

## Chapter IV

### Monitoring mechanism for Recovery of Arrears in CBIC

#### 4.1 Introduction

Any amount recoverable from the assessee due to confirmation of demands in favour of the Department by virtue of Orders-in-Original (OIO) or further Department favourable Orders-in-Appeal (OIA), Tribunal orders, Courts' orders or grant of stay applications with condition of pre-deposits, are treated as arrears.

The process of recovery of arrears starts with confirmation of demand against the defaulter assessee and includes a number of appellate fora wherein assessee as well as Department can go for appeal.

The main statutory provisions dealing with recovery of arrears in Central Excise and Service Tax are section 11 of the Central Excise Act, 1944 (empowers Central Excise officers to take action for recovery of arrears), section 142 of the Customs Act, 1962 (which have been made applicable in Central Excise cases, vide *Notification No. 68/63-Central Excise dated 4 May 1963*), and Section 87 of the Finance Act, 1994 (which empowers the Department to take action for recovery of arrears of Service Tax).

#### 4.2 Classification of Arrears

Arrears are classified into two main categories viz. recoverable and irrecoverable arrears. All stayed arrears are irrecoverable. The recoverable arrears are further classified as restrained (Board for Industrial and Financial Reconstruction (BIFR)/ Debt Recovery Tribunal/Official Liquidator cases, pending applications for stay/ stay extension etc.), unrestrained (Cases where action under section 11 of Central Excise Act, 1944/section 87 of Finance Act, 1994/section 142 of Customs Act, 1962 has been initiated, Certificates sent to District Collector/other Customs-CE formations etc.), and fit for write-off (viz., units closed/defaulters not traceable/assets of company not available etc.).

#### 4.3 Responsibilities for Recovery and Monitoring of Arrears

The Board monitors the overall functions and performance of the field formations in recovery of arrears and fixes targets for the same. It also issues periodical instructions to the field formations to tone up the recovery process.

Chief Commissioners bear the overall responsibility of monitoring and supervising the recovery process under the respective zone.

Commissionerates, having the overall responsibility for recovery of arrears, are required to review and monitor the functions of Divisional and Range officers in this regard. Besides, they should exercise the functions for vacation of stay orders, filing for early hearing of CESTAT/Court matters, taking action for attachment of property of defaulters and follow up of cases pending in BIFR/DRT/OL etc. and watch progress and performance of Recovery Cells through monthly progress reports and take follow up action.

Divisional Officers (Assistant/Deputy Commissioner) are entrusted with supervising Range officers and to ensure that they are performing their duties in accordance with the prescribed rules/regulations/instructions.

Ranges are the lowest level field formations entrusted with the task of maintaining the records relating to arrears and appeals, initiating recovery process and submitting reports to higher authorities.

In addition, Recovery Cell operates under the supervision and control of the jurisdictional Commissioner. The major functions of Recovery Cell are to serve notice upon defaulters, attachment and sale of defaulters' property by public auction. It is also required to send a monthly progress report to the Commissionerate regarding arrears.

#### **4.4 Audit Methodology and Sample Selection**

We had examined the records related to Recovery of Arrears of Central Excise/Service Tax in FY16 to assess the level of compliance with the prescribed rules and regulations and effectiveness of monitoring and control mechanism of the department in this area. We found instances of inordinate delay in various steps involved in recovery of arrears viz. communication of OIOs to Range offices, initiation of recovery proceedings, transfer of cases to Recovery Cell and updating the status of arrear cases. We also observed absence of mechanism to know status of cases, as well as relevant records/data in Tax Arrear Recovery cell (TAR), non-formulation of strategy by zonal TAR, etc. as reported in Chapter-II of Report No. 41 of 2016 (Service Tax) and 3 of 2017 (Central Excise).

The Ministry in its action taken note had stated (May 2017) that the Board had been requested to issue clear instructions on all the issues to the field formations.

To check the current status of monitoring mechanism for Recovery of Arrears in the Department, we verified the records in Director General of Performance Management (DGPM) under CBIC and Monthly Performance

Reports (MPRs) of selected 20 Commissionerates<sup>33</sup> alongwith other relevant records. Further, in the selected Commissionerates, out of total pending 5,672 cases involving money value of ₹ 6,816.77 crore in Central Excise as on 31 March 2018, we examined 119 case files (2 per cent) involving money value of ₹ 1,217.29 crore. Similarly, in selected Commissionerates, out of total pending 12,046 cases involving money value of ₹ 13,549.19 crore in Service Tax as on 31 March 2018, we examined 154 case files (1 per cent) involving money value of ₹ 6,317.34 crore. The pending cases of arrears were generally selected on the basis of high money value and long pendency of the case.

#### 4.5 Audit Findings

We observed instances of discrepancy in data maintained at Board level and non-compliance of Board's instructions by field formations i.e. delay in communication of Orders-in-Original, non/delayed initiation of recovery proceedings, inadequate/non-pursuance of the case with Official Liquidator, non-transfer of cases to Recovery Cell etc. The observations are discussed in succeeding paragraphs.

##### 4.5.1 Performance of the Department in Recovery of Arrears

The law provides for various methods of recovery of revenues raised but not realised. These include adjusting dues against amounts, if any, payable to the person from whom revenue is recoverable, recovery by attachment, sale of excisable goods and recovery through the district revenue authority.

**4.5.1.1** Table 4.1 depicts the performance of the Department in respect of recovery of arrears of Service Tax.

**Table 4.1 Arrears realisation – Service Tax**

	(₹ in crore)			
	FY17		FY18	
	Gross Arrears	Recoverable Arrears <sup>34</sup>	Gross Arrears	Recoverable Arrears
Opening Balance	90,170	2,658	1,17,935	3,766
Addition during the year	68,634	6,176	1,01,016	11,338
<b>Total Arrears</b>	<b>1,58,804</b>	<b>8,834</b>	<b>2,18,951</b>	<b>15,104</b>
Disposal of Demands	39,006	4,285	50,172	9,013
Arrears Realised	1,894	783	2,226	1,164
Arrears Realised as % of Total Arrears	1.19	8.86	1.02	7.71
Closing Balance	1,17,904	3,766	1,66,553	4,927

Source: Figures furnished by the Ministry.

<sup>33</sup> Ahmedabad North, Aurangabad, Belagavi, Bhubaneswar, Delhi North, Faridabad, Guwahati, Hyderabad, Jodhpur, Kochi, Lucknow, Ludhiana, Madurai, Patna-I, Pune-I, Ranchi, Siliguri, Surat, Thane Rural and Visakhapatnam.

<sup>34</sup> Recoverable Arrears include cases in which appeal period is over but no appeal is filed by the party against confirmation of demand, cases decided in Settlement Commission, Units closed/assesseees not traceable, cases pending for action under section 11/Section 142 of the Central Excise Act, 1944 and Customs Act, 1962 respectively etc.

It can be seen that recovery from the recoverable arrears has decreased from 8.86 per cent in FY17 to 7.71 per cent in FY18 in respect of Service Tax. Further, recovery as per cent of gross arrears had reduced from 1.19 per cent in FY17 to 1.02 per cent in FY18.

Table 4.2 depicts the performance of the Department in respect of recovery of arrears of Central Excise.

**Table 4.2: Arrears Realisation – Central Excise**

(₹ in crore)

	FY17		FY18	
	Gross Arrears	Recoverable Arrears	Gross Arrears	Recoverable Arrears
Opening Balance	74,940	7,751	84,122	9,075
Addition during the year	37,591	5,314	56,457	9,123
<b>Total Arrears</b>	<b>1,12,531</b>	<b>13,065</b>	<b>1,40,579</b>	<b>18,198</b>
Disposal of Demands	26,252	2,756	42,293	5,762
Arrears Realised	2,079	1,234	1,790	1,124
Arrears Realised as % of Total Arrears	1.85	9.44	1.27	6.18
Closing Balance	84,200	9,075	96,496	11,313

Source: Figures furnished by the Ministry.

It can be seen that recovery from the recoverable arrears has decreased from 9.44 per cent in FY17 to 6.18 per cent in FY18 in respect of Central Excise. Further, recovery as per cent of gross arrears had reduced from 1.85 per cent in FY17 to 1.27 per cent in FY18.

Given the significant amount of arrears to be recovered, it is essential that the Board specifically focuses on legacy issues after transition to the GST regime.

Further, we worked out the gross arrears figures of Service Tax and Central Excise from the TAR monthly reports received from the Department. The closing balance of gross arrears was ₹ 1,66,553 crore and ₹ 96,496 crore for Service Tax and Central Excise, respectively, as on 31 March 2018. However, the closing balance of arrears as per TAR reports for March 2018 was ₹ 1,27,809 crore and ₹ 85,158 crore for Service Tax and Central Excise, respectively. One of the reasons for difference was that closing balance of TAR reports of June 2017 was not taken correctly in the opening balance of July 2017. The difference between closing balance of June 2017 and opening balance of July 2017 in respect of arrear in litigation was 3,534 cases involving money value of ₹ 7,059 crore for Central Excise and 3,887 cases involving ₹ 18,752 crore for Service Tax. The Ministry was asked to examine and intimate the reasons for the same.

The Ministry stated (October 2018) that significant increase in arrears is due to increased thrust of the Department in curbing evasion of duty/tax, faster adjudication of pending cases, arrears being locked up in litigation and untraceable defaulters/units. Further, regarding difference in closing balance of June 2017 and opening balance of July 2017, the matter had been taken up with the DDM.

The reply of the Ministry shows the major shortcoming in the up-keeping of the data by the Department due to which even after more than one year of the discrepancy, the Department could not locate even the Zones responsible for filing incorrect reports.

#### 4.5.1.2 Discrepancy in figures of Arrear amount in litigation as reported by DLA and TAR Report

The demand confirmed in adjudication becomes arrears of revenue. If the assessee against whom the demand is confirmed is not satisfied with the adjudication order, he can appeal against the order in appellate fora. If an assessee files an appeal, the demand involved in the case becomes Arrear in Litigation. The TAR maintains the figures of arrears amount on all India basis. Similarly, the Directorate of Legal Affairs (DLA) maintains the figures of litigation in appellate fora by the assessee as well as the Department on all India basis. As only the confirmed demand becomes arrear of revenue and only an assessee would go in appeal against the confirmed demands, it can be concluded that arrear in litigation as maintained by TAR and appeals filed by party as maintained by DLA should match but there was difference in both the sets of figures as detailed in Table 4.3.

Table 4.3 : Mis-match in respect of pendency of Arrear cases in Litigation

(₹ in crore)

Year	Central Excise				Service Tax			
	Pending Arrear in Litigation as on 31 March as per TAR Report		Party's Appeals in Litigation as on 31 March as per DLA Report		Pending Arrear in Litigation as on 31 March as per TAR Report		Party's Appeals in Litigation as on 31 March as per DLA Report	
	No.	Amount	No.	Amount	No.	Amount	No.	Amount
FY16	34,472	58,589	45,473	69,987	29,378	78,769	35,977	75,327
FY17	36,836	65,925	47,092	80,156	34,636	97,136	41,301	96,822
FY18	32,100	66,604	35,199	74,406	36,367	1,11,851	35,163	94,825

The Ministry was asked to explain the reasons for mis-match in both of these figures.

The Ministry in its reply stated (October 2018) that it was due to the fact that in TAR reports only confirmed demands are included whereas in DLA figures, party's appeals as well as Department's appeals against adjudication orders

are included. The Ministry further stated that the DDM had been requested to examine the mismatch and take the corrective action.

The reply of the Ministry is not acceptable as the figures in respect of DLA reported above includes only party's appeals which is compared to TAR figures of arrears in litigation. Hence, both should have tallied. The Ministry may reconcile these figures and report the correct position as the difference in these figures is ₹ 24,828 crore which cannot be taken lightly.

#### **4.5.1.3 Department's performance in Recovery of Arrear vis-à-vis the targets set for recovery**

The target for recovery of arrears was fixed by the Board vide letter No. CC(TAR)63/TECH/BUDGET/2015 dated 19 May 2016 for FY17 and vide letter No.CC(TAR)43/TECH/BUDGET/2016 dated 09 May 2017 for FY18. The Department had set combined target for Central Excise, Service Tax and Customs of ₹ 5,000 crore and ₹ 6,000 crore for FY17 and FY18, respectively, which was 48 percent and 47 percent of the recoverable arrears for FY17 and FY18, respectively, of Central Excise and Service Tax only.

The Department achieved the monetary target set in FY17 and achieved 86.93 per cent of the monetary target in FY18. Though 86.93 per cent of target was achieved in FY18, we observed that out of 21 Zones, 16 Zones<sup>35</sup> could not achieve their targets. The targets achieved by six Zones<sup>36</sup> were less than 50 per cent.

The Ministry accepted the facts (October 2018) in respect of 14 zones. In respect of Chennai and Mumbai zones it was stated that targets were achieved. The Ministry further stated that all efforts would be taken to improve the performance.

#### **4.5.2 Inordinate delay in Communication of Orders-in-Original (OIO)**

The Board, in its circular dated 24 December 2008 stipulated that the details of Adjudication Orders shall be entered in the Confirmed Demand Register and action taken for recovery as laid down in Chapter 18 of Part III of the CBEC's Central Excise Manual. However, the circular did not prescribe any time limit for communication of OIO to Range Office.

During our previous audit we noticed 212 cases in which there was delay in communication of OIO to the Range offices as reported in Chapter-II of CAG's Report No. 41 of 2016 (Service Tax) and Report No. 3 of 2017 (Central Excise).

<sup>35</sup> Jaipur, Ranchi, Bengaluru, Ahmedabad, Hyderabad, Vadodara, Bhubaneshwar, Visakhapatnam, Meerut, Nagpur, Chandigarh, Panchkula, Guwahati, Kolkata, Lucknow and Delhi Zone

<sup>36</sup> Chandigarh, Panchkula, Guwahati, Kolkata, Lucknow and Delhi Zone

The Ministry in its action taken note had stated (May 2017) that a recommendation had been forwarded to the Board for considering a time limit for communication of OIO to the Range offices.

We noticed that the Board did not respond to recommendation of the Ministry and did not prescribe a time limit for communication of OIO to the range office.

**In 17 Commissionerates<sup>37</sup>**, we test checked 262 OIOs involving money value of ₹ 7,229.16 crore out of which in nine Commissionerates<sup>38</sup>, in 89 OIOs (34 per cent) involving money value of ₹ 764.18 crore, the time taken beyond seven days to communicate OIOs to the Range Officers/assesseees, ranged between 1 Day to 20 Months considering, in absence of any prescribed time limit for this, one week time limit as acceptable for this communication.

This was brought to the notice of the Department/Ministry in July-August 2018. The Ministry accepted (October 2018) the facts in respect of six Commissionerates. For Belagavi Commissionerate, it was stated that there was no delay in communication of O-I-Os and for Kochi Commissionerate, it was stated that reply would follow.

Two cases are illustrated below:

- (i) Copy of the OIO passed (March 2017) in case of an assessee in Surat Commissionerate, involving revenue of ₹ 6.62 crore, was sent (March 2018) to the assessee after 12 months when the assessee made a request for it.

The Ministry accepted the fact and stated (October 2018) that the delay was due to restructuring after implementation of GST.

- (ii) In Kochi Commissionerate, in 62 cases involving revenue of ₹ 52.28 crore there was delay of 14 to 111 days in communicating the OIOs. Further, in 59 cases there was delay in passing the OIOs after the conclusion of personal hearing. The delay ranged from 10 to 543 days.

The Ministry stated (October 2018) that reply would follow.

#### **4.5.3 Non/delayed initiation of Recovery Proceedings**

The Officers of the Central Excise and Service Tax were empowered under section 11 of Central Excise Act, 1944 and section 73/section 87 of the Finance Act, 1994 to recover the arrears of revenue of Central Excise and Service Tax respectively.

<sup>37</sup> Ahmedabad North, Surat, Jodhpur, Madurai, Kochi, Faridabad, Ludhiana, Aurangabad, Lucknow, Patna-I, Ranchi, Hyderabad, Visakhapatnam, Belagavi, Siliguri, Guwahati and Delhi North.

<sup>38</sup> Aurangabad, Belagavi, Faridabad, Jodhpur, Kochi, Madurai, Lucknow, Siliguri and Surat.



If no recovery of Central Excise dues is made by the action stipulated under section 11 of the Central Excise Act, 1944, action is to be taken under the provision of section 142 of the Customs Act, 1962, (made applicable to Central Excise cases also) which empowers the Department to deduct the amount so payable from any money owing to the defaulter, to sell the goods belonging to the defaulter which are under the control of the proper officer and to take action to distrain and sell any movable or immovable property belonging to such person.

Similarly, Section 73 of the Finance Act, 1994, empowers the Central Excise Officer to serve notice to the person, chargeable with Service Tax, which has not been levied or paid or short-levied or short-paid or erroneously refunded and Section 87 empowers Central Excise officer to recover amount payable by an assessee from a third party who holds money on account thereof.

During our previous audit we noticed 86 cases in which there was delay in initiation of recovery proceedings as reported in Chapter-II of CAG's Report No. 41 of 2016 (Service Tax) and 3 of 2017 (Central Excise).

The Ministry in its action taken note had stated (May 2017) that a recommendation had been forwarded to the Board for issuing instructions to the field offices to initiate timely action for recovery of arrears and to take early recourse for coercive action.

In 18 Commissionerates<sup>39</sup>, we test checked 246 cases involving money value of ₹ 7,141.72 crore out of which in 115 cases (47 per cent) involving money value of ₹ 1,202.33 crore in 16 Commissionerates<sup>40</sup>, action for recovery under section 11 of Central Excise Act, 1944/section 142 of Customs Act, 1962 and section 73 and 87 of the Finance Act 1994, was not initiated in time. The delay was ranging between five months to 12 years.

These cases were brought to notice of the Department/Ministry in July-August 2018. The Ministry in its reply accepted the facts (October 2018) in respect of 14 Commissionerates and for Jodhpur, Belagavi and Ranchi Commissionerate stated that reply would follow. The Ministry further stated that keeping in view of the seriousness of the matter, the Board had issued two circulars (December 2017 and June 2018) whereby it had directed/instructed all field formations that more emphasis and better monitoring of tax arrears recovery is required at the Zone and Commissionerate level.

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<sup>39</sup> Ahmedabad North, Belagavi, Bhubaneshwar, Delhi North, Faridabad, Guwahati, Hyderabad, Jodhpur, Kochi, Lucknow, Ludhiana, Madurai, Patna-I, Pune-I, Ranchi, Siliguri, Surat and Visakhapatnam.

<sup>40</sup> Ahmedabad North, Belagavi, Bhubaneshwar, Delhi North, Guwahati, Hyderabad, Jodhpur, Kochi, Lucknow, Ludhiana, Madurai, Pune-I, Ranchi, Siliguri, Surat and Visakhapatnam.



Some cases are illustrated below:

i) In Surat Commissionerate, an Alert Circular was issued by the Commissioner (June 2005) mentioning that two assesseees were fraudulently passing CENVAT Credit and the said firms or their proprietors never existed in their declared registered premises/residences. However, demands of ₹ 11.81 crore and ₹ 10.53 crore respectively were confirmed (July and August 2010) by the Department after passage of more than five years from the said alert. Further, Department started issuing (September 2015 onwards) letters to the various Government authorities to ascertain whereabouts/properties of these assesseees after a further passage of more than 5 years from the demand confirmation.

Similarly, a demand of ₹ 5.03 crore was confirmed (March 2009) against another assessee in Surat Commissionerate after passage of around four years since the unit was declared (May 2005) fake/non-existent by Alert Circular, while letter was written (December 2012) by the Department to other government authorities for knowing whereabouts/particulars of the assessee after a period of more than 44 months since demand confirmation.

It may be pertinent to note that similar 43 units were identified as fake by the Department, but demands of ₹ 127.41 crore were confirmed after the gap ranging from 3 to 5 years from the date of alert which resulted in assesseees becoming untraceable and amount remained unrecovered.

Thus, it is apparent that the Department did not initiate timely necessary actions to protect the Government revenue.

ii) A demand of Central Excise duty of ₹ 6.79 crore was confirmed (June 2015) alongwith equal penalty against an assessee in Ahmedabad North Commissionerate.

After the demand was confirmed, neither any concrete action, under section 11 or section 142 of Acts stipulated above, was initiated by the Department for recovery of Government dues nor the case was transferred to Tax Recovery Cell of the Commissionerate for further proceedings in the matter. The Department though contemplated (December 2016) prosecution process against the assessee, no such action was initiated in this regard.

Thus, the Department is yet to initiate the recovery proceedings under section 11 and section 142 of the Acts stipulated above despite passage of more than 3 years.

iii) A demand of ₹ 9.46 crore and equal penalty was confirmed (September 2015) against an assessee in Surat Commissionerate. The order sent by post to the assessee returned undelivered (September 2015) and the

party was not traceable. However, Department is yet to initiate any concrete action, under section 11 or section 142 of Acts stipulated above, for recovery of Government dues.

iv) Service Tax demand of ₹ 98.26 lakh and equal penalty and interest was confirmed (October 2015) by the Department against an assessee under Guwahati CGST Commissionerate.

However, the Department neither initiated any action under section 87 of the Finance Act, 1994 nor pursued it for recovery of arrears after May 2016 despite the fact that the assessee did not file any stay application with CESTAT.

v) A demand of Central Excise duty of ₹ 5.85 crore and equal penalty was confirmed (August 2015) against an assessee in Jodhpur Commissionerate and penalty of ₹ 5.00 lakh was also imposed upon its Director.

Appeal filed by the assessee was marked for removal of defects (January 2016) and was subsequently returned by the CESTAT for non-furnishing of mandatory pre-deposit but the Department showed it as pending in CESTAT. Subsequently, Department noticed (December 2017) the fact of returning of appeal by CESTAT and then the Department contemplated (February 2018) initiation of action under Section 142 of Customs Act, 1962. However, no such action was initiated by the Department till date (August 2018).

Thus, Department was unaware of the disposal of the case for a period of more than 22 months due to lack of timely follow up of the case and yet to initiate the contemplated action, resulting in avoidable pendency.

vi) A demand of ₹ 3.69 crore was confirmed (July 2015) against an assessee in Kochi Commissionerate. The department could not serve the said OIO to the assessee till October 2015 as the whereabouts of the assessee were not available and drew (January 2016) a Mahazar (Panchnama) at the premises of the assessee after which no further recovery proceedings were initiated.

Audit verified and found that the EASIEST (departmental website) showed that the assessee was still 'active' under Ernakulam-5 Range under Kochi Commissionerate. Similar basic exercise was not carried out by the Department for tracking the assessee out.

Thus, lack of proper monitoring and follow up action for the last three years by the Department is apparent, despite involving substantial amount of revenue in this case.

The Ministry confirmed the facts in all the above cases (October 2018) and reported the efforts made by the field formations. The fact remains that significant amount of revenue could not be recovered due to slack action taken by the Department.

#### 4.5.4 Inadequate/non pursuance of the case with Official Liquidator (OL)

The Official Liquidators (OL) are officers appointed by the Central Government under Section 448 of the Companies Act, 1956 and are attached to various High Courts. OL is appointed from the date of the order of the winding up of a company and after taking “custody” of the company’s property, plays a major role to realise and distribute the assets of the company (which is about to wind up) among the creditors and debenture holders.

(i) Department filed claim of ₹ 10.51 crore of pending dues against an assessee in Ahmedabad-North Commissionerate with OL appointed (April 2001) by Gujarat High Court. Audit noticed lack of follow up by the Department with the OL as no correspondence took place for a period of more than seven years (April 2001 to November 2008) and more than three years (September 2014 to October 2017), despite involvement of significant amount of revenue.

It is pertinent to mention that the Department was required to pursue the matter more vigorously as the Department received (August 2011) the last correspondence seven years back in which it was mentioned by the OL that the payment of Department’s dues would be made on *pro-rata basis* alongwith other creditors, depending upon fund availability and intimation would be given in due course. A note submitted (December 2017) by a Superintendent after visit to OL indicated that only ₹ 15-16 crore was available now with OL which would be disbursed among remaining creditors.

Thus, it is apparent that the matter was required to be pursued vigorously for early realization of Government dues.

This was brought to notice of the Department/Ministry in August 2018. The Ministry confirmed (October 2018) the facts and reported the action taken by the field formation.

(ii) An amount of ₹ 5.10 crore and interest was pending for realization from an assessee in Surat Commissionerate, which was declared a sick unit by the BIFR and this opinion was forwarded (July 2002) by BIFR to Kolkata High Court for winding up & liquidation.

Audit noticed that in this case there was no evidence of any follow up action by the Department for a period more than 10 years (August 2002 to March 2013) seeking and registering its claim of dues with High Court or

Official Liquidator (OL), if any, appointed by the High Court. Subsequently, several correspondence and follow up action was made (April 2013 to June 2017) by the Department with the Standing Counsel at Kolkata High Court, BIFR and Kolkata Excise authority, but it was unaware whether its claim of dues had been lodged with the High Court or the Official Liquidator, if any appointed by High Court.

This was brought to notice of the Department/Ministry in August 2018. The Ministry confirmed (October 2018) the facts and reported the action taken by the field formation.

## Internal Control

### 4.5.5 Non follow up of Board's instructions issued for arrears recovery process

The Board had issued instructions for speeding up and tune up the arrears recovery process. However, we noticed that these were not properly/timely followed up by the field formations resulting in rendering these instructions/exercise infructuous. Some instances are detailed below:

(i) The Central Excise Officers have been empowered to attach and sell movable and/or immovable properties of any person who has failed to pay any sum due to Government vide Notification No. 48/97-CE (NT) dated 2 September 1997 issued under section 12 of the Central Excise Act, 1944 which made section 142 (1)(c)(ii) of the Customs Act, 1962 applicable to like matters in Central Excise. If no recovery is made by Departmental efforts, cases need to be transferred to the Recovery Cells which have empowered to take action for recovery by attachment and sale of property of the defaulter.

During our previous audit we noticed 86 cases in which there was delay in initiation of recovery proceedings as reported in Chapter-II of Report No. 41 of 2016 (Service Tax) and 3 of 2017 (Central Excise).

The Ministry in its action taken note had stated (May 2017) that a recommendation had been forwarded to the Board for issuing instructions to the field officer to initiate timely action for recovery of arrears and to take early recourse for coercive action.

During the test check of the records of 10 Commissionerates<sup>41</sup>, we observed that no arrear cases were transferred to Recovery Cell during FY17 and FY18. On further examination we noticed that out of 10 Commissionerates, in five Commissionerates<sup>42</sup>, 473 cases involving money value of ₹ 331.19 crore were

<sup>41</sup> Ahmedabad North, Bhubaneswar, Delhi North, Faridabad, Guwahati, Jodhpur, Kochi, Ludhiana, Madurai and Surat.

<sup>42</sup> Bhubaneswar, Faridabad, Guwahati, Kochi and Ludhiana.

pending for recovery for too long in MPRs and fit to be transferred to Recovery Cell as per the Board's instruction cited above but were not transferred to Recovery Cell.

This was brought to the notice of the Department/Ministry in July-August 2018. The Ministry accepted (October 2018) the facts in respect of six Commissionerates<sup>43</sup> and furnished details of the action taken by its field formations. In respect of Madurai Commissionerate, it was stated that Recovery Cell was functional in the Commissionerate. For Cochin and Delhi-North Commissionerates it was stated that reply would follow.

(ii) The Board instructed (August 2004) for constitution of a Centralized Task Force (CTF) under Chief Commissioner (TAR) consisting of Commissioners (TAR) as its nodal officers to coordinate, facilitate, monitor and oversee the efforts of Customs and Central Excise field formations, in recovery of arrears. These functions and responsibilities of Chief Commissioner (TAR) were later assigned (2015) to Directorate General of Performance Management (DGPM).

Audit noticed that the following vital functions prescribed by Board for the Task Force (now to be done by DGPM) had not been performed:

- Co-ordination between the field formations and concerned departmental representatives for out-of-turn hearing and early decisions in suitable arrears cases.
- Follow up of arrear cases passed by Tribunals favouring revenue for arrear realisation .
- Checking compliance of fulfilment of conditions where conditional stay orders were granted by competent authorities .

When we pointed this out (August 2018), the Ministry stated (October 2018) that details of Commissionerates had not been furnished.

The reply of the Ministry is not relevant to the audit observation as the observation was on functioning of DGPM.

(iii) Commissioner (TAR), New Delhi recommended (August 2017) handing over of cases of "Units closed/Defaulters not traceable" for more than 5 years to a 'Selected Preventive Team' to make all out efforts for recovery within three months and considering them for write off by March 2018, if the team gives negative response for such cases after three months after exhausting all avenues.

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<sup>43</sup> Ahmedabad North, Bhubaneswar, Faridabad, Guwahati, Jodhpur and Ludhiana.

We noticed in nine Commissionerates<sup>44</sup> that 'Selected Preventive Teams' had either not been constituted or were constituted after March 2018, the deadline prescribed for handing over suitable cases.

This was brought to notice of the Department/Ministry in July-August 2018. The Ministry accepted the facts (October 2018) and stated that corrective action would be taken.

(iv) Board's circular No. 946/2011, dated 1 June 2011 stipulates that a three member committee of Chief Commissioners and Commissioners shall be constituted to examine the proposals for write-off of irrecoverable arrears and to recommend deserving cases to the authority competent to order such write-off in terms of the Board's circular, dated 21 September 1990. Further, in the action plan for FY16, the Zonal Chief Commissioners were requested to identify all cases fit for write-off and complete the required action so that such cases could be written-off expeditiously. These instructions were reiterated in August 2016.

During our previous audit, we noticed 177 cases in which no action was taken for writing off the arrears although they have become clearly irrecoverable and were pending for long period. The Ministry in its reply stated (May 2017) that a system was already in place and cases are being recommended and considered for write-off by the Commissionerates as per the set procedure.

During our examination, we observed that in none of the selected Commissionerates any special drive to write-off the irrecoverable arrear cases was undertaken during the audit period despite the claims of the Ministry of expediting the process of writing off the arrears.

When we pointed this out (August 2018), the Ministry stated (October 2018) that details of Commissionerates had not been furnished.

The reply of the Ministry is not acceptable as we have clearly mentioned that in none of the 20 test check Commissionerates any action was taken to write off the arrears.

#### **4.5.6 Incorrect depiction in TAR Monthly Performance Report (MPR)**

We observed 11 instances in five Commissionerates<sup>45</sup> wherein lack of monitoring of the recovery cases, resulted in improper categorization/incorrect depiction of the cases i.e. difference in figures furnished to TAR and Legal Cell, non-updation of status of cases in TAR

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<sup>44</sup> Ahmedabad North, Aurangabad, Pune-I, Kochi, Patna-I, Jodhpur, Bhubaneswar, Surat and Thane Rural.

<sup>45</sup> Bhubaneswar, Jodhpur, Kochi, Patna-I and Surat.

(MPR), difference in figures of pendency of cases by the different formations of the Commissionerate etc.

These were brought to notice of the Department/Ministry in July-August, 2018. The Ministry accepted (October 2018) the facts in nine cases and in two cases it stated that there was no discrepancy.

Four cases are illustrated below:

(i) The Department confirmed an amount of ₹ 3.25 crore against an assessee in Kochi Commissionerate. CESTAT rejected the appeal (February 2007) of the assessee on non-compliance of its earlier order in October 2006. The assessee filed restoration application in 2015 and CESTAT website showed that the restoration appeal filed by the assessee was 'Dismissed' (December 2017). However, the Review Cell of the Commissionerate included this case in the list of 'CESTAT cases' and no action for recovery of Government dues had been initiated.

The Ministry stated (October 2018) that action for recovery of Government dues had been initiated now.

(ii) An assessee in Surat Commissionerate had filed (June 2017) an appeal in CESTAT against the demand of ₹ 6.62 crore confirmed by the Department. However, the case was still shown as 'recoverable arrears' as the Commissioner (Appeals) had not delivered copy of appeal to the concerned Range/Division/ Commissionerate which shows lack of intra departmental co-ordination.

The Ministry stated (October 2018) that the mistake is corrected now and maximum care would be taken to update such type of cases in the MPR in future.

(iii) Department confirmed (2007 to 2014) an amount of ₹ 9.72 crore against an assessee in Kochi Commissionerate vide seven OIOs for which orders were issued (March 2015) for attachment of movable and immovable property.

However, Department considered (January 2016) only two OIOs issued in 2013 for calculating total liability of the assessee demanding only ₹ 7.17 crore and overlooked other five OIOs involving amount of ₹ 2.55 crore and applicable interest.

This resulted in short demand of recoverable arrears to the tune of ₹ 2.55 crore and interest thereon. As recovery action by way of attachment of movable/immovable properties of the assessee has not been completed, omission of the amount would tantamount to short recovery to the tune of ₹ 2.55 crore.



The Ministry stated (October 2018) that the omitted amount had been included in the arrear report and action was being taken to include the amount in the order of attachment.

#### **4.5.7 Use of Software application by the Department to monitor Recovery of Arrears**

Audit, vide Paragraph 2.10.3 of CAG's Audit Report No. 3 of 2017 and Paragraph 2.10.2 of CAG's Audit Report No. 41 of 2016, had pointed out requirement of IT system/computers software/program as an effective tool for recovery of arrears. In response, the Ministry had replied (December 2016) that the Board has devised a Management Information System (MIS) and Stage-I of the system involving web-based utility for uploading the Monthly Progress Reports by the field formations operational from June 2015. The Ministry added that a Working Committee for implementation of second stage had been constituted wherein manual registers were to be replaced by digital registers.

However, we noticed that in none of the selected Commissionerates, the second stage of the project had been implemented even after lapse of three years from the implementation of its first stage.

The Ministry had accepted (October 2018) the facts.

#### **4.6 Conclusion**

Significant quantum of revenue is stuck in continuously mounting arrears. We had earlier highlighted (Chapter-II of CAG's Report No. 41 of 2016 and Chapter II of CAG's Report No. 3 of 2017) serious lapses in attending the same. Despite this, our concerns have not yet been attended which is apparent from the instances of shortcomings and irregularities included in this Report. Further, concerns regarding ineffectiveness of special purpose vehicles viz. Recovery Cell, Special Preventive Team etc. prescribed by the Board for toning up the recovery process and exploring potential of Information Technology as monitoring tool are also yet to be attended.