CHAPTER III : REVIEW ON EXCISE DUTY ON INORGANIC AND ORGANIC CHEMICALS

3.1 Highlights

- **Absence of specific provision in new section 4 relating to payment of excise duty on maximum price fixed under the law led to revenue being foregone to the extent of Rs.16 crore in one unit.**

(Paragraph 3.6)

- **Absence of specific sub-heading in Chapter 28 led to loss of Rs.35.53 crore in four units alone.**

(Paragraph 3.7)

- **Undervaluation of goods consumed captively resulted in revenue loss of Rs.1.43 crore.**

(Paragraph 3.10.2)

- **Irregular availment of Cenvat credit resulted in revenue loss of Rs.98.72 crore.**

(Paragraph 3.11)

- **Non-payment of service tax on various services rendered by manufacturers of inorganic and organic chemicals resulted in revenue loss of Rs.3.33 crore.**

(Paragraph 3.13)

- **Non-adjudication of demands resulted in blockage of revenue of Rs.76 crore.**

(Paragraph 3.14.5)

3.2 Introduction

Inorganic chemicals refer to those of mineral origin while organic chemicals mean chemicals of carbon compounds excluding metal carbonates and oxides and sulphides of carbon. Inorganic and organic chemicals are classified under Chapter 28 and 29 of Schedule to Central Excise Tariff Act, (CETA) 1985. The two chapters together contributed Rs.2952.36 crore amounting to 3.08 per cent of central excise collections during 2003-04.

3.3 Audit objectives

Records of selected manufacturing units and departmental offices were scrutinised in audit to examine,

- at macro level, adequacy of provisions of the Act, Rules, and instructions issued by the Ministry of Finance/Central Board of Excise and Customs (Board) in maximizing revenue collection and
- at micro level, to seek assurance that
- valuation of goods was done in accordance with provisions of section 4 of the Act and Central Excise Valuation Rules (as amended from time to time);

- credit of duty paid on inputs/capital goods under Modvat/Cenvat was taken correctly;
- service tax on services provided/received by manufacturers was paid correctly; and
- internal controls were effective to safeguard revenue interest.

3.4 Audit coverage

Inorganic and organic chemicals falling under Chapters 28 and 29 of CETA, 1985, were covered in the review. For this purpose, records of 115 manufacturing units as well as related range offices in 53 out of 93 commissionerates of central excise for the period 2001-02 to 2004-05 (upto 30 September 2004) were test checked.

3.5 Results of audit

Revenue trend of central excise collected was as under: -

3.5.1 Inorganic chemicals (Chapter 28) and organic chemicals (Chapter29) in 53 commissionerates

(Amount in crore of rupees)

Commodity and Chapter	Year	No of units	Duty paid through PLA	Duty paid through Modvat	Total duty paid	Percentage of Modvat to PLA	All commodities percentage of Modvat to PLA
Inorganic chemicals (chapter 28)	2001-02	1074	775.94	510.01	1285.95	65.70	65.70
	2002-03	1091	815.13	470.40	1285.53	57.71	64.60
	2003-04	1139	926.60	557.57	1484.17	60.17	73.65
	2004-05 (upto September 2004)	1201	419.78	355.61	775.39		
Organic chemicals (chapter 29)	2001-02	1595	954.12	1848.66	2802.78	193.75	65.70
	2002-03	1688	1024.33	2122.46	3146.79	207.20	64.60
	2003-04	1787	1192.07	2597.96	3790.03	217.94	73.65
	2004-05 (upto September 2004)	1860	604.82	1557.93	2162.75		

The above table indicates that percentage of Modvat/Cenvat availed to duty paid by cash in respect of organic chemicals (Chapter 29) had been consistently and significantly higher than the all India figures for all commodities.

Macro evaluation

3.6 Inadequate provisions in new section 4 of Central Excise Act

Erstwhile section 4 (a) (ii) of Central Excise Act, 1944, provided that where goods were sold by assessee in course of wholesale trade for delivery at the time and place of removal at a price fixed under any law for the time being in force or at a price, being the maximum, fixed under any such law, the maximum price as the case may be, so fixed shall in relation to the goods so sold be deemed to be the normal price thereof. While introducing the concept of

transaction value in new section 4 with effect from 1 July 2000, the above provision was not made.

M/s. J. K. Pharma Chemicals Ltd., Cuddalore in Pondicherry commissionerate of central excise manufacturing bulk drugs (penicillin-G) falling under Chapter 29 adopted purchase order value as assessable value, instead of price fixed under drug price control order (DPCO). Show cause notice (SCN) issued by the department was adjudicated in favour of assessee. The Board, however, filed an appeal with CEGAT. Accordingly, SCNs were issued again upto the period June 2000. For July 2000 onwards, no SCN was issued on the plea that there was no such provision in the new section 4 of Central Excise Act, 1944. In another case the department, however, had issued SCN to M/s. Orchid Chemicals, Alathur in Chennai III commissionerate covering the period after July, 2000. There were, thus, different practices prevailing in the matter of application of rules and regulations.

In absence of specific provisions akin to those under erstwhile section 4 (a) (ii), government had to forgo revenue to the extent of Rs.16 crore for January 2001 to June 2004 in one unit alone.

3.7 Absence of specific sub-heading led to misclassification and loss of revenue

Chapter heading 28.35 of CETA, 1985, covers phosphates of elements attracting 16 per cent duty and Chapter heading 23.02 covers animal feeds and supplements attracting nil rate of duty.

M/s. Pioneer Miyagi Company Ltd., M/s. Raymon Patel Gelatine Pvt. Ltd., M/s. Kerala Chemicals and Proteins Ltd. and M/s. Bamni Proteins Ltd. in Pondicherry, Vadodara I, Cochin and Nagpur commissionerates respectively were engaged in manufacture of di-calcium phosphate from animal bones. Assessees had classified the product under Chapter heading 23.02 as animal feed supplement attracting nil rate of duty.

The Board, in order dated 3 March 1997 issued under section 37B of Central Excise Act, 1944, classified di-calcium phosphate under Chapter heading 28.35. This decision was taken based on chief chemist's opinion that there was specific mention of di-calcium phosphate under sub-heading 2835.25 of Harmonized System of Nomenclature (HSN) and CETA was aligned to those. The assessees appealed against Board's order and Board's decision was quashed by High Court of Madras and Gujarat and Nagpur Bench of Mumbai High Court. Special leave petitions and civil appeal filed by the department in Supreme Court on this issue were also dismissed by apex court. The Board vide their order dated 15 November 2002 consequently withdrew their earlier order issued under section 37B.

Since di-calcium phosphate was classifiable under Chapter 28 as per note (c)(4)(1) below heading 28.35 of HSN, the Board should have taken action to insert specific sub-heading under heading 28.35. Inaction to do so resulted in loss of revenue to the extent of Rs.35.53 crore (till March 2005) in these four units alone.

3.8 Revenue foregone due to non-coverage of products under section 4-A

Section 4A of Central Excise Act, 1944, provides that any goods, in relation to which it is required, under provisions of Standards of Weights and Measures Act, 1976 (60 of 1976) or Rules made thereunder or under any other law for the time being in force, to declare on the

package thereof retail sale price of such goods, may be charged to duty with reference to retail sale price less such amount of abatement, if any, from such retail sale price as Central government may allow by notification in the official gazette.

M/s. Nirmala Dye Chemicals, Vapi in Daman commissionerate engaged in manufacture of sodium hypochlorite (brand name ALA fabric bleach) falling under Chapter 2828.90, cleared goods in packages of 500ml, 200ml, 45ml and 25ml. Since they were covered under provisions of Standards of Weights and Measures Act/Rules, the assessee displayed retail sale price on each package. Test check revealed that assessable value on which duty was being paid by assessee under section 4 was significantly lower than assessable value notionally arrived at under maximum retail price (MRP) after allowing 40 percent abatement on it.

Government have not notified the goods under section 4A of Central Excise Act, 1944, till date. Non-coverage of this product under MRP resulted in revenue being foregone to the extent of Rs.93.16 lakh during the period from April 2001 to March 2003. Assessee started paying duty under section 4A (under protest) from April 2003 onwards on the basis of SCN issued by the department.

In another case, M/s. Industrial Solvents and Chemicals Pvt. Ltd., Ankleshwar under Surat II commissionerate cleared ethyl solvent (I.P.) in bottles of 500 ml. The goods were cleared under section 4 of the Act. Non-coverage of goods under section 4A for purpose of levy of duty on the basis of MRP resulted in foregoing revenue to the extent of Rs.4.39 lakh for April 2001 to September 2004.

3.9 Board's circular contradictory to provisions in the Act

Section Note 2 to section VI of CETA, 1985, stipulates that goods put up in sets consisting of two or more separate constituents, some or all of which fall in this section and are intended to be mixed together to get a product of section VI or VII, are to be classified in the heading appropriate to that product provided the constituents are: -

- having regard to manner in which they are put up, clearly identifiable as being intended to be used together without first being repacked,
- presented together; and
- identifiable whether by nature or by relative proportions in which they are complementary to one another.

Contrary to section Note, the Board, clarified through circular dated 4 January 1989 and 8 March 1989 that polyols and iso cyanates, even though presented together, were to be assessed individually on merit.

M/s. Manali Petro Chemicals Ltd., of Chennai I commissionerate manufactured polyol (Chapter 29), thio cyanates (Chapter 28) and other chemicals falling under these chapters. In addition to producing thio cyanates, they also imported the same and sold them as part of trading activity. Scrutiny revealed that purchase orders placed by certain customers were for both polyols and thio cyanates (manufactured as well as imported). Polyols and thio cyanates on mixing produced polyurethane. Hence these chemicals were complementary to each other

and when presented together, were to be assessed as polyurethane as per the section Note ibid. No duty was paid for polyurethane. This resulted in revenue foregone of Rs.38.49 lakh.

Micro Analysis

3.10 Valuation

Section 4 of Central Excise Act, 1944, was replaced by new section 4 with effect from 1 July 2000 bringing in the concept of 'transaction value' for levy of duty. New valuation rules were also introduced vide Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 with effect from the same date.

Test check of records of selected manufacturers of inorganic and organic chemicals revealed the following irregularities: -

3.10.1 Exclusion of retained sales tax from transaction value

Section 4 (3) (d) of Central Excise Act, stipulates that transaction value of goods chargeable to central excise duty would not include the amount of duty of excise, sales tax and other taxes, if any, actually paid or actually payable on such goods.

Board in their circular dated 30 June 2003 clarified that the words 'actually payable' meant that if tax deferred at the time of transaction was subsequently held as not payable, deduction from assessable value was not admissible. CEGAT in the case of M/s. Andhra Oxygen Pvt. Ltd. vs. CCE (Trib-Kol) {2003 ELT (156) 239} held that sales tax collected from buyers and not paid to the sales tax department when it was exempted under Sales Tax Act shall be considered as additional consideration flowing to assessees.

M/s. Colour Chem Ltd. in Raigad commissionerate in accordance with State government notification dated 16 November 2002, opted for payment of net present value of deferred sales tax payment which was deemed to have been paid. Assessee had accumulated Rs.8.58 crore representing sales tax collected from buyers during 2003-04. By paying Rs.2.54 crore during the financial year 2003-04, they retained Rs.6.04 crore under this scheme.

This resulted in non-payment of duty to the extent of Rs.83.41 lakh on residual amount so collected from the buyers. On this being pointed out (June 2005), the Ministry admitted (November 2005) the objection.

3.10.2 Undervaluation of goods consumed

Rule 8 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, (Valuation Rules, 2000) stipulates that where excisable goods are not sold by the assessee but are used for consumption by him or on his behalf in manufacture of other articles, assessable value shall be 115 per cent (110 per cent with effect from 5 August 2003) of the cost of production of such goods.

M/s. Wockhardt Ltd., Ankleshwar, M/s. Lupin Ltd., Mandideep in Surat II and Bhopal commissionerates respectively, engaged in manufacture of bulk drugs cleared their products to sister units for captive use in manufacture of other articles. Test check of their records revealed that goods were valued at lower rate based on transaction value instead of cost construction method i.e. 115 per cent/110 per cent of cost of production. This resulted in short payment of duty of Rs.69.31 lakh for the period from April 2001 to January 2004. On

this being pointed out (June 2005), the Ministry stated (November 2005) that SCN for Rs.36.20 lakh is being issued in respect of M/s. Wockhardt Ltd.

M/s. Nicholas Piramal India Ltd., Ennore in Chennai I commissionerate also engaged in manufacture of various bulk drugs cleared ‘verapamil tech’ under the heading ‘raw material consumed’ to their branch factory situated in Andhra Pradesh at cost price of Rs.2750 per kg. Balance sheet, however, showed that the product was valued at Rs.4556 per kg. Short payment of duty to the tune of Rs.48 lakh resulted due to this variation. On this being pointed out (June 2005), the Ministry stated (November 2005) that the value furnished in the balance sheet was that of the finished product (Verapamil tech) produced at the assessee’s branch factory. Reply of the Ministry is not tenable as the goods were cleared as raw material to the branch factory.

Similarly there were five other cases of short payment of duty noticed due to non adoption of cost construction method resulting in loss of revenue of Rs.25.90 lakh.

3.10.3 Non-payment of duty on additional considerations

According to section 4(1) (a) of Central Excise Act, 1944, value of excisable goods for purposes of charging duty of excise in case where (i) the goods are sold by the assessee, for delivery at the time and place of removal, (ii) assessee and buyer of the goods are not related and (iii) price is the sole consideration for the sale, shall be the transaction value. As per rule 6 of Central Excise (Valuation) Rules, 2000, where excisable goods are sold in the circumstances specified in clause (a) of sub section (1) of section 4 of the Act except the circumstance where price is not the sole consideration for sale, value of such goods shall be deemed to be aggregate of such transaction value together with the amount of money value of any additional consideration flowing directly or indirectly from the buyer to the assessee.

M/s. Inox Air Products Ltd. in Belapur commissionerate supplied nitrogen gas through pipeline to M/s. Nocil and M/s. Lubrizol India Pvt. Ltd. Price agreement between the parties provided for discount, which was built into the price depending on agreed quantity of purchase. On it not being purchased, in-built discount was being denied and the said amount was realised from the buyers in the guise of compensation. The amount recovered as compensation in connection with the sale of nitrogen gas was, thus an additional consideration on which excise duty was payable. Short payment of duty amounted to Rs.24.54 lakh for the period from July 2000 to September 2004. On this being pointed out (June 2005), the Ministry stated (November 2005) that nature of this transaction could not be presumed as a discount. Reply of the Ministry is not tenable as after introduction of transaction value any amount recovered in connection with the sale was includible in the assessable value.

3.10.4 Discrepancy in closing stock of gypsum

Rule 10 of the Central Excise Rules 2002, provides that assessee maintain daily stock account of goods produced, cleared, with opening balance etc, in legible manner.

M/s. SPIC Ltd., Tuticorin in Tirunelveli commissionerate were engaged in manufacture of sulphuric and phosphoric acid. The assessee also manufactured phospho gypsum (gypsum) as by-product. It was noticed that stock as per balance sheet was lesser by 12,60,482 MT than that shown in central excise records. This resulted in short payment of duty of Rs.1.51 crore on stock having been cleared as per commercial records. On this being pointed out (June 2005), the Ministry stated (November 2005) that detailed investigation was being conducted.

3.10.5 Short levy of duty on goods sold through depot

In terms of rule 7 of Central Excise (Valuation) Rules, 2000, where excisable goods are not sold by the assessee at the time and place of removal but are transferred to depot, premises of the consignment agent or any other place or premises from where they are to be sold, the value shall be the normal transaction value i.e. the value at which the greatest aggregate quantity of such goods were sold from the depots.

M/s. Sunbel Alloys Ltd. in Belapur commissionerate engaged in packing of goods belonging to M/s. Emerck Ltd. transferred the final product to depot of the latter. It was seen that in some cases, goods were cleared to the depot at a price lower than the normal transaction value which resulted in short payment of duty of Rs.27.74 lakh approximately during the period from January 2003 to August 2004. On this being pointed out (June 2005), the Ministry stated (November 2005) that provisions of rule 11 would be applicable to job worker. The reply is not tenable as the assessee was not job worker and manufacture was not on principal-to-principal basis. They paid duty on normal transaction value and not on cost construction method. The assessee was, therefore, covered under rule 7 and not rule 11.

3.10.6 Undervaluation of goods cleared on job work basis

Erstwhile section 4 of Central Excise Act, 1944 read with erstwhile rule 6 of Central Excise (Valuation) Rules, 1975 provides that assessable value of goods which are sold in the course of wholesale trade or in respect of which the value of comparable goods is not available, should be determined on the basis of cost of production plus the profit that could have been earned on their sale.

M/s. Apte Amalgamation in Belapur commissionerate manufactured goods under Chapter 29 on job work basis on behalf of M/s. Glaxo Ltd. Goods so manufactured and cleared were undervalued to the extent of Rs.68.88 lakh during November 1999 to March 2000. This resulted in short payment of duty of Rs.11.02 lakh. On this being pointed out (June 2005), the Ministry stated (November 2005) that SCN had already been issued in June 2000 and demand confirmed in June 2004.

3.10.7 Other cases

Test check of records revealed that in 18 other cases there was undervaluation resulting in non-payment of duty to the extent of Rs.52.80 lakh**.**

3.11 Cenvat credit

Under Modvat/Cenvat scheme, credit is allowed for duty paid on ‘specified inputs’ and ‘specified capital goods’ used in manufacture of finished goods. Credit can be utilised towards payment of duty on finished goods subject to fulfilment of certain conditions. A few cases of incorrect availment of Modvat/Cenvat credit, noticed in test audit are elucidated in the following paragraphs: -

3.11.1 Inadmissible Cenvat credit on ‘lump sum turn key projects’

Supreme Court in the case of M/s. Triveni Engineering and Industrials Ltd. vs. Commissioner of Central Excise {2000 (120) ELT 273 (SC)} held that turn key projects like steel, cement and power plants involving supply of large number of machinery, pipes, tubes etc for their assembly/installation/creation/ integration on civil structures would not be considered as

excisable goods for imposition of central excise duty. The Board in their circular dated 15 January 2002 also clarified the same.

M/s. Kochi Refineries Ltd., Ambalamugal in Cochin commissionerate got 'diesel hydro de sulphurisation' (DHDS) project executed by contractor M/s. Larsen and Toubro on 'lump sum turn key' (LSTK) basis at a cost of Rs.852 crore. The plant was commissioned in March, 2000.

For its execution, the contractor brought various machinery and components to the site under cover of invoices issued in their favour. Modvat/Cenvat credit amounting to Rs.40.53 crore on such items was availed and utilised by the refinery. Such credit availed on the inputs of the project and utilised by the assessee was inadmissible in view of the judgement.

M/s. Chennai Petroleum Corporation Ltd. in Chennai I commissionerate installed separate plant for desulpherising excess content of sulphur for purification of manufactured petroleum products during 2000-01. A contractor on lumpsum turn-key basis executed the project. They were not eligible for Cenvat credit of Rs.30.46 crore availed on installation of desulphurisation plant. On this being pointed out (June 2005), the Ministry stated (November 2005) that since desulphurisation plant was installed for purification of petroleum products, Cenvat credit on capital goods was allowable. Reply of the Ministry is not tenable as the desulphurisation plant, being turn key project, was not 'goods' as per Board's circular and apex court decision.

Other cases of irregular availment of Modvat/Cenvat credit on turn-key projects noticed are given below in the table: -

(Amount in lakh of rupees)

Sl. No.	Commiss-ionerate	Name of assessee	Turn key project	Amount of Cenvat credit	Remarks
1.	Chennai II	M/s. Hi-Tech Carbon Ltd., Gummidipoondi	Turbo generating set	56.00	SCN for Rs.55.27 lakh issued
2.	Trichy	M/s. Chemplast Senmar Ltd.	Captive Power Plant	269.00	
3.	Mumbai II	M/s. HPCL Ltd.	Reactor for DHDS Plant	176.00	SCN for Rs.88.08 lakh issued
			Total	**501.00**	

3.11.2 Incorrect availment of Cenvat credit on unspecified capital goods

Rule 2 of Cenvat Credit Rules, 2002 stipulates that Cenvat credit on capital goods is admissible only on specified goods used in the factory.

M/s. Sterlite Industries Ltd., Tuticorin and M/s. TANFAC Industries Ltd., Cuddalore in Tirunelveli and Pondicherry commissionerates respectively availed of Cenvat credit of Rs.2.34 crore on unspecified capital goods during the period from March 2004 to June 2004. On this being pointed out (June 2005), the Ministry stated (November 2005), that a SCN for Rs.2.16 crore has been issued to M/s. Sterlite Industries Ltd.

During September 2003 and March 2004, M/s. Dhrangadhra Chemical Works Ltd., Dhrangadhra in Bhavnagar commissionerate and M/s. Phillips Carbon Black Ltd., Palej in Vadodara II commissionerate availed of Cenvat credit of Rs.39.52 lakh on channels, beams, mixed structures etc. which were unspecified goods and, therefore inadmissible. On this

being pointed out (June 2005), the Ministry intimated (November 2005) that a sum Rs.21.10 lakh has been recovered in respect of M/s. Phillips Carbon Black Ltd.

There were 12 other cases of irregular availment of Cenvat credit on ineligible capital goods involving Rs.41.35 lakh.

3.11.3 Excess availment of Cenvat credit on capital goods

Rule 4 (2) of Cenvat Credit Rules, 2002 provides that Cenvat credit in respect of capital goods received in a factory at any point of time in a given financial year shall be taken only for an amount not exceeding 50 percent in the same financial year. Balance amount may be availed in any financial year subsequent to the financial year in which the capital goods were received in the factory of manufacturer provided the goods are in possession and use of the manufacturer of final products in such subsequent financial years.

M/s. United Phosphorus Ltd., Jhagadia in Surat II commissionerate availed 100 percent Cenvat credit of Rs.24.39 lakh in September, 2001 on capital goods received in the factory. Assessee again availed Cenvat credit of Rs.24.39 lakh on the same goods in April, 2002. This resulted in excess availment of Cenvat credit to the extent of Rs.24.39 lakh. On this being pointed out (June 2005), the Ministry intimated (November 2005), that a sum of Rs.24.39 lakh alongwith interest of Rs.8.22 lakh has been paid by the assessee.

There were nine other cases of irregular availment of Modvat/Cenvat credit on capital goods involving duty of Rs.25.44 lakh.

3.11.4 Irregular availment of Cenvat credit on capital goods

Erstwhile rules 57AD and 57AC of Central Excise Rules, 1944 and rules 3, 4 and 6 of Cenvat Credit Rules, 2002 provide that no Cenvat credit on capital goods which are used in the manufacture of exempted goods will be availed.

M/s. Rama Phosphates Ltd. had two manufacturing units at Indore. Scrutiny of records of one unit manufacturing sulphuric acid and fertilizer revealed that an advance licence from Jt. DGFT, Mumbai for use in extraction of oil and export of the products thereof from the other unit at Indore was obtained by the registered office at Mumbai. On this basis capital goods viz. steam turbine (heading 84.06) with accessories and spares were imported from Japan vide bill of entry dated 30 June 2000. Capital goods so imported were installed in June 2001 in the fertilizer plant for export, which was exempted from duty. Assessee took Cenvat credit of additional duty amounting to Rs.29.16 lakh and utilised it in fertilizer plant for clearance of sulphuric acid during the period from August 2001 to May 2002.

Since import of steam turbine was allowed only for the purpose of manufacture of exempted goods at the oil extraction plant, installation of capital goods at fertilizer plant and availment of Cenvat credit of Rs.29.16 lakh was irregular.

3.11.5 Irregular availment of Cenvat credit on duty paid on non-excisable goods

Board vide circular No.02/91-CX.3 dated 4 January 1991 clarified that an assessee had no option to pay duty on his own volition, in case the goods were fully exempted from payment of duty. Further, if he paid any amount in the name of excise duty, which was not leviable by law, the amount so paid would be in the nature of deposit with the Government. Since such payments were not in the nature of duty, question of granting any credit thereon did not arise. Supreme Court in the case of CCE vs. Tata Iron & Steel Co.{2004 (165) ELT, 386} affirmed

its earlier decision of M/s. Indian Aluminium Company Ltd., {1995 (77) ELT 268 (SC)} that zinc dross was non-excisable and no duty was required to be paid thereon.

M/s. Nav Bharat Metallic Oxide Industries Pvt. Ltd., in Daman commissionerate availed Cenvat credit of Rs.8.65 crore on zinc dross procured from the supplier/manufacturer during April 2001 and September 2004, although it was exempted from duty and the manufacturer had paid duty on his own volition.

This resulted in irregular availment of Cenvat credit to the extent of Rs.8.65 crore.

3.11.6 Input used in manufacture of exempted final product

Rule 6 of Cenvat Credit Rules, 2004 provides that where a manufacturer avails Cenvat credit in respect of inputs and manufactures final products, which are chargeable to duty as well as exempted goods, then he shall maintain separate accounts of such inputs. If the exempted final products are other than those specified in sub rule 3 (a) and no separate accounts are maintained, he shall pay an amount equal to eight percent (ten percent with effect from 10 September 2004) of the sale price charged by the manufacturer of such final products.

M/s. Hindustan Zinc Ltd., Debari, Udaipur in Jaipur 1 commissionerate did not pay Rs.66.51 lakh as duty on sale price of exempted final product in which common inputs were used in manufacture of exempted and dutiable product, for which separate accounts were not maintained. On this being pointed out (June 2005), the Ministry admitted the objection and stated that SCNs for Rs.1.28 crore has been issued.

M/s. Gujarat Alkalies and Chemicals Ltd., Dahej (Bharuch) in Vadodara II commissionerate generated electricity by using naphtha and part of the electricity so generated was sold to Gujarat Electricity Board. As assessee did not keep separate account of inputs used in generation of electricity so sold, he was required to pay Rs.19.37 lakh as duty on sale price of the exempted final product. On this being pointed out (June 2005), the Ministry intimated that an amount of Rs.8.17 lakh has been reversed and that SCN demanding interest on the said amount has been issued. Reply of the Ministry is not tenable as Cenvat Credit Rules do not provide for proportionate reversal of credit after opting of the facility of non-maintenance of separate inventory of common inputs to be used in both dutiable and non-dutiable output goods.

Dr. Reddy's Laboratories Unit I in Hyderabad commissionerate cleared exempted product for the period from September 2003 to July 2004 in respect of which no separate accounts of inputs were maintained. The assessee was required to pay Rs.34.49 lakh as duty on sale price of the exempted final product. On this being pointed out (June 2005), the Ministry stated (November 2005) that SCN for differential amount has been issued.

There were ten other cases of non reversal of Cenvat credit to the extent of Rs.33.52 lakh on clearance of exempted goods.

3.11.7 Incorrect availing of credit on inputs not involving purchase and sale

Rule 7(4) of Cenvat Credit Rules, 2001, prescribes that manufacturer of final products shall maintain proper records for receipt, disposal, consumption and inventory of inputs and capital goods in which relevant information regarding value, duty paid, person from whom the inputs or capital goods have been purchased is recorded. Ministry vide circular dated 3 April 2001 also clarified that basic responsibility lay upon the manufacturer to prove that inputs or capital goods were purchased and used by him for the intended purpose. This rule was

amended prospectively with effect from 1 March 2003 substituting the word 'purchased' by the word 'procured'.

During test check of central excise records of M/s. United Phosphorous Ltd., Vapi in Vapi commissionerate and M/s. Sun Pharma Ltd., in Ankleshwar in Surat II Commisionerate, it was noticed that, between April 2001 and February 2003, assessees received inputs from their sister units on stock transfer basis and took Cenvat credit of Rs.2.46 crore thereon. Invoices indicated that goods transferred were not on sale and valuation of such inputs by the supplier units was made under Valuation Rules, 2000. Sales tax was not paid on such goods as the transaction was not a sale. Since assessees did not purchase the inputs, availment of Cenvat credit of Rs.2.46 crore upto the period 28 February 2003 was not in order. On this being pointed out (February 2005), the department stated that Cenvat credit was admissible on stock transfer of such inputs as per section 2(h) of Central Excise Act, 1944. The reply is not tenable as 'stock transfer' was not covered under the definition of sale and purchase given under section 2(h) of the Act.

3.11.8 Irregular availment of Cenvat credit on inputs sent to job workers

Rule 4 (5) (a) of Cenvat Credit Rules, 2001 stipulates that a manufacturer can avail Cenvat credit on inputs or partially processed inputs sent to job workers for further processing, repair, reconditioning etc. provided such goods are received back for use in manufacture of final products.

M/s. Demosha Chemicals Ltd., Valsad in Daman commissionerate supplied naphtha and zinc hydroxide to three job workers for manufacture of zinc oxide and availed Cenvat credit on naphtha during April 2001 and March 2004. Since, the input i.e. naphtha was supplied for generation of steam, which was not received back from job workers, availment of Cenvat credit on naphtha to the extent of Rs.67.68 lakh was irregular.

Similarly, M/s. Unimark Remedies Ltd., Bavla falling under Ahmedabad II commissionerate and engaged in the manufacture of goods falling under Chapter 29 supplied light diesel oil (LDO)/furnace oil to job workers for generation of steam between April 2001 and March 2002, and availed Cenvat credit irregularly to the tune of Rs.4.79 lakh.

Since the inputs i.e. L.D.O./furnace oil were used outside the factory of production and steam generated by them was not received back by the manufacturer, availment of Cenvat credit to the extent of Rs.4.79 lakh was irregular.

3.11.9 Inputs cleared as such to sister units

Erstwhile rule 57 AB (4) of Central Excise Rules, 1944 and rule 3 (4) of Cenvat Credit Rules, 2001 and 2002, (as it existed till 28 February 2003) provided that when input or capital goods on which Cenvat credit has been taken are removed as such from factory, duty would be payable on value determined under section 4 of Central Excise Act, 1944. If removal of inputs is in the nature of transfer to sister unit, value of goods would be 115 percent (110 per cent from 5 August 2003) of cost of production in terms of rule 8 and proviso to rule 9 read with rule 11 of Valuation Rules, 2000. When such inputs have not been produced or manufactured but received from outside by the assessee, duty was required to be paid at 115/110 percent of the total landed cost.

M/s. Ranbaxy Laboratories Ltd., Dewas, M/s. IPCA Laboratories Ltd., Ratlam in Indore commissionerate and M/s. Lupin Ltd., Mandideep, in Bhopal commissionerate were engaged in manufacture of chemicals, bulk drugs and P&P medicaments. They cleared inputs as such

to their sister units after payment of duty by adopting 'transaction value' instead of 115/110 per cent of landed cost of inputs which resulted in short levy of duty to the extent of Rs.2.06 crore for the period from April 2001 to February 2003.

M/s. Transpek Silox India Ltd., Vadodara and M/s. Metrochem Industries Ltd., Padra in Vadodara I commissionerate, M/s. Lupin Ltd., Ankleshwar in Surat II commissionerate, M/s. United Phosphorus Ltd., Vapi in Vapi commissionerate and M/s. Nirma Ltd., Bhavnagar in Bhavnagar commissionerate cleared inputs as such to their other units under the same management, for further use in manufacture of excisable goods between July 2000 and February 2003. The assessees discharged duty liability equivalent to credit taken which was contrary to provisions of extant rules. Non-adoption of the value equivalent to 115 percent of the total landed cost of inputs for assessment resulted in short payment of duty of Rs.1.23 crore in these units.

Short payment of duty amounting to Rs.34.34 lakh due to non-adoption of value equivalent to 115 percent of landed cost was noticed in ten other cases.

3.11.10 Non reversal of credit on capital goods/inputs, spares and components written off/lost in transit/destroyed/found short

In terms of erstwhile rule 57 AB of Central Excise Rules, 1944 (as it stood prior to 1 July 2001) and rule 3 of Cenvat Credit Rules, 2002, manufacturer or producer of final product shall be allowed to take credit of specified duty paid on inputs or capital goods received in the factory for use in or in relation to manufacture of final products. No credit is allowed if inputs are not used in the manufacturing process and hence credit is not available on inputs lost in transit, destroyed in fire or found short on physical verification. Board vide circular dated 16 July 2002 clarified that if inputs, spare parts and components etc. were fully written off, credit availed would be paid back.

M/s. Kerala Minerals and Metals Ltd., Chavara in Trivandrum commissionerate had written off Rs.2.01 crore towards value of obsolete and unused silica pipes and of slow/non-moving items during 2001-02 and 2002-03 respectively. The assessee had already availed Cenvat credit of Rs.35.89 lakh on written off items which was not reversed as required in terms of Board's circular ibid.

M/s. Schenectady Herdillia Ltd. and M/s. Deepak Fertilizers and Petrochemicals Corporation in Belapur commissionerate engaged in manufacture of chemicals under Chapter 29 of CETA 1985 had written off inputs, components and spare parts, amounting to Rs.1.06 crore which became obsolete and incapable of being used within the factory during the period from April 2002 to March 2004. They did not reverse credit of Rs.17.03 lakh on the material written off. On this being pointed out (September 2004), the department intimated recovery of Rs.5.81 lakh and interest of Rs.1.07 lakh in one case. In the other case the department stated (April 2005), that a SCN for Rs.8.65 lakh had been issued.

Non-reversal of credit to the extent of Rs.35.31 lakh was also noticed in audit in seven other cases.

3.11.11 Other cases

Twenty six other cases involving irregular availment of Cenvat credit to the extent of Rs.81.29 lakh were also noticed in audit.

3.12 Exemptions

3.12.1 Irregular availment of SSI exemption

In terms of notification dated 1 March 2003, a manufacturer cannot avail of small scale exemption on specified goods bearing brand name or trade name of another person, whether registered or not. Further, under section 11 AC of Central Excise Act, 1944, in the event of mis-statement/suppression of facts or contravention of any provisions of the Act or Rules, penalty equivalent to duty is leviable.

M/s. Deepak Nitrite Ltd., Nandesari in Vadodara I commissionerate cleared input viz. para nitro chloro benzene, caustic soda and ammonia valued at Rs.4.78 crore to three job workers located in Maharashtra on payment of duty, for further manufacture of para nitro aniline and sodium salt of para nitro phenol. Clearances were in the nature of 'stock transfer' and no sales tax was paid. Under the agreement, job workers were to take credit of duty paid by the assessee and were liable to furnish details of stock of finished, semi-finished goods. After processing the goods, they were to despatch the finished branded goods direct to customers of assessee at the price and conditions agreed upon by them, for which no prior permission of jurisdictional commissioner was obtained as required under rule 4(6) of Cenvat Credit Rules, 2002. Job workers were reimbursed conversion charges and duty required to be paid at the rate of 16 per cent on clearances of finished goods.

It was noticed from invoices issued by job workers that two of them viz. M/s. Saurabh Organics Pvt. Ltd. and M/s. Muktesh Chemicals availed SSI benefits on branded goods and cleared the final products of the assessee by paying duty at the rate of 9.6 per cent of assessable value against 16 per cent advalorem payable by the principal manufacturer.

Modus operandi adopted by assessee in clearing goods to job workers on payment of duty and further clearance of the finished goods at concessional rate resulted in short levy of duty of Rs.24.89 lakh (Rs.19.95 lakh on availment of SSI benefit and Rs.4.94 lakh for non levy of duty on emerged by-product) for the period from April 2002 to September 2004. On this being pointed out (February 2005), the department stated (April 2005) that the goods were sold and not cleared from job work. Reply of the department is not tenable as clearance was in the nature of stock transfer and no sales tax was paid.

3.12.2 Non payment of duty on intermediate products used in manufacture of exempted final products

According to notification dated 16 March 1995, intermediate goods used in manufacture of dutiable final products are exempted from payment of duty. This exemption, however is not available if intermediate products are used in the manufacture of exempted final products.

M/s. SPIC Ltd., Tuticorin and M/s. FACT Ltd., Udyogamandal in Tirunelveli and Cochin commissionerates respectively, were engaged in the manufacture of sulphuric acid and fertilizers. Scrutiny revealed that assessees used sulphuric acid captively for manufacture of phosphoric acid, which was further used for manufacturing fertilizers. As phosphoric acid used in manufacture of fertilizer is exempted from duty under notification dated 1 March 2002, benefit of exemption to sulphuric acid so consumed was not available. This resulted in non-payment of duty of Rs.6.11 crore for the period from April 2001 to September 2004. On this being pointed out, the Ministry while not accepting the objection stated that a SCN for Rs.2.32 crore has been issued to M/s. FACT Ltd.

M/s. National Oxygen Ltd., Pondicherry, in Pondicherry commissionerate produced liquid oxygen and used it in production of gaseous oxygen (medicinal grade). As the latter attracted nil rate of duty, exemption from duty to liquid oxygen was not admissible. This resulted in non-payment of duty to the extent of Rs.11.01 lakh for March 2002 to March 2004. On this being pointed out (June 2005), the Ministry intimated (November 2005) that a SCN for Rs.59.70 lakh has been issued.

3.12.3 Irregular availment of exemption

Notification dated 1 March 2002, stipulates that 'angiography contrast agents' be charged at concessional rate of four per cent advalorem as against tariff rate of 16 per cent. According to product literature on radio opaque agents, their indications and uses, Iopamidal 99.2 per cent is not recognised as a contrast agent and as such not eligible for concessional rate of duty.

M/s. Divis Laboratories Ltd., Lingojigudem, Nalgonda District in Hyderabad III commissionerate engaged in manufacture of bulk drugs cleared Iopamidal 99.2 per cent to customers at concessional rate of duty of four per cent, which was not admissible. This resulted in short payment of duty of Rs.13.44 lakh and interest thereon for the period from July 2002 to October 2002. On this being pointed out (June 2005), the Ministry intimated (November 2005) the recovery Rs.13.44 lakh alongwith interest of Rs.3.89 lakh.

Notification dated 1 March 1997 provided that specified excisable goods supplied to specified public funded research institutions would be exempt from whole of the duty of excise subject to certain conditions. M/s. Navin Fluorine, Surat in Surat I commissionerate, cleared anhydrous hydro fluorine acid and chloro fluoro methane under Chapters 28 and 29 valued at Rs.51.53 lakh from April 2001 to February 2004 to various scientific research organisations such as Bhabha Atomic Research Centre and Vikram Sarabhai Space Centre without payment of duty. Under the said notification, only components/parts of scientific, technical instruments/apparatus had been exempted. Since chemicals cannot be treated as components/parts of any scientific, technical instruments/apparatus, their clearance without payment of duty was irregular.

This resulted in non-payment of duty of Rs.8.24 lakh for the period from April 2001 to February 2004. On this being pointed out (June 2005), the Ministry confirmed the recovery of the amount.

3.13 Service Tax

Scrutiny revealed that some manufacturers had provided services to clients/ received services, on which service tax was payable. Some illustrative cases of non-payment of service tax are given below: -

3.13.1 Consulting Engineer's services

Service tax on service rendered by consulting engineer was levied with effect from 7 July 1997. Clause (13) to section 65 of Finance Act, 1994 defines consulting engineer as 'any professionally qualified engineer or an engineering firm, who either directly or indirectly, renders any advice, consultancy or technical assistance in any manner to a client in one or more disciplines of engineering'.

M/s. Kopran Ltd., in Raigad commissionerate recovered an amount of Rs.5.00 crore from M/s. Cadilla Health Care Ltd. towards technical fees for services rendered between April 2001 and March 2002. Service tax on this account amounting to Rs.25.00 lakh was, however, neither paid by M/s. Kopran Ltd. nor demanded by department. On this being pointed out (June 2005), the Ministry admitted the objection and stated (November 2005) that SCN for Rs.46.02 lakh as also penalty and interest has been issued.

Exemption from service tax on services rendered to foreign agency for which payment were received in convertible foreign exchange was withdrawn from March 2003. M/s. Divis Laboratories Ltd., Lingojigudem, Nalgonda District in Hyderabad III commissionerate provided consultancy and technical know-how to foreign organisation during 2003-04, raised invoices and received payment in dollars, the conversion value of which in Indian currency worked out to Rs.2.75 crore. Service tax amounting to Rs.20.29 lakh was, therefore payable by assessee at five per cent upto 13 May 2003 and eight per cent from 14 May 2003 to 31 March 2004, besides interest which was not done. On this being pointed out (June 2005), the Ministry stated (November 2005) that SCN for Rs.20.09 lakh has been issued.

Two other cases of non-payment of service tax on consultant engineers services are given as per the following table: -

(Amount in lakh of rupees)

Sl. No.	Commiss-ionerate	Name of the assessee	Period	Amount on which service tax not paid	Amount of service tax not paid	Remarks
1.	Bangalore I	M/S. Kumar Organic Products Ltd. Bangalore	2000-01 to 2003-04	73.69	6.93	SCN for Rs.6.93 lakh as also penalty and interest has been issued
2.	Hyderabad I	M/s. Hetero Drugs Ltd., Bonthapalli	-do-	11.69	0.63	Action has been initiated to recover the amount
				Total	**7.56**	

3.13.2 Service tax on services rendered by foreign consultants

Rule 2(I) of (IV) of Service Tax Rules, 1994, as amended provides that a person receiving taxable service would have to pay service tax, if the service provider was non-resident or was outside India and did not have any office in India.

Scrutiny of records of M/s. Deepak Fertilizers and Petrochemical Corporation Ltd. in Belapur commissionerate revealed that they availed services of foreign consultants viz. M/s. Aker Kvaerner Inc. USA, Grand Paroisse, SA, France and W.R. Grace during 2003-04 and paid an amount of Rs.5.41 crore. Service tax amounting to Rs.43.31 lakh was, however, not paid by the assessees in respect of payment made to non-resident service providers, besides interest.

Eighteen other cases of non-payment of service tax amounting to Rs.1.03 crore on services rendered by foreign consultants were noticed in audit.

3.13.3 Non-recovery of service tax on freight charges

According to notification dated 5 November 1997 which came into effect from 16 November 1997, recipients of services of goods transport operators are liable to pay service tax at the rate of five per cent of freight charges paid to goods transport operators. Supreme Court held in the case of Laghu Udyog Bharati {1999 (112) ELT 365} that recipients of services cannot be made liable to pay service tax and the rules made in this regard were ultra vires Finance Act, 1994. In order to validate recovery of service tax from recipients, Finance Act, 1994 was amended with retrospective effect vide Sections 116 and 117 of the Finance Act, 2000. Therefore, recipients of service of transport operators became liable to pay service tax from 16 November 1997 to 1 June 1998.

M/s. Chemplast Sanmar Ltd. in Salem I commissionerate of Central Excise, engaged in manufacture of inorganic/organic chemicals incurred expenditure of Rs.12.20 crore on account of freight and handling charges in respect of four units located at Mettur Dam, Krishnagiri, Panruti and Vedaranyam during the years 1997-98 and 1998-99. Assessee had not paid service tax on freight charges. In the absence of exact details, audit asked (April 2001) the department to work out and collect service tax leviable for the period from 16 November 1997 to 1 June 1998. On this being pointed out (April 2001), the Ministry while admitting the objection in principle stated (October 2005) that demand for Rs.60.98 lakh with equivalent penalty had been confirmed.

3.13.4 Other cases of non-payment of service tax

Scrutiny of records of manufacturers of organic and inorganic chemicals revealed that service tax payable on various services provided by them amounting to Rs.11.56 lakh was not paid besides interest.

3.14 Internal Controls

Under rule 6 of Central Excise Rules, 2002, the assessee is required to follow self-assessment procedure. Departmental officers are, inter-alia, responsible for strengthening all assessments made for verification of correctness; issuing SCN in the event of non-payment, short payment or erroneous refund; adjudicating SCN within prescribed time limit, and enforcing recovery in case of confirmed demands.

Some illustrative cases of ineffective internal control mechanism noticed during the course of review are narrated below: -

3.14.1 Inaction by department on defaults in payment of duty

Rule 8 of Central Excise Rules 2002 prescribes that duty on goods removed from factory or warehouse during a month shall be paid by fifth day of the following month and in case of goods removed during the month of March, duty shall be paid by 31st day of March. If the assessee fails to pay the dues on due dates, he is liable to pay interest at specified rate. In accordance with Chapter 3 (Part V) of Manual of supplementary instructions, after completion of one month, amount of duty outstanding and interest payable thereon was required to be treated as recoverable arrears of revenue and all permissible action under the law was required to be taken. For this purpose, range superintendent was required to maintain separate register to ensure proper monitoring.

In course of scrutiny of range record, it was revealed that M/s. MTZ Industries Ltd. in Raigad commissionerate had defaulted in payment of duty on due dates on 16 occasions between July 2003 and November 2004. In respect of defaults made during months of April 2004, May 2004, June 2004 and October 2004 amounting to Rs.32.23 lakh, assessee had not paid duty till date of audit (January 2005). No action was, however taken by the department for recovery of duty and interest. On this being pointed out (June 2005), the Ministry admitted the objection (November 2005) and stated that SCN for Rs.32.76 lakh as also penalty and interest has been issued.

3.14.2 Continued stay

Note 10 to Chapter 29, of the CETA, 1985, was introduced in March 1997 under which in relation to products of the Chapter, labeling, relabelling of containers, and repacking from bulk packs to retail packs or adoption of any other treatment to render the product marketable to the consumer, amounted to manufacture.

Association of camphor manufacturers producing camphor from duty-paid camphor powder in the form of tablets, obtained stay from High Court of Madras on behalf of their members in 1997 against introduction of the Chapter Note. Department, however, did not pursue vacation of stay even after eight years. Duty to be realised in respect of one of the members viz. M/s. Suresh Industries alone worked out to Rs.44.85 lakh for the period from 2001-02 to 2003-04.

3.14.3 Interest on delayed payment not recovered

According to section 11 AA of Central Excise Act 1944, where a person chargeable with duty determined under Sub-section (2) of section 11A, fails to pay such duty within three months from date of determination, he shall pay, in addition to duty, interest on such duty from date immediately after expiry of the said period of three months till the date of payment of such duty.

M/s. Asian Paints (I) Ltd., Cuddalore in Pondicherry commissionerate, manufacturing chemicals for paint industry, cleared their products to their sister concern/unit for the period from April 1994 to June 2000 by adopting value lower than the prices adopted for other customers. Department demanded differential duty of Rs.2.2 crore. Assistant Commissioner confirmed demand of duty along with penalty. Though assessee paid entire duty element, interest of Rs.64.22 lakh on delayed payment of duty was not paid. Department did not issue demand notice for recovery of interest. On this being pointed out (June 2005), the Ministry stated (November 2005) that SCN for Rs.64.36 lakh has been issued.

In 12 other cases, there was failure of the department to demand interest due from assessees on account of delayed payment of duty amounting to Rs.11.66 lakh.

3.14.4 Proof of export not watched

Under rule 19 of Central Excise Rules, 2002, excisable goods could be exported without payment of duty. However, proof of export was to be submitted to the department within six months from date of clearance of goods. In course of scrutiny of monthly return submitted by assessee, the range superintendent was required to watch submission of proof of export. In event of failure of the assessee to do so, the department was required to initiate action for recovery of duty alongwith interest.

In course of scrutiny of range records it was revealed that M/s. Vani Chemicals and Intermediates, Jeedimetla in Hyderabad-IV commissionerate exported goods to other countries under bond during July 2003 to February 2004. They did not produce proof of export in respect of these consignments, even after expiry of six months nor did the department demand duty of Rs.5.43 lakh involved in nine cases in the course of scrutiny of monthly returns. On this being pointed out (June 2005), the Ministry stated (November 2005) that authenticity of the proof of export is under verification.

3.14.5 Cases pending adjudication

According to provisions of section 11A of Central Excise Act, 1944, where SCNs had been issued, central excise officer was required to adjudicate cases within six months in normal cases and within one year, in cases of non-levy/short levy due to fraud, collusions etc., where it was possible to do so.

Test check revealed that in 17 commissionerates of central excise, adjudication of 121 SCNs issued to manufacturers of organic and inorganic chemicals involving revenue of Rs.76.00 crore were pending. Ninety five per cent of the cases constituting 87 per cent of the total revenue involved were more than a year old. Around 31 per cent of cases involving 34 per cent of the value of pendency were pending adjudication for more than five years.

Despite the amendment brought in section 11A of the Act, fixing time limit for adjudication of demand notices, albeit, with qualification 'where it was possible to do so', pace of finalisation was very slow. Such pendency was indication of the need to monitor disposal of adjudication cases more effectively.

3.14.6 Scrutiny of assessment returns

According to Part VI (Scrutiny of Assessment) of Chapter 3 of CBEC's Excise Manual of Supplementary Instructions, the superintendent was to scrutinise all returns filed by assessees. In addition Assistant Commissioner/Deputy Commissioner and Joint Commissioner/Additional Commissioner shall have to scrutinise returns of assessees paying duty through PLA between Rs. one crore and Rs. five crore and Rs. five crore or more respectively every six months.

In course of test check, it was observed that instructions of the Board with regard to scrutiny of returns were not being fully complied with. In eleven commissionerates only three returns were scrutinised by Indore, Surat II and Thiruvananthapuram from 28 units paying duty of more than Rs. one crore through PLA during 2001-04.

3.14.7 Ineffective internal audit

It was noticed that internal audit had conducted audit of 35 units where statutory audit had also been carried out but had failed to detect the irregularities brought out in the review.

3.15 Audit impact

The review contains audit comments involving financial implication of Rs.168.19 crore arising out of non compliance to Act/Rules/notifications. The review also contains audit observations bringing out lacunae/shortcomings in the relevant Act/Rules/notifications with financial implication of Rs.76 crore.

Department issued SCNs amounting to Rs.14.33 crore and recovered an amount of Rs.1.58 crore.

3.16 Conclusion

Review has revealed inadequacy in provisions and instructions of Ministry/Board in some cases leading to loss/revenue foregone. Instances of incorrect valuation and irregular availment of Modvat/Cenvat credit were also noticed. Internal controls through monitoring of payments by assessees, raising demands for recovery of interest on delayed payments, action for early vacation of stay orders, scrutiny of assessment returns and timely adjudication seemed weak.

The above observations were communicated in June 2005. The Board stated (November 2005) that observations of audit had been taken note of.