

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 BE giving details of the cargo, imported tariff classification and applicable duty, and other required information. Under self-assessment, BE can be filed electronically through ICEGATE⁴⁷ into the Indian Customs Electronic Data Interchange (EDI) system, referred to as ICES⁴⁸. In the non-EDI system, the BE 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 also have 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 BsE filed electronically into ICES through a Customs House Service Centre or web based ICEGATE are transmitted by ICES to the RMS⁴⁹. The RMS processes the data through a series of automated steps and results in an electronic assessment. This assessment determines whether the BE will be taken-up for action, i.e. manual appraisal by assessing officer or examination

⁴⁷ICEGATE 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 BE (import goods declaration), Shipping Bills (export goods declaration), e-payment, on-line registration. A data and links to various other important websites/information pertaining to the Customs business

⁴⁸The 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.

⁴⁹Risk 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.

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 conditions 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.

Pan India data requisitioned (June 2019) by audit for import and export transactions for the FY 19 was not received despite repeated requests. In the absence of Pan India transactional data, audit was conducted through CRA Module interface of ICES, which had its limitations. The conclusions in this chapter on compliance audit were based on limited audits carried out by physically visiting the 48 Commissionerates as well as data analysis of the import data for the year 2017-18.

4.5 Audit Sample

During 2018-19, a total of 1.22 crore BsE and 1.34 crore SBs were generated, out of which Audit selected a sample of 4.09 lakh BsE (3.35 *per cent*) and 2.21 lakh SBs (1.65 *per cent*). Significant audit observations (69 cases) with revenue implication of ₹10 lakh or more noticed during test check of documents in the Customs Commissionerates are included in this chapter.

Based on the findings in test check referred to the Ministry during December 2019 to May 2020, audit analysed import data for the year 2017-18 and quantified total number of transactions at risk. Findings of data analysis have been incorporated in the respective paragraphs.

4.6 The cases of non-compliance to Act, rules, regulations and notifications etc. noticed during audit could be broadly categorized as follows:

- I. Incorrect application of notifications (Paragraphs 4.7 to 4.9).**
- II. Misclassification of imports (Paragraph 4.10).**
- III. Incorrect levy of applicable levies and other charges (Paragraphs 4.11 and 4.12).**

4.7 Incorrect application of notifications

Test check of 1,848 BsE for imports valuing ₹2,378 crore, out of 39,816 BsE for Import of goods valuing ₹55,031 crore were made during January 2016 to March 2019 revealed irregularities of improper application of various notifications in 11 cases (51 BsE), each involving revenue of ₹10 lakh or more. The total revenue implication was ₹4.93 crore. Individual cases of improper application of notifications of value less than ₹10 lakh have been reported to the local Commissionerates through field inspection reports. The Department accepted all 11 cases and intimated recovery of ₹3.52 crore which included interest. Three cases have been discussed in succeeding paragraphs and remaining cases are included in **Annexure 6**.

4.7.1 Short levy of BCD on I phones (Smart phones) imports due to incorrect application of the notification

As per Section 15 of the Act, in the case of goods entered for home consumption under Section 46 of the Act, the rate of duty and tariff valuation applicable to any imported good, shall be the rate and valuation in force, on the date on which a BE in respect of such goods is presented under Section 46 of the Act. If a BE has been presented before the date of entry inwards of the vessel, the BE shall be deemed to have been presented on the date of such entry inwards.

Further, as per notification No. 91/2017-Customs (BCD) dated 14 December 2017, sl. no. (a) (ii), 'I Phone (Smart Phones)' falling under Customs Tariff Heading (CTH) 85171290 attract BCD at 15 *per cent*.

M/s. 'A' India P. Ltd. imported 'I Phone (Smart Phones)' (seven BsE) from AA International, Ireland through Commissionerate of Customs (Import), ACC, Mumbai under CTH 85171290. Audit scrutiny revealed that the BsE were filed on 13 February 2017 and the entry inwards date of all these BsE of goods was 14 December 2017. Accordingly, as per the proviso to Section 15 of the Act, in these cases, the duty should be determined on the date of entry inwards. Thus, the BCD should be levied as on 14 December under aforesaid notification dated 14 December 2017 at the rate of 15 *per cent*. However, the department assessed the goods by adopting lower rate of BCD i.e. 10 *per cent* instead of 15 *per cent*. This resulted in short levy of BCD of ₹1.11 crore and consequent short levy of IGST of ₹0.13 crore. This was required to be recovered from the importers along with applicable interest.

On this being pointed out (August 2018), Department accepted the audit observation and intimated (October 2018) recovery of differential duty of ₹1.39 crore which included interest of ₹0.15 crore.

4.7.2 Short levy of BCD on incorrect exemption granted to ‘Camera module and Printed circuit board assembly’

Exemption benefit of BCD was available to ‘Printed circuit assembly and camera’ till it was omitted from the exemption benefit as per sl. No. 6 (a) of Notification No.57/2017-Cus, dated 30th June 2017 as amended vide 37/2018-Cus dated 02 April 2018. Accordingly, the BCD at the rate of 10 *per cent* is leviable on imported goods ‘camera module & Printed circuit board assembly’ w.e.f. 2 April 2018.

M/s. ‘B’ India Electronics Pvt. and three others imported (April 2018) ‘camera module & Printed circuit board assembly’ (11 BsE) classifying under CTH 85177010, 85258020 and 85177090. The BsE in these cases were filed in advance on 31 March 2018 and 1 April 2018 prior to entry inward date (2 April 2018 to 04 April 2018). However, the Department assessed the BsE considering the date of BsE as duty determination date, instead of entry inward date and granted exemption from BCD under notification no. 57/2017-Cus sl. No. 6 (a). The BCD should be determined on the date of entry inwards i.e. 2 April 2018 and levied at the rate of 10 *per cent*. The incorrect grant of notification benefit resulted in short levy of duty of ₹91.27 lakh which was required to be recovered from the importers along with applicable interest.

The Commissionerate of Customs (Import) NCH, Delhi intimated (May 2019) partial recovery of differential duty of ₹73.79 lakh which included interest amount of ₹8.76 lakh in three BsE and issue (April 2019) of PNC letters in respect of remaining eight BsE.

Ministry’s response was awaited (July 2020).

4.7.3 Import of restricted commodity below Minimum Import Price (MIP)

As per DGFT Notification No. 38/2015-2016 dated 5 February 2016, Minimum Import Price (MIP) of USD 500 *per metric tonne* (PMT) is applicable on import of prime hot rolled steel plate of thickness exceeding 10 mm classifiable under CTH 72085110. Further, DGFT Trade notice No. 17/2016 dated 10 February 2016 has clarified that the imports effected on or after 5 February 2016 below the prescribed USD unit value would be restricted from entry into India.

On 16 February 2016, M/s ‘C’ Steels imported one BE of ‘Prime Hot Rolled Steel plate of thickness ranging from 10 to 63 mm’ under CTH 72085110 declaring the price of goods as USD 295 PMT to USD 380 PMT. On being marked by RMS, the Department after assessment and examination, cleared (February 2016) the goods accepting the declared price. Audit scrutiny (February 2017) revealed that the MIP of USD 500 per metric ton for

imported goods was not adopted as per aforesaid notification. Therefore, non-adoption of prescribed MIP for assessing the goods resulted in short levy of duty of ₹1.15 crore. This was required to be recovered from the importer along with applicable interest.

On being referred (February 2017), Department stated (January 2019) that a SCN had been issued to the importer under Section 124 of the Act read with FTDR Act 1992. Further progress was awaited (July 2020).

Notwithstanding DGFT clarification that the imports effected on or after 05 February 2016 below the prescribed USD unit value would be restricted from entry into India, the Customs department allowed these restricted goods to enter into India. The comments on this systemic lapse in terms of validation controls in the automated system and RMS were called for from the Ministry (May 2020).

Ministry's response was awaited (July 2020).

4.8 Short/non-levy levy under IGST notifications

All imports shall be deemed as inter-State supplies as per IGST Act and accordingly IGST shall be levied on imports in addition to the applicable Custom duties. The IGST on goods imported into India shall be levied as per provisions of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied. In addition, GST compensation cess is also leviable on certain luxury and de-merits goods under the GST (Compensation to States) Cess Act, 2017.

IGST is levied under Section 3 (7) of the Customs Tariff Act, 1975 at the rates prescribed under Schedules of the Notification No.1/2017-Integrated Tax (Rate) dated 28 June, 2017 (as amended). The Central Government under sub-section (1) of Section 6 of the IGST Act, 2017, may, by notification exempt levy of IGST on imports.

Imports worth ₹5,726 crore under 36,861 BsE were made during July 2017 (when GST was implemented) to December 2018 through ten⁵⁰ Customs field formations availing benefits under IGST exemption notifications. Of these, audit test checked 5,135 BsE (14 *per cent*) of imports valued ₹2,754 crore (48 *per cent*). In this test-check, audit noticed 21 cases (485 BsE) of short/non-levy of applicable IGST, each involving revenue of ₹10 lakh or more, with a total revenue implication of ₹9.15 crore. Out of 21 cases, the

⁵⁰ACC, Bengaluru, Chennai (Sea), ACC-Chennai, ACC-Mumbai, ACC-Airport Special cargo, Mumbai, ICD-Garhi Harsaru, ICD-Rewari, ICD-Tughlakabad, NCH-Delhi and Custom House-Pipav, Jamnagar)

Department has accepted 19 cases involving revenue of ₹7.20 crore and recovered ₹7.51 crore in 19 cases which included interest.

Five cases are discussed in the succeeding paragraphs and remaining cases are mentioned in **Annexure 7**.

Analysis of import data for the period 2017-18 revealed short/non levy of IGST in analogous 1161 consignments imported through 38 Customs Ports⁵¹. The revenue amounting to ₹19.72 crore was short/non levied. CBIC may examine these cases and take corrective action.

The matter was referred to the Ministry in August 2020, their response was awaited (September 2020).

4.8.1 Short levy of IGST on ‘Lithium ion cell’ imports

IGST is leviable at the rate of 28 *per cent* on ‘Lithium ion cell’ under Sl. No. 139 of Schedule IV of aforesaid notification.

M/s. ‘D’ India Ltd and two others imported “Lithium ion cell” under CTH 85076000 (12 BsE) through ICD Garhi Harsaru, under Commissionerate of Customs, Patparganj, Delhi. The Department cleared the imports levying IGST at the rate of 18 *per cent* (Sch. III Sl. No.376A). The goods being ‘Lithium ion cell (parts for manufacturing of Lithium Ion Batteries)’ were correctly classifiable under Schedule IV (Sl. No. 139: other than Lithium-ion Battery). Accordingly, imported goods attracted IGST at the rate of 28 *per cent*. Thus, adoption of lower IGST rate of 18 *per cent* instead of 28 *per cent* resulted in short levy of IGST of ₹1.27 crore.

On this being pointed out (January 2019), the Department while accepting the audit observation intimated (July 2019) recovery of differential duty of ₹1.40 crore which included interest of ₹13 lakh.

Apart from these cases, analysis of data revealed that in 10 other imports of ‘Lithium ion cell’ made during 2017-18 through three Customs Ports⁵², IGST was levied at 18 *per cent* instead of applicable rate of 28 *per cent*. The duty

⁵¹Mumbai Air Cargo(INBOM4), Delhi Air Cargo (INDEL4), Chennai Sea (INMAA1), Nheva Sheva Sea (INNSA1), ICD Tuglakabad (INTKD6), Bangaluru Air Cargo (INBLR4), Chennai Air Cargo (INMAA4), Coimbatore(INCJB4) , Cochin Air Cargo (INCOK4), ICD Patparganj (INPPG6), ICD Garhi Harsaru (INGHR6), ICD Thar Dry Port-Ahemdabad(INSAU6) , Kolkata Sea(INCCU1), ICD Bangaluru(INWFD6), ICD Sahnewal Kench (INSNI6), Vizac Sea(INVTZ1), Mundra(INMUN1), ICD Dadri - STTPL (CFS(INSTT6), Dadri - ACPL (CFS(INAPL6) , Kolkata Air Cargo(INCCU4), ICD Sachin-Surat(INSAC6), Hyderabad(INSNF6), Baroda(INBRC6), Krishnapatnam(INKRI1) , Ahmedabad Air Cargo(INAMD4), Ludhiana(INLDH6), Ahmedabad(INSAJ6), Kanakpura - Jaipur ICD(INKKU6), ICD Sahnewal GRFL(INSGF6), Hyderabad Air Cargo)INHYD4, Tiruvallur-ILP ICD(INILP6) , Noida-Dadri-ICD(INDER6) , Sabarmati ICD(INSBI6) , Faridabad(INFBD6), Dadri-CGML(INCPL6), Panchi Gujran/Sonepat ICD(INBDM6) , Mumbai Sea(INBOM1), Pipavav(Victor) Port(INPAV1)

⁵²Delhi Air Cargo (INDEL),Nheva Sheva Sea (INNSA1), ICD Patparganj (INPPG6)

implication was ₹ 68 lakh. CBIC may examine these cases and take corrective action.

The matter was referred to the Ministry (August 2020), their response was awaited (September 2020).

4.8.2 Short levy of IGST on imports of parts of Pen/pencils

IGST is leviable at the rate of 12 *per cent* (Sch. II Sl. No.232/233) on Pens/Pencil classifiable under CTH 9608/9609. However “Parts of pen/pencil” attract IGST at the rate of 18 *per cent* (Sl. No. 453 of Schedule III).

M/s. ‘E’ International Ltd imported ‘parts of pen/pencil’ (21 BsE) classifying under CTH 9608. The Department cleared them after levying IGST at the rate of 12 *per cent* (Sch. II Sl. No.232/233). The goods being ‘Adaptors/Regulators (Parts of pen/pencil)’ were correctly classifiable under Schedule III (Sl. No. 453) and not under Schedule II (Sl. No. 232/233). Hence, the goods attracted IGST at the rate of 18 *per cent* and not 12 *per cent* as applied. Thus, there was short levy of IGST of ₹1.27 crore due to adoption of lower IGST rate of 12 *per cent* instead of applicable 18 *per cent*.

Department accepted the observation and reported (May 2019) partial recovery of differential duty of ₹39.69 lakh from the importer which included interest amount of ₹8.09 lakh. Recovery of balance amount was awaited (July 2020).

Analysis of import data (2017- 18) revealed that in 11 other imports of “Parts of pen/pencil” imported through three Customs Ports⁵³, IGST was levied at 12 *per cent* instead of applicable rate of 18 *per cent*. The duty implication was ₹1.12 crore. CBIC may examine these cases and take corrective action.

The matter was referred to the Ministry in August 2020, their response was awaited (September 2020).

4.8.3 Improper exemption of IGST on import of pharmaceutical products

IGST is leviable at the rate of five *per cent* with effect from 15 November 2017 on Scientific and technical instruments, apparatus, accessories and consumables, specified in notification no. 51/96-Customs, dated the 23.07.1996, when imported by Public funded research institution or a University, Central or State Government Department or laboratory (notification no. 47/2017-Integrated Tax (Rate), dated 14 November 2017 as amended vide notification no. 10/2018 dated 25 January 2018) . Earlier, imports by these organizations were exempted from levy of IGST under notification no. 51/96- Customs.

⁵³Mumbai Air Cargo (INBOM4), Chennai Sea (INMAA1), Chennai Air Cargo (INMAA4)

M/s. 'F' Pharmaceuticals Ltd. and one other imported (15 November 2017 to 31 March 2018) various drugs and pharmaceutical products (107 BsE) from different countries through (i) Commissionerate of Customs (ACC) Mumbai, and (ii) Airport Special Cargo, Courier Cell, Mumbai. The importers claimed IGST exemption under notification no. 51/96 dated 23 July 1996, which was irregularly allowed by the Department. As per the notification dated 14 November 2017, IGST was leviable on goods imported w.e.f. 15 November 2017 at the rate of 5 *per cent*. Omission to do so resulted in non-levy of IGST on the imported goods to the extent of ₹99.09 lakh.

Further, it was also noticed that an additional amount totalling ₹ 16.15 crore was claimed as duty forgone during the same period against notification no.51/96.

On this being pointed (June/November 2018/ March 2019), Deputy Commissioner, of Customs, ACC, Mumbai accepted the observation in one case and intimated (December 2018) that Less Charge Cum Demand Notice has been issued to the importer.

However, the Dy. Commissioner-Mumbai III, in another case, while not accepting the audit observation, seconded Importer's reply and has stated (August 2019) that IGST Act, 2017 vide Section 5, contains provisions for levy of IGST on the specified goods on Inter-State supplies of goods and services and it is not an Act which provides for levy of IGST on imported goods. It has been further held that the charging Section for integrated tax in respect of imported goods is sub section (7) of Section 3 of the Customs Tariff ACT and a reference to Section 5 of the IGST Act, 2017 in that sub section for the purposes of ascertaining the rate of IGST on imported goods when like or similar goods are supplied in India. Hence, it was held that IGST is not leviable on the imports objected to by Audit.

The Department's reply is not tenable as all imports shall be deemed as inter-State supplies under IGST Act, 2017 and accordingly IGST shall be levied in addition to the applicable Custom duties. This was communicated to the Department in November 2019, their response was awaited (June 2020).

In addition to specific response to the above two issues, Ministry was also requested to examine reasons for non-compliance to notification dated 14 November 2017 on clearances made through ICES w.e.f. 15 November 2017 and offer comments on the reasons for lapses and also details of other imports which would have been assessed at incorrect IGST rate in ICES due to this lapse.

Analysis of import data (2017-18) revealed that 26 similar imports of Scientific and technical instruments, apparatus, accessories and

consumables made on or after 15 November 2017 through four Customs Ports⁵⁴, were exempted from IGST. Non-levy of duty implication was ₹24 lakh. CBIC may examine these cases and take corrective action.

The matter was referred to the Ministry in August 2020, their response was awaited (September 2020).

4.8.4 Short levy of IGST on import of Aluminum alloy wheel/Disc

Parts of tractors namely Rear Tractor wheel rim, tractor centre housing, tractor housing transmission and tractor support front axle attract IGST at the rate of 18 *per cent* under Sch. III Sl. No.402. The parts other than these specified parts of tractors as well as Parts and accessories of the motor vehicles attract IGST at the rate of 28 *per cent* (Sl. No. 170 of Schedule IV of aforesaid notification).

‘Aluminum alloy wheel/disc’ for motor vehicles attract IGST at the rate of 28 *per cent* under Sl. No. 170 of Schedule IV of aforesaid notification.

During the period February 2018 to May 2018, a total no. of nine BsE had been filed for import of “Parts and accessories of motor vehicles” valuing ₹8.06 crore under CTH 87087000 through ICD-Rewari, under Commissionerate of Customs, Patparganj, Delhi. Audit test checked all nine BsE valuing of ₹8.06 crore and pointed out short levy of IGST of ₹93.94 lakh in all the 9 BsE.

M/s. ‘G’ Pvt. Ltd imported (February to May 2018) ‘Aluminum alloy wheel/disc’ (nine BsE) classifying them under CTH 87087000, which were cleared by the Department after levying IGST at the rate of 18 *per cent* (Sch. III Sl. No.402). The goods being ‘Aluminum alloy wheel/disc’ and not the specified parts of tractors were correctly classifiable under Schedule IV (Sl. No. 170) of aforesaid notification and attracted IGST at the rate of 28 *per cent*. Thus, there was short levy of IGST of ₹93.94 lakh due to adoption of lower IGST rate of 18 *per cent* instead of applicable rate of 28 *per cent*.

Department accepted the observation and intimated (February/March 2019) recovery of differential duty of ₹1.06 crore which included interest amount of ₹12.11 lakh.

Apart from these cases, analysis of import data (2017-18) revealed that in six consignments of Aluminium alloy wheels imported through Nhava Sheva (Sea) and Delhi Air Cargo Ports, IGST was levied at 18 *per cent* instead of

⁵⁴Mumbai Air Cargo (INBOM4), Delhi Air Cargo (INDEL4), Hyderabad Air Cargo (INHVD4), Chennai Air Cargo (INMAA4)

applicable rate of 28 *per cent* under aforesaid Notification. The duty implication was ₹6 lakh. CBIC may examine these cases and take corrective action.

The matter was referred to the Ministry in August 2020, their response was awaited (September 2020).

4.8.5 Short levy of IGST due to application of incorrect rate on ‘Tufted artificial/polypropylene carpet’ imports

Carpets and other textile floor coverings, tufted made of other man made textile materials are classifiable under CTH 57033090 and attract IGST at the rate of 12 *per cent* (serial no. 144 of schedule II of notification no.1/2017 Integrated Tax (Rate) dated 28 June 2017). Coir mats, matting and floor covering, classifiable under CTH 5705 attract IGST at the rate of 5 *per cent* (serial no.219 of schedule I of notification no.1/2017 Integrated Tax (Rate) dated 28 June 2017).

Imports under CTH 57033090 valued at ₹44.26 crore were made during the period January 2018 to September 2018 through Tughlakabad, Import Commissionerate under 294 BsE. Audit test checked 193 BsE involving imports valued ₹27.28 crore and pointed out short levy of duty by ₹10.09 lakh in nine BsE involving import worth ₹1.24 crore. The case is discussed below:

M/s. ‘H’ Enterprises and two others imported (February 2018 to August 2018) ‘Tufted artificial/polypropylene carpet’ (nine BsE) through ICD, Tughlakabad. The goods were classified under CTH 57033090 – others carpets and other textile floor coverings tufted made of other man made textile materials and assessed to IGST at the rate of 5 *per cent* (serial no.219 of schedule I of notification no.1 Integrated Tax (Rate) dated 28 June 2017) instead of applicable IGST at the rate of 12 *per cent* under Schedule II (Sl. No. 144) of aforesaid notification. Thus, incorrect application of IGST rate resulted in short levy of duty of ₹10.09 lakh, which needs to be recovered along with applicable interest.

Further, audit noticed that while serial no.219 is applicable to goods classified under tariff heading 5705, the system allowed the importer to pay IGST using this serial number, whereas the goods were classified under “5703”. The BE was assessed by the system, implying this was not marked by RMS as well for verification. Thus, neither there was a validation to prevent levy of IGST applicable to a classification other than declared classification nor RMS has been designed to identify this.

The Department reported (July 2019) recovery of ₹7.32 lakh.

Ministry response was awaited (July 2020).

4.9 Short/non- levy of duty due to grant of notification No.50/2017- Customs benefits erroneously

Notification No.50/2017-Customs dated 30 June 2017 (as amended) allows imports of various commodities at concessional rate of duties subject to fulfilment of prescribed conditions.

To verify the compliance with the prescribed conditions specified in the Notification No.50/2017 (Customs) (as amended), Audit analysed imports of Dried leguminous vegetables, Machinery and its parts, “Aircraft parts” (Chapters 7, 84, 85 and 90 of the Customs Tariff) made under this notification during 2017 to 2019 (up to February 2019) through nine⁵⁵ Commissionerates.

Out of 6,511 BsE of imports made under notification 50/2017 during July 2017 to March 2019 valuing ₹737 crore, Audit test checked 4,987 BsE (77 per cent) for imports worth ₹682 crore (93 per cent) and noticed seven cases (127 BsE) of non-compliance with revenue implication of ₹ 5.60 crore.

Three cases are discussed in the succeeding paragraphs and remaining cases are mentioned in **Annexure 8**. The Department has accepted five cases involving revenue of ₹3.43 crore and recovered ₹3.80 crore which included interest in four cases.

Analysis of import data (2017-18) revealed that 172 consignments of automotive parts, ice cream machinery, motor parts, gear box, sewing machine etc. imported through 22 Customs Ports⁵⁶ were allowed benefit of exemption notification 50/2017-Cus. The revenue involved was ₹7.94 crore. CBIC may examine these cases and take corrective action. Matter was referred to the Government (August 2020), reply is awaited.

⁵⁵NCH, Delhi, JNCH-Mumbai, ICD-Garhi Harsaru-Haryana, Comm-II;CH-Chennai, Chennai(Sea), Kochi (Sea), ACC-Mumbai, ICD-Irrungatu Kottai-Tamil Nadu and Bangaluru Commissionerates

⁵⁶Mumbai Air Cargo (INBOM4), Delhi Air Cargo (INDEL4), Chennai Sea (INMAA1), Nheva Sheva Sea (INNSA1), Kattupalli (INKAT1), Bangaluru Air Cargo (INBLR4), Chennai Air Cargo (INMAA4), , Cochin Sea (INCOK1), ICD Patparganj (INPPG6), ICD Garhi Harsaru (INGHR6), Vizac Sea (INVTZ1), Mundra (INMUN1), Dadri - ACPL (CFS (INAPL6), Kolkata Air Cargo (INCCU4), ICD Bangaluru (INWFD6), Ahmedabad Air Cargo (INAMD4), Hyderabad ICD (INSNF6), Nagpur ICD(INNGP6), Ludhiana (INLDH6), Dadri-CGML (INCPL6), Kolkata Sea(INCCU1), GRFL ICD-Sahnewal (INSGF6)

4.9.1 Incorrect grant of exemption benefit of notification to Aircraft parts

As per condition no. 102 for Sl. No. 547A of Notification No.50/2017-Customs (as amended), Aircrafts, aircraft engines and other aircraft parts which fall under 1(b) or 5(f) of Schedule II of the Central Goods and Services Tax Act, 2017 dated 30 June 2017 are exempted from IGST subject to fulfilment of prescribed conditions. One of the conditions was to re-export the goods within three months from the expiry of the period for which they were supplied under a transaction.

Accordingly, the imported goods, Engine Aircraft part (return after repair) attract IGST at the rate of 18 *per cent* under Sl. No. 316 of Schedule III of aforesaid notification as these were not meant for re-export. Hence the benefit of Sl. No. 547A of Notification 50/2017-Cus was not extendable to the imported goods.

M/s. 'I' Limited imported "Engine Aircraft part" (two BsE) classifying them under CTH 84111200. The Department cleared imported goods after exemption of IGST under aforesaid notification. Audit noticed that the goods were actually re-imported after repair and were not to be re-exported after use, hence ineligible for exemption benefit of Sl. No. 547A of Notification 50/2017-Cus. Therefore, the IGST was required to be levied on repair charges paid by importer at the rate of 18 *per cent* instead of allowing exemption. This resulted in short levy of IGST of ₹2.32 crore due to incorrect grant of notification benefit, which was required to be recovered from the importer along with applicable interest.

On being pointed out (November 2018), Department accepted the audit observation and intimated (May 2019) recovery of differential duty of ₹2.83 crore which included interest amount of ₹50.81 lakh.

4.9.2 Short levy of BCD on Ice cream making machinery imports

Import of "Machinery" for the industrial preparation or manufacture of food or drink not specified elsewhere in the Chapter 84 of the Customs Tariff and classifiable under CTH 8438 attract BCD at the concessional rate of 5 *per cent* under Notification No. 50/2017 (S.No.458).

Audit test checked all 107 BsE of imports of machinery under CTH 8438 made during 2017 to 2019 under notification 50/2017-Cus through Chennai (Sea) Commissionerate. In eight BsE of Machinery imports for production of Ice Cream and its parts (CTH 84388090), audit noticed misclassification and subsequent incorrect grant of exemption which resulted in short levy of duty of ₹68.48 lakh.

It was judicially held that “Ice Cream Making Machine” was classifiable under Tariff Heading 8418 and not under Tariff Heading 8438 of the Customs Tariff Act, 1975 and GST rate would be the one applicable to Tariff Heading 8418 (Gujarat authority for Advance Ruling in the case of M/s. ‘IL’ Private Limited, dated 05.02.2018). Accordingly, the machinery attracts BCD at the rate of 7.5 per cent applicable to CTH 8418.

M/s. ‘J’ Agro Products Limited imported (January 2019 to March 2019) “Ice Cream Making Machinery” (eight BsE) through Chennai (Sea) Commissionerate. Audit noticed that all the imports were misclassified under CTH 84388090 despite judicial pronouncement classifying this machinery under CTH 8418. The Department cleared the imported goods under notification No. 50/2017-Cus (Sl. No. 458), levying concessional BCD (5 per cent) instead of 7.5 per cent. Misclassification of goods and subsequent incorrect grant of exemption benefit resulted in short levy of duty of amounting to ₹68.48 lakh.

Out of eight BsE, five BsE were assessed by the System (RMS) and three were assessed by Assessing Officer.

This was pointed out to the Ministry (May 2020), their response was awaited (July 2020).

4.9.3 Incorrect exemption to import of ‘Used oil well equipment’

Machinery and equipments required in connection with petroleum operations undertaken by specified contracts are exempted from levy of BCD under Sl.No.404 (b) of the notification 50/2017, subject to the condition that the importer should furnish a certificate from a duly authorised officer of the Directorate General of Hydro Carbon in the Ministry of Petroleum and Natural Gas, Government of India at the time of imports. Further Sl.No.557-B of the notification provides exemption from levy of IGST for goods imported under lease with the condition that the importer should execute a bond as specified by the Commissioner to bind himself: -

- (i) to pay the IGST leviable under Section 5(1) of the IGST Act;
- (ii) not to sell the goods without the prior permission of the Commissioner of Customs;
- (iii) to re-export the goods within 3 months for the expiry of the period for which they were supplied;
- (iv) to pay on demand an amount equal to the IGST payable on the said goods in the event of violation of any of the above conditions.

Out of 456 BsE filed through Chennai (Sea) Commissionerate under Sl.No.404 (b) and Sl.No.557-B of Notification 50/2017 during the period from April 2018

to March 2019, test check conducted in 24 BsE with an assessable value of ₹11.53 crore, audit observed that the goods were cleared under 'Nil' rate of IGST.

'Used oil well equipment' (24 BsE) imported (October to February 2019) through Chennai (Sea) Commissionerate were exempted from BCD and IGST under aforesaid serial nos. of the notification. However, the required certificate to avail the exemption of BCD, under Sl.No.404 (b) of the said notification, was not produced by the importers at the time of import. As a test check, in 18 cases certificate from the Ministry of Petroleum and Natural Gas (Ministry) was called for from the Department for verification.

In response (January 2020), the Department had furnished 13 certificates and for the remaining five cases, the Department stated that the required certificates were yet to be obtained from the importers. As the certificates from the Ministry were to be submitted at the time of filing the BsE for claiming the exemption of BCD, the reply proved that the Department had not followed the conditions specified in the notification.

As regard exemption of IGST under Sl. No. 557-B, no evidence that the goods were imported under lease was found in ICES. Hence, audit could not verify whether the conditions, as specified in the notification, were adhered to at the time of import. It was also not clear whether the goods were re-exported within the prescribed period of three months. In case of any violation of the above conditions, the importer would be liable to pay the differential duty.

This was pointed out (May 2020) and the reply of the Ministry was awaited (July 2020).

4.10 Misclassification of Goods

Classification of commodities imported is governed under the provisions of Customs Tariff Act 1975. Levy of applicable duties is dependent on classification applied to the imported commodity.

Import of goods valuing ₹15,011 crore were made during April 2015 to March 2019 under 30,759 BsE. Audit test checked 4,333 BsE for imports valuing ₹4,850 crore and noticed short levy of duty due to misclassification in 1,644 BsE (30 cases). These thirty cases of misclassification, each involving revenue implication of ₹10 lakh or more, having total revenue implication of ₹19.84 crore, have been included in this chapter. 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 30 cases of misclassification, seven cases are discussed in the following paragraphs and remaining cases are listed in **Annexure 9**. The

Department had accepted 23 cases involving ₹9.70 crore and recovered ₹8.46 crore in 14 cases.

Apart from cases test checked, analysis of ICES data revealed misclassification of Poultry machinery, aircraft parts, electrical machinery and equipments, CCTV camera, broadcasting equipments, paper and paper board, Plastic and articles etc in 2,768 consignments imported through 49 Customs Ports⁵⁷ with consequential short/non levy of duty amounting ₹141 crore. CBIC may examine these cases and take corrective action.

4.10.1 Clear float glass misclassified as ‘non wired glass’

Clear float glass is transparent and offers high visible light transmittance. It does not have any absorbent, reflective layer and is classifiable under CTH 70052990 as ‘Other non-wired glass’ attracting BCD at the rate of 5 *per cent* (notification no.46/2011-cus, Sl.no.935) when imported from ASEAN countries.

M/s ‘K’ Enterprises Limited and 19 other firms imported (April 2017 to March 2018) ‘float glass’ (249 BsE) through Chennai (Sea) and Kochi (Sea) Commissionerates. The imported goods were misclassified under CTH 70051090 and exempted from BCD. This resulted in non-levy of duty amounting to ₹4.34 crore.

Audit noticed that the imported goods were clear and not coated with any absorbent, reflective or non-reflecting layer, accordingly merit classification under CTH 70052990 and BCD was leviable at 5 *per cent* in terms of aforesaid notification.

On this being pointed out (July/ August 2018), the Customs authorities, Cochin stated (September 2019) that the composition of the glasses was soda lime silica based glass containing other minor components. The glass surfaces are not polished, not tinted, non-wired and not specified. The Department further stated that test results of imports indicate that “An absorbent Layer of Tin” was observed on one side of the glass which is fluorescent under UV illumination”. Accordingly, in view of the test result, the imported goods are clear float glass and correctly classified under CTH 70051090.

⁵⁷Mumbai Air Cargo (INBOM4), Delhi Air Cargo (INDEL4), Chennai Sea (INMAA1), Nheva Sheva Sea (INNSA1), Kattupalli (INKAT1), Bangaluru Air Cargo (INBLR4), Chennai Air Cargo (INMAA4), Cochin Sea (INCOK1), ICD Patparganj (INPPG6), ICD Garhi Harsaru (INGHR6), Vizac Sea (INVTZ1), Mundra (INMUN1), Dadri - ACPL (CFS(INAPL6), Kolkata Air Cargo(INCCU4), ICD Bangaluru (INWFD6), Ahmedabad Air Cargo(INAMD4), Hyderabad ICD (INSNF6), ICD Tuglakabad (INTKD6), Dadri-CGML (INCPL6), Kolkata Sea(INCCU1), Cochin Air Cargo (INCOK4), Dadri – STTPL-CFS (INSTT6), ICD Khurja (INAIK6), Pipavav (Victor) Port (INPAV1), Dabolim (INGOI4), Hyderabad Air Cargo (INHVD4), Jaipur Air Cargo (INJAI4), Rajasansi-Amritsar (INATQ4), Mumbai Sea (INBOM1), Trivendrun Air Cargo (INTRV4), Mangalore Sea (INNML1), Krishnapatnam (INKRI1)

The reply of the Department was not acceptable because:-

(a) The manufacturing process of float glass involves floating molten glass to the mirror-like surface of molten tin, starting at 1,100 degree Celsius leaving the float bath as a solid ribbon at 600 degree Celsius on a bed of molten tin which inevitably introduces tin by thermal diffusion into one side of the glass. The glass so manufactured is clear float glass, one side of which is known as the tin side and other side as the air side. All glass manufactured under float process, (clear, coated or tinted) invariably would contain a layer of tin on one side, which does not mean that all float glass is to be classified under 70051090.

(b) Further, test reports also revealed that the glasses are neither “tinted” nor “wired”. Hence, the possibility of classifying the glasses under CTH 70052110 (meant for tinted) or under CTH 70053010 (wired glass) was also ruled out. Therefore, the imported goods merit classification under CTH 70052990 – “Others” and attract BCD at the rate of 5 *per cent*.

Apart from test checked cases, analysis of data (2017-18) revealed that in another 592 imports of “Clear float glass” made through 27 Customs Ports,⁵⁸ BCD was exempted instead of applicable rate of five *per cent*. The duty involved was ₹13.39 crore. CBIC may examine these cases and take corrective action.

The matter was referred to the Ministry in August 2020, their response was awaited (September 2020).

4.10.2 Polyester woven fabric mixed with viscose fibre misclassified as woven fabrics of synthetic filament yarn

‘Other woven fabric of polyester staple fibers mixed mainly or solely with viscose rayon staple fiber’ are classifiable under CTH 551511 attracting BCD at the rate of 20 *per cent* or ₹ 40 per square metre, whichever is higher. Further, Other than upholstery polyester fabric- ‘woven fabric containing 85 *per cent* or more by weight of textured polyester filaments’ and ‘Other woven fabric obtained from strip or like’ are classifiable under CTH 54075300 & 54072090 respectively.

⁵⁸Ankleshwar (INAKV6), Chennai Sea (INMAA1), Vizac Sea (INVTZ1), Nheva Sheva Sea (INNSA1), Hazira Surat (INHZA1), ICD Banhaluru (INWFD6), Mundra (INMUN1), Cochin Sea (INCOK1), Hyderabad (INSNF6), Garhi Harsaru (INGHR6), Pipavav(Victor) Port (INPAV1), Tuticorin ICD (INTUT6), GRFL ICD Sahnewal (INSGF6), ICD Kanpur – JRY (INKNU6), Ludhiana (INLDH6), Kolkata Sea (INCCU1), Tuticorin Sea (INTUT1), ICD Tuglakabad (INTKD6), Thar Dry Port-Ahemdabad ICD(INSAU6), CMTL ICD/Thimmapur (INTMX6), ICD Loni (INLON6), POWERKHEDA ICD/Dhandari Kalan (INDDL6), KANECH ICD/SAHNEWAL (INSNI6), Krishnapatnam (INKRI1), KLPPL-ICD/PANKI(INPNK6), Kattupalli (INKAT1), Pithampur(ININD6)

M/s 'L' Importer had imported (July 2017 to June 2018) 12 BsE of 'Polyester Woven Fabric 58' through ICD, Sanath Nagar under Commissionerate of Customs, Hyderabad. Department cleared the goods classifying under CTH 54072090//54075300 and levied BCD at the rate of 10 *per cent*. The goods were correctly classifiable under CTH 551511 and attract BCD at the rate of the rate of ₹40 per square metre in the instant case. The misclassification of the imported goods resulted in short levy of Customs Duty of ₹2.74 crore. This was required to be recovered from the importers along with applicable interest.

On this being pointed out (February 2019), the Department partially accepting the observation stated (August 2019) that based on the test reports, the goods were classifiable under CTH 5407 and 551511. The Department further contended that as the importer was not able to quantify the total imported goods among two CTH descriptions suggested in the test report, they requested for assessment at highest rate of duty. Accordingly, goods were classified under CTH 5407 and assessed at the highest rate of duty. On account of misclassification ₹1.36 crore was recoverable from the importer.

Department's reply for classification of some of the imported goods under CTH 5407 instead of CTH 5515 was not tenable because the descriptions of imported goods were same as was in other BsE of CTH 5515. Accordingly, it was classifiable under CTH 551511 and amount of ₹2.74 crore and not ₹1.36 crore was recoverable from the importer.

Apart from these cases test checked, analysis of import data revealed that in 117 similar imports of 'Polyester Woven Fabric 58' made through nine Customs Ports⁵⁹ during 2017-18, BCD was levied at 10 *per cent* instead of applicable rate of ₹40 per square metre. The resultant short levy of duty was ₹11.51 crore. CBIC may examine these cases and take corrective action.

The matter was referred to the Ministry in August 2020, their response was awaited (September 2020).

⁵⁹Nheva Sheva Sea (INNSA1), Mumbai Air Cargo (INBOM4), ICD Mulund (INMUL6), Mumbai SEZ (INBOM6), ICD Tuglakabad (INTKD6), Faridabad (INFBD6), Delhi Air Cargo (INDEL4), Chennai Sea (INMAA1), Bangaluru Air Cargo (INBLR4)

4.10.3 Transmission network interface devices misclassified as its parts

‘Other machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing’ are classifiable under CTH 85176290 and attract BCD at the rate of 10 *per cent*. While, ‘Parts for transmission or reception of voice, images or other data’ are classifiable under CTH 85177090 and exempted from BCD.

M/s ‘M’ Limited imported (February 2018) ‘Multi rate port interface cards/network devices’ of various types by classifying them under CTH 85177090 through NCH, Delhi. Audit scrutiny revealed that the imported goods are network interface cards/network devices and not its parts. Accordingly, the imported goods merit classification under CTH 85176290 as ‘other machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing’ and attract BCD at the rate of 10 *per cent* instead of ‘nil’ rate applied. The misclassification of imported goods resulted in short levy of duty of ₹1.29 crore.

On this being pointed out (May 2018/January 2019), the Principal Commissioner NCH, New Delhi reported (August 2019) recovery of ₹1.29 crore along with interest of ₹1.43 lakh.

Apart from cases test checked, analysis of import data (2017-18) revealed irregular exemption of BCD in 23 consignments of Transmission devices imported through Delhi Air Cargo and Mumbai Air Cargo Customs Ports. The short/non levy of duty involved was ₹19 lakh. CBIC may examine these cases and take corrective action.

The matter was referred to the Ministry in August 2020, their response was awaited (September 2020).

4.10.4 Receiver of Mobile phones misclassified as parts of microphone, speaker

Receiver of mobile phones is classifiable under CTH 85182900 and attracts BCD at the rate of 15 *per cent*. Parts of microphone, speakers are classifiable under CTH 85189000 and assessable to BCD at the rate of 10 *per cent*.

M/s. ‘N’ Technology India Pvt. Ltd. and six others imported (February to November 2018) ‘Receiver for manufacturing mobile phone’ under 1206 BsE through NCH, Delhi. The goods were misclassified under CTH 85189000 - parts of microphone, speaker, etc. and assessed to BCD at the rate of 10 *per cent*.

As the imported goods were ‘Receiver for mobile phones’, they merit classification under CTH 85182900-others and leviable to BCD at the rate of

15 *per cent* instead of 10 *per cent*. Thus, misclassification of imported goods resulted in short levy of duty of ₹1.99 crore.

On being pointed out (November 2018/January and May, 2019), the Department has intimated recovery of ₹3.94 crore including interest from two importers and issued Pre Notice Consultation to the remaining five importers.

Apart from cases test checked, analysis of import data (2017-18) revealed incorrect assessment in 10 consignments of mobile phones receivers imported through Delhi Air Cargo Customs Port. BCD was levied at 10 *per cent* instead of applicable rate of 15 *per cent*. CBIC may examine these cases and take corrective action.

The matter was referred to the Ministry in August 2020, their response was awaited (September 2020).

4.10.5 Misclassification of Crude Palm Stearin

CBIC vide customs circular no.31/2011 dated 26 July 2011, clarified that 'Crude palm stearin' shall be assessed under CTH 38231111 and instructed its field formations to finalise all the pending cases accordingly.

M/s. 'O' Ltd imported (February 2008) through Kolkota (Port) Commissionerate a consignment of Crude Palm Stearin and paid duty at the rate of 10 *per cent* provisionally, classifying the imports under CTH 15111000. The importer executed a Provisional Duty Test bond and Bank Guarantee for finalization of bill after chemical test report.

On receipt of test report confirming the description of goods as palm stearin, the bond was cancelled (March 2017) and Department, in violation of aforesaid circular, classified Crude palm stearin under CTH 15111000 instead of under CTH 38231111. This resulted in short payment of customs duty of ₹1.05 crore.

The matter was referred to the Ministry in August 2020, their response was awaited (September 2020).

4.10.6 Gear boxes and parts of motor vehicles misclassified as transmission shafts and cranks

Gear boxes and parts thereof for motor vehicles are classifiable under CTH 87084000 as 'parts and accessories of motor vehicles', and attract BCD at the rate of 10/15 *per cent*. Whereas, CTH 84831099 covers other transmission shafts (including cam shafts and crank shafts) and cranks; Bearing housings and plain shaft bearings; gears and gear ring attract BCD at the rate of 7.5 *per cent*.

Audit test checked 70 BsE of assessable value of ₹8.82 crore out of 2,771 BsE filed under CTH 84831099 valued at ₹65.04 crore for the imports made during the period July 2017 to May 2018 through NCH (Import) Commissionerate, New Delhi.

M/s. 'P' Automotive Private Limited imported (July 2017 to May 2018) "Fork/Yoke 5th and reverse gear shift" (70 BsE) through NCH (Import) Commissionerate, Delhi. The goods were classified under CTH 84831099 and cleared levying BCD at the rate of 7.5 *per cent*. Audit noticed that imported items were parts of Motor Vehicles-Gear boxes and parts thereof and should be classified under CTH 87084000-Gear boxes and parts thereof-parts of Motor Vehicles and assessable to BCD at the rate of 10/15 *per cent*. Thus, misclassification of imported goods resulted in short levy of duty amounting to ₹56.91 lakh.

The Department confirmed (February 2020) the duty demand of ₹56.91 lakh along with interest. Further progress was awaited (July 2020).

Apart from the cases test checked, analysis of import data (2017-18) revealed that in 99 similar imports of Gear boxes and motor vehicles parts made through eight Customs Ports⁶⁰ were misclassified. BCD was levied at 7.5 *per cent* instead of applicable rate of 15 *per cent*. The short/non levy of duty involved was ₹1.09 crore. CBIC may examine these cases and take corrective action.

The matter was referred to the Ministry in August 2020, their response was awaited (September 2020).

4.10.7 Rice flakes misclassified as 'Preparations of vegetables fruit, nuts or other parts of plants'

Rice flakes, which have been made crisp by swelling or roasting, are classifiable under CTH 1904 and leviable to IGST at the rate of 18 *per cent*.

M/s. 'Q' India Limited imported (April 2017 to January 2018) 'Rice flakes of different flavors' (eight BsE) through JNCH, Mumbai. The Department classified the goods 'Rice flakes' under chapter 90 of Customs Tariff i.e. Preparations of vegetables fruit, nuts or other parts of plants and assessed the same levying IGST at the rate of 12 *per cent*.

However, Rice flakes were classifiable under CTH 1904, attracting levy of IGST at the rate of 18 *per cent*. This misclassification resulted in short levy of duty to the tune of ₹43.14 lakh.

⁶⁰Delhi Air Cargo (INDEL4), ICD Patparganj (INPPG6), Chennai Sea (INMAA1), Kattupalli (INKAT1), Mumbai Air Cargo (INBOM4), ICD Tuglakabad (INTKD6), Nheva Sheva Sea (INNSA1), Dadri-ACPL CFS(INAPL6)

It was further noticed that no assessment or examination was prescribed for these BsE as they were filed by an audited client with Authorised Economic Operator (AEO)⁶¹ category. The BsE have been cleared by the system despite this misclassification, which was pointed out by Audit during test check. Ministry may also like to take up subsequent Onsite Post Clearance Audit (OSPCA) of the AEO to examine similar imports made by the importer.

Apart from the cases test checked in audit, analysis of import data (2017-18) revealed misclassification of five similar imports of Rice flakes made through Customs Ports Nhava Sheva (Sea), Mumbai (Air Cargo) and Delhi (Air cargo). IGST was levied at 12 *per cent* instead of applicable rate of 18 *per cent*. The revenue involved was ₹37 lakh. CBIC may examine these cases and take corrective action.

The matter was referred to the Ministry in August 2020, their response was awaited (September 2020).

4.11 Short/non- recoveries of applicable duties and other irregularities

Out of 6881 BsE involving revenue of ₹2,134 crore, audit examined 4,295 BsE involving ₹1,522 crore. Scrutiny revealed 11 cases (131 BsE), each involving revenue implication of ₹10 lakh or more, where imports were not subjected to applicable levies. The total revenue implication was ₹14.84 crore.

Out of 11 cases, two cases are discussed in the following paragraphs and remaining nine cases are outlined in **Annexure 10**. The Department had accepted five cases involving ₹13.87 crore and recovered ₹74 lakh in two cases.

4.11.1 Short levy of duty due to undervaluation of goods

As per Rule 12 of the Customs valuation (Determination of value of Imported Goods) Rules, 2007 read with clause (iii) of sub-section 1 of the Section 14 of the Act, when the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidences and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods could not be determined and declared value could be rejected.

⁶¹An Authorized Economic Operator (AEO) is defined as a party involved in the international movement of goods, in whatever function, that has been approved by, or on behalf of, a national Customs administration as complying with World Customs Organisation (WCO) or equivalent supply chain security standards.

Imports of Mupirocin USP valued at ₹204.86 crore made during the period 2017-18 through Export Commissionerate, Air Cargo Complex (ACC), Mumbai under 409 BsE, Audit test checked 205 BsE involving imports value of ₹192.95 crore and pointed out short-levy amounting to ₹12.26 crore in nine BsE involving imports worth ₹66.33 crore.

M/s. 'R' Pharmaceuticals Ltd had imported 'Mupirocin USP' valuing ₹54.69 crore from Hungary through, ACC, Mumbai, during 17 April 2017 to 13 March 2018 under 14 BsE. The importer declared the price of goods at the rate of USD 2200 per kilogram in nine BsE and at the rate of USD 6950 per kilogram in five BsE. Department had assessed the goods accepting the same declared price.

Audit noticed that in both these sets of BsE, the goods are similar/ identical in description and also the country of origin and supplier of the goods were same. Thus, the Department had justified reason to reject the lower unit price declared in nine BsE per the aforesaid provisions. Failure to do so resulted in under assessment of goods of ₹45.33 crore and consequent short levy of duty to the extent of ₹12.26 crore.

On this being pointed (November 2018/ March 2019), the Department reported (December 2018) that Less Charge Demand Notice had been issued to the importer for payment of applicable Customs duty to the tune of ₹12.26 crore. Further progress was awaited (July 2020).

Ministry also needs to consider such huge price variations, in respect of import of similar / identical commodity from the same supplier, as one of the risk factors in RMS so that the valuation gets examined in such cases.

4.11.2 Imports cleared without levying applicable Anti-Dumping Duty (ADD)

As per Section 9A of the Customs Tariff Act, 1975, where any article is exported from any country to India at less than its normal value, then upon the import of such article into India, the Central Government may, by a notification, impose an ADD. Accordingly, ADD was imposed on 'Diketopyrrolo Pyrrole Pigment Red 254 (DPP Red 254) classifiable under CTH 3204 OR 3206 originating in or exported from the Peoples Republic of China and Switzerland imported into India at prescribed rates under notification no.41/2015-cus (ADD) dated 17 August 2015.

Eighty four consignments of import of 'DPP Red 254' valued at ₹8.25 crore were made during the period 15 August 2015 to 28 February 2018 through

Commissionerate of Customs, Nhava Sheva –V, Mumbai Zone –II. Audit test checked 40 BsE involving imports valued at ₹3.04 crore and pointed out non levy of ADD amounting to ₹57.45 lakh in 16 BsE involving imports worth ₹1.43 crore.

M/s 'S' Limited and one other imported 16 consignments of 'DPP Red 254' from China under CTH 32041739. The goods imported under CTH 32041739 attracted ADD at prescribed rates under aforesaid notification dated 17 August 2015. However, ADD amounting to ₹57.45 lakh was not levied by the Department. This needs to be recovered along with applicable interest.

On this being pointed out (March 2018), the Department issued (April 2018) a Show cause cum demand notice to the importer. Further progress is awaited (July 2020).

It was also noticed that these BsE had been cleared by the system implying that these were not marked by RMS for verification. Despite having the CTH, product description, country of origin and name of supplier in the BE data, RMS did not flag non levy of ADD in 16 of the 40 BsE test checked. This indicates deficiency in the design of RMS. This systemic lapse needs to be rectified.

Ministry's response was awaited (July 2020).

4.12 Short / Non-Levy of charges by DCs

The SEZs are headed by DCs (Joint Secretary/Director/Deputy Secretary level at the centre) with supportive customs and Ministerial staff. Central Government appoints DC in one or more SEZ {Section 11 (1) of the SEZ Act}. Central Government also appoints such officers and other employees as it considers necessary to assist the DC in the performance of his functions in the SEZs {Section 11 (2) of the SEZ Act}. It is obligatory on the part of the Developer⁶² to bear the cost of such post which have been created on cost recovery basis. In terms of Department of Commerce (SEZ Division)'s order F.No.A-1/3/2008-SEZ dated 16 September 2010, the DC shall, upon the reporting of any of the officers, compute the tentative recovery to be affected against each officer for the half year or any part thereof and intimate it to the Developer. The Developer shall remit the same within 15 days of the demand. Delay in payment may entail a penal interest of 12 *per cent*. Further, failure on the part of developer to make timely payments shall result in withdrawal of officers till the payments are affected subsequently with interest.

⁶²"Developer" means a person who, or a State Government which, has been granted by the Central Government a letter of approval under sub-section (10) of Section 3 and includes an Authority and a Co-Developer

Audit scrutiny revealed five cases of non-recovery of applicable establishment and other charges from the units in SEEPZ-Mumbai, Noida SEZ and ICD, Ankleshwar involving revenue of ₹15.24 crore. Four cases involving ₹5.51 crore were accepted and recovery of ₹1.98 crore was made in three cases.

Three cases are discussed in the succeeding paragraphs and remaining two cases are mentioned in the **Annexure 11**.

4.12.1 Non realisation of cost recovery charges and interest from the developers

Audit examination (February 2018) of records pertaining to cost recovery charges (CRCs) of DC, NSEZ, revealed that CRC amounting to ₹90.73 lakh were not paid by seven⁶³ developers during October 2015 to March 2018. Hence, the developers were liable to pay the unpaid CRCs to the tune of ₹90.73 lakh along with applicable interest.

Further, it was also noticed that 13 developers⁶⁴ had paid the CRCs with delays ranging from 4 to 630 days, during the period October 2011 to March 2018. Thus, these developers were liable to pay interest amounting to ₹9.83 lakh on delayed payment of CRCs.

Audit scrutiny also revealed that the Department has made the demand of CRCs from the developers with a delay⁶⁵ of 12 to 138 days, which contributed towards the delay in deposit of CRCs.

However, the CRCs were not paid by the Developers in time; the Department has not initiated any action to recover the unpaid CRCs and interest on delayed payment of CRCs from the developers.

On being pointed out (February 2018), the Department while accepting the observation, reported (June/November 2018 and February 2020) recovery of entire amount along with interest.

⁶³(1) S-1 Ltd., New Delhi, (2) S-2 Ltd., Worli, Mumbai, (3) S-3 Pvt. Ltd., New Delhi, (4) S-4 Ltd., Greater Noida, (5) S-5 Ltd., Greater Noida, (6) S-6 Ltd., Lower Parel, Mumbai, (7) S-7 Ltd., Bangalore.

⁶⁴ (1) SS-1 Pvt. Ltd., (2) SS-2 Ltd., New Delhi, (3) SS-3 Ltd., Worli, Mumbai, (4) SS-4 Pvt. Ltd., New Delhi, (5) SS-5 Pvt. Ltd., (6) SS-6 Ltd., Nehru Place, New Delhi, (7) SS-7 Ltd., Bangalore, (8) SS-8 Ltd., Greater Noida, (9) SS-9 Ltd., Greater Noida, (10) SS-10 Pvt. Ltd., New Delhi, (11) SS-11 Ltd., Lower Parel, Mumbai, (12) SS-12 Pvt. Ltd and (13) SS-13 Ltd., Bangalore.

⁶⁵Delay has been calculated from 15 day of the month proceeding each half year.

4.12.2 Non levy of fire cess for maintaining the fire station

As per the Section 34 of the SEZs Act, 2005, it shall be the duty of each SEZ authority (Authority) to undertake such measures as it thinks fit for the development, operation and management of the SEZ for which it is constituted. It was also provided that for fulfilling its developmental needs, the Authority will levy user or service charges for incurring expenses on providing common services or fee or rent for the use of properties belonging to the Authority.

MOCI, Government of India, through Empowered Committee approved (February 2009) the proposal for setting up of a fire station with one fire engine, an ambulance and round the clock personnel in SEEPZ-SEZ, Mumbai with a total cost of ₹5.20 crore during the year 2009-10. The work was awarded to Maharashtra Industrial Development Corporation (MIDC). The construction work of the fire station had been completed (September 2011) after incurring an expenditure of ₹2.83 crore.

MIDC had informed (February 2009) the DC, SEEPZ-SEZ, Mumbai for levy of fire cess at the rate of ₹0.25 per square feet per month from all the unit holders (utilized area 42,54,894.32 Sq feet)⁶⁶ to meet the yearly maintenance of fire station of ₹1.16 crore. MIDC had again written (February 2017) to Authority regarding non-reimbursement of recurring expenses to MIDC towards operation & maintenance of fire station. The charges demanded by MIDC for the period July 2011 to January 2017 amounted to ₹3.61 crore.

Audit observed (January 2018) from the monthly bills raised by the SEEPZ-Authority that the levy of fire cess had not commenced even eight years after construction of fire station. This has resulted in non-recovery of fire cess to the tune of ₹9.57 crore⁶⁷.

On this being pointed out (January 2018), the Authority stated (June 2018) that it had approved the levy of fire cess w.e.f. 1 April 2017 and that the bill would be accordingly issued to all the units in SEEPZ SEZ. It was further informed that the proposal for levy of fire cess was placed before the Authority meeting held on 11 May 2018 and a public notice was issued (July 2018) for levy of fire cess w.e.f. 1 April 2017.

Ministry was requested (May 2020) to intimate the reasons for the Authority taking up this proposal only in May 2018 and to fix responsibility for this lapse. Although MIDC informed about this levy in February 2009 itself & fire station was operational since September 2011.

⁶⁶ 395293 Sq. Metres X 10.7639=4254894.32 Sq. feet

⁶⁷ (0.25*4254894.32*90) = ₹ 957.35 lakh

Ministry's response was awaited (July 2020).

4.12.3 Non levy of penalty for gate passes not surrendered and expired

Circular 4 dated 14 May 2015 issued by the DC, SEEPZ- SEZ, Mumbai prescribes the procedure for issue of various types of permanent and daily gate passes for entry into SEEPZ-SEZ. It has been prescribed therein that the unit shall surrender the gate passes immediately at the gate pass counter after the expiry of validity period/termination of the employee/resignation of the employee. Non surrender of the gate pass within 30 days will invite a maximum penalty of ₹1000/ ₹500 (after 1 August 2017) per gate pass, to be recovered from the unit concerned.

Audit scrutiny revealed that 26,674 gate passes issued by SEEPZ-SEZ Authority, Mumbai to the employees/Units had expired on or before 1 August 2017, but not surrendered to security section. Further, 17,235 gate passes that expired after 1 August 2017 onwards were also not surrendered after end of validity period. Thus, the non-surrender of gate passes even after expiry of validity period/termination of the employee/resignation of the employee attracted an imposition of penalty of ₹3.53 crore⁶⁸ against the concerned units, as per the aforesaid provisions. The possibility of misuse of the un-surrendered/expired gate passes also could not be ruled out.

On being pointed out (February 2018), the SEEPZ Authority stated (March 2018) that the process of issuing notices to the units on non-surrender of expired gate passes had been initiated and the said process would involve the penalty part also in cases of delayed submission or non-surrender of passes. It added that to streamline the process further, an automated module was being developed so that the notices for non-surrender or delayed submission could be generated real time. Further progress in the matter was awaited (July 2020).

Ministry's response has not been received (July 2020).

4.13 Conclusion

This Chapter highlights 85 cases of non-compliance to the extant notifications, applicable Customs Tariff, Duties and Levies, noticed by Audit in the assessments of imports. The revenue of ₹69.59 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 applicable duties and other charges.

⁶⁸ (26674 x ₹1000)+(17235x ₹500)= ₹3,52,91,500

The Ministry/Department has accepted 70 cases and has effected recovery of ₹24.90 crore at the time of finalisation of this report. Ministry's/Department's response was awaited in 15 cases 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 possibility that such error 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 for the year 2017-18. Analysis revealed mis-classification, non/short levy of IGST, grant of incorrect notification benefits in 4,106 BsE involving ₹163 crore imported through 58 ports. 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 needs to be reviewed.

