Chapter V

Effectiveness of internal controls

5.1 Internal control

Internal control is an integral process carried out by an entity's management and personnel which is designed to address risks and provides reasonable assurance that following general objectives are achieved:

- executing orderly, ethical, economical, efficient and effective operations;
- fulfilling accountability obligations;
- complying with applicable laws and regulations;
- safeguarding resources against loss, misuse and damage.

5.2 Audit findings

Central Excise Department exercises internal controls by way of two functions i.e. Scrutiny of Returns and Internal Audit. We found from test check of records, 58 cases of failure of internal control having revenue implication of ₹ 279.19 crore which are included in this chapter.

5.3 Non-conducting of Internal Audit

Audit noticed nine cases where Internal Audit was due but not conducted by the Department which led to non detection of lapses committed by the assessees. In four cases, Ministry admitted the lapse of not conducting audit and these cases are detailed in Appendix III. Remaining five cases are illustrated below.

5.3.1 Short payment of Central Excise duty

5.3.1.1 Short payment of duty due to non-inclusion of freight charges

Rule 5 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules 2000 read with explanation 2 thereunder states that where any excisable goods are sold and factory is not the place of removal, then the cost of transportation from the factory to the place of removal shall not be excluded for the purpose of determining the value of excisable goods.

M/s Schneider Electric Infrastructure Ltd. falling under Vadodara-II Commissionerate, cleared its finished goods for delivery (i.e. EX Works – Customer's site). As per terms of the purchase order, the assessee was liable to supply the goods in good condition to the satisfaction of the customer at

the doors of the customers. Thus, the assessee was having its right on goods till the disposal of goods at the end of its customers. The assessee recovered a sum of ₹ 4.49 crore during the period 2010-11 to 2013-14 as outward freight on local dutiable sales on which excise duty of ₹ 54.79 lakh was payable. This resulted in non-payment of excise duty to the tune of ₹ 54.79 lakh which was required to be recovered alongwith applicable interest.

Though the assessee was a mandatory unit for the purpose of internal audit as per extant norms, no internal audit was conducted after February 2013 (period covered January 2010 to December 2012) due to which the lapse remained undetected.

When we pointed this out (July 2014), the Ministry admitted the objection (September 2017) and stated that SCN for ₹ 1.16 crore for the period December 2011 to December 2015 alongwith interest and penalty had been issued to the assessee and the demand was confirmed. For internal audit failure, the Ministry stated that issue was not detected due to audit being conducted on test check basis.

Reply is not acceptable as Annexure C of 'Excise Audit Manual 2008' stipulates, inter alia, that while examining 'profit and loss account' amount recovered as freight should be examined in details. The Internal Audit should have examined the issue regarding inclusion of freight collected in taxable value.

5.3.2 Irregular availing/non-reversal of CENVAT credit

5.3.2.1 Irregular availment of CENVAT credit on Clean Energy Cess

As per Rule 3(1) of CENVAT Credit Rules, 2004 a manufacturer or prducer of final product or a provider of output service shall be allowed to take CENVAT credit of specified duties paid on inputs, capital goods or input services. Clean Energy Cess is not a specified duty in terms of above provision for availment of CENVAT credit.

M/s NALCO, Smelter Plant, Angul working under the jurisdiction of Bhubaneswar-II Commissionerate, engaged in the manufacture of Aluminum Ingot, Wire rod, Billets etc falling under Chapter 76 of Central Excise Tariff Act 1985, availed CENVAT credit amounting to ₹ 8.08 crore against payment of Clean Energy Cess (CEC) on coal in March 2016, in contravention of the Rules, ibid. This resulted in irregular availment of CENVAT credit of ₹ 8.08 crore, which was required to be recovered from the assessee.

Though the assessee was a mandatory unit for internal audit as per existing norms, internal audit was not conducted for the period 2014-15 and 2015-16.

When we pointed this out (September 2016), the Ministry admitted the observation (September 2017) and stated that the assessee had reversed ₹ 230.50 crore including the objected amount for the period from March 2016 to November 2016 under protest. For not conducting of internal audit Ministry stated that audit was delayed due to non-receipt of required document from the assessee within due time and audit for the period 2014-15 and 2015-16 had been conducted in February 2017.

Reply is not acceptable as internal audit is conducted at assessee premises where all records are available. As the revenue involved is substantial, the Ministry need to examine the reasons of not conducting audit in time and take suitable action.

5.3.2.2 Non-reversal of CENVAT credit on clearance of used Capital Goods

As per Rule 3 (5A) (a) of the CENVAT Credit Rules 2004, if capital goods, on which CENVAT credit has been taken, are removed after being used, the manufacturer shall pay an amount equal to the CENVAT credit taken on the said capital goods, reduced by the percentage points calculated by straight line method, as specified in the sub-rule (i) and (ii) or equal to the duty leviable on transaction value, whichever is higher. In case of non-payment of the amount, the same is recoverable alongwith interest in terms of explanation 2 below Rule 3 (5C) read with Rule 14 ibid.

M/s Diamond Beverage Pvt. Ltd. under Kolkata-I Commissionerate, removed used capital goods for ₹ 1.38 crore in January 2014. The assessee had purchased the said capital goods in January 2003 and had also availed CENVAT credit thereof. However, while removing the said capital goods, the assessee did not pay the amount as required under the rule aforementioned. This resulted in non-payment of an amount of ₹ 15.18 lakh during 2013-14, which was recoverable alongwith applicable interest.

On this being pointed out, the assessee paid the amount alongwith interest of ₹ 5.69 lakh totaling ₹ 20.87 lakh.

The assessee was a mandatory unit to be audited annually as per existing norms but the Department last conducted internal audit of the assessee in November 2013 covering the period only upto 2011-12. The Department did not conduct internal audit of the assessee thereafter. Hence, the lapse remained undetected until pointed out by us.

When we pointed this out (March 2016), the Ministry admitted the observation (July 2017) and confirmed the recovery. For not conducting internal audit, the Ministry stated that internal audit for the period 2012-13 to 2014-15 was conducted in June 2016 after our Audit.

Ministry's reply is silent on not conducting Internal Audit of a mandatory unit annually.

5.3.2.3 Non-reversal of CENVAT credit

Sub-rule 5B of rule 3 of CENVAT Credit Rules, 2004, amended vide Notification No. 03/2011 dated 01 March 2011, inter alia provides that if the value of any input or capital goods before being put to use, on which CENVAT credit has been taken is written off fully or partially or where any provision to write off fully or partially has been made in the books of account, then the manufacturer shall pay an amount equivalent to the CENVAT credit taken in respect of the said inputs or capital goods.

M/s. Numaligarh Refinery Ltd. in Shillong Commissionerate, engaged in manufacturing and clearing of articles of Petroleum products under chapter 27 of Central Excise Tariff Act 1985, had made provision of ₹ 66.24 crore as on 31 March 2016 for non-moving stores and spares with a view to write off the said amount at a future date.

As per the rule mentioned above, the assessee was liable to pay an amount equivalent to the CENVAT credit availed earlier on such non-moving items of stores and spares but the same was not paid. This resulted in non-reversal of CENVAT credit of ₹ 29.89 lakh for the financial year 2015-16.

Though the assessee was a mandatory unit to be audited annually by the Department as per existing norms, it was not audited since March 2014. The lapse therefore remained undetected.

We pointed this out in August 2016, reply of the Department/Ministry was awaited (September 2017).

5.3.2.4 Short reversal of CENVAT credit

Rule 3(5B) of CENVAT Credit Rules, 2004 states that if the value of any, (i) input, or (ii) capital goods before being put to use, on which CENVAT credit has been taken is written off fully or partially or where any provision to write off fully or partially has been made in the books of account, then the manufacturer or service provider, as the case may be, shall pay an amount equivalent to the CENVAT credit taken in respect of the said input or capital goods. Further, CENVAT credit can be taken only in respect of those inputs which are used in the manufacture of finished goods.

M/s Ingersoll Rand (India) Ltd. under Ahmedabad-II Commissionerate had procured its input materials locally as well as by import. During the period between March 2011 to March 2014, the assessee had imported its 35 per cent (average) inputs out of the total input purchased. The assessee reversed ₹ 1.09 crore on obsolete and slow moving items (OSMI) during this period. However, the reversal was made only at the rate applicable (of Central Excise

duty only) to local purchases. The assessee was required to reverse the CENVAT credit proportionate of imported inputs at the rate of 17.74 per cent (i.e. CVD + SAD applicable on import for which the assessee is eligible to take credit). This resulted in short reversal of amount to the tune of ₹ 16.67 lakh.

Internal audit of the assessee was not conducted by the Department since November 2011. This resulted in non-detection of the lapse.

When we pointed this out (December 2015), the Department replied (February 2016) that the assessee had reversed CENVAT credit of ₹ 16.67 lakh and paid interest of ₹ 8.01 lakh.

Ministry contested the objection (September 2017) stating that the issue was already in notice of the Department. For not conducting internal audit, it stated that internal audit had been conducted in 2014 and in 2015-16.

Reply is not acceptable as Internal Audit had only pointed out that Central Excise duty reversal was required to be done on the provision of OSMI and had accepted Central Excise duty reversal of the amount at the rate of Basic Excise duty i.e., 12.36 per cent. However, we had pointed out that the OSMI also consisted of a portion (35 per cent) of imported inputs on which CENVAT credit of Additional Duty of Customs (CVD) and Special Additional Duty (SAD) was availed, which was required to be reversed at the rate of 17.74 per cent. Hence, the differential amount of short duty reversal due to above mis-calculation was pointed out by us and Internal Audit failed to point out the same.

5.4 Incomplete coverage of period by Internal Audit

Para 4.2 of Central Excise Audit Manual, 2008 stipulates that audit should extend upto one completed month preceding the date of current audit. We noticed two cases where audit was not extended to the adequate period, which are illustrated below.

5.4.1 Irregular availing of input service credit

As per Rule 2(l) (A) of CENVAT Credit Rules, 2004, input service inter alia excludes service portion in the execution of works contract and construction services used for construction or execution of works contract of a building or a civil structure.

M/s Sun Pharma Laboratories Limited in Siliguri Commissionerate and M/s KE Technical Textiles Pvt. Ltd. in Haldia Commissionerate availed CENVAT credit of Service Tax paid on works contract/ construction services used for construction of civil structures, which was irregular. This resulted in irregular availing of CENVAT credit of ₹ 11.93 lakh during the period from 2011-12 to 2012-13 in case of M/s Sun Pharma Laboratories Limited and ₹ 8.83 lakh

during the period from 2013-14 to 2015-16 in case of M/s KE Technical Textiles Pvt. Ltd.

Department conducted internal audit of M/s Sun Pharma Laboratories Limited in December 2013 covering period upto March 2013. In the case of M/s KE Technical Textiles Pvt. Ltd., Department conducted internal audit in October 2014 covering the period upto March 2014. In both the cases Internal Audit failed to detect the lapse. Department also did not cover the complete period for internal audit as required in para 4.2 of the Audit manual.

When we pointed these out (March 2015 and September 2015), the Ministry in case of M/s Sun Pharma Laboratories Limited stated that SCN issued to the assessee had been adjudicated confirming the demand along with interest and penalty. The assessee had paid duty of ₹ 8.39 lakh along with interest of ₹ 7.53 lakh. In the case of M/s KE Technical Textiles Pvt. Ltd., the Ministry intimated (June 2017) that the assessee had reversed the duty of ₹ 8.83 lakh along with interest of ₹ 1.06 lakh.

For non-detection of lapses the Ministry in respect of M/s Sun Pharma Laboratories Limited stated that lapse could not be detected due to large number of invoices and shortage of manpower. In respect of M/s KR Technical Textiles Pvt. Ltd. it was stated that explanations were being called for from the erring officers. The Ministry however did not reply about incomplete coverage of period in audit.

5.4.2 Irregular availing of CENVAT credit

Sub-sections (1) and (1A) of Section 5A of the Central Excise Act, 1944, provide that where an exemption from Excise duty is granted in respect of any excisable goods absolutely, the manufacturer of such excisable goods shall not pay the duty of Excise on such goods.

Circular No. 940/1/2011-CX dated 14 January 2011 clarified that in case the assessee pays any amount as Excise duty on such exempted goods, the same cannot be allowed as "CENVAT credit" to the downstream units, as the amount paid by the assessee cannot be termed as "duty of Excise" under rule 3 of the CENVAT Credit Rules, 2004. The amount so paid by the assessee on exempted goods and collected from the buyers by representing it as "duty on Excise" is required to be deposited with the Central Government in terms of Section 11D of the Central Excise Act, 1944. Moreover, the CENVAT credit of such amount utilised by downstream units also needs to be recovered in terms of the rule 14 of the CENVAT Credit Rules, 2004.

M/s Super Smelters Ltd. (Unit-III) under Bolpur Commissionerate, engaged in manufacture of sponge iron, MS billet, silico manganese etc., purchased ferro manganese slag which was exempt from Central Excise duty vide Sl. No. 57 of

General Exemption No. 50 (Notification No. 12/2012-CE dated 17 March 2012). Despite the goods being exempted from duty, the assessee paid duty on purchase of the goods and also availed credit thereof. This was in contravention of the provisions as aforesaid and resulted in irregular availing of CENVAT credit of ₹ 4.14 lakh during 2014-15 which was recoverable alongwith appropriate interest from the assessee.

Internal audit of the assessee was conducted by the Department in March 2015, covering the period only upto 2013-14, instead of covering upto one completed month preceding the date of current audit, contravening the provisions of para 4.2 of Central Excise Audit Manual, 2008. Moreover, despite being mandatory unit, to be audited annually, Department did not conduct audit of the assessee for the year 2014-15 onwards. Hence, the lapse remained undetected until pointed out by us.

When we pointed this out (September 2015), the Ministry admitted the objection (September 2017) and stated that recurring SCNs were being issued. For not covering the period upto previous month in Internal Audit, the Ministry stated that covering the period without proper document, required for audit will violate basic principle of Audit Manual and may result in revenue loss. Audit is a continuous process and units are re-allotted for audit for complete financial year.

5.5 Non-detection of assessees' lapses by Internal Audit

Audit noticed 42 cases where Internal Audit was conducted by the Department but they failed to detect the lapses committed by the assessees. In 22 cases, Ministry admitted the lapse of Internal Audit and initiated action against the erring officials wherever required. These cases are detailed in Appendix III. Remaining 20 cases are illustrated below:

5.5.1 Short payment of duty

5.5.1.1 Short payment of Central Excise duty on consideration received as freight

As per clause (d) of Explanation VI to Section 4 of the Central Excise Act, 1944, "Transaction Value" is defines as "the price actually paid or payable for the goods, when sold and includes in addition to the amount charged as price, any amount that the buyer is liable to pay to, or on behalf of the assessee, by reason of, or in connection with the sale, whether payable at the time of the sale or at any other time, including, but not limited to any amount charged for, or to make provision for, advertising or publicity, marketing and selling organisation expenses, storage, outward handling, servicing, warranty, commission or any other matter; but does not include the amount of duty of Excise, Sales Tax and other taxes, if any, actually payable on such goods."

(i) M/s Aster Pvt. Ltd. Nalgonda under Hyderabad III Commissionerate, engaged in the manufacture of Plates, Angles, G. Steel Tower, Poles etc. falling under Chapters 72 & 73 of Central Excise Tariff Act 1985, cleared goods to M/s U.P. Power Transmission Corporation Ltd and M/s Transmission Corporation of Andhra Pradesh Limited on FOR destination basis from the factory to the place of removal i.e. buyer's premises during 2012-13 to 2015-16. The risk of transportation and ownership of the goods remained with the assessee during transportation of the goods. However, the cost of transportation of ₹ 7.42 crore incurred and received from the buyer was deducted while arriving at the transaction value, in contravention to the rule, ibid. This resulted in undervaluation of goods and short payment of duty of ₹ 91.87 lakh which was required to be recovered from the assessee alongwith interest.

Internal audit of the assessee was conducted by the Department in June-July 2014 for the period upto May 2014, but it failed to detect the lapse.

When we pointed this out (June 2016), the Ministry admitted the objection (April 2017) and stated that SCN for ₹ 1.25 crore alongwith interest and penalty had been issued. For internal audit failure, it stated that issue was not detected due to audit being conducted on test check basis.

Reply is not acceptable as Annexure C of 'Excise audit Manual 2008' stipulates that while examining 'profit and loss account' amount recovered as freight should be examined in detail and issue of supply of goods on 'For destination' basis should have been examined.

(ii) M/s Golkonda Engineering Enterprises Ltd. Mallapur under Hyderabad-III Commissionerate, engaged in the manufacture of PJU underground Cables, Signal Cables etc., falling under chapter heading 85 of CETA 1985, had cleared goods to various zones of Indian Railways situated at different places on FOR destination basis from the factory to the place of removal i.e. buyer's premises during the period form 2014-15 to 2015-16. The risk of transportation and ownership of the goods remained with the assessee during transportation of the goods. However, the cost of tranportation of ₹ 4.34 crore incurred (received from the buyer) was deducted while arriving at the transaction value, in contravention to the rule, ibid. This resulted in short payment of excise duty of ₹ 54.02 lakh which was required to be recovered from the assessee alongwith interest.

Though internal audit of the assessee was conducted by the Department for the period upto March 2016, it failed to detect the lapse.

When we pointed this out (October 2016), the Ministry contested the para (August 2017) stating that internal audit conducted by the Department in November 2013 already detected the said issue and amount of ₹ 5.35 lakh

with interest of ₹ 0.58 lakh for the period from April 2012 to September 2013 and ₹ 4.07 lakh for the period from December 2013 to February 2015 were recovered. It further stated that SCN of ₹ 87.86 lakh for the period from March 2012 to September 2016 had been issued. For failure of Internal Audit, Ministry stated that the issue was not raised as there was a decision of Apex Court in the case of Escort JCB Ltd. against the issue involved in the objection.

Reply is not acceptable as Internal Audit detected the similar issue in November 2013 but in subsequent audit conducted in July 2016 it failed to detect the similar lapse. Further, plea of contrary decision of Apex court on similar issue is not tenable as similar issue was raised by Internal Audit in November 2013.

(iii) M/s Ramco Industries Ltd. Ibrahimpatnam under Guntur Commissionerate, engaged in the manufacture of Asbestos Cement Sheets and Asbestos others falling under chapter heading 68 of CETA 1985, cleared goods to M/s Andhra Pradesh Power Generation Corporation Ltd. and Dr. Narla Tata Rao Thermal Power Station on FOR destination basis from the factory to the place of removal i.e. buyer's premises during the period from 2013-14 to 2015-16. The risk of transportation and ownership of the goods remained with the assessee during transportation of the goods. However, the cost of transportation of ₹ 1.27 crore incurred (received from the buyer) was deducted while arriving at the transaction value, in contravention to the rule, ibid. This resulted in undervaluation of goods and short levy of duty of ₹ 15.71 lakh which was required to be recovered from the assessee along with interest.

Internal audit of the assessee was conducted by the Department for the period upto March 2015, but failed to detect the lapse.

When we pointed this out (November 2016), the Department admitted the observation (February 2017) and stated (March 2017) that a SCN was issued to the assessee for ₹ 24.86 lakh.

The Ministry contested the objection (July 2017) stating that though goods were cleared on FOR destination basis but goods were handed over to the carrier and there was no responsibility of the manufacturer. Board circular 999/2015 dated 28 February 2015 and decision of Supreme Court in the case of Ispat Industries Ltd. {2015(324)ELT 670 (SC)} also established the same.

Reply is not acceptable as in the instant case, the assessee had cleared Asbestos sheets to various customers on 'FOR destination' basis. It was observed from the purchase orders that the sole responsibility with risk and cost of transportation remained with the assessee till the goods reach the destination and ownership of the goods lies with the assessee (seller) during the transport of the goods at various destinations. Hence, the Board's circular

and the Apex court judgement quoted by the Ministry are not applicable to the present case.

(iv) M/s Lubi Industries LLP, Ahmedabad under Ahmedabad-II Commissionerate had recovered freight handling charges from its customers for clearing the goods to their premises for the period of 2010-11 to 2014-15. However, Excise duty was not paid by the assessee on freight charges.

Though the Department had carried out internal audit between March and July 2015, it could not point out the lapse.

When we pointed this out (December 2015), the Department accepted (August 2016) the audit objection and confirmed (February 2017) demand of duty amounting to ₹ 41.10 lakh alongwith interest and equal penalty.

However, the Ministry contested it (September 2017) stating that Internal Audit had already detected the lapse.

Reply is not acceptable as the SCN as well as OIO was issued by the Department on the basis of our Audit

(v) M/s Firmenich Aromatics (I) Pvt. Ltd., Bhenslore, under Daman Commissionerate recovered freight charges from its customers in addition to the value of goods and mentioned their freight charges separately in the sales invoices in cases where buyers' premise was shown as the place of removal. Therefore, freight charges recovered by the assessee from the buyers formed part of additional consideration and should have been included in the assessable value for payment of Excise duty. The assessee recovered a sum of ₹ 4.72 crore as freight charges from its buyers during the period 2012-13 to 2014-15 which was not included in the assessable value. This resulted in short payment of duty of ₹ 34.85 lakh which was required to be recovered alongwith applicable interest.

Though the Department had carried out internal audit in April 2016 for the period February 2015 to February 2016, it failed to detect the lapse.

When we pointed this out (March 2016), the Ministry contested the para stating that the Department was already aware of the issue as the same was detected by internal audit.

Reply is not acceptable as we had pointed out the irregularity on 7 March 2016 (vide HM dated 7 March 2016) while internal audit was started on 11 March 2016. We had raised the observation for the period upto March 2015 while Internal Audit covered the period from February 2015 to February 2016. Hence, Internal Audit raised the issue after being pointed out by us.

(vi) M/s Aptar Beauty & Home India Pvt. Ltd. Hyderabad under Hyderabad-IV Commissionerate, engaged in the manufacture of articles for plastic closures with different colors, falling under chapter Heading 39 of CETA, 1985 cleared the goods to various customers on FOR destination basis from the factory to the place of removal i.e. buyer's premises, during the period from 2012-13 to 2014-15. The risk of transportation and ownership of the goods remained with the assessee during transportation of the goods. However, the cost of transportation of ₹ 1.89 crore incurred (received from the buyer) was not included while arriving at the transaction value, in contravention to the rule, ibid. This resulted in short payment of duty of ₹ 23.37 lakh which was to be recovered from the assessee alongwith interest.

Internal audit of the assessee was conducted by the Department in February 2015 for the period upto December 2014, but it failed to detect the lapse.

When we pointed this out (February 2016), the Ministry admitted the objection (September 2017) and stated that SCN had been issued for ₹ 30.15 lakh for the period from 2011-12 to 2016-17 and demand had been confirmed. For lapse of internal audit the Ministry stated that the issue of valuation of excisable goods and place of removal is open to different interpretations and hence Internal Audit could not raise the observation.

(vil) M/s. Parikh Packaging Pvt. Ltd., under Ahmedabad-II Commissionerate, engaged in manufacture of goods falling under Chapter 39 of the Central Excise Tariff Act, 1985 in addition to the assessable value, had recovered freight valuing ₹ 7.23 crore separately in its sales invoice issued to customers. During the period 2012-13 to 2014-15 the assessee had shown buyers premises as the place of removal. Therefore, freight recovered by the assessee from the buyers was part of additional consideration and was required to be included in the assessable value for payment of excise duty. However, the assessee did not include the freight recovered from the buyers in assessable value. This resulted in short payment of Central Excise duty to the tune of ₹ 89.31 lakh which was recoverable with interest.

Internal audit of the assessee was carried out by the Department in January-February 2014 and May-June 2015 but it failed to detect the lapse.

When we pointed this out (April 2016), the Ministry admitted the objection (July 2017) and stated that SCN for ₹ 1.40 crore had been issued. For lapse of internal audit it stated that the issue of valuation of excisable goods and place of removal is open to different interpretations and hence Internal Audit could not be blamed.

Reply of the Ministry in both the cases (vi and vii) above, is not acceptable as the observations have been admitted by the Ministry. Further, reply of the

Ministry indicates that clarification to field formations on the issues subject to different interpretations and to remove ambiguity and to ensure similar treatment of issues by all field formations is warranted.

5.5.1.2 Short payment of duty due to undervaluation of goods cleared to related unit

According to rule 10 read with rule 8 and 9 of Central Excise (Valuation) Rules, 2000, where whole or part of the excisable goods, are sold by an assessee to or through an inter-connected undertaking or are not sold but are consumed in the production or manufacture of other articles, the value shall be hundred and ten per cent of the cost of production or manufacture of such goods, to be compared as per CAS 4 statement.

(i) M/s Faurecia Emissions Control Technologies India Pvt. Ltd., under Chennai IV Commissionerate cleared goods to its related units at Bangalore and Pune for a total value ₹ 110.44 crore and ₹ 130.05 crore during the years 2013-14 and 2014-15 respectively. However, the assessee discharged duty on a value which was less than one hundred and ten per cent of the cost of goods sold. The non-adoption of prescribed transaction value resulted in under-valuation of goods and consequent short payment of duty was recoverable alongwith applicable interest.

Internal audit of the assessee was conducted in October 2014, but it failed to detect the lapse.

When we pointed this out (December 2015), the Department replied (September 2016) that the total value of clearance for the year 2013-14 was actually ₹ 106.82 crore and the assessee had since discharged the differential duty of ₹ 31.08 lakh and also had paid interest of ₹ 14.59 lakh (June 2016) for the year 2013-14. The Department further stated (March 2017) that for the year 2014-15 the assessee paid ₹ 36.33 lakh alongwith interest of ₹ 13.26 lakh.

Ministry admitted the objection (July 2017) and confirmed the recovery. For internal audit failure, it stated that issue was not detected due to audit being conducted on test check basis.

Reply is not acceptable as chapter 7 of Excise Audit Manual, 2008 specified guidelines in special situations which inter alia included that goods cleared to sister unit is prone to undervaluation, hence all clearances to sister unit should have been examined by Internal Audit.

(ii) During scrutiny of Central Excise records of M/s Tirupati Plywood Industries under Siliguri Commissionerate, engaged in manufacturing of plywood etc. falling under Chapter 44 of Central Excise Tariff Act 1985, it was noticed that the assessee sold the finished goods to its related party M/s

Regal Udyog Pvt. Ltd. However, the related party sold the said goods to the ultimate buyer (not being related) at a price which was approximately 4 per cent higher than that at which the goods were sold to related party. Hence, assessee was liable to pay duty on the value at which goods were sold to buyers by related party. However, the assessee paid duty on the price at which the goods were sold to the related party, violating the aforementioned provisions of Central Excise Valuation Rules. This resulted in short payment Central Excise duty of ₹ 7.56 lakh, due to undervaluation during the period 2012-13 and 2013-14.

Though, the Department conducted internal audit of the assessee in October 2013 covering the period up to March 2013 but it failed to detect the lapse.

When we pointed this out (February 2015), the Ministry admitted the audit objection (August 2017) and intimated that SCN had been issued for ₹ 17.63 lakh, covering the period from 2011-12 to 2015-16. For internal audit failure, it stated that issue was not detected due to audit being conducted on test check basis.

Reply is not acceptable as chapter 7 of Excise Audit Manual specified guidelines in special situation which include inter- connected units as goods cleared to sister units is prone to undervaluation, hence all clearances to sister unit should have been examined by Internal Audit.

(iii) M/s Santpuria Alloys (P) Limited, Giridih under Ranchi-II (Bokaro) Commissionerate cleared Sponge Iron (final product) to M/s Mongia Steel Limited, Giridih (related party) at assessable value less than the cost of production during the period 2013-14. Since, the assessable value of clearance of goods was lower than the cost of production, it resulted in short levy of Central Excise duty to the tune of ₹ 15.51 lakh.

Internal audit of the assessee was conducted by the Department in November 2015 but it did not detect the lapse.

When we pointed this out (February 2016), the Department admitted the audit objection (October 2016) and intimated (May 2017) that SCN amounting to ₹ 1.74 crore for the period 2013-14 to 2015-16 had been issued.

Reply of the Ministry was awaited (September 2017).

5.5.1.3 Short payment of Central Excise duty and Clean Energy Cess on Coal

As per Rule 4(1) of Central Excise Rules, 2002, every person who produces or manufactures any excisable goods, or who stores such goods in a warehouse, shall pay the duty leviable on such goods in the manner provided in rule 8 or

any other law and no excisable goods, on which any duty is payable, shall be removed without payment of duty from any place, where they are produced or manufactured or from a warehouse, unless otherwise provided. Duty not paid or short paid by suppression of facts or by fraud/ misstatement etc. attracts penalty under section 11AC of the Central Excise Act, 1944.

During Audit examination of records (other coal washery production statement, direct dispatch to power project statement and ER-1 Return), of an assessee M/s SAIL Chasnalla, Jitpur and Tasra, under Dhanbad Commissionerate for the period 2012-13, Audit observed that the assessee had shown other coal production as 4,54,775 MT and 64,082 MT of other coal was directly transferred to Power project of SAIL (BSL, BSP and RSP) from Tasra mines during 2012-13. Further examination revealed that the total production of other coal in ER-1 for the period was taken as only 4,80,593.33 MT. Thus, the assessee declared other coal in ER-1 returns short by 38,263.67 MT of coal (4,54,775 MT + 64,082 MT – 4,80,593.33 MT = 38,263.67 MT) which resulted in short payment of duty of ₹ 75.48 lakh. Clean energy cess was also leviable on the coal accounted short amounting to ₹ 19.13 lakh besides interest and penalty applicable thereon.

Though the internal audit of the assessee was conducted by the Department in May 2014, it failed to detect the lapses.

When we pointed this out (March 2015), the Department stated that Show Cause Notice was issued to the assessee for ₹ 94.61 lakh.

Reply of the Ministry was awaited (September 2017).

5.5.1.4 Irregular availment of exemption resulted in short payment of Central Excise duty

Notification No. 1/2011-Central Excise dated 1 March 2011, as amended vide Notification No. 16/2012-CE dated 17 March 2012, exempted the excisable goods falling under chapter sub-heading 22029020 of CETA, 1985 from so much of the duty of Excise leviable thereon under the Central Excise Act as is in excess of the amount calculated at the rate of two per cent ad valorem.

Provided that nothing contained in the notification shall apply to the goods in respect of which credit of duty on inputs or tax on input services has been taken under the provisions of the CENVAT Credit Rules, 2004.

M/s Varun Beverages Limited, Bhiwadi, paid duty at the rate of two per cent ad valorem on removal/clearance of fruit juice based drinks falling under CETSH 22029020 during the year 2012-13, availing the exemption notification ibid. However, the assessee took CENVAT credit of Service Tax paid on input services used in manufacturing of the said goods. Hence, the assessee was not entitled to avail the benefit of exemption notification and required to pay

duty at applicable rate of 6.18 per cent ad valorem on the clearances. Thus, irregular availment of exemption notification resulted in short payment of excise duty of ₹ 52.80 lakh, including cess.

Internal audit was conducted up to March 2014 but audit party failed to detect the lapse.

When we pointed this out (August 2015), the Ministry admitted the objection (April 2017) and stated that demand of ₹ 1.28 crore had been confirmed. For internal audit failure, it stated that issue was not detected due to audit being conducted on test check basis.

Reply is not acceptable as specific checks were prescribed in Annexure C(IV) of the Central Excise Audit Manual, 2008 for checking the correctness of exemption claimed by the assessees.

5.5.2 Incorrect availing of CENVAT credit

5.5.2.1 Incorrect availing of CENVAT credit on construction services

'Input service' as defined in Rule 2(1) of the CENVAT Credit Rules, 2004, excludes service portion in the execution of a Works Contract and Construction service in so far as they are used for construction or execution of a works contract of a building or a civil structure or a part thereof, except for the provision of the specified service. Interest under Rule 14 is payable for incorrect availing and utilisation of CENVAT credit.

M/s First Engineering Plastics India Pvt. Ltd. (manufacturer of plastic moulded components under CETSH 87082900) under Chennai IV Commissionerate availed CENVAT credit of ₹ 46.42 lakh on Service Tax paid towards Building and Construction services during the years 2013-14 and 2014-15. Since the assessee is not engaged in providing Works Contract services, the availing of CENVAT credit totaling to ₹ 46.42 lakh was incorrect and recoverable along with applicable interest.

Internal audit of the assessee was conducted in January 2014, but it failed to detect the lapse.

When we pointed this out (September 2015), the Ministry admitted the objection (May 2017) and stated that entire amount had been recovered with interest of ₹ 12.75 lakh and penalty of ₹ 8.94 lakh. Department reported (August 2016) recovery of ₹ 33.16 lakh. For Internal Audit failure, it stated that issue was not detected inadvertently though Internal Audit detected six objections involving ₹ 4.65 lakh.

Reply is not acceptable as Internal Audit detected six objections involving ₹ 4.65 lakh but left observation amounting ₹ 46.42 lakh. Ministry need to take suitable action.

5.5.2.2 Irregular availment and utilisation of CENVAT credit

As per Rule 2(I) of the CENVAT Credit Rules 2004, "input service" means any service, (i) used by a provider of output service for providing an output service; or (ii) used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal and inter alia includes services used in relation to advertisement or sales promotion.

(i) M/s Zim Laboratories Ltd. In Nagpur II Commissionerate, engaged in the manufacture of medicines falling under chapter 29 and 30 of CETA, 1985 paid commission to foreign commission agents in foreign exchange for procurement of export orders during the period 2012-13 to 2014-15 and accordingly paid Service Tax under the category 'Business Auxiliary Services' as recipient of service after availing exemption benefits under notification No. 18/2009-ST and 42/2012-ST. Scrutiny of returns in form EXP 4, ER-1 and CENVAT credit records for the said period revealed that the assessee had availed CENVAT credit of the Service Tax paid on commissions for procuring export order and had also utilised the same for payment of Central Excise duty. This resulted in irregular availment and utilisation of CENVAT credit of ₹ 1.68 crore.

Internal audit of the assessee was carried out covering the period upto March 2015 but the audit party failed to detect the lapse pointed out by us.

We pointed this out (March 2016).

(ii) M/s Styrolution ABS (India) Pvt. Ltd. under Vadodara-II Commissionerate had availed CENVAT credit of ₹ 28.38 lakh during the period 2009-10 to 2013-14 in respect of Service Tax involved in sales commission amount paid to its commission agents on the basis of Input Service Distributor (ISD) invoices issued by its head office. CENVAT credit in respect of Service Tax paid on commission on sales is not available unless the service includes sales promotion. Hence, CENVAT credit of ₹ 28.38 lakh was irregular and required to be recovered alongwith applicable interest.

Internal audit of the assessee was conducted by the Department in September 2010, March 2013 and December 2014 but it could not point out the lapse.

We pointed this out in March 2015.

The Ministry did not admit the observations (September 2017) stating that services of commission agent come under Business Auxiliary service and

decision of Punjab and Haryana High Court in case of Ambika Overseas {2011 (7) TMI 980} as well as Board circular 943/2011 clarified that CENVAT credit on account of commission on sales is covered under the definition of input service. Further, vide notification No. 02/2016 dated 3 February 2016, explanation has been added to rule 2 (l) of CENVAT Credit Rules 2004, clarifying that sales promotion includes service by way of sale of dutiable goods on commission basis.

Reply is not acceptable as in a similar issue of Cadila Healthcare Ltd {2013 (30) STR 3 (guj.)}, Gujarat High Court held that CENVAT credit on sales commission was not admissible if it did not involve promotional activities. Also, explanation to rule 2(l) was added in February 2016, hence it was not applicable to prior period.

5.5.2.3 Irregular availment of CENVAT credit of input service credit of renting of immovable property distributed by Head Office under ISD

Rule 7 of CENVAT Credit Rules, 2004 prescribes the manner of distribution of credit by input service distributor (ISD) as per sub-rule (d) of which "the credit of Service Tax attributable as input service to all the units shall be distributed to all the units pro rata on the basis of the turnover of such units during the relevant period to the total turnover of all the units."

M/s Firmenich Aromatics (India) Pvt. Ltd. falling under Daman Commissionerate had availed service credit of ₹ 1.33 crore distributed by its Head Office as ISD of Service Tax paid for renting of immovable property from September 2014 to March 2015. We observed that the assessee is having another unit, M/s Firmenich Aromatics Production (India) Pvt. Ltd. Dahej which is a tax exempted SEZ unit. Though both the units (Daman as well as Dahej unit) have common registered Head Office, the Head Office incorrectly distributed the entire CENVAT credit to its excisable unit i.e. Daman unit only. This resulted in incorrect availment of CENVAT credit of entire input service distributed by Head Office.

Internal audit of the assessee was conducted for the period from February 2015 to February 2016 by the Department in April 2016 but the audit party could not detect the lapse.

When we pointed this out (March 2016), the Ministry contested the observation (September 2017) stating that Department was already aware of the default by the assessee as same was detected by Internal Audit.

Reply is not acceptable as we had pointed out the subjected irregularity on 7 Mar 2016 (vide HM No 7 dated 7 March 2016) and Internal Audit started on 11 March 2016. We had raised the observation for the period upto March 2015 and Internal Audit had covered the period from February 2015 to

February 2016. Hence, Internal Audit raised the issue after being pointed out by us.

5.5.3 Non/short reversal of CENVAT credit

5.5.3.1 Non-reversal of CENVAT credit on provision made for obsolete input

Rule 3(5) of CENVAT Credit Rules, 2004 stipulates that if the value of any input or capital goods, before being put to use, on which CENVAT credit had been taken, is written off fully or partially or where any provision to write off fully or partially has been made in the books of account, then the manufacturer or service provider, as the case may be, shall pay an amount equivalent to the CENVAT credit taken in respect of the said input or capital goods.

M/s Volvo India Pvt. Ltd. Bangalore, under Large Taxpayers Unit (LTU) Commissionerate Bangalore, manufactures tippers, tractors, trailers and chassis. The assessee made a provision of ₹ 9.53 crore for the year 2014-15 for obsolete inputs on which CENVAT credit had been availed. However, the assessee did not reverse CENVAT credit of ₹ 1.56 crore availed on these obsolete inputs.

Internal Audit wing of the Large Taxpayers Unit, Bangalore conducted the audit of the assessee in September – October 2015, but it failed to detect the lapse.

When we pointed this out (January 2016), the Department intimated that the assessee reversed ₹ 1.56 crore in the CENVAT account.

Ministry admitted the objection (April 2017) but for the internal audit failure, it stated that before finalisation by Internal Audit, our audit was started and as this issue was raised by us, same was not raised by Internal Audit to avoid duplication.

The reply is not acceptable as the dates of audit mentioned in the Internal Audit note revealed that the Internal Audit was completed on 8 October 2015, much before we conducted audit. Hence, the Ministry's claim that the internal audit was not complete at the time of our audit, is not tenable.

5.5.3.2 Non-reversal of CENVAT credit duty on input material written off

Rule 3(5B) of the CENVAT Credit Rules, 2004 provides that if the value of any input on which CENVAT credit has been taken is written off fully or partially or where any provision to write off fully or partially has been made in the books of accounts, then the manufacturer is required to reverse the CENVAT credit taken on the said inputs.

M/s Spicer India Pvt. Ltd. in Kolhapur Commissionerate engaged in manufacture of auto parts falling under chapter 87 of CETA, 1985, wrote off input material valued at ₹ 94.64 lakh in the year 2014-15 and ₹ 143.13 lakh in the year 2015-16. However, the assessee did not reverse CENVAT credit against aforesaid input material written off as per the provision. This resulted in non-reversal of CENVAT credit of ₹ 29.59 lakh.

Internal audit of the assessee was conducted in June 2016 for the period 2013-14 to 2015-16, but the audit party failed to point out the lapse.

When we pointed this out (September 2016), the Ministry admitted the objection (June 2017) and stated that SCN for ₹ 29.59 lakh had been issued to the assessee and he had reversed CENVAT credit of ₹ 11.01 lakh and paid interest of ₹ 2.54 lakh and penalty of ₹ 1.65 lakh. For the internal audit failure, it stated that issue was not detected due to audit being conducted on test check basis.

Reply is not acceptable as information of goods written off is available in finance accounts, hence, audit party should have ensured whether credit on written off goods was reversed.

5.5.3.3 Short reversal of CENVAT credit due to incorrect calculation

According to Rule 6(3) of CENVAT Credit Rules, 2004 manufacturers of dutiable and exempted goods or providers of taxable and exempted output services, availing CENVAT credit of inputs or input services and not maintaining separate accounts for receipt, consumption and inventory of inputs and input services, shall pay an amount equal to six per cent of value of exempted goods and services or pay amount proportionate to the credit availed on exempted goods and services determined under sub-rule (3A). Rule 6(6) of CENVAT Credit Rules states that provisions of sub-rule (1) to (4) of Rule 6 were not applicable in respect of clearances for export.

(i) M/s Synthite Industries Ltd. Kolencherry in Cochin Commissionerate, manufactured dutiable and exempted goods and provided taxable and exempted services. The assessee opted for proportionate payment of credit under Rule 6(3) (ii) since no separate accounts were maintained for accounting of inputs and input services. The assessee, however, considered value of export clearance also for computation of proportionate amount to be reversed in respect on input services. This resulted in short reversal of CENVAT credit amounting to ₹ 17.26 lakh during the period 2011-12 to 2012-13.

Internal audit of the assessee was conducted by the Department covering the period upto November 2012, the lapse was not detected.

When we pointed this out (January 2014), the Ministry admitted the objection (August 2017) and stated that SCN for ₹ 8.72 crore had been issued to the assessee for the period from 2011-12 to 2014-15. For failure of Internal Audit, Ministry stated that issue was also detected by Internal Audit conducted concurrently with our audit and action has been taken after considering observations of both, SCN has been issued covering larger period.

Reply is not acceptable as the Department detected the issue in Internal Audit conducted in January 2014 but same was not detected by Internal Audit conducted earlier, covering the period upto November 2012, though the issue persisted from the year 2011-12.

(ii) M/s Vijayanagar Biotech Ltd., Vijayanagaram under the jurisdiction of Visakhapatnam Commissionerate engaged in the manufacture of Maize Starch Powder, Maize Gluten etc., falling under Chapter 23 of Central Excise Tariff Act, 1985, had cleared both dutiable and exempted goods during the period between April 2012 and March 2015. The assessee had not maintained separate accounts for inputs and input services and opted to reverse CENVAT credit on proportionate basis as per Rule 6(3) of CCR, 2004. It was noticed that while reversing CENVAT credit, the assessee calculated such reversal every month by taking into consideration, the exempted and dutiable turnover of the particular month and at the end of year, amount of such reversal was also not finally assessed.

Further, in respect of input services, reversal was made only on input service credit taken on common services instead of total Service Tax credit availed. This resulted in short reversal of CENVAT credit of ₹ 13.02 lakh which was required to be reversed with interest of ₹ 4.46 lakh.

Internal audit of the assessee was conducted for the period from April 2012 to March 2015 but the lapse was not detected.

When we pointed this out (December 2015), the Ministry admitted the objection (July 2017) and stated that Show Cause Notice for 17.04 lakh along with interest had been issued to the assessee. For lapse of internal audit it stated that the value of exempted goods/services referred to in the formula under rule 6(3A), shall refer only to those exempted goods/services, in respect of which CENVAT credit has been taken for common inputs/ input services. Those exempted goods/exempted services, in respect of which no credit has been taken, even in respect of such common inputs/input services, shall not be considered in the formula. In view of the above stand taken by Internal Audit is in line with the objective of rule 6 of CENVAT Credit Rules.

Reply is not acceptable as in the present case, the assessee made reversal only on input service credit taken on common input service used in dutiable and exempted goods and excluded credit taken on other services. Reply of

the Ministry is not relevant to the observation as it was not a case of excluding exempted service on which no credit was taken as contended by the Ministry.

5.6 Miscellaneous issues

We also observed five cases of non adherence to procedure/control mechanism by the Department which are illustrated below:

5.6.1 Inaction by the Department to recover short payment of duty

According to Rule 4(1) of the Central Excise Rules, 2002 every person who produces or manufactures any excisable goods, or who stores such goods in a warehouse, shall pay the duty leviable on such goods in the manner provided in rule 8 or under any other law, and no excisable goods, on which any duty is payable, shall be removed without payment of duty from any place, where they are produced or manufactured, or from a warehouse.

During the scrutiny of ER-3 return filed by M/s Nilgiri Herbals and Agro Industries Pvt. Ltd. falling under Silvassa Commissionerate for the quarter of July-September 2014, it was revealed that against the duty payable of ₹ 16.92 lakh, the assessee had paid only ₹ 2.88 lakh through debit in the CENVAT credit account. This resulted in short payment of ₹ 14.55 lakh which was recoverable with interest. Department did not take any action for recovery of duty short paid till the same was pointed out by Audit.

When we pointed this out (May 2015), the Ministry admitted the observation (August 2017) and intimated that the assessee has paid ₹ 14.55 lakh alongwith interest of ₹ 1.35 lakh and penalty of ₹ 1.16 lakh. It further stated that action could not be taken due to large number of returns to be scrutinised.

Reply is not tenable as not taking timely action may make the issue time barred and consequent loss of revenue.

5.6.2 Raising short demand in the SCN

As per the provisions of Rule 14 of CENVAT Credit Rules, 2004, where the CENVAT credit has been taken or utilised wrongly or has been erroneously refunded, the same along with interest shall be recovered from the manufacturer or the provider of the output service and the provisions of sections 11A and 11AB of the Central Excise Act, 1944 or sections 73 and 75 of the Finance Act, 1994 shall apply mutatis mutandis for effecting such recoveries.

(i) M/s Rieter India Pvt. Ltd., in Kolhapur Commissionerate, is engaged in the manufacture of excisable goods falling under chapter 84 of Central Excise Tariff Act, 1985. The Department issued two Show Cause Notices to

the assessee for disallowing the wrong availment of CENVAT credit for the period from November 2012 to April 2014 and May 2014 to January 2015 on the basis of our objection. The Department adjudicated these SCNs vide OIO dated 10 March 2016 and confirmed demand to the extent of ₹ 1.41 crore. The same was accepted and reversed by the assessee. However, scrutiny of these SCNs, OIO and CENVAT credit register for the period from 2013-14 to 2015-16, revealed that while calculating the total amount of irregular availment of CENVAT credit for issuance of Show Cause Notice, the Department had not considered the amount of CENVAT credit of ₹ 27.15 lakh irregularly availed by the assessee during the month of August 2014. However, the said credit was neither reversed by the assessee in its CENVAT credit account nor the Department verified the details of the invoices provided by the assessee while raising of demand of ₹ 27.15 lakh in SCN for the period May 2014 to January 2015.

When we pointed this out (August 2016), the Ministry partly admitted the para (September 2017) and stated that the assessee reversed the credit of ₹ 27.15 lakh with penalty of ₹ 4.03 lakh. Ministry further stated that the assessee had given incomplete information to the Department which was taken as the basis for preparing SCN and it was assessee's responsibility to furnish correct information.

(ii) Further scrutiny of CENVAT credit register for the period 2013-14 to 2015-16 revealed that assessee had also wrongly availed ineligible CENVAT credit on IT services of ₹ 23.17 lakh in the month of February 2015 and March 2015 even after being issued SCN by the Department. Further, it was noticed that the Department failed to incorporate the amount of ineligible CENVAT credit availed by the assessee for the said period while issuing SCN for the period from May 2014 to January 2015 as the SCN was issued in May 2015. This resulted in short raising of demand in SCN for reversal of ineligible CENVAT credit amounting to ₹ 23.17 lakh.

When we pointed this out (August 2016), the Ministry partly admitted the para (September 2017) and stated that the assessee reversed the credit of ₹ 23.17 lakh with penalty of ₹ 3.47 lakh. Ministry again stated that the assessee had given incomplete information to the Department which was taken as the basis for preparing SCN and it was assessee's responsibility to furnish correct information.

Reply is not acceptable as no action was taken by the Department to ensure the correctness of the information provided by the assessee while preparing and adjudicating the SCNs.

5.6.3 Ineffective Review of Call Book Cases

CBEC Circular No. 162/73/95-CX dated 14 December 1995 prescribes that only the following categories of cases can be transferred to Call Book:

(i) Cases in which the Department had gone on appeal to the appropriate authority;

(ii) Cases where injunction had been issued by Supreme Court/ High Court/ CEGAT etc.;

(iii) Cases where audit objections are contested; and

(iv) Cases where the Board had specifically ordered the same to be kept pending and to be entered into the Call Book.

Instructions were also issued to the Commissionerates requiring periodical review of pending Call Book items.

During scrutiny of SCNs pending in Call Book at the Large Taxpayers Unit, Bangalore, Audit noticed that 25 SCNs, involving a total demand of ₹ 9.06 crore, were pending in Call Book even though these cases were fit for adjudication as per Board instructions. Since these cases were no more valid for retention in Call Book, the Department should have removed the cases from Call Book and adjudicated.

Wrong retaining of SCNs in Call Book not only resulted in blockage of recoverable revenue, it also indicated ineffective periodical reviews of Call Book cases carried out by the Commissionerate and poor monitoring by higher authorities.

When we pointed this out (May 2015), the Department took the cases out of Call Book and adjudicated 23 SCNs during March 2016 to July 2016 where demand was confirmed partially in three SCNs (involving ₹ 25.76 lakh) and 20 SCNs (involving ₹ 5.32 crore) pertaining to single assessee were dropped. The remaining two SCNs (involving ₹ 3.49 crore) were under adjudication (January 2017).

Ministry contested the objection (April 2017) stating that out of 25 SCNs, in 24 SCNs, Department's appeal was rejected and in one case, audit objection was not admitted by the Department. Thus, delay in taking out cases from Call Book had not resulted in blockage of revenue.

Reply is not acceptable as, the issue raised by Audit is not merely blockage of revenue due to delay in adjudication, but failure of the Department in taking cases out of Call Book in time for adjudication. Whether the case is decided in favour of revenue or otherwise is known only on finalisation of adjudication process. Wherever a case is decided in favour of the Department, not

adjudicating the same timely, would lead to blockage of revenue. Moreover, retaining of SCNs in Call Book without sufficient reasons is a control lapse.

5.6.4 Loss of revenue due to demand being time barred

Section 11A of the Central Excise Act, 1944 provides that the Central Excise officer shall, within one year from the relevant date, serve notice on the person chargeable with the duty which has not been so levied or paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made. Where any duty of Excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, by the reason of fraud, or collusion; or any willful mis-statement; or suppression of facts; or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, by any person chargeable with the duty, the Central Excise officer shall, within five years from the relevant date, serve notice on such person requiring him to show cause why he should not pay the amount specified in the notice.

During Test check of files relating to adjudication in the office of the Central Excise Commissionerate Chandigarh-II for the years 2014-15 to 2015-16, it was noticed that a Show Cause Notice was issued to M/s Punjab Tractors Ltd. (SCD), Village Chappercherri, Tehsil Kharar, District Ropar demanding amount of duty of ₹ 25.40 lakh. Scrutiny of SCN revealed that a Show Cause Notice dated 27 March 2002 demanding duty of ₹ 9.10 lakh for the period from April 2001 to November 2001 on the same subject was also issued earlier. The assessee was asked to supply the correct figures for the above mentioned period and the assessee supplied (October 2002) the revised figure where the value was of ₹ 1.89 crore instead of ₹ 30.22 lakh. The assessee also requested (January 2003) to issue amended SCN on differential value.

However, the Department failed to take timely action and issued SCN for demanding duty of ₹ 25.40 lakh in August 2007, after a gap of five years which was beyond the time frame as given in the above Rule. The assessee filed reply dated 4 December 2015 stating that the SCN demanding the Central Excise duty for the period from April 2001 to November 2001 was barred by limitation. The demand was dropped by the adjudicating authority vide Order-in-Original dated 15 February 2016 on the ground that the demand of differential amount of duty had been issued even beyond the period of five years from its due date which cannot be taken as corrigendum to earlier SCN issued in March 2002. Thus delayed action by the departmental officer, resulted in loss of revenue to Government amounting to ₹ 25.40 lakh. Had the Department issued another SCN within the time frame as per extant statute, loss of ₹ 25.40 lakh to the Government exchequer could have been avoided.

This is a case of negligence on the part of departmental officer warranting action against the erring official.

When we pointed this out (April 2016), the Ministry admitted the objection (June 2017) and stated that SCN for ₹ 25.40 lakh had been issued to the assessee. Regarding negligence of departmental officer, Ministry stated that action was being initiated against the erring officer. It is, however, not understood as to how SCN can be issued again when the issue had already been declared time barred by the adjudicating authority.

New Delhi **(DWARKA PRASAD YADAV)**
Dated: 27 November 2017 **Principal Director (Goods and Services Tax-II)**

Countersigned

New Delhi **(RAJIV MEHRISHI)**
Dated: 27 November 2017 **Comptroller and Auditor General of India**