

CHAPTER III

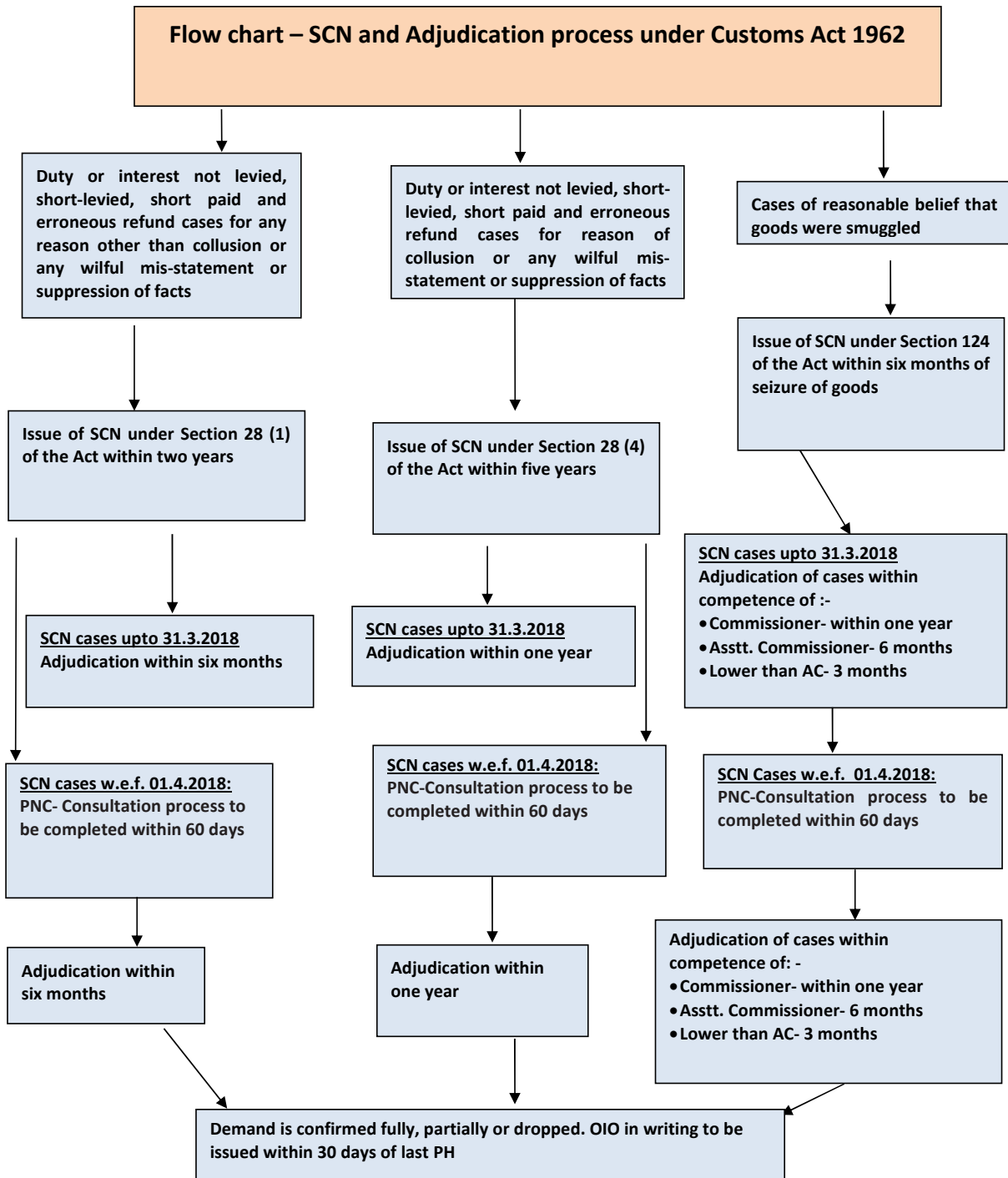
Subject Specific Compliance Audit on Show Cause Notices and Adjudication process

3.1 Introduction

An SCN is issued when the Department contemplates any action prejudicial to the assessee, giving him an opportunity to present his case. SCN is to be served under Section 28(1) of the Act, in the cases where Customs duty has not been paid or short paid or erroneously refunded within two years from the relevant date in normal cases (within one year up to 13 May 2016). While, in case of collusion, wilful mis-statement or suppression of facts with the intent to evade payment of duty or to get erroneous refund, SCN is to be served under Section 28(4) of the Act within five years from the relevant date. Further, in the case of SEZ, the DC shall issue SCNs under Rule 25 of SEZ Rules 2006, if the Net Foreign Exchange (NFE) earning achieved is negative by the end of third year and if the negative performance continues till the fifth year under FTDR Act, 1992. However, no time limit for issuance of SCN and for subsequent adjudication has been fixed in the FTDR Act, 1992.

3.1.1 Adjudication of SCN

The issue of SCN under Section 28 (1) or 28 (4) of the Act is followed by adjudication which is a quasi-judicial function of the officers of the Customs Department under the Act. The noticee shall be given an opportunity of being heard in a proceeding, if the party so desires under Section 122A of the Act. There shall be a written OIO after the completion of adjudication process, detailing facts of the case and justification of the adjudication order under Section 28 of the Act. Section 28(9) of the Act prescribes that where it is possible to do so, the SCNs should be adjudicated within six months in normal cases and within 1 year in extended cases, from the date of service of the notice on the person. The words “wherever it is possible to do so” were omitted vide Finance Act, 2018 dated 29 March 2018. Similarly, the RAs are also empowered under Section 13 and 14 of FTDR Act, 1992 to levy any penalty for contravention of any provision of this Act or any rules or orders made there under or the FTP.



The legal provisions and Administrative instructions for the issue of SCNs and their adjudication are given in **Annexure 3**.

3.2 Audit Objectives

An SSCA on SCN and adjudication process has been carried out to gain an assurance that:

- (i) Issuance and adjudication of SCNs are in accordance with the prescribed Acts, rules, regulations, circulars / instructions and procedures;
- (ii) Suitable internal control systems and mechanisms exist to ensure effective monitoring of issue and adjudication of SCNs.

3.3 Scope and Audit Coverage

SSCA was conducted during the period October 2019 to January 2020. Audit examined the SCNs issued and OIOs passed during the financial years 2016-17 to 2018-19 and the SCNs pending for adjudication as on 31 March 2019. Besides adjudication process of SCNs, SCNs pending in Call Book, maintenance of various registers viz. SCN register, OIO register etc. were also examined.

The SSCA was conducted by examination of records at selected units viz. Customs Commissionerate, RAs and DC, SEZ on the basis of highest pendency and delays in adjudication of cases. The adjudicated cases and the SCNs pending for adjudication as on 31 March 2019 in these sampled units were selected through random sampling.

The details of the audit universe and sample selection and the records produced/not produced in respect of cases selected in the units selected (**Annexure 4**) for this audit are tabulated below:

Table 3.1: Sample Selection

Auditable unit	Total No. of Units	Units selected	Total cases in Units selected	Cases selected by audit	Cases produced to audit	Cases not produced to audit
Customs Commissionerate	70	25	21,932	4,222	3,520	702
Regional authority (DGFT)	25	12	10,358	824	811	13
Development Commissioner (SEZ)	08	08	414	210	210	0
Total	103	45	32,704	5,256	4,541	715

3.3.1 Partial production of records

To get an assurance about application of customs rules and regulations in issuing of SCNs, adjudication and monitoring of adjudication process, out of total 32,704 cases, 5,256 cases (16 *per cent*) were selected, for test check from both pending and as well as cases adjudicated as on 31 March 2019. Only 4,541 cases (86.39 *per cent*) of the total 5,256 selected cases were produced to audit. The eight DCs produced all the records sought. The 12 Customs Commissionerates⁷, of the 25 selected and 02 RAs⁸ out of 12 RAs selected had partially provided the information for audit scrutiny as depicted in the above table.

Of the 715 cases not produced to audit, 220 pertain to Commissionerate of Customs, Jodhpur which did not produce these 220 cases out of 255 cases selected in that Commissionerate. The Principal Director of Audit (Central), Ahmedabad took up (November 2019) the matter with Commissioner of Customs, Jodhpur and CAG Headquarters also brought this issue to the notice of DoR (December 2019). However, the requisitioned records and information were not furnished to audit. Resultantly, audit of SCNs/adjudicated cases in Customs (Preventive) Commissionerate, Jodhpur could not be conducted.

Major audit findings emanating from audit conducted, based on verification of cases produced to audit (86 *per cent*), are described in the succeeding paragraphs.

3.4 Audit findings

During the course of audit, Audit noticed shortcomings in issue of SCNs (Paragraph 3.4.1), deficiencies in the process and procedures leading to adjudication (Paragraph 3.4.2), lack of proper follow up of adjudication and review orders and deficiency in monitoring and internal controls (Paragraph 3.4.4). Total 141 audit observations were issued with a money value of ₹10,649 crore.

The audit observations on the process of issue of SCN and adjudication have been summarised in Table 3.2 overleaf:

⁷Commissionerate of Customs -Bengaluru, Cochin sea , JNCH Mumbai NS-I, NS-II, NS-III and NS-V, Commissionerate of Customs (Prev.) Jodhpur, Commissioner of Customs (Prev.)- Lucknow & Patna, Commissionerate of Customs, Noida, Import Commissionerate, NCH, New Delhi, Export Commissionerate, NCH, New Delhi

⁸ CLA Delhi, RA Bengaluru

Table 3.2: Summary of audit observations

Sl. No.	Category of audit observation	Number of observations	Money value involved (₹ in lakh)
1	Short comings in issue of SCNs (Paragraph 3.4.1)	25	9,37,239
2	Deficiencies in the processes and procedures leading to adjudication (Paragraph 3.4.2)	43	79,483
3	Lack of proper follow up of adjudication and review orders (Paragraph 3.4.3)	13	4,973
4	Efficacy of monitoring and internal controls (Paragraph 3.4.4)	60	43,187
	Total	141	10,64,882

The findings are discussed in detail in subsequent Paragraphs:

3.4.1 Shortcomings in issue of SCN

3.4.1.1 Non-compliance with Pre-Notice Consultation regulation

Paragraph 3 (1) of PNC Regulation, 2018 states that with effect from 1st April 2018 before the SCN is issued under Section 28 (1) of the Act, the proper officer shall inform, in writing, the person chargeable with duty or interest of the intention to issue the notice specifying the grounds known to the proper officer on which such notice is proposed to be issued and the process of PNC shall be initiated as far as possible at least two months before the expiry of the time limit mentioned in sub-section (3) of Section 28 of the Act.

Of the 25 Commissionerates selected for audit, Nine Commissionerates⁹ did not provide the information and nine Commissionerates stated “Nil” in the requisitioned information. Hence audit could not comment on compliance with PNC regulations in these 18 Commissionerates. Of the remaining seven Commissionerates that provided PNC details, in three¹⁰ Commissionerates, 82 SCNs involving money value of ₹401.75 crore were issued during 2018-19 without issuing PNCs. In these cases, the Department had failed to provide opportunity to the importers to present their case or for payment of duties and interest before issue of SCNs.

On this being pointed out (December 2019), Commissionerate of Customs, Hyderabad replied (December 2019) that its field formations initiated draft SCNs on issues which were approved by appropriate authority and then forwarded the same for adjudication to Adjudication section of

⁹ Commissionerates of Customs - Ahmedabad, Mundra, Comm. of Customs (Prev.)- Jodhpur, ACC-Bengaluru, NCH-Mangaluru, Cochin, Import-NCH Delhi, Export-NCH Delhi, Indore, ACC-Kolkata, CCP-Kolkata, Mumbai- NS I, NSII, NSIII, NSV, Patna, Lucknow, Vishakapatnam,

¹⁰ Customs Commissionerate Hyderabad, Noida and Preventive Commissionerate-Bhubaneswar

Headquarters along with necessary documents and hence, no PNC was conducted at Commissioner's (Headquarters) Office.

The reply of the Department was not tenable as the purpose of PNC was to avoid unnecessary litigation and Commissioner's office was required to monitor the compliance to such codal provisions. Instead of confirming whether PNC was done in these cases or not, the response of Hyderabad Commissionerate simply stating that these were initiated and approved by appropriate authority was not tenable.

Commissionerate of Customs (Preventive), Bhubaneswar stated (December 2019) that cases raised by audit pertained to misclassification of bituminous coal, the issue which was pending before the Hon'ble Supreme court of India. The Department could not take a different view in pre-SCN consultation till the issues are decided by the Hon'ble Supreme Court.

Department's argument is not justified as audit is not objecting to litigation cases but cases wherein SCNs were issued in 2018-19 without PNC in contravention to the PNC regulation.

Commissionerate of Customs (Prev.) Jodhpur stated that PNC is required in notices issued in terms of Section 28 (1) (a) of the Act only and not in notices issued under Section 28(4) of the Act. Accordingly, in two cases issued under Section 28 (4) of the Act, PNC was not issued and in nine cases Document Call (D-Call) notices were issued, while in one case the PNC was issued in May 2019.

The Jodhpur Commissionerate's reply was acceptance of the fact that the process of PNC prescribed in the Act was not followed in most of the cases and action was initiated only after audit raised the issue. Further, the reply was silent about the status of the SCNs issued even after expiry of more than one year.

Reply from the remaining five Commissionerates was awaited (July 2020).

3.4.1.2 Non compliance with Board Circular regarding issuance of simple notice

As per CBIC circular No. 16/2017 dated 2 May 2017, the field formation may issue simple notice to the licence holders for submission of proof of discharge of EO. In case where the licence holder submits proof of their application having been submitted to DGFT, the matter may be kept in abeyance till the same is decided by DGFT. However, in case where the licence holder fails to submit proof of their application for EODC/redemption certificate, extension/clubbing etc, action for recovery may be initiated by enforcement of bond/Bank guarantee. In case of fraud, outright evasion etc., field formations shall continue to take necessary action in terms of the relevant provisions.

Commissionerate of Customs, JNCH, Mumbai had issued 210 SCNs (February to August 2018), involving a money value of ₹222.83 crore, after 2 May 2017, on the issue of non-submission of EODC. This was a violation of the Board directives for issue of a simple notice to the licence holders for submission of proof of discharge of EO. These cases were still pending for adjudication as on December 2019.

Issuance of SCNs instead of simple notice and keeping it in abeyance in violation of Board directives was unwarranted.

This was pointed out by audit (January 2020); the reply was awaited (July 2020).

3.4.1.3 Wrong invocation of extended period of time for issue of SCN

In three¹¹ Commissionerates, extended period under Section 28(4) of the Act was invoked for issuing SCNs in 100 BsE (April 2012 to December 2017) involving a duty amount of ₹76.48 crore for issues like misclassification / extension of incorrect exemption benefit, which were in notice of the Department before clearance of the goods. As these were covered under Section 28 (1) and Section 28 (4) of the Act which is applicable for cases of wilful mis-statement or suppression of facts should not have been invoked for these cases. Out of the 100 BsE, 88 BsE involving a duty amount of ₹76.25 crore pertaining to the period April 2012 to November 2016 had become time barred for issuing SCN under Section 28(1) of the Act.

Cases of irregularities including issuance of SCN under inapplicable section of the Act may be examined in detail and responsibility may be fixed for errors of omission and commission.

3.4.1.4 Time barred SCNs

(A) In Commissionerate of Customs (Airport), Kolkata and JNCH Mumbai, eleven cases (32 BsE and 152 SBs) involving a duty amount of ₹87.31 lakh were declared time barred by the Commissioner for issuing SCNs under Section 28(1) of the Act.

Two such cases are narrated below

(i) In Commissionerate of Customs, JNCH, Mumbai, SCN was issued (May 2017) to M/s 'A' Chem Industries Private Limited for 41 BsE involving a money value of ₹97.92 lakh pertaining to the period September 2015 to September 2016. The SCN was adjudicated in January 2018 wherein Commissioner declared 30 BsE involving a duty of ₹66.15 lakh as time-barred since these BsE were pertaining to the period prior to the amendment (May

¹¹ Chennai Sea Customs, Chennai Air Customs, Commissionerate of Customs (Prev.) Bhubaneswar

2016) under Section 28(1) of the Act and covered under the notice period of one year only.

Department's reply was awaited (July 2020).

(ii) In Commissionerate of Customs (Airport), Kolkata, there were 09 cases in respect of 152 SBs for Mica exports pertaining to the period June 2010 to March 2014 involving cess of ₹10.94 lakh. SCNs for these SBs were issued between June 2015 and April 2016 under Section 28(1) of the Act after expiry of prescribed period of six months (before 7th April 2011) or one year (from 8th April to 13th May 2016). Adjudicating authorities confirmed nine demands between January 2018 and March 2018 by invoking the provisions of Section 28(4) of the Act of wilful misstatement & suppression of facts instead of Section 28(1) of the Act. Aggrieved by the orders, the exporters preferred appeals before the Commissioner of Customs (Appeals) where the Appellate authority held (September 2018) that the SCNs were time barred. In December 2018, Department filed an appeal before CESTAT, Kolkata for restoration of OIOs passed by the Adjudicating authorities.

Though the decision of the CESTAT was pending in respect of the instant cases, yet in a similar case Hon'ble High Court, Calcutta in the case of XYZ & Co. & ANR vs UoI & Ors against WP No.314 of 2007 had decided that the SCN which was issued under Section 28(1) of the Act to the petitioner was itself barred by limitation of time at the time of issue and recovery could not be made by invoking Section 28(4) of the Act by the Adjudicating authority.

The fact remains that delay in timely issue of SCNs has resulted in avoidable dispute between the exporters and the Department for which revenue has remained locked for almost six to ten years from the date of exports and there is a risk of Department losing revenue involved in these demands due to time-barring.

Ministry's reply was awaited (July 2020).

(B) Section 75 of the Act and sub-rule (2) of the Rule 18 of the Customs & Central Excise Duties Drawback Rules, 2017¹² specify the procedure for the recovery drawback, if sale proceeds in respect of such goods are not within the time allowed of nine months under the Foreign Exchange Management Act (FEMA), 1999. The Customs Commissionerates have to watch the realisation of Foreign exchange through Bank Realisation Certificate (BRC) and in case of non-realisation, have to proceed for recovery of draw back by issue of SCN.

¹² Earlier Rule 16 (A) (2) of the Customs & Central Excise Duties Drawback Rules, 1995 changed w.e.f. 01.10.2017

SCNs were issued (December 2016) under Section 75 of the Act and sub-rule (2) of the Rule 18 of the Customs & Central Excise Duties Drawback Rules, 2017¹³ to M/s 'B' (UZ) Impex and M/s. 'C' Impex (India) for recovery of drawback amount of ₹61.13 lakh after a delay of 11 and 8 years respectively for non-production of BRCs.

The parties filed writ petition against these SCNs in Delhi High Court pointing to delay in the issuance of SCNs. The Department referred to Rule 16 (A) (2) of the Customs, Central Excise Duties & Service Drawback Rules, 1995 and submitted that there was no limitation prescribed there under. The High Court of Delhi vide its order dated 05 August 2019 quashed the SCNs on the ground that even where there was no prescribed period of limitation for completing an assessment, it did not mean that the power can be exercised at any time. The Court also observed that such power had to be exercised within a reasonable period and what was reasonable period would depend on the nature of the statute, the rights and liabilities there under and other relevant factors.

Accordingly, had the Commissionerate issued SCNs for non-production of BRC after the expiry of the prescribed nine months period under FEMA, Department would have saved itself from such litigations and safeguarded the Government Revenue of ₹61.13 lakh.

In reply Commissionerate of Customs (Export), New Customs House, New Delhi stated that henceforth, these cases are being monitored on regular basis. SCNs are being issued as per provision of Drawback Rules within the reasonable time period.

The abnormal delay in issuing SCNs needs to be investigated and responsibility fixed. Ministry may take corrective action to avoid such repetition.

Ministry's response was awaited (July 2020).

3.4.1.5 Delay in issuance of SCN to SEZs

Rule 25 of SEZ Rules 2006 stipulates that where an entrepreneur or Developer does not utilize the goods or services on which exemptions, drawbacks, cess and concessions have been availed for the authorized operations or unable to duly account for the same, the entrepreneur or the Developer, shall refund an amount equal to the benefits availed without prejudice to any other action under the relevant provisions of the Act.

¹³ Earlier Rule 16 (A) (2) of the Customs & Central Excise Duties Drawback Rules, 1995 changed w.e.f. 01.10.2017

In DC, SEEPZ, Mumbai and Visakhapatnam Special Economic Zone (VSEZ) in six cases,¹⁴ SCNs involving Customs duty of ₹25.52 crore, were issued for suspension of manufacturing, using public premises for unauthorized operation, initiation of action for de-bonding of the unit and non-execution of sub-lease agreement. These SCNs were pending for adjudication for a period ranging from 3 years to 12 years.

Two such cases are narrated below:

(i) In DC-SEEPZ, Mumbai M/s 'D-1' Jewellery Pvt. Ltd (EOU) was issued Letter of Approval (LOA) in March 2004. The unit had suspended its manufacturing activity in January 2014 due to financial crisis. Even though, the unit was not functional and not achieving positive NFE for the period 2014-16, SCN was issued only in October 2017. During PH in March 2019, it was noticed that apart from non-functionality, outstanding government dues including customs dues also existed. Therefore, fresh consolidated SCN was issued in July 2019 covering all pending issues which were pending for adjudication. Delay in issue of SCN and non-finalization of adjudication resulted in non-recovery of Customs duty to the extent of ₹86.98 lakh and interest thereon.

(ii) The DC, VSEZ issued Letter of permission (LOP) to M/s 'D-2' Pharma India Pvt. Ltd. on 23 May 2007 for setting up of an EOU unit within three years. The unit procured capital goods and raw materials worth ₹59.55 lakh during the period from 2007-08 to 2009-10. The unit sought for renewal of LOP for a period of 5 years vide their letter dated 27 February 2013 even though LOP expired on 22 May 2010. Though no communication was made after the date of 27 February 2013 the DC, VSEZ issued SCN in January 2017 for cancellation of LOP and the case was adjudicated vide OIO dated 19 May 2017. The Department of Customs in their letter dated 12 September 2017 informed that the unit was absconding from the registered premises and no capital goods and raw materials, which were procured without payment of duty were available in the said premises. Therefore, though the LOP expired on 22 May 2010, the SCN was issued on 9 January 2017 with more than six years delay, resulting in misuse of LOP and revenue loss.

Ministry may consider providing specific time limit in FTDR Act, 1992 for issuance and adjudication of SCN.

Ministry's response was awaited (July 2020).

¹⁴M/s 'D-3' Jewellery Pvt. Ltd., M/s 'D-4' Agency (Trading), M/s 'D-5' & Company & M/s 'D-6' Mobile Communication Ltd., M/s 'D-7' Pharma India Pvt. Ltd., M/s 'D-8' Solar Energy Pvt Ltd.

3.4.1.6 Dropping of deficient SCNs

An SCN issued shall be revised or amended, if such revision/ amendment leads to further burden to the party, by issue of a corrigendum/addendum to original SCN. While adjudicating the SCN, proper recording of the fact of amendment/revision has to be made in the OIO. Likewise any subsequent relevant communication with the party regarding the issues pointed out in the SCN has to be recorded and points of relevance such as reasons for contesting by the party and its rebuttal also have to be shown in the OIO.

Audit noticed that in two cases involving money value of ₹21.88 lakh under two Commissionerates¹⁵ SCNs were dropped by the Adjudicating authority because of reasons of non-adherence to prescribed procedures and misrepresentation of facts.

The cases are discussed below:

(i) In Commissionerate of Customs (Sea) Cochin, based on Special Intelligence and Investigation Branch (SIIB) inputs SCN was issued (March 2017) under Section 28(4) of the Act to M/s 'E' care Ltd for eleven BsE pointing out short levy of duty of ₹21.32 lakh on account of misclassification of goods under the headings 30067000/34039900/ 33073090 instead of CTH 3304 9090. On the classification being contested by the party, the Customs department issued a letter in May 2018 proposing another CTH 38249090 which was also not accepted by the party. The Adjudicating authority issued a corrigendum to the original SCN in August revising short levy to ₹21.88 lakh incorporating two BsE which were not included in the original SCN. The OIO issued in August 2018 for the SCN was quashed by the Hon'ble High Court of Kerala on the grounds that the Adjudicating authority had passed an Order as per the proposal in the original SCN, classifying the goods under the heading 33049090, without rescinding the subsequent letter issued classifying the goods under CTH 38249090. The Adjudicating authority eventually dropped the proposal in the SCN to classify the goods under the chapter heading 33049090. The action of the Adjudicating authority to adjudicate the original SCN without rescinding a subsequent communication proposing a wrong tariff category (namely CTH 38249090) after the issue of SCN became a ground for the importer to challenge the adjudication order in the Court of Law. Also, the Adjudicating authority did not record the significant issues such as result of PH on proposal given in the letter and dropping of the proposal in the OIO. This had resulted in quashing the adjudication order by the Hon'ble High Court.

¹⁵ Cochin (Sea) Commissionerate, Comm. of Customs (Import) NCH New Delhi

(ii) In Commissionerate of Customs (Import), NCH, New Delhi, audit noticed that one SCN was issued (March 2018) to M/s 'F' Service Pvt. Ltd. for short levy of duty amounting to ₹85/- under Section 28 (1) of the Act. Issue of SCN for short levy of duty less than ₹100 was against the proviso of Section 28 (1) of the Act. Further, the SCN was also dropped (December 2018) by the Adjudicating authority. Issue of SCN for short levy of duty less than ₹100 not only put unnecessary litigation but also burden on Adjudicating authority which could have been avoided.

This was pointed out in January 2020, Ministry's response was awaited (July 2020).

3.4.1.7 Delay / Non-issuance of notices by the RA

As per paragraph 5.13 of Handbook of Procedures (HBP) Vol.1, EPCG) authorisation holder shall submit to the concerned RA, an application along with prescribed documents as a proof of EO fulfilment. Further, Paragraph 5.8 of HBP Vol.1 read with EPCG notification prescribes block wise achievement of EO. In cases where EO of any particular block is not fulfilled, the holder shall within three months from the end of the said block pay duties of customs on imports proportionate to the unfulfilled EO. DGFT and Customs departments are responsible to implement the Scheme. Similarly, as per Paragraph 4.44(b) of HBP Vol.1, 2015-20, AA holder shall within two months from the date of expiry of EO period, file application online by linking details of SBs against the authorization. The EO period is eighteen months from the issue of licence. Further, Paragraph 4.44 (f) of HBP Vol.1 prescribes that in case, authorisation holder fails to complete EO or fails to submit relevant information/documents, RA shall enforce condition of authorisation and undertaking and also initiate penal action as per law including refusal of further authorization to the defaulting exporter. However, FTDR Act, 1992 or Rules there under or administrative instructions issued by the DGFT do not prescribe any time lines to take action against the licence holders who violate the provision of.

In six RAs¹⁶, audit found that in a total of 5,061 licences (4,849 EPCG and 212 Advance licenses) involving duty saved amount of ₹8,645 crore were issued during 2001 to 2016 and the EO period had already expired 2 to 11 years earlier. But the Department failed to take penal action under FTDR Act, 1992 against the licencees for failure to fulfil prescribed EO in 2,665 cases involving revenue of ₹5,342 crore. In 2,396 cases involving revenue of ₹303 crore,

¹⁶ ADGFT, Mumbai, ADGFT, Ahmedabad, ADGFT, Rajkot, JDGFT, Chennai, DDGFT, Kanpur and ADGFT, Hyderabad

although SCNs were issued after considerable delays, these SCNs were not adjudicated as of December 2019.

In response to audit observation, (January / February 2020), Additional Director General of Foreign Trade (ADGFT), Hyderabad stated that inadequate staff was the reason for the delay; reply was awaited from remaining five RAs (July 2020)

3.4.2 Deficiencies in the processes and procedures leading to adjudication

The time limits for adjudication of SCNs was different prior to April 2018 and post April 2018. Hence the comments on adherence to time limits prescribed for adjudication of SCNs have been given for both periods separately.

3.4.2.1 Non-observance of Monetary Limits for adjudication

CBIC vide Circular¹⁷ dated 31 May 2011 has prescribed the monetary limit for issue and adjudication of SCNs. Accordingly, the monetary limit prescribed for issue and adjudication of SCN by Deputy Commissioner/Assistant Commissioner is up to ₹5 lakh, by Additional Commissioner/Joint Commissioner it is up to ₹50 lakh and by Commissioner without limit.

In Commissionerate of Customs (Preventive), Bhubaneswar, in two cases (M/s 'G' India Pvt. Ltd & M/s 'H' Steel Co. Ltd.) the SCNs having money value of ₹51.62 lakh and ₹36.59 lakh were adjudicated by the Assistant Commissioner, Customs Division, Paradeep which is in contravention to the conditions stipulated in the CBIC circular. The cases should have been adjudicated only by the Addl. Commissioner or Commissioner.

On being pointed out, Deputy Commissioner Customs Division Paradeep, while accepting the observation stated (December 2019) that in future the monetary limit would be considered before issuance of SCNs.

3.4.2.2 Non adjudication of SCNs issued up to 31 March 2018

Sub-section 9 of Section 28 of the Act stipulates that the proper officer shall determine the amount of duty and interest within six month from the date of SCN “where it is possible to do so”¹⁸ in respect of cases falling under Section 28 (1) of the Act and within one year from the date of notice “where it is possible to do so” in respect of cases falling under Section 28 (4) of the Act.

¹⁷ Circular No. 24/2011-Customs dated 31 May 2011

¹⁸ Omitted vide Finance Act, 2018

In twelve Commissionerates, 117 SCNs involving money value of ₹497.49 crore were pending adjudication for a period ranging from 1 to 182 months. A case is discussed below:

In Commissionerate of Customs, Ahmedabad, an SCN was issued for duty amount of ₹49.77 crore by DRI (December 2012) for fraudulently obtaining Duty Free Credit Entitlement (DFCE) licenses. The Hon'ble High Court of Gujarat set¹⁹ deadline of 31 March 2016 for adjudication of the SCN. A miscellaneous application filed by the Department seeking extension was dismissed by the Hon'ble HC vide order dated 11 August 2017. The matter was brought to notice of the Board on 02 November 2018, after lapse of more than 14 months from the date of HC order and the case was pending adjudication as on date of audit (November 2019). The matter was referred to the Ministry in May 2020, their response was awaited (July 2020). Similar seven cases involving a duty amount of ₹13.44 crore are detailed in Table 3.3 below:

Table 3.3: SCNs pending in Commissionerate of Customs, Ahmadabad for want of review orders from DGFT, New Delhi

Sl. No.	Name of the Exporter	DRI SCN No. & Date	DGFT OIO No. & Date	Money Value (₹ In lakh)	Remarks
1	M/s 'I' Intermediates	DRI/AZU/INV-45/2009 Dtd. 09-03-2010	08/F-3/01/AM-11/ECA dt.10.07.13	76.95	On the basis of SCNs issued by DRI, JDGFT-Ahmedabad also issued SCN which was later dropped. DRI vide letter dated 03 February 2016 requested Pr. Commissioner to keep the adjudication of the impugned SCN in abeyance till further intimation. DRI, vide letter dated 08 July 2016 requested DGFT, New Delhi for review of impugned OIOs passed by JDGFT, Ahmedabad. Further, Chief Commissioner of Customs also requested the Board to take up the issue with the Ministry of Commerce to expedite the proceedings by DGFT. Despite several reminders from Chief Commissioner of Customs, Gujarat Zone, Board did not revert back and the cases are still pending for adjudication resulting in blockage of government dues of ₹1344 lakh.
2	M/s 'J' Chemicals	DRI/AZU/INV-47/2009 Dtd. 14-08-2012	08/F-3/2/AM13/ECA dt.15.07.13	203.00	
3	M/s 'K' (P) Ltd	DRI/AZU/INQ-56/2013 dtd. 30-10-2013	08/F-3/04/AM14/ECA dtd.27.01.14	188.42	
4	M/s 'L' Chemicals	DRI/AZU/Inv-48/2009 Dtd. 15-06-2012	08/F-3/3/AM11/ECA dtd.16.07.13	120.00	
5	M/s 'M' Dye Chem Industries	DRI/AZU/Inv-6/2010 dtd 14-08-2012	08/F-3/02/AM11/ECA dtd.01.11.13	55.87	
6	M/s 'N' Dyes & Intermediates	DRI/AZU/INQ-53/2013 dtd.24.06.2013	08/F-3/05/AM14/ECA dtd.14.03.14	103.00	
7	M/s 'O' Chemicals Industries	DRI/AZU/INQ-55/2013 dtd.30.10.2013	08/F-3/05/AM14/ECA dtd.10.02.14	597.00	
			Total	1,344.24	

¹⁹vide order dated 26 November 2015

Commissionerates of Customs, Ludhiana stated (March 2020) that SCNs were issued prior to the assent of Finance Bill 2018 (29 March 2018) and therefore, the time limit of one year provided in Section 28(9) of the Act does not apply to these cases. These cases shall continue to be governed by the provision of Section 28 of the Act as it stood immediately before such date and at that time there was no time limit prescribed for adjudication, hence, there was no delay in adjudication of the cases as pointed out by audit. The replies were silent about present status of the cases.

The reply of the Commissionerate of Customs, Ludhiana was not acceptable as time limit prescribed for adjudication existed even before amendment was made in the Customs Act through Finance Act 2018 (enacted w.e.f. 29 March 2018). The amendment made was removal of the wording “where it is possible to do so” and not in the time limit prescribed. Thus, applicable to all these cases even though SCNs were issued before 29 March 2018.

Reply was awaited from the Ministry (July 2020).

3.4.2.3 Non adjudication of SCNs issued after 1 April 2018 within the stipulated period

Section 28(9) of the Act introduced w.e.f. 01 April 2018 stipulates that SCNs issued after 01 April 2018 have to be adjudicated within six months and one year from the date of issue of notice in respect of cases falling under Section 28(1) and Section 28(4) of the Act respectively. This time limit can be further extended by another six months and one year for Section 28(1) and Section 28(4) of the Act respectively by the competent authority. It was also stipulated that failure to adjudicate the cases within such extended period will result in the proceedings being deemed to have concluded as if no notice had been issued.

Accordingly, non-adjudication within the prescribed time, might lead to SCN deemed as closed and consequent non-recovery of revenue, if any, due from the defaulter, leading to loss of revenue due to the Government.

In two Commissionerates²⁰, in six cases involving a money value of ₹9.03 crore, adjudication orders were not passed for SCNs issued during February 2018 to February 2019 under Section 28(1) and Section 28(4) of the Act even after completion of the prescribed period.

²⁰ Commissionerate of Customs JNCH Mumbai and Commissionerate of Customs (Import), NCH, New Delhi

Two cases are illustrated below:

- i. M/s 'P' Mom Private Limited under Commissionerate of Customs JNCH, Mumbai was issued SCN in February 2018 under Section 28(4) of the Act for suppression of correct retail price of imported goods and differential duty of ₹8.71 crore was demanded. During the last PH, the party submitted Hon'ble Punjab and Haryana High Court's decision wherein it was held that post enactment of the Finance Act 2018, even SCN issued prior to 29 March 2018 must be adjudicated by 28 March 2019 and on failure to do the same, and the SCN will be treated as never issued. Further, as per paragraph 5 of Standing Order²¹ issued by JNCH, adjudication orders in respect of cases relating to Section 28(4) of the Act should be issued by 28 March 2019. The case was pending for adjudication even after a delay of one year and revenue of ₹8.71 crore remained locked.
- ii. In Commissionerate of Customs, JNCH, Mumbai, M/s 'Q' Exports Pvt. Ltd was issued SCN in June 2018 for an amount of ₹25.20 lakh under Section 124 of the Act read with Section 28(4) of the Act. The SCN was adjudicated in October 2019 after a delay of 4 months, which was in contravention of the provisions of the Act. Further, it was confirmed from the records that no extension was sought from the competent authority for extension of the adjudication period.

Failure to adjudicate the cases within the timelines had resulted in blockage of revenue of ₹9.03 crore.

This has been pointed out to the Commissionerate (January/ February 2020); their reply was awaited (July 2020).

Ministry's response was awaited (July 2020).

3.4.2.4 Grant of PH in excess of prescribed norms

Section 122A of the Act, prescribes that the Adjudicating authority shall give an opportunity of being heard to a party in a proceeding, if the party so desires. Further, the Adjudicating authority may, if sufficient cause is shown at any stage of proceeding, grant time, from time to time, to the parties or any of them and adjourn the hearing for reasons to be recorded in writing provided that no such adjournment shall be granted more than three times to a party during the proceeding.

²¹ Standing Order No. 22/2018 dated 15 June 2018.

In 12 Customs Commissionerates²², the Adjudicating authority granted more than three adjournments of PHs to the parties in 56 cases involving a money value of ₹16 crore, in contravention of the above statutory provision. Out of these 56 cases, in 26 cases involving a money value of ₹6.94 crore, PHs were adjourned 4 to 11 times and the cases are pending adjudication for a period ranging from 10 months to 118 months as on 31 December 2019.

The Adjudicating authorities contravened the provision of the aforesaid Section and had given more than three adjournments of PHs which ultimately delayed the adjudication process and thereby affected the consequent recovery process.

Three cases are narrated below:

(i) In Commissionerate of Customs (Imports), NCH New Delhi, for two cases involving money value of ₹1.01 crore, six adjournments were granted by the Joint Commissioner/Commissioner of Customs and the same two cases were still pending for adjudication for periods ranging from 48 months to 118 months.

(ii) In Commissionerate of Customs (Airport), Kolkata, 4 cases involving money value of ₹5.40 crore, five to ten adjournments of PHs were granted by the Addl. Commissioner/Commissioner of Customs. The cases were still pending for adjudication for 9 to 36 months.

On this being pointed out, Chief Commissioner of Customs, Kolkata replied that shortage of manpower, multiple charges of Adjudicating authorities and frequent transfers might have contributed to granting of excess PHs. The fact remained that despite adjournments granted for the PHs in contravention to the prescribed procedures, nine cases involving money value of ₹5.48 crore were pending for adjudication.

(iii) In Commissionerate of Customs Ludhiana, in five cases involving money value of ₹1.45 crore, four to eleven adjournments of PHs were granted by the Asstt. Commissioner/Joint Commissioner/Commissioner of Customs.

In reply Commissionerate of Customs, Ludhiana replied that the opportunity for PH was given and OIO had been issued within stipulated time i.e. 30 days from the date of last PH. The reply was silent about present status of pending cases.

²² Customs(Prev.) Lucknow and Patna, Kolkata (Airport), West Bengal (Prev.), Customs (Ahmedabad), Mundra, Bhubaneshwar, Hyderabad, Ludhiana, JNCH(Mumbai), Delhi(Import) and Delhi (Export)

The reply of the Department was not tenable because adjournments were granted more than three times in contravention to provisions of Section 122A of the Act.

Replies from the other Commissionerates were awaited (July 2020).

Ministry response has not been received (July 2020).

3.4.2.5 Delay in issuance of adjudication order after last PH

CBIC vide its Master Circular no. 1053/02/2017-CX dated 10.03.2017, (point no. 14.10) stated that, “In all cases where PH has been concluded, it is necessary to communicate the decision as expeditiously as possible, but not later than one month in any case, barring in exceptional circumstances to be recorded in the file”.

It was noticed in five Commissionerates²³ that adjudication orders were issued for 117 cases involving a money value of ₹85.46 crore with a delay ranging from 02 days to 808 days after the expiry of 30 days from the date of last PH as depicted in the Table 3.4 below:

Table 3.4: Delay in issue of adjudication order after last PH

Range of delay (in days)	No. of cases	Money value involved (₹ in lakh)
Upto 1 month	46	945.80
1 month to 3 months	37	3,633.73
3 months to 6 months	24	937.14
6 months to 1 year	7	3,012.12
Above 1 year	3	17.03
Total	117	8,545.82

Of these total 117 delayed cases, 10 cases involving money value of ₹30.29 crore, where the delay was beyond 6 months, accounted for 35 *per cent* of total money value involved in the delayed orders. In all these ten cases, the demand of ₹30.29 crore was confirmed by Adjudicating authority. Thus, delay in issuing adjudicating order, even after all steps required for adjudication were completed, resulted in blockage of revenue and increased pendency of arrears.

The monitoring and reporting mechanisms need to be strengthened to ensure that timely and proper action as per the Act is taken by the field formations in issuing and adjudicating SCNs.

Ministry’s response was awaited (July 2020).

²³ Customs(Preventive)-Lucknow, Customs Commissionerate- Noida, JNCH Mumbai, Comm(Import), New Delhi and Customs-Hyderabad

3.4.2.6 Absence of provision for fixing of PH in FTDR Act, 1992

Customs Act, 1962 contains express provision for grant of hearing to parties from time to time subject to condition that no adjournment of hearing shall be granted more than three times. However, FTDR Act, 1992 does not contain any specific instruction in this regard. In absence of prescribed provisions, DCs are providing PH without any limit to numbers.

Scrutiny of 52 cases selected for audit at DC, Kandla Special Economic Zone (KASEZ) relating to SCN and adjudication revealed that in absence of specific instructions in respect of number of PH, in 03 cases Adjudicating authority granted more than 3 PHs to the party.

One such case is narrated below:

i. Scrutiny of SCN files in the Office of the DC, KASEZ, Gandhidham revealed that an SCN for non-compliance of bond condition was issued in December 2016 to M/s 'R' Shipping (India) Pvt. Ltd., Gandhidham for violation of provisions of SEZ Rules, 2006 viz. failing to furnish Annual Performance Return for the period 2014-15 to 2015-16. Opportunity of Six PH had already been given to the party between 02 December 2016 and 06 March 2018 and party appeared on 06 March 2018. No further progress was found on records and the SCN was pending for adjudication even after four years of its issue.

On this being pointed out (December 2019), DC, KASEZ replied (December 2019) that the SCN could not be adjudicated as the DC who had issued SCN and held PH, has been transferred from KASEZ. It was also stated that the SCN issued would be adjudicated by the present DC within a short period of time, after grant of PH.

In order to give a fair opportunity to the noticee to reply to SCN and also to prevent unlimited discretion in hands of Adjudicating authority to allow any number of PH, express provision needs to be incorporated in the FTDR Act, 1992 regarding number of PH to be granted on same lines as in Customs Act.

Ministry's response was awaited (July 2020).

3.4.2.7 Pendency of SCNs for want of RUDs

As per Master Circular No. 1053/02/2017-CX dated 10 March 2017, the Adjudicating authority is to examine all evidences, issues and material on record, analyze those in the context of alleged charges in the SCN and examine the reply to the SCN and accept or reject them with cogent reasoning. Para 13 provides that SCN and the documents relied upon in the SCN need to be served on the assessee for initiation of the adjudication proceedings.

In Commissionerate of Customs (Export), NCH, New Delhi, out of 86 cases, in four cases SCN involving revenue of ₹2.09 crore issued during October 2016 to March 2017 were pending adjudication as on December 2019. Audit scrutiny of the files revealed that the Adjudicating authorities could not adjudicate the cases due to non-availability of the RUDs in the files on the basis of which SCNs were issued. For adjudicating the cases, Adjudicating authorities requested (May 2017 to March 2019) SCN issuing authorities for seeking RUDs, but no further progress was available in the records. In two out of four cases, noticee's request for RUDs were also found pending since May 2017/August 2019.

Initial failure of SCN issuing authorities to issue SCNs along with RUDs was in contravention to the prescribed instructions. Subsequently, the monitoring authorities failed to act on disposal of noticee's requests for RUDs. These failures, coupled with delays in adjudication, indicated weakness of internal control mechanism in issue and adjudication of SCNs.

Commissionerate of Customs (Export), NCH, New Delhi stated (January 2020) that in three cases noticees or their advocates frequently requested for another PH. Also due to change in Adjudicating authority, further PH needs to be given which delayed the adjudication proceedings. Department further stated that PH needs to be given in compliance to principles of natural justice. However, if no response is received, the cases would be decided ex-parte.

Department's reply is acceptance of inaction in timely adjudication of the cases. The reply was also silent about missing RUD of the cases pointed, in the absence of which adjudication were pending. Present status of the cases has not been furnished (July 2020).

3.4.2.8 Pending adjudication Cases despite no response from parties

Section 124 of the Act stipulated that if no reply was received within 30 days of receipt of the notice or if the party fails to appear before the Adjudicating authority when the case is posed for hearing, the case will be decided ex-parte on the basis of material available on record.

In Commissionerate of Customs, JNCH, Mumbai, scrutiny of the records revealed that 111 cases involving money value of ₹101.61 crore were still pending for adjudication up to 31 December 2019 for a period ranging from 5 to 34 months after issue of SCNs. Of these, in 76 cases no PH was issued and in 35 cases, PH was issued but there was no response from the parties. Non-adjudication of these SCNs was in contravention to the aforesaid Section 124 of the Act.

This was pointed out to the Department in January 2020, their response was awaited (July 2020).

3.4.2.9 Delay in adjudication of seizure cases

Board has prescribed²⁴ specific time frames, within which the Departmental officers would complete adjudication in the cases which relate to seizure under Section 124 of the Act. The Commissioner or Additional/Joint Commissioner, Assistant/Deputy Commissioner and Superintendent of Customs are required to complete adjudication within one year, six months and three months respectively from the date of service of the SCN under Section 124 of the Act.

Audit scrutiny revealed non-compliance to Board instructions in adjudication of the cases, with delay in adjudications as well as cases still pending adjudication beyond prescribed time limits as detailed in Table 3.5 below:

Table 3.5: Details of cases adjudicated with delay and pending for adjudication

Days	Cases adjudicated with delay				Cases pending for adjudication			
	Cases		Amount		Cases		Amount	
	No.	%	₹ in crore	%	No.	%	₹ in crore	%
up to 3 months	175	35	5.90	40	16	12	9.30	18
3 months to 6 months	136	28	4.18	28	48	36	4.63	9
6 months to one year	101	20	3.26	22	44	33	7.50	15
Beyond one year	82	17	1.55	10	24	18	29.53	58
Total	494		14.89		132		50.96	

²⁴Circular No.3/2007-Cus. dated 10.01.2007

In six²⁵ Commissionerates, there were delays in adjudication under Section 124 of the Act ranging from 2 to 1,122 days in 494 cases involving revenue of ₹14.89 crore. Out of these, in 183 cases (37 *per cent*) the delays in adjudication were for more than 6 months involving revenue of ₹4.81 crore which is 32 *per cent* of the total revenue involved (₹14.89 crore).

Further, in 132 cases, in eight²⁶ Commissionerates involving revenue of ₹50.96 crore, SCNs issued under Section 124 of the Act were pending adjudication (as on January 2020) beyond the prescribed period for the period ranging from 2 to 1303 days. Out of total pendency, 24 cases (18 *per cent*) pending beyond one year represented 58 *per cent* of total money value involved in cases pending for adjudication.

On being pointed about cases pending for adjudication, Commissionerate of Customs (Prev.), Jodhpur stated that investigations in these cases were not completed till date of issue of the respective notices as addendums were issued. Further, in one case, letter was received on 16 May 2019 from Investigating Agency informing about completion of Investigation. Pendency of the cases has to be counted from the date of addendum/Completion of investigation and not from the date of issue of the notices.

The reply of the Department is not tenable, as cases related to seizures and should have been adjudicated within one year from the date of service of SCN. Department issued Addendum after lapse of one year from the date of issue of SCN and in another case adjudication was still pending even after completion of investigation in May 2019.

For delays in adjudication of cases, Commissionerate of Customs, Ludhiana stated that (March 2020) the parties were originally answerable to different custom authorities for PH.

The reply of the Department was not acceptable as the OIO has not been issued within the prescribed time as per Circular No.3/2007-CUS dated 10.1.2007.

Commissionerate of Customs, Indore in response to delays in adjudication stated (March 2020) that the Customs Commissionerate, Indore was created in the month of January, 2018. The two cases mentioned were received in this Commissionerate in January, 2018, and were adjudicated within the

²⁵ Customs Comm.(Prev.) Lucknow, Customs Comm.(Preventive) Patna, Customs Comm.-Ludhiana, Customs Comm.-Indore , Comm. Customs (Airport) Kolkata and Comm. of Customs (Prev.) -West Bengal

²⁶ Customs Comm. (Preventive- Lucknow, Comm. of Customs (Airport) Kolkata, Comm. of Customs (Prev.) West Bengal, Comm. of Customs- Ahmedabad and Comm. of Customs (Prev.)-Jodhpur

period of one year. It is reiterated that due to formation of a new Commissionerate w.e.f. 15.01.2018, teething problems existed as regards to the jurisdiction and staff position.

The reply of the Department is not acceptable in audit as the objected SCNs were issued in November 2016 and July 2017 by the Commissionerate common for Customs and Excise and these should have been adjudicated within the time limit of one year as per Circular No.03/2007-Cus dated 10-01-2007.

Reply from the remaining Commissionerates was awaited (July 2020).

3.4.2.10 Delay in Adjudication of Remand Back Case

CBIC Circular²⁷ dated 10 January 2007 stipulates that the de-novo (Remand back) cases are to be adjudicated within six month /one year from the date of remand back of the case. Further, in case the above time period could not be observed in a particular case, the Adjudicating officer shall keep his supervisory officer informed regarding the circumstances which prevented the observance of the above time frame, and the supervisory officer would fix an appropriate time frame for disposal of such cases and monitor their disposal accordingly.

(i) In Commissionerate of Customs (Import) NCH, New Delhi, two remand back cases involving a duty amount of ₹2.02 crore were pending adjudication for 19 months as of January 2020 and the reasons for the pendency were not available in the files submitted to audit. This was pointed out (January 2020), Commissionerate's reply was awaited (July 2020).

(ii) In another case pertaining to Commissionerate of Customs (Prev.), Jodhpur involving money value of ₹62.36 lakh, adjudication was done after a delay of 320 days which resulted in deferment of recovery for the period adjudication was delayed. There was nothing on record regarding any extension of time period granted for adjudication.

Commissionerate of Customs (Prev.), Jodhpur stated (March 2020) that neither provisions of Section 28 of the Act nor Circular 03/2007-Cus specify any time limits in case of adjudication carried out in remand proceedings.

The reply of the Department is not tenable as in terms of CBEC circular No. 4/2007- Cus. dated 10.01.2007, de-novo (Remand back) Customs cases were to be adjudicated within six month/ one year as the case may be, in accordance with the guidelines prescribed under Section 28(2A) of the Act. Paragraph 3 of the circular 4/2007-Cus further prescribed that in case the

²⁷ Circular No. No.4/2007-Cus dated 10.01.2007

time period could not be observed in a particular case, the Adjudicating officer shall keep his supervisory officer informed regarding the circumstances which prevented the observance of the above time frame, and the supervisory officer would fix an appropriate time frame for disposal of such cases and monitor their disposal accordingly. But, audit was unable to ascertain whether supervisory officer had fixed any time frame for disposal of such cases. Further response was awaited (July 2020).

3.4.2.11 Confirmation of duty in excess of specified in SCN

As per Section 28(8) of the Act, the amount of duty or interest due should not be in excess of the amount specified in the notice.

In JNCH Commissionerate, Mumbai, in five cases, it was observed that the duty demanded in SCNs was ₹1.39 crore, whereas the amount confirmed in the OIO was ₹1.72 crore. Thus, the duty confirmed in OIOs was in excess of the duty demanded in the SCNs, which was not in conformity with the provisions of the Act. The reasons for the excess duty of ₹32.84 lakh demanded while adjudicating the cases were not available in the records.

Ministry's response was awaited (July 2020).

3.4.3 Lack of proper follow up of adjudication and review orders

3.4.3.1 Non-enforcement of adjudication orders

Adjudication orders are issued by the appropriate authorities under various Sections²⁸ of the Act for confiscation, payment of differential duty, payment of the redemption fine (RF) and / or penalty, re-export / destruction of imported goods for non-submission of the mandatory certificates issued by Bureau of Indian Standards (BIS), Food Safety Standards Authority of India (FSSAI), Animal Quarantine Department, Plant Quarantine Department etc.

As per the MoF Circular dated 15/12/1997, a "Recovery Cell" (RC) should be created in each Custom Commissionerate for the purpose of making recovery of Government dues. Accordingly, each Commissionerate has a Recovery Cell whose major functions are to serve notice upon defaulters, attachment and sale of defaulter's property by public auction under Section 142 of the Act and to send a monthly progress report to the Chief Commissioner regarding arrears.

In six Commissionerates²⁹ it was noticed that in 135 cases involving a money value of ₹38.65 crore, the Department did not enforce the adjudication

²⁸Section 28,111,112,124,125 of Customs Act, 1962

²⁹ Customs Commissionerate (Import), NCH New Delhi, Indore, Chennai Sea Customs, Chennai Air Customs, Cochin Sea Customs and Bhubaneshwar Commissionerate

orders issued during December 2015 to June 2019 for goods not re-exported/improperly imported. Recovery of Government dues amounting to ₹38.65 crore under Section 142 of the Act was pending.

Commissionerate of Customs (Import), NCH, New Delhi accepted the pendency in five cases involving money value of ₹12.64 lakh.

Commissionerate of Customs, Indore stated (March 2020) that M/s 'S' Polymers Pvt. Limited had appealed (January-2020) to CESTAT and the matter relates to Indore SEZ. It was further stated that in another case the party was booked by DRI (July 2017).

The reply of the Department in the case of DRI is not acceptable as the SCN was issued by DRI in July 2017 and adjudicated in December 2018, but no efforts were made for recovery of objected amount by the Department.

Reply from other Commissionerates was awaited (July 2020).

3.4.3.2 Non-compliance with Commissioner's Review orders

Section 129 D(2) of the Act, stipulates that the Commissioner of Customs may, on his own, call for and examine the record of any proceedings in which an Adjudicating authority subordinate to him has passed any decision or order under this Act for the purpose of satisfying himself as to the legality or propriety of any such decision or order and may, by order, direct such authority or any officer of customs subordinate to him to apply to the Commissioner (Appeals) for the determination of such points arising out of the decision or order as may be specified by the Commissioner of Customs in his order.

In Chennai Sea Customs Commissionerate (Imports), scrutiny of review orders revealed that Department adjudicated 41 cases in respect of 41 BsE pertaining to import of 'Used Clothes', which were under the restricted category, by imposing redemption fine and penalty amounting to ₹1.44 crore. Commissioner (Import) reviewed (December 2017 to April 2018) the adjudication orders and directed the Adjudicating authority to file an application before the Commissioner (Appeals) for enhancing the redemption fine (₹97.46 lakh) and penalty (₹46.32 lakh) as deemed fit. Neither any evidence of filing application by the Joint Commissioner, (Group 3) before the Commissioner (Appeals) was found available on records nor the details of redemption fine and penalty were available against the 41 BsE as verified through online access provided to audit. Hence, no action was taken on Commissioner's review orders to enhance redemption fine and penalty.

This was pointed out in May 2020; the reply was awaited (July 2020).

3.4.3.3 Inadequate follow up of adjudication orders issued by the RAs

For non-fulfilment of EO, adjudication orders are issued under Section 13 of FTDR Act, 1992 with a copy endorsed to the Customs department, imposing penalty for contravention of any provision of this Act or any rules or orders made there under or the FTP. Further, as per Section 11 (4) of FTDR Act 1992, a penalty imposed under this Act may, if not paid, is to be recovered as an arrear of land revenue. O&M Instructions No.04/2018 dated 2nd Aug 2018 issued by the DGFT also insisted that all adjudicated orders shall be uploaded on the website maintained by the field offices and to mark one copy to the Central Economic Intelligence Bureau (CEIB) and Customs authority at the port of registration.

In five RAs³⁰, penalty amount of ₹5.29 crore was imposed under Section 11(4) of the FTDR Act in 40 cases after adjudication during the period September 2016 to August 2019. On a scrutiny of the records, audit noticed that these cases were not marked to CEIB and Customs authorities for necessary recovery action. Further, it was also noticed that no evidence of payment of penalty were available in the files.

Some cases are illustrated below:

(i) In RA, New Delhi, scrutiny of records revealed that the three adjudication orders involving money value of ₹13.05 lakh were not transferred to the Enforcement cum Adjudication (ECA) Recovery cell.

On this being pointed out (January 2020), RA, New Delhi accepted the findings that the same were not transferred earlier and informed that these cases had been forwarded to ECA Recovery cell in January and February 2020.

(ii) Similarly, in ADGFT, Rajkot, SCN was issued first in April 2008 and second in March 2018 to M/s 'T' Chemicals Pvt. Ltd. under Section 11(5) and Section 14 of FTDR Act, 1992. The SCN was adjudicated in November 2018 after Department found that there was no company by this name. Scrutiny of the records revealed that the Department had not written to the District Collector for initiating recovery proceedings even after a lapse of 10 years from the issuance of first SCN.

On being pointed out by audit (October 2019), ADGFT, Rajkot issued (December 2019) direction to District administration for recovery action.

Non-endorsing the adjudication orders to CEIB and Customs authorities resulted in delay in action leading to pendency and consequent blockage of

³⁰CLA New Delhi, JDGFT Chennai, ADGFT Mumbai, ADGFT, Rajkot and ADGFT, Kolkata

revenue and burden on the Department. The Department was required to ensure proper monitoring in this regard.

Replies for the remaining cases were awaited (July 2020).

3.4.3.4 Non transfer of cases to enforcement division for investigation / adjudications

The DGFT vide circular³¹ dated 31 December 2003 issued guidelines for treatment of cases which were kept under Denied Entity List (DEL). Further, in terms of Paragraph A (1) of the aforesaid guidelines, it was specifically mentioned to transfer the cases, kept under DEL to the enforcement division for further investigation/ adjudication.

In ADGFT, Hyderabad, 13 cases involving duty saved amount of ₹4.36 crore, which were kept into DEL list were not transferred to the enforcement division for further investigation/ adjudication.

Department had replied that as per Office Memorandum (OM) Instructions³² dated 26 July 2004, ECA work would be monitored by the Licensing section.

Reply was not acceptable as it did not address the issue of not transferring cases under DEL to enforcement division for adjudication.

The fact remained that non-transfer of DEL cases for adjudication resulted in avoidable delay involving duty saved amount of ₹4.36 crore.

Ministry's response was awaited (July 2020).

3.4.4 Efficacy of monitoring and internal control in Customs formations

Monitoring and Internal Control is an integral process, which addresses risk and provides reasonable assurance about effectiveness and adequacy of systems and procedures. The Customs procedures prescribe maintenance of SCN register, adjudication register, refund register, call book, MPRs for ensuring effective monitoring of issue of SCNs and their adjudication.

Audit noticed following shortcomings in monitoring and internal control in respect of SCN and adjudication.

³¹F.No. 18/24/HQ/99-2000/ECA II, dated 31 December 2003

³²O&M Instructions³² No.11/2004, dated 26 July 2004

3.4.4.1 Non-updation of the DRI Intelligence Gathering and Investigation Tools (DIGIT) database

DIGIT was introduced with the objective of creating a complete database of Customs offences for flow of vital information, its exchange and timely utilization for enforcement and risk management by the Revenue Department.

CBIC, hereinafter referred to as Board, vide instructions³³ dated 28 March 2018 and 2 April 2018 had made it mandatory that with effect from 1 April 2018, all SCNs and adjudication orders for offences detected by the intelligence agencies³⁴ should be issued only through the software application tool 'DIGIT' and all Customs formations were to complete entry of the legacy data in DIGIT by 31st July 2018. The DIGIT database was to be kept up to date so as to ensure the flow of vital information, its exchange and its timely utilisation for meeting the enforcement and risk management objectives of the Department. Board further impressed upon all the Commissionerates to issue SCNs within the stipulated time period and not delay till the last day. Board, through DRI, was to monitor completion of the task and also issuance of SCNs through DIGIT. It was also stated that failure of field formations to complete the task would be viewed seriously.

Out of 25 Customs Commissionerates test checked, audit noticed that issuance of SCNs and adjudication orders through DIGIT was done partially in 10 Commissionerates³⁵ and SCNs and adjudication orders were not issued through DIGIT in nine Commissionerates³⁶. Six Commissionerates³⁷ did not provide the requisite information to audit (**Annexure 5**).

Further, audit noticed (January 2020) that while entry of legacy data was to be completed by 31 July 2018, it was done only in three Commissionerates³⁸ and in 19 Commissionerates the legacy data was not updated as of December

³³ Instruction No. 5/2018 dt.28/03/2018 and 6/2018 dt.02/04/2018

³⁴ Special Intelligence Investigation Branch (SIIB), Docks Intelligence Unit (DIU), Air Intelligence Unit (AIU), (Customs Internal Investigation Agencies), Directorate of Revenue Intelligence (DRI),

³⁵ NCH-Mangaluru, Chennai (Air) Customs, Cochin (Sea) Customs, ACC(Export)-NCH-Delhi, Bhubaneswar Customs (Prev.), Customs (Prev.) Patna, JNCH NS I, NS-II, NS-III and NS-V, Mumbai

³⁶ Customs Comm-Ahmedabad, Cus. Comm-Ludhiana, Cochin (Air) Customs, ACC (Import) NCH-Delhi, Indore Customs Comm., Customs Comm- Hyderabad, Cus. Comm-Vishakapatnam, Cus. Comm (Airport) Kolkata, and Cus (Prev.) W.B.

³⁷ Customs Comm. (Mundra), Cus.(P) Comm (Jodhpur), Airport & Air Cargo Comm-Bengaluru, Chennai (Sea) Customs, Customs (Prev.) Lucknow and Customs Comm (Noida)

³⁸ Customs Comm. (Ludhiana), Cochin (Sea) Customs and Customs Comm (Vishakhapatnam)

2019. Three Commissionerates³⁹ did not provide the information regarding legacy data.

On being pointed out, Commissionerate of Customs (Export) New Delhi, Customs (Preventive) Patna and Jodhpur stated that SCNs and adjudication orders were being entered in the DIGIT database.

Audit however, noticed that only one SCN out of 110 SCNs and 13 adjudication orders in NCH, New Delhi, 68 cases in Patna and 167 cases in Jodhpur issued during 2016-19 were entered in the DIGIT database.

Further, Customs Paradeep, Cochin (Sea) and Kolkata (Air) Commissionerates stated (January 2020) that legacy data in DIGIT could not be uploaded due to technical issues and login ids and passwords of Officers have not been completed.

While, Commissionerate of Customs, Indore and Ludhiana stated (March 2020) that uploading of legacy data as on 31 March 2018 shall be taken up on top priority.

Replies were awaited (July 2020) from 15 Commissionerates⁴⁰.

Non-updation of the DIGIT database by all the Customs field formations defeated the purpose of implementation of DIGIT. Ministry may take note of failures in not only achieving the target of entering the legacy data scheduled by 31 July 2018 but also entry of new cases w.e.f. April 2018 by its field formations even after lapse of more than two years and take corrective action.

The database of Customs offences as envisaged under DIGIT must be completed in a time bound manner.

3.4.4.2 Irregularities noticed in Call Book Cases

Board's circular⁴¹ as amended provides criteria for transfer of those SCNs to call Book, where the Department has gone in appeal, injunction has been issued by the court, the board has specifically ordered the case to be kept pending and to be entered into the call book, or the case has been referred to Settlement Commission. It further clarifies that such cases shall be taken out of the Call Book and adjudicated where issue involved has been decided by the Hon'ble Court and such order of the Court has attained finality.

³⁹ ACC & Airport Customs (Bengaluru), Customs. Comm –Mundra, Cochin (Air) Customs,

⁴⁰ Commissionerates of Customs- ACC & Airport-Bangalore, Import, NCH, Delhi, Mundra, Vishakhapatnam, NCH-Mangalore, Cochin (Air), Chennai (Air), Chennai (Sea), , Noida (Customs), and four Commissionerates under JNCH-Mumbai (NS-1, NS-II, NS-III, NS-V) and Commissionerates of Customs (Prev.)- Lucknow, West Bengal.

⁴¹Circular No.162/73/95-CX dated 14December 1995 as amended by Circular dt.28 May 2003, 26 December 2014 and 26 April 2016.

Audit scrutiny of 286 Call Book cases in 25 Commissionerates of Customs revealed that in 07 Commissionerates⁴² there were 8 cases having money value of ₹28.93 crore, which were incorrectly retained (August 2016 to May 2019) in Call Book for want of timely review in contravention to the directions issued by the Board vide Circular of April 2016.

Two such cases are narrated below:

(i) In Commissionerate of Customs (Import), NCH, New Delhi an SCN issued (February 2018) to M/s 'U' News Print Ltd. for ₹81 lakh was still reflected (January 2020) in the call book even though the Settlement Commission had passed the final order in January 2019 and the party had deposited all dues by February 2019.

(ii) Similarly, in Commissionerate of Customs, JNCH, Mumbai, two SCNs issued (October 2015 & November 2017) to M/s 'V' Automobiles and M/s 'W' Systems Private Limited and others for ₹1.38 crore were retained in call book even though the Settlement Commission had passed their orders (July 2018).

Inadequate monitoring of call book cases resulted in incorrect reporting to the Board as well as non-adjudication of cases fit for adjudication.

This was brought to the notice of Department (January/February 2020); their reply was awaited (July 2020).

3.4.4.3 Monitoring mechanism of reporting through Monthly Technical Report (MTR)/Monthly Performance Report (MPR)

The Board vide Circular NO.717/33/2003-CX dated 23 May 2003 had requested all Chief Commissioners/Commissioners to take utmost care in compiling the data, particularly relating to pending cases and revenue involved, while sending the reports (MTRs/MPRs).

Audit test checked records in selected 25 Commissionerates and noticed following discrepancies in 10 Commissionerates⁴³ :

- a) Non reflection of SCNs issued in MPR
- b) Differences between opening and closing balances of pending cases in MPR
- c) Mismatch of data in different sections of MPR
- d) Mis-reporting of issued SCN to the Board through MPR

⁴² Commissionerate of Customs- Mundra, (Import), Delhi, Noida, JNCH, Mumbai and Comm. of Customs (Prev.) Bhubaneswar, Paradeep Customs and Lucknow

⁴³ Commissionerate of Customs - Mundra, (Air Port & Air Cargo) Bengaluru, NCH- Mangaluru, Cochin sea port, (Import) NCH Delhi, Indore, Noida, Comm. of Customs (Prev.)- Lucknow, Patna & Paradeep Cus House-Bhubaneswar,

On being pointed out (November 2019), the Commissionerate of Customs, Indore stated (March 2020) that the Commissionerate was created in January, 2018 and while bifurcating the figures of erstwhile Commissionerate of Customs and Central Excise, certain discrepancies had crept in the MPR of Customs Commissionerate. At present, the figures are being reported correctly.

The fact remained that the discrepancy pointed out by audit has been accepted. However, the discrepancies still exist between MPR and information furnished by the office.

Assistant Commissioner, Paradeep division replied (December 2019) that discrepancies existed in these cases because protective SCNs were issued during 2002 on the basis of audit objections and all these cases were transferred to Call Book. Case files of 136 cases were not readily available/traceable.

Audit observed that this matter of missing files was never brought to the notice of higher authorities. Accordingly, the matter needs investigation as likelihood of realization of revenue involved had further diminished.

Further response and reply from remaining Commissionerates were awaited (July 2020).

3.4.4.4 Maintenance of registers

For proper levy and collection of duty, Department maintains various registers to monitor duty demand cases right from its initiation to its final recovery viz. issue of SCN, its adjudication, demand and its recovery. The Department's field formations maintain registers like SCN control register for monitoring of issuance of SCN (Unconfirmed demand register), Confirmed Demand register, 335J register for monitoring of cases of prosecution etc.

In 08 Customs Commissionerates⁴⁴, it was noticed that there was no uniform system being followed by all the field formations in maintenance of registers. Some categories of discrepancies noticed in the registers had been listed below:

- a)** SCN registers not maintained or were incomplete
- b)** Confirmed demand (OIO) register not maintained/ incomplete
- c)** Abstract of pending cases not being prepared
- d)** Call Book register not maintained

⁴⁴ Commissionerate of Customs- (Export) & (Import) NCH Delhi, Indore, Hyderabad, Noida, Cochin Sea, Comm. of Customs (Prev.)-Jodhpur & Patna,

On being pointed out (November 2019), the Commissionerate of Customs (Prev.), Jodhpur replied that most of the office work was maintained on computer and copy of the same is pasted in manual register. It is only due to clerical error, the same were not pasted in the concerned register. However, the concerned staff has been directed to be more careful at the time of making entries in register and ensures that all the entries will be inserted in the register before submission of MPR.

Commissionerate of Customs Indore accepted the audit observation with assurance 'Noted for due compliance'. It further submitted to maintain Centralised SCN/OIO register at AC/DC level in future.

Reply from remaining Commissionerates was awaited (July 2020).

3.4.4.5 Effectiveness of Monitoring and Internal Control in RA

Consequent to issue of O&M Instruction No.11/2004 dated 27.7.2004, Adjudication and ECA Divisions have been restructured and ECA section was entrusted with all the post adjudication activities. The licensing sections have to forward details of defaulters to ECA Divisions for issue of SCN and adjudication and to take steps for recovery.

(i) Non-issuance of SCNs and adjudication orders despite completion of required process

Scrutiny of records revealed that in RA, Mumbai 132 cases were fit for issuance of SCN but the same were pending for issuance of SCN. Apart from this, instances were also found where adjudication orders were not passed even after preparation of factsheets.

One such case is narrated below:

In ADGFT, Mumbai an analysis of un-redeemed EPCG licences revealed that there were 132 EPCG cases involving a money value of ₹130.56 crores⁴⁵ (duty saved amount ₹130.56 crore) where SCNs were issued, PHs were held and fact sheet prepared for conclusion of adjudication proceedings. However, no adjudication orders were finalized at the time of audit (December 2019). The number of days lapsed since the preparation of factsheet ranged from 218 to 1213 days, as detailed in Table 3.6.

⁴⁵ Duty saved amount = (₹ 1,044.50 crore divided by 8)

Table 3.6: Pending issue of OIO even after preparation of fact sheet

No. of days	No. of licences involved	Money value involved (₹ in Cr.) FOB
up to one year	126	1,038.21
1-2 years	0	0
More than 2 years	6	6.29
Total	132	1,044.50

As could be seen from Table above 126 licenses involving exports value (FOB) of ₹1,038.21 crore were pending for nine months to one year since preparation of fact sheet. Cases involving six licenses with exports value of ₹6.29 crore were pending beyond one year, with highest pendency being more than three years. No reason or justification for such delays were available on record. Non-issue of OIOs for such prolonged period despite preparing the fact sheet for OIO, indicated the failure of monitoring mechanism.

This was brought to the notice of Department (January 2020) and reply was awaited (July 2020).

(ii) Observations on Registers and MIS reports

Examination of maintenance of registers and accuracy of MIS reports revealed the following deficiencies in five of the 12 RAs test checked:

- a) Registers for SCN and OIO issued during 2016-17 to 2018-19 were not maintained in two RAs (Kanpur and Kolkata).
- b) In two RAs (Jaipur and Bengaluru), it was noticed that there were discrepancies of 156 and 592 cases respectively in MIS report and list of OIO/SCN cases provided to audit. The discrepancies were noticed in opening and closing balances in the MPRs in cases reported by RA, Jaipur while in RA, Bengaluru discrepancies were noticed in SCN and adjudicated cases.
- c) In JDGFT, Cochin, penalty imposed in adjudication of 34 SCNs during the period 2017-18 and 2018-19 was not incorporated in MIS Report.

Ministry's reply was awaited (July 2020).

3.4.5 Lack of co-ordination between RAs and Customs

MoF in its instruction F. No. 609/119/2010-DBK dated 18th Jan 2011 stated that some Customs Houses reported that in many Drawback cases of non-realisation of foreign exchange, the SCNs have been returned undelivered as the recipient / address was non-existent. In view of this, the instruction desired that the Commissionerates should set up an institutional mechanism to liaise regularly with RAs and report names of such exporters to RAs at regular intervals or joint review meetings so that action can be taken against

them and their IE codes cancelled for furnishing wrong addresses to DGFT / Customs. Further Circular NO. 16 / 2017-Cus dated 2nd May 2017 also instructed that the institutional mechanism laid down in MoF instruction dated 18th Jan 2011 should be used to pursue cases of non-fulfilment of EO by licence / authorisation holder.

3.4.5.1 It was noticed that there were inconsistencies in the redemption status of EPCG licences furnished by RA and Customs department. In Commissionerates of Customs-Chennai Sea, ACC Bengaluru and JNCH Mumbai, a test check revealed that in 128 licence cases where the EO period was over, the cases were not communicated to the concerned RAs. Moreover, 19 cases were closed at Customs side and pending with the RAs.

A few cases are narrated below

(i) In Commissionerates of Customs-Chennai Sea and ACC Bengaluru, in 19 EPCG licences involving a duty saved amount of ₹24.35 crore, audit found that the bonds were cancelled and the cases were closed by the Commissionerates. On cross verifying these licenses with the respective RAs, it was noticed that these licences were still unredeemed.

The cancellation of the EPCG licences by the Customs department without receipt of the redemption order from the concerned JDGFTs was not in order. The Department would not be in a position to act upon any Deficiency Letters(DLs) / SCNs /adjudication orders issued by JDGFT for these licences involving recovery of import duty towards the non-fulfilment of the EO.

In reply Commissionerate of Customs, ACC Bengaluru stated that:

- a)** In one case the Department accepted that a different bond was closed by oversight. Further, in the instant case the importer had completed EO and applied for EODC to DGFT which was issued on 10 March 2020.
- b)** In another case the Department replied that DGFT vide their Email dated 3 October 2019 confirmed that redemption letter has been issued.
- c)** In one more case on the basis of Importer's request wrong bond was closed on 17 March 2017. However, the importer had completed EO and addressed a letter (14-02-2020) to DGFT for action.

The reply of the Department may be viewed in light of the fact that for each licence a separate bond is executed as guarantee. Cancellation of a different bond, wrong bond on importer's request or cancellation of bond without EODC underlines that due diligence was not exercised by the Customs department to monitor the fulfilment of prescribed EOs. Further, on verification in one case wherein the Department stated that EODC has been

issued, it was noticed that details related to the licence were not available in the DGFT's EODC database (*website; eodc.online*).

The fact remained that Department initiated action against licensee only after observation by audit which indicates inadequacy of the monitoring system.

Reply from other Commissionerate was awaited (July 2020).

(ii) In Commissionerate of Customs (Sea) Chennai, in respect of 57 EPCG licenses involving a duty saved amount of ₹162.81 crore, where the EO period was over, it was noticed from the information furnished to audit that these licenses were not available in the EPCG licence master data of the Commissionerate. The given information was incorrect as test check of 10 cases in the ICES System revealed that these licences were utilised through Chennai Sea Customs for making imports.

(iii) In Commissionerate of Customs, JNCH Mumbai, M/s 'X' International (India) involving duty saved amount of ₹4.84 lakh, SCN was adjudicated in August 2018; whereas the licence was already redeemed in December 2016 by ADGFT, Mumbai.

Similarly, in 11 cases involving money value of ₹43.40 crore, SCNs (January 2017 to February 2019) were not closed by the Customs department for a period ranging from 10 months to 36 months even though parties had either submitted the EODC and proof of extension of EO period issued by ADGFT, Mumbai.

(iv) DGFT launched EODC Monitoring System⁴⁶, which is available in the public portal, to facilitate exporters to know the status of their application with regard to issue of EODC.

In Commissionerate of Customs, JNCH Mumbai, in 41 cases involving ₹41.77 crore, SCNs issued during August 2017 to February 2019 were not closed by the Customs department. Even though, EODC was stated to have been issued as per EODC Monitoring System for Advance/EPCG authorisation module of DGFT. Since this information is available in the public portal, the Customs department could have utilised the facility to ascertain the position of EO at DGFT.

In spite of having instructions/standing orders on EO Monitoring and sharing of information between the Customs and RAs through institutional mechanism, there is no established mechanism in place and the Departments continue to function as independent silos.

⁴⁶Trade Notice No.1/2018-19 dated 4.4.2018

Monitoring of RAs needs to be enhanced. Coordination between Customs Department and DGFT's EODC monitoring system needs to be improved.

Reply of the Ministry was awaited (July 2020).

3.5 Conclusion

Audit of the issue of SCNs and adjudication process in Customs Commissionerates revealed non-compliance to the extant provisions of the Act and rules at various stages from PNC stage till issue of adjudication orders and follow up of review orders.

On one hand, SCNs were issued instead of issuing a simple letter for failure of licence holder to submit proof of discharge of EO and on the other, failure to issue SCNs within the prescribed period rendered them time-barred. Extended period of time under Section 28 (4) of the Act was invoked even in cases where SCNs were ought to be issued within the normal period under Section 28 (1) of the Act.

In case of SEZs, delays were noticed in issue of SCNs by DCs as well as dropping of SCNs by the Adjudicating authority because of non-adherence to prescribed procedures and mis-representation of facts.

Absence of provisions for prescribed timelines for issue of SCNs and their adjudication in the FTDR Act, 1992 to act swiftly against the defaulters left discretion in the hands of administrative authorities of RAs and DCs and avoidable delays in recovery of Government revenue. Considerable delays were noticed in issue of SCNs by RAs, even though the EO period had already expired, including cases where the EO period expired 2 to 11 years ago.

The SCNs were pending for adjudication beyond prescribed timelines, with highest pendency being 182 months beyond prescribed time limit, inspite of timelines for adjudication of SCNs being clearly laid out in the Act. Even in cases where adjudication was completed, there were considerable delays, with 37 *per cent* cases, representing 32 *per cent* of total revenue involved in delayed cases, getting adjudicated with delay of more than 6 months. The PH was granted beyond permissible number and delays were noticed in issue of adjudication order even after holding last PH, leading to avoidable blocking of revenue. SCNs were pending adjudication for want of RUDs, a basic requirement for issuing SCN.

In the absence of prescribed provisions in FTDR Act, 1992 regarding fixing of PH, it was noticed that the DCs were providing PH without any limit to numbers, leading to delay in adjudication.

While the adjudication process itself was fraught with delays, deficiencies were noticed even in follow up of adjudication orders in both Customs Commissionerates and RAs.

The DIGIT, made mandatory since 1 April 2018 with the objective of creating a complete database of Customs offences was found to be partly functional.

Deficiencies were also noticed in key monitoring and reporting mechanisms such as data discrepancies in Monthly Progress Reports, incomplete SCN and Confirmed Demand registers in Customs Commissionerates. The lax monitoring in RAs is evident from non-issuance of adjudication orders despite preparation of fact sheet.

Inconsistencies were noticed in the redemption status of EPCG licences furnished by RA and Customs department. It was also noticed that Customs department was not using EODC details available on DGFT's EODC Monitoring System, available in public domain, leading to non-closure of SCNs even in cases where EODC was granted by DGFT. Thus, in spite of standing orders on monitoring EO and sharing of information between the Customs and RAs through institutional mechanism, there is no established mechanism in place and the Departments continue to function as independent silos.

Recommendations:

- 1) Ministry may consider providing specific time limit in FTDR Act, 1992 for issuance and adjudication of SCN.**
- 2) In order to give a fair opportunity to the noticee to reply to SCN and also to prevent unlimited discretion in hands of Adjudicating authority to allow any number of PH, express provision needs to be incorporated in the FTDR Act, 1992 regarding number of PH to be granted on same lines as in Customs Act.**
- 3) The monitoring and reporting mechanisms need to be strengthened to ensure that timely and proper action as per the Act is taken by the field formations in issuing and adjudicating SCNs.**
- 4) Cases of irregularities including issuance of SCN under inapplicable section of the Act may be examined in detail and responsibility may be fixed for errors of omission and commission.**
- 5) The database of Customs offences as envisaged under DIGIT must be completed in a time bound manner.**
- 6) Monitoring of RAs need to be enhanced. Coordination between Customs Department and DGFT's EODC monitoring system needs to be improved.**
- 7) As audit has checked only a sample of cases, the Department may examine all other cases also to identify and fix systemic deficiencies.**

