CHAPTER I: ANALYSIS OF RECEIPTS

1.1 Budget estimates, revised budget estimates and actual receipts

The budget estimates, revised budget estimates and actual receipts of customs duties during the years 1999-2000 to 2003-2004 are exhibited in the table below:-

(Rupees in crore)

Year	Budget estimates	Revised budget estimates	Actual receipts	Difference between actual receipts and budget estimates
1999-2000	50369	47800	48334	(-)2035
2000-2001	53576	49781	47615	(-)5957
2001-2002	54822	43170	40096	(-)14726
2002-2003	45193	45500	44912	(-) 281
2003-2004	49350	49350	48613	(-)737

The actual receipt of customs duties fell short of the estimates of 2003-2004 by Rs.737 crore.

1.2 Trend of Receipts

A comparison of total year-wise imports with the corresponding net customs duties collected during 1999-2000 to 2003-2004 has been shown in the table below :

VALUE OF IMPORTS AND IMPORT DUTY COLLECTED 1999-2000 TO 2003-2004 (YEAR-WISE)

(Rupees in crore)

Year	Value of Imports	Import duties	Import duty as percentage of value of imports
1999-2000	204583	49517	24.20
2000-2001	228307	46569	20.40
2001-2002	243645	39406	16.17
2002-2003	296597	44137	14.88
2003-2004	353976	48002	13.56

1.3 Commodity wise details of customs receipts

Major commodity wise value of imports and exports and the gross duty realised therefrom during the financial year 2003-2004 and the previous year 2002-2003 are given overleaf:

1.3.1 Imports

(Rupees in crore)

Sl. No.	Commodities	Value of imports*		Import duties**		Percentage share in total import duties collection	
		2002-03	2003-04	2002-03	2003-04	2002-03	2003-04
1.	Food and live animals chiefly for food	14003.49	16902.93	4236	3285	9.60	6.84
2.	Mineral, fuels and related materials	11605.33	13235.64	3191	3974	7.23	8.28
3.	Petroleum, crude and products	85367.00	94520.00	6819	7491	15.45	15.61
4.	Chemicals and related products	17815.98	21381.64	3928	4185	8.90	8.72
5.	Manufactured goods	29224.51	38188.16	3805	4614	8.62	9.61
6.	Machinery and transport equipment	29562.23	29531.39	12392	13441	28.07	28.00
7.	Professional instruments etc.	5167.78	5635.56	2907	3319	6.59	6.91
8.	Others	103850.62	134580.29	6859	7693	15.54	16.03
	Total	296596.94	353975.61	44137	48002		

1.3.2 Exports

(Rupees in crore)

Sl. No.	Commodities	Value of exports*		Export duty and cess**	
		2002-03	2003-04	2002-03	2003-04
1.	Food items	24108.63	24636.61	07	10
2.	Beverages and tobacco	1163.05	1562.05	07	08
3.	Petroleum, crude and products (including mica)	39.84	105.66	02	02
4.	Others	227478.45	267062.43	138	143
	Total of exports and re-exports	252789.97	293366.75	154	163

Source - *Ministry of Finance, New Delhi.
**Directorate of Data Management, Central Excise and Customs, New Delhi.

1.4 Duty foregone

1.4.1 Under export promotion schemes

(a) The break-up of the duty foregone for export promotion schemes viz., advance licence, duty exemption pass book (DEPB), export promotion capital goods (EPCG), export promotion zone (EPZ), export oriented units (EOUs) and refund of duty under the drawback and other schemes for the period from 2000-2001 to 2003-2004 are shown in the table overleaf:

CUSTOMS DUTY FOREGONE UNDER EXPORT PROMOTION SCHEMES AND DUTY DRAWBACK SCHEME

(Rupees in crore)

Year	Advance licence & others	DEPB	EPCG	EPZ/ SEZ	EOU	Duty drawback	Total
2000-2001	5612	4631	1513	1223	3537	4189	20705
2001-2002	7890	5661	2008	2064	4219	2957	24799
2002-2003	7462	6831	3026	1106	4820	4520	27765
2003-2004	10812	11692	3399	1320	9422	3059	39704

(b) The total duty foregone under various export promotion schemes for the period 2000-2001 to 2003-2004 as a percentage of customs receipts is shown in the table below:

CUSTOMS DUTY FOREGONE

(Rupees in crore)

Year	Customs duty collected	Total duty foregone under export promotion schemes	Duty foregone as a percentage of customs receipts
2000-2001	47615	20705	43
2001-2002	40096	24799	62
2002-2003	44912	27765	62
2003-2004	48613	39704	82

Duty foregone under export promotion schemes has gone up from 43 per cent of customs duty receipts in 2000-2001 to 82 per cent of customs receipts in 2003-2004.

1.4.2 Other duty foregone

Duty foregone under section 25 (1) and (2) of the Customs Act, 1962 {other than for export promotion schemes vide para 1.4.1 (b)} during 2000-2001 to 2003-2004 are shown in the table below:

(Rupees in crore)

Year	No. of notifications issued under 25(1)	No. of total notifications issued under 25(2)	Total No. of notifications issued	Duty foregone under 25(1)	Duty foregone under 25(2)	Total Duty foregone
2000-2001	60	NA	NA	6733	NA	NA
2001-2002	39	NA	NA	2477	NA	NA
2002-2003	54	50	104	3512	34	3546
2003-2004	57	63	120	4267	258	4525

Section 25(1) General exemption
Section 25(2) Adhoc exemption

Duty foregone during 2003-04 under notifications issued vide section 25(2) (adhoc exemption) was Rs.258 crore which was more than seven times duty foregone in 2002-03.

1.5 Cost of collection of customs receipts

The expenditure incurred on collection of customs duty during the year 2003-2004 alongwith the figures for the previous year are given below:

(Rupees in crore)

Cost of collection	2002-2003	2003-2004
Revenue cum import export and trade control functions	131.76	165.41
Preventive and other functions	271.61	322.58
Total	403.37	487.99
Cost of collection as percentage of customs receipts	0.89	1.00

1.6 Searches and seizures

The details of searches conducted and seizures effected by the customs officers as given by the Ministry are indicated below:

SEARCHES AND SEIZURES

Sl. No.	Description	2002-2003	2003-2004
1.	Number of searches	1270	1354
2.	Value of goods seized (Rupees in crore)	439.80	387.07
3.	Number of seizure cases adjudicated	8736	9525

These figures relate to 69 custom houses/Commissionerates

1.7 Arrears of customs duty for recovery

The amount of customs duty assessed upto 31 March 2004 which was still to be realised as on 30 June 2004 was Rs.1167.94 crore in 20 custom houses.

1.8 Demands of duty barred by limitation

Demands raised by the Department up to 31 March 2004 which were pending realisation as on 30 June 2004 and where recovery was barred by limitation amounted to Rs.10.58 crore in 20 custom houses and Commissionerates.

1.9 Duty written off

Customs duties written off, penalties waived and exgratia payments made during the year 2003-2004 and the preceding two years are given below:

(Rupees in lakh)

Year	Amount
2003-2004	57.13
2002-2003	36.08
2001-2002	14.38

1.10 Number of pending audit objections

The number of audit objections raised upto 31 March 2004 and pending settlement as on 30 September 2004 in the various custom houses and combined Commissionerates of Central Excise and Customs are given below:

OUTSTANDING OBJECTIONS AND AMOUNT INVOLVED

(Rupees in crore)

Sl. No.	Commissionerate	Number	Amount
1.	Ahmedabad	37	46.28
2.	Ahmedabad (Prev.)	37	25.27
3.	Bangalore	335	84.85
4.	Bhubaneshwar	54	190.30
5.	Chennai (Sea)	1512	231.80
6.	Cochin	100	56.37
7.	Delhi	1418	139.92
8.	Hyderabad	617	667.40
9.	Jamnagar (Prev.)	18	109.81
10.	Kolkata	1585	2066.72
11.	Mumbai (Air)	455	9.49
12.	Mumbai (Sea)	881	307.17
13.	Others	3188	3224.81
	Total	**10237**	**7160.19**

1.11 Categories of outstanding audit objections

(Rupees in crore)

Sl. No.	Categories of objections	No. of objections	Amount
1.	Short levy due to misclassification	1689	90.68
2.	Short levy due to incorrect grant of exemption	992	267.33
3.	Non levy of import duties	1008	436.37
4.	Short levy due to undervaluation	394	702.31
5.	Irregularities in grant of drawback	1123	20.17
6.	Irregularities in grant of refunds	56	20.04
7.	Irregularities in levy and collection of export duty	172	303.61
8.	Other irregularities	4803	5319.68
	Total	**10237**	**7160.19**

1.12 Internal Audit Department (IAD)

In addition to statutory audit, customs Department has an IAD which is required to concurrently audit all bills of entry/shipping bills, refund claims, drawback claims etc. With a view to analyse the performance of IAD, an attempt was made by statutory audit to examine the system. The DG (Audit's) Wing, which was the designated apex authority for internal audit work, did not have consolidated information on the performance of IAD.

The working of the IAD therefore, was examined through information compiled on the basis of data made available by eight Commissionerates of customs located in four States viz. Goa,

Maharashtra, Tamil Nadu and West Bengal. The table below indicates the number of items outstanding in eight* Commissionerates of customs.

(Rupees in crore)

Year in which objection raised	No of cases outstanding	Amount
2001-02 and earlier years	599	12.28
2002-03	699	13.75
2003-04	539	4.81
Total	**1837**	**30.84**

**Pune, Goa, New custom house, Mumbai, Shillong (Prev.), Chennai (Sea) & (Air), Trichy & Tuticorin*

Public Accounts Committee (PAC) in its recommendations in para 3.21 and 3.25 of their 44th report (1980-81/7th Lok Sabha), had stressed the need to improve the efficiency of IAD being a very important tool of internal control through which the Board could keep an effective watch over the standard of performance of their field formations in bringing about substantial improvements by pointing out errors and omissions of common occurrence and had also stressed timely completion of audit work within six months so as to avoid the operation of time bar. However, the above table showed that the stipulated period was long over and objections involving Rs.30.84 crore remained outstanding.

Reportedly, no targets for performance of IAD were fixed as the arrangement was for concurrent audit of bills of entry, shipping bills, refund claims and drawback, etc. But, based on available information from three* Commissionerates of customs as given below, it emerged that percentage of clearance was not upto the mark.

(Rupees in crore)

	Audit observation				
	For disposal		**Settled**		**Percentage of clearance (Nos.)**
	No	**Amount**	**No.**	**Amount**	
1	**2**	**3**	**4**	**5**	**6**
Current (2003-04)	77	0.09	20	0.01	25.97
Arrears (2001-02) & (2002-03)	53	11.93	31	8.21	58.49

**Goa, Shillong (Prev.) & Tuticorin.*

For evaluation of the working of IAD, Board had desired (August 1981) that a copy of monthly audit bulletin containing the review of work done by IAD be forwarded regularly to the Director of Audit (Customs & Central Excise), New Delhi for preparing quarterly audit bulletins under intimation to CBEC and the performance of IAD should invariably be included in the agenda for Collectors Conference. However, this was not being done. Audit scrutiny revealed that no such periodical returns about functioning of IAD had been prescribed. Different field offices were left free to submit such information separately as and when required. In some cases position of pending IAD objections were furnished as part of monthly technical reports (MTR). A review on Indian Customs Electronic Data Interchange System (ICES) in CAG's Report No.10 of 2002 had also mentioned that internal audit module for export had not been developed. Therefore, it can be concluded that internal audit

in customs department is weak and lacking uniformity. Targets were evidently not fixed, pursued or monitored by the Board through any centralised agency on account of both manual as well as EDI systems in operation.

1.13 Contents of the report

The Report includes three reviews namely 'Recovery of arrears of revenue', 'Import general manifest/export general manifest (IGM/EGM)' and 'Inland container depots (ICD)' involving financial implications to the tune of Rs.6488.95 crore. Besides there are 251 paragraphs (including 54 cases of Total Under Assessment) featured individually or grouped together, arising from important findings from test check in audit pointing out leakage of revenue aggregating Rs.941.10 crore. Of this the Department/Ministry of Finance had till January 2005 accepted audit observations in 177 paragraphs involving non/short levy of duty of Rs.94.44 crore and reported recovery of Rs.10.06 crore.

CHAPTER II: IMPORT GENERAL MANIFEST (IGM)/ EXPORT GENERAL MANIFEST (EGM)

2.1 Highlights

- **Non-receipt of 14,093 IGMs by manifest clearance Department (MCD) from import Department (ID) in 24 Commissionerates revealed lack of co-ordination/effective follow up action on their part.**

(Paragraph 2.4)

- **Non-levy of penalty for non/belated receipt of IGMs/EGMs amounted to Rs.63.23 crore and also resulted in notional loss of interest of Rs.19.89 crore.**

(Paragraphs 2.5 & 2.11.2)

- **There was 94 per cent increase in pendency of IGMs at MCD at the end of 2002 compared to 1999 in 23 Commissionerates. Age analysis of 82,505 IGMs revealed that 42 per cent were pending for more than three years in 15 custom houses.**

(Paragraph 2.6)

- **Non-closure of IGMs/non-disposal of unclaimed, un-cleared goods and non-payment of duty where bills of entry were filed led to blockage of revenue of Rs.280.66 crore apart from notional loss of interest of Rs.60.41 crore.**

(Paragraphs 2.6.1, 2.6.2 & 2.6.4)

- **Four hundred and thirty IGMs, in four Commissionerates in which bonds for Rs.71.06 crore were executed were pending disposal due to non receipt of landing certificates.**

(Paragraph 2.6.5)

- **Revenue loss occurred due to non-levy of penalty of Rs.17.05 crore for short landed goods and duty of Rs.1.09 crore for pilfered goods apart from notional loss of interest of Rs.4.63 crore.**

(Paragraphs 2.6.6 & 2.6.8)

- **There were 11,600 out-turn-statements (OTS) in respect of 19420 IGMs in five Commissionerates not received by MCD. As on 31 December 2003, 30386 letters of call (LOC) were pending in two Commissionerates.**

(Paragraph 2.7 & 2.8)

- **Absence of provision in the Customs Act for recovery of duty on shortage between ullage and stored quantity entailed loss of duty amounting to Rs.15.47 crore and also notional loss of interest of Rs.5.84 crore.**

(Paragraph 2.10.1)

- **Customs share of Rs.2.01 crore out of sale proceeds of auctioned goods was not realised apart from notional loss of interest of Rs.0.90 crore.**

(Paragraph 2.10.2)

- **There were 91,900 EGMs valuing Rs.71,925 crore pending closure in 23 Commissionerates at the end of 2002. In eight custom houses 14,322 EGMs had not been filed and 2721 were filed late in three custom houses.**

(Paragraphs 2.11.1 & 2.11.2)

2.2 Introduction

Section 30 of the Customs Act, 1962 prescribes that the person-in-charge of a vessel or an aircraft carrying imported goods shall deliver to the proper officer, an IGM in the prescribed form within 24 hours after the arrival of a vessel at a custom station or 12 hours after arrival of an aircraft. The time limit for filing the manifest is extendable on sufficient cause on proper officer's satisfaction failing which, person in-charge is liable to penalty not exceeding Rs.50,000 effective from 14 May 2003. Prior to that penal action was liable under section 117 ibid. A manifest can also be filed before arrival of vessel or aircraft (prior entry manifest). Import manifest or report is permitted to be amended or supplemented if it is held that it is incorrect or incomplete but with no fraudulent intention. No order can be given to the master of a vessel for unloading any imported goods until an import manifest has been delivered or the proper officer is satisfied that there was sufficient cause for not delivering it under section 31 ibid.

The Central Board of Excise and Customs (Board) have made regulations under section 157 read with section 30 of the Act ibid, viz. Import Manifest (Aircraft) Regulations, 1976/Import Manifest (Vessels) Regulations, 1971, for filing import manifests and prescribed the forms in which they should be filed. Accordingly import manifests are to be filed in duplicate, covering all the goods carried in the aircraft/vessel. The manifest in respect of a vessel is to consist of:

(i) an application for entry inwards–Form I, (ii) a general declaration–Form II, (iii) a cargo declaration-Form III, (iv) a vessels stores list-Form IV, (v) a list in Form V of property (private) in the possession of the master, officers and crew.

Further, cargo declaration has to be furnished separately for categories such as cargo to be landed, un-accompanied baggage, goods to be transhipped and same bottom or retention cargo. In respect of arms, ammunitions, explosives, narcotics, dangerous drugs, gold and silver however, these are required to be filed separately.

Mis-declaration in the aforesaid documents attracts penal provisions under Sections 111(f) and 112 of the Customs Act, 1962.

2.3 Audit objectives

The review in regard to filing of IGMs/EGMs in ID/Electronic data interchange (EDI) service centres, their further monitoring and closure in MCD was designed to test check records of 25 custom houses of 50* Commissionerates. For this purpose, 1,06,183 IGMs and 1,49,483 EGMs out of 3,00,956 IGMs and 2,72,353 EGMs filed manually and electronically in the EDI service centres during 1999 to 2002, were examined in audit with the objectives of seeking assurance that:-

(i) the codal provisions of the manual/circulars etc. had been adequately observed by the ID, port trust authorities and MCD in regard to timely transmission of IGM/EGMs, OTS, issue of LOC and closure of manifests etc.

(ii) cases involving short landing/pilferage of goods had been properly pursued with steamer agents/port trust authorities and duty and penalties realised timely.

(iii) no financial accommodation was shown to steamer agents/ custodian of goods or to importers while granting them refunds.

(iv) there was no lapse in internal control mechanism providing chances to systemic weaknesses and leakage of revenue.

Audit findings are contained in the succeeding paragraphs.

2.4 Non-receipt of IGMs from ID

MCD of a custom house scrutinises transactions pertaining to ship/aircraft for import and export to ensure that they have taken place in accordance with the various provisions of the Customs Act, 1962 and the rules and regulations made thereunder. In order to achieve this, it compiles what is known as ship's file (Sea and Air) for arrival and departure of each ship/air craft separately. MCD functions under the general control and supervision of an Assistant Commissioner and is responsible for accountal of landed cargo and short landed goods, and closing IGMs without waiting for the disposal particulars of unaccounted cargo/abandoned goods which are to be watched by Assistant Collector (cargo/disposal).

According to procedure set out in chapter-II of MCD manual, documents such as IGM/Air Manifest, bills of entry and ship's papers comprising a ship's import file, listed in column 2 of Appendix A are to be received in MCD from the designated sections or authorities within the stipulated periods. IGMs are required to be sent to MCD immediately after the expiry of

* Located in eight States i.e. Andhra Pradesh, Delhi, Gujarat, Karnataka, Kerala, Maharashtra, Tamil Nadu and West Bengal.

30 days from the date of entry of the vessel/aircraft. If the bills of entry are received after forwarding the IGMs to MCD, a list (in duplicate) indicating IGM number, line number, cash account number and date and number of each package has to be prepared by ID and sent to MCD for further action.

Paragraph 3 of chapter II of the MCD manual, stipulated that it was the duty of ID to send to MCD, every evening a list of aircraft, which had entered during that day. Para 24 of chapter IV of MCD manual also provides for supply of weekly advice by ID showing details of vessels entered inwards. Para 25 ibid provides for adequate monitoring of the receipt thereof and para 5 provides watch of IGMs in MCD through a register, where date of receipt of manifests was to be entered. On every Saturday, a list of IGMs not received from ID is to be prepared for further follow up action by MCD.

Year wise details of IGMs filed in ID and their transmission to MCD during 1999 to 2002 in 24 custom houses/Commissionerates were as under:-

(Rupees in crore)

Calendar Year	**IGMS filed in import department/EDI**		**IGMs received in MCD**		**IGMs pending in import department as on 31.12.2003**	
	No.	**Value**	**No.**	**Value**	**No.**	**Value**
1999	66129	102276	56208	101249	2935	1027
2000	76175	118020	63070	117083	3098	937
2001	82730	138988	69381	137181	3586	1807
2002	76470	124633	65503	123375	4474	1258
Total	**301504**	**483917**	**254162**	**478888**	**14093**	**5029**

1. *Data of Kolkata (Port/Air), Bangalore, Mangalore is incomplete.*
2. *Table has been compiled on the basis of figures furnished by the Department.*
3. *Value of IGMs not furnished by Kolkata (Port/Air),Bhubaneswar, Goa, NCH, JNCH, ACC, CSI Mumbai, ACC Bangalore, NCH Mangalore, Visakhapatnam, Hyderabad-II.*
4. *In NCH Delhi 9281, 11241, 12897 and 11259 IGMs were received during 1999 to 2002 in MCD from import department in heaps and bundles without any detailed list for which no proper accounts were kept either by import department or by MCD.*

Aforesaid table reveals that out of 3,01,504 IGMs filed in ID, 47,342 IGMs (301504-254162) were not received in MCD, whereas data furnished by the Commissionerates showed only 14,093 IGMs pending in ID. This was indicative of lack of co-ordination/effective follow up action between the two departments.

According to figures furnished by Import Freight Officer (IFO), 48,613 IGMs were filed by carriers in ID of NCH New Delhi whereas records of EDI, showed that 35,397 IGMs were received. The difference of 13,216 IGMs needed to be reconciled in respect of data for 2000, 2001 and 2002. However, no reconciled figures had been received in audit so far (January 2005).

In Kolkata custom house, there was delay in transmission of IGMs from ID to MCD ranging between one to 392 days during 1999 and 2000. In Kolkata (Port/Air) and ACC Bangalore neither had 17,742 and 16,322 IGMs respectively been shown as pending with ID nor exhibited as received in MCD.

In the above Commissionerates the Department had not maintained registers in the prescribed format to watch receipt of IGMs, thereby precluding verification of correctness of data.

On this being pointed out, Kolkata custom house could not justify non-maintenance of vessel register in MCD and not passing on weekly advice by ID while custom house Cochin attributed pendency to lack of staff and storage facility. The fact remains that no follow up action was taken by these MCDs to obtain outstanding IGMs from ID.

2.5 Non-levy of penalty for non/late filing of IGMs

With a view to comply with provisions of section 30 ibid for filing IGMs and observing laid down time schedule, NCH New Delhi issued public notices in May 1997 and December 2002 requiring airlines to file complete IGMs on the ICES prior to or within two hours of landing before segregation of cargo, since the custodian cannot begin segregation of cargo unless the IGMs are transmitted to them by customs.

Though no penalty had been prescribed till May 2003 for non/late filing of IGMs, section 117 of the Customs Act, 1962 provided for general penalty not exceeding Rs.1000 upto 10 May 1999 and Rs.10,000 thereafter in case of contravention of any provision of the Act ibid.

Scrutiny revealed that 45,235 IGMs were filed late after the stipulated time limit of 12/24 hours in four Commissionerates whereas 5,485 IGMs were not filed at all in ID/service centres in four Commissionerates. Non-levy of penalty of Rs.47.77 crore for non /late filing of IGMs also caused notional loss of interest of Rs.15.59 crore.

On this being pointed out by audit (August 2003), Department (Delhi customs) stated (February 2004) that penalty under section 117 ibid would depend upon the outcome of show cause notices (SCN). However, no action was taken by it even to issue the SCNs. Reply from other Commissionerates was awaited as of January 2005.

2.6 Non closure of IGMs

Chapter VIII of MCD manual provides a time limit of 10 months (from the date of entry of the vessel) for closure of IGMs by the superintendent with the approval of Deputy Commissioner (MCD) when all cargo imported thereunder have been cleared on payment of duty or free of duty according to the orders in force, or on satisfactory accountal by way of transhipment permit or otherwise to the satisfaction of the customs officer. If, for any reason a few of the imports covered by an IGM are not cleared for a long time, the manifest is closed after transferring the outstanding items to the "pending register/disposal register" for watching the disposal. As delay in disposal of the goods increases possibility of pilferage, deterioration, damage etc., and consequential loss of revenue to the customs Department, prompt action is required to be taken to clear the outstanding items.

Further, under chapter-VI of MCD manual, following procedures are laid down for MCD before an IGM is closed;

(i) Matching the manifest with OTS received from the airport authority of India/port trust authority.

(ii) Issuing of letters of call to the carriers/steamer agents.

(iii) Issuing notices for fine and penalty and repeated persuasion.

In the case of manual bill of entry a particular line number in the IGM is closed on receipt of duplicate bill of entry in MCD. In EDI too, the above procedure is to be followed.

However, year wise details of IGMs pending closure in MCD in 23 Commissionerates as given below revealed the following;

(Rupees in crore*)

Calendar Year	IGMs pending closure at the beginning of the year		IGMs received during the year		IGMs closed during the year		IGMs pending closure at the end of the year	
	No.	Value	No.	Value	No.	Value	No.	Value
1999	34728	12701	65709	102277	21546	82998	78891	26600
2000	78891	26600	75036	118020	54139	101845	99788	42084
2001	99788	42084	81642	138988	44069	107547	137361	68002
2002	137361	68002	74767	124634	59278	97977	152850	90117

**Value reported by 10 Commissionerates.*

Closure of IGMs did not keep pace with their receipt. Resultantly from 1999 to 2002 there was a consistent increase in pendency in number with 94 per cent increase in 2002 compared to 1999. The high pendency of IGMs showed that the purpose of the laid down procedure for their timely closure had not been fulfilled.

One of the main factors contributing to this phenomenon was lack of follow up action by MCD in sending periodical reminders to the various authorities viz. custodians, carriers, importers etc.

Age analysis

Out of 1,52,850 IGMs pending in 23 custom houses as on 31 December 2002, age analysis of 82,505 IGMs pending in 15 custom houses as on 31 December 2003 revealed that the pace of closure of IGMs was very slow, as only 26,862 IGMs out of 41,325 pending on 31 December 2002 were closed during the year 2003 in 10 custom houses, whereas there was no closure of 68,042 IGMs pending in five custom houses i.e. Delhi, Kolkata, Chennai (Air), Tiruchi and Jamnagar. The pendency position as given overleaf shows that the time schedule of 10 months as provided in para 100 (IV) of MCD manual had not been observed.

(Rupees in crore)

Pendency period	No. of IGMs	Value
1-2 years	27001	20578
2-3 years	21149	18502
More than 3 years	34355	24414
Total	**82505**	**63494**

Value of IGMs has been furnished by Cochin. For others value is not available.Delhi Commissionerate reported value of total imports of Rs.62823 crore which is included in the table above.

Audit attempted to analyse reasons for pendency. Scrutiny of 16 custom houses revealed that IGMs were pending on account of unclaimed goods, bills of entry being filed but duty not paid (un-cleared goods), non receipt of landing certificate in respect of transhipped cargo, short landing cases and pilferage.

2.6.1 IGMs pending due to non-disposal of unclaimed/un-cleared goods

Under section 48 of the Customs Act, 1962, if imported goods are not cleared for home consumption, warehousing or transhipment within 30 days of their landing or within such extended time as the Assistant Commissioner of customs may allow, or if the title to any imported goods is relinquished, such goods may after notice to the importer and with the permission of the proper officer be sold by the person having custody thereof.

CBEC circular of February 1998 prescribed that Assistant Commissioner was required to scrutinise the sale list received from the custodian and ensure that intimation to withhold any consignments was sent to the custodian within 15 days of the receipt of sale list. Custodian was free to dispose off the goods if no intimation was received from customs within this time.

Scrutiny revealed that goods worth Rs.425.72 crore in 13 Commissionerates were lying un-cleared for a period ranging from one to 19 years and led to non-closure of 1,783 IGMs/non disposal of 17,247 consignments. This also resulted in blockage of duty of Rs.182.14 crore and notional loss of interest of Rs.30.12 crore.

Department (ACC Chennai) stated (June 2004) that disposal of goods was delayed due to non-availability of bidders. Visakhapatnam (Cus.) reported (November 2004) that out of 23 cases, eight consignments of seized and confiscated goods were disposed off in September 2004 and a sum of Rs.4.03 lakh was realized and six other uncleared consignments of timber logs were sold (December 2003) and duty amounting to Rs.458 was realized (August 2004).

2.6.2 Unclaimed/un-cleared goods lying in warehouse

Section 72 (1) (b) of the Customs Act provides that if any goods have not been removed from a warehouse at the expiration of permitted period, proper officer may demand from the owner of such goods, full amount of duty along with interest, penalty, rent etc. CBEC vide their circular of January 1995 stressed the need to ensure that action under section 72 ibid be taken within a week after expiry of warehousing period followed by further action under section 142 ibid for recovery of dues from defaulters.

Scrutiny revealed that in two Commissionerates 418 consignments worth Rs.392.16 crore imported during July 1997 to March 2003 whose warehousing period expired between

February 1999 and February 2004 were lying un-cleared and the Department neither initiated any action under section 72 (2) ibid for disposal of the goods nor under section 142 ibid. This resulted in blockage of duty of Rs.40.07 crore apart from interest of Rs.7.37 crore.

2.6.3 IGMs closed without disposal of un-cleared goods

In custom house Kandla in 228 cases, goods imported during January 1999 to December 2002 were not claimed and cleared by the importers. For 132 of these cases, duty leviable of Rs.1.74 crore on unclaimed goods was lost as disposal action under section 48 ibid was not taken. Remaining cases were under consideration of customs for assessment. MCD had closed all the relevant IGMs in spite of non-disposal of goods. Notional loss of interest for delays ranging from one to five years therefore accrued.

On this being pointed out in audit, the Department stated (September 2004) that the goods were still under customs control and there was no loss of revenue, in 40 cases goods had been disposed off and in the remaining cases IGMs were being located for further action. Reply is not acceptable since the delay in disposal action blocked Government revenue for varying periods during the five year span.

2.6.4 Non-payment of duty on un-cleared goods, where bills of entry were filed

Section 12 of the Customs Act, 1962, provides for levy of duty on entry of goods into India. The charge of duty arises on the date of filing of the bills of entry for clearance when the importer is called upon to pay the duty assessed thereon after the arrival of aircraft/vessel and the permission for entry inwards to the aircraft/vessel is given.

Audit scrutiny of records in three Commissionerates revealed that 2,842 bills of entry having assessable value of Rs.182.12 crore presented during 1999 to 2002 were pending clearance with customs Department as on 31 December 2003. This led to non-recovery of duty amounting to Rs.58.45 crore with notional loss of interest of Rs.22.92 crore and consequent non-closure of 2,330 IGMs filed during the four years.

2.6.5 Non-receipt of landing certificate in respect of transhipment goods

IGM in which transhipment cargo is included can be closed only on satisfactory accountal of such goods along with transhipment permit or otherwise on receipt of landing certificate from the place of destination.

According to section 54(2) of the Customs Act, 1962 read with regulation 4 of Goods Imported (Conditions of Transhipment) Regulations, 1995, the terms of the bond necessitate the person executing the bond to produce to the proper officer, within one month or within such extended period as such officer may allow, a certificate issued by the proper officer at the customs station of transfer as specified in the said bond, or at the customs station of destination specified in the said bond and situated at or nearest to the place of destination to the effect that the imported goods have been transferred or produced at the station as the case may be. The bond would stand discharged, failing which an amount equal to the value, or as the case may be, the market price of the imported goods in respect of which the said certificate is not produced shall stand forfeited.

Scrutiny in four Commissionerates revealed that 430 IGMs in which bonds were executed for Rs.71.06 crore during the years 1999 to 2003 were pending disposal due to non receipt of landing certificate from the place of destination within a month. The Department had neither received landing certificate nor initiated any action to forfeit the value of bonds or call for the bank guarantee, which led to unintended benefit to the carriers/importers.

2.6.6 Non levy of penalty for short landed goods under section 116 of the Customs Act

Para 70 of MCD manual makes it incumbent upon MCD to take prompt and expeditious steps against steamer agents for imposition and realisation of penalty in respect of short landed goods, which are not accounted for by them under section 116 ibid. Accordingly, the person in charge of the vessel/conveyance is liable to penalty not exceeding twice the amount of duty that would have been chargeable on the goods not unloaded or the deficient goods, as the case may be, had such goods been imported.

Test check of records in 12 Commissionerates revealed that in eight custom houses penalty amounting to Rs.3.51 crore against refund of duty of Rs.1.89 crore was pending realisation, and in six custom houses penalty amounting to Rs.13.54 crore was pending realisation though no refund was given for short landing of goods. Delay in finalisation of penal action led to non-closure of 577 IGMs apart from notional loss of interest of Rs.4.61 crore in 337 cases pertaining to four custom houses.

Some illustrative cases are mentioned below:-

(a) In Kandla custom house short landing involving liquid cargo weighing 2788.828 MT in six cases and 16 pieces of timber logs in one case imported during March 1999 to September 2002 was observed. The quantity short landed was leviable to duty of Rs.72.86 lakh for which the steamer agents were liable to penalty amounting to Rs.1.46 crore but no action was taken by the Department to levy penalty.

Department replied (September 2004) that SCNs had been issued in all the cases and further outcome of adjudication was awaited (January 2005).

(b) An importer M/s. Steel Complex Limited Calicut had imported iron scrap through Tuticorin Port during the period from 1991 to 1993 and claimed refund of duty paid on the short landed quantity of iron scrap based on 'B' Certificate issued to him by the Tuticorin Port Trust at the time of taking delivery of the imported cargo. Refund of Rs.2.6 lakh along with interest of Rs.2.5 lakh was sanctioned to him after eleven years in 2002 and 2003. Loss of revenue of Rs.2.5 lakh could have been avoided had the Department taken timely action to refund the amount due. Since the person in-charge of conveyance is accountable for the deficiency of goods, department issued SCN to vessel agent M/s. P.S.T.S. Thiraviarathinam and Sons, Tuticorin for penalty of Rs.5.20 lakh under section 116 ibid in September 2002 after a lapse of 11 years. Adjudication of SCN and recovery particulars were awaited (January 2005).

(c) In Visakhapatnam custom house, Rs.11.63 lakh were refunded to importer M/s. Nalco, being duty on 56 pieces of baked anodes short landed. The Department levied a penalty of Rs.11.67 lakh on steamer agent M/s. Natwar Parekh Industries in 1998, who went

in appeal before CEGAT by pre depositing a sum of Rs.3.00 lakh. CEGAT remanded the case to the original authority who again confirmed the penalty in December 2003. Recovery of penalty of Rs.8.67 lakh was still awaited (January 2005). The Department reported that CESTAT had granted stay in June 2004 against detention notice of April 2004.

(d) In Kolkata (Sea), an importer M/s. PEC Limited was granted refund of Rs.12.72 lakh on 7 March 2001 against LOC issued by the Department in May 2000 for short landing of 7619 bags of sugar. Though penalty amounting to Rs.18.41 lakh as determined by the Department was admitted by the party, it remained unrealised due to non-pursuance thereby causing loss of Rs.18.41 lakh apart from notional loss of interest of Rs.9.89 lakh.

2.6.7 Delayed payment of penalty/accommodation to steamer agents

Sections 28AA and 28AB of the Customs Act, provide for interest leviable on delayed payment of confirmed demand of duty not levied, short levied or erroneously refunded. However, no provision had been made in the Customs Act, for charging interest on delayed payment of penalty and penalty levied but not paid.

In Chennai Air Commissionerate two short landing cases were finalised and refund was granted during 2001 and 2002 and a penalty of Rs.5.84 lakh imposed under section 116 of the Customs Act, 1962. The amount was payable within thirty days from the date of demand notice. Though notices were issued in 2002, the amount demanded was realised only in 2003 and 2004. The loss of revenue in the form of interest worked out to Rs.1.73 lakh.

Similarly in respect of 35 cases (Chennai Sea) due to absence of provision to recover interest on delayed payment of penalty of Rs.14.59 lakh, the loss of notional interest resulted to an extent of Rs.6.5 lakh.

2.6.8 Non recovery of duty/penalty under section 45 (3) on pilfered goods

In accordance with provisions of section 45 (3) of Customs Act 1962, if any imported goods are pilfered after unloading thereof in a customs area, the custodian of the imported goods is liable to pay duty on such goods at the rate prevailing on the date of delivery of an IGM. MCD is to identify such goods where no bills of entry have been filed and issue demand notice to custodians and collect the amount.

Test check of records in custom houses New Delhi, Chennai (Sea) and Kandla revealed that in 33 cases SCNs had been issued to custodians demanding duty of Rs.1.09 crore which was still pending realisation for a period ranging from one to seven years apart from notional loss of interest of Rs.2.18 lakh in one case.

A few cases are illustrated below:-

(a) In 10 cases of New Delhi, a sum of Rs.20.22 lakh was refunded to importers on account of short landing of goods but recovery of duty of Rs.11.87 lakh in response to SCNs issued to custodians during May 1999 to July 2002 was pending.

(b) In Chennai (Sea) Commissionerate, goods worth Rs.5.29 lakh were pilfered at Chennai Port Trust during 1998, and Rs.3.64 lakh was demanded as duty from importer, non realisation of which resulted in notional loss of interest of Rs.2.18 lakh.

(c) In ACC Mumbai, SCNs were issued to custodian in five cases demanding duty of Rs.6.51 lakh between March 1999 and July 2002 but the cases were not finalised even after three years. In four other cases though refund was allowed, no action was taken to issue SCNs to recover duty of Rs.0.67 lakh. In another two cases of pilferage, order in original was issued demanding duty of Rs.0.84 lakh but the amount still remained unrealised even after three years of adjudication.

2.7 Non/delay in receipt of OTS from port trust authorities

Under para 3 (Appendix A) of MCD manual, OTS are to be received in MCD from port trust authorities in the first week of second month from the date of arrival of the vessel on receipt of which the MCD is to issue LOC to steamer agents on account of short landed goods.

During 1999 to 2002, out of 19,420 IGMs filed in five custom houses, OTS in respect of 11,600 IGMs were not received from ID till December 2003.

In NCH New Delhi the Department was not aware of the concept of OTS and reckoned pendency as nil, thereby indicating total failure of co-ordination between the two departments. Possibility of non-imposition of penalty for short landing/pilferage of goods therefore was very high.

In custom houses, Tuticorin and Bhubaneswar, the concerned MCD had not received any OTS from the port trust authorities in respect of 5,574 and 3,197 IGMs respectively filed during 1999 to 2002. In ACC and CSI Airport Mumbai no OTS reports were maintained and sent to MCD.

In NCH Mangalore, delayed action for recovery of duty/penalty for short landing as a result of delayed receipt of OTS from port trust (four/one and a half years) in two cases led to non-recovery of penalty of Rs.2.55 lakh apart from notional interest.

2.8 Non/delay in issue of LOC

According to para 64 of MCD manual, LOC are to be issued within 120 days from the date of receipt of OTS from port trust authorities/Air port authority of India (AAI). Delay would lead to reduced scope of realisation of penalties from the parties concerned.

Audit scrutiny revealed that as on 31 December 2003, 30,386 LOC were pending for issue in custom houses New Delhi and Kolkata of which 29,867 pertained to NCH New Delhi alone. Of these 5653 were pending since 1999. Seven hundred and seventy six files were opened in NCH New Delhi for issue of LOC after a year but year wise details were not available. As evident in segregation sheets of AAI of India in respect of 452 IGMs, against 97,709 parcels manifested, 94,532 parcels were reportedly received, 6063 short landed, 2886 excess landed and 13,785 were transhipped. When asked to furnish the records of action taken to analyse the shortages, the Department expressed inability on account of requisite information not being traceable.

In Pune Commissionerate, non issue of LOC by MCD against the steamer agent for short landing of 697 items during 1998 to 2003 led to non recovery of duty amounting to Rs.35.39 lakh apart from notional loss of interest of Rs.15.92 lakh for three years.

2.9 Non-realisation of penalty in respect of adjudication

Test check of records in four Commissionerates revealed that in 109 cases penalty amounting to Rs.3.48 crore was pending in appeals for one to 18 years. Failure of the Department to pursue the cases vigorously resulted in undue financial accommodation to steamer agent and importers and in notional loss of interest of Rs.1.02 crore.

2.10 Other irregularities

2.10.1 Non-provision for recovery of duty on account of shortage between ullage and stored quantity

As per CBEC, circular No.96/2002 in case of imports of bulk liquid cargo whether for home consumption or for warehousing, the shore tank receipt quantity was to be taken as the basis for levy of customs duty. For shortages noticed between ship's load port ullage quantity or bill of lading quantity, and ullage survey report at the port of landing, the owner of the ship would be held responsible, and be liable to pay penalty not exceeding twice the amount of duty that would have been chargeable for shortages under section 116 of the Customs Act, 1962. However, there was no provision for recovery of duty on shortages between the quantity of ullage survey report at the port of landing and quantity of shore tank receipt. In case of bulk cargo, which is discharged directly through pipelines under white bill of entry without being warehoused in the shore tank, assessment of duty is to be done according to ship's ullage survey report at the port of discharge.

In Cochin Commissionerate 1,52,328 MT of liquid cargo imported during 1999 to 2002 by M/s. Kochi Refineries on account of difference between ullage survey report at the port of landing and quantity received in shore tank was not accounted for. This resulted in loss of duty of Rs.15.47 crore apart from notional loss of interest of Rs.5.84 crore.

2.10.2 Failure to apportion customs share as per section 150(2) of Customs Act, 1962

According to section 150(2) ibid read with circular No.50/97, dated 17 October 1997, 50 per cent of sale proceeds realised by custodian in auction in respect of unclaimed/un-cleared goods should be remitted to customs Department till finalisation of consignment-wise accounts of all auctioned goods.

The custodians, Kolkata Airport Authority and Port Trust auctioned/sold 3,562 consignments of unclaimed/un-cleared goods and realised Rs.4.01 crore out of sale proceeds during December 1997 to March 2003. Customs share however amounting to Rs.2.01 crore was not realised for a period ranging from one to six years, apart from notional loss of interest of Rs.89.54 lakh.

2.10.3 Wasteful expenditure of Rs.11.03 lakh on staff posted in MCD

Perusal of departmental records revealed that non functioning of MCD at Air cargo New Delhi had been commented upon by the Ministry's inspection team. Work relating to scrutiny, closing of manifest, adjudication under section 116 of Customs Act, issue of certificates and export clearance (closure of EGMs) were not functional for long.

Expenditure amounting to Rs.11.03 lakh incurred on the pay and allowances of a Superintendent and two Inspectors posted during 1999-2002, therefore, proved infructuous.

2.10.4 Loss of revenue due to irregular grant of extension for clearance

Section 48 of the Customs Act, provides that if any goods brought into India from a place out side India are not cleared for home consumption or warehoused or transhipped within 30 days from the date of unloading thereof at a customs station or within such extended period as may be allowed by the proper officer or if the title to any imported goods is relinquished, such goods may after notice to the importer and with the permission of proper officer be sold by the custodian.

Ministry of Finance in their circular of October 1989 stipulated that extension of warehousing period was not to be granted on the grounds of financial constraint. In addition, it was also required that extensions should not result in loss of revenue.

Audit scrutiny revealed that extensions of four to 300 days granted for clearance of goods against 59 bills of entry in three custom houses resulted in notional loss of interest of Rs.42 lakh due to belated payment of duty of Rs.11.72 crore. In a custom house grant of extension to 10 bills of entry deprived the Government of 10 per cent surcharge amounting to Rs.17.04 lakh otherwise leviable prior to March 2001.

While replying for two cases, the Department (Jamnagar ICD) stated (October 2004) that board's circular dated 9 October 1989 pertained to grant of extension of warehousing period of bonded goods and cannot be made applicable to the instant case. The reply is not tenable as extension granted on the ground of financial crises which is not a valid ground in one case cannot be a valid ground in another.

2.10.5 Loss of revenue due to improperly imported goods

Section 111(f) of the Customs Act provides that any dutiable or prohibited goods brought from a place outside India are required to be mentioned in an import manifest failing which they are liable to confiscation.

In custom house Kandla, a vessel discharged 30,991.050 M.T. against the manifested quantity of 30,991.014 MT of "muriate of potash" (MOP), and the same was accepted by the importer M/s. IFFCO Kandla. However, custom house instead of taking action under said provisions and further subjecting the case to proceedings under section 48 of the Customs Act, 1962 allowed 286.840 MT of MOP valued at Rs.17.07 lakh to be cleared by importer as "sweepage" under post-bill of entry, on payment of duty of Rs.0.85 lakh. Interestingly this

quantity did not form part of either original IGM or bill of lading. This resulted in loss of revenue to the extent of Rs.16.22 lakh.

Department in reply stated (September 2004) that sweepings were part of duty paid goods and duty had been collected thereon. The reply is not acceptable and is contradictory in itself as the additional quantity unloaded at port of discharge did not form part of original IGM/bill of lading and the goods were cleared on payment of duty for a small part thereof. The importer could not have reassured that they pertained to the same vessel and cleared it on payment of duty without it having been manifested in IGM. The possibility of unauthorised import could not be ruled out.

2.11 Export General Manifest (EGM)

Section 41 of the Customs Act, 1962 requires the person-in-charge to deliver to the proper officer an export manifest before departure of the vessel or aircraft in the prescribed form, which can also be delivered within seven days from the date of departure of the vessel/aircraft on furnishing such security, as the proper officer deems sufficient. The manifest is required to be submitted in two parts, one for all drawback shipments and the other for the rest. The EGM is to contain a true specification of all goods on board at the time of departure of aircraft/vessel, to be recorded under the following classifications viz. transhipment cargo, foreign cargo and local cargo, retention cargo, stores and shipments out of bond. Closing of EGM as indicated in Para 2(b)/chapter-I of MCD manual is normally the function of MCD of the custom houses. However, for administrative convenience and speedy working, the work was being attended to by export Department. After introduction of EDI system in major custom houses, the steamer agent has to furnish EGMs to the customs electronically. Apart from this, manual EGMs continue to be filed as hitherto followed.

2.11.1 Non-closure of EGMs

Section 144 of MCD manual provides that export clearance section functioning in MCD would be responsible for carrying out work relating to receipt, scrutiny and disposal of EGMs and to ensure that the obligations imposed upon the owner (exporter) of the goods under section 156(f) and short shipment rules under the Customs Act 1962, had been duly fulfilled and manifests completed after disposal of all documents.

With the introduction of the EDI system for filing EGMs, submission of complete EGMs itself is considered as its closure, as they are a confirmation that the goods relating to those shipping bills have been exported. In respect of EGMs containing manual shipping bills, the details are to be verified as per the procedure mentioned above and only after proper matching, can EGM be treated as closed.

Year wise position of EGMs pending closure in 23 Commissionerates was as under:-

(Rupees in crore)

Year	EGMs pending closure at the beginning of the	EGMs received during the year	EGMs closed during the year	EGMs pending closure at the end of the year

	year							
	No.	**Value**	**No.**	**Value**	**No.**	**Value**	**No.**	**Value**
1999	25047	4422	63118	29415	38073	5867	50092	22634
2000	51708	22634	72899	44392	47401	21094	77206	39861
2001	77206	39861	81756	47587	57446	24878	101516	55301
2002	101516	55301	76585	63458	86201	39355	91900	71925

Value of EGMs furnished by 11 custom houses only

In ACC Begumpet 1546 EGMs could not be closed due to their being in error queue. This indicated that there was no system in MCD/export section for proper upkeep, maintenance and scrutiny of EGMs and forwarding of EGMs to Internal Audit Department (IAD) before closure. The procedure involved in closing the EGMs as prescribed in chapter-XII of MCD manual was not followed and the Department was not able to identify the EGMs which were not yet received.

2.11.2 Non-levy of penalty on non/belated receipt of EGMs from carriers/agents

Audit scrutiny revealed that 2,721 EGMs were filed late in three custom houses whereas 14,322 EGMs were not filed at all in eight custom houses, resulting in non-levy of penalty amounting to Rs.15.46 crore apart from notional loss of interest of Rs.4.30 crore.

Illustrative Case

In Kolkata (Sea and Air) delay in receipt of EGMs ranged from 1126 to 3440 days. Department imposed penalty of Rs.3.31 lakh under section 117 in March 2000, which still remained unrealised.

2.12 Failure of Internal Control Mechanism

Audit attempted to evaluate operations and check functioning of controls in a bid to identify weaknesses/strengths. International standards define internal control as an integral process designed to provide reasonable assurance that objectives such as fulfilment of accountability obligations, compliance to laws and regulations and execution of orderly, efficient and effective operations among others were being achieved. However, shortcomings were noticed in the following areas.

2.12.1 Accountability obligations

Inordinate delay in closing of manifests had invited adverse criticism from PAC as early as in their 44th Report (1965-1966) wherein they had desired that a suitable device be found to check accumulation of goods at ports and had also stressed that better co-ordination between customs Department and port trust authorities was essential. Ministry too, in its response to the review on MCD in CAG's Report No.5 of 1989 had committed to better co-ordination with port trust authorities on the question of expediting out turn reports. However, the problems continued to persist indicating lack of concerted efforts in this direction.

2.12.2 Control activities established to address risk

Audit noticed that while procedures such as authorisation and approval, segregation of duties, verifications, reconciliation, review, supervision had been designed, they were only partially functional. Maintenance of records was inadequate and disorderly at times. In Delhi IGMs/EGMs received at MCD were lying in physical heaps with no details ascertainable.

2.12.3 Information technology control activities

The specific application controls applying to individual application systems are normally directly related to computerised applications. ICES package introduced in 1998, provided for the facility to file IGM and EGM electronically. In response to para No.2.11 (e) of CAG's Audit Report No.10 of 2002, the Department had conceded non development of software for closure of IGM electronically in October 2001. In their action taken note in March 2003 they had expressed difficulty in closing of EDI documents on ICES alone. As bills of entry are filed both in EDI and manually, MCD is impeded in its task of watching details needed for closure of manifests.

2.12.4 Monitoring

Para 28 and 144 of MCD manual stipulate that it is required to forward IGMs/EGMs to IAD for pre-audit before closure. Para 100 (iv) provides that a list of IGMs finally closed each month is to be supplied to IAD on first of succeeding month and a ship's file ordinarily closed within 10 months from date of entry of vessel and then sent to IAD for final audit. But audit noticed that no such procedure was followed during 1999 to 2002 enhancing the risk attendant on absence of pre-audit checks.

2.13 Conclusion

The review has revealed several instances of violations of rules and procedures framed to give effect to provisions in the Customs Act regarding filing/closure of IGMs/EGMs. Departures from provisions of MCD manual in issue of LOC, timely receipt of OTS, non-levy of penalty for short landed and pilfered goods persist. Lack of monitoring and ineffective internal control mechanism further led to substantial revenue remaining unprotected. Audit therefore recommends that the Department improve compliance to the rules and regulations laid down in the Act and manual and strengthen its internal controls.

The review was issued to the Ministry in September 2004. They were largely in agreement with the audit conclusions and recommendations and the need for systematising and strengthening the systems regarding filing and closure of IGM/EGMs. They stated (November 2004) that suitable provisions had been made under sections 30 and 41 of the Customs Act, 1962 for levy of penalty and advance filing of EGMs respectively.

CHAPTER III: INLAND CONTAINER DEPOTS (ICD)

3.1 Highlights

- **Customs revenue of Rs.2400 crore remained unprotected against risk of loss, pilferage etc. due to non/deficient execution of bond/bank guarantee (BG) by custodians for storage of import cargo, by carriers for transhipment of export cargo, non renewal of BG, and insufficient insurance coverage of goods at ICD/container freight station (CFS).**

(Paragraphs 3.4, 3.4.1, 3.4.2 & 3.5)

- **Non-disposal of unclaimed/un-cleared/confiscated, imported/export goods involved blockage of customs revenue to the extent of Rs.287.96 crore apart from notional loss of interest of Rs.62.05 crore.**

(Paragraphs 3.7, 3.7.2 & 3.7.5)

- **Delay in disposal of unclaimed/un-cleared and confiscated goods and injudicious decision of custodian caused loss of Rs.2.96 crore.**

(Paragraphs 3.7.1, 3.7.3 & 3.7.4)

- **Department failed to protect duty of Rs.12.49 crore by not forfeiting bonds on account of non receipt of landing certificates.**

(Paragraph 3.11)

- **Non receipt of transference copies of shipping bills within 90 days for exports made between April 2000 and March 2003 entailed recovery of drawback amounting to Rs.344 crore.**

(Paragraph 3.11.2)

- **Test check revealed in 27 ICDs of 10 Commissionerates absence of system of reconciliation of containers. Neither gateway port nor custodians furnished periodical details.**

(Paragraph 3.12)

- **Failure to re-export 2404 containers imported without payment of duty in five Commissionerates entailed recovery of duty amounting to Rs.23.57 crore apart from notional loss of interest of Rs.3.14 crore.**

(Paragraph 3.13)

- **Non forwarding of General Remittance (GR) forms to Reserve Bank of India (RBI) by the Department reflected lack of mechanism to monitor the realisation of foreign exchange and to ensure the correctness of export incentives of Rs.681 crore paid on such exports.**

(Paragraph 3.14.1)

3.2 Introduction

Inland container depot (ICD)/Container freight station (CFS) is a common user facility offering services for handling and temporary storage of import/export laden and empty containers carried under customs transit. All activities related to clearance of goods for home use, warehousing, outright export etc take place from such stations. The main function of ICD/CFS is receipt, dispatch and clearance of containerised cargo. The custodian after taking over goods from the carrier, arranges their proper storage and safety and allows clearance to importers after they fulfil customs formalities. An ICD is notified under section 7 (aa) of the Customs Act 1962 by the Ministry of Finance (Ministry). After the infrastructure for an ICD/CFS is developed, notification under section 8 ibid declaring the facility as customs area is issued by the jurisdictional commissioner of customs.

3.3 Audit objectives

Review on working of ICD/CFS in relation to transmission of import/export goods between ICD/CFS and gateway port, proper storage, safe custody and clearance thereof on payment of customs revenue due to the Government has been designed to test check records of customs as well as custodians for three years from 2000-01 to 2002-03. For this purpose, 71 ICD/CFS (43 public plus 28 private) out of 82 (53 public plus 29 private) ICD/CFS located in 25 Commissionerates, were examined in audit with the objective of seeking assurance that:-

(i) imported goods received at ICDs and export goods cleared/dispatched therefrom had been properly accounted for.

(ii) revenue due to the Government viz. duty on lost/pilfered goods, unclaimed/un-cleared goods and cost of customs staff posted at ICDs had been recovered in time.

(iii) there was no failure of systems/procedure, lack of monitoring or leakage of Government revenues due to non compliance of codal provisions prescribed for working of ICDs.

Audit findings are contained in the succeeding paragraphs.

3.4 Non/insufficient execution of bond/bank guarantee (BG)

Central Board of Excise and Customs (Board) circular of December 1995 provided for execution of a bond by the custodian equal to the value of goods likely to be stored in the premises for a period of 30 days, which vide circular of December 2002, restricted bond value to average duty on goods likely to be stored. BG equal to ten percent of such bond value/duty was also required to be executed. Public sector undertakings (PSUs) both Central and State were exempted from execution of BGs. A separate bond with sufficient BG was also required to be executed for transhipment of goods between gateway port and ICD/CFS.

Audit scrutiny revealed non execution of bond/BG by custodians to the extent of Rs.93.94 crore/Rs.34.02 crore respectively and deficient execution of bond/BG by Rs.764.27

crore/Rs.29.02 crore respectively thereby resulting in failure to safeguard customs revenue to that extent.

A few cases are illustrated as under:-

(a) A private sector CFS in Chennai, South India Corporation (Agencies) Limited (SICAL) executed a combined bond for Rs.6 crore along with BG of Rs.60 lakh covering both transhipment of cargo between gateway port and CFS as well as for custodianship of goods. Same bond was used for transhipment of cargo between gateway port and CFS and no separate bond was executed for custodianship. The bond and BG to be executed worked out to Rs.11.78 crore and Rs.0.58 crore respectively.

(b) A CFS in Tuticorin executed bond and BG for Rs.20 lakh and Rs.4 lakh respectively in 1996, which was not enhanced proportionate to volume of imports. Bond and BG should have appropriately been increased to Rs.7.22 crore and Rs.72.20 lakh respectively. This resulted in deficiency of bond and BG for Rs.7.02 crore and Rs.68.20 lakh respectively.

On this being pointed out, the Department reported (October 2004) execution of bond/BG for the deficient amount.

(c) ICD Tughlakabad (TKD) Delhi came into existence in September 1993 but bond valuing Rs.4 crore was executed only in November 1996 i.e. after 38 months of its inception. Further, its value was not revised in view of increased volume of goods to the extent of Rs.258 crore based on 30 days average value of goods/duty element during 2002-03.

On this being pointed out, the Department endorsed (May 2004), the reply of the custodian stating that the latter had executed a custodian-cum-carrier (one time) bond, which would be valid till Concor was the custodian and carrier and one more year thereafter. The reply was not tenable, as the value of the custodian bond should have covered the average duty element of goods likely to be stored for a period of 30 days. Further, they did not execute a separate bond as carrier of transhipment of the goods between gateway port and ICD.

(d) A CFS (JNCH Mumbai) had executed a bond for Rs.25 crore and BG of Rs.5 crore. Here too value of both had not been revised commensurate with increase in the volume of cargo handled by the CFS. The bond and BG were required to be executed for Rs.144.50 crore and Rs.14.45 crore respectively, thus, involving deficiency in bond/BG to the extent of Rs.119.50 crore and Rs.9.45 crore respectively.

3.4.1 Non-execution of bond for transhipment of export cargo

Board's circular dated 4 August 1998, stipulated that the custodians execute a separate bond for transhipment of goods cleared for exports from ICD to gateway ports and debit FOB value of goods at the time of clearance of goods. On receipt of the transference copy of the shipping bill in support of proof of export from the gateway ports, necessary credit would be given in the bond.

In respect of exports made through four ICD and a CFS in two Commissionerates, no separate bond was found executed for movement of export goods from ICD/CFS to gateway ports. They were required to be executed for Rs.1190 crore.

In the absence of this control mechanism prescribed by CBEC, it was not known as to how the exports were verified by the Department.

The Department reported (October 2004) execution of bond for Rs.50 crore in September 2004 in respect of one ICD. However, the fact remains that such bond was not executed during 2002-2003. In two cases, the custodians were directed (August 2004) to execute bonds for Rs.1067 crore and in two other cases, notices were issued (September 2004) to execute the bonds immediately.

3.4.2 Non-renewal of BG

In a private ICD (Dhigi Pune), BG for Rs.4.20 crore which expired in June 2003 was not re-validated till the time of audit (August 2003). The Department's reply was awaited (January 2005).

3.5 Insufficient insurance coverage of goods in ICD/CFS

Section 45 of the Customs Act, 1962 provides that the custodian of ICD would be responsible for safe custody of goods unloaded in the customs area, enjoining upon them to insure goods held therein vide condition (iv) of circular No.128/95 dated 14 December 1995.

Scrutiny of five ICDs revealed improper insurance coverage. At ICD Coimbatore the custodian did not insure goods for a value equivalent to average monthly duty of Rs.20.83 lakh held in their custody, whereas insurance made by three ICDs of Ahmedabad (Preventive) was deficient to the extent of Rs.26.58 crore.

In New Delhi, though plant and machinery, warehouse and administrative block of ICD had been insured for Rs.61.47 crore, goods lying at ICD (Tuglakabad) involving monthly average duty amounting to Rs.258 crore were not insured.

Thus, revenue to the extent of Rs.284.79 crore remained unprotected against risk of loss/pilferage etc.

3.6 Non-review of appointment of custodian

Board's circular of December 1995 provides for review of appointment of custodian every five years. Test check revealed that appointment of custodians made between 1981 and 1998 in 28 ICD/CFS of 10 Commissionerates had been not reviewed indicating that the authorities concerned had largely neglected an envisaged system.

On this being pointed out, Amritsar Commissionerate stated (March 2004) that the review was being done by the concerned Assistant Commissioner/Deputy Commissioner and a new bond was obtained after five years. However, audit found no evidence either of such review or execution/revalidation of bond as no record in support of reply was produced.

In other cases reply was awaited (January 2005).

3.7 Non-disposal of un-cleared/unclaimed imported cargo

According to section 55 read with section 48 of the Customs Act, 1962, if goods brought into India from a place outside India were not cleared within 30 days from the date of unloading thereof at the customs station and if no extension for retention of such goods beyond 30 days was obtained, they could be sold by the person having custody thereof.

Further, the Board vide circular of October 1997 stipulated that:-

(a) All goods that landed till 1 January 1994 and were lying un-cleared/unclaimed were to be taken up for disposal by the custodian even without no objection certificate (NOC) from customs if there was no stay/court case.

(b) For goods that landed between 1 January 1994 and 31 December 1996, custodian was to prepare a monthly list of cargo due for disposal and send it to customs for NOC. If no intimation was received from customs within 30 days, custodian was to presume that the former had no objection and go ahead with the disposal.

(c) For goods pending since 1997 a monthly list was sent to customs for their permission to dispose off the cargo within 30 days, failing which the custodian would be free to dispose off these goods.

Scrutiny of records of 37 ICD/CFS in 13 Commissionerates revealed that goods worth Rs.540.47 crore imported between 1985 and March 2003 were awaiting disposal action for periods ranging from one to eighteen years resulting in blockage of duty amounting to Rs.192.81 crore apart from notional loss of interest of Rs.58.41 crore.

Analysis of non-disposal of goods in 16 ICD/CFS revealed that for 1466 containers valued at Rs.301.55 crore in Chennai (Sea), Tuticorin, Tiruchirapalli and Coimbatore the reasons for non-disposal were as under:-

(i) Clearance of 115 containers valued at Rs.35.00 crore involving custom duty of Rs.16.44 crore, were locked up in court cases.

(ii) Twenty five containers valued at Rs.1.21 crore involving custom duty of Rs.0.47 crore were pending as the cases were referred to Board for Industrial and Financial Reconstruction (BIFR).

(iii) One hundred and eleven containers valued at Rs.10.04 crore were detained by Special Investigation and Intelligence Branch (SIIB)/Directorate of Revenue Intelligence (DRI)/Dock

Intelligence Unit (DIU) and customs duty amounting to Rs.4.75 crore was blocked due to delay in adjudication.

(iv) One thousand two hundred and fifteen containers of goods valued at Rs.255.31 crore were free from litigation, yet were delayed in clearance leading to blockage of customs duty of Rs.59.27 crore.

In above cases delays had ranged from nine to 105 months involving a notional loss of interest of Rs.43.03 crore.

Of 1215 containers, the Department reported (July 2004) that the goods contained in 33 containers were disposed off and duty amounting to Rs.10.96 lakh was realised (March/April 2004). In another case the importer cleared the goods in June 2004 on payment of duty of Rs.1.83 lakh.

Illustrative cases are narrated below:-

(a) A second-hand blast furnace plant imported by M/s. Kitti Industries Limited in January 1999 was transhipped partly to a CFS, in Chennai and balance retained in Port Trust, Chennai. Due to non-payment to the supplier, Chennai, High Court restrained the removal of cargo. No action was initiated by the Department for lifting the restrictions on sale of goods and the same remained un-cleared (December 2003) for five years causing blockage of customs duty of Rs.15.67 crore with notional loss of interest of Rs.11.16 crore.

(b) Eighteen consignments of cold store equipments imported during 1995-96 at a public CFS could not be cleared owing to importer's financial constraints. Duty amounting to Rs.33.75 lakh remained blocked for more than seven years apart from notional loss of interest of Rs.39.23 lakh.

(c) Capital goods valued at Rs.3.97crore imported (February 1999) under export promotion of capital goods scheme (EPCG) at a private CFS in Chennai were detained by the Department, as the importer did not fulfil conditions of import on earlier occasion under the same scheme. The case was adjudicated in July 2002 whereby benefit of EPCG scheme was disallowed. However, the goods lay un-cleared (December 2003). Delay in adjudication and disposal of goods led to blockage of customs duty of Rs.1.86 crore for more than 58 months apart from notional loss of interest of Rs.1.33 crore.

(d) Five consignments of dewatering equipments worth Rs.1.80 crore imported in 1995-96 at a public sector CFS in Chennai were placed for auction in 2002-03 after the Department permitted the custodian to auction the goods. However, in October 2002 customs department intimated the custodian that the goods were liable for confiscation and should not be auctioned. They remained un-cleared (December 2003). The inordinate delay in disposal of goods caused blockage of duty of Rs.90.36 lakh apart from notional loss of interest of Rs.1.05 crore

(e) A public limited company, imported (November 1999 to September 2000), 663 containers of second hand refinery equipment valued at Rs.144.92 crore at a private CFS at Chennai. The Department did not take action to dispose off the goods in terms of section 48

ibid. On the request of the importer, the containers were transhipped (January 2003) to factory premises at Cuddalore through ICD Sattva, Pondicherry after obtaining permission from Chennai customs. The goods remained un-cleared (December 2003), causing blockage of duty of Rs.31.59 crore for 39 months apart from notional loss of interest of Rs.17.65 crore. Further, 354 containers of the same goods valued at Rs.98.72 crore imported (April 2001), through Chennai Sea customs, were transhipped to the bonded warehouse of the importer through the same ICD, after obtaining permission. The goods remained un-cleared (December 2003) in the bonded warehouse causing blockage of customs duty of Rs.22.20 crore and interest thereon amounting to Rs.7.49 crore.

On this being pointed out (April 2004), the Department stated (May 2004) that the remaining 30 percent of the equipments were yet to be received and only then would erection of the equipment be completed. The Department further stated that the importer could not clear the goods owing to their financial constraints and that the duty with interest would be collected early.

The fact remains that there was delay in warehousing the goods and the same still remained uncleared (for three to four years) causing blockage of revenue amounting to Rs.78.93 crore.

(f) In CFS (CWC/Kolkata and Haldia), 74 consignments of goods of perishable nature valued at Rs.4.44 crore were lying undisposed for a period ranging from 10 months to six years (December 2003) contrary to instructions issued in this regard resulting in loss/blockage of revenue of Rs.1.45 crore.

3.7.1 Delay in disposal of un-cleared/unclaimed cargo

Test check of records in eight ICDs/CFS located in three Commissionerates revealed that goods valued at Rs.7.53 crore were disposed off after periods ranging from six months to fifteen years of their importation. Delayed disposal resulted in loss of duty/notional loss of interest of Rs.1.78 crore.

Illustrative cases are narrated below:-

(a) Four consignments of machinery imported at a private CFS in Chennai (March 1996) were not cleared by the importer. The machinery was placed for auction for the first time in June 2001 after a lapse of five years though the subject goods were free from litigation. They were sold in auction in September 2001 and customs duty of Rs.16.51 lakh was realised in November 2001. Delay in disposal of cargo had led to postponement of revenue of Rs.16.51 lakh for more than five years apart from notional loss of interest of Rs.13.61 lakh.

(b) In five cases of PSWC Ludhiana where un-cleared cargo arrived between 1997 and 2001, the goods were auctioned by custodian for Rs.72.15 lakh (between March 2002 and March 2003) and duty of Rs.28.20 lakh was realised. Delay in disposal led to postponement of revenue realisation causing notional loss of interest of Rs.8.46 lakh.

3.7.2 Non-disposal of confiscated goods

Section 126 of the Customs Act, 1962 provides that ownership of confiscated goods vests in the Central Government who is promptly required to dispose them to avoid loss of revenue due to deterioration in quality, commercial value of the goods, excess expenditure incurred in the maintenance of the goods besides rent liability to the custodian.

Scrutiny revealed that in eight Commissionerates goods valued at Rs.27.23 crore (involving duty of Rs.10.74 crore) were confiscated between 1991 to 2003. The same were awaiting disposal for periods ranging from eight months to twelve years resulting in consequential loss of interest amounting to Rs.3.64 crore to the Government. Also, six cars confiscated in May 2001 were awaiting disposal in Overseas Warehousing Limited, Ludhiana till May, 2004.

Illustrative cases are as under:-

(a) Forty two cargo containers (medical equipments, fruit juice, organic chemicals, oil seeds etc.) valued at Rs.2.52 crore (involving duty of Rs.82.42 lakh) confiscated between April 1996 and February 2003 in Kolkata Commissionerate were awaiting disposal for periods ranging from eight months to seven years (December 2003). Their non disposal would result in deterioration in quality and commercial value.

(b) Four hundred and sixty bales of synthetic rags imported in October/November 1998 and lying un-cleared on account of delay beyond 30 days in terms of section 48 of the Customs Act, had been confiscated in July 2000 on termination of appointment of the custodian of CFS, Thammanam (Cochin). However, no action was taken by the Department for its disposal even after two years, which resulted in blockage of revenue amounting to Rs.36.30 lakh apart from notional loss of interest of Rs.21.78 lakh (December 2003).

3.7.3 Loss of revenue due to delayed disposal of confiscated/unclaimed goods

Ministry's instructions issued on 7 September 1961 provided that the reserve price fixed by Joint Pricing Committee would be the absolute minimum price below which for legal or other reasons a consignment could not be sold. However, some instances came to light as follows:-

(a) According to orders of Commissioner (Amritsar) (January 2003) auction of goods made in February/March 2003 for Rs.91.34 lakh against the reserve price of Rs.1.39 crore fixed by the Committee (July 2002) resulted in short realisation/loss of Government revenue to the extent of Rs.47.62 lakh.

(b) According to instructions (May 1984) electronic goods liable to rapid depreciation in value on account of fast change in technology, should be disposed off immediately after adjudication.

In Delhi Commissionerate a container of "flat shadow" (electronic goods) involving FOB value of Rs.60.39 lakh was brought to ICD Patparganj (PPG) for export in May 1993. The goods were not exported and finally sold (March 2001) by the custodian for Rs.7200. Thus, delay in disposal of goods resulted in loss of Rs.60.32 lakh, as the value of the article was highly prone to depreciation.

3.7.4 Injudicious decision of custodian resulted in loss of customs duty

Disposal guidelines contained in chapter-21 (para 6) of Customs Law Manual 2002-03 provided that in the event of goods not being disposed off at the reserve price (or within the permissible margin) in the first auction, the reserve price be reduced according to prescribed scale in the subsequent auction.

In Delhi Commissionerate (ICD TKD) imported goods such as brass dross/eckart ink were put for auction (March 2002) with reserve price of Rs.31.96 lakh. The highest bid received was Rs.29 lakh (9.26 per cent less than reserve price). The bid was not accepted and in the next four auctions the highest bid did not cross the limit of Rs.13.51 lakh. Goods remained un-cleared and after the fifth auction the Department restrained the custodian from disposing off the goods on the ground of their being restricted items. However, it was not clear as to how an item put to auction five times was declared as restricted by the Department subsequently.

Non-disposal of the goods resulted in loss of customs duty to the extent of Rs.9.77 lakh (applicable at the first auction value).

3.7.5 Non disposal of export cargo

Under instructions issued by the Ministry in May 1984, seized, confiscated goods were to be disposed off within the time frame prescribed for each category according to preservation periodicity i.e. goods prone to rapid decay - immediately after seizure, goods having short span of life - within six months from the date of seizure, and goods liable to rapid depreciation in value immediately after adjudication.

Test check of records of four Commissionerates revealed that due to non compliance of aforesaid instructions export goods worth Rs.67.92 crore were not disposed for one to eighteen years.

The following cases came to light:

(a) In Delhi Commissionerate export goods i.e. ready-made garments, compact disc, hand tools and electronic goods worth Rs.63.15 crore entered for export between 1985 and 2003 were lying in the export shed as unclaimed /detained/confiscated/seized.

Non disposal as required in the aforesaid instructions, of such items having short span of life, within appropriate time limit resulted in their commercial value being lost leading to loss of revenue amounting to Rs.49.88 crore apart from blocking of revenue amounting to Rs.13.27 crore on other goods.

Regarding non-disposal of watches, the Department (ICD PPG) stated (February 2004) that the goods were presumably disallowed for export and were seized by customs for overvaluation. It was further stated that detailed reply would be furnished in due course.

(b) In Chennai (Sea) and Tuticorin Commissionerates, of 11 consignments, four cases involving value of Rs.2.27 crore were confiscated but not sold for 33 months. Show cause

notices were issued in six cases involving value of Rs.1.76 crore. Delay in adjudication of these cases was for 31 months.

A case involving value of Rs.66.67 lakh was pending before CEGAT who granted stay in 1999. The case had not been decided and the goods remained un-cleared.

On this being pointed out (March/May 2004), the Department (Tuticorin) reported (July 2004) disposal of one export cargo in June 2004 for Rs.6.40 lakh. These goods valued at Rs.1.03 crore were brought to CFS in November, 2001 and confiscated in December, 2003. Thus the delay in adjudication and disposal led to loss of revenue of Rs.96.60 lakh.

3.8 Revenue realised vis a vis rent paid in respect of confiscated goods

According to Board's circular of December 1995, in respect of goods, ownership of which vests in the Government after confiscation, the Government has to pay rent fixed by commissioners to the custodian. Non-disposal of confiscated goods is a dual liability of Government, on the one hand rent is incurred, on the other quality deterioration leaves little scope of realisation of appropriate revenue.

Audit scrutiny of records of four ICDs in four Commissionerates revealed that against the rent liability of Rs.12.41 crore the Department could realise only Rs.1.20 crore as sale proceeds of confiscated goods. This resulted in loss of revenue to the extent of Rs.11.21 crore.

Illustrative cases are narrated below.:-

(a) In Delhi Commissionerate (PPG) alone ground rent of Rs.11.44 crore was outstanding in respect of 45 containers disposed off by the Department for Rs.0.95 crore resulting in loss of Rs.10.49 crore for prolonged retention of goods by the custodian.

(b) In Amritsar Commissionerate (PSWC Ludhiana) a sum of Rs.17.32 lakh was paid and Rs.53.30 lakh outstanding as rent liability in respect of goods confiscated during January 1995 to May 2000 against sale proceeds of Rs.22.16 lakh realised in March 2001.

Reply of the Department was awaited (January 2005).

Further, in two ICDs of Amritsar Commissionerate liability of Rs.48.67 lakh (50 per cent of sale proceeds) towards rent payable to custodian had accrued against sale proceeds of Rs.96.84 lakh.

3.9 Non/delayed recovery of customs duty on auctioned cargo

In accordance with section 48 read with section 150 of the Customs Act 1962, customs duty is recoverable on goods auctioned by custodian. Non-observance of the procedure of

payment of duty on clearance of goods leads to non-realisation/delay in realisation of revenue and consequential loss of interest.

Test check revealed that in 37 cases in seven Commissionerates custom duty amounting to Rs.1.21 crore involved on uncleared goods auctioned for Rs.9.76 crore during October 1997 to December 2003 had not been realised (December 2003). Notional loss of interest worked out to Rs.31.66 lakh. In 30 other cases of Chennai (Sea) and Hyderabad Commissionerates remittance of duty of Rs.2.68 crore and Rs.47.93 lakh respectively with delay ranging from one month to four years caused notional loss of interest of Rs.33.02 lakh.

A few cases are narrated below:-

(a) In 29 cases (Chennai Sea) delay ranging from 25 to 225 days in remitting customs duty to Government account after completion of auction led to postponement of revenue of Rs.2.68 crore and consequential loss of interest of Rs.10.22 lakh.

(b) In Delhi Commissionerate, (ICD/PPG) it was noticed that four auctions of unclaimed/un-cleared goods were held by custodian between 2000-01 to 2002-03 but an amount of Rs.36.99 lakh on account of customs duty was recoverable (March 2003.) This resulted in notional loss of interest of Rs.12.64 lakh (December 2003).

3.10 Non-recovery/short recovery of cost of customs staff posted at ICD/CFS

Vide Board's letters F.No.11018/63/87-Ad.IV, dated 11 January 1988 followed by another clarification issued vide F.No.11018/9/91-Ad.IV dated 1 April 1991 and further circular dated 14 December 1995, the custodian would bear the cost of the customs staff posted at ICD/CFS. Parameters were further provided in circular dated 17 October 1997. Custodians are required to pay at a uniform rate of 1.85 times of monthly average cost of the post, plus DA, CCA, HRA etc. in respect of customs staff posted at ICDs. Advance deposit is required to be made for staff for three months.

In 35 ICD/CFS located in 17 Commissionerates a sum of Rs.27 crore towards cost of customs staff for the period from 1990-91 to 2002-03 had not been recovered from the custodians.

Non/delayed recovery of cost of staff resulted in notional loss of interest of Rs.9.36 crore (December 2003).

Illustrative cases are narrated below:-

(a) In ICD, (Coimbatore), cost charges amounting to Rs.55.93 lakh were not recovered in respect of customs staff for the period from 2000-01 to 2002-03 causing notional loss of interest of Rs.14.50 lakh.

In reply, the Department stated (September 2004) that according to orders of the Ministry of May, 1985 sanctioning additional posts for attending to customs work in ICDs, the expenditure on such additional posts should be met within the sanctioned budget grant of the concerned organisation and hence the custodian M/s. Concor was not required to pay cost

recovery charges. The reply was not acceptable as the Board's circular of December, 1995 stipulated that custodian shall bear the cost of customs staff posted at ICD/CFS.

(b) In CFS (Chennai), demand (February 2002) for Rs.12.33 lakh was raised by the Department towards payment of cost recovery charges consequent to re-fixation of pay which remained unpaid (December 2003) apart from notional loss of interest of Rs.5.09 lakh.

(c) In Delhi Commissionerate, it was, noticed that the custodians (TKD and PPG) were not paying the cost of customs staff at all. The Department had also not demanded any cost recovery charges from them and did not have separate ICD-wise details of sanctioned/actual strength and expenditure on pay and allowances of staff meant exclusively for these ICDs.

However, the cost charges for actual staff posted in four ICDs (TKD, PPG, Faridabad and Gurgaon) amounting to Rs.4.41 crore were recoverable from January 1996 to March 2003 apart from notional loss of interest of Rs.2.42 crore (December 2003).

In reply to audit observation, custodian (PPG) stated (September 2003) that since they were appointed in 1984 provisions of circular issued in 1995 were not applicable. Reply was not tenable because the Board's circular stipulated recovery of cost and did not expressly exclude earlier appointees.

(d) Ministry of Commerce recommended (January 1997) the case of PSWC Ludhiana and Jalandhar to the Board for waiver of arrears of cost recovery of staff amounting to Rs.29.52 lakh for the period 1990-92 which was rejected by Ministry in August 2000. Even though demand was raised in September 2000 against the custodian, the amount was not paid till May 2004 leading to notional loss of interest of Rs.52.03 lakh.

The matter was brought to the notice of the Department (March 2004), reply was awaited as of (January 2005).

(e) In Cochin Commissionerate a CFS was created within Cochin Port Trust area (November 1993). On the request of the port trust custom staff were deployed to the CFS from 15 March 1995 but the demand for cost recovery charges was turned down by the port trust on the plea that said charges were not payable since the Government had created new facility for its own use. Demand for remittance of the charges was not pursued by the Department even though the cost recovery charges are mandatory irrespective of the nature of the CFS (i.e. whether private sector/autonomous/public sector) vide letter No.11018/20/95/A XIV dated 17 August 1995 of the Ministry.

Cost recovery charges for the period from 15 March 1995 to 31 December 2003 worked out to Rs.1.50 crore apart from notional interest of Rs.83.37 lakh. The Department had not replied.

(f) Cost recovery charges in respect of 39 out of 66 staff posted to CFS (CWC Dronagiri Node) under JNCH were neither demanded nor paid since inception. Cost charges recoverable for the period 2000-01 to 2002-03 worked out to Rs.3.75 crore causing notional loss of interest of Rs.94.45 lakh.

3.10.1 Non-recovery of merchant over time fee (MOT)

Customs (fee for rendering services by customs officers) Regulations, 1998 provide for levy of MOT fee for services rendered by customs officers beyond office hours and on holidays according to the rates specified therein.

MOT charges amounting to Rs.23.74 lakh for 1999-2000 and 2000-01 were not recovered from the custodian (CFS Mulund West) apart from notional loss of interest of Rs.9.79 lakh.

3.11 Non-receipt of landing certificate

The imported cargo unloaded at a port is allowed to be transhipped to ICD/CFS after execution of bond and BG. According to Regulation 4 of the "Goods imported (Conditions of transhipment) Regulation, 1995", the landing certificate for receipt of such containers at ICD/CFS is to be received at the originating port within a month or within such extended period as allowed by the proper officer. In case such certificate is not produced, an amount equal to the value or market price of the imported goods is to be forfeited.

In 103 cases, transhipment permits were issued by Chennai (Sea) and Haldia (mini customs house) gateway ports between April 2000 to December 2003 for transhipment of cargo to various ICDs, but landing certificates required to be received within one month were not received. Value of goods and duty involved were Rs.37.14 crore and Rs.12.49 crore respectively. The Department had not initiated action to forfeit the value of goods from the transhipment bond.

3.11.1 Non-issue of landing certificate

In three cases though sub manifest transhipment permit (SMTPs) relating to three IGMs were received in respect of eight containers imported in October 2000 at ICD Maliwada in Aurangabad Commissionerate, neither was any proof of receipt of containers and clearance of goods available nor was landing certificate issued by the ICD to gateway port. This resulted in non-realisation of duty amounting to Rs.24.38 lakh apart from notional loss of interest of Rs.11.55 lakh.

3.11.2 Non-receipt of transference copies of shipping bill

According to Board's circular No.57/98 dated 4 August 1998, for goods exported from ICD, the transference copy of the shipping bill indicating the exports of such goods from the gateway port has to be received at the ICD within 90 days. These have to be correlated with the duplicate copy of the shipping bills to ensure correctness of the drawback payments made and other export incentives claimed in the shipping bills. If the copy affirming shipment is not received within this time, the Assistant Commissioner would have to raise demand against custodian for an amount equal to duty and drawback contained in exported goods.

Test check in 3652 cases in eight Commissionerates revealed that transference copies of shipping bills for exports made from 17 ICD/CFS during April 2000 to March 2003 were not

received, though more than 90 days had lapsed since the date of exports of such goods. Drawback availed in respect of these cases amounted to Rs.344 crore.

No action was taken to recover the export incentives availed in these cases. In the present system, drawback payments are made immediately after the dispatch of goods from ICD, without waiting for transference copies. Linking of transference copies with the duplicate copy of shipping bills assumes significance in the light of overvaluation of F.O.B. value with an intention to avail excess drawback in respect of exports made from ICD. Audit noticed that over valuation made in goods exported from ICD Tiruppur was detected at Tuticorin gateway port by the Department.

3.12 Non-reconciliation of containers

The main function of ICD/C.F.S. is receipt, dispatch and clearance of containerised cargo. Hence it is imperative to maintain an upto date inventory control and tracking system to locate containers/cargo. In order to achieve the above objective, there should be periodical reconciliation of number of containers dispatched from the gateway port with those received at the ICD/CFS. Further, the custodian should periodically submit returns to the customs relating to receipt of containers in the ICD/CFS, so that such information can be tallied with the landing certificates issued.

Test check of 27 ICDs in 10 Commissionerates revealed that there was no system of reconciliation prevalent in any of the ICD/CFS as neither were the gateway ports sending periodical details of containers forwarded by them nor were the custodians furnishing returns to customs department relating to receipt of containers in ICD/CFS.

3.12.1 Loss of revenue due to theft/pilferage

Board's circular dated 14 December 1995, provides that the custodian should bear the duty on goods lost or pilfered from the ICD/CFS.

Deficiency in the tracking system causing loss of revenue

In ICD, TKD (Delhi Commissionerate) a firm of Kanpur imported in May 1988 eight containers of serviceable garments etc. and declared them as woollen rags. After examination, the Department seized and confiscated the goods (September 1998), which were put to auction four times with highest bid in the fourth auction (March 2000) being accepted. At the time of actual delivery, the goods/containers could not be located. Failure in locating the goods highlights serious deficiency in the tracking system. There was loss of revenue of Rs.5.02 lakh in this case.

3.13 Non-re-export of containers imported without payment of duty

Notification No.104/94-cus dated 16 March 1994 provides for import of durable containers without payment of duty subject to re-export of such containers within six months from the

date of their importation or within such extended period as may be allowed by the Assistant/Deputy commissioner.

Test check revealed that 2761 containers imported during 1993-2003 without payment of duty under aforesaid notification were not re-exported by 23 ICD/CFS in eight Commissionerates.

Failure to re-export 2404 of them valued at Rs.32.95* crore entailed recovery of duty amounting to Rs.23.57 crore apart from notional loss of interest of Rs.3.14 crore.

The Department (Tuticorin) reported (July 2004) that 34 containers had since been re-exported. Reply in respect of others was awaited (January 2005).

3.14 Other irregularities

3.14.1 Non-forwarding of GR forms to RBI

According to Board's circular No.57/98-cus when exports benefits are availed, GR forms related to these exports are to be forwarded to the concerned branch of RBI.

For exports made from seven CFS, in Tuticorin Commissionerate, export benefits such as drawback, duty exemption entitlement certificate, duty entitlement pass book scheme, EPCG etc. were availed. Assessment of the goods was made through Electronic Data Interchange System. However, the Department could not furnish any documentary evidence for having forwarded the details of exports to RBI, thus reflecting lack of mechanism therein to ensure prompt supply of information to RBI.

Test check revealed that for exports involving incentive of Rs.681 crore, details were not furnished to RBI.

On this being pointed out (March 2004), the Department produced acknowledgement given by RBI for having received the export data in EDI format. No individual details of shipping bills for the period April 2001 to March 2003 of cases pointed out in audit were however, forthcoming. It was also stated by the Department that GR forms had been replaced by SDF through Chennai (Sea) public notice No.34/99 dated 21 January 1999. However, Board continued to refer to GR forms as late as in its circular No.18/2002-Cus dated 13 March 2002. In view of this ambiguity, audit could not ascertain how the department ensured transmission of data in respect of cases for which export incentives were availed by the exporters.

3.14.2 Injudicious expenditure on furniture

Board's circular dated 14 December 1995, stipulated that the custodian would provide free furnished office space at each ICD for departmental officers.

*Value for 357 containers in respect of Chennai and Tuticorin was not ascertainable.

It was, however, noticed that contrary to the above instructions, the Department incurred expenditure of Rs.11.27 lakh at ICD, TKD (Delhi) during 2000-01 to 2002-03 on purchase of furniture from their own budget, which was not claimed from custodian.

Similarly, in Bangalore Commissionerate the Department incurred expenditure of Rs.5.70 lakh on electrification and furnishings in ICD without claiming it from custodian.

3.14.3 Physical verification of stock not conducted

Circular 128/95 provides that custodians are responsible for safety and security of the goods stored in their ICD/CFS. With a view to ensure proper accounting of goods, periodical physical verification of the stock kept at the ICD/CFS would be imperative. Department in the case of ICD TKD (Delhi) had stated (March 2004) that some containers lying un-disposed contained hazardous waste and efforts were being made to clear them after taking NOC from branches concerned. Several miscellaneous items such as steel forgings, tin plates, steel alloy and machine parts etc. were also found lying un-disposed for export for varying periods from 1995.

Audit scrutiny revealed that there was no system prescribed for periodical physical verification in ICD/CFS by customs authorities (TKD/PPG).

The Department (PPG) stated (May 2004) that onus of physical verification of containers lying at ICD rested with CWC since they were the title holder of the goods lying at ICD.

3.14.4 Internal Control Mechanism

Audit scrutiny showed that the internal audit wing did not undertake audit of ICD/CFS. Test check of six ICD/CFS under Commissioner of customs Ahmedabad (Preventive) revealed that except bills of entry, drawback and refund claims in two of them, no other checks were exercised through internal audit on any documents before final assessment. Amritsar Commissionerate did not provide any feedback of internal audit conducted either. In Delhi, Chennai, Tuticorin, Coimbatore, IAD did not undertake audit of transactions except audit of limited bills of entry, drawback and refund claims. In Kolkata, Shillong, Visakhapatnam (Customs) and Cochin, IAD had not conducted any audit of ICD/CFS.

3.15 Impact of EDI system

Scrutiny revealed that processing of bills of entry/shipping bills under EDI system was around 73 per cent of total documents assessed at ICD Sabarmati in Ahmedabad Commissionerate. The Department stated (April 2004) that software had not been developed/loaded onto EDI. Similarly at Delhi 80 to 90 percent, at Tuticorin 45 to 84 percent bills of entry/shipping bills and transactions at JNCH Mumbai were processed through EDI, whereas in Kolkata, Bangalore, Mumbai, Cochin and in nine ICDs/CFS in five Commissionerate of Tamil Nadu, Hyderabad-II and Visakhapatnam Commissionerates, no EDI system was introduced. In three CFS at Ludhiana (Amritsar) shipping bills were submitted by exporters on EDI while the rest of the work was done on manual basis.

3.16 Conclusion

The review has revealed several instances of violation of rules, regulations and procedures framed under the Customs Act relating to deficiency of bond/BG, insufficient insurance coverage, non/delayed disposal of unclaimed/un-cleared, confiscated goods, non/delayed recovery of custom duty on auctioned goods, non receipt of landing certificates, deficiency in tracking system, etc. Monitoring mechanism through physical check or other wise was weak. Insufficient use of EDI system for tracking purposes was evident. In view of large scale non-disposal of unclaimed/un-cleared, confiscated goods lying in the ICDs, audit recommends system of periodical physical verification by appropriate machinery and a time bound clearance of long pending accumulations.

The review was issued to the Ministry in October 2004. They were largely in agreement with the need for taking appropriate action for systematising and strengthening functioning of ICDs. The Ministry stated (November 2004) that some procedures for disposal of uncleared/unclaimed cargo had been simplified in 2004.

CHAPTER IV: RECOVERY OF ARREARS OF REVENUE

4.1 Highlights

- **Of the 7345 confirmed demand cases involving Rs.1539.02 crore in 34 Commissionerates, pending as on 31st December 2003, 4230 cases involving Rs.412.24 crore were pending for more than three years. Blocked revenue arrears were 32.36 per cent of revenue assessed in these Commissionerates.**

(Paragraph 4.4)

- **Sixty eight per cent of pendency lay with the Department. Recovery proceedings had not been initiated in 1844 cases involving Rs.127.79 crore though no appeals were pending.**

(Paragraph 4.4.1 & 4.6)

- **Benefits envisaged by creation of a special recovery cell in each Commissionerate for speedy recovery of revenue arrears had not materialised.**

(Paragraph 4.5)

- **Inaccurate reporting of pendency involving Rs.321.54 crore in 1396 cases was found, indicating failure of reporting/monitoring mechanism.**

(Paragraph 4.7)

- **Certificate action under the Act had been initiated only in 3347 out of 7345 cases with delay of one to 15 years involving Rs.270.70 crore, of which only Rs.10.50 crore had been recovered.**

(Paragraph 4.11)

- **In 835 cases in four Commissionerates involving Rs.307.40 crore failure to invoke provisions of Attachment of Property Rules was noticed.**

(Paragraph 4.12)

- **Penalties amounting to Rs.281.65 crore imposed in 8559 cases were pending realisation, of which Rs.147.21 crore in 6909 cases constituting 52 per cent were pending for more than three years.**

(Paragraph 4.13)

- **Unconfirmed demands in 1851 cases involving duty of Rs.2278.13 crore in two Commissionerates were pending for one to ten years.**

(Paragraph 4.17.1)

4.2 Introduction

According to section 12 of the Customs Act, 1962, except as otherwise provided in the Act, or any other law for the time being in force, duties of customs are levied at such rates as may be specified. Ordinarily such duties levied are to be paid within five days. Section 28 of the said Act provides that duties of customs that have either not been levied/paid or have been short levied/short paid may be demanded by issue of a notice by a proper officer. If the confirmed amount is not paid within three months and no stay has been obtained from an appellate authority, recovery proceedings are initiated. Further penalties are leviable under section 112 and 114 of the ibid Act for improper importation and exportation respectively. Section 116 provides for penalty on goods not accounted for. For any other contravention not expressly mentioned in the Act, penalty is levied under section 117. Penalties and other government dues are recovered from defaulters under the provisions of section 142 of the Customs Act, 1962. It was amended in 1995 by incorporation of sub section 142 (c) (i) and (c) (ii) providing for attachment of property of defaulters and its auction by the Department respectively for recovery of penalties and other government dues.

Rule 3 of Customs (Attachment of Property of Defaulters for Recovery of Government Dues) Rules, 1995 provides that where Government dues are not paid by a defaulter, the Assistant Commissioner or Deputy Commissioner of customs may prepare a Certificate signed by him specifying the amount due from such person and send the same to the Commissioner having jurisdiction over the place in which the defaulter owns any movable or immovable property or resides or carries on his business or has bank accounts. Rule 28 of Customs (Attachment) of Property of Defaulters for Recovery of Government Dues) Rules, 1995 provides that if at any time after the certificate has been issued by Assistant/Deputy Commissioner under Rule 3, the defaulter dies, the proceedings under these rules would be continued against the legal representatives of the defaulter.

4.3 Objectives of review

Records of 36 out of 54 Commissionerates for the years 2000-2003 covering eight States were examined to seek assurance that:

(i) There was no failure of system/procedure, lack of monitoring or failure on the part of the Department in safeguarding and realisation of revenues.

(ii) No accumulation of arrears due to inaction/delay by the Department in initiating action under section 142 (c) (i) and (ii).

(iii) Certificate action under Rule 3 of Customs (Attachment of Property of Defaulters for Recovery of Government Dues) Rules, 1995 had been appropriately taken by departmental authorities to recover personal penalties.

Audit findings are contained in the succeeding paragraphs:

4.4 Trend of customs revenue and arrears

According to information made available by 34 test checked Commissionerates there were 7345 cases involving confirmed demand of Rs.1539.02 crore upto 31 March 2003 pending realisation as on 31 December 2003. Of these 4230 cases involving Rs.412.24 crore were pending realisation for more than three years. Blocked revenue arrears were 32.36 per cent of revenue assessed in these Commissionerates. There had been a steady increase in revenue not realised since 2000-2001 with more than double the figure at Rs.653.89 crore during 2002-03 compared to Rs.323.15 crore of 2001-2002.

The Ministry stated (November 2004) that pendency of arrears had been a matter of concern for the Government and the issue was addressed at the highest level. Target to recover Rs.750 crore of customs arrears during the current financial year by initiating various measures had been set, out of which Rs.234.56 crore had been realised upto October 2004. Details of cases were being called from concerned Commissionerates. Further progress was awaited (January 2005).

4.4.1 Category wise analysis of arrears

Audit attempted to analyse categories of arrears. It emerged that 5079 cases involving Rs.357.44 crore representing around 23 per cent of confirmed demands in these Commissionerates, were pending recovery with the Department alone. Sixty eight per cent were pending for more than three years.

Nine hundred and sixty cases involving Rs.1058.36 crore were pending with various appellate fora like High Court, Tribunal, Commissioner (Appeal) as on 31 December 2003, of which pendency in 411 cases involving Rs.254.08 crore was more than three years.

On this being pointed out, the Department stated that appellate fora were being addressed/requested for early disposal of these cases.

A large proportion of cases involving Rs.53.69 crore, however, were pending for various other reasons like reference to district administration, Director General of Foreign Trade (DGFT), BIFR or lack of response from importers/whereabouts not known of defaulters etc.

The Ministry stated (November 2004) that all possible measures were being initiated for recovery of cases pending before various courts/tribunals. Comments from concerned Commissionerates had been called for and would be furnished on receipt. Further progress was awaited (January 2005).

4.5 Failure of special recovery cell

Having created a statutory framework to realise dues by attaching, distraining movable and immovable property and then disposing the said property, Board's circular No.56/96-cus dated 14 November 1996 instructed that database indicating therein defaulter's movable or immovable property, residence and details about business and bank accounts be built by each Commissionerate for use in taking action for realisation of arrears.

Further, as per the Board's instruction, one of the Assistant Commissioners of customs would be authorised as proper officer under the Rules and a special cell would be created in custom house/central excise headquarters for implementing the provisions of section 142 of the Customs Act, 1962 and Customs (Attachment of Property of Defaulters of Recovery of Government Dues) Rules, 1995. The Commissioner would issue suitable standing order on the subject endorsing a copy to the Board and the Directorate General of Inspection, Customs and Central Excise, New Delhi. This procedure was required to be reviewed after a year.

Test check revealed that the database had not been created in several Commissionerates[♦]. Details of the number of pending cases dealt with by recovery cell and amount realised after their creation upto 2003 were not being maintained. Despite instructions as early as in 1996, some Commissionerates had created cells or equivalent branches with much delay as late as in 2003. There was no clear evidence whether the procedure had been reviewed after a year or that Director General of Inspection wing was monitoring the same. Standing orders of creation of recovery cells were not endorsed to them by these Commissionerates. It was therefore not clear how Director General Inspection's set up was even aware of their existence.

The Ministry stated (November 2004) that software for publications of defaulters list including flash alerts on EDI systems was being operationalised to facilitate quick recovery of arrears with details on the assessing terminal in respect of the exporters/importers against whom notices under section 142 of the Custom Act were pending. Further progress was awaited (January 2005).

4.6 Failure due to lack of administrative action

Test check revealed that in 14 Commissionerates, 3314 cases involving revenue of Rs.574.21 crore were pending realisation as on 31 December 2003. 1844 cases involved Rs.127.79 crore where no appeals were pending, yet the Department failed to initiate recovery proceedings for their early realisation.

4.7 Mis-reporting in monthly technical reports (MTRs) furnished to Ministry/Board

Consolidated figures of various sections in the Commissionerates pertaining to arrears of revenue were reported to the Ministry/Board through MTRs. Test check however, showed that 1396 cases involving Rs.321.54 crore in eight[*] Commissionerates were not reported in the MTRs furnished to the Ministry/Board, thereby raising doubts about reliability of the reporting system.

[♦] Commissionerate : Bangalore, Jamnagar, Kandla, Chennai (Air), Chennai (Sea), Hyderabad-II, Delhi (Import & General), Delhi (Air cargo-export), Delhi (Prev.), ICD Tughlakabad.

[*] Chennai (Air),Trichy, Tuticorin, Kolkata (Port), Delhi (Import & General), Delhi (Air cargo-export), Cochin, Mumbai (Customs –General), New custom house

The Ministry replied (November 2004) that details of the cases/MTRs were being called and would be compared with the reports furnished to the Ministry. Further progress was awaited (January 2005).

4.8 Failure to pursue cases pending with appellate fora

According to provisions of sections 128 and 129 of the Customs Act, 1962, a person aggrieved with an adjudication order issued by a departmental officer confirming demands of duty and/or imposing penalties/fines, as well as with verdicts of other appellate and judicial fora in this regard, can appeal to the next higher forum, subject to certain specified time limits.

Test check revealed that in Chennai (Air and Trichy) Commissionerates, 20 cases involving Rs.6.57 crore pending in various stages of appeal were not even included in the MTRs furnished to the Ministry or in the details furnished by these Commissionerates in connection with audit review. No follow up action had been taken. Further, in some cases, the Commissionerates were unaware of the latest position of the appeal cases which is otherwise essential for taking further recovery measures.

4.9 Failure to collect outstanding dues using Kar vivad samadhan scheme

The Kar vivad samadhan scheme was introduced through Finance (No.2) Act, 1998, and was in operation from September 1998 to January 1999 with the objective of declogging tax administration and raising revenue of fiscal significance. However, 161 cases of confirmed demands involving Rs.42.48 crore outstanding under various stages of action, relating to the period upto 31 March 1998, were pending realisation in four Commissionerates as on 31 December 2003.

The cases remained unattended to for 30 to 42 months after closure of the scheme and no effective steps were taken by the Department for collection of revenue. It failed to initiate recovery proceedings provided in the Customs Act, 1962/Customs Rules, 1995 against the defaulters.

The Ministry stated (November 2004) that comments of the concerned Commissionerates were called for. Further progress was awaited (January 2005).

4.10 Failure to initiate action under Revenue Recovery Act/lack of co-ordination between departmental officers and State revenue authorities

The Board circular No.56/96 dated 14 November 1996 clarified that in cases where the recoverable amount exceeded rupees one lakh or where the district collector, to whom a certificate stipulated under sub clause (i) of clause (c) of section 142(1) of the Customs Act had been issued for recovery of dues as arrears of land revenue had not been able to effect

recovery within three months, he was to be informed that recovery be discontinued. Action was then to be initiated for recovery under sub clause (ii) to clause (c) of section 142(1) of the Act by the Department. Demands less than rupees one lakh were to be referred to district collector for recovery under Revenue Recovery Act.

Audit scrutiny revealed that in 10 Commissionerates, 106 cases involving demands of Rs.22.09 crore were pending recovery under certificate action. Of these, 67 cases involving Rs.0.22 crore had not been referred to concerned district collectors for recovery. Failure of the local customs authorities to refer cases to district administration to initiate action under Revenue Recovery Act and improper co-ordination with State revenue authorities in cases where arrears were not recovered within three months resulted in non realisation of Rs.21.90 crore as on 31 December 2003.

The Ministry admitted (November 2004) lack of adequate response from the State Revenue Authorities/District Collectors. They further stated that viable measures to ensure quick realisation of arrears had been identified by the task force. Further progress was awaited (January 2005).

4.11 Accumulation of arrears due to inaction/delay by the Department in initiating action under section 142 (c) (i) and (ii)

Subsequent to amendment of section 142 of the Customs Act, 1962, the CBEC issued circular No.54/95-cus dated 3 May 1995 stipulating that in cases where recovery could not be effected by issue of notices under clauses (a) or (b) of section 142(1), recovery action was to be initiated under the amended clause (1) (c) as per the following guidelines:

(i) If the amount recoverable exceeded rupees one lakh, recovery action was to be initiated directly under sub clause (1)(c)(ii) i.e. property attachment by the Department.

(ii) If the amount did not exceed rupees one lakh, certificate action under sub clause (1)(c)(i) was first to be taken i.e. recovery through district authorities was to be attempted.

(iii) If the amount under (c)(i) was not recovered by the district authority within three months, action was to be initiated under sub clause (c)(ii) by the Department after informing the district authority to discontinue recovery.

Out of 7345 cases, certificate action under section 142(c)(i)&(ii) was initiated by the Department only in 932 and 2415 cases involving Rs.70.06 crore and Rs.200.64 crore respectively. Against this, recovery was only to the tune of Rs.0.71 crore and Rs.9.79 crore by district authorities and by the Department respectively, which represented meagre percentages of one and 4.89 of the total amount due.

Further, scrutiny revealed that in 185 cases out of 932 involving Rs.13.52 crore, the initiation of action by the Department had been delayed by three to ten years. In 12 Commissionerates, in fact no case was referred to the district collector.

Similarly, in 58 out of 2415 cases involving Rs.67.75 crore there were delays in initiating certificate action by the Department, which ranged from one to 15 years. However, in nine Commissionerates action under section 142 (c)(ii) was not initiated in a single case.

The Ministry stated (November 2004) that change in approach and strategy would address the shortcomings. Further comments would be furnished on receipt from concerned Commissionerates.

4.12 Failure to invoke Customs (Attachment of Property of defaulters for Recovery of Government Dues) Rule 1995 for recovery of personal penalties

In four Commissionerates, 835 cases involving Rs.307.40 crore were reportedly pending under certificate action. However, from records made available to audit, it was seen that three cases were not reflected in the records of revenue recovery unit at all and the certificate under Rule 3 of Customs (Attachment of property of defaulters for Recovery of Government dues) Rules, 1995 had not been found issued.

4.13 Arrears of penalty levied under the Customs Act 1962

Penalties amounting to Rs.370.26 crore were imposed in 16,350 cases for the period upto 31 March 2003 under sections 112/114/116/125 of the Customs Act, 1962, out of which only Rs.54.49 crore amounting to 14.72 per cent relating to 7842 cases were realised upto 31 March 2003. Audit scrutiny revealed that Rs.281.65 crore relating to 8559 cases were pending realisation as on 31 December 2003. Of this, 6909 cases involving Rs.147.21 crore were pending realisation for more than three years which constitutes 52 per cent of the total outstanding revenue.

4.14 Failure to pursue closed business cases

In 11 Commissionerates, the Department did not enforce recovery of Rs.265.26 crore outstanding against 18 defaulters as the units were already closed. Two cases involved Rs.3.17 crore and were under BIFR, four involving Rs.11.13 crore were under official liquidator and in respect of two cases involving Rs.1.91 crore, the properties owned by the defaulter were already taken over by financial institutions. In remaining ten cases, where the blocked arrears were Rs.248.78 crore, either addressees were not traceable or no records had been maintained/or stay had been granted by CEGAT.

4.15 Loss due to personal penalties written off due to death of defaulters

In Trichy, Visakhapatnam Commissionerates, fines and penalties involving Rs.64 lakh in 22 cases were written off during the period from December 1998 to December 2003 invoking discretionary powers delegated under rule 13 of Delegation of Financial Powers Rule 1978

read with notification S.O. No.1469 dated 26 May 1995 without making efforts to realise the arrears from legal representatives as provided for under rule 28 of Customs Rules, 1995.

The Ministry quoted some Tribunal orders in support of their stand. Reply, however is not tenable in view of Rule 28 ibid.

4.16 Arrears pending realisation due to inability to locate defaulters/fictitious address

In Chennai and customs (Preventive), West Bengal Commissionerates, it was observed that Rs.2.76 crore referred to revenue recovery unit in 98 cases could not be realised due to fictitious address/inability to locate defaulters, thereby making remote any chances of realisation.

4.17 Other points

4.17.1 Unconfirmed demand

Audit scrutiny revealed unconfirmed demands in Air cargo complex (ACC), Mumbai and Hyderabad-II Commissionerates in 1851 cases involving duty of Rs.2278.13 crore outstanding for one to ten years under DEEC scheme/warehoused goods where export obligations had not been discharged within the prescribed period/warehoused goods were cleared without payment of interest. No action under section 28 of the Act was initiated in these cases.

On this being pointed out the departmental authorities (Hyderabad-II Commissionerate) stated that appropriate action would be taken. Reply in respect of ACC, Mumbai was awaited.

4.17.2 Non filing of 'miscellaneous application' before CEGAT for vacation of stay and early hearing

According to guidelines issued by joint chief departmental representative, Mumbai, in August 2002 to the Commissioner of customs Ahmedabad, where recovery of duty/penalty was rupees one crore or more, miscellaneous applications for early hearing and vacation of stay order were required to be submitted to the assistant registrar of the Tribunal.

It was noticed that in seven cases under Ahmedabad Commissionerate involving recovery of duty and penalty of Rs.15.80 crore, stay was granted by CEGAT but miscellaneous applications had not been filed till December 2003.

4.18 Conclusion

The review has revealed failure of system and weak monitoring in the recovery of arrears. Inaction or delayed action under provisions of the Act despite availability of statutory framework, and tardy certificate action to recover personal penalties or attach property was noticed. Arrears consequently doubled in the last two years.

Audit therefore, recommends activation of special recovery cells, a firm internal control mechanism to watch recovery and effective departmental action under the Statute if substantial recovery is to be ensured.

On this being pointed out (September 2004), the Ministry stated (November 2004) that the concerns raised by audit were noted and shared by them. The Government was seized of the issue at the highest level and government machinery had been activated to maximise the recovery of outstanding arrears. Further progress was awaited (January 2005).

CHAPTER V: SHORT LEVY OF DUTY DUE TO INCORRECT CLASSIFICATION

Some illustrative cases of short levy of customs duty arising from incorrect classification of goods are briefly narrated below:

5.1 Motorcycle and vehicle parts

5.1.1 'Motorcycle parts' merit classification under Custom Tariff heading 87.14.

Sixty six consignments of parts of motorcycle e.g. gear primary driven, collar driven gear and driven gear components imported by M/s. Hero Honda and two others between April 2002 and February 2003, through custom house, Delhi were classified under Custom Tariff heading 8483.40 treating them as independent goods though the imported goods were parts of motorcycle and would merit classification under Custom Tariff heading 8714.19. The incorrect classification resulted in short levy of duty of Rs.1.26 crore.

On this being pointed out during December 2002 and February 2004, the Ministry stated (July 2004) that gears were specifically covered under Customs Tariff heading 84.83 and as per general interpretative rule 3(a) of the Customs Tariff Act, 1975, the heading which provided the most specific description would be preferred to headings providing a more general description.

They further referred to HSN explanatory note under CTH 84.83, whereby gear boxes, transmission shafts and clutches were excluded but not the internal parts of engines like imported goods i.e. gear primary driven and collar driven etc. The Ministry also cited cases for classification of gear under CTH 84.83 in support thereof.

The reply of the Ministry is not tenable as gears for vehicles and other transmission elements are specifically covered under CTH 87.14 as per HSN explanatory note No.3. CTH 84.83 is meant for gears of machineries which are classifiable in chapter 84. This fact is also corroborated by the HSN explanatory general note III (B) below notes of section XVII wherein it has been stated that although gears of both the mobile machineries of chapter 84 and vehicles of section XVII are identical, their classification would be determined by their principal use. Reply of the Ministry to the effect that gears are internal parts of engine, is not tenable as collar driven gear/gear primary drive are parts of clutch of motorcycle as is evident from the importer's catalogue.

Further, cases cited by the Ministry related to machineries of chapter 84 and 85 for which CTH heading 84.83 is applicable but not for machinery of motorcycles of chapter 87. Moreover, in the case of Shri Ganesh Gears Pvt. Limited, the Tribunal vide its final order

No.1407/98 dated 24 July 1998 held that gears, pinions etc. which had been specifically designed only for use as original equipment in motor vehicles, would be classifiable under chapter heading 87.08 and not under heading 84.83 as a general use item.

5.1.2 Specially designed parts of motor vehicles i.e. 'head cylinders, block cylinders and TM case of aluminium castings' are classifiable under Custom Tariff heading 8708.99. It has been judicially held by the Apex court in the case of G.S. Auto International Limited Vs CCE Chandigarh {2003 (106) ECR 580 (SC)} relating to the classification of 'nut, bolts for motor vehicles', that the true test for classification was 'the test of commercial identity and not the functional test'. The Court further held that for the purpose of classification under chapter heading 87.08, the test to be applied was whether the goods were suitable for use solely or primarily with articles of chapter headings 87.01 to 87.05. If the answer was in the affirmative, the goods would be classifiable under chapter heading No.87.08, while in the negative, they would have to be classified under chapter heading No.73.18.

M/s. Maruti Udyog Limited imported during July 2003 to January 2004, specially designed parts of cars namely 'head cylinders, block cylinders and TM case of aluminium castings' through ICD, Garhi Harsaru, Gurgaon. The goods were classified as 'other goods of aluminium' under Customs Tariff heading 7616.99. They were specially designed parts for specific models of motor vehicles and would thus have merited classification under Custom Tariff heading 87.08. The misclassification resulted in short levy of duty of Rs.1.26 crore.

On this being pointed out (December 2003 to March 2004), the Department stated (March 2004) that the case of M/s. G.S. Auto Vs. CCE Chandigarh was not applicable in the instant case as the imported goods were unmachined casting of aluminium and not finished product ready to use in motor vehicles. The Department further stated that a demand SCN has been issued and presently the imports were being assessed provisionally.

The reply of the Department is not tenable since the case wherein Supreme Court had given guidelines for classification of parts of vehicles under Custom Tariff heading 87.08 was similar to the instant case. Reply of the Department that raw/unmachined castings had to undergo several stages of machinery processes was untenable, as the imported articles had already obtained characteristics of finished article to be used in motor vehicles.

5.2 Measuring instruments

Apparatus based on the use of X-rays are classifiable under Custom Tariff heading 90.22.

Two consignments of 'sulphur analyser' imported by M/s. Tata Honeywell Limited Pune, through Mumbai (Air) customs during March 2000 and June 2001 were assessed under Custom Tariff heading 9027.80 treating them as instruments and apparatus for chemical

analysis. The imported apparatus worked on X-rays and accordingly merited classification under Custom Tariff heading 90.22. The misclassification resulted in short levy of duty of Rs.43.92 lakh.

On this being pointed out (August 2000), the Department (November 2003) while admitting the misclassification stated that the short levy amounted to Rs.34.23 lakh. Further progress was awaited (January 2005).

Reply of the Ministry had not been received (January 2005).

5.3 Other cases

Eight other cases of incorrect classification of goods imported by eight importers involving short levy of duty of Rs.14.82 lakh were reported to the Ministry. Out of these the Department admitted three cases involving Rs.5.51 lakh as per details below:

(Rupees in lakh)

Sl. No.	Details of product	Name of the importers M/s.	Heading where classifiable	Heading where classified	Amount short levied	Amount admitted	Amount recovered
1	Polyester viscose fabrics	Shree Krishna Enterprises	5515.11	5516.22	2.61	1.68	--
2	EGR valve	Mahindra & Mahindra Ltd.	8409.91	8481.80	2.56	--	--
3	Parts of CT scanner	Mecord Dataware (P) Ltd.	Chapters 84/85	90.18	2.25	2.25	--
4	Sugar spheres	Cipla Ltd.	170199.90	382490.90	1.75	--	--
5.	Multifunction printer/scanner	Gestetner (India) Ltd.	Chapters 84/90	8471.60	1.66	--	--
6.	Laces	Chirag Enterprises	5804.21	5810.91	1.58	1.58	--
7.	Optical spectrum analyser	Himachal Futuristic Communications Ltd.	903039.90	9030.40	1.40	--	--
8.	8 bit TV games	Dynamic Exports Ltd.	95.04	95.03	1.03	--	--
	Total				**14.82**	**5.51**	

CHAPTER VI: SHORT LEVY OF DUTY DUE TO INCORRECT GRANT OF EXEMPTION

Short levy of duties aggregating Rs.6.85 crore in 38 cases on account of incorrect grant of exemptions were pointed out to the Ministry. Some illustrative cases are narrated below:

6.1 Grant of adhoc exemption

Government of India, Ministry of Finance, Department of Revenue, Central Board of Excise and Customs (CBEC) vide their circular No.49 of 2003 dated 10 June 2003 issued guidelines, to regulate requests for adhoc exemption from customs duty under section 25 (2) of the Customs Act, 1962. The guidelines prescribed certain categories under which imports would be considered for customs duty exemption such as those of secret or strategic nature to meet country's defence needs, for relief and rehabilitation under exceptional circumstances etc.

M/s. Thomson Press (India) Limited imported a used 'Harris graphics model web offset printing machine' classifiable under Custom Tariff heading 8443.19 in November 2003 through Delhi Commisionerate at concessional rate of duty under adhoc exemption No.43 dated 27 October 2003 issued by the Ministry. Audit scrutiny revealed that the import did not fall under any eligible category prescribed in guidelines dated 10 June 2003 and its irregular grant resulted in short levy of duty of Rs.1.08 crore.

On this being pointed out (March 2004), the Ministry stated (May 2004) that the exemption was granted after satisfaction of public interest and exceptional nature of circumstances. Guidelines had been issued for processing adhoc exemption requests and did not preclude the Central Government from exercising their powers in public interest.

Reply of the Ministry is not tenable as para 7 of the guidelines prohibited grant of adhoc exemption under section 25(2) of the ibid Act to goods which are not of strategic or secret nature or not meant for being used for charitable purpose. In the instant case, goods were put to commercial use. Further, statutory provisions under section 25(2) of the Customs Act could not be modified by an executive instruction.

6.2 Incorrect application of exemption notification

6.2.1 Second proviso to notification No.94/96-cus dated 16 December 1996 exempts re-imported goods from levy of duty subject to the condition that they were the same as those exported earlier.

M/s. Ford India Limited and Maruti Udyog Limited exported 'fuel injection pumps and injectors' and re-imported such goods after fitting them in the engine supplied by the foreign supplier. Duty was paid on the value of engines and exemption under notification No.94/96 was extended to them.

Audit scrutiny revealed that the goods exported were classifiable under heading 8413.81 while the goods re-imported were engines fitted with fuel injection pumps and injectors classifiable under heading 87.08 and hence the goods exported and imported were not the same. Exemption extended to 'fuel injection pumps' and 'injectors' under the notification ibid was irregular and duty of Rs.52.77 lakh was recoverable alongwith interest of Rs.7.17 lakh (upto March 2004).

On this being pointed out (June to December 2003), the Department in respect of Maruti Udyog Limited stated (July 2004) that the demand had been confirmed against which appeal was pending before Commissioner (Appeals). Reply in the other case was awaited (January 2005).

6.2.2 Notification No.32/97-cus dated 1 April 1997 exempts duty on goods imported into India subject to the condition that the imported goods are used for execution of an export order of the supplier of goods and that the said goods after jobbing work are re-exported to the supplier of goods or to any other person which the supplier may specify, within six months from the date of clearance or within such extended period as the Assistant Commissioner of customs may allow.

M/s. NSP Electronics Limited and nine others imported various goods during July 2001 to May 2002 through customs Commissionerate, Bangalore. The goods were cleared duty free under notification ibid. Audit scrutiny revealed that though the imports were made during 2001 and 2002, the importers had not furnished any documentary evidence either in support of re-exports within the stipulated time or for extensions if any granted. The Department had not taken any action to raise demand and recover the duty foregone amounting to Rs.49.70 lakh.

This was pointed out to the Department in July 2003; reply was awaited (January 2005).

6.2.3 Notification No.21/2002–cus (serial No.362) dated 1 March 2002 prescribes concessional rate of duty on import of hospital equipment/apparatus/appliances.

A consignment of 'hospital furniture' imported (June 2003) by the medical superintendent, Safdarjang Hospital through custom house, New Delhi was classified under heading 94.02 and assessed to concessional rate of customs duties by extending the benefit under notification ibid. The notification benefit was available for hospital equipment under chapter 90 and not to hospital furniture under chapter 94.02 under which the goods had been classified. Incorrect exemption resulted in short levy of duty of Rs.46.64 lakh.

On this being pointed out during October 2003 and January 2004, the Department stated (March 2004) that the goods imported were not ordinary furniture but hospital equipment having special features for accurate patient positioning. It further stated that scope of entry at serial No.362 of the notification ibid was wide and general in nature and covered equipment, apparatus, appliances and not only 'medical equipment' as mentioned in serial No.363 to 368 of the notification ibid.

The reply is not tenable as it is contradictory in itself. On one hand the imported items were classified under CTH 94.02 as medical furniture and on the other treated as 'hospital equipment' and extended the benefit of the notification ibid.

6.2.4 According to the notification No.20/99-cus dated 28 February 1999 (serial No.11) read with notification No.139/99-cus dated 30 December 1999 vegetable oils falling under chapter 15 (other than coconut oil, RBD palm oil, RBD palm kernel oil and palm stearin) of edible grade in loose or bulk imported for the manufacture of vanaspati or for refining were chargeable to concessional rate of duty.

M/s. B. Arun Kumar Trading Private Limited New Delhi cleared two consignments of 693.433 metric tonne of rapeseed oil on 14 January 2000 through custom house, Kolkata on payment of concessional rate of duties under the notification ibid even though there was no evidence on record to prove that the oil was refined or used for manufacture of vanaspati by the importer. This resulted in short levy of duty of Rs.45.46 lakh.

On this being pointed out (June 2001), the Department issued (August 2004) a show cause notice. Further progress was awaited (January 2005).

6.2.5 Under notification No.153/94-cus (serial No.1) dated 13 July 1994, goods of foreign origin when imported into India for repairs and return are exempted from duty leviable thereon subject to fulfilment of conditions specified therein. However, the exemption notification ibid was applicable to import of goods of foreign origin which themselves are to be repaired and returned after repairs and not for goods imported to be used for carrying out repairs.

M/s. Carter Pooler Engineering Company Limited Kolkata imported (January 2003) two sets of welding machines with accessories, tools and spare parts from Thailand on return back basis for carrying out repair (welding) work. The goods were irregularly exempted from all duties of customs by the Department by allowing benefit of exemption notification ibid which resulted in non levy of duty of Rs.33.15 lakh.

On this being pointed out (November 2003), the Ministry reported (July 2004) recovery of the amount alongwith interest of Rs.5.37 lakh.

6.2.6 According to notification No.27/2002-cus dated 1 March 2002, leased machinery, equipment and tools temporarily imported for use are eligible for concessional rate of duties if they are re-exported within six months.

Eight consignments of 'plants and equipment for drilling rigs, mixing plant and measuring device etc.' imported by M/s. Soletanche Bachy on payment of concessional rate of duties through custom, Kolkata (Port) and Kolkata (Air) during September 2002 to February 2003 under notification ibid were re-exported after expiry of six months from the date of importation. This resulted in non-levy of duty including interest of Rs.30.77 lakh.

On this being pointed out during June and September 2003 the Ministry reported (August 2004) recovery of the amount.

6.2.7 According to explanation b (iii) read with condition 1 (b) of serial No.1 under notification No.51/96-cus dated 23 July 1996 a college affiliated to a university which is registered with the department of Scientific and Industrial Research (DSIR) can import items required for research purpose at concessional rate of customs duty subject to production of an essentiality certificate issued by the registrar of the said university. Under guidelines issued (October 1998) by the DSIR, imports are to be made by the colleges, recognised as Ph.D level research centres in natural/applied/social science or for PG level courses in engineering, computer science and agricultural science. Exemption, however, was not admissible if imported goods were made use of for dual purposes such as research and training or education/training.

Sri Bhagwan Mahaveer Jain College, Bangalore affiliated to Bangalore university imported (August 2003) 200 computers through custom house, Bangalore and was allowed exemption under notification ibid on the basis of essentiality certificate furnished by the importer. Audit scrutiny revealed that the college while applying for the essentiality certificate had indicated that it was recognised for PG level courses in Biotech and other related subjects by the Government of Karnataka.

As there were no documentary evidence to prove that the imports were exclusively for research purposes and MSc courses in microbiology/biochemistry could not be construed as courses in agricultural sciences as prescribed in the DSIR guidelines ibid, the exemption was irregular. This resulted in non levy of duty of Rs.21.32 lakh.

On this being pointed out (December 2003), the Department stated (August 2004) that the two courses offered i.e. MSc in microbiology and biochemistry were PG level courses and were core subjects under agriculture sciences. The Department further stated that essentiality certificate issued by the registrar Bangalore University indicated that the goods would be used for research purpose only.

The Department's reply is not tenable, since imports made were for dual purpose i.e. for educational purpose also as clearly evident from the information available on the website of the importer. Further, even though the college offered PG level courses they were not envisaged by the DSIR, as qualifying for exemption.

6.2.8 Notification No.21/2002-cus {serial No.251(1)}dated 1 March 2002 stipulates that 'goods specified in list 31 required for use in the textile industry' are chargeable to concessional rate of duty.

M/s. Z.C. International and another imported 'second hand high speed fully fashioned computerised four system flat bed knitting machine' and 'reconditioned fully-fashioned high speed knitting machine' through Delhi Commissionerate during September 2003, who assessed them to duty by granting the benefit of notification ibid.

Since this benefit was available to 'fully fashioned high speed knitting machine' and not to computerised machines as in the instant case, the incorrect grant of exemption resulted in short levy of duty of Rs.13.17 lakh.

On this being pointed out (December 2003 and January 2004), the Department stated (January/August 2004) that entry at serial No.5 of list 31 was generic and did not restrict the scope of entry to computerised and multi-headed machines. The Department also quoted some judicial pronouncement in its support.

The reply was not tenable because the technical specifications of machines that are eligible for exemption under the aforesaid notification have been listed at No.31 (serial Nos.6,7,11,26,27,32,38 of list 31). However, there was no mention of the type of computerised machines that were actually imported. Hence, they were not eligible for benefit of notification No.21/2002. The judicial pronouncements referred to by the Department were not relevant in this case since specifications like computer controlled automatic three system and double head were not covered by the notification.

The reply of the Ministry had not been received (January 2005).

6.3 Condition of the notification not fulfilled

6.3.1 Condition 18 for serial No.181 of notification No.17/2001-cus dated 1 March 2001 and condition 20 for serial No.200 of notification No.21/2002-cus dated 1 March 2002 provide import of melting scrap of iron or steel at concessional rate of duty subject to the conditions that the importer furnish an undertaking as to the use of the imported material by him and the certificate issued by the Central Excise authorities for having used the goods so imported within six months from the date of import.

M/s. Vakkal Impex and another imported 17 consignments of melting scrap of iron or steel between September 2001 and February 2003 under notifications cited above. However, the required end use certificates had not been furnished even after expiry of the prescribed period of six months. As such, the importers were liable to pay the duty foregone amounting to Rs.28.18 lakh for which no demand had been raised by the Department.

On this being pointed out in October 2003, the Ministry stated (August 2004) that out of 17 bills of entry (BEs), the importer had submitted end use certificate in respect of 12 BEs against which the end use bonds had been cancelled in August 2004. In the remaining five cases the BEs were cancelled as such there was no need of end use certificate.

6.3.2 Condition No.48 below notification No.16/2000-cus dated 1 March 2000 specifies that the goods covered under serial No.320 of the notification can be imported at concessional rate of duty provided the importer furnishes an end use certificate within three months from the date of import for having consumed the imported goods.

M/s. Wipro GE Medical System Limited Bangalore imported spare parts and components for manufacture of medical equipment in February 2000 and June 2000 through Bangalore Commissionerate. The imported goods were cleared under the exemption notification ibid. Audit scrutiny revealed that the importer had not furnished the required end use certificates as required under the notification ibid.

On this being pointed out (December 2000), the Department recovered the foregone duty of Rs.12.70 lakh between January 2001and July 2004. Interest on duty paid from date of expiry of bond amounting to Rs.8.05 lakh was still to be recovered (January 2005).

6.4 Incorrect exemption due to misclassification

6.4.1 Goods put up in unit containers other than those for infant use merit classification under Central Excise Tariff heading 1901.19.

Six consignments of 'pediasure powder' imported by M/s. Abott Healthcare Pvt. Limited and another through Sea Commissionerate, Mumbai between May to October 2002 were classified under Central Excise Tariff heading (CETH) 1901.11 and assessed as duty free under notification No. 21/2002-cus dated 1 March 2002, as preparation for infant use.

Audit scrutiny revealed that the said goods being other than those for infant use should have been classified under CETH 1901.19. The incorrect grant of notification benefit resulted in short levy of duty of Rs.69.19 lakh and interest of Rs.20.60 lakh thereon.

On this being pointed out (October/December 2002 and February 2003), the Department stated (June and October 2003) that the goods were meant for 'infant use' and assessed accordingly under the notification dated 1 March 2002. The reply is not acceptable in view of the decision taken in the Chief Commissioner's conference at Visakhapatnam in September 2003 wherein the product was declared as not covered by the exemption ibid.

Reply of the Ministry had not been received (January 2005).

6.4.2 According to customs notification No.21/2002–cus (serial No.347) dated 1 March 2002, import of parts of aircraft/helicopter classifiable under Custom Tariff heading 8803.30 were exempted from payment of duty.

A consignment of 'test equipment/instruments' imported by M/s. Pawan Hans Helicopters Limited through Air customs, Mumbai (May 2003) was incorrectly classified under Custom Tariff heading 8803.30 and exempted from customs duties by extending the benefit under notification dated 1 March 2002 even though the goods imported were test equipment/ instruments/apparatus to be used as ground equipment and not aircraft parts and hence merited classification under Custom Tariff heading 9031.80. This resulted in a short levy of duty amounting to Rs.22.87 lakh.

On this being pointed out (June 2003), the Ministry reported (July 2004) recovery of the amount of Rs.32.72 lakh including interest.

6.4.3 Machines for rice mills are classifiable under Custom Tariff heading 8437.80. Further, import of goods under heading 8437.80 and their parts are excluded from the benefit of concessional rate of duty under customs notification No.21/2002 (serial No.267) dated 1 March 2002.

M/s. Kailash Rice Mill Raipur, Chattisgarh and another imported (August/December 2003) 'sortex model Z-3V electronic colour sorter with essential set of spares' through Air customs, Delhi which were classified under heading 8437.10 and assessed to concessional duty by extending the benefit of notification ibid. Audit scrutiny revealed that the predominant function of the imported machines was sorting of rice on the basis of colour and as such they were classifiable under heading 8437.80. Misclassification and consequential incorrect grant of notification benefit resulted in short levy of duty of Rs.10.46 lakh.

On this being pointed out (November 2003/Janaury-March 2004), the Ministry stated (October 2004) that the main function of the machines was sorting of rice and accordingly they were classified under heading 8437.10 as machines for cleaning, sorting or grading seed, grain or dried leguminous vegetables. The reply was not tenable because machines for rice mills had been specially classified under heading 8437.80 and as such machines for rice sorting should also have been classified under heading 8437.80.

6.5 Other cases

In 24 other cases, objections were issued to the Ministry on incorrect grant of exemption involving short levy of Rs.95.56 lakh. The Department admitted the objection in 16 cases involving Rs.65.03 lakh and reported recovery of Rs.45.42 lakh in 13 cases as per table below:

(Rupees in lakh)

Sl. No.	Product on which exemption granted	Name of the importers M/s.	Amount short levied	Amount admitted	Amount recovered
1.	Food trays	Indian Airlines Ltd.	8.64	Not admitted	--
2.	ISDN (EPABX)	Jamia Millia Islamia	8.63	8.63	8.63
3.	CPU cooling fans	RMA International & 8 others	7.34	7.34	0.71
4.	L/S band medium power GAAS MES	Bharat Electronics	7.02	7.02	7.02
5.	(i) Tungsten scrap (ii) Coffee maker	GKW Ltd. Indian Airlines Ltd.	6.96 2.68	6.96 Not Admitted	6.96 --
6.	44 gyrasphere crusher	A.L. Sudershan & Co.	6.48	5.03	--
7.	Spares	Kerala State Electricity Board	4.66	Not admitted	--
8.	(i) Cotton socks (ii) Melamine spoons	Parkar & Co. Merchant Impex	3.68 2.60	3.68 2.60	3.68 2.60
9.	Teas tester	Grasim Industries Ltd.	3.61	3.61	3.61
10.	Computer parts	Savex Computers Ltd.	3.54	3.54	4.61
11.	Electrically calcined anthracite coal	Madras Aluminium Co. Ltd.	3.51	3.51	3.51
12.	Industrial blower	Caryaire Equipments India (P) Ltd. & two others	2.62	2.62	2.62

13.	Copra	Shivam Coco (P) Ltd.	2.27	2.27	--
14.	Goods for exhibition	Directorate of Film Festival, Ministry of I&B & others	2.25	1.04	1.04
15.	Column switch	JCB India Ltd.	2.11	2.11	--
16.	(i) Linen tops bleached (ii) Music reproducer	Birla VXL Ltd. Sahara Airlines Ltd.	1.99 1.68	Not Admitted	-- --
17.	Stainless steel scrap	Shyam Refractories	1.94	Not admitted	--
18.	EPBAX system	IIT, Kanpur	1.90	--	--
19.	Pokemon shooting tazo II	Frito lay India	1.76	1.76	--
20.	Printing blankets	Harish Enterprise (P) Ltd.	1.68	--	--
21.	Parts of rice processing machinery	Amchros India & 2 others	1.67	1.67	0.21
22.	Parts of helicopter	Indian Airlines & 2 others	1.64	1.64	0.22
23.	Blowers	Caryaire Equipments India (P) Ltd. & another	1.37	--	--
24.	High pressure injector	Siemens Ltd.	1.33	--	--
	Total		**95.56**	**65.03**	**45.42**

CHAPTER VII: SHORT LEVY OF DUTY DUE TO UNDERVALUATION

7.1 Incorrect fixation of tariff value

7.1.1 Sub-section 2 of section 14 of the Customs Act, 1962 stipulates that if the Central Government is satisfied that it is necessary or expedient so to do, it may, by notification in Official Gazette, fix the tariff value of any class of import or export goods having regard to the trend of value of such or like goods. Invoking the provision of the above section, the tariff value of crude palm oil, RBD palm oil, RBD palmolein, crude palmolein, brass scrap (all grades) and crude soyabean oil was fixed by the Government from time to time.

Audit scrutiny revealed that M/s. Kanchan Oil Industries Limited and 74 others imported 461 consignments of 'crude palm oil, RBD palmolein, crude palmolein, brass scrap (all goods) and crude soyabean oil' through custom house, Kolkata (Port & Sea), Kandla and Nhava Sheva customs, Mumbai during July 2002 and October 2003, wherein invoice value per metric tonne was higher than the tariff value on which the goods were assessed. The fixation of tariff value lower than the prevalent market price resulted in undervaluation of the consignments and consequential loss of revenue of Rs.17.48 crore.

On this being pointed out (February 2003 to January 2004)), the Department stated (February 2004) that Board amended tariff value of commodities after observing the trend of value for certain periods of time. There is a need to review the provisions of the said sub section to provide for assessment at the tariff value or invoice value whichever is higher to tighten tax administration and protect revenue.

Reply of the Ministry had not been received (January 2005).

7.1.2 Section 3 of the Produce Cess Act 1966 read with the first schedule appended thereto stipulates that cess is to be levied on cashew kernel which is exported out of India at the rate of one per cent of the tariff value. Ministry of Agriculture vide notification No.S.0733 (E) dated 26 June 2003 fixed such value at Rs.1600 per quintal for the period from 1 July 2003 to 30 June 2004.

Audit scrutiny revealed that though cess was levied and collected on tariff value of Rs.1600 per quintal fixed, the average transaction value of cashew kernel exported during October 2003 to March 2004 from custom house, Tuticorin was much higher at Rs.17978 per quintal. The fixation of tariff value lower than the prevalent market price resulted in loss of Rs.11.55 crore on the exports of cashew kernel from July 2003 to March 2004.

This was pointed out to the Department/Ministry in July/October 2004. Reply had not been received (January 2005).

7.2 Other cases

In two other cases, objections were issued to the Ministry on undervaluation involving short levy of Rs.6.98 lakh. The Department admitted the objection in one case involving Rs.5.49 lakh and reported recovery of Rs.5.49 lakh as per table below:

(Rupees in lakh)

Sl. No.	Name of product	Name of the importers M/s.	Amount short levied	Amount admitted	Amount recovered
1.	Catalyst	Tamil Nadu Petroproducts Ltd.	5.49	5.49	5.49
2.	Amusement machines	Appu Ghar Entertainment (P) Ltd.	1.49	--	--
	Total		**6.98**	**5.49**	**5.49**

CHAPTER VIII: NON LEVY/SHORT LEVY OF ADDITIONAL DUTY

According to section 3 of the Customs Tariff Act, 1975, any article which is imported into India shall also be liable to an additional duty equal to the central excise duty for the time being leviable on a like article produced in India.

Short levy of additional duties amounting to Rs.1.85 crore were reported to the Ministry in 13 cases, as narrated below:

8.1 Non levy of additional duty due to incorrect grant of exemption

8.1.1 'Sewing machines' other than those with inbuilt motors are exempted from central excise duty vide notification No.6/2002-CE dated 1 March 2002.

Eight consignments of 'industrial sewing machines' imported by M/s. India Agencies, Bangalore between March and August 2002 through Inland Container Depot, Bangalore were assessed extending the benefit of notification ibid. Since the imported machines had inbuilt motors, the goods were not eligible for the exemption ibid. The incorrect application of exemption notification resulted in non levy of additional duty of Rs.51.80 lakh.

On this being pointed out (July and December 2002), the Department stated (July 2003) that the motors were not inbuilt and were supplied separately and attached to the main machine through a pulley and belt system.

The reply is not tenable as the motors were not presented for assessment separately and the invoice entry indicated 'sewing machines as machine complete set'. In a case of classifying motors as part of sewing machine, CEGAT held {(1999) (106) ELT 165} that the motor attached outside the machine need not be inbuilt and it could still be treated as an integral part of the machine.

8.1.2 According to notification No.21/2002-cus dated 1 March 2002 as amended by notification No.26/2003-cus dated 1 March 2003 (serial No.168) 'lining and inter-lining material' are exempt from whole of the basic customs duty leviable under first schedule of the Custom Tariff Act 1975 and additional duty of custom leviable under sub-section (1) of section 3 of the said Act. Exemption from additional duty under section 3(1) of the Tariff Act, 1975, therefore refers to the exemption only from levy of basic excise duty and not from any other duties of excise leviable such as Additional Duty of Excise under sub-section (1) section 3 of Additional Duty of Excise (Goods of Special Importance) Act 1957, Textile Cess under Textile Committee Act, 1963 etc.

M/s. Bharti Sons and 24 other importers imported 35 consignments of 'polyester lining fabrics' between March 2003 and September 2003 through Kolkata (Sea) Commissionerate. The importers claimed the benefit of exemption under the notification ibid and the Department allowed clearance without charging additional duty of excise under Additional Duty of Excise (Goods of Special Importance) Act, 1957. This resulted in non-levy of duty amounting to Rs.28.15 lakh.

This was pointed out in audit between August 2003 and December 2003. Reply of the Department was awaited (January 2005).

8.1.3 According to customs notification No.54/2001-cus dated 11 May 2001, additional duty at the rate of 150 per cent ad valorem is leviable on all packed imported goods falling under customs headings 22.03, 22.04, 22.05, 22.06 and 22.08 having a CIF price not exceeding US$ 20 per case.

Fourteen consignments of 'alcoholic liquor' under Custom Tariff headings 22.03, 22.04 and 22.08 were imported (April to August 2001) by M/s. Ravi Kumar Distilleries and another through customs house, Chennai and Kolkata (Port) without levying additional duty as prescribed under the notification ibid resulting in short collection of duty of Rs.27.21 lakh.

On this being pointed out (December 2001/January 2002/February 2002), the Ministry stated (November 2004) that a demand of Rs.23.70 lakh had been confirmed in one case. Appeal filed by the importer had been rejected and action taken to recover the amount. Reply in the remaining cases was awaited (January 2005).

8.1.4 According to notification No.46/2002-cus dated 22 April 2002 (as amended), raw materials etc. imported under duty free replenishment certificate (DFRC) licence for manufacture of resultant export product are exempt from the whole of the duty of customs leviable thereon under the First Schedule to the Customs Tariff Act, 1975 and from the whole of the special additional duty (SAD) leviable thereon under section 3A of the said Customs Tariff Act.

Three consignments of 'ferro-molybdenum and nickel briquettes' imported by M/s. Gontermann-Peipers (India) Limited, West Bengal during January and February 2003 through Commissionerate of custom (Port), Kolkata were assessed without levying additional duty in terms of notification ibid. Audit scrutiny revealed that the notification did not exempt additional duty of customs leviable under section 3 of the said Act in respect of materials imported under DFRC licence. The incorrect grant of exemption resulted in non levy of additional duty of Rs.7.50 lakh.

On this being pointed out (August 2003), the Ministry reported (July 2004) that Rs.17.74 lakh was recovered from the importer in respect of eight consignments.

8.1.5 According to notification No.17/2000-CE dated 1 March 2000, concessional rates of additional duties of excise are applicable to goods which are manufactured indigenously subject to conditions stipulated in the notification.

Three consignments of '100 per cent cotton fabrics' and a consignment each of 'polyester fabrics' and 'polyester knitted pile fabrics' imported (between October 2000 and January 2001) by M/s. J.S. Fashion and two others through custom house (Sea) Chennai were assessed to concessional rate of additional duty under the notification ibid. However, the concessional notification could be extended only to indigenous goods and not imported goods and as such the incorrect exemption resulted in non levy additional duty of Rs.10.69 lakh along with interest (upto 31 March 2004).

On this being pointed out (April to June 2001), the Department recovered Rs.1.95 lakh along with interest of Rs.0.99 lakh in respect of one consignment. Replies in the remaining cases were awaited (January 2005).

8.2 Non levy of additional duty due to misclassification

Accessories of 'automatic data processing machines' and units thereof are classifiable under heading 8473.90 of Central Excise Tariff and assessable to additional duty at 18 per cent.

Twenty three consignments of routers imported (October 1997 to June 1998) by M/s. Microland and two others through custom house, Air, Chennai were classified under heading CETH 8473.20 instead of under 8473.90. The misclassification resulted in short levy of additional duty of Rs.26.66 lakh.

On this being pointed out (April 1998 to December 1998), the Department stated (February 2004) that, demand for Rs.23.22 lakh had been confirmed in respect of one importer who had appealed against it. Action was under finalisation for the other two.

Further progress was awaited (January 2005).

8.3 Other cases

In six other cases, incorrect application of rate, incorrect classification, incorrect computation resulted in short levy of additional duty of Rs.22.44 lakh of which Rs.7.52 lakh were recovered in three cases as per details below:

(Rupees in lakh)

Sl. No.	Details of product	Irregularity	Amount short levied	Amount admitted	Amount recovered
1.	Polyester fabric	Incorrect grant of exemption	8.60	--	--
2.	Nylon tyre cord	Incorrect grant of exemption	5.23	Not admitted	--
3.	Parts of primary reformer	Incorrect application of rate	3.10	3.10	3.10
4.	Nylon filament yarn	Incorrect grant of exemption	2.31	2.31	2.31
5.	Needles for industrial machines	Misclassification	2.11	2.11	2.11
6.	Cotton handkerchiefs	Incorrect application of rate	1.09	--	--
	Total		**22.44**	**7.52**	**7.52**

CHAPTER IX: DUTY EXEMPTION SCHEME

9.1 Non realisation of penalty

According to section 11 of the Foreign Trade (Development and Regulation) Act, 1992 where a person makes or abets or attempts to make any export or import in contravention of the provisions of the Export-Import Policy, he shall be liable to pay penalty not exceeding five times the CIF (cost, insurance & freight) or Rs.1000, whichever is higher.

Audit scrutiny of the records of Joint Director General of Foreign Trade (JDGFT), Kolkata, Jaipur, Moradabad, Kanpur and Varanasi revealed that in 983 cases, adjudicated upto March 2004 in respect of non fulfilment of export obligation (EO) under advance licences issued between April 1973 to January 2002 a total penalty for Rs.577.22 crore was imposed but only Rs.1.44 crore was realised in 60 cases. The Department did not pursue the cases effectively except for taking minor action such as suspension of the relevant import export codes and invoking bank guarantee (BG) in a solitary case.

On this being pointed out (February 2004), the Department stated (March/ September 2004) that once the Certificate Officer of the district administration was requested to recover the amount through certificate proceedings, the responsibility of the Department was practically over.

The Department's reply is not acceptable as, apart from suspension of the import export codes, the responsibility of watching realisation of penalty imposed by them and pursuing the cases with the Certificate Officer till the amount was realised lay with the Department. Further audit is of the view that there is a need to review, the existing provisions of FT (DR) Act, 1992 to protect revenue on the lines of providing attachment of property under section 142 (c) (ii) of the Customs Act, 1962.

Further reply from the Department was awaited (January 2005).

9.2 Duty entitlement passbook (DEPB) scheme

9.2.1 Unintended financial gains to exporter due to non revision of DEPB rates

According to para 4.38 read with Appendix-10A of the Handbook of Procedure 2002-07 Vol-I, while fixing the DEPB rate, basic custom duty (BCD) and SAD paid on imported inputs for the manufacture of export goods are considered. The amount of SAD payable on imported goods is debitable from DEPB credit vide notification No.45/2002-cus dated 22 April 2002. Under notification No.6/2004-cus dated 8 January 2004 the levy and collection of SAD was withdrawn from all imported goods with effect from 9 January 2004 and accordingly the debit of the amount of SAD from DEPB certificate on importation on or after 9 January 2004 are not required. It was therefore necessary to re-fix the rate of DEPB giving

contra effect of the exemption of SAD with effect from 9 January 2004. However, the rate has been revised with effect from 9 February 2004, vide Public notice No.47 (RE-2003)/02-07.

Audit scrutiny revealed that the licensing authorities at Kolkata, Chennai, Mumbai, Tuticorin, Moradabad, Kanpur, Varanasi and Jaipur issued 22,227 DEPB licences from 9 January 2004 to 8 February 2004 allowing DEPB credit at unrevised rate. Delay in refixation of DEPB rates due to withdrawal of levy and collection of SAD on import led to undue financial gain of Rs.100.65 crore to the exporters holding DEPB certificates issued during the said period.

On this being pointed out (February to September 2004), DGFT, stated (December 2004) that the rates could be revised only after the revised customs duty is made public and administrative convenience also needed to be taken into consideration. They further stated that in the normal course, it would take from one month to three months to revise the rates.

The fact remains that delay in re-fixation of DEPB rates led to undue financial gain of Rs.100.65 crore on licences issued by eight licensing authorities alone. The Ministry may consider reviewing the mechanism to minimise the time gap for fixation of rates to safeguard revenue.

Reply of the Ministry of Finance was awaited (January 2005).

9.2.2 Incorrect fixation of DEPB rates

Both DEPB and duty drawback schemes are based on the principle of reimbursement of duty paid on imported inputs required for the manufacture of export goods. Rate of Duty Drawback has a customs and excise element. Customs includes BCD and SAD paid on imported inputs and excise portion includes additional duty of customs and is reimbursable only when the exporter does not avail CENVAT credit on it. However, in case of DEPB scheme, the rate is fixed only for customs duty portion (BCD plus SAD). Thus, for items specified under both schemes, the rate under DEPB scheme must correspond with the rate of customs portion of the duty drawback scheme.

Study of DEPB licencees on leather items issued by the ZJDGFT, Kolkata during the period 1 April 2003 and 30 September 2003, revealed that DEPB credit allowed was Rs.25.95 crore in excess of customs portion of duty drawback allowable. Similarly, in respect of export of leather items between April and December 2003, from Chennai (Air) custom the DEPB credit allowed was Rs.60.88 crore in excess of custom portion of duty drawback allowed.

On this being pointed out (February/July 2004), DGFT, stated (December 2004) that DEPB and Drawback schemes could not be compared. While DEPB was neturalisation of the customs duty on the deemed import content in the export product, drawback included actual import content in the export product. Further value addition, in addition to the duty suffered on the deemed import content was also relevant so far as the DEPB scheme was concerned.

The fact remains that excess DEPB credit for three products exported between April and December 2003 at Kolkata and Chennai alone amounted to Rs.86.83 crore. Considering the overall revenue implications and the fact that they were based on similar principles with inputs suffering similar customs duty, reimbursement needs to be similarly aligned as well.

Reply of the Ministry of Finance was awaited (January 2005).

9.2.3 Non imposition of restriction on DEPB

As per para 4.46 of the Hand Book of Procedure Vol-I, 2002-2007, the CIF value of imports effected under DEPB scheme shall not exceed FOB value against which the DEPB certificate has been issued. Accordingly, the licensing authority incorporates an endorsement to this effect on the DEPB certificate issued by them.

DGFT vide circular No.26 (RE-99)/1999-2000 dated 9 August 1999 clarified that in cases where clearance was sought after clubbing different DEPBs, the FOB value taken for restriction should be proportionate to the credit availed against such DEPB by the importer.

Fifty six consignments of coking coal, lam coke and MS scraps' imported by M/s. TISCO and ten others between June 2002 and May 2003 through Commissionerate of customs (Port), Kolkata were allowed DEPB benefit in terms of notification No.34/97-cus dated 7 April 1997 without applying any restriction on CIF value of import against FOB value of the DEPB certificate either in single use or in case of clubbing of different DEPB certificates in single consignment as per guidelines ibid. Against admissible CIF of Rs.82.22 crore, the Department allowed CIF of Rs.124.68 crore. Thus, utilisation of excess CIF of Rs.42.46 crore resulted in undue financial benefit to the importers amounting to Rs.3.52 crore.

This was pointed out to the Department between May and October 2003; reply was awaited (January 2005).

9.2.4 DEPB credits granted before realisation of export proceeds

Para 7.38 (iii) of Hand Book of Procedures (Vol-I) 1997-2002 stipulates that if the export proceeds are not realised within six months or such extended period as may be allowed by RBI, the DEPB holder is liable to pay in cash an amount equivalent to the DEPB credit utilised against imports with interest.

Scrutiny of records of the JDGFT, Ahmedabad for the period 2000-01, revealed that in 10 post-export licences issued to five units between May 2000 and November 2001 involving export proceeds of Rs.1.78 crore, there was no evidence of realisation of export proceeds even after six months of export. Where applications for non-transferable license were submitted after the expiry of six months, they were entertained without insisting on realisation particulars, even though the period of six months for realisation had already expired as on the date of application itself. In the absence of realisation particulars, DEPB license holders were liable to pay cash equivalent to DEPB credit of Rs.23.08 lakh plus interest.

On this being pointed out (November 2003), the Department stated (March 2004) that the firms had been declared defaulters. Further progress was awaited (January 2005).

9.3 Export oriented units (EOU) scheme/export processing zones (EPZ) scheme

9.3.1 Non fulfilment of export obligation (EO)

Vide para 9.11 of Hand Book of Procedure Vol-I (1997-2002), the EOU shall ensure minimum net foreign exchange earnings percentage (NFEP) and export performance (EP) as stipulated in Appendix I of the Exim Policy. In accordance with para (6) of notification No.53/97 dated 3 June 1997 as amended, if the unit fails to achieve NFEP and EP as specified in Appendix I of the Exim Policy within one year or such extended period not exceeding five years as the Commissioner may allow, the duty on the raw materials, components, spares and consumables procured duty free has to be paid along with interest from the date of duty free importation or procurement of the said goods till the date of payment of such duty. According to Appendix I of Exim Policy 1997-2002, in the case of units where investment in plant and machinery was Rs.5 crore and above, such units were required to achieve minimum EP of US$ 3.5 million or five times CIF value of imported capital goods whichever was higher.

M/s. Compact Electric Limited, Thiruvallur was granted letter of permission under 100 per cent EOU scheme by the Ministry of Industry for manufacture of energy efficient electric filament lamps and the unit commenced its commercial production in September 1996. The first block of five years period ended on 30 September 2001. Against the import of capital goods of Rs.10.89 crore, the minimum EP required to be achieved during the first block of five years i.e. from 1 October 1996 to 30 September 2001 worked out to Rs.54.43 crore.

Audit scrutiny revealed that the EP of the unit for the five years period was Rs.13.36 crore. Thus there was shortfall in EP to the extent of Rs.41.07 crore. However, the unit was granted extension for a further period of five years to continue as 100 per cent EOU without initiating any action for non fulfilment of EP. For this shortfall the unit was liable to pay Rs.8.41 crore being the duty on the imported raw material, spares and consumables along with interest of Rs.5.12 crore (Upto 31 March 2004).

On this being pointed out (March 2003), the Central Excise department replied (June 2003) that fulfilment of EO was dispensed with/deleted in the Exim Policy 2002-2007. The reply of the Department was not acceptable as the unit had completed five years of operation during September 2001 and the case was to be governed by Exim Policy 1997-2002.

The Commerce department stated (September 2003) that the unit's application for extension of EO for a further period of five years was being taken up with Ministry of Commerce and Industry for being placed before board of approvals (BOA).

9.3.2 Incorrect determination of depreciation on capital goods

According to para 117 of the Exim Policy 1992-1997 read with notification No.53/97-cus dated 3 June 1997 (condition 5 and 6) EOUs may be de-bonded on their inability to achieve EO on payment of customs and excise duties applicable on depreciated value of capital goods. The depreciation shall be allowed from the date on which such goods came into use for manufacturing process up to the date of payment of duty.

M/s. Alsa Marine and Harvests Limited, West Bengal an EOU under Falta export processing zone (FEPZ) was granted letter of permission (LOP) in June 1992/May 1995 (enhanced capacity) for manufacture and export of frozen marine products (shrimps, fish etc). The unit initially started production in January 1994 with enhanced capacity in January 1998. It could not achieve the stipulated NFEP and EP and applied (January 2000) for de-bonding seeking conversion of the 100% EOU into EPCG scheme. Subsequently, the Development Commissioner, FEPZ, Kolkata allowed in-principle de-bonding in January 2000 and final de-bonding in July 2000 after having collected customs duty of Rs.12 lakh and excise duty of Rs.3.19 lakh on the depreciated value of imported and indigenous capital goods respectively.

Audit scrutiny revealed that depreciation on imported capital goods was allowed from the date of receipt of the capital goods and not from the date of commencement of production which led to short levy of duty of Rs.5.63 lakh together with interest of Rs.18.09 lakh on the excess depreciation allowed.

On this being pointed out (March 2002) the FEPZ authorities stated (November 2002) that the aspect of assessment of duty and their recovery came under the purview of the Department of Revenue and that FEPZ had no role in that matter. FEPZ authorities further stated that interest on short levied duty did not arise since it was not a case of premature de-bonding.

The reply of the FEPZ authorities is not tenable as the importer had executed a bond under the Exim Policy binding himself to pay duty and interest in terms of notification ibid if the capital goods had been used otherwise as in the instant case without fulfilment of EO.

Reply from the customs department was awaited (January 2005).

9.3.3 DTA sale

As per para 9.9 (b) of the Exim Policy 1997-2002, sale in domestic tariff area (DTA) by EOU upto 50 per cent of FOB value of export is permissible on payment of concessional duty subject to fulfilment of minimum NFEP. Further as per para 9.17 of the Exim Policy an EOU may sub-contract 50 per cent of production for job work in DTA with permission of Assistant Commissioner of customs.

M/s. Promising Estates & Traders Pvt. Limited, an EOU under FEPZ, imported 'PVC granules' free of duty during October 1998 to June 2000 for manufacture of 'plastic lay flat tube'. The duty foregone on the imports was Rs.1.99 crore. As the unit failed to commission production due to technical problems, the entire imports were sent to third parties in DTA for manufacture of the export product on job work basis. The EOU despite not having made any physical exports or achieving minimum NFEP during the year 1999-2000 applied for DTA sale permission on grant of which it cleared the entire quantity of the export product in DTA and paid duties amounting to Rs.1.14 crore.

DTA sale of goods without fulfilment of minimum NFEP was irregular. Also manufacture of entire export product from third parties in DTA was inadmissible as the unit had not commenced production or made any physical exports from the imported material. As such it

was liable to pay duty foregone on imports amounting to Rs.85.19 lakh after excluding duty paid on the DTA sales.

On this being pointed out (March 2002), the Department while accepting the facts (June 2003) issued a demand SCN for Rs.19.05 lakh in respect of irregular DTA sale. The Department further stated that entire production of the export product was done through job work, it having been allowed by the concerned authorities and in view of job work qualifying as manufacture there existed no penal provision to demand duty from the unit.

The Department's contention is untenable since the unit sent entire raw material to the DTA unit for job work. Department's contention that the goods manufactured by third party are to be considered as goods manufactured by the unit itself is not backed by any provisions.

9.4 Advance licensing scheme

9.4.1 Non fulfilment of EO

Nil export

According to para 7.28 HBP Vol. I (1997-2002), if EO is not fulfilled both in terms of quantity and value, the licence holder of the advance licence shall for regularisation, pay the customs authority, customs duty on the unutilised imported material alongwith interest thereon and to the licensing authority, a sum in rupees which is equivalent to the CIF value of the unutilised imported materials; and a sum in rupees equivalent to the shortfall in EO.

In addition, the licencee was also liable to penalty in terms of section 11 (2) of F.T (D&R) Act, 1992.

(a) Two advance licences were issued to M/s Texel Industries Limited, Ahmedabad and M/s. Concept International, Mumbai in June 1999 and July 1997 by licensing authority at Ahmedabad and Mumbai respectively for duty free import of goods valued at Rs.24.78 lakh with EO of Rs.33.64 lakh to be fulfilled within a period of 18 months from the date of issue of the licences. Against import of raw material valued at Rs.21.28 lakh, the licencees failed to export any goods and were therefore liable to pay (i) customs duty of Rs.15.91 lakh on unutilised material alongwith interest of Rs.16.39 lakh (ii) Rs.6.53 lakh equivalent to shortfall in EO and Rs.21.28 lakh being value of the unutilised imports.

On this being pointed out (September 2001/October 2002), the licensing authority imposed (June 2004) fiscal penalties of Rs.40 lakh in one case and Rs.10 lakh in another.

Further progress was awaited (January 2005).

(b) According to para 7.22 read with para 7.28 of Exim Policy 1997-2002, only those exports made within the validity/revalidation period of license shall be considered/accounted towards EO. Non adherence to above provision would render such exports, null and void and be construed as default in non fulfilment of EO, which would be regularised as per provisions of para 7.28.

M/s. Noble Merchandise (India) Limited, was issued Quantity based advance licence (QBAL) for duty free import of Rs.5.50 lakh kg of 'PP granules' in October 1998, which was valid upto 6 April 2000, (CIF value Rs.1.19 crore) as against export of five lakh kg. of 'PP woven sacks' (FOB value Rs.1.56 crore).

Audit scrutiny revealed that the exports were effected by the licencee during 15 April 2000 to 30 October 2000 i.e. after the expiry of validity period of licence. Since no further extension was sought by licencee, the exports could not be counted towards fulfilment of EO.

Hence, differential custom duty of Rs.31.91 lakh availed on the imported materials was required to be recovered alongwith interest of Rs.39.25 lakh (upto March 2004).

This was pointed out to the Department (JDGFT) in December 2003, who reported (March 2004) that a refusal order was issued on 23 January 2004.

Partial export

(c) An advance licence was issued to M/s. Alcobex Metals Limited, Jodhpur in March 1999 by the licensing authority, Jaipur for duty free import of 1001.230 MT of copper, zinc, nickel and tin valued at Rs.8.12 crore against export of 938 MT of copper/nickel/brass tubes worth Rs.15.09 crore. The licencee imported 951.234 MT of goods and exported only 702.014 MT of finished goods till the expiry of the licence (i.e. September 2000). As such the licencee was liable to pay custom duty of Rs.67.80 lakh on unutilised imports and interest of Rs.56.95 lakh thereon.

On this being pointed out (December 2002), the JDGFT, Jaipur stated (April 2004) that show cause notice has been issued.

Further progress was awaited (January 2005).

(d) A QBAL licence was issued to M/s. Precision Fasteners Limited, Mumbai for import of CHQ Steel wires/rods/bars and other consumables. The initial validity of the licence was upto 30 January 2000 with EO for precision fasteners of 619.000 MT.

Audit scrutiny revealed that the licencee imported 705.11 MT of CHQ steel wire/rods/bars, against which export of 269.017 MT of the finished products fructified. As such licencee was liable to pay customs duty on 391.436 MT of unutilised raw material of Rs.33.11 lakh and interest of Rs.34.44 lakh thereon.

On this being pointed out (January 2004), the Department reported (March 2004) issue of refusal order dated 8 March 2004.

Further progress was awaited (January 2005).

(e) M/s. Gomathy Mills Limited, Tirunelveli, issued two advance licences (December 1999 and March 2001) by the licensing authority, Madurai for a CIF value of Rs.14.81 crore and Rs.11.74 crore which were clubbed for the purpose of realisation as per para 7.20 of Handbook of Procedures.

The licencee imported 29,26,501.81 kg. of raw cotton and 6,93,242 cones to export 18,89,011 kg. of 'combed/carded yarn of counts 40 and below and 40 counts and above'. According to standard input output norms (SION), for the above exports the exporter was entitled to import 22,28,256.87 kg. of raw cotton and 6,39,472 cones. The excess import of raw cotton of 6,98,244 kg. and 53,770 plastic cones required regularisation by payment of duty and interest amounting to Rs.38 lakh. The excess import was identified by the Department in June 2003 and the licensee paid only Rs.11.50 lakh in August 2003.

Audit scrutiny revealed that the balance amount was neither paid nor was any demand raised by the Department till February 2004.

On this being pointed out (February 2004), the Department reported recovery of the balance amount of Rs.26.50 lakh in March 2004.

(f) M/s. Toshniwal Export Limited was issued a quantity based advance licence (QBAL) in August 1998 for duty free import of goods valued at Rs.59.62 lakh for import of 63,700 kg. of para anisidine as against prescribed EO of Rs.1.16 crore and an export quantity of 70,000 kg. of fast bordeaux GP base.

Audit scrutiny revealed that the unit could achieve EO only to the extent of Rs.11.21 lakh and export of 7650 kg. against 100 per cent import of duty free goods worth Rs.35.87 lakh (quantity 63,700 kg). As it failed to achieve the prescribed EO, duty foregone on the imports amounting to Rs.12.32 lakh alongwith interest of Rs.13.68 lakh was recoverable.

On this being pointed out (November 2003), the Department replied (March 2004) that refusal order had been issued on 18 March 2004.

Further progress was awaited (January 2005).

(g) According to para 7.25 of Hand Book Procedure Vol-I (1997-2002), fulfilment of EO is subject to realisation of foreign exchange.

M/s. BPL Limited was issued an advance licence (October 1998) for duty free import of Rs.31.75 crore against EO of Rs.35.82 crore. The licence was amended (March 2000) to import components of CIF value Rs.29.42 crore and FOB value of Rs.33.43 crore. Against these the licencee achieved EO of Rs.28.63 crore by exporting 39075 sets of colour monitor.

Audit scrutiny revealed that out of 39075 monitors, the export proceeds in respect of 20010 monitors valuing Rs.13.98 crore were not realised by the exporter. No action was taken by JDGFT/Department to demand/recover duty of Rs.59.17 lakh due on imports for which export proceeds had not been realised on the plea that the RBI had written off non-realised sum of Rs.25.51 crore. Neither RBI nor the Department secured the surrender of export incentives availed by defaulting exporter.

On this being pointed out (April 2004), customs Department, Bangalore stated (November 2004) that the export obligation was to be monitored by the DGFT and BG was also given to

the DGFT in terms of condition (ii) of the customs notification No.160/92 dated 20 April 1992.

The reply was not tenable as condition (iii) of the notification ibid specifically provided for importer at the time of clearance to make a declaration before the Assistant Commissioner/Deputy Commissioner of customs binding himself to pay on demand an amount equal to the duty leviable on such goods but for the exemption in case export obligation had not been fulfilled. DGFT stated (July 2004) that the matter was being examined.

Further progress was awaited (January 2005).

(h) According to para 7.14 of Exim Policy (1997-2002), the period of fulfilment of EO under the advance licence scheme shall commence from the date of issue of licence. According to para 7.22 of Handbook of Procedures, Vol-I (1997-2002), the regional licensing authority shall grant one extension for a period of six months from the date of expiry of original EO period on the licence subject to payment of composition fee of one per cent on unfulfilled FOB value of EO . Request for further extension of six months may be considered by Regional Licensing Authorities subject to payment of composition fee of five per cent on unfulfilled FOB value of EO.

M/s. Indfrag Limited was issued (August 1998) a QBAL by the licensing authority, Chennai with a CIF value of Rs.3 crore for import of 1,25,000 kg. of 'St. John Wort'♦, against export of 25,000 kgs with FOB value of Rs.4 crore. The licence was initially valid for 18 months i.e. upto 2 February 2000 and then extended upto 2 August 2000 on payment of composition fee of one per cent.

The Department while redeeming (March 2001) the licence, reckoned the export made on 25 August 2000 (after the extended period of validity of licence) for fulfilment of EO.

Audit pointed out (February 2003) that this was incorrect and actually there had been shortfall in EO and as such the licencee was liable to pay duty on the unutilised imported raw material amounting to Rs.15.89 lakh along with interest of Rs.11.78 lakh for the period November 1998 to November 2003.

On this being pointed out, the Department stated (September and October 2003) that the period of EO was extended for a further period of six months after payment of composition fee of Rs.1.77 lakh on 11 June 2003.

The reply is not tenable as the licence could be redeemed/regularised as per para 7.26/7.28 of HBP Vol-I only after taking into account the extensions if any granted till the date of redemption. In the instant case the licence was redeemed in March 2001 and was extended (second time) as late as in June 2003.

♦Drug for treatment of depression.

Further progress was awaited (January 2005).

9.5 EPCG scheme

9.5.1 Absence of provisions in EPCG scheme to prevent negative value addition

The basic objective of foregoing duty on imports made under various export promotion schemes is to enhance foreign exchange through positive value addition. The principal objective of the Exim Policy 2002-07 was to facilitate sustained growth in exports to attain a share of at least one per cent of global merchandise trade. The EPCG scheme as modified under the said policy effective from 1 April 2003, however, did not include a provision to guard against negative value addition in respect of cases where the effective rate of duty on imports was low.

Customs notification No.55/03 dated 1 April 2003 issued under the amended provisions of the EPCG scheme allowed imports at concessional rate of BCD and exempted additional duty and SAD entirely.

Test check in ZDGFT, Chennai, revealed (August 2004) that in respect of 226 cases of industrial sewing machines imported under the EPCG scheme during the period May 2003 to December 2003 through Chennai Sea, customs, there was excess outflow of foreign exchange of Rs.29.49 crore equivalent to CIF value of imports in excess of FOB value of exports. In addition it would entail notional loss of duty of Rs.1.96 crore being the duty foregone on such imports, in the absence of positive value addition provision in the Exim policy.

This was pointed out to the Department in August 2004, their reply was awaited (January 2005).

9.5.2 Shortfall in EO

(a) Nil export

According to para 38 of the Exim Policy 1992-97 read with para 106 of the HBP Vol. I (1992-97) and para 6.19 read with para 6.11 of HBP 1997-2002 an EPCG licencee is permitted to import capital goods at concessional rate of customs duty subject to fulfilment of prescribed EO within the stipulated period and in the event of failure to do so, the licencee is liable to pay customs duty plus interest thereon.

Six EPCG licences were issued between June 1995 and January 2000 to M/s Shagun Exports, Secunderabad and five others by the licensing authorities at Mumbai and Hyderabad for import of capital goods valuing Rs.3.73 crore at concessional rate of duty against prescribed obligation of Rs.15.20 crore. But the licencees failed to export any goods having imported goods worth Rs.3.34 crore during the EO period. They were thus liable to pay duty foregone amounting to Rs.1.09 crore plus interest of Rs.1.19 crore (upto March 2004).

On this being pointed out (May 2001 to October 2004), the licensing authority at Hyderabad stated (April to June 2004) that two licencees were declared defaulters and fiscal penalties amounting to Rs.25 lakh and 68.30 lakh were imposed and in another case while customs duty saved (Rs.13.44 lakh) had been recovered the licencee has been directed to pay the interest. The licensing authority at Mumbai (July to October 2003) reported that the licencees had been imposed with fiscal penalty of Rs.2.08 crore.

(b) Partial export

Three EPCG licences were issued (October 1993 to November 1994) to M/s. Akbar Arts, Mumbai and two others by the licensing authority at Mumbai and New Delhi for import of capital goods valuing Rs.3.96 crore at concessional rate of duty against prescribed EO of Rs.15.82 crore. They exported goods worth Rs.12.15 crore during EO period against import worth Rs.3.59 crore. Proportionate duty saved amounting to Rs.47.96 lakh plus interest of Rs.60.70 lakh upto March 2004 was recoverable from the licencees.

On this being pointed out (December 2000 to February 2003), the licensing authority at New Delhi reported (August 2002 to July 2003) that enforcement action was being taken in one case and the bank has been intimated to forfeit BG. In other two cases, recovery of the duty saved and interest was reported.

(c) Non fulfilment of average exports

According to para 6.2 of Exim policy 1997-2002, capital goods may be imported at concessional rate of customs duty subject to fulfilment of specified EO. Further, as per condition laid down in para 6.5 (v), the EO shall be, in addition to any other export obligation undertaken by the importer, over and above the average level of exports of the same product, achieved in the preceding three licensing years. However, as per para 6.5 (vii) of Exim policy, importer is not required to maintain average level of export in case of export of computer software, agriculture, aquaculture, animal husbandry, horticulture, pisciculture, viticulture, poultry and sericulture.

M/s. Mondial India Limited, Mumbai was issued (April 1997) an EPCG licence by licensing authority, Mumbai to import capital goods with CIF value of Rs.1.57 crore with export obligation of Rs.6.28 crore with an average EO of Rs.6.09 crore. Subsequently, the licencee obtained exemption from maintaining the average level of export in terms of para 6.5 (vii) of Exim policy stating that the foreign exchange earnings made by him in the past three years were from export of computer software (February 2002).

Audit scrutiny revealed that the foreign exchange earnings were from export of readymade garments and not computer software. As such the exemption by the Department to the licencee from maintaining the average exports prescribed was irregular. The licencee was therefore, liable to pay Rs.40.71 lakh towards duty saved and interest thereon.

On this being pointed out (June 2002), the JDGFT, Mumbai, reported (June 2004) confirmation of demand of Rs.81.42 lakh.

9.6 Other cases

In 19 other cases of non fulfilment of EO, irregular DTA sales, excess DEPB credits etc., short levy of Rs.1.01 crore alongwith interest of Rs.38.36 lakh were pointed out as per table below. Department/Ministry admitted objections in 14 cases.

(Rupees in lakh)

Sl. No.	Irregularity	Name of the importers/ exporters (M/s.)	Commi-ssionerate	Amount objected	Interest	Whether accepted
1.	Incorrect debit to DEPB	Wonder Rexine (P) Ltd., & 10 others	Kolkata	13.49	--	Yes
2.	Irregular grant of DEPB credit	TVS Srichakra Ltd., Madurai	Madurai	11.88	--	No
3.	Non fulfilment of EO	Ramalinga Mills Ltd., Aruppukottai	Madurai	11.64	--	Yes
4.	Incorrect exemptions under DFRC scheme	P.P. Products Ltd., Bangalore and five others	Bangalore	8.31	--	No
5.	Irregular grant of DEPB credit	Saint Gobain Glass India, Chennai	Chennai	7.78	1.81	No
6.	Non-imposition of late cut on replenishment licence	Shree Jee Enterprises, & S.M. Co., Jaipur	New Delhi	6.96	--	Yes
7.	Incorrect debit of DEPB credit	SAIL Bokaro	Kolkata	6.75	--	Yes
8.	Non fulfilment of EO	Bombay Drugs & Pharmas Ltd., Mumbai	Mumbai	6.50	6.46	Yes
9.	Irregular DTA sale	Sindhu Apparels (P) Ltd., Surat	Surat	5.50	4.48	Yes
10.	Non fulfilment of export obligation	BDH Industries Ltd.	Mumbai	4.21	3.83	Yes
11.	Irregular DTA sale	Multimedia Frontiers Ltd., Gandhi Nagar	Ahmedabad	3.31	2.87	Yes
12.	Non fulfilment of export obligation	CAV Cotton Mills Ltd., Pogalur	Tuticorin	2.46	1.30	Yes
13.	Non debiting of duty in DEPB	Maha Maya Enterprises, Gandhidham	Kandla	2.42	0.09	Yes
14.	Irregular imports	Lahoti Overseas Ltd., Mumbai	Kochi	2.34	--	No
15.	Inadmissible imports	GTN Textiles	Kochi	1.75	--	No reply
16.	Non fulfilment of export obligation	Grand Foundry Ltd.,	Mumbai	1.26	1.55	Yes
17.	Non fulfilment of export obligation	Bombay Drugs & Pharmas Ltd.	Mumbai	1.23	1.16	Yes
18.	Non fulfilment of Export Obligation	B. Vijaykumar & Co. Ltd.,	Mumbai	2.71	2.71	Yes
19.	Non levy of interest	Ganpati Industries, Daman & others	Kandla	--	12.10	Yes
	Total			**100.50**	**38.36**	

CHAPTER X: OTHER TOPICS OF INTEREST

10.1 Non levy of penalty under the Customs Act, 1962

According to notification No.42/96-cus dated 23 July 1996 as amended from time to time under CTH 9801.00 all items of machinery as well as components or raw material for the manufacture of the aforesaid items and their components required for initial setting up of units or substantial expansion of existing unit and spare parts or consumables not exceeding 10 per cent of the value of the goods specified can be imported by the assessee for notified import projects. In case of improper importation of goods penalty not exceeding five times of the value of the goods so imported shall be leviable under sub-section (b) (I) of 112 of Customs Act, 1962.

M/s. Indian Oil Corporation, Mathura Refinery, Mathura, under Lucknow Commissionerate of Central Excise, imported machinery etc. for Rs.9.91 crore during 1998-99 for a notified project under CTH 9801. Audit scrutiny revealed that the importer imported catalyst for Rs.15.02 crore which was in excess of permissible limit of 10 per cent of value of machinery amount by Rs.14.11 crore. The import of catalyst in excess of the value of Rs.0.91 crore was in contravention of specified condition. As such the importer was liable to pay penalty not exceeding Rs.70.57 crore under section 112 of Customs Act, 1962.

On this being pointed out (December 1999 to January 2002), the Department while accepting the facts stated (November 2004) that penal action under the Act ibid lay with Mumbai Customs Commissionerate under which the project was registered.

Reply of the Ministry had not been received (January 2005).

10.2 Provisional assessment of imports of palm oil

Palm oil and its fractions, whether or not refined falling under CTH 1511.10 are chargeable to basic customs duty at the rate of 100 per cent. However, in terms of customs notification No.21/2002 dated 13 February 2002 (as amended), import of palm oil under various conditions i.e. palm oil/crude/edible grade, free fatty acid content, beta carotene content is subject to concessional rate of customs duties. Further, as per para 7 of chapter 7 of CBEC manual, it is to be ensured that most of the cases of provisional assessments are finalised within six months of the date of provisional assessment including those subject to test report.

Test check revealed that provisional assessment of 57 consignments of palm oil imported by M/s. Godrej Industries Limited and 19 others through new custom house, Mumbai/Jawahar custom house, Mumbai during the period March 2003 to May 2004 were not finalised within the stipulated period of six months despite receipt of test reports entailing levy of higher rate of duties. In another three consignments imported through Jawahar custom House, Mumbai,

imports were cleared at lower rate of duties without samples even being sent for testing to determine free fatty acid content.

Thus, delay in finalisation of assessments and clearing imports without testing resulted in Government revenue of Rs.21.91 crore being postponed apart from financial accommodation to importers.

Further rules provide that where provisional assessment is allowed pending the production of any document, or pending test report, a bond is to be furnished within a month and deficiency if any between the duty finally assessed and the duty provisionally assessed is to borne by the importer executing the bond.

It was noticed that in 36 consignments of crude palm oil imported by M/s. Ruchi Soya and 12 others under the DEPB/DEEC scheme during April 2003 to June 2004, entries in the test bond register, such as bill of entry number/TR number and date etc. had not been filled in. In the absence of these details it was not clear how the Department satisfied itself as to whether test report were received and final assessments made. It was also not clear whether or not bonds had been cancelled.

Improper maintenance of the bond registers was indicative of inadequate documentation and monitoring by the Department thereby raising scope of revenue leakage.

This was pointed to the Department in September 2004, whose reply was awaited (January 2005).

10.3 Non levy of national contingent calamity duty (NCCD)

According to clause 126 of the Finance Bill, 2003, with effect from 1 March 2003, a surcharge by way of duty of customs called NCCD has to be levied on the goods specified in the schedule to the Finance Act, 2001 at the rate of Rs.50 per MT on petroleum oil and oils obtained from bituminous minerals and crude under Tariff heading 2709.00.

M/s. Chennai Petroleum Corporation Limited and Kochi Refineries, Ambalamughal imported 7,76,309 MT of crude oil through custom house, Chennai and Kochi custom house which were cleared after 1 March 2004 without levy of NCCD in term of provisions ibid. The omission resulted in non collection of NCCD of Rs.4.06 crore and interest thereon.

On this being pointed out (June 2004), the Department/Ministry reported (July 2004) recovery of NCCD. However, interest was yet to be recovered as M/s. Chennai Petroleum Corporation Limited filed an appeal before the Commissioner (Appeals) against the order confirming the demand of interest. Further progress was awaited (January 2005).

10.4 Non collection of merchant overtime fees (MOT)

Section 36 of the Customs Act, 1962 provides that no imported goods shall be unloaded from and no export goods shall be loaded on any conveyance on any holiday observed by the customs department or any other day after working hours, except after giving the prescribed notice and on payment of the prescribed fees, if any. The Board vide circular No.68/98-cus dated 7 September 1998 had communicated different rates of fee chargeable by the Department for services to be rendered by the customs officers.

Audit scrutiny of the records at custom house, Tuticorin and custom house, Kakinada revealed that MOT charges amounting to Rs.59.94 lakh for the period February 2002 to September 2003 were not assessed and levied.

On this being pointed out (March to November 2003), the Department reported (October 2003 to March 2004) recovery of Rs.59.87 lakh.

10.5 Non inclusion of high seas sales charges

Public notice No.47/2002 dated 5 December 2002 of Commissioner of customs, Gandhidham, Kandla stipulated that 'high seas sales charges' declared by the original importer and the buyer be added to the declared CIF value. Such charges are taken to be two per cent of CIF value as a general practice. However, in cases where actual 'high seas sales charges' are more than two per cent of CIF value, the actual charges are required to be added to the CIF value.

Audit scrutiny of Kandla custom house revealed that in 105 cases, high seas sales charges at 2 per cent of CIF value were not added to arrive at assessable value as per the public notice ibid, non inclusion of which resulted in short levy of customs duty of Rs.31.10 lakh.

On this being pointed out (September 2003), the Department stated (November 2003) that two SCNs had been issued to the importer.

Further progress was awaited (January 2005).

10.6 Interest on delayed payment of duty

According to section 28AB of the Customs Act, 1962 where any duty has not been levied or paid or had been short levied or short paid or erroneously refunded the person who is liable to pay duty shall in addition to duty, be liable to pay interest at appropriate rate from the first day of the month succeeding the month in which the duty ought to have been paid till the payment of duty.

Scrutiny of the records of custom house, Kochi and Chennai Sea Commissionerate revealed that demand notices under section 28 of the Customs Act, 1962 for short levy/non levy of

duty were issued by the Department in 47 cases. However, interest at appropriate rate under section 28AB was not demanded. The omission resulted in non collection of interest of Rs.17.84 lakh.

These were pointed out to the Department in June 2004, replies were awaited (January 2005).

10.7 Application of incorrect rate of duty

Parts of digital video cameras imported by two importers through Air Cargo Complex, Hyderabad in December 2001 and January 2002 and a consignment of pure caustic soda imported (July 1999) by M/s. Indian Aluminium Company Limited, Kolkata through Air Cargo Complex and Goa customs were assessed to duty at lower rates resulting in short levy of duty of Rs.17.22 lakh including interest.

On being pointed out (June 2002 and August 2003), the Ministry reported (July/August 2004) recovery of the amount.

10.8 Goods not re-exported

Notification No.104/94-cus dated 16 March 1994 exempts containers of durable nature, when imported, from whole of customs duty provided the importer executes a bond and binds himself to re-export the said containers within six months from the date of their import and to pay the duty leviable thereon in the event of failure to do so.

M/s. Manrich International and two others imported items contained in durable containers during January 2000 to November 2001. The Department allowed the benefit of notification ibid by obtaining bonds. Audit scrutiny revealed that neither was any proof of re-export of containers submitted nor was any extension sought by the above importers. Despite a lapse of 19 to 42 months, the Department did not recover the duty by enforcing the bond. The omission resulted in non-recovery of duty amounting to Rs.11.52 lakh.

On this being pointed out (June 2002, January/April 2004), the Department stated (July 2004) that the importers had been asked to furnish documentary evidence of re-export and demands would be confirmed after finalisation of personal hearings in each case. They further stated that bonds furnished by the importer were valid and had not been cancelled in the absence of documentary evidence of export, as such, revenue had not suffered. Fact remains that despite lapse of three to four years, the Department initiated action only after it was pointed out by Audit. During the interim the revenue remained unrealised.

10.9 Short collection of cost recovery charges

Custom officers are posted to custom bonded warehouse for supervising manufacturing operation on cost recovery basis. According to Government of India, Ministry of Finance letter dated 1 April 1991, the cost of officers posted to customs warehouse for supervising manufacturing operations has been fixed at 185 per cent of the monthly average cost of the post plus DA, HRA, CCA etc.

Audit scrutiny of files relating to 'cost recovery charges' at Cochin shipyard revealed that against recovery charges at the rate of 185 per cent of the prescribed elements, charges at the rate of 100 per cent only were collected for the period from 1 October 2000 to 30 September 2001, resulting in short collection of Rs.11.25 lakh.

This was pointed out to the Department in December 2003, their reply was awaited (January 2005).

10.10 Non levy of special excise duty

'Aluminous cement, polyester filament yarn of high tenacity and air conditioners' falling under headings 2502.30, 5402.62 and 8415 of CETH respectively were subject to levy of special excise duty.

A consignment of Aluminous cement and three consignments of polyester filament yarn of high tenacity and a consignment of air conditioner imported by M/s. Garware Wall Ropes and two others between November 2001 and June 2003 through Kolkata (Sea) customs and Nhava Sheva customs, Mumbai were cleared without levying special excise duty. This resulted in short collection of duty to the tune of Rs.10.08 lakh and interest of Rs.0.99 lakh thereon.

On this being pointed out between August 2002 and February 2004, Kolkata Commissionerate reported in September 2004 recovery of Rs.1.42 lakh, reply in the other cases was awaited (January 2005).

10.11 Non levy of anti-dumping duty

According to section 9A of the Customs Tariff Act, 1975, where any article is exported from any country or territory to India at less than its normal value, then upon the importation of such article into India, the Central Government may, by notification, impose an anti dumping duty on such article. Accordingly, the Government issued notifications imposing anti dumping duty on 'graphite electrode, isobutyl benzene, citric acid, sodium nitrite' etc. from time to time.

Audit scrutiny revealed that 54 consignments of above articles imported by 26 importers were cleared without levying/short levying anti dumping duty. This resulted in short levy of anti dumping duty of Rs.2.91 crore.

On this being pointed out (January 2000 to April 2004), the Department/Ministry admitted (May 2001 to July 2004) short levy of Rs.1.79 crore in 36 consignments and reported recovery of Rs.87.50 lakh in 29 consignments.

10.12 Excess payment of drawback

On export of goods, refund of excise and customs duties paid on components and raw material could be claimed as drawback as per provisions in the relevant Acts and rules thereunder. Of 25 cases, where excess payment of drawback amounting to Rs.2.41 crore had been pointed out, the Department/Ministry admitted the facts in 22 and reported recovery of Rs.80.13 lakh in 19 cases.

10.13 Other cases

Of 12 cases, which audit pointed out involving Rs.37.03 lakh as detailed below, the Department accepted objections in six cases involving duty effect of Rs.14.39 lakh and reported recovery of Rs.4.62 lakh in four cases.

(Rupees in lakh)

Sl. No.	Subject	Importer/exporter M/s.	Amount objected	Amount admitted	Amount recovered
1.	Short levy of interest	Associated Pigments Ltd	6.76	No reply	--
2.	Inadmissible refund	Lakshmi Precision Screw Ltd	5.56	Not accepted	--
3.	Interest on ex-bond clearance	Selvas Photography Ltd & one other	3.59	3.59	3.10
4.	Penalty on delayed submission of IATT and FTT returns	Swiss Airlines & others	4.41	4.41	0.02
5.	Short levy of interest	Simplex Engg & Foundry works	3.63	No reply	--
6.	Delay in implementing CEGAT order	Infar (India) Ltd.	2.99	Interim reply	--
7.	Interest on delayed payment of IATT and FTT dues	UL airways & five others	2.24	No reply	--
8	Interest on warehoused goods	Vantech Chemicals Ltd & seven others	2.07	2.07	--
9.	Shortage in seized goods	Patna Commissionerate	1.86	1.86	--
10.	Incorrect date of ex-bond clearance	Rallies India Ltd	1.47	1.47	1.47
11.	Non levy of interest on warehoused goods	Essar Oil Ltd & one other	1.30	No reply	--
12.	Interest on delayed payment of IATT and FTT dues	Air India & others	1.15	0.99	0.03
	Total		**37.03**	**14.39**	**4.62**

10.14 Miscellaneous

Four hundred and fifty three other cases involving duty of Rs.69.07 lakh were also pointed out. The Department has accepted all the objections and reported recovery of Rs.60.03 lakh in 452 cases.

New Delhi **(MINAKSHI GHOSE)**
Date: **Principal Director (Indirect Taxes)**

Countersigned

New Delhi **(VIJAYENDRA N. KAUL)**
Date: **Comptroller and Auditor General of India**