Department replied (June 2015) that corrective measures would be taken.

Final outcome may be intimated to audit.

(x) Scrutiny of MIS report of March 2015 of RLA Jaipur revealed that five EPCG licenses<sup>16</sup> involving total EO of ₹ 3.10 crore involving duty forgone amounting to ₹ 38.71 lakh issued during the year 2004 and 2005 were pending redemption for want of fulfilment of EO details. EO period of these

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<sup>15</sup> M/s N.J. Gems, M/s Shri Hari Gems, M/s Bhadiyadra Impex and M/s OM Anand Export

<sup>16</sup> Nos. 1330000678, 1330000533, 1330000652, 1330000660 and 1330001001

licenses ended in July 2013. The department had neither initiated any action to obtain the EO details against these licenses nor any action had been taken against these licence holders as required under FTDR Act.

Reply of the department is awaited (January 2016).

### **3.4 Cases of operational malfunctioning**

#### **(A) Non-observance of process prescribed for collection of KPC**

Kimberley Process Certification Scheme (KPCS) plays a key role in maintaining the data and paperwork of the flow of all rough diamonds certified as “conflict-free” going in and out of the country.

DoC vide their letter dated 13 November 2002 had designated GJEPC as the “Importing and Exporting Authority” within the meaning of Section IV (b) of the KPCS.

Further, as per CBEC Circular dated 23rd June 2003, imported consignment of rough diamonds was to be accompanied by a Kimberley Process Certificate (KP Certificate). On or before arrival of the consignment/parcel, the importer or his authorised representative was to present a copy of the KP certificate and other related documents, such as airway bill, Invoice, Packing list etc, to the GJEPC for verification and certification. GJEPC after verifying the documents was to make endorsement on the copy of the KP certificate to that effect. The importer/CHA was to present the KP Certificate endorsed by GJEPC along with the required import documents while filing BE for assessment and clearance of the rough diamonds. Customs was to endorse the clearance of the consignment on the copy of the KP Certificate verified by GJEPC and retain the original. The authorised representative of GJEPC will collect all the original KP Certificates retained by the Customs

Audit observed that the original KP certificates were not being collected by any authorized representative of GJEPC from the office of Dy. Commissioner of Customs, Surat Hira Bourse, and Surat. Instead they were being submitted to GJEPC by the personnel of Custom House Agent (CHA). Non-adherence to prescribe procedure is fraught with a risk of forgery.

Reply from DoC is awaited (January 2016).

#### **(B) Chartered Engineer Certificate not issued as per professional competence**

As per HBP, on the basis of nexus certificate from an Independent Chartered Engineer (CEC) submitted by the applicant, RLA issue EPCG authorization. In Trade Notice dated 10 July 2008 it was clarified that Chartered engineer of a particular field/Branch would only certify the technical requirement of the same engineering field. As per the Code of Ethics of Institute of Engineers

which stipulates that, “professional engineer undertake assignment where professionally competent engineers shall perform service only in the area of their technical competence”.

Audit observed in RLA Mumbai that the ten EPCG licensees having manufacturing and processing of diamond unit in Surat had submitted Nexus Certificate and installation certificate from a Electronics and Telecommunication Engineer for the import of Machinery during the period 2010-11 to 2014-15. As the machineries were required for manufacturing and processing of diamonds it was required to be certified by the Mechanical/Electrical Engineers only. Thus the CE had not followed the Code of Ethics of the Institute of Engineers (India) as well as trade notice dated 10 July 2008. Neither was it objected by the RLA.

DGFT in their reply (December 2015) stated that there is no stipulation in the FTP and/or HBP that Chartered Engineer certifying nexus or installation has to be from the relevant stream only. In cases cited by the Audit, it has been observed that the equipments imported are machines used for scanning, marking and cutting rough diamonds. These capital goods appear to be electronic equipments and therefore, certification by Electronics Engineer appears to be in order.

The reply of the department is not tenable as equipments imported were not electronic equipments but machineries. Further, audit observed that in all ten units located in Surat, the nexus and installation certificate were given by Electronic Engineer whereas, in three units located in Mumbai similar imported equipments were certified by a Mechanical Engineer.

Thus there is a need to specify the certifying authority in the policy in line with the code of ethics of chartered Engineers.

**(C) Non recovery/surrender of export incentives on unrealised and written off export proceeds**

In terms of HBP, realization of export proceeds were not to be insisted under any of the Export Promotion Schemes under FTP if RBI writes off the requirement of realization of export proceeds on merits and the exporter produced a certificate from the concerned Foreign Mission of India about the fact of non-recovery of export proceeds from the buyer. However, this was not to be applicable in “self-write off cases”. RBI vide their circular dated 22 July 2010 clarified that where AD category –I Banks permitted to accede to the requests for write off made by the exporter, subject to the conditions, *inter alia* that the exporter had to surrender proportionate export incentives availed of, in respect of the relative shipments. It was also clarified that

relaxation would not be applicable where exports were made prior to 27 August 2009.

Test check of records of four exporters<sup>17</sup> under DC, SEZ, Sitapur, Jaipur revealed that the unrealised export proceeds amounting to ₹ 1.84 crore were written off by the exporter themselves from their books of accounts. Since the exporter themselves had written off the unrealised amount of foreign proceeds therefore, proportionate export incentives availed was required to be recovered from the exporters.

Reply of the department is awaited (January 2016).

**(D) Self-Analysis of gold content in Gold Dore Bars**

The Customs wing was to collect samples from each consignment of gold Dore Bars and to ensure content of gold in gold Dore Bars.

Audit scrutiny of records of M/s Kundan Care Products Ltd, Haridwar, revealed that the unit imported 21,503 Kg of Gold Dore Bars during the period June 2013 to March 2015 in which the gold content of 71 per cent (15,276 Kg) as declared by unit after analysing in its own laboratory.

Audit observed that in one consignment of 766.72 kg of Gold Dore Bars, self-analysis report dated 23 June 2013 indicated only 16 per cent of gold content and the remaining consignment disclosed silver and other impurities, which was accepted by Department. The department relied upon the reports submitted by the unit and did not take independent samples in order to ensure content of gold content in Gold Dore Bars.

In the absence of reports on analysis of the samples taken by Customs wing other than the self-analysis report of the unit, the gold content of the Gold Dore Bars could not be relied upon.

CBEC in their reply (December 2015) stated that on import of gold bar there is ad valorem duty and applicable CVD. The unit submitted that all imports were provisionally assessed and samples drawn by the Custom authorities at the time of examination were sent to Govt. lab for testing. After getting lab results the BEs were finally assessed. M/s Kundan Care Products Ltd. has got Accreditation certificate from National Accreditation Board for testing & Calibration Laboratories on 10 December 2014.

The reply is not acceptable in view of fact that the consignment of 766.72 kg of Gold Dore Bars was self analyzed on 23 June 2013 for which testing lab report of Customs authority was required. Further, the certificate from

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<sup>17</sup> M/s Derewala Jewellery Industries, Export House, M/s Shah Gems & Jewellery Mfg. Co. , SEZ-I, M/s Lunawat Gems, SEZ-II, Jaipur and M/s GIE Jewels, SEZ-II

National Accreditation Board for Testing and Calibration laboratories was issued to the unit only in December 2014.

**(E) Participation in overseas exhibition without permission of GJEPC**

HBP prescribes that any person other than Nominated Agency would produce to Assistant Commissioner (Customs) letter in original or its certified copy containing Gem & Jewellery Export Promotion Council (GJEPC) approval for holding exhibition/export promotion tour/export of branded jewellery.

During test check of records, it was noticed that in four cases, under Dy. Commissioner (Customs), Air Cargo Complex, Jaipur, exporters participated in exhibition held overseas without permission of GJEPC. Since these exporters participated in exhibition at overseas without valid permission they were liable to pay duty amounting to ₹ 94.92 lakh.

CBEC in their reply (December 2015) stated that the exporters did not participate in the exhibition but the goods were exported to other parties on consignment basis and delivered at exhibition centre. Thus, no permission of GJEPC was required to these exporters.

Reply is not tenable because the exporter i.e M/s Blue Star, Jaipur had sent consignment for participating in exhibition/fair-2014 (SB No. 2741 dated 13.03.2014) held at Hongkong wherein the exporter was himself the consignee of goods. No permission was obtained by the said exporter for participating in fair held at Hongkong. Further EXIM policy did not exempt exporter from obtaining permission from GJEPC in case goods are delivered to other person for participating in exhibition centre overseas.

**(F) Delay in adjudication of offence cases**

In terms of the Customs Act, 1962, the adjudicating authority was to, before proceeding further, give an opportunity of being heard to a party in a proceeding, if the party so desires. The adjudicating authority would, if sufficient cause was shown at any stage of proceeding, grant time to the parties and adjourn the hearing for reasons to be recorded in writing, provided that no such adjournment was to be granted more than three times to a party during the proceeding.

In Chennai Air Customs, 23 offence cases were registered during 2013-14 on seizure of 21.533 Kgs of Gold bars worth ₹ 6.71 crore and were pending for more than 18 months as on August 2015. Similarly, in Air Customs, Nedumbassery, Cochin only one case was pending for more than one year the reasons for which are awaited.

CBEC in their reply (December 2015) stated that in case of Air Customs, Nedumbassery, Cochin, the case has been adjudicated on 26 August 2015.

Replies in other cases are awaited (January 2016).

**(G) Irregularities in export of Studded Jewellery for Exhibition abroad**

HBP provided that the Unit was to bring back goods or repatriate the sale proceeds within forty-five days from the date of closure of exhibition through banking channels.

Audit observed that DC allowed (September 2012) M/s Dialmaz Exports for export of jewellery through three exhibitions abroad, organized during October 2012 to May 2013 and again for three exhibitions abroad, organized during October 2013 to June 2014.

Thus, due to grant of the permissions for export through exhibitions for such a long period (about six months), re-import of the unsold goods after 45 days, from the closure of exhibition could not be ensured. The goods were returned after delays ranging from five to six months.

This indicated that the department had not put in place a system to monitor re-import of unsold goods allowed for export for exhibition abroad and also failed to initiate any action under Foreign Trade (Directive Regulations) Act.

Reply of the department is awaited (January 2016).

**(H) Uncertain inward remittance in respect of gold jewellery**

SEZ Rules 2006 stipulated that the personal carriage of gems and jewellery items of the value not exceeding US\$ two millions, for holding or participating in overseas exhibition was to be permitted with the approval of the Development Commissioner and subject to the condition that the unit was to submit proof of inward remittance in respect of goods sold in the exhibition.

DC, NOIDA SEZ, granted 15 permissions to M/s BE Jewelled India Pvt. Ltd for exporting the jewellery through overseas exhibitions during the period 2011-12 to 2014-15. Audit examination revealed that in respect of five permissions the dates of Foreign Inward Remittance Certificates (FIRC) of ₹ 27.12 crore was prior to the dates of the exhibitions abroad. This reflected doubtful inward remittance in respect of gold jewellery.

Further, the details of FE realisation of ₹ 84.36 lakh in one case (permission no. 9537 for the period 20.09.2013 to 20.12.2013), was not submitted by the unit.

Reply of the department is awaited (January 2016).

**(I) Non-maintenance of separate annual accounts of the unit**

As per SEZ Rules 2006, if an enterprise operates both as a Domestic Tariff Area unit as well as a Special Economic Zone Unit, it could have two distinct



identities with separate books of accounts. Further, as per SEZ Rules, every unit engaged in both trading and manufacturing activities was to maintain separate records for trading and manufacturing activities.

The unit M/s Neogem (I) Ltd. situated in SEEPZ, Mumbai was issued LoA on 11 February 1991 for manufacture and export of Studded and Plain gold jewellery the LoA was extended in 2010 for a further period of five year i.e., 2010-11 to 2014-15. The above company was a listed company and it had three units, one in DTA, one in SEEPZ as a trading unit and one in SEEPZ as a manufacturing unit. All the above units were separate from each other. However, it was observed during audit that the unit was not maintaining separate books of accounts as prescribed in Rule 19(7) of SEZ Rules 2006 for DTA, Trading and Manufacturing units.

Similar observation was noticed in two cases where DC issued LoAs in favour of M/s Kanak Exports in July 2014 and M/s M D Overseas in January 2004, and these units were engaged in trading as well as manufacturing activity of gold Medallions and gold Bars during 2010-11 and 2011-12. However, no separate accounts were submitted by units in contravention of Rule above.

Reply of the department is awaited (January 2016).

**(J) DTA purchase and consumption of CPDs**

DC, NSEZ issued a LoA in July 2007 in favour of M/s Dialmaz Exports for manufacturing of handcrafted/machine made gold jewellery/Plain/Studded loose cut and polished jewellery.

Audit scrutiny revealed that the unit exported gold jewellery with cut and polished diamonds valuing Rs 71.04 crore during 2010-11 to 2014-15 through 46 SBs. As per these SBs, the export value of cut and polished diamonds (CPD) was Rs 52.93 crore, but the details of CPD (Purchased from DTA) was neither available with the Customs wing nor with the Development Commissioner. Besides, the Department had not put in place a mechanism to check the consumption of cut and polished diamond purchased from DTA, although the unit had procured cut and polished diamonds amounting to Rs 30.74 crore during the period 2010-11 to 2014-15.

Reply of the department is awaited (January 2016).

**(K) Non-recovery of penalty**

DC, Cochin (CSEZ) issued LoP to M/s. D.T.S. Diamond Tools Sea Pvt Ltd, Bangalore (EoU) on 14 February 2000 for five years for the manufacture and export of circular saw blades, blades with diamond segments. LoP was further extended upto 28 March 2010. The unit achieved positive NFE in the

initial five year period but in the 2<sup>nd</sup> block of operation the unit did not achieve positive NFE. There was a shortfall of ₹ 1.75 crore on actual basis.

DC, CSEZ cancelled the LoP on 25 April 2012 and imposed penalty of ₹ 2 crore for failure to achieve positive NFE. Further, Commissioner of Central Excise, Bangalore-I Commissionerate, Bangalore confiscated goods and demanded duty on 8 June 2012 and imposed penalty as under:

- I. Confiscated capital goods and raw materials imported by the unit valuing of ₹ 6.79 crore and offered to redeem the confiscated goods on payment of redemption fine of ₹ 60 lakh;
- II. Confirmed and ordered to recover sum of ₹ 2.07 crore being the customs duty involved on (a) above and interest thereon;
- III. Imposed penalty of ₹ 25 lakh.

DC, CSEZ also addressed the Deputy Collector, Bangalore on 24 August 2012 for recovery of ₹ 2 crore as “Recovery of amount other than Public Revenue due on land which is recoverable under the Revenue Recovery Act”.

Further, CSEZ also addressed letter (24-8-2012) to the First Secretary (Commercial), Embassy of India, Ministry of External Affairs, for recovery of ₹ 2 crore since the unit is an 100 per cent subsidiary of an Italian Company (M/s. Sea Utensili Diamantati S.P.A. Via Augera.)

Despite the Department’s communication, even after almost 3 years no action was taken to recover the amount.

Reply of the department is awaited (January 2016).

#### **(L) Incorrect refund of Central Sales Tax (CST)**

As per FTP, EoU would be entitled to reimbursement of CST on goods manufactured in India.

M/s Renaissance Jewellery Ltd., a 100 per cent EoU, falling under the jurisdiction of Range-I, City Division, Bhavnagar, received ₹ 1.47 crore towards its CST reimbursement on input procurement for the period 2010-11 to 2014-15 from DC (KASEZ), Gandhidham, out of which ₹ 1.13 crore was paid for purchase of Gold from Union Bank of India.

Audit observed that the Union bank of India was included in the list of nominated agencies authorized under FTP to import gold and supply to different industry/manufacturers. Since the imported gold was not manufactured in India, the reimbursement of CST of ₹ 1.02 crore was incorrect and recoverable from the unit.

Reply of the department is awaited (January 2016).

**(M) Incorrect issuance of status certificate to exporter as PTH**

M/s Laxmi Diamond Pvt Ltd earlier recognized as export house certificate holder had applied for grant of STH Certificate on the basis of the export performance of the previous three years including the period (4 September 2009 to 31 July 2009) for ₹ 2,691 crore. On the basis of the FOB/FOR value of export performance the Zonal Jt. DGFT had approved on 31 December 2010 issue of a STH certificate to the exporter. However, while issuing the certificate status mentioned certificate was PTH.

Incorrect status mentioned in the certificate allowed the importers to available benefits which are meant for PTH instead of the benefits due to the STH.

DGFT in their reply (December 2015) stated that on verification it has been found out that this particular company has not availed the benefit under EPCG scheme.

Department may intimate whether the rectification in the status certificate has been carried out or not.

**(N) Short/non-execution of LUT Bond value**

As per SEZ Rules 2006, for availing exemptions, drawbacks and concessions for authorised operation, the unit had to execute BLUT with regards to its obligation regarding proper utilization and accounting of goods, including capital goods, spares, raw materials components and consumables including fuels imported or procured duty free and achievement of positive NFEE. The value of the BLUT was to be equal to the amount of duties leviable on import or procurement from DTA. Where BLUT executed fell short on account of requirement of additional goods, the unit was to submit additional BLUT. The value of the BLUT in respect of gems and jewellery units was to be calculated on rates as notified by the Central Government, from time to time.

(i) Audit scrutiny of APR for 2010-11 to 2013-14 and BLUT in the case of M/s Neogem (I) Ltd, SEEPZ, Mumbai, revealed that the unit mentioned the total value of capital goods procured at ₹ 3 crore in the APR whereas the unit executed BLUT for ₹ 1.26 crore in 2008 and ₹ 1 crore in 2013. Accordingly, the value of BLUT fell short of actual value of the capital goods imported.

Similar omission was noticed in the case of M/s Shri Raj Jewels, SEEPZ Mumbai where total value of capital goods procured was ₹ 2.44 crore as on 31 March 2014 whereas the unit executed BLUT for import of capital goods valuing ₹ 1 crore only.

Reply of the department is awaited (January 2016).

(ii) M/s Shri Raj Jewels, SEEPZ Mumbai executed BLUT on 3 October 2011 of ₹ 2.72 crore. Audit observed from the export/import performance for the year 2012-13 and 2013-14 that unit had exceeded the projected exports/imports. However, the unit did not execute BLUT upto 15 April 2014. For 2014-15, the unit filed revised projection of export and import and the LOA was accordingly modified by the SEEPZ on 2 May 2014 accepting the projections and requested the unit to execute revised BLUT. As per revised projection, consolidated FOB/CIF value for the next three years was ₹ 616.07 crore/₹ 432.46 crore respectively. The unit had not filed the revised BLUT.

Similar omissions were also noticed in SurSEZ (Surat), where the bonds executed by six SurSEZ (Surat) units viz., M/s Goenka Diamonds and Jewels Ltd., M/s V Square International, M/s Fortune Gems, M/s Kamini Jewels, M/s Kiran Design and M/s Diamond Forever International, were not enhanced despite enhancement in the quantum of import over the year.

Department replied (June 2015) that the units had been directed to submit fresh bond.

Reply of the department is awaited (January 2016).

(iii) In the case of M/s Easy Fit Jewellery Pvt Ltd., (SEZ unit), Manikanchan the unit executed BLUT for a value of ₹ 50 lakh on 11 July 2008. The annual capacity of the unit was revised from 50000 pieces to 2500 kgs on 03 April 2010, however the revised BLUT was not executed accordingly. This resulted in short execution of Bond-cum-LUT of ₹ 16.23 crore (approx) for duty free import of gold.

On this being pointed out, the department accepted the observation and informed that all MKSEZ units have been instructed to enhance BLUT amount in line with their present capacity.

(iv) During the scrutiny of BLUTs entered under Hyderabad Commissionerate, it was observed that in respect of four units<sup>18</sup>, the units projected the value of imported capital goods and indigenous capital goods required. While arriving at the value of bond, the value of projected imported capital goods was divided into two parts for imported and indigenous capital goods instead of taking the consolidated projected value capital goods. Accordingly, the duties arrived at was based on incorrectly adopted values. This resulted in short valuation of BLUTs of ₹ 3.25 crore.

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<sup>18</sup> M/s.Fantasy Diamond Cuts Pvt. Ltd (Gitanjali Brands Ltd), M/s.Asmi Jewellery Ind Pvt Ltd(M/s Desire Life Style Pvt Ltd), M/s Brightet Circle Jewellery India Pvt Ltd ( M/s Nakshatra Brands Ltd) and M/s D'Damas Jewellery (I) Pvt Ltd

CBEC in their reply (December 2015) stated that they will reiterate the instructions to the field formations with a copy to DC.

Final outcome may be intimated to audit.

**(O) Procurement certificate issued without correlating the import entitlement**

HBP envisaged that jurisdictional Commissioner of Customs and Excise shall also be a member of the UAC for EoU. Further, UAC to supervise and monitor permission, clearances, licence granted to units and to take appropriate action in accordance with law.

Audit observed that M/s Lodha Jewellery Export India Pvt. Ltd. was granted procurement certificate in July 2012 by Central Excise Division for import of gold jewellery to be exported after repair/remaking. The procurement certificate was issued without correlating the import entitlement with LoP which is for import of gold bar. The omission on the part of Excise Department allowed unauthorized import of gold jewellery valuing ₹ 1.31 crore.

CBEC stated (December 2015) that a detailed reply will be submitted shortly.

Final outcome may be intimated to audit.

**(P) Implementation of 24x7 cargo clearance operation**

CBEC made 24x7 Custom Clearance operational on pilot basis with effect from 01 September 2012 at identified Air Cargo Complexes to enhance the coverage of trade facilitation measure. The Board further extended the facility to the Air Cargo Complex at Amritsar with effect from 01 June 2013 with the recommendation that Chief Commissioners of Custom should divert Customs staff for deployment at Custom location within the available staff for the time being in force and also directed to work out the additional man power requirement and send the same to the Board.

Audit observed that the Air Cargo Complex at Amritsar had not implemented the 24x7 cargo clearance operation despite orders of the Board dated 31 May 2013.

CBEC in their reply (December 2015), while admitting the audit observation stated that staff has now been deputed at Air Cargo Complex, Amritsar.

**3.5 Miscellaneous irregularities**

In twenty nine cases of Incorrect availing of exemption notification on imitation jewellery, Non recovery of demand, Non recovery of duty on excess claim of wastage on gold/silver jewellery, Non-levy of duty on re-exportation of goods beyond prescribed time limit etc resulted in non levy/short levy of

duty of ₹ 2.82 crore were also noticed (Appendix 14), the department had accepted the observation in four cases, replies in the remaining cases are awaited.