CHAPTER IV

Non- Compliance to Provisions of Customs Act, Customs Tariff Act and Tariff Notifications

4.1 Goods imported in a vessel/aircraft into India attract customs duty and unless these are not meant for customs clearance at the port/airport of arrival and are intended for transit to another customs station or to any place outside India, detailed customs clearance formalities of the landed goods have to be followed by the importers. The importer is required to file a bill of entry (BE) giving details of the cargo, imported tariff classification and applicable duty, and other required information. Under self-assessment, bill of entry can be filed electronically through ICEGATE[39] into the Indian Customs Electronic Data Interchange (EDI) system referred ICES[40]. In the non-EDI system the bill of entry is filed manually by the importer along with a prescribed set of documents.

4.2 The assessment function of the Customs authorities is to determine the duty liability taking due note of any exemptions or benefits claimed under different export promotion schemes. They have also to check whether there are any restrictions or prohibitions on the goods imported and if they require any permission/license/permit etc., and if so whether these requirements have been met. Assessment of duty essentially involves proper classification of the goods imported in the customs tariff having due regard to the rules of interpretations, chapter and sections notes etc., and determining the duty liability. It also involves correct determination of value where the goods are assessable on ad valorem basis.

4.3 Bills of Entry filed electronically into ICES through a Customs House Service Centre or web based ICEGATE are transmitted by ICES to the Risk Management System (RMS)[41]. The RMS processes the data through a series of automated steps and results in an electronic assessment. This assessment

[39] ICEGATE stands for the Indian Customs Electronic Commerce/Electronic Data interchange (EC/EDI) Gateway. ICEGATE is a web based portal through which the department offers a host of services, including electronic filing of the Bill of Entry (import goods declaration), Shipping Bills (export goods declaration), e-payment, on-line registration for IPR, Document Tracking status at Customs EDI, online verification of DEPB/DES/EPCG licences, IE code status, PAN based CHA data and links to various other important websites/information pertaining to the Customs business

[40] The Indian Customs EDI System (ICES)has two aspects: (i) Internal Automation of the Custom House for a comprehensive, paperless, fully automated customs clearance system (ii) Online, real-time electronic interface with the trade, transport, Banks and regulatory agencies concerned with customs clearance of import and export cargo through ICEGATE.

[41] Risk Management System is an IT driven system with the primary objective to strike an optimal balance between facilitation and enforcement and to promote a culture of self-compliance in customs clearances. It uses econometrical modelling to identify the relevant criteria for assessing the risk associated with trade transactions and applies criteria in a systematic manner to determine the level of risk for each transaction and assigns the levels of customs intervention according to the level of risk and available resources.

determines whether the Bill of Entry will be taken-up for action, i.e. manual appraisal by assessing officer or examination of goods, or both, or be cleared after payment of duty and Out of Charge directly, without any assessment and examination. Where necessary, RMS will provide instructions for Appraising Officer, Examining Officer or the Out-of-Charge Officer. The system of clearances of imports through RMS based ICES and/ or assessment by Customs authorities should ensure that the condition prescribed in the applicable notifications are fully met before exemptions could be granted.

4.4 Fully automated procedures of ICEGATE have facilitated comprehensive and paperless customs procedures. The pan-India transaction data generated at different Customs Commissionerate is available in electronic format in a centralised database maintained at the Directorate of Systems (DG/Systems) under CBIC. This provides a good opportunity to the Audit for hundred per cent review of data, instead of test check transactions in a few locations, and provides a high level of assurance to the Government and the Parliament on correctness of application of tax law across all Customs Commissionerates. The availability of complete data also minimizes the requirement of physical visits of Audit to the Customs premises for test check of transactions.

Data requisitioned by audit for import and export transactions in 67 Commissionerates for the year 2017-18 was received with much delay from CBIC, and that too with many gaps and deficiencies. The deficiencies were brought to the notice of the CBIC in February 2019, for which the response is still awaited.

In the absence of full data, the conclusions in this chapter on compliance audit were based on limited audits carried out in the field by physically visiting the 38 Commissionerates. Audit has, to the extent possible and based on the findings in test check, quantified total number of transactions at risk, based on the pan-India data that had been provided by the department. The range of audit findings noticed even in the test check point to systemic deficiencies that need to be addressed by the department.

4.5 Audit Sample: During 2017-18, a total of 46.04 lakh BE and 74.68 lakh Shipping Bill (SB) were generated, out of which Audit selected a sample of 4.04 lakh BE (8.77 per cent) and 1.62 lakh SB (2.17 per cent). Significant audit observations with revenue implication of ₹ 10 lakh or more noticed during test check of import/export documents in the Customs Commissionerates are included in this chapter.

4.6 The cases of non-compliance noticed during audit could be broadly categorized as follows:

IV. Incorrect application of General exemption notifications

V. Misclassification of imports

VI. Incorrect levy of applicable levies and other charges

4.7 Incorrect application of General exemption notifications

Government, under section 25 (1) of the Customs Act, 1962 is empowered to exempt either fully or subject to such conditions as may be stipulated in the notification, goods of any specified description, from the whole or any part of duty of customs leviable thereon.

Compliance audit of 14 Commissionerates conducted during April to March 2018, brought out 10 cases of incorrect grant of exemptions, on transactions assessed either through RMS or manually by customs authorities, each involving revenue implication of₹ 10 lakh or more, having total revenue implication of ₹ 5.33 crore. Individual cases of incorrect grant of exemption of values less than ₹ 10 lakh have been reported to the local Commissionerates through field inspection reports. Five cases are discussed in the following paragraphs and remaining five cases involving revenue of ₹ 1.62 crore which have been accepted by the department and recoveries made/recovery proceedings initiated are mentioned in **Annexure 8.**

4.7.1 Short levy of Basic customs duty (BCD) on import of "Ink cartridges for use in printers for computers" due to lack of clarity in the notifications

The Basic customs duty (BCD) on "Ink cartridges for use in printers for computers" classifiable under Customs tariff heading (CTH) 84439951/84439952 was reduced to five per cent vide notification no.50/2017-cus dated 30 June 2017. On the same day, notification no.56/2017-cus dated 30 June 2017 was issued which increased BCD on goods falling under CTH 84439951/84439952 i.e. Ink cartridges with and without print head assembly to 10 per cent with effect from 1 July 2017. However, the notification did not refer notification issued earlier (i.e. 50/2017-cus) and hence lacked clarity as to which notification shall prevail for assessment of imports.

Audit carried out test check of bills of entry (BsE) in respect of import of Ink cartridges under CTH 84439951/84439952 made through Nhava Sheva JNCH, Mumbai Zone II and Air Cargo Complex (ACC), Mumbai Zone III vis-à-vis application of the above-mentioned notifications no.56/2017-cus and no.50/2017-cus dated 30 June 2017 to assess whether exemptions had been applied correctly.

Audit scrutiny revealed that during the period July 2017 to February 2018, a total of 1113 BsE were filed pertaining to import of Ink cartridges through

Nhava Sheva JNCH and ACC Custom houses. In 1112 BEs there was no mention that the item imported was to be used in printers for computers. Out of total 1112, 943 BsE (85 per cent) were provisionally assessed while 169 BsE were finally assessed.

In 169 BsE finally assessed, BCD was levied at the rate of 10 per cent in 122 BsE while in remaining 47 BsE duty was levied at five per cent instead of 10 per cent resulting in short levy of duty of ₹ 1.85 crore. Thus, due to lack of clarity in the notifications as to which notification would prevail for levy of duty on import of Ink cartridges for use other than computer printers resulted in short levy of duty of ₹ 1.85 crore.

The outcome of another 943 BsE which were provisionally assessed at the time of audit is awaited (October 2019).

The audit observation was communicated to the respective Commissionerates in September 2017/January 2018/February 2018. In reply, JNCH Commissionerate initially stated (November 2017) that as per notification no.50/2017-cus (serial no.230), the duty on the imported items has been correctly levied at the rate of five per cent. Subsequently the Commissionerate stated (November 2018) that a SCN for ₹ 23.49 lakh in respect of two consignments has been issued to an importer. Further progress is awaited (October 2019).

The Commissionerate Air Cargo Complex (ACC), Mumbai stated (February 2018) that a less charge demand memo for ₹ 51.67 lakh has been issued to the importer.

The fact that department had provisionally assessed majority of BsE(983), and had levied duty at the rate of 10 per cent in the case of 122 cases and at five per in other 47 cases, indicated that there was no clarity on the rate of duty applicable on ink cartridges after issue of notification no.56/2017-cus and department was adopting inconsistent approach in assessment of such imports.

Ministry of Finance, Department of Revenue, while issuing notification no.56/2017 dated 30 June 2017 ought to have made reference to earlier notification no.50/2017-cus issued on the same day, clarifying the applicable rate on ink cartridges imported under both notifications as they covered commodities under the same Customs tariff heading.

Apart from the cases test checked in audit, analysis of data on imports during 2017-18 revealed that 1202 similar Ink cartridges imported through Mumbai (Air), Mumbai-Nhava Sheva, Kolkata (Air & Sea), Bangalore (Air), Delhi (Air), ICD, Tughlakabad, Chennai (Air & Sea)and Katupalli, Tamil Nadu during 2017-18 were allowed benefit of exemption notification 50/2017-cus. Based on

the audit observation involving detailed examination of approximately 50 per cent of total BsE involved in these imports, the correctness of application of notifications in all other cases need to be examined by the Board.

The DAP was issued to the Ministry in October 2018, their response is awaited (October2019).

4.7.2 Short levy of Basic customs duty (BCD) due to incorrect exemption granted for import of research equipment meant for Public funded research centres

Public Funded research institutions or a university or an Indian Institute of Technology or Indian Institute of Science, Bangalore or a Regional Engineering College, and Regional Cancer Centre other than a hospital are allowed import of research equipment at concessional rate of BCD subject to the conditions specified, (notification no.51/1996-cus dated 23 July 1996). Further, as per explanation provided in the notification "Hospital" includes an Institution, Centre, Trust, Society, Association, Laboratory, Clinic or Maternity Home which renders medical, surgical or diagnostic treatment. The exemption to the Regional Cancer Centre is available which is registered with the Government of India, in the Department of Scientific and Industrial Research and the importer produces a certificate to this effect from an officer not below the rank of a Deputy Secretary in the concerned Department.

A cancer hospital at Patna run by a non-profit trust imported (June/July 2016) three consignments of Linear Accelerator and its parts used for radiotherapy valued at ₹ 7 crore through Commissionerate of Customs, Kolkata Port. The imported goods were cleared at concessional rate of BCD of 5 per cent under aforesaid notification, instead of applicable rate of 7.5 per cent.

Audit scrutiny revealed that the exemption under the aforesaid notification was incorrectly granted since the assessee was not registered as Regional Cancer Institute with the Government of India, in the Department of Scientific and Industrial Research. Hence it did not meet the criteria laid down in the aforesaid notification. Incorrect grant of notification benefit resulted in short levy of duty of ₹ 96.65 lakh.

On this being pointed out (July 2017), the Commissioner of Customs (Port), Kolkata authorities issued (December 2017) a demand notice to the importer.

Analysis of import data during 2017-18 revealed that Measuring instruments, laptop, medical equipment, video camera, operating table light, Gas chromatograph etc. were imported by four hospitals through Bombay (Air), Nhava Sheva, Kolkata (Air) and Cochin (Air) during 2017-18 and were allowed benefit of exemption notification 51/1996. Board needs to examine these

imports to ensure that no revenue has been lost by granting undue benefit of duty concessions on these imports.

The DAP was issued to the Ministry in June 2018, their response is awaited (October 2019).

4.7.3 Short levy of Basic customs duty (BCD) due to irregular concession on import of "Vegetable fats and oils" for industrial use cleared through RMS

As per the notification no.12/2012-cus (serial no.58), import of 'Vegetable oil' (other than refined and edible grade) classifiable under Customs tariff heading (CTH) 1509/1515 is not eligible for concessional rate of basic customs duty (BCD).

Audit findings on incorrect application of notification benefits to imports of vegetable oil meant for industrial use were reported in Audit Report No.1 of 2017 (paragraph no.6.2) which were accepted by the Ministry.

A test check of similar imports during 2017-18 revealed that M/s A and 10 other importers had imported (April 2015 to March 2017) 30 consignments of 'Different vegetable fats and oils' for industrial use through ACC, Mumbai. The imported goods were classified as 'raw material for cosmetic use/industrial use'.

The department incorrectly allowed the benefit of aforesaid notification and cleared the goods after levying BCD at concessional rates of 7.5 percent/15 percent/20 percent instead of applicable 100 percent. The misclassification of imported goods under edible grade and incorrect availment of exemption led to short levy of duty amounting to ₹ 39.84 lakh.

Audit noticed that these imports were subject to RMS based clearance, which indicated that the notification conditions were not correctly incorporated in the system, even though a similar finding reported in the earlier Audit Report had been accepted by the Ministry with an assurance to take corrective measures.

On this being pointed out (August to October 2017), the department stated (October/December 2017) that less charge cum demand notices have been issued to all the importers and reported (April 2018) recovery of ₹ 1.79 lakh from one importer. Apart from the cases test checked in audit, analysis of data on imports during 2017-18 revealed that 21 similar imports imported through Bangalore (Air),Delhi(Air), Mumbai (Nhava Sheva) and Mumbai (Air) for Cosmetic/industrial purposes were allowed benefit of exemption notification. Board may examine these imports and take corrective action.

The DAP was issued to the Ministry in October 2018, their response is awaited (October 2019).

4.7.4 Short levy of Basic customs duty (BCD) on prawn feed imports cleared through RMS

In terms of serial no.107 of notification no.12/2012-cus dated 17 March 2012 prawn feed, shrimp larvae feed and fish feed in "pellet form" classifiable under Customs tariff heading (CTH) 230990 are leviable to BCD at the rate of 5 percent.

M/s B India Ltd. and one another, imported (April 2016 to March 2017) four consignments of "Prawn/Shrimp feed" valued ₹ 1.13 crore through Air Customs, Chennai which were classified under CTH 23099031 as 'Prawn and shrimps feed' and cleared through RMS to concessional BCD at 5 percent in terms of aforesaid notification.

Audit noticed that the imported goods were not in "pellet form" and hence the exemption extended was not in order and BCD was leviable at the rate of 30 percent. The incorrect extension of notification benefit had resulted in short levy of duty ₹ 29.15 lakh.

On this being pointed out (June 2017/June 2018), the Ministry/department reported (August/December 2018) issue of SCN to M/s B India Ltd and recovery of ₹ 14.20 lakh from another importer.

Since the imports were subject to RMS based clearance it is evident that the RMS was unable to apply the notification conditions indicating that the business rule mapping in RMS was insufficient.

Apart from the cases test checked in audit, analysis of data on imports during 2017-18 revealed that 122 similar imports imported through Nhava Sheva, Chennai(Air & Sea),Hyderabad and Hyderabad (Air) were allowed benefit of exemption notification. Board needs to examine these imports and take corrective action.

4.7.5 Short levy of IGST due to application of incorrect rate on import of Speaker/Headphones

Parts of speakers, headphones, earphones or amplifier etc. are classifiable under Customs tariff heading (CTH) 85189000 and attract IGST at the rate of 28 percent vide serial no.148 of Schedule IV of notification 1 Integrated Tax (Rate) dated 1 July 2017.

M/s C Ltd. and two others imported (July to September 2017) seven consignments of parts of speakers, headphones etc through ICD, Tughlakabad. The imported goods were correctly classified under CTH 85189000 –as parts

but IGST was incorrectly levied at the rate of 18 percent (vide serial no.380 of Schedule III of notification 1 Integrated Tax (Rate) dated 1 July 2017) instead of applicable rate of 28 percent. Thus, incorrect application of IGST rate resulted in short levy of duty of ₹ 20.28 lakh.

On this being pointed out (October 2018), Department of Revenue (DoR), Ministry of Finance reported (June 2019) recovery of ₹ 20.28 lakh along with interest of ₹ 3.16 lakh from the importers.

4.8 Misclassification of Goods

Classification of items imported is governed under the provisions of Customs Tariff Act, 1971 and various notifications issued from time to time. Levy of applicable duties is dependent on classification applied to the imported items.

During test check of records, Audit noticed 21 cases of short levy/non-levy of Customs duties due to misclassification of imported goods each involving revenue implication of ₹ 10 lakh or more, having total revenue implication of ₹ 9.66 crore. Individual cases of misclassification of imports with money value less than ₹ 10 lakh have been reported to the local Commissionerates through field inspection reports.

Out of 21 cases of misclassification mentioned in the Chapter, the department has accepted 18 cases involving ₹ 4.84 crore and recoveries of ₹ 1.74 crore are made in seven cases **(Annexure 9)**. The other three cases are discussed in this chapter.

4.8.1 Seeds of herbaceous plant principally cultivated for flowers misclassified as "Other seeds"

According to Customs tariff, seeds of herbaceous plants cultivated principally for their flowers are classifiable under CTH 12093000 and leviable to basic customs duty (BCD) at the rate of 15 per cent (serial no.41 of the notification no.12/2012-cus dated 17 March 2012).

Cases of misclassification of seeds of herbaceous plants were reported in the last year Audit Report (Para No. 6.3 of AR No. 1 of 2017). Ministry had accepted the audit observation and assured (May 2017) that all field formations are being sensitized

During test check of BsE audit noticed that thirty two consignments of 'Flower seeds of various herbaceous plants (Marigold, Tagetes etc.) for sowing' imported (January 2016 to September 2017) by six importers through Air Cargo Complex (ACC), Mumbai were mis-classified as other vegetable seeds/ other seeds under CTH 12099190/12099990 and duty was assessed at concessional rate of 5 per cent (serial no.42 of notification no.12/2012-cus dated 17 March 2012).

As the imported items were seeds of herbaceous plants for sowing, cultivated principally for flower purpose, these should have been appropriately classified under CTH 12093000 and assessed to BCD at the rate of 15 per cent. The misclassification resulted in short levy of duty of ₹ 2.28 crore.

On this being pointed out (August 2017), the department stated (October 2017) that less charge memo has been issued to four importers. The DAP was issued to the Ministry in June 2018, their response is awaited (October 2019).

Analysis of imports data revealed that 89 similar imports were made through Bombay Air cargo during 2017-18 and were classified under CTH 1209 and exempted from or levied BCD at the rate of 5 per cent. Board may examine these imports and take corrective action**.**

4.8.2 Short levy of duty due to misclassification of 'Seaweed Extract Powder'

In terms of Rule 3 (a) of 'Rules for the interpretation of the schedule to Customs tariff Act, 1975' while adopting the classification of items for tariff purposes, the heading which provides the most specific description shall be preferred to the headings providing a more general description.

Accordingly, 'Plant growth regulators' which are applied to alter the growth process of a plant so as to accelerate or retard growth, enhance yield, improve quality or facilitate harvesting etc. are to be classified under CTH 38089340. There are currently five recognized groups of 'Plant growth regulators' also called plant hormones: auxins, gibberellins, cytokinins, abscisic acid (ABA) and ethylene.

Seaweed and seaweed derived products such as 'Seaweed extract powder' derived from vegetable seaweed contains sufficient amount of oceanic bio-active matter and used as bio stimulants in crop production due to presence of multiple growth regulators such cytokinin, auxins, gibberlline etc. as well as presence of macro nutrients which are necessary for plant growth and development. Seaweed extract powder is used as plant growth promoter for all kinds of plants and therefore, in terms of aforesaid interpretation rules is classifiable under CTH 38089340 and attracts basic customs duty (BCD) at the rate of 10 per cent, additional duties of customs equivalent to excise duty at 12.5 per cent.

Eighteen consignments of 'Soluble seaweed extract powder' were imported (January 2016 to March 2017) by seven importers from United States, Norway and Canada through JNCH, Mumbai. The goods were incorrectly classified under CTH 31010099 as 'animal and vegetable fertilizers' produced by the mixing or chemical treatment of animal or vegetable products and assessed to BCD at the rate of 7.5 per cent and additional duties of customs at nil rate

instead of levying BCD and CVD at 10 per cent and 12.5 per cent respectively. The misclassification resulted in short levy of duty of ₹ 1.76 crore.

Analysis of imports data revealed that 48 similar imports made through JNCH, Mumbai during 2017-18 were classified under CTH 3101/3808 and levied BCD at the rate less than 10 per cent.

Since the BsE test checked by audit had been facilitated through RMS without detecting misclassification, it is indicated that RMS rules are not sufficient to distinguish the classification criteria for CTH 3101 and 3808. Board may examine these imports and take corrective action.

On this being pointed out (April 2017), the department stated (May/September 2017/October 2018) that show cause notices have been issued to five importers. Reply in respect of other importers is awaited (October 2019).

4.8.3 Brush cutters, reapers and parts thereof misclassified as mechanical appliances for dispersing or spraying liquids/Harvesting or threshing machinery

As per Harmonised System of Nomenclature (HSN) note under CTH 8433, portable machines for trimming lawns, grass and brush cutters having self-contained internal combustion engine mounted on a light metal frame and equipped with cutting devices, have been excluded for classification under CTH 8433 and are classifiable under CTH 84672900 and their parts are classifiable under CTH 84679900. The subject goods are leviable to additional duty of customs at the rate of 12.5 per cent.

Misclassification of grass and brush cutters was pointed out in the previous year Audit Report (Para No. 6.4 of AR No. 8 of 2015), which had been admitted by the Ministry.

Twenty two consignments of brush cutters, grass/weed cutters of various models and parts thereof were imported by nine importers through Chennai, Sea Commissionerate. The imported goods were incorrectly classified under different headings like 8424/8432/8433 of the Customs tariff as Agriculture/ Horticulture/Harvesting machinery and their parts instead of under CTH 8467 and cleared at nil rate of additional duty of customs. The misclassification resulted in short levy of duty of ₹ 77.85 lakh.

Audit noticed that most of the BsE for these imports were subject to RMS based assessment.

On this being pointed out (November 2017), the department reported (October 2018) recovery of ₹758 in one case. Reply in respect of remaining importers is awaited (October 2019). Analysis of imports data revealed that 33 similar imports

made through Mumbai (Air & Sea), Chennai (Sea), Dadri and Kolkata (Sea) ports during 2017-18 were misclassified under CTH 8479, 8409, 8433 and exempted from duty. Board may examine these imports and take corrective action.

4.9 Short/non recoveries of applicable levies and other charges

Test check of records (November 2016 to March 2018) revealed 16 cases each involving revenue implication of ₹ 10 lakh or more where imports were incorrectly assessed. The total revenue implication was ₹ 73.10 crore. Out of 16 cases, the department has accepted 12 cases involving ₹ 37.67 crore and recoveries are made/recovery proceedings initiated **(Annexure 10)**.The other four cases are discussed in the succeeding paragraphs.

4.9.1 Imports of motor spirit cleared without levying additional duty of customs

"Alkylate", also known as "green petrol" is 99 per cent cleaner than regular petrol and is used to run boat engines, motorbikes, go-karts, mopeds etc. It is classifiable under Customs tariff heading (CTH) 27101219 as "other motor spirits" of the Customs tariff and leviable to additional duty of customs at the rate of ₹ 6 per litre in terms of notification no.6/2015-cus dated 1 March 2015.

An importer imported (January 2017) two consignments of "Alkylate" valued at ₹ 111.86 crore through Sea Customs, Chennai. The goods were correctly classified under CTH 27101219 – "other motors spirits" but additional duty of customs at ₹ 6 per litre, applicable to petrol were not levied. The non-levy of additional duty of customs resulted in short levy of duty of ₹ 17.60 crore.

On this being pointed out (July 2017), the department stated (October/November 2017) that demand notice has been issued to the importer and adjudication proceedings were in progress.

Analysis of ICES data revealed that two similar imports made through Bombay (Air), Nhava Sheva during 2017-18 were incorrectly assessed under CTH 27101960/27102000. Board may examine these imports and take corrective action.

The draft audit paragraph was issued to the Ministry in June 2018, their response is awaited (October 2019).

4.9.2 Short insurance taken by the custodian of Inland Container Depot (ICD)

Regulation 5 (1) (iii) of Handling of Cargo in Customs Area Regulations, 2009 (HCCAR) provides that Customs Cargo Service Providers (CCSPs) shall provide, to the satisfaction of the Commissioner of Customs, insurance for an amount equal to the average value of goods likely to be stored in the customs area based

on projected capacity and for an amount as the Commissioner of Customs may specify having regard to the goods which are already been insured by the importers or exporters.

The Central Board of Indirect Taxes & Customs (CBIC) has clarified, vide its circular no.32/2013-cus dated 16 August 2013, that the amount of insurance to be provided by CCSPs should be equal to the average value of goods likely to be stored in the customs area for a period of 30 days (based on the projected capacity) and for an amount the Commissioner of Customs may specify having regard to the goods already been insured by the importers or exporters. Further, the CBIC vide its circular no.42/2016-cus dated 31 August 2016 amended the amount of insurance to be provided equal to the average value of goods likely to be stored in the Customs area for a period of 10 days.

Audit scrutiny of cargo handled revealed that during the year 2016-17 ICD, Agra, handled import cargo to the value of ₹ 39.58 crore and export cargo amounting to ₹ 1311 crore. The custodian has taken the insurance of ₹ 20 crore[42] in relation to cargo & containers including loss/damage to accessories and towards air cargo consignments for 2017-18. However, as per aforesaid CBEC circulars M/s CONCOR, the custodian, was required to take insurance for 2017-18 for ₹ 36.99 crore[43] (on the average value of good for 10 days) based on the value of handled import and export cargo for the period 2016-17. Hence, the amount of insurance taken by the custodian was short by ₹ 16.99 crore[44] for the year 2017.18.

On this being pointed out (February/March 2018), the Commssionerate accepted (October 2018) that the Custodian had taken short insurance for covering liabilities to the Customs and the Custodian at ICD, Agra have been asked to take insurance Policy as per Board circular No. 42/2016-cus dated 31 August 2016.

The draft audit paragraph was issued to the Ministry in October 2018, their response is awaited (October 2019).

4.9.3 Short levy of basic customs duty on Mobile/smart phones imports

Telephones for cellular networks or for other wireless networks classified under CTH 85171210/85171290 are leviable to basic customs duty (BCD) at the rate of 15 percent notification no.91/2017-cus dated 14 December 2017.

M/s D India Private Limited and M/s E Limited imported (December 2017) three consignments of mobile/smart phones through Air Cargo Complex (ACC),

[42] In relation to cargo & containers including towards loss/damage to accessories: ₹ 15 crore + towards air cargo consignment: ₹ 5 crore (total ₹ 20 crore)

[43] (39.58+1310.65)X10/365=₹ 36.99 crore

[44] ₹ 36.99 crore - ₹ 20 crore = ₹ 16.99 crore

Mumbai Zone III. The goods were classified under CTH 85171210/85171290 but cleared levying BCD at the rate of 10 percent instead applicable rate of 15 percent. This resulted in short levy of BCD to tune of ₹ 58.76 lakh. Audit noticed that BEs for all these imports was facilitated through RMS. Short levy of duty despite correct classification of imported items indicated that the system was not updated with the enhanced applicable rate of duty.

On this being pointed out (January/March 2018) the department reported (April 2018) that differential duty of ₹ 47.24 lakh and interest of ₹ 1.90 lakh has been recovered from M/s D India Private Limited. While in respect of imports made by M/s E Limited, the department stated that goods were already assessed with 15 percent BCD, hence no differential duty is required to be paid by the importer. The department reply is not acceptable because on subsequent re-verification from the records, audit noticed that the bills of entry in respect of M/s E Limited were assessed with 10 percent BCD.

Analysis of ICES data revealed that in 17 similar imports made through Mumbai (Air), Bangalore (Air) and Delhi (Air) during 2017-18, BCD was levied at 10 per cent instead of applicable rate of 15 per cent. Board may examine these imports and take corrective action.

The DAP was issued to the Ministry in June 2018, their response is awaited (October 2019).

4.9.4 Non levy of CVD on import of the parts of an equipment/component meant for wind operated electricity generators

Casting for wind-operated electricity generators whether or not machined falling under CTH 84834000, 85030010 and 85030090, when originating in or exported from the Peoples Republic of China are leviable to prescribed rate of CVD under customs notification no.1/2016 (CVD) dated 19 January 2016.

M/s F India Industrial Private Limited and two others imported (June 2016 to February 2017) from China 10 consignments of casting parts of wind-operated electricity generators through Air Cargo Complex (ACC), Mumbai. The department classified the imported goods under CTH 84834000, 85030010 and 85030090, but cleared these goods without levying prescribed CVD. This resulted in non levy of duty of ₹ 25.46 lakh. Audit noticed that BEs for all these imports was facilitated through system.

On this being pointed out (August/November 2017), the department reported (November 2017) that less charge demand memos have been issued to all importers.

Analysis of ICES data revealed that in 120 similar imports made through Chennai (Sea) and Krishnapatnam Port during 2017-18 CVD was not levied. Board may examine these imports and take corrective action.

The draft audit paragraph was issued to the Ministry in August 2018, their response is awaited (October 2019).

4.10 Other Irregularities

Incorrect sanction of brand rate of drawback for exports

Fixation of brand rate of drawback is inter alia subject to satisfaction of Rule 8 (2) of drawback rules which stipulates that the free on Board (FOB) value of export goods should be more than Cost Insurance freight (CIF) of imported inputs which are declared to have been utilized for the manufacture of the export goods meaning thereby that there was value addition to the imported inputs.

4.10.1 M/s G in Kerala had filed application (September 2016) for fixation of brand rate of Drawback under Rule 7 (1) of the Customs, Central Excise and Service Tax drawback rules 1995 in respect of the 2700 Kgs valued at ₹ 45.20 lakh for "Paprika Oleoresins" classified under CTH 33019029 exported in August 2016. The 2700 Kgs of the export product was produced by blending with indigenous 595.60 Kgs of Paprika Oleoresin valued at ₹ 1.40 lakh purchased locally with 2104.40 Kgs of refined Paprika Oleoresin manufactured out of imported 2146.60 Kgs of Crude oleoresin valued at ₹ 38.59 lakh.

The department sanctioned (April 2017) drawback of ₹ 16.01 lakh to the exporter. Since the party had applied under Rule 7 of Drawback Rule 1995 for brand rate fixation only against import duty paid on inputs, it is only that portion of the FOB value of export goods proportionate to the quantity of imported goods utilized in manufacturing the export goods that can be considered for determining the value addition.

While determining value addition for the fixation of brand rate drawback, the purchase cost of indigenous oleoresin (₹ 1.40 lakh) was directly deducted from the FOB value (in rupees), instead of proportionate FOB value of indigenous oleoresin (₹ 9.97 lakh[45]). The balance figure was considered for determining value addition which showed a positive value addition which is incorrect.

Audit scrutiny revealed that the value addition was negative when FOB value of 2104.40 kgs of exported product Paprika Oleoresin was compared with the CIF value of imported raw material 2146.40 Kgs. The proportionate FOB

[45] (FOB value of the 2700 kg of export product ₹ 45.20 lakh) x 595.60 kg (indigenous input) / 2700 (Total qty exported) = ₹ 9.97 lakh.

value of 2104.40 Kgs of exported product was ₹ 35.23 [46] lakh against c.i.f. value of imported raw material ₹ 38.59 lakh[47] indicating negative[48] value addition. Accordingly, brand rate drawback of ₹ 16.01 lakh sanctioned to the exporter was irregular.

On this being pointed out (April/May 2017), the department intimated (July 2017) the stand taken by the firm which stated that indigenous Paprika Oleoresin (595.60 Kg) used for blending the export product has not undergone any process and as there was no value addition therefore its procurement cost (₹ 1.40 lakh) has been deducted from the total FOB value (₹ 45.20 lakh) to calculate value addition for imported raw material used (2104.40 Kg) in the exported product.

The reply is not tenable because the term 'manufacture' has been defined in Rule 2 (e) of drawback Rules, 1995 as including all processing of or any other operations carried out in the goods. Blending for standardization is invariably considered as a process qualifying the definition of manufacture hence proportionate FOB value of indigenous Paprika Oleoresin (₹ 9.97 lakh) used for blending should be deducted from fob value of the export product instead of its procurement cost (₹ 1.40 lakh).

Moreover, the proportionate FOB value of 2104.40 Kg export product (Paprika Oleoresin) was ₹ 35.23 lakh only as against ₹ 43.40 lakh considered by the department.

In response to audit rejoinder issued (March 2018), the department reported (May 2018) that the disbursement of brand rate drawback has been withheld and a show cause notice was issued (April 2018) to the exporter.

The Ministry in their response (January 2019) not accepting the audit observation stated that Brand Rate fixation is subject to satisfaction of Rule 8 (2) of Drawback Rules 1995 read with the Board circular No. 14/2003-cus dated 6 March 2003, which stipulates that the FOB value of export goods should be more than the CIF value of the imported inputs declared to have been utilized. They further stated that apportioning of FOB value in proportion to quantity of imported and indigenous inputs will not be appropriate as this will disregard the value addition happening due to blending activity.

Ministry's reply cannot be accepted since audit is not disputing the applicability of Rule 8 (2) and Board's circular, but objecting to the manner of calculation of FOB value of 2104.40 Kg of export product (Paprika Oleoresin). The Ministry

[46] FOB value of 2700 kgs of Paprika Oleoresins ₹ 45.20 lakh, Proportionate value of 2104.4kgs= (45.20 x 2104.40)/2700 = ₹35.23lakh.

[47] CIF value of 2146.40 kgs (2104.4 kgs + 42 kgs of wastage generated) of Paprika Oleoresins=₹ 38.59lakh

[48] Value addition = {(FOB-CIF value) / CIF value} *100 i.e.{ ₹35.23 –₹ 38.59/ 38.59)*100 = (-) 8.7 %

has already accepted that value addition happened due to blending of the indigenous inputs. Thus, FOB value of indigenous inputs (595.60 kg) should have been apportioned in the same quantity to arrive at the FOB value of the imported inputs used which resulted in negative value addition.

4.10.2 Over-assessment of customs duty on imported goods

Central Board of Indirect Taxes and Customs (Board) in terms of section 14 (2) of the Customs Act 1962, has fixed tariff values for betel nut vide notification no.36/2001-cus (NT) dated 3 August 2001, which are revised from time to time through amending notifications. Thus, items for which tariff values are fixed, are to be assessed with reference to such tariff value only.

Audit scrutiny of manually assessed Bills of entry filed at Zokhaw Thar Land Customs Stations (LCS) under Aizwal Customs Division of Preventive Commissionerate of Customs, NER, Shillong, revealed that in 214 cases of import of Betel nuts during December 2013 to November 2015, the department over assessed the applicable customs duty due to incorrect calculation of the Assessable value (AV) adding insurance and landing charges to the tariff value, instead of treating the tariff value itself as the AV. This resulted in excess levy of customs duty amounting to ₹ 16.76 lakh.

On this being pointed out (September 2016), the Commisionerate authorities stated (September/November 2016) that since invoice value of all the objected BsE were more than tariff value, same were taken while arriving at the AV by including insurance and landing charges as done usually in assessing the customs duty on imported goods and that there was no claim for refund of excess duty recovered in terms of section 27 of Customs Act, 1962.

The Commissionerate's reply was not tenable because customs duty was to be levied with reference to tariff value of the imported goods fixed by the Government and the assessing officer should have done due diligence to assess such imports.

The Board subsequently accepted (March 2019) the audit observation in case of the Preventive Commissionerate of Customs NER Shillong.

Data analysis of ICES revealed that in 31 similar imports made through Nhava Sheva and Chennai (Sea) during 2017-18 tariff value was not applied. Board may examine these imports and take corrective action.

4.11 Conclusion

This Chapter highlights cases of non-compliance to the extant notifications, applicable customs tariff, duties and levies, noticed by Audit in the assessments done of the imports, through a test check of sample of 3107 BsE and other

supporting documents. The revenue of ₹ 88.42 crore was at risk either due to non/short levy of duty due to incorrect application of exemption notifications, misclassification of imported items or incorrect levy of duty, taxes and fees.

The Ministry/department has accepted 41 cases and has effected recovery of ₹ 6.57 crore at the time of finalisation of this report. Ministry's/Department's response was awaited in 8 cases out of a total of 49 cases reported in this Chapter at the time of finalisation of the Report.

Though the Ministry has taken corrective action to recover duty in many cases, it may be pointed out that these are only a few illustrative cases. There is every likelihood that such errors of omission and commission, whether in RMS based assessments or manual assessments, may exist in many more cases. Audit has, wherever applicable, attempted to quantify potential risk to revenue by ascertaining the total universe of similar transactions by using the import data. The department is required to review all the transactions which may be at risk of loss of revenue, including the ones that have been quantified by audit based on analysis of CBIC data.

It is pertinent to note that a large number of BsE examined by audit in test check had been assessed through the RMS which indicated that the assessment rules mapped into the RMS to facilitate system based assessments were inadequate.

The process of mapping and updating of risk parameters in the RMS may need to be reviewed.