

## CHAPTER : IV REVIEW ON DELAY IN FINALISATION OF DEMANDS

### 4.1 Highlights

➤ In spite of incorporation of time limit in the statute with effect from 11 May 2001, 15251 cases involving central excise duty of Rs.8625.87 crore were pending adjudication as on 31 March 2004. Increase was 13 per cent in terms of number and 51 per cent in terms of amount as compared to position on 31 March 2001.

(Paragraph 4.5.1)

➤ Cases reported to be pending beyond one year were 38 per cent in terms of number and 48 per cent in terms of amount.

(Paragraph 4.5.2)

➤ In six test checked cases alone, an amount of Rs.153.01 crore was pending adjudication for want of administrative action.

(Paragraph 4.6.1)

➤ There was general tendency for adjudicating officers to finalise low revenue cases at the expense of keeping high value ones pending. This was true even for de novo cases.

(Paragraphs 4.6.2 and 4.6.3)

➤ Cases numbering 829 involving central excise duty of Rs.1687.83 crore were pending adjudication for want of clarifications by the Board.

(Paragraph 4.6.5)

➤ Seventy six per cent of adjudicating officers did not meet target of 100 cases fixed per annum.

(Paragraph 4.7.1)

➤ Due to ineffective internal controls, 31 cases with duty effect of Rs.6.61 crore were lost sight of while transferring cases on revision of monetary limit for adjudication and 200 cases involving duty of Rs.145.48 crore not reflected in the monthly technical report of ten divisions alone.

(Paragraphs 4.7.2 and 4.7.3)

### 4.2 Introduction

Section 11A of Central Excise Act, 1944, provides that when any duty of excise has not been levied or has been short-levied or short-paid or erroneously refunded, central excise officer may, within one year from the relevant date, serve notice on the person chargeable with duty which has not been levied or paid or which has been short-levied or short-paid or erroneously refunded, requiring him to show cause why he should not pay the amount specified in the notice. Period of one year stands extended to five years where duty has been short-paid due to fraud, collusion, wilful mis-statement or suppression of facts with the intention to evade

duty. Central excise officer shall, after considering the representation, if any, made by the person on whom show cause notice (SCN) has been served, determine amount of duty due from such person and thereupon such person shall pay the amounts so determined. SCN is the main instrument through which department ensures that excise duty is correctly paid as per provisions of the Act, Rules and orders issued by it. The number of SCNs issued during the years 2001-02, 2002-03 and 2003-04 in 79 commissionerates were 41,496, 30,332 and 41,484 involving an amount of Rs.13599.62 crore, Rs.15094.04 crore and Rs.17613.65 crore respectively.

Pace of adjudication of cases was reviewed by audit in review on 'delay in finalisation and collection of demands' in Audit Report 1997-98 wherein it was recommended that reasonable statutory time limit for finalisation of SCNs be fixed for safeguarding interest of revenue. Thereafter, sub-section 11A(2A) was inserted vide Finance Act, 2001, with effect from 11 May 2001, which stated that 'the central excise officer, in case any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, by reason of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the Rules made thereunder with intent to evade payment of duty, **where it is possible to do so**, shall determine the amount of such duty, within a period of one year from the date of service of the notice. In any other cases, where it is possible to do so shall determine the amount of duty of excise within a period of six months from the date of service of the notice on the person'. Fixation of time limit has thus been qualified by the clause 'where it is possible to do so'.

### 4.3 Audit objectives

Review of pending adjudication cases was undertaken to assess: -

- the impact of the new provisions relating to time limit on pace of clearance of pending cases;
- measures taken by the department to speed up adjudication; and
- efficacy of the monitoring and control mechanism devised by department for adhering to the time limit.

### 4.4 Audit coverage

Records of 154 divisions/adjudication branches in 79 out of 92 commissionerates were test checked. Period covered under audit was from 2001-02 to 2003-04. The findings are contained in succeeding paragraphs.

### 4.5 Macro Analysis

4.5.1 The overall position of demand cases pending adjudication in respect of 79 commissionerates is given below in the table: -

(Amount in crore of rupees)

	As on 31 March 2001	As on 31 March 2002	As on 31 March 2003	As on 31 March 2004
No. of demand cases pending adjudication	13491	21520	18584	15251
Total amount of excise duty involved in all pending cases	5707.56	7448.26	11371.45	8625.87

Figures furnished by commissionerates

## SECTION - 2 - CENTRAL EXCISE

- In spite of incorporation of time limit in the statute with effect from 11 May 2001, pendency rose during 2001-02 both in terms of number and amount and in 2002-03 in terms of excise duty involved.
- Even after fixation of time limit, pendency as on 31 March 2004 was higher by 13 per cent in terms of number and 51 per cent in terms of duty involved compared to position as on 31 March 2001 after taking into consideration fresh additions and disposal of cases during this period.
- Audit scrutiny revealed that average disposal was approximately 54 cases per annum per adjudicating officer during the year 2002-03 against target of 75 cases and was 72 cases per annum during 2003-04 against revised target of 100 per annum per adjudicating officer fixed by the Board in May 2003.

**4.5.2 Time limit prescribed for finalising adjudication not adhered to**

The extent to which the time limit in the statute with the rider 'where it is possible to do so' was adhered to by adjudicating officers in disposal of cases was evaluated in audit by analysis of age-wise pendency.

Break-up of demand cases raised upto 31 March 2004 but pending adjudication as on 30 September 2004 (after taking into account clearance between 1 April 2004 and 30 September 2004) furnished by 79 commissionerates is given in the table below: -

(Amount in crore of rupees)		
Age-wise pendency	Number	Amount
Cases upto one year old	4118	2516.20
Cases more than one year but upto two years old	1457	1344.99
Cases more than two years but upto five years old	794	865.20
Cases more than five years old	305	125.93
<b>Total</b>	<b>6674</b>	<b>4852.32</b>

*Figures furnished by commissionerates*

- The reported age-wise pendency was 38 per cent in terms of number and 48 per cent in terms of amount for cases pending adjudication beyond one year. These did not seem accurate since audit scrutiny had revealed that several cases transferred from one adjudicating officer to another consequent upon revision of monetary powers in October 2003 were reflected as fresh cases in MTR. Of total cases pending finalisation on 30 September 2004, 16 per cent involving 20 per cent of duty were pending for more than two years.
- In Delhi II commissionerate demand notice for Rs.65 lakh having been issued to M/s. Eskay Electronics India (Pvt.) Ltd. on 29 June 1988 was pending adjudication for more than 17 years.

**4.6 Micro analysis**

Number of cases pending adjudication beyond one year being high, an attempt was made by audit to ascertain the disposal pattern of cases by adjudicating officers during 2003-04. Position emerging from information furnished by 147 divisions/adjudication branches of the commissionerates is given in the following table: -

Cases required to be adjudicated within	Total clearances (No.)	Cases cleared out of the pendency as on 31 March 2003		Cases cleared out of the additions during 2003-04	
		No.	Percentage	No.	Percentage
Six months	14714	4745	32	9969	68
One year	6126	2539	41	3587	66

- Disposal of cases pending adjudication as on 31 March 2003 was only to the extent of 32 per cent in respect of cases required to be finalised within six months and 41 per cent in respect of those required to be adjudicated within one year.
- From disposal rate of old cases, it was thus evident that adjudicating officers tended to clear fresh cases at a faster rate than old cases, thereby allowing old cases to linger.

#### **4.6.1 Adjudication kept pending for want of administrative action**

Some of the cases involving high amount and pending adjudication for more than two years were reviewed in audit to ascertain reasons for delays in the context of the clause 'where is it possible to do so'. It was noticed that these were pending largely because of administrative delays. In most of them, it should have been possible to finalise adjudication, had the delays been addressed promptly by the department.

A few illustrative cases are given below: -

M/s. TISCO Ltd. in Jamshedpur commissionerate was served SCNs for Rs.45.91 crore and Rs.11.99 crore in August 1998 and May 2000 on grounds of evasion of duty by suppression of facts and undervaluation of product for captive consumption respectively. Section 33(A)(2) in Central Excise Act, inserted with effect from 13 May 2004, stipulates that the adjudicating officer shall not grant adjournment more than thrice to a party during adjudication proceedings. It was, however, noticed that in the former case, personal hearing was deferred four times before 13 May 2004 and thrice after 13 May 2004. In the latter case, personal hearing was deferred eight times before 13 May 2004 and thrice after 13 May 2004 all at the request of the assessee. Demands had not been adjudicated till the date of audit (May 2005). This inordinate delay of more than six and four years respectively in adjudication resulted in non-recovery of Rs.57.90 crore and financial accommodation to the assessee.

M/s. Rajam Industries Pvt. Ltd. and others in Chennai IV commissionerate were issued five SCNs between May 2001 and June 2003 for Rs.29.02 crore at the instance of director general of central excise intelligence after seizure of goods. All the above cases involving revenue of Rs.29.02 crore were assigned to commissioner of central excise, Chennai IV as common adjudicating authority by the Board only in September 2003. One show cause-cum-demand notice, for Rs.0.25 lakh was, however, yet to be served to the assessee. Thus substantial revenue was held up on account of administrative delay of small value case. This was pointed out to the department in May 2005, reply was not received till November 2005.

M/s. Bhandradri Minerals in Hyderabad IV commissionerate was issued 10 SCNs demanding duty of Rs.18.22 crore on account of mis-classification of 'calcinated lime' during the period between August 1999 and September 2003. On reasons for delay being enquired upon, commissionerate in their reply (August 2005) stated that clarifications had been sought from the Board but did not intimate letter and date.

## SECTION - 2 - CENTRAL EXCISE

M/s. Satayanarayana Plastics Industry having six units within common premises in Hyderabad IV commissionerate were issued four SCNs between 2 May 2002 and 6 January 2004 demanding duty of Rs.12.35 crore in connection with evasion of central excise duty by suppression of actual production and clandestine clearances. Personal hearing was conducted on 8 September 2004 after a period of two years from date of issue of SCN. During personal hearing, the assessee requested for copies of documents (handed over to IT department) for making effective representation. No action was taken by the department for supply of required documents to assessee. Instead, they were asked to approach IT department and were informed that personal hearing would be held again after perusal of records. Inaction of the department resulted in these cases lying pending for one year four months and three years.

M/s. IGPL in Belapur commissionerate was served with six SCNs during the period November 1999 to October 2002 demanding duty of Rs.26.45 crore on account of incorrect valuation of steam and waste water. Despite personal hearing being held on 4 March 2003, 24 July 2003 and 3 December 2004, adjudication orders were still to be issued.

Audit in para 8.4 of Audit Report for the year ending 31 March 2000 had pointed out incorrect grant of exemption to small scale sector by manufacturers of plywood in Cochin II commissionerate from April 1996 to June 1997. Director general (anti evasion) conducted searches on 23 September 1997, and SCN for Rs.7.68 crore was issued on 2 August 1999 by the then Madras commissionerate. The case was assigned to commissioner central excise, Calicut by the Board for purpose of adjudication on 29 August 2003 i.e. after a lapse of more than four years. The case files were, however, received in Calicut commissionerate only in July 2004 i.e. after a further lapse of nine months. The case was yet to be adjudicated till date of audit (May 2005).

M/s. Mohit Engineering in Delhi II commissionerate was issued SCN in May 1992 for Rs.1.39 crore on grounds of wilful mis-statement, suppression of facts, fraud with the intention to evade duty in contravention of central excise rules for availing concessional rate of duty, after director general (anti evasion) had found incriminating documents during searches on 9 July 1991. Scrutiny of the concerned files/records revealed that no action was taken till 9 June 2004 when department addressed the director general for documents relied upon. A copy of personal hearing notice placed in file revealed that notice was issued to assessee without mentioning date and time of appearance. Date of issue of notice too was not indicated in the office copy. Case has been delayed for more than 13 years because of inaction by the department.

#### 4.6.2 Pace of finalisation of high revenue cases was slow

Revenue-wise pattern of disposal of cases during 2003-04 in 127 divisions/adjudication cells of commissionerates was reviewed in audit and the following emerged: -

(Amount in crore of rupees)

Cases involving revenue	Opening balance as on 1 April 2003		Additions (2003-04)		Clearances		Percentage of clearances		Closing balance as on 31 March 2004	
	No.	Amt.	No.	Amt.	No.	Amt.	No.	Amt.	No.	Amt.
Upto Rs.5 lakh	6116	155.53	11347	363.28	12141	414.74	70	80	5322	104.07
More than Rs.5 lakh but not more than Rs.10 lakh	1246	93.24	1651	123.06	1869	140.18	65	65	1028	76.12
More than Rs.10 lakh but not more than Rs.20 lakh	1083	135.15	1595	220.43	1676	231.18	63	65	1002	124.40
Above Rs.20 lakh	3023	5362.34	4258	6584.92	4571	5332.91	63	45	2710	6614.35

- It was noticed that percentage of clearances both in terms of number and amount varied from 63 per cent to 80 per cent in respect of cases involving revenue upto Rs.20 lakh each.
- Percentage of clearances of cases involving revenue of more than Rs.20 lakh in terms of number was similar whereas percentage in terms of revenue involved was much lower at 45.
- This wide gap was indicative of the general tendency of adjudicating officers to deal with low revenue cases at the cost of keeping high revenue ones pending. As a result, pendency of high revenue cases (above Rs.20 lakh) has risen by almost 23 per cent and was in fact the only category where additions had outstripped clearance.

#### 4.6.3 De novo adjudication cases kept pending beyond time limit

Adjudication of cases remanded by appellate authorities for de novo adjudication are also required to be entered into the records as new cases and finalised within prescribed time limit as in the case of any SCN as per amended section 11A(2) of the Act. Position of pendency of de novo cases in 154 divisions/adjudication cells is given below in the table: -

**(Amount in crore of rupees)**

Number of cases pending including additions upto 31 March 2004		Clearances (from 2001-02 to 30 September 2004)		Cases pending as on 30 September 2004		Cases pending for more than one year	
Number	Amount	Number	Amount	Number	Amount	Number	Amount
1744	836.66	1223	495.01	521	341.65	301	317.52

- The percentage of cases pending de novo adjudication for more than one year as on 30 September 2004 was 17 in terms of number and 38 in terms of amount.
- While clearance in terms of numbers was to the extent of 70 per cent, clearances in terms of amount were only 59 per cent. This is indicative of cases involving high revenue being largely kept pending.
- In Visakhapatnam II, Ghaziabad and Nagpur commissionerates only 10, 46 and 49 per cent of total pendency (number-wise) was cleared respectively.

Concerned at the delay in adjudication of remanded back cases, Member (Legal and Judicial), CBEC in demi-official letter dated 11 August 2004 instructed chief commissioners to pay adequate attention to these cases and submit report on fortnightly basis.

Scrutiny of records of commissionerates, however, revealed that no such fortnightly report was being submitted. Lack of proper attention and monitoring at Board's level resulted in remanded back cases involving high revenue remaining un-adjudicated for long.

Some illustrative cases are given below: -

Demand of Rs.16.58 crore was confirmed by commissioner, Mumbai against M/s. Viacom Electronic Pvt. Ltd. in Vadodara II commissionerate in October 2001. On an appeal, CEGAT, Mumbai remanded back the case to jurisdictional commissioner, central excise in March 2003 who did not initiate any action to adjudicate the de novo case as original case records and files had not been received from the commissioner, Mumbai till date of audit (April 2005). Administrative delays in transferring required records had resulted in non-finalisation of the case and blockage of government revenue.

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CEGAT, Chennai in final orders dated 26 August 2002, remanded the case in respect of assessee M/s. PMP Steels Ltd., Amani Kondalampathy, Salem to commissioner, central excise, Coimbatore with directions that (i) commissioner re-adjudicate the matter within six months from the date of order; and (ii) the appellant/assessee file reply within three months from date of receipt of orders. CEGAT's orders were against confirmation of duty of Rs.4.12 crore by the commissioner, Coimbatore vide his order dated 31 December 2001. The case was transferred to Salem commissionerate on bifurcation of Coimbatore commissionerate. Personal hearing was postponed seven times at the request of the assessee, and was ultimately held on 31 July 2003 by commissioner, central excise, Coimbatore. No orders were, however, passed by commissioner-in-charge after personal hearing. Fresh personal hearing fixed from time to time was postponed five times on the request of the assessee. CEGAT, Chennai's orders to adjudicate within six months were thus violated even after a lapse of three years and two months (November 2005).

#### 4.6.4 Delay in issue of adjudication orders after personal hearing

The Board vide circular dated 26 July 1980 had issued instructions that in all such cases where personal hearing had been conducted it was necessary to communicate the decision immediately or within reasonable time of five days. Where for certain reason, above time limit could not be adhered to in a particular case, order should be issued within 15 days or at most one month from the date of conclusion of personal hearing. Above instructions of the Board were reiterated vide their circular dated 5 August 2003. It was further directed that chief commissioners and commissioners should devise suitable mechanism to ensure that Board's instructions are adhered to in letter and spirit and any failure to adhere to the prescribed time limit should be viewed seriously.

Position of issue of adjudication orders after personal hearing on the basis of information furnished by 219 adjudicating officers in 79 commissionerates is given in the table below: -

(Amount in crore of rupees)

Period	Total number of cases adjudicated	Within five days		After 5 days but upto 15 days		After 15 days but upto 30 days		After one month	
		No.	Percentage	No.	Percentage	No.	Percentage	No.	Percentage
2003-04	11541	904	8	3345	29	2992	26	4300	37

- In 37 per cent of the cases, adjudication orders were issued after one month from date of conclusion of personal hearing with delays ranging from a month to more than a year.
- In four divisions of Thane I, Aurangabad, Delhi III and Delhi IV commissionerates, all adjudication orders were issued after one month.
- No effective mechanism was devised by chief commissionerates. Resultantly, in 63 per cent of the cases, adjudication orders were issued after 15 days.

Chief commissioner, Vadodara vide letter dated 26 August 2003 directed commissioners to submit monthly report in the prescribed proforma in respect of such delays. Test check, however, revealed that no such report was being furnished to chief commissioner.

Some illustrative cases are given below: -

M/s. BPCL and M/s. HPCL in Tirunelveli commissionerates were issued SCNs in November 2002 involving amount of Rs.2.30 crore and Rs.1.64 crore respectively. Though personal hearing was concluded in March 2003, orders were passed only in September 2004. There

was thus administrative delay of over a year in issue of orders. This was pointed out to the department in December 2004, the reply was not received till November 2005.

M/s. Sterlite Industries (India) Ltd. in Tirunelveli commissionerate was issued seven SCNs from March 2002 to January 2004 involving an amount of Rs.17.95 lakh. Personal hearing was concluded in one case in December 2003 and in six other cases in July 2004. No adjudication orders were, however, passed till November 2005.

#### **4.6.5 Cases kept in call book were not adjudicated for want of clarifications by the Board**

As per administrative instructions dated 14 December 1995, demand cases pending adjudication can be transferred and kept in the call book, on specific instructions of the Board. These cases could be adjudicated only after necessary clarifications were issued by it.

Pursuant to PAC's recommendations, Board in their circular dated 28 May 2003 instructed all chief commissioners to monitor progress of disposal of call book cases specifically to see whether :-

- call book cases had been received by commissioners of central excise ;
- whether any appreciable progress was noticed; and
- whether there were any avoidable delays.

In course of review of demand cases in 79 divisions/adjudication cells, it was revealed that a large number of cases kept in the call book on specific instructions of the Board were pending finalisation for want of clarifications from the Board as per the details given in the table below: -

(Amount in crore of rupees)							
Cases more than five years old		Cases more than three years old but less than 5 years old		Cases less than three years old but more than one year old		Total	
Number	Amount	Number	Amount	Number	Amount	Number	Amount
84	85.42	234	194.99	511	1407.42	829	1687.83

- In Delhi II commissionerate, seven cases involving revenue of Rs.29.33 crore were pending in call book for more than five years.
- In Hyderabad II commissionerate a case involving Rs.32.02 crore was pending in call book for more than five years.

Board was responsible for overall monitoring of expeditious disposal of pending cases within prescribed time limit. It should, therefore, have reviewed the position and issued clarifications from time to time to finalise cases pending at its own instance in a fixed time frame. Inaction in the matter resulted in postponement of adjudication for a long period to the detriment of revenue.

A few cases are illustrated below: -

Board vide circular dated 28 August 2003 decided to further examine the matter relating to recovery of eight per cent of the price of exempted goods, when common inputs are used for both dutiable and exempted goods. Twenty five cases in seven divisions on this account were, therefore, transferred to call book in compliance with its instructions. Even after a lapse of more than two years, Board has not yet decided the matter. This has resulted in non-finalisation of adjudication cases involving revenue of Rs.286.12 crore.

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SCN issued to M/s. Toyota Kirloskar Motors in Bangalore III commissionerate involving duty of Rs.2.68 crore was transferred to call book as per instructions of the Board dated 12 June 2002 as it wanted to examine the issue of availment of exemption under notification No.2/2001, dated 27 January 2001 for Gujarat relief work. The Board have not yet taken a decision even though more than two years have lapsed since the orders withholding finalisation proceedings were issued.

#### **4.6.6 Cases remanded back by appellate authority after 11 May 2001 in violation of amendment**

In accordance with section 35A of Central Excise Act, 1994, as amended with effect from 11 May 2001, commissioner of central excise (appeals), shall after making such further enquiry as may be necessary, pass such order as he thinks fit and proper confirming, modifying or annulling the decision or orders appealed against. Power to remand back a case was thus done away with by amendment of section 35A with effect from 11 May 2001.

In course of review of 154 divisions/adjudication cell of commissionerates it was revealed that cases continued to be remanded back by the commissioner (appeals) even after amendment in section 35A with effect from 11 May 2001. The details are given in the table below: -

(Amount in crore of rupees)			
Cases remanded back after 11 May 2001		Cases not reflected in the MTR	
Number	Amount	Number	Amount
981	466.27	177	115.19

- The fact that commissioner (appeals) continued to remand back cases even after amendment of 11 May 2001 indicated that Act was being violated.
- It was also observed that 18 per cent of cases in terms of number involving 25 per cent of the amount so remanded back were not reflected by the concerned divisions in MTR, thereby mis-reporting position of pendency at the adjudication stage.
- Surprisingly, no corrective action was taken by the Board even though receipt of cases remanded back after 11 May 2001 continued to be reflected in MTR of the concerned divisions/adjudication branch of commissionerates.

### **4.7 Internal controls**

Audit evaluated efficacy of the department in monitoring performance of adjudication officers on a limited scale in selected divisions. The findings are given below: -

#### **4.7.1 Targets fixed for adjudicating officers not achieved**

Board vide their circular dated 5 May 2003 revised the target of adjudication for each adjudicating authority from 75 cases to 100 cases per annum. In their action taken note to the PAC, the Ministry assured that revised targets if adhered to, would very considerably wipe out existing pendency within a year.

Position with regard to achievement of the target in respect of 254 adjudication officers in test checked divisions/adjudication cells is given in the following table: -

No. of adjudicating officers	No. of cases pending finalisation including additions from 5 May 2003 to 4 May 2004	No. of cases finalised between 5 May 2003 to 4 May 2004	Closing balance as on 5 May 2004	No. of adjudicating officers not meeting the target
254	27363	18555	8808	195

- Seventy six per cent of the adjudicating officers did not meet the target of 100 cases per annum.
- Disposal rate on an average was approximately 70 cases per adjudicating officer against the target of 100 cases. This was even lower than the earlier target of 75 per adjudication officer per annum.

To ascertain extent of improvement in the clearance of cases audit also compared and analysed data relating to 'pre' and 'post' period of revised targets in respect of 254 adjudication officers.

The position is given in the table below: -

From 1 April 2002 to 31 March 2003			From 5 May 2003 to 4 May 2004		
Total cases	Clearances	Percentage	Total cases	Clearances	Percentage
21295	11492	54	28247	18978	67

- There was only marginal improvement of 13 per cent in clearance of cases after the revision of target from 5 May 2003 to 4 May 2004 as compared to the clearances during the period from 1 April 2002 to 31 March 2003.
- Having fixed the targets the Board did not constantly monitor performance of adjudicating officers to ensure that the assurances given to the PAC were fulfilled.

MTRs received from field formations containing details were required to be scrutinised at commissioner level before being compiled by director general (inspection) and put up to the Board. Surprisingly, this important aspect of the rate of disposal of cases by adjudicating officers was not monitored by them.

For want of effective monitoring and control by the Board the target of 100 per adjudication officer remained elusive and existing pendency could not be reduced to the extent envisaged.

#### ***4.7.2 Cases transferred due to revision of monetary limit for adjudication not reflected/shown as fresh cases in MTR***

For purpose of expeditious settlement of adjudication cases, the Board vide circular dated 1 October 2003, revised the monetary limit for adjudication of demand cases. Consequent upon such revision relevant files and records of the cases were required to be transferred to respective adjudicating authorities by 20 October 2003 and recast figures were required to be reflected in the MTR of October 2003, which was to be submitted in November 2003 in terms of para 11 of the Board's order *ibid*.

Test check of records of 87 divisions revealed that some of the cases transferred by originating divisions were not reflected in the MTR of the receiving adjudication authorities. It was also revealed that considerable number of cases received on account of transfer were shown as fresh cases in the MTR of the receiving adjudication officer. The details are given in the following table: -

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(Amount in crore of rupees)

Cases transferred		Cases not shown in MTR		Cases shown as fresh in MTR	
Number	Amount	Number	Amount	Number	Amount
3031	960.95	31	6.61	2338	814.37

- Pendency exhibited in MTR was, therefore, not reflective of actual pendency in such cases lying unattended.
- Also, depiction of 2338 transferred cases involving amount of Rs.814.37 crore as fresh cases in MTR resulted in distortion of the correct picture of cases pending finalisation beyond the statutory time limit. There was every possibility of these cases being vulnerable to further delays on account of there being no link to earlier pendency. Such a high percentage as 77 covering around 85 per cent of value revealed a system failure.
- Process of transfer of cases continued from October 2003 till well beyond May 2004 as against the instruction of the Board for it to be completed by 20 October 2003. Because of continued transfer of case files from one adjudicating officer to another for a longer period than anticipated, there was considerable delay in commencing process of adjudication. The chief commissioner, central excise Bhubaneswar also acknowledged this fact in communication to the Board citing such transfer to joint commissioners as one of the reasons for pendency.

Such lapses in process of transfer of case files were not adequately addressed by commissioners and director general (inspection) even at the stage of scrutiny and compilation of MTRs. Board should have taken extra care to ensure that all relevant cases files were transferred properly and recast figures correctly reflected in the MTR.

Thus due to lack of proper monitoring over process of transfer of cases, the revision of monetary limit for adjudication caused avoidable delay rather than expediting settlement of cases.

An illustrative case is given below: -

The Board, while revising the monetary limit for adjudication vide circular *ibid* clarified that in case different SCNs had been issued on the same issue answerable to different adjudicating authorities, all SCNs would be adjudicated by adjudicating authority competent to decide the case involving highest amount of duty. Assistant commissioner, central excise division II, Faridabad in Delhi III commissionerate issued three SCNs on the same issue to M/s. Food and Health Care Specialities, Faridabad on 19 October 2001, 11 January 2002 and 17 July 2002 involving Rs.18.56 lakh, Rs.5.13 crore and Rs.4.03 crore respectively. While cases involving Rs.5.13 crore and Rs.4.03 crore were transferred to the commissioner, Faridabad, case involving Rs.18.56 lakh was transferred to the additional commissioner, Faridabad. As the issue involved was common in all three cases, SCN dated 19 October 2001, on which no further action has been taken by additional commissioner, was also required to be transferred to commissioner. Resultantly, all the cases were pending for adjudication as on November 2005.

#### 4.7.3 Cases pending adjudication mis-reported

On PAC expressing serious concern over discrepancies in data relating to pending cases, the Board vide letter dated 23 May 2003 issued instructions for taking utmost care in compiling data while sending MTRs.

Test check of records of divisions, however, revealed that despite such instructions there were differences in the figures reflected in divisions with those in MTRs as on 31 March 2004 as per the details given in the table below: -

No. of divisions	(Amount in crore of rupees)			
	Pendency as per division/commissionerate records as on 31 March 2004		Pendency as shown in MTR as on 31 March 2004	
	Number	Amount	Number	Amount
10	1095	670.13	895	524.65

- There was thus incorrect/un-reconciled data of pendency to the extent of 200 number of cases involving amount of Rs.145.48 crore from commissionerates and then to the Board in 10 divisions.
- This had also resulted in presentation of incorrect picture of the actual pendencies to the Board.

#### **4.8 Orders of the Board for analysis of pending adjudication cases not complied with**

The Board vide letter dated 23 May 2003 instructed commissioners and chief commissioners to analyse reasons for pendency particularly where the pendencies were unduly high and disposals were not prompt.

It was noticed that pendency was high in Vadodara, Ranchi, Mumbai II and Chandigarh chief commissionerates. Chief commissioner Vadodara wrote to commissioners on 10 September 2003 and 12 February 2004 emphasising the need for clearance of cases more than one year old. However, no corrective/remedial measures for early disposal of these pendencies were suggested by chief commissioners.

Chief commissioner Mumbai II intimated audit that commissioners had been directed to carry out proper planning in order to liquidate pendencies in time bound manner, without specifying whether analysis of pending cases was done at his level and whether any corrective remedial measures were suggested. There was no response from chief commissioners Ranchi and Chandigarh.

Chief commissioner central excise, Coimbatore zone, had chalked out an action plan for 2003-04 wherein commissioners were advised to complete the adjudication of all cases pending as on 1 April 2003 by 31 December 2003. Audit, however, found out that there was no improvement in liquidation of adjudication cases. Chief commissioners, central excise Nagpur and Chennai (September 2004) did not analyse pendency but simply forwarded the Board's circular to subordinate offices with instructions to reduce the number of pending cases. No specific instructions suggesting corrective/remedial measures were found issued.

From information furnished by commissionerates under chief commissioner, Vadodara and Mumbai II, it was noticed that the Board had graded the commissionerates as 'outstanding', 'good', 'satisfactory' and 'poor' during the year 2002-03 based on performance of each commissionerate in response to Board's direction. It was noticed that while Mumbai II commissionerate showing clearances of 48 per cent cases during 2002-03 was awarded 'outstanding', the Mumbai I commissionerate showing clearance of 71 per cent of the cases

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was given 'good' grading. The basis on which the grading was awarded was, however, not made available to audit by commissionerates.

#### 4.9 Non-maintenance of unconfirmed demand registers

The Board issued instruction on 28 July 1980 that a register of show cause-cum-demand notices for unconfirmed demands should be maintained in the prescribed proforma to keep watch over their speedy finalisation.

It was noticed that in Chennai I, Tirunelveli, Jaipur I and Jaipur II commissionerates no monthly closing showing opening balance, receipt, clearance during the month and closing balance at the end of the month were arrived at showing break-up for the actual pending cases at the end of each month. De novo demand cases and cases received on transfer from other adjudicating officers were also not included in SCN register. In Madurai II division 15 cases involving an amount of Rs.3.88 crore were not exhibited in unconfirmed register. In Jamshedpur division I of Jamshedpur commissionerate only 29 cases were found to be entered in the register against the transfer of 70 cases from Jamshedpur III division.

In the absence of complete details in SCN registers and due to improper maintenance of records, correctness of pendency reflected in the MTR vis-à-vis actual demand cases pending in the SCN register was in doubt.

#### 4.10 Lack of co-ordination between Board and field offices/within the wings of the department

In the course of review, it was noticed that some cases were pending adjudication due to lack of proper co-ordination between Board and field offices as also within the various wings of the department in furnishing necessary clarifications/documents to each other. A few cases are illustrated below in the table: -

(Amount in crore of rupees)

Commissionerate	Name of the assessee	Date of issue of SCN	Amount involved	Reasons for pendency
Delhi I	M/s. Kuber Tobacco	31 July 2000	11.99	Documents from anti evasion wing awaited
Delhi I	M/s. Hindustan Machine	June 1991	4.17	Documents from DGCEI awaited
Goa	M/s. Konkan Draffin (Pvt.) Ltd.	28 May 2003	2.42	Documents from DGCEI, Bangalore awaited
Ahmedabad I	M/s. Maradia Steel Ltd.	July 1998 to April 2000	1.22	Clarification from the Board awaited
Chennai I	M/s. Chennai Petroleum Corporation Ltd.	July 2003	0.90	Refund claim was pending with Customs department

#### 4.11 Conclusion

With almost half the amount involved in demand cases lying un-adjudicated well beyond one year and the provision of qualified time limit not deterring adjudicating officers from allowing older cases to linger, the purpose of fixing time limit was not fully served. Adjudication officers were prone to postponing finalisation of demands by

**taking recourse to ‘where it is possible to do so’. Various measures initiated by the Government to speed up finalisation of demand cases did not meet with full success largely due to lack of consistent monitoring and insufficient internal controls.**

#### **4.12 Recommendations**

**Government may consider laying down guidelines specifying circumstances under which it was not possible to finalise demand within the statutory period and make it incumbent upon each adjudication authority to justify each such case to the Board.**

**Board may also fix appropriate time limit for issuing clarifications on the cases kept in the call book at its behest.**

**In view of large scale transfer of cases due to revision of monetary powers, there is an urgent need for recasting of MTRs by all the commissionerates to reflect correct picture of age-wise pendency.**

**In addition to fixing a numerical target for disposal of cases, Board may stipulate financial target as well to take care of the tendency of adjudicating low value cases.**

**Time bound programme of concerted efforts to bring down older pendencies to manageable levels.**

The above observations were pointed out to Ministry in October 2005. Member (Central Excise) at ‘exit conference’ stated (November 2005) that corrective steps would be taken after detailed examination of audit observations wherever necessary.