



सत्यमेव जयते

# Report of the Comptroller and Auditor General of India



Performance Audit on Natural or cultured pearls, precious or semi-precious stones, precious metals, metals clad with precious metal and articles thereof, imitation jewellery, coins (Chapter 71 of CTH).

Union Government  
Department of Revenue - Indirect Taxes - Customs  
No. 6 of 2016

**Report of the  
Comptroller and Auditor General  
of India**

**for the year ended March 2015**

**Performance Audit on Natural or cultured pearls,  
precious or semi-precious stones, precious metals,  
metals clad with precious metal and articles thereof,  
imitation jewellery, coins (Chapter 71 of CTH).**

**Union Government  
Department of Revenue  
Indirect taxes – Customs  
No. 6 of 2016**

**Laid on the table of Lok Sabha/Rajya Sabha \_\_\_\_\_**



## Table of Contents

Contents		Page
<b>Preface</b>		i
<b>Abbreviations</b>		iii
<b>Executive summary</b>		v
<b>Chapter 1: Introduction</b>		1
1.1	Background	1
1.2	Administrative structure	1
1.3	Why we chose this topic?	2
1.4	Audit objectives	3
1.5	Audit sample and criteria	3
1.6	Audit criteria	3
<b>Chapter 2: Systemic issues</b>		5
2.1	Trend and composition of Imports/Export under Chapter 71 goods	6
2.2	Analysis of Database of imported and exported goods	9
2.3	20:80 Scheme	10
2.4	Net Foreign Exchange Earnings (NFEE)	21
2.5	Customs EDI System	22
2.6	Inadequate trade facilitation	26
2.7	Activities in SEZs	31
2.8	Absence of norms and enabling conditions	36
<b>Chapter 3: Compliance issues</b>		45
3.1	Cases of incorrect assessment	45
3.2	Cases of irregular grant of exemptions	52
3.3	Violation of Act, Rules, instructions and governing conditions	59
3.4	Cases of operational malfunctioning	64
3.5	Miscellaneous irregularities	73
<b>Chapter 4: Co-ordination, internal control and monitoring</b>		75
4.1	Audit of Nominated agencies by Customs	75
4.2	Lack of coordination between DoC, DoR and DGFT	75
4.3	Cases of improper monitoring	79
4.4	Lack of internal control	85
5	Conclusion	88
<b>Appendices</b>		91



## **Preface**

This Report for the year ended March 2015 has been prepared for submission to the President of India under Article 151 of the Constitution of India.

The Report contains significant results of the performance audit on natural or cultured pearls, precious or semi-precious stones, precious metals, metals clad with precious metal and articles thereof, imitation jewellery, coins (Chapter 71 of CTH) during 20010-11 to 2014-15.

The instances mentioned in this Report are those which came to notice in the course of test audit during the period 2015-16.

The audit has been conducted in conformity with the Auditing Standards issued by the Comptroller and Auditor General of India.

Audit wishes to acknowledge the cooperation received from Ministry of Commerce and Industry (DoC), Department of Revenue (DoR) and its field formations and Reserve Bank of India (RBI) at each stage of the audit process.



**Abbreviation**

AA	:	Advance Authorisation
APR	:	Annual Performance Report/Annual Progress Report
BOA	:	Board of Approval
BCD	:	Basic Customs Duty
BE	:	Bill of Entry
BLUT	:	Bond cum Legal Undertaking
BTP	:	Biological Technology Park
CAD	:	Current Account Deficit
CBEC	:	Central Board of Excise and Customs
cif	:	Cost, insurance, freight
CPD	:	Cut and polished Diamond
CSEZ	:	Cochin Special Economic Zone
CST	:	Central Sales Tax
CTH	:	Customs Tariff Heading
CVD	:	Countervailing Duty
DC	:	Development Commissioner
DEA	:	Department of Economic Affairs
DFIA	:	Duty Free Import Authorisation
DGFT	:	Directorate General of Foreign Trade
DGoV	:	Directorate General of Valuation
DG (Systems)	:	Directorate General of Systems and Data Management
DoC	:	Department of Commerce
DoR	:	Department of Revenue
DRI	:	Directorate of Revenue Intelligence
DTA	:	Domestic Tariff Area
EDI	:	Electronic Data Interchange
EHTP	:	Electronic Hardware Technology Park
EO	:	Export Obligation
EODC	:	Export Obligation Discharge Certificate
EP	:	Export Performance
EPCG	:	Export Promotion Capital Goods
EoU	:	Export Oriented units
FEMA	:	Foreign Exchange Management Act
FOB	:	Free on Board
FTP	:	Foreign Trade Policy
FTDR Act	:	Foreign Trade (Development & Regulation) Act.



FSEZ	:	Falga Special Economic Zone
GDP	:	Gross Domestic Product
G&J	:	Gems and Jewellery
GJEPC	:	Gems and Jewellery Export Promotion Council
HBP	:	Hand Book of Procedure
ICES	:	Indian Customs EDI System
ISEZ	:	Indore Special Economic Zone
ITCHS	:	International Tariff Classification (Harmonised System)
LoA	:	Letter of Approval
LoP	:	Letter of Permission
MEPZ	:	Madras Export Processing Zone
MKSEZ	:	Manikanchan Special Economic Zone
NA	:	Nominated Agency
NFEE	:	Net Foreign Exchange Earnings
NIDB/ECDB	:	National Import Database/ Export Commodity Database
NII	:	Non-Intrusive Inspection
NOC	:	No Objection Certificate
NSEZ	:	Noida Special Economic Zone
PCA	:	Post Compliance Audit
PCCCC	:	Precious Cargo Customs Clearance Centre
QPR	:	Quarterly Performance report
RBI	:	Reserve Bank of India
RLA	:	Regional Licencing Authority
RMS	:	Risk Management System
SB	:	Shipping Bill
SCN	:	Show Cause Notice
SEZ	:	Special Economic Zone
STH/PTH	:	Star Trading House/Premier Trading House
STP	:	Software Technology Park
SVB	:	Special Valuation Branch
UAE	:	United Arab Emirates
UAC	:	Unit Approval Committee
SEEPZ	:	Santacruz Electronics Export Promotion Zone
VSEZ	:	Visakhapatnam Special Economic Zone

## Executive Summary

The Gems and Jewellery (G&J) industry occupies an important position in the Indian economy as it is a leading foreign exchange earner and one of the fastest growing industries. It contributed to 15 per cent of the national export basket. The major product categories of this industry are gold and diamond jewellery. Gold jewellery forms around 80 per cent of the Indian jewellery market while the remaining market demand is of studded jewellery that includes diamond studded as well as gemstone studded jewellery. Over 65 per cent of the World's polished diamonds is manufactured in India in terms of value, 85 per cent in terms of volume and 92 per cent in pieces. India's diamond manufacturing sector employs about ten lakh people across the country. Majority of the diamond manufacturing activities takes place in Surat, Gujarat. The Bharat Diamond Bourse in Mumbai, a modern trading complex which began its operations in 2010, is the largest bourse in the World, and accounts for nearly 90 per cent of India's total diamond trade. The manufacturing of jewellery and coloured gemstones is centred at Jaipur, which is the World's largest manufacturing center.

Rough diamond, precious coloured gemstones and gold are not produced in India. These are imported from major source countries or trading hubs. These are essential inputs for the Gems and Jewellery (G&J) sector. G&J sector in India has a unique availability of traditional skills, a huge socio-economic importance and a large domestic market for different kinds of plain and studded jewellery. This sector also generates a fair amount of economic activity and contributes to the GDP of the country if value is added to the final product. Currency and asset demand of gold in India is one of the highest in the world vis-a-vis other currencies and investment asset categories. Given global demand for Indian design and workmanship, Cut and Polished Diamond (CPD) and jewellery has been one of the top exporting products for decades. Conversion of rough diamonds to CPD and gold to plain/studded jewellery creates substantial value integration with ramifications on all the economic factors.

The import of gold, jewellery et cetera increased from ₹ 3,50,396 crore in 2010-11 to ₹ 3,81,515 crore (9 per cent) in 2014-15. Export of similar goods also increased to ₹ 2,53,940 crore (28 per cent) in 2014-15 from ₹ 1,98,886 crore in 2010-11. In 2014-15 the share of imports of Chapter 71 goods to all imports was 13.93 percent whereas the share of its exports was 13.39 percent. While imports grew by 10.57 percent, the exports grew only by 0.7 percent over the last year.

Trade deficit has decreased from 43 per cent (FY 11) to 34 per cent (FY 15) but the duties foregone have increased from 14 per cent (FY 11) to 20 per cent (FY 15) of the value of imports.

During this period, value of the US Dollar increased by 34 percent making the imports proportionately expensive and exports cheaper. The entire five year period saw, imports of gold as a major component of the imports under the chapter 71 but it suffered a negative Net Foreign Exchange Earnings (NFEE) vis a vis corresponding exports of jewellery. International gold prices reached its peak in 2012 and steadily declined by 2015. Evidently, in 2013-14 rough diamonds formed the dominant category of the Chapter 71 imports and CPD formed the majority of the exports with a positive NFEE between these two categories. The value addition in this category of goods was however, far better during the previous period 2010-2013. Import, re-import and export of CPD through PCCCC, Mumbai alone had increased manifolds. Re-import of CPD to total import grew from 27 to 79 per cent and re-import of CPD to exports increased from 10 to 29 per cent in the last five years.

India barely produced diamond or gold. It was the highest average importer of gold in the last five years. There was a sharp increase in the share of import of gold after 2007-08 because of its rise in its asset demand. Interestingly, in 2013-14 the export of rough diamond and non monetary form of gold was also at maximum levels of 10.10 and 11.04 percentages, respectively.

The difference between the transaction wise valuation of trade between India and its exporting/importing partners indicated that India ranked 4<sup>th</sup> in volume of illicit financial outflows in the world. This was almost \$83 billion USD in 2013 and growing, akin to the last ten years trend. It is around 4.5 per cent of India's GDP (against global average of 4 per cent) and totally comprises of outflows due to trade mis-invoicing.

The export growth (0.7% in 2014-15) was much below the rate of 25 per cent envisaged in the DoC strategy, affecting employment generation and other economic indicators. Mid-Term review of DoC's strategy indicated downward revision of the export targets almost by 30 percent (2013-14) owing to both global and domestic conditions. FTP 2015-20 acknowledged the suboptimal performance of the sector and highlighted need for better use of information technology infrastructure in trade transactions; input based indirect tax remission for export price competitiveness and augmenting production and labour efficiency.

Export-import data of DoC in respect of import of gold jewellery from Singapore, Malaysia, Indonesia, Hongkong, Thailand and UAE during 2010-11

to 2014-15 as mentioned in Appendix 2A revealed that there was a surge in import of gold jewellery from Asian Countries during the year 2013-14 and 2014-15 when 20:80 scheme was in operation, since import of gold bar was restricted for normal importers during the above period. UAE's diamond trade slumped after 2011, post imposition of the 2 per cent customs duty (January 2012) when gold and gold jewellery received a boost.

It has been observed that on an average 64 per cent of imported gold jewellery were from Switzerland, UAE and Hong Kong out of the 120 odd source countries. However, the importing countries were not being exported to, except in case of UAE and Hong Kong. Similarly, 63 per cent exports of jewellery were to UAE and Hong Kong. Analysis of the trade of four main goods category gold, diamond, CPD and jewellery of Chapter 71 with UAE in 2014-15 reveals that 15 percent (of the total like goods imported) were imported from UAE and 29 percent of the total like goods were exported to UAE. The country trade analysis further indicates repeated transactions between each of the four categories of products under Chapter 71; cases of related party transactions, inverted duty structure and re-export. Evidently, trade with UAE involving re-export did not create major economic activity while inflating the total value of the trade. It necessitated a detailed examination to distinguish imports and exports tied to the real economy through value addition and creation of economic growth, rather than from the re-exports simply passing through the trade accounting and bank financing channels.

No analysis of the incremental changes in the transaction cost associated with the sector was measured by DoC. The change in gold price, import regulation, export promotion schemes did not have a material impact on the gold trade. The G&J trade related financial outflow continued unabated.

DoC was mandated to facilitate creation of an enabling environment and infrastructure for growth of Gems and Jewellery sector through accelerated growth in exports and to earn the precious foreign currency. Higher domestic value addition led exports could have reduced the trade deficit in this sector and consequently eased the Current Account Deficit (CAD). FTP 2015-20, however, did not make any defining provision for the G&J sector despite withdrawal of 20:80 Scheme in 2014 and climb down from the set target of the DoC's Strategy, after its Mid-term review.

Role of RBI was to regulate the external sector by regulating the foreign exchange. Audit found that Gems and Jewellery sector alone contributed to around 13 per cent of the total foreign exchange outgo. RBI in consultation with the government introduced 20:80 scheme in August 2013 to reduce Current Account Deficit and to discourage consumption of gold in the

domestic market. As a result the import of gold moderated, till the scheme was modified by DEA and in May 2014, RBI allowed Star/Premier trading houses to import gold.

Similarly, CBEC/DoR was mandated to provide improved tax payer services, implement export promotion measures and effectively collect the tax revenue. Total Customs duty forgone was ₹ 12,26,033 crore for the period 2010-11 to 2014-15 whereas the share of gems and jewellery sector in the above was 25 per cent (₹ 3,01,042 crore) for the same period. Gaps in the valuation database management and Customs electronic data application allowed gradual increase in trade mis-invoicing over the period leading to foreign exchange/capital outflow.

G&J sector was last audited in 2008 however most of the improvements recommended by audit were not achieved.

Lack of an impact assessment of the scheme prior to its implementation and an outcome assessment after implementation, or on exit, rendered the policies ineffective due to insufficient coordination, control and monitoring; cases of operational malfunction, non compliance; inadequate ICT infrastructure for tax administrations, border control, facilities and certification.

DoR, CBEC and DoC, DGFT need to improve coordination; implement the EDI systems with full functionality; reduce transaction cost; regulate related party transactions, tariff and re-export, for a growth led licit Gems and Jewellery trade to avoid inflated export figures through mere trade accounting.

This performance audit has revenue implication of ₹ 1,003.37 crore in addition to systemic issues worth ₹ 19,522.67 crore and internal control matters which could not be quantified.

#### **Summary of recommendations**

- 1. Department of Commerce should undertake an outcome analysis of the important schemes implemented to boost the gems and jewellery sector from an economic, trading and revenue perspective. All inverted duty structures, transaction costs, related party transactions, re-export transactions, facilitation measures need to be carefully reviewed before designing an effective promotional scheme.*
- 2. CBEC should maintain a robust and updated valuation data for all the tariff lines so that these could be utilised and shared with other concerned departments.*

3. *CBEC may consider rationalising the duty structure so that Foreign Exchange Earning could at least be at par with duty foregone under the FTP.*
4. *CBEC may expedite implementation of ICES 1.5 to all the high valued and sensitive commodities. The EDI system may be extended to import/export of gold dore bars, export of gold jewellery, hand baggage and disposals. Effective mechanism may be adopted to ensure the updating of tariff value, exchange rate and duty rate in the EDI system in a timely manner.*
5. *Department of Commerce may consider introducing suitable provisions in the SEZ rules, to prescribe a minimum value addition by the SEZ units; to provide certain minimum percentage of examination of goods to check the purity of Gold jewellery, caratage of Diamonds and for regular stock verification to check diversion into DTA. The provisions should include value of procurements made by SEZ from DTA (on payment in foreign currency) for the purpose of calculation of NFEE.*
6. *Department of Commerce may review the export incentives allowed on G&J exports, product category and country wise, considering the volume and value of re-imports involved, to safeguard the interest of revenue and to prevent round tripping.*
7. *Existing mechanism for fixing tariff value may be reviewed by CBEC so as to facilitate a balance between the revenue management and valuation concerns.*
8. *To maintain the consumer and trade confidence in Indian diamond industry, CBEC may consider a clear categorization for manmade diamonds to differentiate from natural diamonds.*
9. *A suitable control mechanism may be established by Department of Commerce to get assurance and reliability of the data furnished in APR by SEZs/EOUs.*



**Performance Audit on Natural or cultured pearls, precious or semi-precious stones, precious metals, metals clad with precious metal and articles thereof, imitation jewellery, coins (Chapter 71 of CTH).**





## Chapter 1: Introduction

### 1.1 Background

The Gems and Jewellery (G&J) industry occupies an important position in the Indian economy as it is a leading foreign exchange earner and one of the fastest growing industries. The two major product categories of this industry are gold jewellery and diamond. Gold jewellery forms around 80 per cent of the Indian jewellery market while the remaining market demand is of studded jewellery that includes diamond studded as well as gemstone studded jewellery. Gems & jewellery worth ₹ 2,53,940 crore was exported in FY 2014-15, of which cut and polished diamonds (CPD) accounted for ₹ 1,38,463 crore and jewellery exports accounted for ₹ 80,679 crore as tabulated below (Table 1).

**Table 1: Import/export of Rough diamond and CPD during FY11 to FY15**

Year	Imports of					Exports of				
	Rough diamond	Gold	CPD	other	Total CTH 71	Gold	Jewellery	CPD	Other	Total CTH 71
FY11	48832	184729	95464	21371	350396	5763	37373	131011	24739	198886
FY12	65412	269900	63637	35649	434598	1980	68128	126071	30111	226290
FY13	80115	292153	36652	46936	455856	23765	75073	116233	23388	238459
FY14	98471	166243	35031	45285	345030	18351	65570	147716	20538	252175
FY15	102251	210658	22581	45890	381515	17442	80679	138463	17356	253940

Source: [commerce.nic.in](http://commerce.nic.in), <http://indiabudget.nic.in>

In India over 65 per cent of the World's polished diamonds is manufactured in terms of value, 85 per cent in terms of volume and 92 per cent in pieces. India's diamond manufacturing sector employs about ten lakh people across the country. Majority of the diamond manufacturing activities takes place in Surat, Gujarat. The Bharat Diamond Bourse in Mumbai, a modern trading complex which began its operations in 2010, is the largest bourse in the World, and accounts for nearly 90 per cent of India's total diamond trade. The manufacturing of jewellery and coloured gemstones is centred at Jaipur, which is the World's largest manufacturing center. The effective customs duties were initially reduced for rough diamond and gold from 12.5 percent to 10 percent with effect from 01 January 2007. The effective duty on gold varied from a specific rate of ₹ 300 per 10 grams on 27 February 2010 to 10 per cent w.e.f 13 August 2013. For rough Diamonds effective rate of duty has been kept at 'Nil' since March 2012.

### 1.2 Administrative structure

The Central Board of Excise and Customs (CBEC), DoR through its Directorates and field formations, is responsible for collection of revenue, border control

and certain trade facilitation measures. The Director General of Foreign Trade (DGFT)/Department of Commerce (DoC) monitors the transaction cost issues and implements various Export promotion schemes for the sector. Gems & Jewellery Export Promotion Council (GJEPC) was set up in 1966 under the aegis of DoC as an apex body to facilitate this sector. It has been mandated as the nodal agency for the Kimberley Process Certification Scheme (KPCS) for imports and exports of rough diamond and maintains the trade information of all certified “conflict-free” rough diamonds. In its Outcome Budget 2013-14, DoC had proposed two new schemes for Gems and Jewellery on PPP Basis. Measurements and indicators of the outcome(s) are yet to be stated. The two proposed schemes are as follows.

- i) Common facility centre: In view of acute scarcity of skilled artisans in G&J sector, a common facility centre on PPP basis was proposed in the 12<sup>th</sup> Five Year Plan (2012-17) by creating additional facilities to attract the Gems & Jewellery workers in clusters.
- ii) Gem Bourse in Jaipur: It was proposed to develop an international hub of gemstones (Gem Bourse) in Jaipur with facilities such as Customs, Banks, Clearing and Forwarding Agents, etc.

In the Strategic Plan of DoC there is a mention of the G&J sector but the Result Framework Document (RFD) 2013-14 does not mention specific targets/goals/objective for G&J sector though this industry carries one of the highest weights in the export basket of India.

Reserve Bank of India is responsible for regulating the foreign exchange, an important ingredient for international trade.

### **1.3 Why we chose this topic?**

G&J sector covered under Chapter 71 of the schedule I of the Custom Tariff Act, 1975 is India’s one of the largest and growing exporting sector, leading foreign exchange earner, employing lakhs of skilled and semi-skilled manpower. It has for a long period enjoyed various duty exemptions and remissions in the Foreign Trade Policy (FTP) in addition to being preferred tariff line(s) under the various free trading agreements. Gold in any form is an asset category and has a high currency and non-currency valuation in India, leveraging its economic potential manifolds. In the run up to the current account deficit crisis (4.9 per cent of GDP in June 2013) gold and jewellery emerged as the second largest contributor to foreign exchange outflow after the Petroleum sector. The 20:80 scheme was introduced to regulate imports, increase exports and maximize foreign exchange earnings from gold and jewellery. This sector was last audited in 2008 which covered the high growth period of the entire Indian economy including this specific

sector. Recommendations were mainly on maintaining a trade database; implementing ICES in Precious Cargo Customs Clearance Centre (PCCCC) earlier known as DPCC; and DTA purchases, physical examination of goods cleared, value addition and Quality of Annual Progress Reports (APRs) in SEZs.

Given the critical and increasingly significant role of the Gems and Jewellery sector during the recent years, audit of its performance was taken up.

#### **1.4 Audit Objectives**

The aim of this Performance Audit is to seek assurance on:

- Whether the provisions of relevant Acts and enabling rules and regulations are adequate and in line with the stated objectives of DoC (Chapter 4 of FTP), and DoR, CBEC (Chapter 71 of CTH); and imports/exports are in accordance with of the provisions of Acts, Rules, Notifications, Circulars and Guidelines issued by Government/RBI from time to time.
- Whether benefit of exemptions/concession/remission for import of precious metals and other specified products had been allowed correctly and terms and conditions for granting such benefits were fulfilled.
- The internal control system, monitoring and coordination mechanism were sufficient, proper and appropriate, enabling performance of the objectives and outcome based actions of the Government.

#### **1.5 Audit Sample**

This performance audit was carried out in the DoR, DoC, DEA, DGFT, major customs stations and SEZ/EoU units. We scrutinised the records relating to imports and exports under Chapter 71 of CTH for 2010-11 to 2014-15 in all the selected customs stations as per the Stratified Random Sampling Method. A sample of 21,245 bills of entry (BEs) and 13,143 shipping Bills (SBs) out of a total population of 3,26,012 BEs and 11,55,362 SBs respectively were selected for scrutiny. Records of 28 Export Oriented Units (EoUs) out of 34 EoU units, 156 Special Economic Zone (SEZ) units out of 891 SEZ units and records related to 1702 licences out of 6607 licences issued under various export promotion schemes were also selected for scrutiny. Records of 47 Nominated Agencies/Banks/STH/PTH out of 81 Nominated Agencies/Banks/STH/PTH, registered/licensed for import of gold were also audited. Certain related records at the DoR, DoC and DGFT Hqr, New Delhi were also examined.

#### **1.6 Audit Criteria**

We bench marked our findings against the extant provisions/guidelines in the following:

- a. The Customs Act/Rules, 1962, The Customs Tariff Act, 1975.

- b. Customs Manual, CBEC's Notifications and Circulars.
- c. Foreign Trade Policy along with Handbook of Procedures with Appendices; Foreign Trade (Development and Regulation) Act, 1992.
- d. RBI Master Circulars on EXIM policies and gold import.
- e. SEZ Act, 2005; SEZ Rules, 2006.

## Chapter 2. Systemic issues

Rough diamond, precious coloured gemstones and gold are not produced in India. These are imported from major source countries or trading hubs. These are essential inputs for the Gems and Jewellery (G&J) sector. G&J sector in India has a unique availability of traditional skills, a huge socio-economic importance and a large domestic market for different kinds of plain and studded jewellery. This sector also generates a fair amount of economic activity and contributes to the GDP of the country if value is added to the final product. Currency and asset demand of gold in India is one of the highest in the world vis-a-vis other currencies and investment asset categories. Given global demand for Indian design and workmanship, Cut and Polished Diamond (CPD) and jewellery has been one of the top exporting products for decades. Conversion of rough diamonds to CPD and gold to plain/studded jewellery creates substantial value integration with ramifications on all the economic factors.

G&J sector, in India, contributed substantially (15 per cent) to the export basket and merchandise exports growth, with commensurate revenue contribution. Reasons for growth in gems and jewellery exports were considered by DoC to be dynamic entrepreneurship, favourable Foreign Trade Policy (FTP) provisions, and market size<sup>1</sup>. The problems identified were that the industry was import sensitive with 90 percent of the raw material imported from overseas; the raw material was not available from direct sources adding to its cost; increasing requirement of skilled human resources; improvised training and facility centres; high trade related transaction cost and availability of competitive finances, interest rates with a favourable tax regime. Being a leading foreign exchange earner and a labour intensive sector which employed around 34 lakh workers (2008<sup>2</sup>) it was estimated that for an annual average growth of 25 percent<sup>3</sup> of the sector, 66 lakh workers would be required by 2018.

Schemes for exporters of G&J are in Chapter 4 of the FTP of the DoC. The trading transaction is captured by the Customs department, DoR, under Chapter 71 of the Customs Tariff Heading (CTH). The process of importation and exportation is monitored through valuation, tariff, certification (source and authenticity) and facilities instituted by Customs. The trade related payments and remittances in foreign exchange are regulated under the

---

<sup>1</sup> Report of the Working Group on 'Boosting India's manufacturing Exports' (2012-17), DoC; September 2011.

<sup>2</sup> Impact of the Global crisis on the diamond cutting and polishing Industry in India, UNDP, Indira Hirway.

<sup>3</sup> Strategic Plan DoC; Strategy for Doubling Exports in Three Years (2011-12 to 2013-14), DoC.

relevant regulations/schemes of the RBI. The financial flow based on imports and exports of G&J products, irrespective of the end use, is substantial.

This chapter analyses the trend and composition of the customs trading data, product category wise, both in value and quantities. The impact of the schemes under the FTP, FTAs and the prevalent tariff was analysed, country wise, year wise and major product category wise. The direction of trade is analysed with respect to significant trading partners. Quality of the database for valuation and efficiency of the Electronic Data Interchange (EDI) system maintained has been commented at systemic levels.

Performance of the 20:80 scheme has been audited to evaluate its efficacy while the indicators like Net Foreign Exchange Earnings (NFEE), Export Obligation (EO), Tariff etc have been analysed from the perspective of the trade and transaction. Observations have been made on SEZ/EoU, trade facilitation procedures and institutions as instruments of export growth with respect to the extant provisions of law.

### **2.1 Trend and composition of Imports/Export under Chapter 71 goods**

Import and export performance of goods under Chapter 71 of CTH during 2010-11 to 2014-15 is tabulated in Appendix 1 to 1C. There were about 84 different items imported under this chapter and 89 items were exported. Share of value of import of rough diamond, gold, jewellery, polished diamonds and other items to that of total imports under Chapter 71 revealed that gold and rough diamond formed 75-80 per cent of the imports whereas exports comprised around 85 per cent of CPD and jewellery. There was a general increase in the share of rough diamond. Therefore the significant four category of goods viz. non currency gold, rough diamond, cut and polished diamond (CPD) and gold jewellery of the Chapter 71 trade have been analysed.

The import of gold, jewellery etc. increased from ₹ 3,50,396 crore in 2010-11 to ₹ 3,81,515 crore (9 per cent) in 2014-15. Export of similar goods also increased to ₹ 2,53,940 crore (28 per cent) in 2014-15 from ₹ 1,98,886 crore in 2010-11. In 2014-15 the share of imports of Chapter 71 goods to all imports was 13.93 percent whereas the share of its exports was 13.39 percent. While imports grew by 10.57 percent, the exports grew only by 0.7 percent over the last year. The value and quantity of goods imported and exported under the four categories revealed a generally increasing trend of export of rough diamond, gold and an increasing trend of imports of jewellery over its exports.

In the last five years, similar to the total Chapter 71 imports, the rate of growth of the value of gold imports as well as value of gold, jewellery and

CPD exports was irregular, whereas, rate of growth of both imports and exports of rough diamonds declined.

Trade deficit has decreased from 43 per cent (FY 11) to 34 per cent (FY 15) but the duties foregone have increased from 14 per cent (FY 11) to 20 per cent (FY 15) of the value of imports.

During this period, value of the US Dollar increased by 34 percent making the imports proportionately expensive and exports cheaper. The entire five year period saw, imports of gold as a major component of the imports under the chapter 71 but it suffered a negative NFEF vis a vis corresponding exports of jewellery. International gold prices reached its peak in 2012 and steadily declined by 2015. Evidently, in 2013-14 rough diamonds formed the dominant category of the Chapter 71 imports and CPD formed the majority of the exports with a positive NFEF between these two categories. The value addition in this category of goods was however, far better during the previous period 2010-2013. Import, re-import and export of CPD through PCCCC, Mumbai alone had increased manifolds. Re-import of CPD to total import grew from 27 to 79 per cent and re-import of CPD to exports increased from 10 to 29 per cent in the last five years.

India barely produced diamond or gold. It was the highest average importer of gold in the last five years. There was a sharp increase in the share of import of gold after 2007-08 because of its rise in its asset demand<sup>4</sup>. Interestingly, in 2013-14 the export of rough diamond and non monetary form of gold was also at maximum levels of 10.10 and 11.04 percentages, respectively. Correspondingly, seizures of like items increased from Rs 22.11 crore in 2010-11 (0.006 per cent of value of imports) to Rs 1,419.22 in 2014-15 (0.37% of value of imports). There was a quantum jump in the value of seized Chapter 71 goods from Rs 156.61 crore in 2012-13 to Rs 950.16 crore in 2013-14. The duty evasion cases detected by DRI under different schemes also increased between 2010-11 to 2014-15.

The export growth (0.7 per cent in 2014-15) was much below the rate envisaged in the DoC strategy affecting employment generation and other economic indicators. Mid-Term review of DoC's strategy indicated downward revision of the export targets almost by 30 percent (2013-14) owing to both global and domestic conditions. FTP 2015-20 acknowledged the suboptimal performance of the sector and highlighted<sup>5</sup> better use of information technology infrastructure in trade transactions; input based

---

<sup>4</sup> RBI (2013): 'Report of the Working group to study the Issues Related to Gold Imports and Gold Loans by NBFCs' Reserve Bank of India New Delhi.

<sup>5</sup> FTP 2015-20 highlights.



indirect tax remission for export price competitiveness and augmenting production and labour efficiency.

### **Direction of Trade**

The major sources for rough diamonds were Russia, Canada, Botswana, Angola, Namibia, South Africa, Australia DRC and Zimbabwe. Coloured gemstone was available from Tanzania, Myanmar, Thailand, Srilanka, Namibia, Columbia and Brazil. The major existing market hubs were Hongkong, UAE and Singapore.

Export-import data of DoC in respect of import of gold jewellery from Singapore, Malaysia, Indonesia, Hongkong, Thailand and UAE during 2010-11 to 2014-15 as mentioned in Appendix 2A revealed that there was a surge in import of gold jewellery from Asian Countries during the year 2013-14 and 2014-15 when 20:80 scheme was in operation, since import of gold bar was restricted for normal importers during the above period (Appendix 4 and 6). UAE's diamond trade slumped after 2011, post imposition of the 2 per cent customs duty (January 2012) when gold and gold jewellery received a boost<sup>6</sup>.

Top seven source countries and destination countries of goods of Chapter 71 during 2010-11 to 2014-15 have been included in Appendix 2B and 2C respectively.

It has been observed that on an average 64 per cent of imported gold jewellery were from Switzerland, UAE and Hong Kong out of the 120 odd source countries. However, the importing countries were not being exported to, except in case of UAE and Hong Kong. Similarly, 63 per cent exports of jewellery were to UAE and Hong Kong. Analyse of the trade of four main goods category of Chapter 71 with UAE in 2014-15 reveals that 15 percent (of the total like goods imported) were imported from UAE and 29 percent of the total like goods were exported to UAE. The country trade analysis further indicates repeated transactions between each of the four categories of products under Chapter 71; cases of related party transactions, inverted duty structure and re-export which have been mentioned in the following paragraphs. Evidently, trade with UAE involving re-export did not create major economic activity while inflating the total value of the trade. It necessitated a detailed examination to distinguish imports and exports tied to the real economy through value addition and creation of economic growth, rather than from the re-exports simply passing through the trade accounting and bank financing channels.

---

<sup>6</sup> idexonline.com, International Diamond Exchange; Thomson Reuter (2013) Gold Survey 2013 Update.

No analysis of the incremental changes in the transaction cost associated with the sector was measured by DoC. The change in gold price, import regulation, export promotion schemes did not have a material impact on the gold trade. In FTP 2015-20, DoC did not make any defining provision for the G&J sector different from the earlier FTPs despite its climb down in the mid-term review of the departmental strategy and withdrawal of 20:80 scheme. The G&J trade related financial outflow continued unabated.

CBEC in their reply (December 2015) stated that in the 2003 circular, there is no ban on import of jewellery and no country restriction. Jewellery is covered under the FTA.

Department's reply is not satisfactory since it had not analysed the potential impact of the 20:80 scheme before implementing it nor its outcome after withdrawing it in a year's time, in terms of imports, exports, revenue or CAD, especially with respect to specific source and destination countries. The lessons learnt from this scheme could have been useful for development of similar promotional schemes in future.

***Recommendation No. 1:*** Department of Commerce should undertake an outcome analysis of the important schemes implemented to boost the gems and jewellery sector from an economic, trading and revenue perspective. All inverted duty structures, transaction costs, related party transactions, re-export transactions, facilitation measures need to be carefully reviewed before designing an effective promotional scheme.

## **2.2 Analysis of Database of imported and exported goods**

The DGoV, Mumbai was established in the year 1997 to assist the Board in policy matters concerning valuation. To carry out this task, the DGoV had to develop a comprehensive real time electronic database of imported and exported goods.

The Expert Committee on Gems and Jewellery had expressed concern over the absence of reliable turnover statistics in this sector and had opined that the domestic trade was grossly under-estimated to avoid both sales tax and income tax and had recommended sharing of the trading data with other tax authorities to detect instances of tax evasion. Given the multiple uses of the database, completeness of data was a prerequisite for doing any reliable analysis.

Audit observed that the import/export data was incomplete and could not be used as the base data for any realistic analysis. Undervaluation and overvaluation of imports and exports of high unit value products are also liable to be used for financial outflows from the country due to trade mis-invoicing. The DGoV database management system was not fully functional

(C&AG's Report No. 8 of 2015) and it was not integrated with the EDI system of Customs department or DGFT. The value of imports and exports for the total transactions captured in the DGoV database for Chapter 71 did not match with the trade figures reported by Commissionerate of Customs in Mumbai (Appendix 3). DGoV had noticed some transactions of undervaluation and overvaluation, however 'no valuation Alert/Guidelines was issued.

Data of the DGoV and the respective Commissionerates revealed that the data captured by National Import Database (NIDB)/Export Commodity Database (ECDB) was not complete. The variation in the export data ranged from 1.33 to 81 times the actual data provided by different Commissionerates for the period 2010-11 to 2013-14, similar variation was also observed on the import side. However, the import and export data pertaining to the PCCCC was not being captured in the database of DGoV, and import data of Gold Dore Bars are manually processed in PCCCC.

The difference between the transaction wise valuation of trade between India and its exporting/importing partners, indicated<sup>7</sup> that India ranks 4<sup>th</sup> in volume of illicit financial outflows in the world. This was almost \$83 billion USD in 2013 and growing akin to the last ten years trend. It is around 4.5 per cent of India's GDP (against global average of 4 per cent) and totally comprises of outflows due to trade mis-invoicing.

CBEC in their reply (December 2015) stated that DGoV data is regularly updated and CBEC is willing to share the DGoV data on request basis.

Reply of CBEC is not acceptable because during the audit it was observed that DGoV data was neither fully functional nor regularly updated. There is no existing mechanism/protocol of sharing of the data with other Government agencies.

**Recommendation No. 2:** *CBEC should maintain a robust and updated valuation data for all the tariff lines so that these could be utilised and shared with other concerned departments.*

### **2.3 20:80 Scheme**

To control the deteriorating Current Account Deficit (CAD) during 2012-13 gold import was identified by DGFT, DoC as an important constituent. RBI in consultation with Government of India introduced 20:80 scheme. Vide the circular dated 22 July 2013 RBI imposed certain restrictions on import of gold and gold dore bar in to the country with a view to decrease the import of

---

<sup>7</sup> Global illicit Financial Flows Report: 2015; Global Financial Integrity; [www.gfintegrity.org](http://www.gfintegrity.org)

gold and consequential outflow of foreign exchange and prescribed certain conditions to be followed by the authorized importers.

DGFT considered gems and jewellery sector as one of the largest exporting sector in India and to promote export of gold and jewellery and earn foreign exchange RBI vide circular dated 14 August 2013 prescribed revised guidelines for import of gold. It required all the nominated banks/agencies to ensure Export Obligation of 20 per cent of every lot of gold imported and the balance 80 per cent was to be used for domestic purpose. They were permitted to import 1<sup>st</sup> consignment of gold on the basis of their past imports. After exporting 20 per cent of imported quantity they again became eligible to import the 2<sup>nd</sup> lot of gold by submitting proof of exports, and so on.

For border control measures, CBEC vide circular dated 4 September 2013, notified guidelines to be followed by the Customs Department and importers of gold.

Vide circular dated 14 February 2014 RBI restricted the import of gold after the 2<sup>nd</sup> lot to be limited to lesser of the two quantities of, five times of export for which proof had been submitted, OR quantity of Gold permitted to a Nominated Agency in the first or second lot.

The Star Trading Houses/Premier Trading Houses (STH/PTH) were allowed to import gold for export purpose only and were kept outside the purview of the scheme. However, based on a modification proposed by Department of Economic Affairs (DEA), RBI vide circular dated 21 May 2014 allowed STH/PTH to import gold under the scheme. They were to be registered as nominated agencies by the Director General of Foreign Trade (DGFT)

The scheme was withdrawn by RBI vide circular dated 28 November 2014.

#### **(A) Import of gold jewellery under 20:80 Scheme**

In terms of RBI's circular dated 14 August 2013, Gold in any form/purity including Gold Dore was allowed to be imported under 20:80 scheme. However, RBI vide circular dated 1 July 2014 disallowed import of gold in the form of jewellery/Mountings, etc. from the purview of 20:80 scheme.

An analysis of all India data on Gold Jewellery import received from DG (System), revealed that the import of gold jewellery surged substantially during the period of 20:80 scheme. The average monthly jewellery import during the period of 20:80 scheme (i.e. 14 August 2013 to 27 November 2014) had risen to ₹ 425.05 crore from the average monthly jewellery import of ₹ 25.48 crore when 20:80 scheme was not operational as shown in

Appendix 4. Again average import of gold jewellery had significantly come down after withdrawal of the 20:80 scheme.

In our opinion allowing import of Gold jewellery without any limit during the 20:80 scheme period affected the domestic Gold jewellery industry which employed a large number of workers.

CBEC in their reply (December 2015) stated that, Customs did not allow the import of jewellery after the issuance of the RBI Circular dated 1 July 2014.

Department's reply is not acceptable as allowing import of gold jewellery without any limit during the 20:80 scheme period and RBI's clarification dated 01 July 2014 thereafter defeated the objective of minimizing CAD intended in 20:80 scheme as a result of the sudden surge in import of gold jewellery during the currency of the 20:80 scheme. Further this was also against the interest of domestic jewellery industry which employed millions of artisans.

**(B) Irregular permission to import gold under 20:80 scheme**

In terms of RBI circular dated 14 August 2013, the nominated banks/agencies/refineries and other entities not having a previous record of having supplied gold to the exporters needed to seek prior approval from RBI before placing orders for import of gold for the first lot under the 20:80 scheme.

Audit scrutiny revealed that M/s Diamond India Ltd (DIL) had not supplied any gold to exporters in the financial year 2010-11 to 2012-13 thus it was not entitled to import gold under 20:80 scheme. However, DGFT, New Delhi granted permission to DIL to import 100 kg gold bars, each at Mumbai, Ahmedabad, Chennai, Hyderabad, Delhi, Kolkata, Bangalore and Kochi locations for first two lots, under the 20:80 scheme in contravention of the RBI circular dated 14 August 2013.

DIL had imported 700 kg of gold bars (Assessable value ₹ 178.82 crore) in Mumbai. The details of quantity of gold actually imported at Ahmedabad, Chennai, Hyderabad, Delhi, Kolkata, Bangalore and Kochi locations during the 20:80 period (14.08.2013 to 27.11.2014) by DIL have not been furnished by the department.

In our opinion, allowing DIL to import gold bars under 20:80 scheme by DGFT was irregular. Imports, exports and DTA sale of the imported gold may be investigated and remedial action under FTDR Act may be taken under intimation to audit.

DGFT in their reply (December 2015) stated that the permission to DIL for import of only 600 Kgs was given with approval of the competent authority

on the basis of their entitlement as per RBI circular dated 14 August 2013 and as per criteria laid down in the circular. Further, the permission was not utilised by M/s DIL as Govt had withdrawn all restrictions on import of gold vide RBI Circular dated 28 November 2014.

Documentary evidence may be produced to audit for verification.

**(C) Anomaly in different sets of guidelines issued by RBI under 20:80 scheme**

RBI's circular dated 22 July 2013 imposed certain restrictions on import of gold and gold Dore bar into the country with a view to control CAD by decreasing the import of gold and consequential outflow of foreign currency and prescribed certain conditions to be followed by the authorized importers. RBI's circular dated 14 August 2013 revised the guidelines for import of gold. In this circular STPs/PTHs were kept outside the purview of 20:80 scheme and were allowed to import gold for export purpose only. Later on RBI in consultation with Govt. of India allowed STHs/PTHs to import gold under 20:80 scheme in 21 May 2014 after taking into account views of DGFT, RBI, DRI and PTHs/STHs. However, concurrence of DoR/CBEC was not sought though DoR had strong reservations on allowing STHs/PTHs to import gold at the time of earlier RBI circular issued on 14 August 2013. Audit is of the opinion that the views of DoR were important as the gold policy affected the tax administration of the Government. GJEPC, one of the Apex body for promotion of gems and jewellery exports was also opposed to the idea of allowing STHs/PTHs to import and sell gold in domestic area.

It can be seen that while the import entitlement of PTHs/STHs were based on highest quantity imported by them in last 24 months prior to introduction of 20:80 scheme whereas, the import entitlements of banks/nominated agencies were determined by exports during previous years. Analysis of the scheme revealed that there was built in discrimination in the scheme in favour of STH/PTHs.

Audit observed that extending the 20:80 scheme to PTH/STH had resulted in spurt in import of gold during June 2014 to November 2014 which negated the objective of 20:80 scheme to reduce the CAD. Average monthly gold import increased by 2.74 times. Further analysis of imports by trading houses revealed that the major trading houses took advantage of the notification and imported in huge quantities after the relaxation was brought in by RBI (Appendix 5).

It can be observed that imports of PTHs/STHs shot up by more than three times during the comparable period. Total gold imports during June 2014 to November 2014 was 533 MTS, out of that 282.77 MTS i.e. approximately 53

percent of total gold imports were by 13 trading houses. Further, top seven trading houses accounted for approximately 50 percent of total gold imported during 20:80 period. Thus, allowing PTH/STH to import gold under the scheme allowed benefits to be cornered by a few business houses.

Audit scrutiny of the records of selected PTHs/STHs showed that PTHs/STHs mostly exported plain gold jewellery, bangles or medallions with negligible or no value addition. 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. Exports were also made to related parties. Some of the remittances were being received the very next day. Possibility of exporting products without even nominal value addition as plain jewellery by these agencies could not be ruled out. These importers 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. DRI had also observed that the export obligation was mostly met by exporting machine made plain jewellery viz. bangles and chains which are re-melted abroad and cast into primary bars for the purpose of re-import.

Analysis of export data furnished by DG (Systems), New Delhi (Appendix 6) revealed that average monthly export of plain gold jewellery increased 3.5 times after relaxation was brought under the 20:80 scheme. However, internal analysis by the Department showed that the export of plain gold jewellery had actually surged by more than 10 times after the relaxation.

Further, STHs/PTHs with the status of exporters imported huge quantity of gold without any cap and supplied it in the domestic market contributing to the anomalous situation.

Reply of the department is awaited (January 2016).

**(D) Inclusion of new refiners under 20:80 scheme without notification**

RBI circular dated 14 February 2014 stipulated that DGFT through a notification, could include new refiners, and fix licence quantity for them.

Audit scrutiny of the records of at DGFT, New Delhi, revealed that seven<sup>8</sup> refiners had applied for Import Authorisations to import gold dore bars for the first time. On file approval for Import Authorisations for total quantity of 13.8 MT to these seven refiners were accorded by DGFT on 07.03.2014. These new refiners were issued Import Authorisations and brought under

---

<sup>8</sup> M/s Bhandari Gold and Jewellers Pvt. Ltd., Shree Surya Refinery, Uttarakhand, Multivision, Mumbai, Parekh Industries Ltd., Mumbai, Rajesh Exports Ltd., Bangalore, Diamond Forever International, Mumbai and Chemmanur Gold Refinery Ltd., Cochin.

20:80 scheme by virtue of the approval of DGFT. However, no notification was issued by the Government to include these refineries under 20:80 scheme. This contravened the procedure prescribed by RBI in its circular dated 14 February 2014.

DGFT in their reply (December 2015) admitted that in there is no procedure/practice in DGFT for notifying list of refineries as every time a new refinery applies for licence/authorisation the quantity to be allowed from time to time would vary which cannot be pre-determined. Further, they stated that refineries are different from Nominated Agencies as refiner has to fulfil the condition of actual user and therefore furnish the details of utilization of gold dore to excise authorities and customs authorities about the quantity of gold extracted. Hence it was felt appropriate that licence/authorisation for import of gold dore was granted case to case as per the refining capacity instead of issuing notification and adding names of the refineries to the list subsequently.

Reply of DGFT is not acceptable because by not notifying the refineries in advance, other agencies like CBEC, GJEPC, RBI etc were kept out of the loop.

**(E) Irregular exports fulfilling under 20:80 scheme**

As per Board's circular dated 4 September 2013 read with RBI's circular dated 14 August 2013 for every consignment of gold imported, at least 20 percent quantity was to be supplied to the exporters only.

Further HBP stipulated that the exporters had to furnish export promotion (EP) copy of the SB along with other documents in support of proof of export of gold jewellery and such exporters were required to export the jewellery made there from within 90 days.

(i) In Air Cargo Complex, Mumbai, M/s Diamond India Ltd, Mumbai imported 100 kg of gold in 7<sup>th</sup> lot (October 2014) under 20:80 scheme. Out of 30 kg of gold supplied to exporters, export fulfilment against 18 kg of gold was shown prior to issue of gold.

Similar observation was also noticed in the case of The Bank of Nova Scotia, Mumbai, where it imported 3000 kg of gold (August 2014) under 20:80 scheme. Out of this, 10 kg of gold was issued to exporter in September 2014. The export fulfillment against this gold was shown prior to issue of gold.

Above export fulfilling prior to receipt of gold was not in order and thus the importer was liable to pay duty of ₹ 72.87 lakh in both the cases.

CBEC in their reply (December 2015) stated that (i) in case of DIL, delivery of gold was made to M/s Bhindi Manufacturers on 17 October 2014 and not on 20 October 2014 as pointed by Audit and the same was reflected in SB dated



17 October 2014. Thus the export has not taken place prior to receipt of gold. (ii) in the case of M/s Nova Scotia Bank, appropriate reply will be sent on the basis of verification and action taken.

CBEC's reply regarding date of supply to M/s Bhindi Manufacturers on 17 October 2014 is not acceptable, as evident from the register maintained in Bond section at ACC, Mumbai, indicated that gold was supplied on 20 October 2014. Even if it is assumed that the gold was supplied on 17 October 2014, the export on the same date is doubtful as manufacturing of gold jewellery involves a number of processes. This needs detailed examination. Detailed reply in respect of M/s Nova Scotia Bank may also be furnished.

(ii) Similar observation was noticed in the case of M/s. MMTC Limited under Cochin Air Customs Commissionerate with a duty impact of Rs 18.46 lakh along with interest.

CBEC in their reply (December 2015) stated that M/s. MMTC Limited had been granted extension by proper officer in terms of notification dated 08 May 2000 and the goods had been re-exported and no duty liability was involved on the goods in terms of the notification.

Reply is not acceptable as according to HBP no extension for fulfilment of export obligation was to be allowed.

(iii) Scrutiny of records of two Nominated Agencies (NA) IndusInd Bank and Axis Bank in Kolkata revealed that EP copies of SBs of exports (IndusInd Bank - 16 SBs and Axis Bank -15 SBs) were not available with them. In absence of these EP copies of SBs as proof of exports, proportionate import duty amounting to ₹ 9.40 crore stood recoverable from the NAs concerned.

Subsequently, Axis Bank Ltd. vide their reply (17.08.2015) submitted only 03 nos. of EP copy of SBs and expressed their inability to submit the remaining EP copy of SBs.

Final outcome may be intimated to audit.

(iv) Board circular dated 4 September 2013 stipulated that import of gold Dore Bars from the third consignment onwards was to be allowed only up to 5 times of the quantity for which the proof of export had been submitted by importer and this was to be on accrual basis.

M/s Kundan Care Products Ltd had made first export of 26 Kg of Plain gold jewellery on 28 November 2013 against the import of 210.70 kg Gold Dore Bars on 12 November 2013. Further, the unit imported of 26.87 Kg and 76.80 Kg gold Dore Bars on 20 January 2014 and 21 January 2014 respectively without fulfilling the export obligation against earlier imports.

Thus, permission to the unit for imports for the consignment of 103.67 Kg without fulfilling the export obligations was irregular and the unit was liable to penalty under Foreign Exchange Management Act, 1999 (FEMA).

CBEC in their reply (December 2015) stated that it appeared that M/s Kundan Care Products Ltd., Haridwar has imported the consignment of 103.667 Kg of Gold Dore Bar after fulfilment of the export obligation of earlier imports.

The reply is not relevant because audit raised the observation regarding allowing the importer to import third consignment without furnishing the export proof for earlier imports. Ministry may provide a specific reply.

(v) Assistant Commissioner Customs & Central Excise Division, Rampur issued the permission in October 2013 to M/s Sri Sai Vishwas Polymers for import of Gold Dore Bars and manufacturing of gold/silver bars and coins.

Audit observed that the unit imported 29.12 kg gold Dore bars having assessable value of Rs7.08 crore during the period June 2014 to August 2014 and exported 7.51 Kg plain gold jewellery having assessable value of ₹ 1.77 crore, for which the permission for manufacturing of gold jewellery was not obtained from the Customs & Central Excise Department. Accordingly, the unit was liable for penalty under FTDR Act and FEMA.

Reply of the department is awaited (January 2016).

**(F) Inconsistency in circulars issued by RBI, SEZ and DGFT for granting status Certificate and Nominated Agency Certificate to STH and PTHs**

Merchant as well as Manufacturer Exporters, service providers, units located in EoUs, SEZs, EHTPs, STPs, BTPs and Agri-Export Zones were to be eligible for status of STH/PTH. Further, as per FTP (2009-14) Status recognition depended upon EP. Minimum prescribed EP for a status of STH and for PTH House was ₹ 2,500 crore and ₹ 7,500 crore respectively. The export performance was to be counted on the basis of FOB value of export proceeds realized during current plus previous three years (taken together).

RBI circular dated 14 February 2014 excluded any import under Advance Authorisation (AA)/Duty Free Import Authorisation (DFIA) from the purview of 20:80 scheme. However, RBI on 21 May 2014 allowed STH/PTH to import gold under 20:80 scheme. Further, in order to streamline regulatory mechanism for the SEZ units dealing in gold/gold medallions DoC decided (dated 25 April 2013) that no DTA transactions was to be permitted for SEZ units transacting in gold. The SEZ units were not permitted to trade in gold even for export activity.

Audit observed that three trading houses discussed below had achieved the required minimum turnover for getting star/premier trading house certificate

either through exports from SEZ units or against the exports under DFIA licence. Since SEZ units are not permitted to import gold for trading in DTA in terms of DoC's decision dated 25 April 2013, the PTH/STHs status earned through exports from SEZ should not have been allowed to import gold for supplying to DTA and their imports should have been restricted for use within SEZ.

However, neither RBI circular dated 21 May 2014 nor DoC had brought any amendments to SEZ/EoU rules/provisions to this effect. Further as per RBI clarification dated 14 February 2014 exports under DFIA was not entitled for determining eligibility to further import under 20:80 scheme. However, past exports made under DFIA were not excluded for granting status and nominated agency certificate.

Audit observed that trading houses had taken advantage of the inconsistency in circulars issued by different departments and got their status either by clubbing exports from SEZs or by exports under DFIA. As a result they became eligible for import of gold under 20:80 scheme and sold substantial quantity in domestic area. Few illustrative cases are narrated below:

Documentary evidence may be produced to audit for verification.

(i) M/s Edelweiss Commodities Services Ltd (formally M/s Edelweiss Trading & holdings limited) while applying for STH declared their export turnover of ₹ 2,537.17 crore. Audit scrutiny revealed that export worth ₹ 2,479.75 crore was through Manikanchan SEZ, Kolkata and only ₹ 57.42 crore was through units other than SEZ. Therefore, the status allotted as a Star Trading House and as a nominated agency to the exporter was not in order. This resulted in import of gold bars to the tune of 19,000 kg (₹ 4,699 crore) during 20:80 scheme out of which 15200 kgs of gold bar was consumed for domestic use.

Further, it was also observed that erstwhile company M/s Edelweiss Trading & holdings limited (IEC No. 0909004790) had applied for status certificate and status certificate were issued on 06 September 2011 and certificate was subsequently amended in favour of M/s Edelweiss Commodities Services Ltd (IEC No. 0307050521). It is pertinent to mention that FTP 2009-14 does not allow the transfer of status certificate to another entity holding a different IEC as the Star Trading Certificate was issued to the exporters for his own export performance.

Further, it was noticed by audit that the same export turnover of the year 2010-11 (₹ 406.41 crore) and 2011-12 (₹ 2,130.76 crore) had been claimed by both the companies i.e. M/s Edelweiss Trading & holdings limited and M/s Edelweiss Commodities Services Ltd and both of which were certified by the

same Chartered Accountant. In any circumstances, one export performance could not be claimed by two companies accordingly, the certificate of the Chartered Accountant was not in order. A mechanism to verify the details certified by the exporter as well as the CA was not available with DGFT.

DGFT in their reply (December 2015) stated that In this regard, it is stated that the name of the new entity was endorsed on the status certificate in pursuance of the order of the Hon'ble High Court of Andhra Pradesh on account of transfer of assets/liability by virtue of amalgamation/merger.

Reply of DGFT was not addressing the issue of not having a mechanism to verify the details certified by the exporter as well as the CA.

(ii) M/s Shree Ganesh Jewellery House(I) Ltd, applied for PTH on 26 May, 2014 on the basis of declared export turnover of ₹ 19,754.74 crore during April 2011 upto April 2014. The Status was granted by Additional, DGFT, Kolkata on 6 June, 2014. Audit scrutiny revealed that out of total export turnover of Rs 19,754.74 crore shown, Rs 17981.23 crore was through its SEZ units. Thus the status holder certificate granted in contravention of DoC's decision dated 25 April 2013 was not in order, this resulted in unintended benefit to the exporter and consequent import of gold bars of 400 kgs (₹ 98.75 crore) by them under 20:80 scheme out of which 320 kgs were supplied in domestic area.

In terms of the FTDR Act, 1992, the above units were liable for penalty. Penalty was also leviable under Section 112 of Customs Act, 1962.

Reply of the department is awaited (January 2016).

**(G) No norms for fulfilling Export obligation without any value addition in terms of purity**

Under the 20:80 scheme, M/s. Rajesh Exports Pvt. Ltd, imported 68,500 Kgs of gold from Switzerland and United Arab Emirates and exported 13,700 Kgs of medallions and bangles to United Arab Emirates fulfilling the 20 percent export criteria.

Audit observed that the export obligation was made by exporting medallions and bangles of 24 carat purity. This indicates that the imported gold (24 carat purity) was exported in 24 carat purity medallions and bangles without substantial value addition to the exported products. The Goods imported in bars were merely converted to medallions or other articles of gold of same purity (24 carat) and exported so as to meet export obligation. The risk of round tripping of imports/exports of gold bars in absence of a value addition provision could not be ruled out.

In our opinion, to achieve desired results of export promotion schemes, the scheme should have included specific minimum value addition criteria instead of regular value addition prescribed in FTP to mitigate the risk of round tripping.

**(H) Irregular allowance of exemption**

20:80 scheme was withdrawn from 28 November 2014.

Scrutiny of records of M/s. Rajesh Exports revealed that the unit imported 500 Kgs of gold having assessable value of ₹ 121.44 crore vide BE dated 28 November 2014 and warehoused. The unit filed two ex-bond bill of entry on 2 December 2014 for home consumption for 100 KGs and 400 KGs of Gold respectively under 20:80 scheme. The unit paid duty of ₹ 10 crore on 400 kgs gold and availed exemption of ₹ 2.50 crore for 100 kgs of gold under the scheme, which is irregular since, the 20:80 scheme was withdrawn with immediate effect from 28 November 2014.

Similar irregularity was also noticed in the case of M/s. Reliance Industries Ltd who cleared 10 Kgs of warehoused gold having assessable value of ₹ 2.49 crore vide Ex-BE dated 22 January 2015 and claimed duty exemption of ₹ 73 lakh.

The exempted duty of ₹ 3.23 crore along with interest of ₹ 27 lakh stands recoverable from the importers.

Reply of the department is awaited (January 2016).

**(I) Cancellation of bonds without obtaining bank realisation certificates (BRCs)**

According to Board circular dated 4 September 2013, proof of export was to be furnished by the exporter for having exported the jewellery made from the duty free gold released to them within the period prescribed in the FTP. The instructions contained that the realisation of payments related to those exports should be submitted to the Customs officer.

According to HBP Vol, export against supply by Nominated Agencies was to be effected within a maximum period of 90 days from the date of outright purchase/release of gold on loan basis of precious metal.

Similarly, in terms of notification dated 8 May.2000, as amended, Gold falling under CTH 7106 was exempted from whole of customs duty under the scheme of 'Export Against Supply by Nominated Agencies' subject to certain condition.

Seven nominated Agencies imported 54 consignments of Gold bars (995 purity) through Chennai Air and Coimbatore Air Customs, during the period the 20:80 Scheme was in operation and supplied 20 percent or more of the

quantity to exporters involved in manufacture and export of Gold Jewellery. The nominated agencies submitted only the copy of the shipping bills as proof of exports for shipments made. However the Bank certificates of realization was not insisted upon by the authorities.

Similarly, M/s Bank of Nova Scotia imported 40 consignments of Gold bars (995 purity) during the period 2010-11 to 2012-13 (till August 2013) through Coimbatore Air Customs and supplied it to exporters of Gold Jewellery. However BRC was not submitted by the exporters.

Department's action in considering the export obligation as fulfilled and cancelling the Bonds without insisting on the BRC from the concerned exporters was not in order as one of the important purposes of exemption was to realize foreign exchange to meet the balance of payments position.

CBEC in their reply (December 2015) stated that importing banks have been asked to furnish BRCs for the SBs furnished as 'proof of exports' by them and the same is being monitored.

Final outcome may be intimated to audit.

#### **2.4 Net Foreign Exchange Earnings (NFEE)**

##### **(A) Non Inclusion of the value of procurement made from DTA on payment of foreign exchange in calculation of NFE**

As per SEZ Rule, 2006, supply of goods to DTA by SEZ units made against payment in foreign currency has been considered as export for SEZ for NFE calculation. However, no provision exists in SEZ rules to treat procurements made by SEZ from DTA on payment in foreign currency as import for purpose of NFE calculation.

Audit observed that four units under DC, SurSEZ, Surat, procured goods worth ₹ 2,292.03 crore from DTA against payment made in foreign exchange. In absence of the provision for inclusion of the same outflow of FE, the NFE arrived at for these units, in our opinion does not give the correct picture of transactions made in foreign currency.

Reply of the department is awaited (January 2016).

##### **(B) High cost of earning foreign exchange under Advance Authorization Scheme**

Scrutiny of records of Advance authorization/DFIA licenses issued to three importers under CLA, Delhi, for import of gold bar of purity 99.5 percent and silver bar of fineness 0.999 issued during 2010-11 to 2014-15 revealed that in five cases, on comparison of duty foregone on import of gold bar/silver bar with respect to Net Foreign Exchange (NFE) earned by the exporter, it was observed that to support earning of 1US\$ by the exporter, government had

borne expenditure in the form of duty foregone in the range of ₹ 56.67 to ₹ 221.75 (Appendix 7) which was higher than the exchange rate of US\$ in the open market during the period. The primary reason for the difference between earning of Net Foreign Exchange and duty foregone by the Government was the fact that minimum value addition required to be done by the jewellery exporter according to HBP ranged between 1.5 to 5 percent whereas the duty foregone/exempted when the gold bar was imported was 10 per cent. As such, the Department was foregoing more revenue amount than what was being earned through foreign exchange earnings.

DGFT in their reply (December 2015) stated that the primary objective for allowing Advance Authorisations against the export of a product was to allow duty free import of inputs (after allowing wastage admissible for the inputs) so that these inputs are used by the exporter and the export product is exported within a specified time after using the inputs. In case the exporter fails to export full quantity, he becomes liable to pay customs duty and interest on the inputs remaining with him. Further, the wastage which were allowed in 2009-14 FTP have been reduced in the new FTP and minimum VA have been increased for some of the export products. However while deciding on the Value addition; one of the points which emerged was that if very high value addition norms are prescribed then exports from India will be adversely impacted as the exporters from India have to compete with exporters from other countries. Hence, Value additions were decided keeping this aspect in view.

Reply of the department is not acceptable since duty foregone on import under advance authorisation or in any export incentive schemes is allowed to boost the export of the country and realising sufficient FE for the country. When NFE realised is less than the duty forgone, it has a direct impact on the fiscal management. Very low value addition did not help in generating economic activity in the sector and induced inflated trade data, opening up the window for round tripping.

**Recommendation No. 3:** CBEC may consider rationalising the duty structure so that Foreign Exchange Earning could at least be at par with duty foregone under the FTP.

## **2.5 Customs EDI System**

### **(A) Non-Implementation of ICES 1.5**

(i) Indian Customs Electronic Data Interchange System (ICES) captures details of imports and exports in all Commissionerates. It was introduced to speed up assessments, improve transparency and to act as a repository of data.

Audit observed that although the Precious Cargo Customs Clearance Centre (PCCCC) had a dedicated server, the entire data relating to customs clearance for exports is still kept manually. Transactions relating to imports were integrated with EDI (ICES 1.5) on 28 November 2013.

Since bulk of the imports and exports transaction of the country is handled by the PCCCC, therefore and not capturing the data in EDI system resulted in escaping the scrutiny of the Risk Management System (RMS) and Post Compliance Audit (PCA) introduced by the department for examination of the high risk cargo. In our opinion, the delay in integrating export transactions with EDI has increased the risk of tax evasion and undervaluation/overvaluation which were sought to be reduced by the introduction of ICES 1.5.

Further, imports made with corresponding export obligations under various export incentive schemes of government remain largely unmonitored as the export data are not captured by the system.

Audit also observed that all the transaction relating to import of Gold Dore Bars are done manually since there is no facility to generate Bills of Entry and debit respective licenses in the EDI system therefore the control mechanism envisaged through RMS, PCA, Special Valuation Branch (SVB), DRI and other authorities are not being exercised. DGFT was also not able to track the imports against various export promotion schemes licenses through their system since DGFT EDI system is not connected with the customs system.

Similarly, EDI facility at Surat Hira Bourse is yet to be enabled by the Customs Authority. Further, audit observed that in absence of the EDI facility, the register is the sole record for maintaining the details of imports/ exports based on which various internal reports are prepared were not being authenticated by any Customs authority providing hardly any assurance on the report returns prepared.

In Air Cargo Complex, Indore, even after installation of EDI system, ICES 1.5 system was not operational.

CBEC in their reply (December 2015) stated that ICES 1.5 has already been implemented since November 2013 in import and since 2015 in exports with facility to process Precious cargo including Gold Dore Bars and several sites are using the Systems.

Department's reply is not tenable since ICES 1.5 for export at PCCCC is still under implementation as EP copy is not generated through the system which has been accepted by the DG System. Regarding 100 per cent examination of import and export at PCCCC, department has not issued any circular to that



effect neither any instruction through system is given for compulsory examination. In PCCCC, gold dore bar is still processed manually.

(ii) In terms of HBP, during export of plain/studded jewellery, SBs and invoice presented to customs authorities were to contain description of item, its purity, weight of gold/silver/platinum content, wastage claimed thereon, total weight of gold/silver/platinum content plus wastage claimed and its equivalent quantity in terms of 0.995/0.999 fineness for gold/silver and in terms of 0.9999 fineness for platinum and its value, value of precious/ semi-precious stones/diamonds/pearls used in manufacture and weight /value of any other precious metal used for alloying gold/silver, FOB value of exports and value addition achieved.

Audit observed that all SBs in respect of export of plain/studded jewellery are filed manually in Chennai and Coimbatore Air Commissionerate. Moreover, SBs for gold Jewellery exported by hand carriage in substantial numbers are also filed manually.

Being a high value item, department may initiate necessary steps to extend ICES 1.5 system to accommodate the SBs for export of Gold Jewellery through hand carriage so that manual filing of shipping bills are avoided to control the risks associated with such transactions.

CBEC in their reply (December 2015) stated that ICES development is being done by taking into account common requirement of all field formations. Accordingly, BEs and SBs etc. are standardised to avoid needless entry of data. Incorporation of Additional data in standardised formats needs careful considerations and development of additional modules to link such data to processing of documents. Further, many EDI sites including ACC Delhi is processing such export on ICES. CBEC also stated that Board may consider defining an alternate proof of export (which is conducive to automation) for such consignments.

Final outcome may be intimated to audit.

**(B) Delay in revision of rates in ICES 1.5 systems**

The Board from time to time notifies the change in Tariff value, duty rates and currency exchange rate to be adopted by the assessing officer while assessing the import and exports made to the country or from the country.

Most of the assessment, after introduction of the EDI system in Customs is done through the system with minimum human interference. Thus, it is not only important but also necessary to effect those changes in tariff value, duty rates and exchange value rates in the system without any delay by the system manager to mitigate the risk of under/over assessment.

(i) On analysis of import data of Air Cargo Complex, Mumbai, ACC, Bangalore, Chennai Air Customs and Delhi Airport revealed that the tariff value or exchange rate or both as notified by the Board has not been updated in the ICES 1.5 system resulting in non- adoption of correct tariff value involving short levy of duty and interest of ₹ 16.82 crore for the period 2012-13 to 2014-15 on gold bars imported.

CBEC in their reply (December 2015) stated that in case of ACC, Bangalore, out of duty of ₹ 3.87 crore short paid by 17 importers, ₹ 25 lakh has been recovered from four importers (Axis Bank, MMTC, Rajesh Exports Limited and Titan Industries Limited) along with interest of ₹ 9 lakh from 3 importers. M/s Rajesh Exports Limited has been instructed to pay interest of ₹ 29,573. SCN has been issued to M/s IndusInd Bank Limited, for recovery of ₹ 0.32 crore along with interest. SCNs are in the process of being issued to the remaining 12 importers for recovery of ₹ 3.30 crore along with interest.

(ii) Through notification dated 21 January, 2013, the Board revised BCD rate on import of gold bar from 4 percent to 6 percent with effect from 21 January 2013.

Analysis of import data audit of Bangalore Air Port, Delhi Air Port and Ahmedabad Air Port revealed that nine importers cleared 1528.25 Kg of gold bars through 12 BEs (16 items) of assessable value of ₹ 457.64 crore on 21 January 2013. However, due to non updation notification directory in the ICES 1.5 system, these BEs were assessed at lower rate of duty of 4 percent instead of 6 percent resulting in short levy of duty of ₹ 9.43 crore.

CBEC in their reply (December 2015) stated that the issue of notification dated 21 January 2013 was communicated at 9.25 PM and updated on 9.45 PM on the same day. Since it was in ICES 1.0, it came into effect on 22.01.2013 at 00:00 hours. In case of ACC, Bangalore, SCN is in the process of being issued to M/s IndusInd Bank Limited for recovery of ₹ 1.23 crores short paid by them.

CBEC further, stated that Standard Operating Procedure (SOP) had been issued on 11 June 2015 for timely updation of Notification Directories. Further, to strengthen the mechanism even more, the Board has approved a new mechanism of Peer Audit.

Department's reply is not acceptable as notification the came into existence on 21 January 2013 and it should have been simultaneously updated on ICES system so that it can be implemented by field formations. Time lag between issue of notification and its updation on system may lead to revenue loss to exchequer.

**(C) Computerized system for assessment of duty on commodity brought by passenger**

Audit observed that duty of customs for the baggage brought in by passengers is assessed manually at SVP International Airport, Ahmedabad. Details of passengers' viz., name, duration of stay abroad, description and value of commodity, duty levied on commodity etc., are filled up manually in the Duty Debit Register (DDR) voucher after which duty assessed on the voucher is deposited in the bank and goods are handed over to passenger. No computerized system exists for assessment of duty on commodity brought by passenger.

In order to have a greater transparency, department may evolve a system wherein mentioning of certain information like value of free allowance availed and date of last departure may be made mandatory before making assessment of duty. This can be achieved if the system of assessment is computerized wherein such information may be made compulsory before assessment is processed.

Similarly, Sanganer Airport, Jaipur, also does not have any computerized system for assessment of duty on commodity brought by passenger.

CBEC in their reply (December 2015) while admitting that the computerization process at passenger terminal has not been undertaken stated that computerization of assessment procedure, the aspects has been looked into and feasibility study is being undertaken, the necessary steps would be taken on top-priority.

Final outcome of the feasibility study being taken may be intimated to audit.

**Recommendation No. 4:** *CBEC may expedite implementation of ICES 1.5 to all the high valued and sensitive commodities. The EDI system may be extended to import/export of gold dore bars, export of gold jewellery, hand baggage and disposals. Effective mechanism may be adopted to ensure the updating of tariff value, exchange rate and duty rate in the EDI system in a timely manner.*

**2.6 Inadequate trade facilitation**

(a) The regulations of Courier Imports and Exports (Clearance) Regulations, 1998, was not to apply to the imported (i) animals and parts thereof, plants and parts thereof; (ii) perishables; (iii) publications containing maps depicting incorrect boundaries of India; and (iv) precious and semi-precious stones, gold or silver in any form; requiring testing of samples thereof or reference to the relevant statutory authorities or expert before their clearance.

Audit scrutiny of the records of Foreign Post Office, Jaipur, revealed that precious and semi-precious stones, gold jewellery and silver jewellery value of ₹ 43.90 crore imported through 3970 parcels during 2010-11 to 2014-15 by units were cleared by applying regulations of Courier Imports and Exports (Clearance) Regulations, 1998 in contravention of the provisions of regulations.

CBEC in their reply (December 2015) stated that goods imported or exported by post are governed by Sections 82, 83, and 84 of the Customs Act, 1962. The procedure for clearance of goods through post is prescribed in Rules regarding Postal Parcels and letter packets from Foreign Ports In/Out of India of 1953. The Import through Foreign Post office is not covered by Courier Imports and Exports (Clearance) Regulations, 1998.

Reply is not tenable because as per regulation 2(1) of Courier Imports and Exports (Clearance) Regulations, 1998, these Regulations shall apply for assessment and clearance of goods carried by the 'Authorised Couriers' on incoming or outgoing flights or by any other mode of transport on behalf of a consignee or consignor for a commercial consideration.

(b) The Task Force Committee constituted by MoC to reduce transaction cost in their Report (January 2011) suggested various measures to reduce transactions cost and time impacting the country's Foreign Trade Transactions. Customs Circular dated 16 March 2010 mandates detailed verification of export obligation fulfilment. Further Customs Instruction dated 18 January 2011 mentioned that in cases where RLA has endorsed on the Export Obligation Discharge Certificates (EODC), customs should verify the SBs and other documents.

In Mumbai, RLA Mumbai was issuing EODC in respect of EPCG licences after verification of all the required documents and copy of the same is also forwarded directly to the Custom EPCG Cell and concerned Port of Registration for cancellation of Bond. However, the licensee have to attach all these documents again along with the original and attested copy of the EODC letter to the custom at the time of filling Bond Cancellation Application. Therefore the current process is not aligned with the suggestions of above Task Force as the recommendations of reducing the cost and time impact on foreign trades is not yet implemented.

DFGT in their reply (December 2015) stated that they are in agreement with the audit observations that EODC, once issued by RA, should be honoured by Customs without insisting on any further documentation unless there is a compelling reason to do so.

Reply of CBEC is awaited (January 2016).

(c) As per CBEC Circular dated 25th August 2006, 100 percent screening of import/export consignments (documents and all type of cargo) was required to be done through X-ray or other non-Intrusive Inspection (NII) technology. However, no such facility, either X-ray or NII techniques as available in Office of the Dy. Commissioner (Customs), FPO, Jaipur. Apart from this computerisation was also not done in respect of import through courier in this office.

CBEC in their reply (December 2015) stated that Presently 11 X Ray Baggage Inspection System (XBIS) systems are installed at 7 FPOs/PADs at different locations and in addition 5 more machines are proposed to be installed.

CBEC may intimate the location where these machines were installed and or proposed to be installed.

(d) As per sub-regulation 2(b) of regulation 2 of Courier Imports and Exports (Clearance) Regulations, 1998, these regulations shall not apply to the goods where the weight of the individual package exceeds 70 kilograms.

Further, these regulations shall apply to export of cut and polished diamond, gems and jewellery under any scheme of export and import policy published by the government of India under Ministry of Commerce as amended from time to time from Export Oriented Units, units in Export Processing Zones or units in the Domestic Tariff Area if the value of each export consignment under such export does not exceed rupees twenty lakh.

Audit observed that export consignment of goods of chapter 71 having value more than ₹ 20 lakh and also import consignment of rough semi-precious stones under chapter heading 71031029 and having weight more than 70 Kilograms were allowed to clear from FPO office, Jaipur.

CBEC in their reply (December 2015) stated that goods imported or exported by post are governed by Sections 82, 83, and 84 of the Customs Act, 1962. The procedure for clearance of goods through post is prescribed in Rules regarding Postal Parcels and letter packets from Foreign Ports In/Out of India of 1953. The Export through Foreign Post office are not covered by Courier Imports and Exports (Clearance) Regulations, 1998. As Import and Exports through postal is one of the oldest practices. There is no such financial limit in Section 82, 83 and section 84 of The Customs Act, 1962.

Reply is not tenable, as per regulation 2(1) of Courier Imports and Exports (Clearance) Regulations, 1998, these Regulations shall apply for assessment and clearance of goods carried by the 'Authorised Couriers' on incoming or outgoing flights or by any other mode of transport on behalf of a consignee or consignor for a commercial consideration. Foreign Post Office is covered

under the definition of 'Authorised Courier' according to sub-regulation 3(a) of Regulation *ibid*. Thus export through Foreign Post office is covered by the Courier Imports and Exports (Clearance) Regulations, 1998.

(e) As per the Customs Act 1962, proper officer has power to search any suspected person who has landed from or is about to board or is on board any vessel within the Indian Customs waters, screen or X-ray bodies of suspected persons for detecting secreted goods. Further, as per the Customs Act, 1962, all imported goods unloaded in a customs area shall remain in the custody of authorized person and it can be allowed to be cleared only with the written permission of authorized person.

Audit scrutiny of the procedure followed and systems in place at Mumbai Port Trust under the preventive wing of Commissioner of Customs-General, Zone-I, Mumbai, revealed that no screening machine was installed at 'A' division passenger terminal and that the officers were provided with only hand held metal detectors. Further, Central Industrial Security Force (CISF) officers employed at Exit/Entry gates were screening the baggage of passengers as well as crew members only with respect to security angle.

It was further observed that passengers alighting from foreign vessels were allowed to exit with temporary pass to enter the city and return. Crew members were allowed to sign off from Mumbai if their duty period is over. In the absence of screening machines installed at the passenger terminal, Customs Officers may not be in a position to detect whether passengers allowed to exit on temporary pass and crew members signing off after duty hours carry any dutiable or prohibited goods with them.

Allowing passengers/crew members passage without any screening of their baggage/person is fraught with the risk of dutiable goods/prohibited goods being cleared without payment of applicable duty.

CBEC in their reply (December 2015) stated that there was no baggage scanner for passengers and crew members disembarking from ships/vessels is provided and to install Scanning Machine at MBPT, Mumbai.

Final outcome may be intimated to audit.

(f) As per Customs Manual 2014 no passenger can leave a Custom Station without thoroughly checking of Baggage and other items imported by him on each existing Airport, International Railway Station or Air/Rail Cargo unless permitted by Customs Officer after clearance of all the formalities like payment of duties.

During test check of records of Customs stations i.e SGRDJI Airport, ICP Attari Road, LCS Attari Rail under the Custom (Preventive) Commissionerate,

Amritsar, it was noticed that at all the stations only x-rays, metal detectors were installed but there was no mechanism or any other equipment available to detect the Precious Stones like Diamond, Gems & others. Thus the department had inadequate equipment to detect smuggling of precious stones items like Diamond, gems etc, except gold and gold articles.

CBEC in their reply (December 2015) stated that as regards availability of mechanism for detection of precious stones like diamonds, gems or others, after clearance of the passenger by the immigration, customs officers X-ray all luggage items carried by the passenger and the passenger himself is made to pass through the door frame metal detector. It is pertinent to mention that precious metals and stones have identifiable signatures in X-rays. If a doubt arises during the X-ray, the baggage of the passenger is marked and sends for thorough examination. Customs also deploys sniffer dogs at the stations for this purpose. In addition to the above mentioned measures, the profiling of the passengers is also done and close liaison is maintained with the various intelligence agencies and if suspicious movement of a passenger is noticed, he is subjected to rigorous checking.

(g) An Indian passenger who has been residing abroad for over 1 year is allowed to bring jewellery, free of duty, in bonafide baggage up to an aggregate value of ₹ 50,000 in the case of a male passenger or ₹ 1 lakh in the case of a lady passenger.

Any passenger of Indian origin (even foreign national) or a passenger holding a valid passport issued under the Passport Act, 1967 if coming to India after a period of not less than 6 months of stay abroad is allowed to import specified quantities of gold and silver as baggage on payment of duty, which has to be paid in foreign currency.

Audit scrutiny of the baggage receipts for the years 2010-11 to 2014-15 at Devanahalli Airport revealed that in number of cases period of stay abroad was not recorded. Further, no column has been provided in baggage receipt for recording the same.

Since quantity permitted to be brought to India depends on period of stay abroad, column for Period of Stay abroad ought to have been provided in baggage receipt book to minimise the misuse of the provisions.

CBEC in their reply (December 2015) stated that instructions have been issued to all officers preparing such baggage receipts to ensure that all details including the stay in abroad are invariably mentioned in the baggage receipt prepared by them.

However, copy of the instruction issued was not produced to audit.

## **2.7 Activities in SEZs**

### **(A) Exports of Plain gold jewellery from SEZ**

In two cases, audit observed that the process of importing gold bars, transporting them to the manufacturing units and exporting them to the buyers were completed within very short time leaving a space to doubt the entire process of import to declared export by the units.

DC, NOIDA, issued (July 2010) an LOA in favour of M/s SRS Ltd for manufacturing of gold jewellery. The unit exported 923.60 kgs of pure gold jewellery manufactured from gold bars during November 2013 to March 2015. Audit observed that the unit imported the gold bars just one or two days before the date of exports. The manufacturing of gold jewellery from imported gold bars and export thereof entails a elaborate process such as completing import formalities at Indira Gandhi International Airport (IGI), New Delhi and NSEZ, transportation from the port of import to the unit, manufacturing of gold jewellery from gold bars, completion of export formalities at NSEZ and then export from the port of shipment, IGI in this case. The entire process described above has been completed within a day or two.

Manufacturing of gold jewellery by the unit beyond its installed capacity and within a short span of a day or two prima facie, needs to be investigated.

Further, though the unit had declared production capacity of manufacturing plain gold jewellery of 25 Kg per day and exported gold jewellery having value more than 25 kg per day against 18 SBs which indicates that the unit might have exported gold jewellery obtaining the same from DTA.

In another case, M/s Kundan Care Products Ltd, Haridwar transferred 1815 Kg gold Bars to its sister unit at Gurgaon and exported gold jewellery after manufacturing at Gurgaon during the period November 2013 to November 2014. Audit scrutiny revealed that the unit exported 879 kg of pure gold jewellery, which had been received from Haridwar just one day before the date of export through 103 invoices.

The series of activities from transportation from Haridwar to Gurgaon, completing all manufacturing process at Gurgaon unit and fulfilling the export formalities does not seem possible in a single day. Hence, the export of gold jewellery made by the unit needs to be investigated.

Department may revisit the provisions of the export incentive schemes under FTP and introduce proper checks and balances to avoid doubtful import and export under the schemes.



CBEC, in respect of M/s Kundan Care Products Ltd, Haridwar, in their reply stated that (December 2015) the issue requires an in depth coordinated investigation. However, investigation is being initiated in this regard and outcome of the investigation will be intimated on conclusion of the investigation.

Final outcome may be intimated to audit.

**(B) Absence of provision for Value Addition and non-existence of mechanism for ensuring the actual wastage in the SEZ Rules**

HBP prescribed the value addition EoUs in Gem and Jewellery Sector. However, no such provision exists in the SEZ Rules, 2006 and therefore Gems and Jewellery Units in SEZ are placed in an advantageous position as compared to other exporters/EoUs. Further, In case of failure to achieve the prescribed value addition, the EoUs were liable to pay duty forgone amount in proportion to non-achievement of VA, whereas, units in SEZs are only required to achieve a positive value addition. In paragraph 2.4 (B) of this report audit opined that when NFE realised is less than the duty forgone under Advance Authorization Scheme, it has a direct impact on the fiscal management. The situation may also prevail for SEZ units.

Audit analysed the import/export data pertaining to Cochin SEZ and found that M/s Rajesh Exports Ltd has contributed 86.18 percent of import of gold and 83.84 percent of exports from Cochin Special Economic Zone. Analysis of the data for the period 2007-08 to 2013-14 revealed that out of total 1108 export consignments, the unit achieved 1.5 percent value addition in 112 consignments as prescribed in the HBP. Out of remaining 996 cases, in 554 cases the value addition achieved was less than 1.5 percent and in 412 consignments there was negative value addition of US\$ 200,775,820. Moreover, actual purity of exported goods could not be ascertained as there was no mechanism in place at that time to check the purity of the exported goods in CSEZ. Since M/s Rajesh Exports Ltd was the major importer/exporter of Gold in CSEZ, absence of provision in the SEZ Rules to prescribe the minimum value addition in the Gem and Jewellery Sector defeated the intended objective of foreign exchange earnings.

Similarly, seven SEZ units (4 in NOIDA SEZ and 3 in Manikanchan SEZ), could not achieve the VA prescribed for EoUs though they have achieved the NFE.

DGFT in reply to recommendation stated (December 2015) that the action to be taken by DoC as it requires changes in SEZ Act/ Rules.

Final outcome may be intimated to audit.

**(C) Insufficient SEZ rules to curb smuggling activities**

Customs Act, 1962, empowers the department to confiscate goods on account of improper importation, mis-declaration etc., and to initiate action to adjudicate the cases after issuing show cause notice. The Directorate of Revenue Intelligence (DRI) is functioning to prevent smuggling activities of prohibited goods and goods prone to evasion of customs duty which includes Gold, Silver, Diamond and other precious and semi-precious metals/stones.

During the period 2010-11 to 2014-15, there was increasing trend in the seizures affected by DRI, Chennai as detailed in Appendix 8.

In Cochin SEZ, two instances of unauthorised removal of gold were reported which involved non-accountal of 10.5 Kg Gold by M/s Ashwin Gold Pvt. Limited noticed by the Preventive Wing and 900 gm of Gold seized from an employee of M/s. Rajesh Exports Ltd by the Directorate of Revenue Intelligence which was taken out of SEZ premises without authorisation

The mechanism prevailing in SEZ to curb unauthorised movement of goods through SEZ gate was sought and it was informed that security personnel were deployed at the SEZ gate to prevent unauthorised movement of goods. The reply is not tenable as the security personnel are not authorised to carry out any customs preventive functions, nor is the gate-pass data linked to SEZ online data for any control check.

SEZ Rules provides freedom to SEZ units by way of self-declaration and no routine examination of these goods, prescribed thereby restricting Customs officials from exercising their normal functions. Taking into consideration, the inherent risks associated with revenue aspect in respect of Gem and Jewellery sector, audit is of the opinion that MOCI may introduce a mechanism to prevent clandestine removal/smuggling of Gold/Diamonds as in the case of any other schemes where duty exemption is extended under strict customs supervision/scrutiny by virtue of various notifications and orders issued by Ministry of Finance.

CBEC in their reply (December 2015), while admitting the audit observation stated that after cadre restructuring, sanctioned strength has been increased in various grades. Further working strength has also been improved.

The issue is about the existing vacancy of officials posted in preventive work and the reply is silent regarding the filling up of those vacancies.

**(D) Non-accounting of imported Gold/Silver by SEZ units**

Every SEZ Unit shall maintain proper accounts, financial year-wise and such accounts should clearly indicate the value of goods imported, consumed and

utilised goods produced, disposed by way of exports and the balance in stock in accordance with the provisions of SEZ Rules, 2006.

(i) Jewels Magnum (SEZ Unit) under MEPZ, imported goods worth ₹ 1,405.47 crore during the period 2009-10 to 2011-12 and the consumption of Gold was stated as ₹ 1,397.50 crore leaving a stock of ₹ 7.97 crore as on 31 March 2012 whereas the closing stock of value of goods has been stated as ₹ 2.87 lakh in the APR for the year 2011-12. Since there are no imports and exports during the years 2013-14 and 2014-15, the actual stock of material and its value needs to be examined by the Specified Officer of Customs in view of the above discrepancy as the duty at 10.3 percent on the closing stock value of gold short accounted works out to ₹ 82.11 lakh.

(ii) M/s Forever Precious Jewellery & Diamonds Ltd , a CSEZ unit, requested for permission to exit from SEZ scheme in 2013 and intimated (March 2014) that they had stock of 1.304 Kgs of Gold and 54.730 Kgs of Silver with them. On request of the unit, the department permitted (May 2014) to transfer the same to any other unit in CSEZ.

The import-Export data revealed that the unit had imported (March 2011 to March 2013), 8985 Kgs of Gold and exported 8909.697 Kgs leaving a balance of 75.303 Kgs whereas the actual stated stock of Gold was 1.304 Kgs. The data also showed that the unit had not exported 90 Kg of Silver granules imported by them during the same period whereas the actual stock was 54.730 Kgs of Silver. Hence, the unit has unaccounted quantity of 73.999 Kgs of Gold and 35.270 Kgs of Silver granules on which they are liable to pay duty of ₹ 1.89 crore and ₹ 1.22 lakh respectively.

Audit observed that Exit permission has not been issued to the unit yet which led to blockage of revenue of ₹ 1.90 crore towards duty of unaccounted Gold and Silver.

Reply of the department in the above cases is awaited (January 2016).

#### **(E) Physical examination of consignments in SEZs**

Under SEZ Rules, the assessment of imports and domestic procurement by a Developer or a Unit, shall be on the basis of self-declaration and shall not be subjected to routine examination except in case of procurement from the Domestic Tariff Area under the claim of export entitlements provided that where based on a prior intelligence the examination becomes necessary the same shall be carried out by the Authorised Officer(s) after obtaining written permission from the DC or the Specified Officer.

Whereas, as per RBI circular dated 1 July 2006, customs authorities are required to examine and certify the value of the goods exported in the

guaranteed remittance (GR) form to be submitted by the exporters to their respective banks.

Audit observed from information furnished by DC, (SEEPZ, Mumbai that during 2010-11 to 2013-14 SEZ units had made imports of ₹ 14,738.35 crore and export of ₹ 41,494.21 crore. All these imports and exports consignments by SEZ units were allowed without any physical examination except cases of re-imports to verify the genuineness of consignment. However, same analogy was not adopted to examine the case of imports of cut and polished diamonds on loan basis and exports thereof to verify whether the diamonds used in studding are the same or not.

Enabling provision of physical examination in the SEZ Rules is of utmost significance in view of cases of fraud/duty evasion detected by DRI and Customs Authorities at various SEZs. DRI has detected 29 cases of duty evasion in EoU/EPZ/SEZ during FY 2010 to FY 2014.

Further audit noticed that DC, Surat SEZ on 22 November 2013/1 December 2013 issued directions for random sample checking of import/export consignments of gold, gold jewellery and other jewellery to the extent of minimum of 10 percent of total consignment in case of import/export from/to gulf countries and Hong Kong was and for other countries, examination and purity checking was to be carried out on random basis. In our opinion such instruction has no real impact as the same is not backed by amendment in SEZ rule 2006.

In the absence of an enabling provision in the SEZ Rules, the department is not in a position to check the adequacy of assessments done by the units and the revenue consequently realized. Therefore there is a need for a convergence between the SEZ rules with RBI instructions. Thus, in the absence of any rule or instructions from the Board to physically examine the goods imported/exported by a SEZ unit, undervaluation/overvaluation of goods in import/exports cannot be ruled out and accordingly, the value addition/net foreign exchange (NFE) achieved by the SEZ units cannot be relied upon.

Reply of the department is awaited (January 2016).

**(F) No provision to check the purity of gold medallions and coins**

In MEPZ-SEZ, Chennai, M/s Surana Corporation Limited, was issued (May 2008) LoA for manufacture and trading activity of Jewellery articles, medallions and bars of any precious metals. The unit manufactured and exported Gold Medallions/coins and stopped manufacturing and trading activity during 2013-14.

As per APR, during 2009-10 to 2013-14, the unit achieved NFEE of ₹ 161.25 crore. However, as per Bank realisation details an amount of ₹ 298.97 crore were outstanding for a period of more than two years. This resulted in achieving negative NFE to the tune of ₹ 137.72 crore due to non-realisation of export proceeds. Consequently, the duty forgone of ₹ 15.63 crore extended on import of Gold bars proportionate to the unrealized FOB value of exports may be recovered along with applicable interest.

Moreover, the Directorate of Revenue Intelligence, Chennai seized 5.242 Kg of smuggled gold valued at ₹ 1.40 crore from M/s Surana Corporation Limited from its showroom premises at NSC Bose Road, Chennai and also found that 408.739 kg of gold covering jewellery (jewellery made of copper coated with golden colour) were tagged with markings as 22 carat gold jewellery.

There is currently no provision to check the purity of gold medallions and coins (mentioned to be of purity 995 fineness in SBs) exported to various countries from SEZs by Customs authorities.

Reply of the department is awaited (January 2016).

**Recommendation No. 5:** *Department of Commerce may consider introducing suitable provisions in the SEZ rules, to prescribe a minimum value addition by the SEZ units; to provide certain minimum percentage of examination of goods to check the purity of Gold jewellery, caratage of Diamonds and for regular stock verification to check diversion into DTA. The provisions should include value of procurements made by SEZ from DTA (on payment in foreign currency) for the purpose of calculation of NFEE.*

## **2.8 Absence of norms and enabling conditions**

### **(A) Non-existence of uniform procedure for re-import of 'cut and polished diamonds' (CPD)**

As per of the Customs Act, 1962, if the goods are imported into India after exportation, such goods shall be liable to duty and subject to all the conditions and restrictions, if any, to which goods of like kind and value are liable or subject on the importation there of.

Similarly, FTP 2009-14 stipulates that Gems and Jewellery exporter are allowed to export diamonds, gem stones and jewellery on consignment basis as per procedure prescribed under Handbook of Procedure (HBP) Vol-I and Customs Rules and Regulations. Further, HBP laid down that re-import of these items (either in complete or partial lot) exported on consignment basis shall be subject to condition that the exporter follows prescribed provisions of relevant Custom notification to establish that goods are the same which

are exported. Some of the important exemption notifications governing the re-import of CPD are listed in Appendix 9.

Audit observed that in the case of re imports against export on consignment basis, there is no procedure prescribed under FTP or in Customs notifications for maintenance of any control register or reporting system for monitoring re-import of CPD. There is also no system in place to ensure that the CPD re-imported are same which were exported and the importer has not claimed any export incentives on such export. The value of re-import of CPD done at PCCCC, Mumbai during the period from 2010-11 to 2014-15 was ₹ 1,17,698.14 crore ( Appendix 10). In PCCCC, Mumbai imports through EDI were implemented from January 2014 and exports are not yet integrated with EDI.

Analysis of import and re-import of CPD through PCCCC during 2010-11 to 2014-15 revealed that the percentage of total re-import cases against the total imports of CPD was only 27 percent in 2010-11 and 30 percent in 2011-12 when there was no duty on CPD. However re-import cases increased significantly in the subsequent years when duty of 2 percent was introduced on CPD and amounted to 73 percent, 66 percent and 79 percent of total imports in the year 2012-13, 2013-14 and 2014-15 respectively. It is also significant to note that the re-import of CPD in the year 2014-15 amounted to ₹ 40,440 crore which is 29 percent of the total export of CPD from PCCCC, Mumbai.

CBEC in their reply (December 2015) stated that proper mechanism for establishing the identity of re-imported goods is already in place. The parameters like size, colour, cartage, clarity certification no. etc. made by the exporter at the time of export are endorsed on the export documents and these parameters are tallied with the re-imported goods.

Regarding the audit observations on the re-import of CPD in the year 2014-15 records at PCCCC, Mumbai is being verified. A detailed reply in this regard will be submitted shortly.

Reply of the department is not tenable as there is no procedure or conditions prescribed under FTP or in any Custom notifications for maintenance of any control register or reporting system for monitoring re-import of CPD. In the absence of any record of re-imports being maintained there is no audit trail to ensure that the department has followed due procedure at the time of allowing re-import. Detailed reply in respect of re-import of CPD in 2014-15 at PCCCC is awaited.

**Recommendation No. 6:** *Department of Commerce may review the export incentives allowed on G&J exports, product category and country wise,*

*considering the volume and value of re-imports involved, to safeguard the interest of revenue and to prevent round tripping.*

**(B) Delay in increasing import duty on Gold jewellery**

The Board notified (17 March 2012) the rates of duty on gold jewellery and gold bars at 10 per cent and four percent respectively. The rate of duty on gold bars was further increased to six per cent w.e.f. 21 January 2013, to eight per cent w.e.f. 5 June 2013 and to ten per cent w.e.f. 13 August 2013.

In order to avoid an inverted duty structure and protect domestic gold jewellery manufacturing industry sufficient gap between customs duty rates of gold and gold jewellery was maintained. It was observed that rate of duty on gold jewellery was not simultaneously increased from the existing ten per cent while rate of duty on gold bars was increased to ten per cent w.e.f. 13 August 2013. The rate of duty on gold jewellery was increased to 15 percent w.e.f. 17 September 2013. It was observed that gold jewellery valued at ₹ 13.79 crore was imported at PCCC during the period from 13 August 2013 to 16 September 2013 by paying custom duty at the rate of ten per cent. Had the duty rate on gold jewellery been increased to 15 percent w.e.f. 13 August 2013, the govt could have earned ₹ 68.96 lakh extra from the import of gold jewellery made through PCCC, Mumbai alone during the period. All India data of the imports made during 2013-14 was called from DG (System), New Delhi, which has not been furnished to audit for detailed examination.

CBEC in their reply (December 2015) stated that subsequent to increase in import duty on gold, DRI had suggested that a duty differential of at least 5 per cent over the primary rate should be provided to protect this labour intensive sector from cheap imports. Similarly, Committee of Privileges, Lok Sabha had also suggested that a gap of at least 10 per cent should be maintained between bullion (gold and silver) and jewellery thereof, to protect the interests of artisans dependent on this sector for their livelihood. Accordingly, the matter was examined and notification dated 17 September 2013 was issued to increase tariff rate of duty on gold jewellery. The above process took time of about one month and the duty rates on gold are increased using emergency powers. The time lapse of 1 month is not too much to destabilize the Indian jewellery units.

Department's reply is not satisfactory as duty rate was increased to 15 per cent only after recommendation of DRI and Committee of Privileges, Lok Sabha instead of a considered change to protect the employment and domestic value addition chain.

**(C) Incomplete authorisation of Ports for import licences**

As per HBP, every licensee has to fill an application in original to concerned RLA in form ANF 2B for issuance of import license by the DGFT in case of restricted items. Also import authorizations for a restricted item, shall be issued for import through one of the sea ports or air ports or ICDs or CFS, as per the declaration by the applicant.

RLA Mumbai and JDGFT, Dehradun issued authorised 26 and 2 licenses respectively for import of Gold Dore Bars during 2010-11 to 2014-15. Audit observed from the licenses that port of registration was mentioned as "O" which indicates any Port in India against the Port of registration instead of specific port mentioned by the licensee in their application. Due to the imports not routed through EDI, DGFT was not in a position to monitor the imports of gold Dore Bars and also to capture the specific port of registration in the licenses.

Department while accepting the audit observation stated that they have requested to NIC/Computer cell to make necessary modification in the exiting software system meant for issuance and printing of relevant authorization.

DGFT in their reply (December 2015) stated that the NIC in DGFT is being requested to make adequate provisions in Software so that Port of Registration automatically comes in the licence to be issued.

Final outcome may be intimated to audit.

**(D) Inconsistencies/ambiguities in notifications and provisions**

(i) CBEC notified the tariff value on Gold and Silver effective from 17 January 2012 for imports through baggage, post and courier for assessment and collection of revenue. However, the tariff value for regular imports of Gold and Silver i.e. other than import through post, courier and baggage was introduced on 30 March 2012 by the Board. The difference of tariff value for gold and silver for two different sets of import procedure i.e. import through post, courier and baggage and other than import through post, courier and baggage resulted in short collection of revenue to the tune of ₹ 1.55 crore on import of 50 items imported through 32 BEs during 17 January 2012 to 30 March 2012 in ACC, Mumbai, Chennai, Coimbatore, Nedumbassery and Cochin Air Commissionerate

Similarly, excess duty to the tune of ₹ 1.45 crore was collected on import of 46 items through 22 BEs in in Chennai, Coimbatore, Cochin and Air Commissionerate.



There was inconsistency in the stand taken by the Board adopting two different valuations on import of Gold/Silver bars through Baggage/Courier and regular imports during the relevant period.

CBEC in their reply (December 2015) stated that after the change from specific duty rates to an ad-valorem duty rate, to facilitate speedy clearance of passengers at the airports, tariff values were fixed for import of gold and silver by passengers and later on based on a number of representations, it was extended to import of gold and silver through cargo also. However, fixation of tariff value is not revenue raising measure but a measure to ensure certainty and uniformity in assessment. Further department stated that accepting the recommendation to adopt tariff value or transaction value whichever is higher for charging duty will be a violation of WTO agreement on valuation to which India is a signatory.

Further, CBEC reported that in case of Coimbatore ACC, all the six BEs (filed by five importers) pertain to the years 2012 and 2013 are time barred, however, the importers were asked to pay the short levied duty with interest. Out of the five, importers, two importers viz. M/s The Handloom & Handicrafts Exports Corporation of India and M/s Riddhi Siddhi Bullions Ltd. have paid the short levied duty and interest, amounting to ₹ 4.21 lakh. Regarding excess collection of duty, due to non-adoption of tariff value and incorrect application of tariff value, for which no action is pending, as no importer had filed any refund claim for the excess paid duty.

Department's reply is not acceptable as fixation of tariff value was done to prevent undervaluation as seen from various minutes of meeting of Chief Commissioners of Customs. In fact, due to inconsistency in the stand taken by the Board by adopting two different valuations on import of Gold/Silver bars through Baggage/Courier and regular imports during the relevant period created anomaly. Therefore there is no question of an audit recommendation to adopt tariff value or transaction value whichever is higher for charging duty rather CBEC has been asked to remove the anomalous situation. However, outcome in the remaining cases may be intimated. The excess amount collected by the Government from the importer should have been deposited to the National Consumer Fund as stipulated in Section 27 of Customs Act, 1962.

(ii) Articles of Jewellery falling under heading 7113 are leviable to CVD at 6 percent in terms of notification dated 01 March 2011. Audit observed that the rate of CVD for Articles of jewellery falling under heading 7113 which was 1 per cent effective from 17 March 2012 was amended to 'Nil' rate of duty vide the Finance Act 2012 (23 of 2012) dated May 2012 with retrospective effect from 17 March 2012.

As both the aforesaid notifications are in force, there is ambiguity with regard to the levy of CVD on import of Articles of Jewellery. The Board may review these notifications and rationalise the duty rate to remove the ambiguity.

CBEC in their reply (December 2015) stated that it is settled legal position that when two notifications are available to the assessee, he may make use of the notification beneficial to him.

CBEC's may review their reply in the context of the fact that the Board does not benefit reacting to the situation rather than proactively rectifying the ambiguity in the notifications highlighted by audit.

(iii) According to HBP, 'export against supply by foreign buyer' and 'export against supply by nominated agencies' respectively, the exports shall be completed within 90 days and no extension for fulfilment of EO shall be allowed

However, the Customs Notifications 5 May 2000 and 8 May 2000 under which the Scheme of 'Export against Supply by Foreign buyer' and Export Against Supply by Nominated Agencies' are implemented by the Customs department for monitoring the Scheme provides that the importer exports gold/silver/platinum jewellery or articles within 120 days from the date of import. Thus, there exists an inconsistency in the provisions of the HBP and the Customs Notification regarding the period of fulfilment of EO.

M/s. Malabar Gold Ornaments Makers Pvt. Ltd imported (December 2014) 25 Kgs of 995 purity gold from M/s. Trendy Jewellery LIC, UAE under the scheme 'Export Against Supply by Foreign buyer' through ACC Nedumbasserry (Kochi). The export of Jewellery of 22CT were fulfilled (April 2015) by M/s. Malabar Gold Private Limited (name changed after amalgamation) after a period of 112 days from the date of import.

Inconsistency in the provisions between the Customs Notification and the HBP resulted in undue advantage by way of extension of Export obligation period by 22 days and hence the duty foregone of ₹ 65.11 lakh could not be realised from the importer.

CBEC in their reply (December 2015) stated that they would rectify the ambiguity in consultation with DoC. Whereas, DGFT replied (December 2015) that for consistency between Customs and DGFT provisions, Customs were required to follow the HBP.

Final outcome may be intimated to audit.

**(E) Tariff value fixed by the Board does not relate to the transaction value**

The Customs Act also provides that if the Board is satisfied that it is necessary or expedient to do so the Board by notification in the Official Gazette, fix

tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods, and where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value. The World Gold Council (WGC) notifies daily international rate of gold in their website [www.gold.org](http://www.gold.org).

The Board notified the tariff value of Gold and Silver effective from 17 January 2012. Thereafter, based on the market fluctuations, the Board periodically revised the tariff value on import of gold.

On analysis of data for import of gold bars imported through ACC, Mumbai, ACC, Bangalore, Chennai Air, Coimbatore Air Customs, Kolkata Airport and Cochin Customs Commissionerate revealed that the tariff value fixed by the Board was lower than the invoice price (CIF value) in 646 consignments imported during the period 2012-13 to 2014-15 which resulted in short levy of duty of ₹ 46.55 crore.

The intention of fixing the tariff value by the Board was to prevent undervaluation of goods. However, the tariff value fixed by the Board on weekly or fortnightly basis was not commensurate with the prevalent international price of the Gold/Silver as the rates changes frequently in a day. To stop the under/over valuation of Gold and Silver, Audit is of the opinion that in order to augment the revenue, the Board may consider reviewing the existing mechanism for fixing tariff value so that there is no revenue loss.

CBEC in their reply (December 2015) stated that India's Customs valuation law flows from the WTO Agreement on Customs Valuation (ACV) which is a binding agreement. The Tariff Values are calculated on the basis of prevailing international prices of gold and silver. The tariff values are accepted as the assessable values for these commodities, irrespective of whether the declared values for these commodities are higher or lower than these tariff values. These tariff values are not fixed but are floating values and are reviewed and revised every fortnight based on international prices so as to keep them close to the transaction values.

Focus of Audit comment is to strengthen the process of fixation of tariff and is not against the WTO principle. Department's view on fixing tariff value in such a way so that there would not be a revenue loss is not acceptable as the Valuation Directorate developed the following criteria to select commodities for recommending tariff values: (i) large volume of imports and significant revenue contribution, (ii) high rates of duties and sensitivity of undervaluation, (iii) wide fluctuation in assessed values at different Customs stations (iv) reliable information concerning international price is available (daily rates notified by WGC), (v) adequate information and data are available for periodic review of the tariff value so as to keep it as close to international

prices. From above it is clear that data on transaction value received from different customs stations in an online environment was not considered for review of the tariff value. Unreal value of Tariff results in both over assessment and under assessment, causing loss of importer confidence and/or revenue loss of Government. Audit maintains the view that tariff value should be fixed in such a way to prevent undervaluation.

**Recommendation No. 7:** Existing mechanism for fixing tariff value may be reviewed by CBEC so as to facilitate a balance between the revenue management and valuation concerns.

**(F) Absence of mechanism to correlate the Annual Export Turnover declared in Aayaat Niryaat Form**

As per HBP, application for Replenishment (REP) Authorisation may be made to RA concerned. Licensees are liable for penal action for any inaccurate details in their application.

RLA Mumbai authorized 19 and 36 REP authorisation to M/s Vishrut Gems and M/s Dipak Dipchand Taswala respectively during 2010-11 to 2014-15. Audit observed that the disclosed export of the last three year in Aayaat Niryaat form did not tally with the export declared in the Profit and loss accounts. This indicates that the department had no mechanism to check correctness of declaration made by the licensee in their application and thereby no action had been initiated by the department against the licensees.

The complete reliance of the department on the declaration furnished by the Licensee for grant of duty credit certificates and non-correlation of the declaration with other statutory documents like audited annual accounts was a risk area which was left open by the department for misuse of the schemes.

DGFT in their reply (December 2015) stated that in keeping with the spirit of trade facilitation, every effort is made by DGFT and the DoC to reduce the transaction cost by avoiding insistence on additional documents. In any case, if any mis-declaration comes to the notice even subsequently, the authorisation holder can be proceeded against under Rule 10 of the Foreign Trade (Regulation) Rules, 1993.

**(G) Separate International Tariff Classification (Harmonized System) code for Manmade Diamonds and Natural Diamonds**

(i) Lab grown/synthetic/manmade diamonds and natural diamonds were classified under same ITCHS code from 16 January 2012, prior to that they were classified under different headings.

The rationale for classifying both Lab grown/synthetic/manmade diamonds and natural diamonds under one heading was not made available to audit.

Audit observed that Natural diamonds takes long time to form in comparison to lab grown diamonds. Good quality synthetic diamonds can only be distinguished in the laboratory with the use of specialized instruments. The prices of manmade diamonds are cheaper than natural diamonds to the extent of 30-60 percent. As per report of Diamond Intelligence Briefs the clubbing under the same ITC HS Code has led to illicit and undisclosed mixing of manmade diamonds with natural diamonds. This also leaves scope for duping consumers and possible money laundering. Further, this threatens the consumer and trade confidence in Indian diamond industry. Hence a clear categorization specific to man-made diamonds is needed to enable specific tracking of synthetic diamonds. Similar proposals were made by DoC in their budget proposal for the year 2014-15.

CBEC in their reply (December 2015) stated that the issue is being examined. There is no revenue angle. The decision may be taken as soon as possible.

Final outcome may be intimated to audit.

(ii) GJEPC on 25 October 2013, apprehended before CBEC regarding possible fraud being committed by way of passing off lab grown diamond as natural diamond by unscrupulous parties in order to make quick profit. GJEPC also raised concern that such activity may contaminate the entire natural diamond industries in India, thus negatively effecting the credibility of India in international market and made recommendation (November 2013) to the Chief Commissioner of Customs, Gujarat zone for testing the consignment imported/exported under CTH 7104.2000 and 7104.9000 (i.e., synthetic or reconstructed precious or semi-precious stones) to check such activity.

Audit observed that the department, based on the above recommendation, started the practice of sending every consignment, declared as commodity classifiable under CTH 7104.2000 and 7104.9000, for testing to Indian Diamond Institute, Surat.

The process of testing the goods which has already been declared as synthetic diamonds defeated the purpose for which GJEPC made the request for testing of the consignments. It would be more appropriate to test the goods declared as natural diamond to ensure that it does not contain synthetic diamond. However, audit did not find any instance where consignment declared as 'natural diamond' was sent for testing. Hence, the present system being followed may be re-looked.

Reply of the department is awaited (January 2016).

***Recommendation No. 8:*** *To maintain the consumer and trade confidence in Indian diamond industry, CBEC may consider a clear categorization for manmade diamonds to differentiate from natural diamonds.*

### 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

---

<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

---

<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.

---

<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

---

<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

---

<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

---

<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

---

<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.

---

<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.

## **Chapter 4: Co-ordination, internal control and monitoring**

This chapter focuses on the appropriateness adequacy of the internal audit function; coordination between the different ministries and their field formations; internal control mechanism like reports, returns, information, communication; and monitoring by the DoC, DGFT, DoR, CBEC of its field formations. The observations below highlight if the procedures, documentations and mechanisms in place are enabling performance of the objectives and outcome based actions of the Government.

### **4.1 Audit of Nominated agencies by Customs**

Board's circular dated 14 October 2009 and 4 September 2013 suggested jurisdictional Commissioner to devise a system of random technical audit of Nominated Agencies.

Audit observed that no such system of technical audit was in place in Air Cargo Complexes, Mumbai, Ahmadabad and Custom House, Kolkata. In absence of such a system monitoring the utilization of gold imported by nominated agencies could not be ascertained.

CBEC in its reply (December 2015) stated that since the 20:80 scheme has been withdrawn, the notification dated 04.09.2013 is not in force now.

Department's stand that after withdrawal of 20:80 scheme such audit/check is not required now is not correct because prior to commencement of the 20:80 scheme, the aforementioned technical audit was prescribed for Nominated Agencies at Para 3(viii) of Circular No. 28/2009-Cus dated 14.10.2009 which is applicable even after the withdrawal of the 20:80 Scheme.

### **4.2 Lack of coordination between DoC, DoR and DGFT**

(a) As per the Foreign Trade (Regulation) Rules, 1993 the Director General or Licensing Authority may refuse to grant or renew a license subject to reasons specified therein which includes contravention of any law relating to customs or foreign exchange for which DGFT maintains a 'Denied Entities List' (DEL).

DC, CSEZ, on verification of import and export documents relating to M/s Ashwin Gold (P) Ltd, noticed that there was short account of 48.785 Kg of Gold. Since no permission was granted to the unit for undertaking job work outside the SEZ premises, DC concluded that the unit had removed gold illegally from its premises and accordingly, DC suspended (August 2014) the LoA and issued an OIO imposing penalty of ₹ 11.32 crore under FT (D&R) Act, 1992 for failure to realize export proceeds, illegal removal of imported gold after availing duty exemption and personal penalty of ₹ 11.30 lakh for illegal activities. In addition, the importer was liable to be placed under 'DEL'.

Audit observed that the DC had not referred the case to the RLA for inclusion in the DEL, as such the unit was not put under DEL. Lack of coordination between the DC, CSEZ and RLA led to contravening of the provisions of FTDR Act, 1992.

DGFT in their reply (December 2015) stated that DoC will be requested to send instructions to all the DCs to send information to the concerned RLAs and DGFT would advise all the RLAs to inform the concerned DCs if any violation by an EoU/SEZ unit comes to its notice.

Final outcome may be intimated to audit.

(b) According to HBP, if an IEC holder does not wish to use the allotted IEC number, he may surrender the same by informing the issuing authority. On receipt of such intimation, issuing authority shall immediately cancel it and electronically transmit it to DGFT and the Customs authorities. According to FT (DR) Act, 1992, no person shall make any import or export except with an IEC Number granted by the DGFT.

M/s Malabar Gold Ornaments Makers Pvt. Ltd. was issued (May 2004) a IEC number and consequent to the merger of this company with M/s Malabar Gold Pvt. Ltd. the above IEC was cancelled (February 2015). From the DGFT database it was observed that M/s Malabar Gold Ornaments Makers Pvt. Ltd had exported a consignment under the cancelled IEC on 19 March 2015 through Sahar Air Cargo, Mumbai.

In this case, the party had exported using a cancelled IEC in violation of the provisions of the FT (D&R) Act, 1992 and hence was liable to penal action under the Act. This was another case requiring need for strengthening the controls in DGFT (EDI) and coordination between DGFT and the Customs department.

DGFT in their reply (December 2015) stated that IEC cancellation details were electronically transmitted to the Customs Authorities. Since the cancellation details were available in the website of ICEGATE, the Customs department could verify the IEC before allowing the export/import consignment.

Reply from DoR is awaited.

(c) In terms of SEZ Rules, 2006, units may import Gold as personal baggage through an authorized passenger subject to (i) the acknowledged copy of the intimation submitted to the Authorised Officer needs to be handed over to the Customs Officer in charge at the Airport and (ii) the authorized passenger carrying the goods shall hand over the goods duly packed indicating the name and address of the consignee unit accompanied by invoice and packaging list to the customs Authorities at Airport and obtain

Detention Receipt for detaining the goods in Warehouse before taking it to the unit.

The officials of Air Intelligence Unit, Chennai detained (August 2014) 12 kg of gold from two passengers which they stated that the gold was advance supply to the SEZ unit M/s Prakash Gold Palace (P) Ltd for manufacture of jewellery. Proper documents were not produced to the officials in support of their claim that the consignment was meant for the SEZ unit as it did not have the consignee's name and was without any mark and numbers. The company has represented for release of the Gold which is still pending.

The unit ought to have intimated the Authorized Officer at MEPZ-Customs prior to import of gold which was not done in the instant case. Despite a clear procedure in place for import of gold through hand carriage provided in the SEZ Rules, violation of the rules led to irregular import involving duty of ₹ 32.56 lakh.

Reply from DoC is awaited (January 2016).

(d) M/s Abhilasha Jewellers (EoU) was issued LoA on 28 August 2003 for manufacture of plain and studded 21ct and 22ct Gold jewellery. The LoA was extended in 2008 for another five year period till 31 October 2013.

The unit opted (August 2010) for de-bonding and in-principle order for exit was granted on 14 December 2010. Due to non-production of 'No due certificate' from the Central Excise authorities within six months of issue of in-principle order, the unit continues to hold the status of 100 per cent EoU. The company stated that the operations of unit ceased on 14 December 2010 itself with no stock.

Central Excise department found that the unit was in possession of some Capital Goods and arrived at the duty amount payable of ₹ 43.22 lakh, however, no SCN for non-payment of duty on the Capital Goods on account of de-bonding was issued.

In view of the above, the NOC from Central Excise was not issued and the Unit continues as EoU and have filed 'Nil' Annual Performance Reports for the year 2011-12, 2012-13 and 2013-14. Despite the lapse of more than 4 years, the unit still continues as EoU without any export performance. Non issue of SCN till date and adjudication thereof caused blockage of revenue and resources.

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

(e) LoP was issued to M/s P&S GoldClads (EoU unit), Bangalore on 18 April 2005 for the manufacture and export of Gold plated Imitation Jewellery. LoP was extended for further period of 5 years from 11 May 2010. As per

APR for the year 2009-10, the unit had achieved positive NFE and the value of unused raw materials (closing balance) was ₹ 9.96 lakh.

The unit closed its business operations with effect from 1 April 2011 and the Department issued In-Principle de-bonding permission on 6 April 2011 and issued SCN (14 August 2012) for non filing of APR for the year 2010-11 for which the unit replied that they had applied for NOC with the Excise Department which they had not received.

The unit did not file Annual Performance Reports for the years from 2010-11 to 2014-15. Despite the lapse of more than four years, the unit still continues in the status of EoU without any export performance. Absence of specific time limit for issuance of NOC by the Excise authorities is causing undue delay in the units getting exit from EoU Scheme hampering the trade facilitation process.

Reply of the department is awaited (January 2016).

(f) From the records of DC, SurSEZ, nineteen units of Gem and Jewellery Sector had applied for exit between 2011-12 and 2014-15, but their application was pending as of April 2015. Similarly, there were forty six units which remained non-functional for two or more years.

Reply of DoC is awaited (January 2016).

(g) The performance of EoUs is to be jointly reviewed by the Development Commissioner and Customs/Central Excise Officer concerned, on the basis of quarterly and annual progress report furnished by the EoUs on a six monthly basis. Based on the joint review, DC concerned would prepare a report for information of DoC and CBEC and suggest corrective measures to enable the defaulting units to fulfil their obligations. Further, vide circular dated 15 June, 2001 such a report on the joint review was to be submitted to the CBEC within 7 days.

When details of the minutes of the joint reviews of EoUs conducted during the period 2010-11 to 2014-15 was called for, the department furnished the copy of the minute of one joint review meeting of EoUs held on 16 August 2012 against a total of ten meetings to be conducted in that period. In the absence of joint review meetings on regular basis, the department could not monitor and identify the problems, reason for poor performance/short fall and suggest possible solutions to the EoUs. It similarly affected interest of the department to safeguard revenue and to propose export promotion strategy as well as tentative targets for the next year.

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

Final outcome may be intimated to audit.

### **4.3 Cases of improper monitoring**

#### **(A) Incomplete format of Annual Performance Report (APR)**

Review of the APRs submitted by EoU/SEZ units to the DCs for monitoring their performance revealed that the present format of APRs did not include the information regarding purchase of raw materials from DTA and duty foregone on imports of raw materials and capital goods. Further, although the manufacturing process of jewellery included both imported and indigenous raw materials, the information regarding them was not being captured in APRs. In absence of this information, the department was not able to ascertain value addition to export goods as required under the provisions of FTP.

The Customs department agreed with the audit observation and stated that they have no details regarding indigenous raw materials used in manufacturing process by units.

Reply of DoC is awaited (January 2016).

#### **(B) Discrepancy in APRs and stocks maintained and certified by the Chartered Accountant of exporters**

SEZ Rules 2006 provides for, every unit in a SEZ to maintain proper accounts financial year-wise clearly indicating the value of goods imported, consumption and utilization of goods, production of goods, disposal of goods by way of exports and the balance in stock and furnish APR in the prescribed format to DC duly certified by a Chartered Accountant (CA).

Audit correlated the data furnished by the units in their certified APRs, with data available in the stock register, sale register and customs records and found discrepancies in four SEEPZ-SEZ units.

Similarly, HBP provides that an EoU shall maintain proper accounts for the entire quantity of each category of goods imported/procured duty free and cleared by way of exports, sales/supplies in DTA or transfer to other SEZ/EoU/EHTP/STP/BTP units and balance in stock.

The APR data forms the basis for verifying whether the units have indeed achieved the required positive NFE and also as a monitoring mechanism to ensure that the units are functioning within the ambit of the applicable rules. Thus, the discrepancies in the data can distort the NFE. Some illustrative cases are detailed in Appendix 15.

Reply of DoC is awaited (January 2016).

#### **(C) Non/Delayed filing of APR**

Scrutiny of APRs filed in the office DC, Surat SEZ, Jaipur SEZ, NSEZ, Noida, EPIP, Sitapura, Jaipur, Indore SEZ, Manikanchan, FALTA SEZ and CSEZ,



Cochin revealed that there was non/delay/incorrect filing of APR by the units as detailed in (Appendix 15A).

CBEC in their reply (December 2015) while admitting the delay in filing of APR by M/s World Wide small diamonds manufacturing Pvt. Ltd., Hoshangabad Road, Bhopal stated that the unit has been warned.

Reply of CBEC in the remaining cases is awaited (January 2016).

**Recommendation No. 9:** *A suitable control mechanism may be established by Department of Commerce to get assurance and reliability of the data furnished in APR by SEZs/EOUs.*

**(D) Incorrect data of export in Daily Trade Return (DTR)**

SBs and BEs are the source document for preparation of 'Daily Trade Returns' (DTR) by the Customs Authority which are sent to Directorate General of Commercial Intelligence and Statistics (DGCIS) for processing and statistical presentation of foreign trade data.

Records of FPO, Jaipur revealed that in eight cases FOB value in DTR and DOB value in export invoice does not match during 2012-13 and 2013-14. There was excess reporting of export value amounting to ₹ 7.28 crore in the DTR. This indicates that export import database of DGCIS needs to be corrected to give the actual import/export figures.

CBEC in their reply (December 2015) stated that the work of reconciliation of data is in progress.

Final outcome may be intimated to audit.

**(E) Inefficient system for identification of dutiable goods etc.**

System for identification of dutiable goods, computerized billing system for duty collection, maintenance of day to day item wise database of duty collection and periodical reporting system as part of MIS are the yardstick for a good internal control mechanism for customs duty administration.

On examination of procedure followed and systems in place at Mumbai International Airport for collection of Customs duty and maintenance of records of duty collection, following short comings were noticed in audit.

1. Baggage Receipts were prepared and calculated manually for each and every item for all the customs duty receipts using pencil carbon.
2. No standard procedure was adopted for issuing and bringing back of baggage receipt books for gold Duty Debit Registers (DDRs) for day to day use. Some of the DDRs did not contain date. In some cases period of stay abroad was not specified without which applicable duty was not ascertainable. In few cases, the third copy of DDR which was supposed to be

a carbon copy was written in pen. Further DDRs were used in haphazard manner.

3. Database for customs duty collection had not been maintained. Administration (Tech) was having only monthly figures of duty collection for reporting purpose.

4. Analysis of quantity and value of Gold seized by Air Intelligence Unit (AIU) and Batch/Uniform section (Appendix 16) in the last four years revealed that gold seizure by AIU has increased substantially over the years, however, the increase in quantity of seizure by Batch (Uniform) section was not substantial though Batch Section has higher working strength than AIU wing and have direct control over baggage clearance.

CBEC in their reply (December 2015) has admitted that the computerization process at passenger terminal has not been undertaken. It may not be a wise investment vis-a-vis benefits entailed. Regarding computerization of assessment procedure, the aspects has been looked into and feasibility study is being undertaken, the necessary steps would be taken on top-priority.

Department's reply is not acceptable with regard to the cost benefit analysis since audit noticed serious lapses, as stated above. All these lapses/lacuna may lead to serious risk of duty evasion. Hence audit is of the opinion that these lapses can be eradicated if the process is linked to the EDI system. Reply of the department is not tenable as the primary objective of deployment of customs officers at Airport is to ensure that no dutiable goods pass the custom barrier without levy of applicable customs duty while facilitating passenger's movement. Computerisation of duty collection system at Airport would not only speed up baggage clearance process but also make available valuable man power for important work of detection of duty evasion in addition to creating a permanent database of all transactions for the RMS/DGoV.

**(F) Improper maintenance of register**

As per Circular dated 4 September 2013 read with RBI's circular dated 14 August 2013, the Customs officer shall permit clearance of the gold for export production under the relevant exemption notification after submission of the documents stated in the circular and shall make necessary entries in the register in the form prescribed. This register was to be maintained by the Customs officer separately for each of the nominated agency importing gold under its jurisdiction.

In ACC, Mumbai it was observed that registers were not being properly maintained by Customs in terms of the circular. Entries regarding quantity of gold issued to various exporters were not recorded. Entries in the register

were not authenticated by the competent officer and in some registers quantity permitted for import in subsequent lot had not been calculated.

CBEC, while admitting the observation stated (December 2015) that the registers will be properly updated and maintained.

**(G) Non Maintenance of the records by units under SEZ**

All units in Gem and Jewellery Sector are required to maintain register for import, use and issue, used or broken jewellery imported for remaking, re melting, repairing etc. Further the register should have serially numbered pages and should be maintained for each financial year and balance should be struck at the closing of each month to facilitate the concerned authorities to inspect and verify the account maintained. Further such goods have to be stored separately and the quantities in stock as per the requirement prescribed here in above should tally with the stock challan/ stock taken by the proper officer.

Three SurSEZ, Surat units namely M/s Solar Export, M/s Kavya Jewels and M/s Firestar International Pvt. imported used jewellery of value ₹ 537.58 crore, however, the record as mentioned above was not maintained by units.

On this being pointed out (June 2015), department replied (June 2015) that remedial action would be taken.

Final outcome may be intimated to audit.

**(H) Non-monitoring of Job works of EoU**

As per circular dated 1 April, 2003, before allowing subcontracting of production in DTA, the jurisdictional Assistant Commissioner/Deputy Commissioner shall satisfy himself of the necessity of such sub-contracting of production in DTA. This facility was not to be allowed in routine manner to the EoU units. The intention of the Government was to allow the unit to assign the manufacturing to DTA or to other EoU to overcome the genuine difficulties and to enable units to meet the sudden demand of goods for export.

Audit scrutiny of records relating to permission for job work revealed that the Excise department had been permitting M/s Lodha jewellery Export India Pvt. Ltd, a 100 percent EoU under NSEZ for sub-contracting of production process in DTA for the period from 2010-11 to 2014-15 in a routine manner. It was also observed that the advance permission for sub-contracting of production process in DTA for the period for 2015-16 was granted without ascertaining the difficulties and sudden demand necessitating such sub contracting.

Reply of DoC is awaited (January 2016).

**(I) Late filing of ER-2 return**

As per Central Excise Rules 2002, every assessee shall submit to the Superintendent of Central Excise a monthly return, in the form specified by a notification, of production and removal of goods and other relevant particulars, within ten days after the close of the month to which the return relates.

During test check of records in Jaipur, we observed that two 100 percent EoU units<sup>19</sup> filed their ER-2 returns belatedly ranging from 3 to 120 days. In reply department stated that SCN has been issued to both assesses.

Final outcome may be intimated to audit.

**(J) Locking up of Government revenue**

Based on audit observation regarding ambiguity in the notification dated 12 May 2004 with regard to levy of duty on Gold coins, SCNs were issued and the issue was referred to the Board seeking clarification on the effective rate of duty on imported Gold coins. Since no response was received from the Board the cases were transferred to Call Book and are still pending adjudication involving duty of ₹ 3.29 crore. The Board clarified on 17 March 2012 that Gold coins of purity 995 and above are to be levied at lower rate of duty and other Gold coins of less purity are to be levied at higher rate of duty and the assessments after March 2012 are being done accordingly. However, Board did not issue any instruction for assessment of the cases lying in the Call Book resulting in locking up of ₹ 3.29 crore revenue.

CBEC in their reply (December 2015) stated that from the beginning, gold coins were extended with concessional rate of customs duty from time to time.

It is also stated that it is quite likely that a commodity may be covered under more than one notification attracting different rates of duties. In such cases, the benefit of lower rate of duty cannot be denied to the assessee as per various judicial pronouncements on the subject.

Reply of CBEC is not tenable because based on its own policy the board has not issued any clarification on this matter even after referral to them by the Coimbatore Commissionerate with the cases pending in Call Book for more than 5 years.

**(K) Short accounting of gold stock in the department**

Any goods which do not correspond in respect of the value or with the declaration made under the Customs Act, is liable to confiscation and penalty

---

<sup>19</sup> M/s Millennium Jewels, (100% EOU), Jaipur, M/s A.K. Exports (100%EOU), Jaipur

under the Act and the importer/passenger has the option to pay fine and redeem the goods in lieu of confiscation. The confiscated goods are to be disposed off in accordance with the procedure prescribed in circular dated 8 August 2005.

In Mumbai Airport, the stock of gold as on 31 March 2015 was 725.08 Kg as per the MTR (Appendix 17).

Audit observed that Gold shown as disposed included gold bullion 14516.80 gms of ₹ 3.63 crore and gold in other forms 4517 gms of ₹ 1.12 crore under the head 'transfer to confiscation/ripe goods' handed over to AIU for valuation was considered as disposal. This being an internal transfer could not be considered as disposed. Further no records were maintained by the issuing authority (strong room) to track return of gold issued for valuation. Further in stock account of Gold, there was difference of 13337.80 gms of gold between gold issued from strong room and stock of gold as shown in DS-1 section (section where gold is cleared for valuation and other seized goods are kept temporarily) was observed. DS-1 section does not prepare any MTR and hence no Management Information System (MIS) was available to monitor the stock of gold and other articles lying in stock at DS-1 section.

The closing stock of 725.08 Kgs reported by the Commissionerate did not include 31.274 Kgs of Gold shown under 'ripe for disposal' in the MTR for March 2015.

Against the quantity of 330.545 Kgs of gold shown as disposed in MTR for the year 2014-15 under the head 'transfer to confiscation and Ripe goods', the corresponding receipt under the head 'before ripe/ripe for disposal was only 91.437 Kgs of gold showing non reconciliation of gold disposal of 239.108 Kgs. The difference observed in accounting of gold stock as stated above, needed reconciliation.

No system was in place for reconciling gold issued from strong room for valuation purpose to AIU/DS-1 and its return. A reconciliation of stock of gold as on 31 March 2015 in respect of gold shown as disposed from strong room during last 5 years was called for and the same was not made available to audit.

CBEC in their reply (December 2015) stated that the entire gold has been returned to the Strong Room and gave one month reconciliation. Further, it stated that the apparent difference in reconciliation with DS1 is only due to lack of suitable head in the MTR column where such movements of gold can be accounted for.

Reply of the department is not acceptable because the department has not furnished reconciliation for the entire audit period and it shows lack of a

proper monitoring system. Department also stated that quantity shown as cleared from strong room will never tally with DS1 balance as the clearance from DS1 is shown as fresh receipts in strong room. This corroborates audit contention of a lack of tracking system for the gold cleared from strong room.

#### **4.4 Lack of internal control**

##### **(A) Non-initiation of action under section 110(1A) of the Customs Act**

The Central Government may, having regard to the nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification in the Official Gazette, specify the goods or class of goods which shall, as soon as may be after its seizure be disposed of by the proper officer in such manner from time to time, after following the procedure.

Further, where any goods have been seized by a proper officer shall prepare an inventory of goods containing such details relating to their description, quality, quantity, mark, numbers, country of origin and other particulars as the proper officer may consider relevant to the identity of the goods in any proceedings under the Act and shall make an application to a Magistrate for the purpose of certifying the correctness of the inventory so prepared and shall take photograph of such goods in the presence of Magistrate and get it certified as true and the Magistrate shall, as soon as may be, allow the application.

Audit observed that in Mumbai Airport out of total 262 cases disposed (Book value ₹ 41.84 crore), 69 cases (Book value ₹ 16.45 crore) were disposed without following proper procedure for seizure and disposal of the goods. Further in 157 cases (Book value ₹ 6.84 crore), disposed during 2013-14, department could not produce any records to confirm whether proper procedure had been followed or not.

CBEC in their reply (December 2015) stated that as far as the goods under seizure are concerned all the procedure stipulated has been properly followed without any deviation.

The reply is not acceptable since in light of the case as mentioned above, no supporting evidence was produced for verification and department was silent about the 69 cases which were disposed without taking action under section 110(1A).

##### **(B) Non disposal of seized/confiscated goods**

The Customs Act, 1962 provides for recovery of sums due to the Government after disposal of seized goods. The CBEC in their instructions (dated 22 July 2010) directed that each Customs formation will constitute a 'Task Force' for

a one time comprehensive review for expeditious disposal of all uncleared/unclaimed cargo and asked for progress made in disposal along with age-wise breakup of pending cargo that was ripe for disposal. CBEC in their instructions also reiterated that in cases where consignments are detained by Customs, all pending actions such as investigation, adjudication and related court proceedings should be taken up for completion without delay. As per the instructions it was responsibility of the Commissioners to ensure the expeditious disposal of such cargo on regular basis.

(i) In Mumbai Airport, audit observed that Gold, Diamond & Precious stones are lying un-disposed to the extent of ₹ 177.64 crore upto March 2015. Out of these, 95 cases valuing of ₹ 26.90 crore were pending for more than one year and 27 cases valuing of ₹ 5.26 crore, were pending for more than three years.

Similarly, in the office of the Dy. Commissioner (Customs) JGSE and Air Cargo Complex, Sanganer, Jaipur, imported articles/goods weighing 319.87 Kgs (falling under CTH 71) were lying unclaimed and pending for disposal ranging from 1 year to 24 years period.

(ii) In Customs Intelligence Unit of Coimbatore Commissionerate, 11 consignments of Gold involving value of ₹ 5.01 crore were seized and confiscated during 2013-14 and 2014-15. Out of these, nine cases have been adjudicated and orders have been passed by the adjudicating authority for absolute confiscation of goods valued at ₹ 2.91 crore and also fines and penalty amounting to ₹ 65 lakh and ₹ 51 lakh respectively were imposed. However, in six cases, though the appeal period of 60 days had expired but no action was initiated to recover the fines and penalties amounting to ₹ 57 lakh and ₹ 42 lakh respectively. Moreover, the seized goods are ripe for disposal as the adjudication orders have been passed for absolute confiscation involving value of ₹ 2.34 crore.

Similarly, in Chennai Air Customs, five cases pertaining to Chennai Airport were adjudicated during February and March 2014 involving value of ₹ 68.93 lakh, on the quantum of 2.516 Kgs seized/confiscated and redemption fine of ₹ 18 lakh and penalty amount of ₹ 7.55 lakh were imposed which is pending realization for more than a year.

CBEC in their reply (December 2015) stated that instructions have been issued to Mumbai-III Commissionerate reviews all the activities for expeditious disposal of all uncleared/unclaimed/ripe for disposal goods.

In case of Jaipur, the auction was held on 07.02.2015 to clear all the uncleared/ unclaimed cargo. Only one consignment remained un-auctioned due to lower bids in comparison to reserve price

In case of Coimbatore ACC, instructions have been issued to Tax Recovery Cell, Coimbatore Commissionerate to take necessary action to recover the same. With regard to disposal cases, action has already been taken in all the adjudicated cases.

Final outcome in these cases may be intimated to audit.

**(C) Procedural lapses in transfer to disposal unit**

As per the agreement signed between Central Warehousing Corporation (CWC) and Commissioner of Customs (General) in 2001 regarding management of warehouse at IGI Airport, New Delhi “the goods not cleared within 30 days by the airlines or the passenger concerned shall be liable to be removed by the Customs to their Disposal Units and to this, CWC shall provide necessary details to Customs as and when such goods become ripe for disposal”.

As per disposal manual, whenever any goods are detained/seized, a detailed inventory of these goods containing details like description of goods, quantity, condition of goods, country of origin, total estimated market value etc. should be prepared by the seizing officer at the time of detention/seizure.

During test check of records, audit noticed that during the period from April 2010 to March 2015, a total number of 179 valuable goods/items (Gold bar/rod/rounds, gold jewellery/silver/artificial jewellery) were lying in the warehouse of CWC without valuation and resultant non disposal in contravention of the above provisions.

Department may initiate action to dispose these goods at the earliest to prevent any damage or pilferage of the goods and to mitigate the risk of loss of seized/confiscated precious goods.

In response to the recommendation that disposal system should be built into the ICES System, CBEC stated that disposal is a local function and has no effect on working in other Commissionerates. Hence, developing module for centralized processing may not add to much value. However, a policy decision may be taken in this regard.

Department’s reply is not acceptable as audit noticed instances where action was not taken under section 110(1A) of Customs Act, 1962. It is evident from the age wise position of the un-disposed goods that disposal was not done in time bound manner. Audit is of the opinion that if it is linked to EDI, it would help in monitoring timely disposal of the confiscated goods, ruling out blockage of revenue and Government resources and by generating MIS for CBEC and its field formation and would be value adding rather than a burden on the existing system.



## 5. Conclusion

The Gems and Jewellery industry occupies an important position in the Indian economy and contributes to around 15 per cent of the export basket. Gems and Jewellery sector which was pushing the overall export growth of India reduced to a meagre annual growth of only 0.7 per cent in 2014-15 whereas imports grew by 10.5 per cent, thereby contributing to the trade deficit. Since India did not produce gold and given the currency and asset demand of gold in tandem with a strong socio-cultural dimension of gold jewellery, the change in gold price, import regulation and export promotion schemes did not have material impact on the gold trade. This had led to India becoming the largest gold importer. Simultaneously, trade in rough diamond and CPD grew with insufficient value addition.

DoC was mandated to facilitate creation of an enabling environment and infrastructure for growth of Gems and Jewellery sector through accelerated growth in exports and to earn the precious foreign currency. Higher domestic value addition led exports could have reduced the trade deficit in this sector and consequently eased the Current Account Deficit (CAD). FTP 2015-20, however, did not make any defining provision for the G&J sector despite withdrawal of 20:80 Scheme in 2014 and climb down from the set target of the DoC's Strategy, after its Mid-term review.

Role of RBI was to regulate the external sector by regulating the foreign exchange. Audit found that Gems and Jewellery sector alone contributed to around 13 per cent of the total foreign exchange outgo. RBI in consultation with the government introduced 20:80 scheme in August 2013 to reduce Current Account Deficit and to discourage consumption of gold in the domestic market. As a result the import of gold moderated, till the scheme was modified by DEA and in May 2014, RBI allowed Star/Premier trading houses to import gold.

Similarly, CBEC/DoR was mandated to provide improved tax payer services, implement export promotion measures and effectively collect the tax revenue. Total Customs duty forgone was ₹ 12,26,033 crore for the period 2010-11 to 2014-15 whereas the share of gems and jewellery sector in the above was 25 per cent (₹ 3,01,042 crore) for the same period. Gaps in the valuation database management and Customs electronic data application allowed gradual increase in trade mis-invoicing over the period leading to foreign exchange/capital outflow.

G&J sector was last audited in 2008 however most of the improvements recommended by audit were not achieved.

Lack of an impact assessment of the scheme prior to its implementation and an outcome assessment after implementation, or on exit, rendered the

policies ineffective due to insufficient coordination, control and monitoring; cases of operational malfunction, non compliance; inadequate ICT infrastructure for tax administrations; border control, facilities and certification.

DoR, CBEC and DoC, DGFT need to improve coordination; implement the EDI systems with full functionality; reduce transaction cost; regulate related party transactions, tariff and re-export, for a growth led licit Gems and Jewellery trade to avoid inflated export figures through mere trade accounting.

This performance audit has revenue implication of ₹ 1,003.37 crore in addition to systemic issues worth ₹ 19,522.67 crore and internal control matters which could not be quantified.

New Delhi

Dated: 16 March 2016



(Dr. Nilotpal Goswami)

Principal Director (Customs)

**Countersigned**

New Delhi

Dated: 16 March 2016



(Shashi Kant Sharma)

Comptroller and Auditor General of India



# Appendices



## Appendix 1

(Refer Paragraph No. 2.1)

## Trend of Imports and Exports under CTH 71

(Value in ₹ crore)

Year	Imports of						Exports of						Customs duty Revenue forgone under CTH 71
	Rough diamond	Gold	Jewellery	CPD	other	Total CTH 71	Rough diamond	Gold	Jewellery	CPD	Other	Total under CTH 71	
FY11	48832	184729	1532	95464	19839	350396	2212	5763	37373	131011	22527	198886	49164
FY12	65412	269900	4154	63637	31495	434598	6006	1980	68128	126071	24105	226290	65975
FY13	80115	292153	28183	36652	18753	455856	9898	23765	75073	116233	13490	238459	61676
FY14	98471	166243	5765	35031	39520	345030	9949	18351	65570	147716	10589	252175	48635
FY15	102251	210658	3431	22581	42594	381515	9390	17442	80679	138463	7966	253940	75592

Source: commerce.nic.in, http://indiabudget.nic.in

## Appendix 1A

(Refer Paragraph No. 2.1)

Year	% ge growth in import of rough diamond over previous year	% ge growth in import of gold over previous year	% ge growth in import of jewellery over previous year	% ge growth in import of polished diamond jewellery over previous year	% ge growth in imports under Chapter 71 over previous year	% ge growth in export of rough diamond over previous year	% ge growth in export of gold over previous year	% ge growth in export of jewellery over previous year	% ge growth in export of cut and polished diamond jewellery over previous year	% ge growth in exports under Chapter 71 over previous year
FY12	33.95	46.11	171.15	(-) 33.34	24.03	171.52	(-) 65.64	82.29	(-) 3.77	13.78
FY13	22.48	8.23	578.45	(-) 42.40	4.89	64.80	1100.25	10.19	(-) 7.80	5.35
FY14	22.91	(-) 43.10	(-) 79.54	(-) 74.42	(-) 24.31	0.52	(-) 22.78	(-) 12.66	27.09	5.75
FY15	3.84	26.72	(-) 40.49	(-) 35.54	10.57	(-) 5.62	(-) 4.95	23.04	9-) 6.26	0.70

Overall growth rate (YoY - Year on Year) of value of imports under Chapter 71 varied from 24.03 per cent (FY 12) to (-) 24.31 per cent in FY 14. It steeply decreased upto FY 14 with a moderate rise in FY 15 of 10.57 percent. Similarly, growth rate of import of gold over the same period has shown an irregular declining trend from 46.11 per cent (FY 12) to (-) 43.10 per cent in FY 14 which increased to 26.72 per cent in FY 15. The same declining trend was visible in the growth rate of import of polished diamond jewellery during FY 12 (- 33.34 per cent) to FY 15 (- 35.54 per cent). The decline was at the peak (-)74.42 per cent in FY 14. However, growth rate of export of gold jewellery likewise declined to (-) 12.66 per cent in FY 14 from 82.29 per cent in FY 12 and then again increased to 23.04 per cent in FY 15.

Growth rate of value of import of rough diamond over the year 2011-12 to 2014-15 has shown a declining trend from 33.95 per cent (FY 12) to 3.84 per cent in FY 15. However, growth rate of export of rough diamond has shown similar declining trend from 171.52 per cent (FY 12) to (-) 5.62 per cent in FY 15. The growth rate of overall exports under Chapter 71 also correspondingly declined from 13.78 per cent to 0.70 per cent during the period.

Growth rate of value import of gold jewellery over the same period has shown a non uniform trend. The growth was 171.15 per cent (FY 12) was further increased to 578.45 per cent (FY 13) then declined to (-) 79.54 per cent and finally (-) 40.49 per cent in FY 15. In the same way, growth rate of export of gold rose to 1100.25 percent (FY 13) from (-) 65.64 per cent in FY 12 and then again went down to (-) 22.78 per cent in FY 14 and finally (-) 4.95 per cent in FY 15.

Declining trend in the growth rate of value of export of polished diamond jewellery during FY 12 (- 3.77 per cent) to FY 15 (- 6.26 per cent) was also noticed. However, it gained an upward movement in FY 14 (27.09 per cent). The rise was at the peak (27.09 per cent) in FY 14.

### Appendix 1B

(Refer Paragraph No. 2.1)

Year	% ge share of imports of rough diamond in total imports under Chapter 71	% ge share of imports of gold in total imports under Chapter 71	% ge share of imports of gold jewellery in total imports under Chapter 71	% ge share of imports of cut and polished diamond in total imports under Chapter 71	% ge share of exports of rough diamond in total imports under Chapter 71	% ge share of imports of gold in total imports under Chapter 71	% ge share of exports of gold jewellery in total imports under Chapter 71	% ge share of exports of cut and polished diamond in total imports under Chapter 71
FY11	13.94	52.72	0.44	27.44	1.11	2.90	18.79	65.87
FY12	15.05	62.10	0.96	14.64	2.65	0.87	30.11	55.71
FY13	17.57	64.09	6.18	8.04	4.15	9.97	31.48	48.74
FY14	28.54	48.18	1.67	10.15	3.95	7.28	26.00	58.58
FY15	26.80	55.22	0.90	5.92	3.70	6.87	31.77	54.33

### Appendix 1C

(Refer Paragraph No. 2.1)

Year	%ge of exports of rough diamond over import of rough diamond	%ge of exports of gold over import of gold	%ge of import of jewellery over import of jewellery	%ge of Imports of cut & polished diamond and Exports of cut & polished diamond	%ge of Total imports under CTH 71 and Total Exports under CTH 71
FY11	4.53	3.12	4.10	72.87	176.18
FY12	9.18	0.73	6.10	50.48	192.05
FY13	12.35	8.13	37.54	31.53	191.17
FY14	10.10	11.04	8.79	23.72	136.82
FY15	9.19	8.28	4.25	16.31	150.24

Share of rough diamonds imported to the total imports had an upward trend from 13.94 per cent (FY 12) to 28.54 per cent in FY 14 with a small dip to 26.80 in FY 15. Likewise share of imports of gold jewelry rose from 0.44 per cent in FY 11 to 6.18 per cent in FY 13 then it dropped to 1.67 per cent in FY 14 and 0.90 per cent in FY 15. Similarly, export of rough diamonds has also recorded an upward trend, from 1.11 per cent FY 11 to 4.15 per cent in FY 13, however, in FY 14 it came down to 3.95 per cent and further down to 3,70 per cent in FY 15.

Share of gold import to the total import had an irregular growth from 52.72 per cent in FY 11 to 64.09 per cent in FY 13 which then declined to 48.18 per cent in FY 14 and again grew to 55.22 per cent in FY 15. Similarly, share of gold jewellery export in the total import had shown an upward trend 18.79 per cent in FY 11 to 31.77 per cent in FY 15 followed by a dip to 26 per cent in FY 14 and finally increasing to 31.77 per cent in FY15.

Share of gold export in the total import under Chapter 71 has a zigzag growth pattern from 2.90 per cent in FY 11 which came down to 0.87 per cent in FY 12 then it moved up to 9.97 per cent in FY 13 and further declined to 7.28 per cent in FY14 and 6.87 per cent in FY 15. Share of cut and polished diamond export in the total import similarly declined from 65.87 per cent in FY 11 to 54.33 per cent in FY 15 below the FY 11 levels.

The trend of export of rough diamond over the import of rough diamond shows an increasing trend from 4.53 per cent (FY 11) to 12.35 per cent in FY 13 and then slightly declined to 9.09 per cent in FY 15.

In case of export of gold over the import of gold, it was observed that there was an upward movement to 11.04 per cent FY 14 (from 3.12 per cent in FY 11) which declined to 8.28 per cent in FY 15.

The trend of import of jewellery over the export of jewellery had shown an increasing trend from 4.10 per cent (FY 11) to 37.54 per cent in FY 13 which steadily declined to 4.25 per cent in FY 15.

The trend of import of cut and polished diamond over the export of cut and polished diamond had shown a declining trend from 72.87 per cent (FY 11) to 16.31 per cent in FY 15.

When total imports over exports under Chapter 71 were compared it was noticed that it had an overall declining trend from 176.18 per cent in FY 11 to 150.24 in FY 15. Though it initially reached its crest at 192.05 per cent in FY 12 and base at 136.82 per cent in FY 14.

Quantity of Import of rough diamonds increased from 1,12,781 crt to 1,40,880 crt in 2014-15 but the rate of its growth gradually declined between 2011-15. Similarly the quantity of rough diamonds exported also increased from 10,694 crt (8% of imports) in 2010-11 to 40,201 crt (22% of imports) in 2014-15 but the growth rate was also increasing between 2010-13 which eventually decreased between 2013-15. During the same period 50,809 crt of cut and polished diamond was imported in 2010-11 which reduced to 9,587 crt in 2014-15 and 66,028 crt was exported in 2010-11 which decreased to 33,007 crt in 2014-15.

Non monetary form of Gold (710812/13) was imported to the tune of 969 thousand units in 2010-11 which increased to 1078 thousand units in 2011-12 and finally reduced to 915 thousand in 2014-15. Export of like articles similarly increased from 57 thousand units in 2010-11 to 169 thousand units in 2011-12 to finally decrease to 70 thousand units in 2014-15. During the same period Jewellery (711311/19) imports reduced from 86 thousand units in 2010-11 to 46 thousand units in 2014-15 with a dip (33 thousand units) in 2011-12 and exports of the like articles decreased from 475 thousand units in 2010-11 to 438 thousand units in 2014-15 though there was a spurt of exports of 72339 thousand units in 2011-12.



**Appendix 2(A)**

(Refer Paragraph No. 2.1)

**Import of gold jewellery from Singapore, Indonesia, Hong Kong, Thailand and UAE**

Year	Singapore		Indonesia		Hong Kong		Thailand		UAE	
	Value (₹in crore)	% Growth over previous year	Value (₹in crore)	% Growth over previous year	Value (₹in crore)	% Growth over previous year	Value (₹in crore)	% Growth over previous year	Value (₹in crore)	% Growth over previous year
FY11	6.67	(-) 19.33	4.16	(-) 18.99	232.36	113.50	165.69	73.58	105.00	80.84
FY12	5.56	(-) 16.58	1.03	(-) 75.23	1533.41	559.94	687.40	314.87	879.68	737.81
FY13	25.00	348.33	0.33	(-) 67.95	3250.00	11.97	684.00	(-) 0.54	22859.00	2498.51
FY14	176.00	604.00	7.53	2181.82	679.00	-79.11	144.00	-78.95	3447.00	-84.92
FY15	91.00	-48.29	885.16	11655.11	441.00	-35.05	85.00	-40.97	870.00	-74.76

**Appendix 2 (B)**

(Refer Paragraph No. 2.1)

**Top seven sources of Chapter 71 imports**

Rank	1	2	3	4	5	6	7
Year	(% share)	(% share)	(% share)	(% share)	(% share)	(% share)	(% share)
FY11	Switzerland (29.59)	UAE (27.16)	Hong Kong (10.12)	Belgium (9.17)	South Africa (5.76)	Australia (3.95)	USA (3.62)
FY12	Switzerland (35.43)	UAE (19.99)	Belgium (9.24)	Hong Kong (9.02)	South Africa (8.41)	Australia (4.25)	UK (2.85)
FY13	Switzerland (35.31)	UAE (24.36)	Belgium (9.90)	Hong Kong (5.56)	South Africa (6.07)	USA (5.22)	Australia (3.79)
FY14	Switzerland (29.40)	UAE (20.40)	Belgium (15.70)	Hong Kong (8.27)	South Africa (4.62)	USA (4.34)	Australia (3.70)
FY15	Switzerland (32.68)	Belgium (14.41)	UAE (14.09)	Hong Kong (6.57)	USA (5.66)	South Africa (3.05)	Australia (2.65)

Source: Exim Data, Ministry of Commerce

**Appendix 2 (C)**

(Refer Paragraph No. 2.1)

**Top seven destinations of Chapter 71 exports**

Rank	1 (% share)	2 (% share)	3 (% share)	4 (% share)	5 (% share)	6 (% share)	7 (% share)
FY11	UAE (45.27)	Hong Kong (19.88)	USA (12.08)	Belgium (5.48)	Israel (2.20)	Singapore (1.12)	Australia (0.49)
FY12	UAE (39.08)	Hong Kong (24.09)	USA (14.34)	Belgium (8.08)	Israel (6.77)	Singapore (1.33)	Thailand (1.44)
FY13	UAE (43.23)	Hong Kong (24.30)	USA (15.39)	Belgium (5.55)	Israel (2.64)	Singapore (1.45)	Thailand (1.28)
FY14	UAE (30.64)	Hong Kong (26.82)	USA (18.73)	Belgium (6.42)	Israel (3.15)	Thailand (1.81)	Singapore (1.28)
FY15	UAE (29.59)	Hong Kong (29.38)	USA (20.27)	Belgium (6.44)	Israel (2.85)	Thailand (1.60)	UK (1.23)

Source: Exim Data, Ministry of Commerce

**Appendix 3**

(Refer Paragraph No. 2.2)

**Comparison of figures of DGoV and Commissionerate**

₹ In lakh

F.Y.	Name of Customs Station	As per DGoV Data				As per Commissionerate Data			
		No. of BE	Value of Imports	No. of SB	Value of Exports	No. of BEs	Value of Imports	No. of SBs	Value of Exports
FY11	ACC Mumbai	4394	90117.54	8	5.21	1901	241183.55	6332	29186.34
	NCH Mumbai	4356	1520.05	0	0	200	662.26	0	0
	JNCH Mumbai	4331	2715.51	4	32.66	716	2750.94	6510	86361.11
	PCCCC Mumbai	Data not captured				25754	4466555	124690	9914085
FY12	ACC Mumbai	15676	392651.29	996	1331.73	2009	456245.63	6078	29250.12
	NCH Mumbai	6025	3261.47	0	0	229	1483.95	0	0
	JNCH Mumbai	3120	2561.41	2540	12654.24	859	4501.25	6585	14522.26
	PCCCC Mumbai	Data not captured				36353	10111458	127077	11709480
FY13	ACC Mumbai	12297	631210.25	2184	3376.87	1863	999770.07	6090	44316.86
	NCH Mumbai	4585	2618.27	2	1.48	228	1224.73	0	0
	JNCH Mumbai	3423	2572.17	4965	22528.98	673	820.86	6658	88161.38
	PCCCC Mumbai	Data not captured				30539	7889510	133444	11544743
FY14	ACC Mumbai	19253	626367.54	2290	4825.88	1845	1227556.5	6485	40486.09
	NCH Mumbai	5667	7114.09	0	0	70	4753.65	0	0
	JNCH Mumbai	3028	2351.22	4681	27486.16	532	552.84	6784	68867.11
	PCCCC Mumbai	39220	2350258.7	Data not captured		29445	9866810	153908	14613334

### Appendix 4

(Refer Paragraph No. 2.3A)

#### Analysis of Data relating to import of Gold jewellery

(₹ In crore)

Import of Gold Jewellery (All India)		
Period	Total Import	Average Import per Month
1 <sup>st</sup> April 2012 to 13 <sup>th</sup> August 2013 (16.5 months)	783.55	47.49
14 <sup>th</sup> August 2013 to 27 <sup>th</sup> November 2014 (20:80 Scheme Period- 15.5 months))	6588.27	425.05
28 <sup>th</sup> November 2014 to 31 <sup>st</sup> March 2015 (4 months)	1505.45	376.36

Source: DG (Systems), New Delhi

### Appendix 5

(Refer Paragraph No. 2.3C)

Total gold imports during 2010-11 to 2014-15			
Year	Qty of gold imported (MTS)	Average Monthly Gold import (MTS)	
2010-11	970	80.83	
2011-12	1078	89.83	
2012-13	1014	84.50	
April 2013 to July 2013	419	104.75	
August 2013 to May 2014 (20:80)	336	<b>33.60</b>	
June 2014 to November 2014(20:80)	553	<b>92.16</b>	
December 2014 to March 2015	286	71.50	
Imports by major Trading Houses during the 20:80 scheme			
M/s	Total Imports in June 2013 to November 2013 (kgs)	Total Imports in June 2014 to November 2014 (kgs)	Percentage increase
Rajesh Exports Ltd	40791	68,500	67.93
M D Overseas Ltd	9626	49,450	413.71
Kundan Rice Mills Ltd	4552	39,000	756.77
Kanak Exports	0	24,896	Very high
Edelweiss commodities Services	4770	19000	298.32
Zaveri & Co. Pvt. Ltd.	5176	42000	711.44
Riddi Sidhi Bullions Ltd	2004	22000	997.80
Khnadwala Enterprise Pvt. Ltd	505	11700	2216.83
Jindal Dychem Industries	1050	2800	166.67
Gopal Jewels Ltd	216	1728	700
Reliance Industries Ltd.	0	900	Very high
Gitanjali Gems Ltd.	300	400	33.33
Su-Raj Diamonds Ltd.	75	400	433.33
<b>Total</b>	<b>69065</b>	<b>282774</b>	<b>309.43</b>

**Appendix 6**

(Refer Paragraph No. 2.3C)

**Export of plain gold jewellery before, after and during 20:80 scheme**

Average Monthly Export of plain gold jewellery					
Period	Quantity (Kgs)	Value (In ₹ Crore)	Average Monthly export (Qty)	Average Monthly export (Value)	Period
01.04.2012 to 31.03.2013	8363.52	2343.65	696.95	195.30	Before 20:80
01.04.2013 to 13.08.2013	4416	1067.52	981.33	237.14	
14.08.2013 to 31.03.2014	35564.96	3302.95	4741.99	440.39	During 20:80 when PTH/STH were not included
01.04.2014 and 27.11.2014	151765	12186.49	18970.66	1523.31	During 20:80 when PTH/STH was brought under 20:80.
28.11.2014 to 31.03.2015	108769.32	2728.07	27192.33	682.01	After 20:80

**Appendix 7**

(Refer Paragraph No. 2.4B)

**High cost of earning foreign exchange under Advance Authorization Scheme.**

Importer	Licence/File No. Year	Item imported	Qty in Kg.	Cif value INR (in crore)	Cif value US\$ (in crore)	Duty forgone INR (in crore)	Fob value INR (in crore)	Fob value US\$ (in crore)	Foreign exch. earning US\$ (in crore)	Ratio of duty forgone to value addition (₹ in crore)	Cost of earning per US\$ in ₹
MD Overseas Ltd	510340873 Yr: 2012	Gold Bars of purity 99.5%	340	98.97	1.79	3.92	100.45	1.82	0.03	2.65	130.67
MD Overseas Ltd	510315775 Yr: 2012	Gold Bars of purity 99.5%	380	99.16	2.21	3.93	10065	2.25	0.04	2.64	98.25
Kanak Exports	510360640 Yr: 2013	Gold Bars of purity 99.5%	500	139.47	2.55	8.87	141.56	2.59	0.04	4.24	221.75
ACPL Exports	05/93/041/55100/0396/8314 Yr: 2014	Silver fineness 0.999	9511	33.09	0.55	3.40	36.83	0.61	0.06	0.91	56.67
ACPL Exports	05/93/041/55100/0372/5919 Yr: 2014	Silver fineness 0.999	6000	26.85	0.42	2.76	29.83	0.47	0.05	0.93	58.72

**Appendix 8**

(Refer Paragraph No. 2.7C)

**Details of year wise seizures cases under Chapter 71**

(₹ In crore)

Year	All India	DRI	Total
FY11	20.86	1.25	22.11
FY12	71.09	23.75	94.84
FY13	106.81	49.80	156.61
FY14	698.97	251.19	950.16
FY15	1133.92	285.30	1419.22

**Details of year wise seizures cases by DRI, Chennai**

S. No	Year	No. of cases where smuggling was involved	Description	Qty in Kgs	Value (₹ in crore)
1	2010-11	2	Gold and Silver ornaments	1.378	1.05
2	2011-12	10	Gold bars etc	16.049	3.55
3	2012-13	20	Gold bars etc	114.309	32.64
4	2013-14	34	Gold bars etc	216.964	65.40
5	2014-15	33	Gold bars etc	249.369	68.86

**Appendix 9**

(Refer Paragraph No. 2.8A)

**Exemption notifications governing the re-import of CPD**

Notification	Main conditions
1. Notn. No. 94/96 Cus dated 16 December 1996 applicable to all goods including CPD	1. Goods are same which were exported 2. Re-imported within 3 years (extendable to 5 years by Commissioner of Custom). In the case of goods exported under DEEC, EPCG or DEPB, within one year of export (Extendable to 2 years by Commissioner)
2. Notn. No. 9/2012 Cus dated 9 March 2012 applicable only to CPD re-imported after certification/grading.	1. CPD must match with the CPD exported 2. Re-import must be after certification/grading by the Laboratories/Agencies as notified in FTP. 3. Re-import must be made within 3 months from the date of export
3. Notn. No. 158/95 Cus dated 14 November 1995. All goods for repair, reconditioning, remaking etc.	1. Re-imported for repair, reconditioning, reprocessing, refining or remaking etc. 2. Re-export must be made within 6 months after re-import (extendable up to one year by Commissioner) 3. If it is for repair or reconditioning, re-import must be made within 3 years of exportation (10 years for Nepal and Bhutan) 4. If it is for reprocessing, refining or remaking, re-import must be made within one year from the date of exportation.

**Appendix 10**

(Refer Paragraph No. 2.8A)

**Import and re-import and export data of CPD through PCCCC**

(₹ In Crore)

Year	Total Imports Of CPD	Re-Import Of CPD (Included In Total Imports Of CPD)	% Of Re-Import Of CPD To Total Import Of CPD	Total Exports Of CPD	% of Re-Import Of CPD To Total Export Of CPD
2010-11	34323.82	9326	27	91570.03	10
2011-12	53711.92	15896.61	30	105474.07	15
2012-13	31027.97	22791.49	73	101991.84	22
2013-14	44260.13	29243.87	66	131045.79	22
2014-15	51093.60	40440.17*	79	139023.49	29

(Source Import-Export data of CPD for 2010-11 to 2013-14 as furnished by GJEPC)(Import data for 2014-15 obtained from EDI data furnished by PCCCC. The data furnished by GJEPC for 2014-15 not considered as there was discrepancy with the EDI data in respect of Re-import cases and GJEPC does not have data of re imports against export on consignment basis for 2014-15) (\*Includes re-import after certification of ₹ 7713.45 crore)

**Appendix 11**

(Refer Paragraph No. 3.1A)

Sr. No.	Name of the importer (M/s)	Quantity imported (Kgs)	Period of import	Quantity sold in DTA (Kgs)	Minimum quantity required to be sold to exporters (Kgs)	Quantity sold to Exporters (Kgs)
1.	MMTC, Bangalore	14,800	4/2010 to 1/2011	14,800	2,220	Nil
2	Reliance Industries Ltd	650	15.7.10 to 19.1.11	650	97.50	Nil
3	MMTC, STC, HHEC (under Chennai Air and Coimbatore Air Customs)	49186.5	NA	6724.975	7377.975	653
4	MMTC, STC (under Nedumbassery, Cochin) ACC	3850	4/2010 to 1/2011	Details not made available	578	Details not made available

**Appendix 12**

(Refer Paragraph No. 3.2D vii)

**Non-realisation of Foreign Exchange**

(₹ In crore)

Name of the unit	Amount pending realisation
M/s Auro Gold Jewellery Pvt.Ltd	2315.73
M/s Goenka Diamond and Jewels Ltd.	443.94
M/s Kamini Jewels	509.36
M/s CVM Exports,100%EOU	0.83
M/s DJMC Export, SEZ-I	0.63
M/s Gem Centre, SEZ-I	0.16
M/s Lunawat Gems, SEZ-II	0.55
M/s BML Gems & Jewellery, SEZ-II	0.25
M/s Silvex Images, Export House	45.14
M/s Silvex & Co. India Ltd, Export House	78.64
M/s Agra Products Pvt., NSEZ	0.64
M/s Bera Enterprise, NSEZ	0.38
M/s Divya Creations, NSEZ	0.36
M/s HONEY-MC-DEW-GOLD INC.	2.08
M/s Jaya Shri Jewellers, NSEZ	2.79
M/s Lalsons Jewellers Ltd, NSEZ	0.27
M/s Sterling Ornaments Pvt Ltd, NSEZ	0.71
M/s Senco Gold Impex Pvt. Ltd. Manikanchan	575.81
M/s Infield Gems & Jewellery Ltd, Manikanchan	
M/s Easy Fit Jewellery Ltd., Manikanchan	
<b>Total</b>	<b>3978.27</b>

**Appendix 13**

(Refer Paragraph No. 3.2E)

**Incorrect fixation of EO of EPCG licence**

Name of the Unit	No. of invoice/BE	Period of Invoice/BE	Amount paid for software in ₹	Duty saved amount in	Less EO imposed in ₹
M/s. Rosy Blue India P. Ltd.	21	02/06/08 to 30/01/13	19299486	4631876	37055013
M/s. Laxmi Diamonds P. Ltd.	7BEs	10/12/09 to 29/03/12	97724714	23453931	187631450
M/s. Dharamand Diamond P. Ltd.	37BEs	18/06/09 to 29/03/12	155170754	37240980	297927847
M/s. Mahendra Brothers Export P. Ltd.	13BEs	11/08/10 to 12/06/12	29318440	7036425	56291404
M/s. Sheetal Manufacturing Co. P. Ltd.	33BEs	28/10/09 to 26/06/12	251225847	60294203	482353626
M/s. Asian Star Co. Ltd.	13BEs	10/12/09 to 16/09/13	64653538	15516849	124134792
M/s. Shri Ramkrishna Exports P. Ltd.	14BEs	15/06/09 to 06/01/12	60573798	14537711	116301692
M/s. Kiran Gems	51BEs	22/10/09 to 28/06/12	194316104	46635865	373086920
M/s. Venus Gems	15	26/06/08 to 01/10/12	15202432	3648583	29188669
M/s. Vishindas Holaram	6	15/08/11 to 28/12/11	28067745	6736258	53890070
M/s. Diamexon Diamond	16	28/10/08 to 22/10/11	10759420	2582260	20658086
Total			926312278		1778519568

**Appendix 14**

(Refer Paragraph No. 3.5)

**Miscellaneous Irregularities**

Sr. No.	Comm/DC	Description	Amount (₹ In lakh)	Accepted or not
1	SEZ-1, Sitapura, Jaipur	Irregular DTA sale	31.77	
2	NOIDA, SEZ	Non realisation of FE	29.73	Accepted
3	ACC, Nedumbassery, Cochin	Gold Dore Bars not imported by the actual user for the purpose of refining etc.	26.13	Not accepted
4	Hyderabad Airport Amritsar Airport Bangalore Airport Sanganer Airport	Short payment of customs duty due to application of incorrect rate of duty.	22.15	Accepted Accepted Not accepted Partly Accepted
5	DC SEZ Sitapura, Jaipur	Non-levy of duty on re-exportation of goods beyond prescribed time limit	17.18	Reply awaited
6	NCH, Delhi	Non recovery of Drawback	15.69	Interim reply
7	Delhi	Unauthorised import of gold jewellery	13.47	Interim reply
8	Coimbatore Airport Bangalore Airport	Payment of duty on Baggage gold and silver in Rupee terms instead of in foreign currency	12.83	Accepted
9	CSEZ, Cochin	Non-accounting of imported Gold/Silver by SEZ units	12.28	Reply awaited
10	ACC, Mumbai	Miss-classification of goods	12.06	Accepted
11	AAC, Bangalore	short levy of duty and interest	11.00	Accepted
12	PCCCC, Mumbai	Irregular exemption from duty given on re-import of Cut and Polished Diamonds (CPD)	10.61	Accepted
13	NOIDA, SEZ	Excess import of sample	9.89	Reply awaited
14	RLA, Jaipur and Mumbai	Non imposition of late cut	9.54	Accepted
15	Delhi	Excess drawback rates resulting in revenue leakage	9.23	Not accepted
16	DC (Customs), JGSE, Digg House, Jaipur,	Non recovery of demand	7.44	Accepted
17	SEZ II, Sitapura, Jaipur	Non levy of duty on import of wooden and Stainless Steel furniture and ACs.	6.16	Reply awaited

Report No. 6 of 2016 (Performance Audit)

Sr. No.	Comm/DC	Description	Amount (₹ In lakh)	Accepted or not
18	RLA Jaipur	Issue of duplicate authorization without fee	5.10	Reply awaited
19	SEZ I Jaipur	Non/Short levy of Customs duty on treatment charges & findings	4.36	Reply awaited
20	ACC, Sanganer	Incorrect availment of exemption notification on 'imitation jewellery'	3.65	Not accepted
21	PCCCC, Mumbai	Short levy of Duty on Synthetic diamonds and Synthetic stones	3.23	Accepted and reported recovery of ₹ 1.81 lakh
22	DC SEZ Sitapura, Jaipur	Non payment of Custom duty on import of samples beyond prescribed limit	3.08	Reply awaited
23	SEZ I, Sitapura, Jaipur	Non execution of additional BLUT	1.35	Reply awaited
24	SGRDJI Airpor, Airportt	Excess levy of Customs duty	1.08	Reply awaited
25	DC SEZ Sitapur	Non recovery of duty on excess claim of wastage on gold/silver jewellery	0.94	Reply awaited
26	SEZ II, Jaipur	Non levy of duty on clearance of wastage in Domestic Tariff Area	0.93	Reply awaited
27	SEZ I Jaipur	Non payment of duty on stock	0.50	Reply awaited
28	DC SEZ Jaipur	Non recovery of duty on excess claim of wastage on gold/silver jewellery	0.27	Reply awaited
29	SEZ II, Jaipur	Goods exported not covered under authorized operations	0.19	Reply awaited
Total			281.84	

**Appendix 15**

(Refer Paragraph No. 4.3 B)

*Discrepancy in APRs*

Sr. No.	Name of the Unit (M/s)	DC	Nature of discrepancy	Accepted or not
1	Fine Jewellery Manufacturing Ltd	SEEPZ Mumbai	DTA sale of ₹0.83 lakh in FY12-13 APR as against actual sale of ₹ 0.96 lakh.	Accepted
			DTA sale of ₹ 0 in FY13-14 APR as against actual sale of ₹ 0.36 lakh.	Accepted.
			Closing balance of imported raw materials and consumables, packing materials etc. was shown at ₹29.74 crore in APR of 2012-13 whereas opening balance in APR of 2013-14 was shown at ₹22.15 crore. Discrepancy of ₹78.11 lakh between closing balance and opening balance of stock as certified by CA in Tax Audit Report for 2012-13 and 2013-14.	Not accepted.
2	Sidd's Jewels Pvt. Ltd	SEEPZ Mumbai	Underassessment of stock of ₹0.62 lakh involving duty impact of ₹0.20 lakh.	Not accepted.
3	Shri Raj Jewels	SEEPZ Mumbai	Closing stock of ₹27.12 crore was shown in APR of 2012-13 whereas opening balance in APR of 2013-14 was shown at ₹27.20 crore	Accepted.
			Difference in quantity of diamond and gold consumed as furnished by the unit and the quantity certified in clause 28 of Tax Audit Report for 2012-13 and 2013-14 by the CA	Not accepted
4	Neogem (I) Ltd	SEEPZ Mumbai	Difference of between the total of country wise exports details and FOB value of exports declared in APR for 2011-12	Reply awaited



**Appendix 15A**

(Refer Paragraph No. 4.3 C)

**Non/Delay/Incorrect filing of APR**

Name of SEZ	Name/No. of units	Nature of Irregularities	Whether accepted or not
Surat SEZ,	11 SEZ Units	Delay ranging from 02 days to 950 days	Not accepted
Jaipur SEZ	22 SEZ Units	Delay ranging from 02 days to 479 days	Partly accepted
NSEZ, NOIDA	14 SEZ Units	Not filed till date of audit	Accepted
EPIP, Sitapura, Jaipur	M/s Millennium Jewels (EOU unit)	ranging from 1 to 34 days	Accepted
Jaipur	M/s A.K. Exports (EOU unit)	Not filed APR for the period 2014-15	Reply awaited
NSEZ NOIDA (EOU)	M/s Anil & Company, M/s I.P Jewelers and M/S Taj International Jewelers	Not filed APR for the period 2013-14, 2011-12 and 2011-12 respectively	Accepted
SEZ, Indore (Bhopal)	M/s World Wide Small Diamonds Manufacturing Pvt. Ltd. (EOU unit)	Not submitted QPR/APR for the year 2012-13, 2013-14 and 2014-15	Accepted
Manikanchan & Falta SEZ	15 SEZ Units,	Submitted APR late ranging from 10 to 113 days	Reply awaited.
	10 SEZ Units	Not submitted APR for the period 2013-14	
	21 SEZ Units	Not submitted APR for the period 2014-15	
CSEZ	M/s Joyal Ornaments and Trades Pvt. Ltd	Gold obtained from other sources such as Nominated Agencies etc. which was not declared in the Annual Performance Report in contravention of the Rule cited.	Reply awaited
CSEZ	M/s DAR Paradise	The value shown in invoice (imports) was understated by ₹ 2.65 crore.	Reply awaited

**Appendix 16**

(Refer Paragraph No. 4.3 E)

Status of Gold seized at Mumbai Airport	
Status of Gold seized	Qty in Kg
Stock of gold bullion before confiscation	564.32
Gold bullion before ripe for disposal	31.70
Gold in other forms before confiscation	124.53
Gold in other forms before ripe for disposal	4.53
<b>Total</b>	<b>725.08</b>

**Appendix 17**

(Refer Paragraph No. 4.3 K)

**Stock of Gold**

YEAR	AIU			UNIFORM		
	Working strength of ACS/ACO*	Quantity of gold seized	Value (₹ In Cr)	Working strength of ACS/ACO*	Quantity of gold seized	Value (₹ In Cr)
2011-12	89	19.502	9.08	80	40.136	7.75
2012-13	93	28.279	9.51	122	29.774	12.39
2013-14	101	295.184	77.08	129	50.634	10.44
2014-15	80	843.443	214.82	96	80.504	19.93
TOTAL		1186.408	310.49		201.048	50.51

\*ACS-Air Customs Supdt. ACO-Air Customs Officers.

**© COMPTROLLER AND  
AUDITOR GENERAL OF INDIA  
[www.cag.gov.in](http://www.cag.gov.in)**