CHAPTER I : HUNDRED PER CENT EXPORT ORIENTED UNITS (EOUS)

A review of 565 functional and 386 closed/de-bonded EOUs was conducted in audit to evaluate whether these functioned as per existing norms and regulations and had achieved intended/prescribed export obligations (EO), commensurate with duty saved by these units on imports. Total duty foregone by the Government on EOU Scheme was Rs.37,384 crore, during the period 1997-98 to 2004-05. Audit review has identified a few critical risks, which if not mitigated could impact adversely in achieving the mandated goals and objectives of EOUs. Nine constructive and implementable recommendations have been given to remedy the systemic weaknesses noticed by audit. If implemented, these would mitigate the risk of similar irregularities in future. The Ministry of Finance was in agreement (till January 2007) with three recommendations and specific replies to the remaining six recommendations were awaited. The total additional revenue which could come to the Government as a result of this audit intervention (review) is Rs.1,125.29 crore. Some of the major findings are abstracted below:-

1.1 Highlights

- **Macro data regarding total number of EOUs approved, those functional, duty foregone etc. was inconsistent, incomplete and unreliable. As a result, there was minimal assurance that the units were monitored by the departments to ensure that these met the objectives of their formation and functioned within the existing norms and regulations.**

(Paragraph 1.6)

- **Duty amounting to Rs.285.81 crore was not levied/short levied on imports effected, in violation of applicable conditions.**

(Paragraph 1.7)

- **The department did not recover duty of Rs.284.72 crore and interest of Rs.289.24 crore from 47 EOUs that failed to achieve their prescribed EO/net foreign exchange earning as a percentage of exports (NFEP).**

(Paragraph 1.9)

- **Duty amounting to Rs.84.37 crore was recoverable as 76 EOUs had effected irregular/excess domestic tariff area (DTA) sales, in contravention of Exim Policy/notifications.**

(Paragraph 1.10)

- **Central sales tax (CST) and drawback amounting to Rs.78.57 crore on DTA sales made by 95 EOUs was reimbursed irregularly in violation of the Exim Policy and the Handbook of procedures (HBP) Volume-1.**

(Paragraph 1.13)

- **There was variance between export performance figures as recorded by Revenue Department (Customs) and Development Commissioners (DCs) in Ministry of Commerce. Infact, the performance {free on board (FOB) value of exports} was inflated/over stated in records of DCs which formed the very basis of their evaluation by the DCs. Accordingly, the risk of incorrect decisions based on inflated export performance was left unmitigated.**

(Paragraph 1.20)

1.2 Introduction

The scheme of 100 per cent EOUs was introduced in 1980 with the objective of boosting exports by generating additional production capacity. It was primarily designed for promotion and growth of manufacture and export of value added products. In order to make these units cost efficient, facilitate their free access to foreign technology and encourage them to venture into foreign markets on a large scale, a wide range of incentives have been provided to these units. The scheme provides for duty free import/procurement of capital goods, raw materials, components, packing materials, consumables, spares and various other specified categories of equipment including material handling equipments. These units have to execute a bond to fulfil the EO and abide by the conditions of notifications and Exim Policy and to pay on demand the duty leviable on goods, as are not used in the manufacture of goods for export. The EOUs should achieve, the level of value addition (VA) as specified in the letter of permission (LOP) or positive net foreign exchange earnings specified in Exim Policy 2002-2007, as applicable.

1.3 Implementation of the Scheme

EOUs basically function under the administrative control of the DC of special economic zones, (SEZs) formerly known as export processing zones (EPZs). The jurisdictions are notified by the Ministry of Commerce. In all, there are seven DCs at Mumbai, Gandhidham, Chennai, Cochin, Visakhapatnam, Noida and Kolkata. All policy decisions relating to the EOUs are taken by the Board of Approvals (BOA) set up under the Ministry of Commerce and Industry. The provisions of the Customs and Central Excise law, pertaining to EOUs are administered by the Commissioners of Customs and Central Excise under the control of Central Board of Excise and Customs (CBEC). Monitoring achievement of VA/NFEP and, in default, levy of penalty under Section 11(2) of Foreign Trade (Development and Regulation) Act, 1992 are within the jurisdiction of the DCs functioning under the Ministry of Commerce. Recovery of customs duty in case of shortfall in VA/NFEP is within the purview of concerned commissionerates of Customs/Central Excise. With the approval of DC/BOA, EOU can be de-bonded on their inability to achieve EO/VA or other requirements, subject to levy of penalty and payment of duty applicable at the time of de-bonding.

1.4 Audit objectives

Audit findings from an earlier review on 100 per cent EOUs were reported in Audit Report No.10 of 1997. The present review was conducted through test check of records in the offices of seven DCs and Customs/Central Excise divisions to examine if the:-

(a) EOUs had taken the benefit of the scheme by fulfilling import conditions as laid down in the relevant notifications/Exim Policies/Hand book of procedure (HBP) Volume-1.

(b) EOUs had obtained benefits commensurate with duty foregone.

(c) Internal control mechanism to monitor the activities of the EOUs was adequate and effective.

1.5 Scope of audit

A review for the period 1997-1998 to 2004-2005 of 565 functional and 386 closed/de-bonded EOUs, was conducted in audit between July 2005 and May 2006 to evaluate whether these units met the intended objectives. Duty foregone by the Government on EOU Scheme during the period was Rs.37,384 crore.

AUDIT FINDINGS AND RECOMMENDATIONS

1.6 Unreliable macro data

1.6.1 Functional status of EOUs

Statistical information furnished by seven DCs and 64 commissionerates of Customs and Central Excise, on the numbers of units approved, those functional, closed and de-bonded during the above period were as under: -

Table - 1 : Position of EOUs and amount outstanding against closed/ de-bonded units as on 31 March 2005

(Amount in crore of rupees)

No. of valid approvals	No. of functional units	No. of non functional units	No. of units de-bonded in principle	No. of units finally de-bonded	No. of closed/ de-bonded units from which duty, interest and penalty is recoverable	Amount outstanding		
						Duty	Interest	Penalty
5,637	3,209	2,007	549	297	451	1,011.37	44.24	568.96

Audit noticed that the macro data provided, suffered from following inconsistencies:-

(a) Out of 5,637 approved units, 3,209 were functional, 2,007 non functional and 549 were de-bonded in principle. Accordingly, 128 units {(3,209 + 2,007 + 549) – 5,637 = 128} may be existing without valid approval unless the data of approved units itself is incorrect. There is therefore, minimal assurance that the units were monitored by the department to ensure that these met the objectives of their formation and functioned within the existing norms and regulations.

(b) Number of units in operation was more than the number of valid approvals in Surat-II, Daman, Hyderabad-II, Hyderabad-III, Visakhapatnam-I and Tirunelveli commissionerates.

(c) Commissionerate wise figures were not furnished for Cochin (Cus), Cochin (CE), Calicut (CE), Trivandrum (CE), Chandigarh, Jalandhar and Ludhiana field formations.

(d) A sum of Rs.1,624.57 crore on account of duty, interest and penalty remains to be recovered from 451 closed de-bonded units.

1.6.2 Duty foregone

Table - 2 : Position of imports/export and customs duty foregone

(Amount in crore of rupees)

Years	No. of units	Value of imports	Customs duty foregone	Value of exports prescribed	Value of exports realised
1997-98 to 2004-05	7,683	62,112.03	26,667.23	66,480.89	1,09,836.64

Information furnished by 69 commissionerates relating to duty foregone revealed following inconsistencies:-

(a) Number of units engaged in imports/exports was more than the total of 5,637 approved units shown in table-1 rendering the data unreliable.

(b) Export proceeds realised in Bangalore II (CE) and Mysore commissionerates were 12 and six times higher than the value of export prescribed respectively. The reasons of these wide variations were not ascertainable.

(c) Commissionerate wise figures for Chandigarh, Jalandhar and Ludhiana were not furnished.

1.6.3 Outstanding confirmed demands

In addition, audit also ascertained whether the department was proactive in recovering dues against units that had closed and not achieved the prescribed VA/EO etc.

Audit verified that a demand of Rs.440.85 crore (duty Rs.311.01 crore, interest Rs.4.55 crore and penalty Rs.125.29 crore) was outstanding for periods upto 12 years from the dates of adjudication in respect of 194 EOUs in seven SEZs/26 commissionerates. This is indicative of inadequate follow up action by the department, once the demands were confirmed. There is a need to urgently act to recover Government dues pending since long.

The Ministry acknowledged (January 2007) the concern of audit and stated that in a large number of cases, demands were outstanding on account of factors beyond the control of department. However, close monitoring was being carried out for recovery of outstanding dues, wherever legally possible.

Recommendation No.1

Ministry of Commerce should re-verify/reconcile the number of units approved, functional/closed and that de-bonded as a first step to effectively monitor functions of these units, in close co-ordination with department of revenue so that timely and effective action could be taken for effecting recoveries, wherever due.

The Ministry of Finance replied (January 2007) that reconciliation would need to be primarily carried out by Ministry of Commerce as Development Commissioners issue LOP to EOUs, monitor their export performance and permit de-bonding.

1.7 Non/short levy of duty on imports effected in violation of conditions of notifications/LOPs

Para 4.4 of Appendix 14-I of HBP Volume-1 (2002-07) provides that only project having minimum investment of Rupees one crore and above in building plant and machinery shall be considered for establishment under EOU scheme. Furthermore,

- An EOU may import free of duty, all types of goods including capital goods, as defined in the policy, required by it for manufacture, services, production, processing or in connection with export goods, provided these are not prohibited items of imports.
- The units shall also be permitted to import goods, including capital goods, free of cost or on loan basis.
- The EOUs may on the basis of a contract between the parties, source the capital goods from a domestic/foreign leasing company.
- EOUs were allowed to import capital goods duty free subject to the condition that they pay on demand by customs officer, duty leviable on goods and interest as applicable, if such goods are not proved to the satisfaction of Assistant/Deputy Commissioner to have been installed/used for manufacture of goods/services for export within the bonded premises (para 6 of notification No.53/97-cus dated 3 June 1997 and para 5 of legal undertaking – LUT, Appendix 16 B).
- At the time of import/procurement, EOU should hold valid licence i.e. LOP and duty free goods should be utilised for manufacture/service as specified in LOP.
- Items imported/procured from DTA are specifically covered under notifications No.53/97-cus, 52/2003-cus, No.1/95-CE and 22/2003-CE respectively as amended from time to time.
- EOU should execute a general (B-17) bond, binding it to pay on demand the duty exempted, on violation of conditions subject to which the concession was availed.

Audit check of records pertaining to 86 EOUs in the jurisdiction of seven SEZs revealed that duty foregone amounting to Rs.285.81 crore was not levied/short levied, despite imports having being made in violation of the applicable conditions.

Table - 3 : Foregone duty not levied/short levied on imports effected in violation of applicable conditions

(Amount in crore of rupees)

Sr. No.	Irregularities	No. of units	Assessable value	Duty involved	Interest	Remarks
1.	Irregular imports/ procurement from DTA in violation of conditions of notifications, circulars etc.	23	5.31	5.69	-	Assessable value of imports made by four units is not available.
2.	Imports without valid LOPs/LUTs.	16	87.95	10.25	-	Department reported recovery of Rs.1.67 lakh in one case.
3.	Non fulfilment of conditions of LOP.	14	437.42	171.08	-	-
4.	Non levy of duty on goods received short in EOUs when compared to quantity declared in import documents.	6	-	0.05	-	Department reported recovery of short levy.
5.	Import of raw material for production of goods in excess of capacity mentioned in LOP.	10	15.90	84.13	-	Assessable value of four EOUs of Bangalore and one unit of Vadodara-I not available.

6.	Imports of capital goods/raw material not put to use for manufacturing purpose.	6	4.73	2.90	2.66	Interest from February 1997 to March 2006 for only one unit.
7.	Improper utilisation of capital goods	3	37.31	9.63	-	-
8.	Import against export of prohibited goods, non utilization of goods during validity of warehousing period, grant of EOU status to units having investment of less than Rs.1 crore, import of 2nd hand capital goods more than 10 years old and imports in excess of standard input output norms (SION).	8	21.11	2.08	-	Duty of one unit of Chennai having substantial imports not quantified.
	Total	**86**	**609.73**	**285.81**	**2.66**	

In seven cases of Belapur and Rajkot commissionerates, department reported recovery of duty Rs.7.09 lakh and in one case of Pune-III commissionerate, duty of Rs.95.68 lakh was confirmed.

A few illustrative cases are abstracted below:-

According to para 9.2 of the Exim Policy 1997-2002 read with notification No.53/97-cus, exemption from payment of customs duty is allowed to EOU only for the purpose of manufacture of articles for export out of India. Chief Commissioner of Customs and Excise vide a circular No.31/2002-CC (HZ) AE had instructed prevention of utilization of duty free raw materials for research and development purposes.

M/s. Orchid Chemicals and Pharmaceuticals Ltd., was issued a LOP in September 1992 for manufacture of bulk drugs at Alathur, Chengalpattu district in Tamil Nadu. Subsequently, EOU was permitted to manufacture new drugs and drug intermediates at the Alathur unit and also at Sholinganallur unit. While the warehouse licence under Section 58(2) of the Customs Act, 1962 and in-bond manufacturing licence under Section 65, ibid for the EOU at Alathur unit was issued by the Assistant Commissioner (AC) of Central Excise, Chengalpattu Division, the said licences for the Sholinganallur unit were issued by the AC, Custom House, Chennai. According to para 9.37 (vi) of HBP Volume-1, 1997-2002, the DC was empowered to include an additional location only when the unit and its additional location fell under the same customs circle. Since the unit at Alathur and its additional location at Sholinganallur did not fall under the same customs circle, inclusion of additional location was prima-facie, not in order.

Notwithstanding the above, annual accounts of Sholinganallur unit for the year 1998-99 revealed that the unit was functioning to develop new products, optimize production yields, enhance quality in oral and sterile cephalosporin, patent the novel development in India and abroad and to conduct pre-clinical studies as an exclusive Research and Development (R and D) centre from 1997-98 onwards.

It is thus, evident that no manufacturing activity was carried out at Sholinganallur and it was only functioning as R and D centre having contractual R and D programmes with a leading overseas pharmaceutical company.

As no manufacturing activity took place in the R and D unit, it was not eligible to duty free benefits of Rs.3.37 crore availed on the imported/indigenous capital goods/raw materials for R & D centre and the same was recoverable.

According to provisions of para No.9.5 of HBP Volume-1, the LOP/Letter of Intent (LOI) shall be construed as a licence for all purposes under the scheme, including procurement of raw materials, and consumables. The overall validity of the LOP/LOI is five years from the date of commencement of commercial production, which is extendable upto five years at a time by the DC. The LOP once issued shall automatically lapse, if an application for extension of validity is not made, before the expiry of its validity.

M/s. Patspin India Ltd., Kanjicode was issued LOP on 23 January 1991 for manufacture of 100 per cent cotton yarn, which was further renewed for five years i.e. up to 11 February 2001. Next LOP was issued on 7 April 2004 valid for five years from 18 January 2004. Thus, the period from 12 February 2001 to 17 January 2004 was not covered by the LOP and the import of 8.41 million tons of raw cotton valued at Rs.67.27 crore made by the unit during aforesaid period was not covered by a valid licence. Accordingly, the unit was not eligible for duty concession of Rs.5.39 crore and the same was recoverable.

M/s. Vatan Textiles, an EOU (Aurangabad) was issued LOP in October 1993 for manufacture and export of woven Jacquard Upholstery Fabrics. LOP was valid for a period of three years, and was further extended up to October 1997. However, unit did not start production even in the extended period nor did it apply for renewal of LOP. The unit had started commercial production in August 1998 without any valid LOP. The LOP was renewed in December 2003. Thus, during the period between November 1997 and November 2003, the unit continued to operate as an EOU without valid LOP and had made duty free imports of capital goods worth Rs.3.21 crore and raw materials of Rs.56.79 lakh. The duty concession granted on import of capital goods and raw materials amounting to Rs.1.98 crore was, thus, not in order and required to be recovered. Operation of the unit without valid LOP indicated lack of proper follow up of procedure by Customs, Central Excise and DC.

Para 9.5 of HBP Volume-1 1997-2002 and para 6.6(b) of the Exim Policy 2002-07 provide that LOP/LOI issued to EOUs by concerned authority would be construed as a licence for all purposes including procurement of raw materials, consumables etc. Para 9.6 and 6.6(a), ibid provide that the LOP shall specify the items of manufacture/service activity, annual capacity, projected annual performance, NFEP, limitations, if any, regarding sale of finished goods, by products and rejects in the DTA and also impose such conditions, as may be required.

Two EOUs (Vadodara-I and II) and four EOUs (Rajkot CE) manufactured the items for export exceeding their annual capacity as specified in the LOP issued to them. The EOUs had not obtained the enhancement in annual capacity which required submission of revised project reports to concerned authority. Duty foregone on excess procurement of raw material consumables worth Rs.15.90 crore was Rs.9.38 crore, which was recoverable.

M/s. Arintex Global Ltd. was granted LOP on 26 September 1996 for manufacture and export of dyed yarn, knitted fabrics/garments. From the import bond register maintained by the unit, it was noticed that the unit did not take up any manufacturing activity till April 2001 and was simply doing trading activity of imported/indigenously procured goods. The unit imported capital goods i.e. knitting machines, spares, air filter, etc. worth Rs.2.86 crore between February 1997 and July 2003. The unit started commercial production in May 2001 and

made physical exports of Rs.17.23 lakh and deemed exports worth Rs.46.15 crore during 1999-2000 to 2001-02.

Exports of Rs.6.15 crore made prior to commencement of commercial production were not eligible for counting against EO/VA. Deemed export of Rs.31.85 crore was made to a SEZ unit by transfer of readymade garments purchased from M/s. Madhav Textiles Ltd. without any actual value addition. Another export of Rs.8.32 crore was made after importation of goods from M/s. Frost International on high sea sale basis, without any value addition. Apart from these, no other exports were made by the unit. Hence, it is clear that the EOU has not put to use the capital goods for manufacture of any export goods. Having failed to use capital goods within five years of operation of the unit for manufacturing export goods, the unit was liable to pay duty amounting to Rs.1.55 crore along with interest of Rs.2.66 crore.

In two cases of CSEZ, Kerala, the Ministry replied (January 2007) that the demand notices for Rs.5.07 lakh were issued. Ministry, in seven cases under "irregular imports/procurement from DTA", replied that duty free imports were permissible as inputs, being in the nature of capital goods, which were procured after approval of Development Commissioner/Joint Chief Controller of Imports and Exports. Reply was not tenable as imports/procurements were not covered under notification No.53/97-cus and 52/2003-cus.

Recommendation No.2

Duty free irregular imports made by EOU's are a huge drain on the Government revenue. There is an urgent need to put in place a workable co-ordinated mechanism between Commerce and Finance Ministries, to detect such lapses and recover duty in time.

1.8 Non commencement of commercial production

According to condition 3 of Appendix 16D of Exim Policy 1997-2002, the LOP issued to EOU is valid for three years, within which unit should implement the project and commence commercial production, unless extended by the competent authority. Customs notification No.53/97 dated 3 June 1997 provides for exemption from payment of duties, provided that importer carries out the manufacture/production and exports out of India such manufactured goods, within a period of one year from the date of importation or within such extended period as the proper officer may allow. In the event of non-fulfilment of conditions, the unit is liable to pay on demand the duty involved on imported goods, besides interest from the date of importation till the date of payment of such duties.

Audit scrutiny revealed that four units in two SEZs/commissionerates did not utilise the imported goods worth Rs.12.68 crore for a period ranging from seven to 12 years from the issue of LOP/date of imports. These units were, accordingly, liable to pay duty of Rs.4.78 crore besides interest of Rs.1.52 crore. No such duty was demanded. Of these, two units of Chennai (Sea) have been closed and are under the purview of debt recovery tribunal for the dues payable by these units to banks.

1.9 Failure to fulfil EO/achieve NFEP or NFE

Paragraphs 9.5 of Exim Policy 1997-02 and 6.5 of Exim Policy 2002-07 read with their respective Appendix-I, prescribed certain export performance/percentage addition to the

imported goods, for EOUs to achieve. Further, in the Exim Policy 2002-07, the requirement of EP has been done away with and in the place of net foreign exchange earning as a percentage of exports, the concept of positive net foreign exchange earning has been introduced with effect from April 2003. Moreover, only the items of manufacture for export specified in the LOP/LOI shall be taken into account for calculation of NFEP and EP.

The units, whose investment in plant and machinery was Rs. five crore and above, were required to achieve minimum EP of US $ 3.5 million or five times of Cost Insurance Freight (CIF) value of imported capital goods (three times from April 2000). In all other cases, the EP was three times of CIF value of imported capital goods or one million US dollars (i.e. Rs.four crore approximate), whichever was higher.

Calculation of NFEP/NFE

NFEP shall be calculated annually and cumulatively for a period of five years from the commencement of commercial production, according to the following formula:-

$$NFEP = A\text{-}B/A \times 100$$

Where NFEP is net foreign exchange earnings as a percentage of export.

'A' is the FOB value of exports by the EOU;

'B' is the sum total of CIF value of all imported inputs, capital goods and the value of all payments made in foreign exchange by way of commission, royalty, fees, dividends, interest on external borrowings during the first five year period or any other charges. "Inputs", mean raw materials, intermediates, components, consumables, parts and packing materials.

Positive NFE with effect from 1 April 2003

According to Exim Policy, 2002-2007, the EOU shall be a positive net foreign exchange earner. NFE shall be calculated cumulatively for a period of five years from the commencement of production according to the formula given below:-

$$\text{Positive NFE} = A - B > 0$$

Where NFE is net foreign exchange earning.

Failure to fulfil EO/achieve NFEP or positive NFE would make the EOUs liable to pay duty along with interest to the revenue authorities in addition to penalty, if any, imposed by the jurisdictional DC.

Test check of records relating to EOUs of seven DC's revealed that 21 EOUs could not fulfil the EO prescribed for them and 26 EOUs failed to achieve the prescribed NFEP/NFE. NFEP of 16 units was negative i.e. below the value of their imports. The jurisdictional commissionerates did not recover duties amounting to Rs.284.72 crore, besides interest amounting to Rs.289.24 crore as required under relevant provisions of Exim Policy and notifications.

A few illustrative cases are narrated below: -

M/s. Akzo Noble Non Stick Coating Ltd. (Ahmedabad III-CE) was granted LOI by SIA (EOU Section in the Ministry of Industry), on 18 August 1997. According to LUT, the unit was required to earn foreign exchange of US$ 1,28,59,180 (Rs.59.15 crore) within five years against which unit could export goods worth Rs.33.14 crore only, resulting in short fall in EO

by Rs.26.01 crore. Proportionate duty recoverable on imported raw material worked out to Rs.4.63 crore.

M/s. PML Industries (Chandigarh) was issued LOP for processing of buffalo meat and the unit commenced commercial production in March 1996. Against the import of capital goods worth Rs.26.27 crore, minimum EP of Rs.131.34 crore was required to be achieved between March 1996 and March 2001. Audit scrutiny revealed that the EP of the unit for the above period was Rs.103.17 crore. Thus, there was shortfall in achievement of minimum EP to the extent of Rs.28.17 crore. The unit was liable to pay Rs.4.61 crore, being proportionate duty on imported plant and machinery, spares and consumables besides interest of Rs.4.36 crore (upto June 2006). However, the unit was granted extension for a further period of five years to continue as an EOU without initiating any action for non fulfilment of EP.

M/s. Hi Tech Medical Products, Gida, Gorakhpur was granted LOP on 22 September 1995 and started commercial production in March 1997. The unit exported goods valued Rs.16.19 crore against EO of Rs.41.58 crore, resulting in shortfall of Rs.25.39 crore. According to LOP, unit was required to achieve the value addition of 42 per cent, whereas it could achieve only 30.07 per cent. Since the unit could not fulfil prescribed EO/VA, it was liable to pay duty of Rs.3.34 crore foregone on imported capital goods valued at Rs.8.86 crore. In addition, interest and penalty are also leviable.

M/s. Intimate Fashions (I) Pvt. Ltd. was approved to operate as EOU in July 1999 to produce/export ready-made garments with an annual capacity of 30 lakh pieces. The unit was required to achieve NFEP of 21.02 per cent based on projections given by them against 20 per cent NFEP prescribed in Appendix-I of the Exim Policy 1997-2002 (31 March 1999).

The unit commenced production on 1 July 1999, and the EO period was up to 31 March 2004. From the accounts available with the DC, Madras Special Economic Zone (MSEZ), compiled on the basis of the annual performance reports (APR) furnished by the unit, it was noticed that unit had achieved prescribed NFEP. However, on scrutiny of records maintained at the unit, it was noticed that NFEP achieved by the unit was only 18 per cent, which was lower than the minimum NFEP of 20 per cent. The difference in the NFEP was on account of under reporting of expenditure under the head "other outflow of foreign exchange", covering payments such as dividends, foreign agency commission, foreign travel, etc. The actual expenditure under this head was Rs.75.02 crore against Rs.6.79 crore, short reported by the unit to DC/MEPZ.

As the unit had not achieved the minimum prescribed NFEP, it was liable to pay the proportionate duty amounting to Rs.8.17 crore on raw materials and consumables worth Rs.161.15 crore imported duty free.

M/s. Contour Apparels (Bangalore), a garment manufacturing unit was issued LOP (May 1996) with stipulated VA of 31 per cent. The unit in its annual performance report claimed achievement of positive NFEP which was accepted by DC, CSEZ during the period from 1996-97 to 2004-05. Audit scrutiny, however, revealed that VA was actually negative, ranging between (-) 1.91 to (-) 372.22 per cent during the aforesaid period, after taking into account the value of raw materials of Rs.114.95 crore received (upto 2000) by the unit free of charge, which had to be taken into account while calculating the NFEP, according to provisions of Annexure-I of Appendix-16E of HBP Volume-1.

Due to non-achievement of NFEP and EP, duty foregone amounting to Rs.143.35 crore and interest of Rs.258.65 crore (upto March 2006) on the imported and indigenous goods worth

Rs.270.09 crore was recoverable. The unit is also liable to penal action for violation of policy provisions.

The Ministry replied (January 2007) that no action was initiated against the EOU as the same was requested by CSEZ vide their dated 21 January 2001 and that their final clarification was still pending.

Recommendation No.3

Ministries of Commerce and Finance should strengthen their internal control mechanism and coordination to monitor that the EOUs achieve their prescribed VA/EO failing which the duty foregone along with interest and penalty leviable under Customs Act/Exim Policy should be recovered promptly.

The Ministry replied (January 2007) that provisions already exist for concurrent joint monitoring to review the performance of EOUs by the DC and concerned Customs/Central Excise officers in terms of Appendix 14-IG of HBP (Volume-1). Ministry further replied that CBEC vide circular No.35/2001-cus dated 15 June 2001 and circular No.41/2001-cus dated 23 July 2001 had also issued similar instructions to field formations. Reply of the Ministry further corroborates audit recommendation of strengthening joint monitoring mechanism, implementation of which was apparently weak.

1.10 DTA Sales

Paragraph 9.9 (b) of the Exim Policy 1997-02 and 6.8(b) of 2002-07 provide that the entire production of an EOU is to be exported, subject to following conditions:-

- Upto 50 per cent of FOB value of exports of goods/services (25 per cent upto March 1999), may be sold in DTA on payment of applicable duties and fulfilment of minimum NFEP prescribed in Appendix I of Exim Policy.
- Rejects may be sold in DTA upto five per cent of FOB value of exports within the overall 50 per cent entitlement on prior intimation to Customs authorities.
- No DTA sale shall be permissible in respect of motor cars, alcoholic liquors etc. EOU may sell finished goods in DTA over and above the level permissible against payment of full duties, provided the unit achieved the stipulated NFEP and export performance/NFE.
- Gem and jewellery units may sell upto ten per cent of the FOB value of exports during the preceding year. Units dealing in instant tea in the form of tea bags or bulk are eligible for DTA sales upto 20 per cent of FOB value of exports.
- If a unit manufactures and exports several products, bunching of such products as provided in para 9.24 of HBP Volume-1 for disposal in DTA are permitted provided the total sale effected, is within the overall ceiling of unit's DTA sale entitlement, stipulated in LOI/LOP. The entitlement will be determined in totality and not with reference to specific items.

Sale in DTA by EOUs is a post export entitlement subject to achievement of minimum cumulative NFEP/NFE and is to be availed of within three years of its accrual. According to proviso of Section 3(1) of Central Excise Act, duty payable in case of DTA sale shall be 50 per cent of aggregate duties of Customs payable if these were imported or normal excise duty payable if these were produced in India, whichever is higher (notification No.23/03-CE dated

31 March 2003 and earlier notification No.2/95-CE dated 4 January 1995). Clause (g) of Appendix 42 of HBP Volume-1 provide that advance DTA sale in respect of trial production shall not exceed the entitlement accruable on exports envisaged in the first year and such sale shall be adjusted against subsequent entitlements within a period of two years.

MACRO DATA

According to data furnished by ten commissionerates, duty amounting to Rs.11.68 crore was recoverable from 20 EOUs on DTA sales of Rs.17.85 crore effected in excess of permissible limits. Value of excess DTA sales made by EOUs has not been furnished by Ahmedabad-III, Vadodara-II and Thane-I commissionerates**.**

However, test check of records in audit of 76 EOUs in seven SEZs (in 29 commissionerates) revealed non levy/short levy of Central Excise duty of Rs.84.37 crore on irregular DTA sales as given in the table below: -

Table - 4 : Irregular/excess DTA sales

(Amount in crore of rupees)

Sl. No.	Irregularities	No. of units	DTA sale value	Duty recoverable	Remarks
1.	Irregular exemption of duty due to failure in achievement of NFEP/NFE/VA.	8	53.10	18.08	
2.	Advance DTA sale not adjusted with subsequent export.	8	78.63	15.33	Duty effect of three units not available
3.	DTA sale of goods other than that exported physically.	3	16.27	5.78	
4.	DTA sale of prohibited goods at concessional duty.	2	10.32	3.14	
5.	DTA sale without permission of DC.	6	5.93	0.74	
6.	Irregular duty concession on DTA sale.	14	181.60	20.60	
7.	Incorrect calculation of duty.	10	125.90	5.16	
8.	Excess DTA sale than permissible in exim policy	13	54.73	7.19	Duty effect of six units not available
9.	Excess DTA sale of waste/rejects.	12	67.40	8.35	Duty effect of three units not available
	Total	**76**	**593.88**	**84.37**	

A few illustrative cases are narrated below:-

1.10.1 Irregular/unauthorised DTA sale

M/s. Sanghi Spinners (I) Ltd. (Hyderabad-III), engaged in manufacture of cotton yarn and polyester yarn was accorded permission for advance DTA sale of Rs.75.50 crore between June 2001 and March 2005. Such sale is required to be adjusted against subsequent entitlements within a maximum period of two years.

Audit scrutiny revealed that the EOU adjusted advance DTA sales valued at Rs.19.91 crore and that too with a delay ranging between 23 and 513 days. Advance DTA sales to the extent of Rs.35.09 crore allowed between August 2001 and August 2003, due for adjustment by August 2005, were not adjusted. Failure to adjust the advance DTA sale within permissible period of two years, required recovery of differential duty of Rs.12.72 crore.

However, based on the recommendation of the BOA, the policy relaxation committee (PRC) in its meeting held on 1 November 2004, granted extension in the validity period of advance DTA sale for a further period of two years beyond normal time limit of two years.

Despite the fact that advance DTA sale was pending adjustment, DC/Visakhapatnam Special Economic Zone (VSEZ) further permitted the unit to clear goods worth Rs.151.85 crore in DTA. Reasons for non-adjustment of advance DTA sale before granting subsequent entitlements were not on record. Further, assessee executed bond for differential duty of Rs.three crore only against differential duty of Rs.12.72 crore, resulting in non safeguard of duty of Rs.9.72 crore.

1.10.2 Irregular duty concession on DTA sales

According to paragraph 106 of the Exim Policy 1992-97, supplies from DTA to EOU are regarded as deemed exports and eligible for benefit of discharge of EO on the supplier. The benefit shall be available, provided the goods supplied are manufactured in the country. These supplies are also counted towards fulfilment of EO imposed on DTA units against various schemes such as advance licence, EPCG etc. While supplies from a EOU to another EOU is treated as deemed imports in the hands of recipient unit, a similar provision is not available in the Policy for reckoning the deemed exports from DTA units, as deemed imports in the hands of recipient EOU, even though the supplied materials were produced out of imported raw materials, as in the case of advance licence scheme.

Central Excise notification No.2/95 dated 4 January 1995, provides that excisable goods produced in EOU and cleared to DTA shall be chargeable to excise duty at 50 per cent of the duties of customs leviable under Section 12 of Customs Act, 1962, as if the goods were imported into India. Where the goods are manufactured by EOU wholly from the raw materials manufactured in India, the duty shall be equal to aggregate of duty of excise leviable under Section 3 of Central Excise Act, under notification 8/97-CE dated 1 March 1997.

M/s. Tube Products India, an EOU was issued a LOP on 27 January 1995 for manufacture of steel tubes at Avadi, Chennai. The raw material 'hot rolled steel coils' was supplied by their own unit functioning as DTA unit, located within the same premises. The hot rolled steel sheets were imported by DTA unit, against advance licences/special imprest licences and sold to EOU after slitting the sheets as per the required specification of EOU. The DTA supplier carried out no other manufacturing operation on the hot rolled coils imported by them. The supplies to EOU, being deemed exports as per the Exim Policy, were counted towards fulfilment of EO of DTA unit against advance licences/special imprest licence.

However, for the DTA sales effected by the EOU, duty was paid in terms of notification No.8/97-CE dated 1 March 1997, on the pretext that raw materials were locally procured.

As the supplies made by DTA unit were only slit coils of the imported hot rolled coils, having undergone no further operation other than slitting, the slit coils transferred to the EOU were essentially imported materials and not indigenous materials. Therefore, for the DTA

clearances made by the EOU unit, duty chargeable should have been at 50 per cent of aggregate duties of customs under notification No.2/95 dated 4 January 1995 and not excise duty alone, as was levied. The differential duty recoverable worked out to Rs.9.97 crore.

M/s. Precot Mills Ltd. 'C' unit Chandrapuram Walayar, an EOU (de-bonded on 18 April 2005) was engaged in manufacture/clearance of cotton yarn falling under heading 52.06 of the Central Excise Tariff, using imported as well as indigenous raw materials. Pursuant to permission granted by the DC, CSEZ under para No.6.8(b) of the Exim Policy, unit removed a portion of the said product in the DTA paying central excise duty at eight per cent and additional excise duty at 15 per cent up to 8 July 2004 and thereafter, excise duty at four per cent and education cess at two per cent. This was not in order; as the unit had been using imported cotton as the main raw material, it was not eligible for exemption from customs duties and was liable to duty under notification No.23/2003-CE dated 31 March 2003 at 50 percent of customs duties. The short payment of duty recoverable during 2002-2003 to 2004-2005 worked out to Rs.3.60 crore.

The Ministry, in respect of M/s. Precot Mills Ltd., replied (January 2007) that the unit was eligible for exemption under notification No.8/97-CE dated 1 March 1997 as the unit had maintained independent stock account for receipt/issue of independent and imported raw cotton. Ministry further replied that the unit had used indigenous cotton only for manufacturing of yarn meant for DTA clearance. Reply was not tenable as there was no provision for keeping separate accounts for imported and indigenous raw materials in EOU scheme and Board's circular No.614/5/2002-CX dated 31 January 2002 stated that concession was not available when a unit used imported consumables.

1.10.3 Excess DTA sales

M/s. IG Petrochemicals Ltd., Taloja (Belapur) was issued LOP in March 1995 for manufacture/export of phthalic anhydride and was allowed broad banding on 20 December 2002 to manufacture phthalate plasticizers (DOP, DINP, DBP etc).

According to APR for 2004-2005, FOB value of exports amounted to Rs.152.09 crore and DTA sale of Rs.93.81 crore was in excess of 50 per cent of FOB value by Rs.17.76 crore, in violation of provisions of Exim Policy and notification No.23/03-CE. The duty recoverable on such excess DTA sale amounted to Rs.3.48 crore.

1.10.4 Wastage in excess of permissible limits leading to short levy of duty

According to para 9.30 of HBP Volume-1, wastage arising out of production process, upto five per cent of FOB value of exports may be sold in DTA on the basis of records maintained by the unit. Wastage in excess of five per cent shall be approved by the DC, in accordance with the norms provided in Appendix 41.

M/s. D.C. Mills, unit III, Alappuzha, an EOU manufacturing rugs and carpets of polypropylene, jute, cotton wool was eligible to wastage at five per cent under standard input output norms (SION). However, it was noticed that the process wastage was 24.64 per cent during 2004-2005 and 13.83 per cent for 2005-2006 (upto December 2005) which is far in excess of permissible limit. Duty amounting to Rs.2.75 crore on the value of excess wastage was recoverable.

The Ministry replied (January 2007) that norms of five percent was fixed for import of raw materials without payment of duty and the above norms might not be applicable for the

wastage of actual production of a new unit. Reply is not tenable as Exim Policy does not permit more than five percent wastage for any unit, whether new or existing.

Recommendation No.4

As the name itself suggests, EOUs are intended primarily for exports. Any DTA sale should only be permissible after the unit has achieved minimum prescribed EO/EP/NFEP etc. Government should strengthen its control mechanism to ensure that DTA sales are effected after achievement of EO. In audit opinion, use of duty free imports and other concessions in production and diverting the output products in DTA unauthorisedly is a major risk, which needs to be mitigated effectively.

The Ministry agreed (January 2007) that DTA sale entitlement accrues on completion of export commitment and stated that Development Commissioners monitor the export performance of EOUs including DTA sales and Customs/Central Excise officer initiates action only on receipt of decision regarding irregular DTA sale by the Development Commissioner.

1.11 Inconsistency in execution of bond/bank guarantee (BG)

Paragraph 9.6 of the Exim Policy, 1997-2002 (Paragraph 6.6 of 2002-07) provides that an approved EOU shall execute a LUT with DC concerned to achieve minimum NFEP and EP as stipulated in Appendix-I of Exim Policy and in the event of failure to fulfil EO, it would be liable to duty, interest and penalty. Apart from LUT, the unit was required to execute a single all purpose bond before jurisdictional Deputy/Assistant Commissioner of Customs and Central Excise covering liability of duty etc. Board's circular No.76/99-cus provided for execution of bond for an amount equal to 25 per cent of the duty foregone on the sanctioned requirement of capital goods plus the duty foregone on raw material required for three months. Surety or security equivalent to five per cent of bond amount in the form of BG is also required to be given by the EOUs.

Test check of records pertaining to 21 EOUs under four SEZs revealed irregularities like non execution of bond by the functioning units, improper maintenance of bond register, non furnishing of requisite security/surety along with the bond, non verification of solvency of surety and non renewal of bond and BG, leading to insufficient safeguarding of Government revenue to the extent of Rs.96.15 crore.

1.12 De-bonding of EOUs leading to short/non levy of duty

Paragraph 9.25 of Exim Policy 1997-2002 and 6.19 of 2002-2007 provide that the bonding period for units under EOU scheme shall be five years, and extendable for further five years, at a time. Subject to approval of DC/BOA, EOU can be de-bonded on their inability to achieve EO/VA or other requirements. Such de-bonding will attract penalty and payment of duty, applicable at the time of de-bonding.

Test check of records of 19 EOUs under six SEZs revealed short levy of duty of Rs.4.28 crore besides interest of Rs.2.20 lakh on de-bonding due to incorrect/excess depreciation on capital goods, non levy of countervailing duty/special additional duty, incorrect availment of exemption etc. In one case of Hyderabad-I commissionerate, duty on indigenous goods worth Rs.51.03 lakh had not been quantified.

In two cases of Bangalore (Customs Division) and Jaipur commissionerates, the Ministry intimated (January 2007) recovery of Rs.4.99 lakh.

A few cases are illustrated below:-

Para 6.18 (d) of Foreign Trade Policy 2004-2009 provides that an EOU could be allowed by the DC to exit from EOU scheme on payment of duty on capital goods under the prevailing EPCG scheme as one time option. This facility would be subject to fulfilment of eligibility criteria under the scheme and standard conditions as indicated in HBP Volume-1.

M/s. Multivista Global Ltd. (DC/MEPZ) was allowed partial de-bonding of two capital goods valued Rs.2.38 crore in September 2005, under EPCG scheme. Since the unit did not exit from the EOU scheme as one time option, grant of EPCG benefit was not in order, resulting in undue benefit of Rs.41.90 lakh, being the difference between the EPCG rate of duty and the normal rate of duty, on the depreciated value.

M/s. Modern Terry Towels Ltd. (KASEZ) was allowed partial de-bonding in principle in July 2002 with a condition to obtain final de-bonding, within six months on payment of duty on capital goods under EPCG scheme. The date of debit in EPCG licence was required to be treated as exit from EOU scheme. EPCG licence was debited in August 2002. However, the EOU was allowed duty free procurement of goods valued at Rs.5.36 crore during September 2002 and December 2002, resulting in non levy of duty amounting to Rs.92.63 lakh.

On being pointed out, the jurisdictional Central Excise Superintendent stated that though the EPCG licence had been debited on 9 August 2002, the unit would be considered as a DTA unit from 9 December 2002. The department's reply is not acceptable as the date of debit in EPCG licence should be construed as effective date of exit from the EOU scheme and it was not eligible to procure duty free raw material thereafter.

1.13 Irregular reimbursement of central sale tax (CST) and drawback on DTA sales

The EOUs are entitled to full reimbursement of CST paid by them on purchase from DTA units, when goods are used by them for production of finished goods meant for export, as provided in para 9.13 of Exim Policy and procedure prescribed under Appendix-43 of HBP Volume-1 1997-2002. It also provides for deemed export drawback and reimbursement of duty paid on fuels procured from domestic oil companies at the rates of drawback notified by Director General of Foreign Trade (DGFT). Accordingly, reimbursement of CST and payment of drawback on inputs used in goods meant for DTA sale by EOUs is not admissible. In addition, even on exported goods where foreign exchange has not been realised, CST and drawback benefit received by EOUs are recoverable.

Test check of records revealed that reimbursement of CST of Rs.254.09 crore on raw materials/consumable procured and utilised by 77 EOUs in six SEZs/20 commissionerates, were permitted on entire production. However, these units were permitted to sell the goods in DTA also. As the reimbursement of CST was permissible only in respect of exported goods, excess reimbursement of CST amounting to Rs.57.80 crore on sales made in DTA was recoverable. In addition, reimbursement of duty drawback of Rs.20.77 crore to 18 EOUs, in four SEZs/seven commissionerates, allowed on raw materials used in the goods sold in DTA, was not admissible. In audit opinion, CST/drawback reimbursed to EOUs on their DTA sales

distorts the level playing field between EOUs and DTA units. In addition, incorrect application of rate of drawback also resulted in excess payment of drawback in few cases.

A few illustrative cases are narrated below:-

M/s. Thomson Press (I) Ltd. Noida was reimbursed CST amounting to Rs.16.94 crore on raw materials/consumables procured and utilised by them in entire production during 2001-02 to 2004-05. As this unit cleared 62 per cent of its finished product in DTA, it was not eligible for reimbursement of CST to the extent of Rs.10.45 crore allowed on such DTA sales.

M/s. Pacific Cotspin Ltd. (Kolkata Air) had procured raw materials i.e. cotton from DTA on which periodical reimbursements of CST were made, to full extent as applied by the unit. Scrutiny of records revealed that the unit had made DTA sale of Rs.145.75 crore, during the period 1997-98 to 2004-05. Reimbursement of CST on raw material used for production of goods sold in DTA was not in line with the provisions of the Exim Policy. This resulted in excess reimbursement of CST of Rs.3.22 crore.

M/s. Farida Shoes Pvt. Ltd., Chennai on conversion from DTA to EOU commenced commercial production in October 2001. The unit obtained shoe uppers from its sister unit M/s. Chennai Footwear Pvt. Ltd. located in DTA. The EOU manufactured complete shoes from the uppers received and exported them. The shoe uppers received from the DTA unit were treated as deemed exports and after obtaining a disclaimer from the supplier, the EOU was allowed deemed export drawback on shoe uppers, at all industry rates, from October 2001 till March 2005, without getting the brand rates of drawback fixed by the DGFT. The EOU was claiming drawback at higher rates applicable to shoe uppers manufactured using duty paid finished leather. However, audit scrutiny revealed that the EOU had been using duty free imported finished leather in its manufacture. As such, it was not eligible for higher rate of drawback at ten per cent upto January 2004 and 9.1 per cent from February 2004 onwards, instead it was eligible for lower rates of drawback at 5.9 and 5.6 per cent respectively fixed for shoe upper manufactured using duty free finished leather. This resulted in excess payment of drawback of Rs.9.01 crore, which was recoverable.

Recommendation No.5

Government should amend the provisions of Exim Policy to restrict reimbursement of CST/drawback correctly to duties relating to exported goods only and not for goods sold in DTA.

1.14 Inter unit transfers/non submission of re-warehousing certificate

According to para 14 of chapter 22 of Customs Manual, EOUs have to submit re-warehousing certificate to the Assistant/Deputy Commissioner in charge of the port of import, within 90 days from the date of import. In case such re-warehousing certificate is not furnished within the specified period, the Assistant Commissioner incharge of the port of import shall intimate the Assistant Commissioner of Customs or Central Excise in-charge of recipient units for issuing a demand notice to recover duty/penalty etc.

Under paragraph 9.16 and 6.14 of Exim Policy 1997-2002 and 2002-07, EOUs were allowed to transfer or give on loan, imported/domestically procured duty free raw materials to another EOU with permission of DC/Customs, subject to issue of proof of its receipt at consignee's end. In case of non-receipt of proof of re-warehousing/export from the proper officer that

transferred goods have been fully accounted for within 90 days, duty is required to be demanded from the transferring unit.

Scrutiny of records of 5,647 units in concerned Customs houses and six SEZs revealed that re-warehousing certificates were not submitted by the recipient units for imported or transferred goods from other EOUs to the port of imports or to the transferring units, within the prescribed period, resulting in improper accountal of goods involving duty amounting to Rs.312.08 crore. The department should have demanded/recovered the duty.

The Ministry replied (January 2007) that in respect of 1393 cases in ACC, Bangalore and ICD, Bangalore, re-warehousing certificates had been received and action was being initiated for the remaining 29 cases.

1.15 Non realisation of foreign exchange

Public Accounts Committee (PAC) in para 7.2 of its 61st Report (2003-04) recommended that the connectivity to the EDI system should be streamlined so that monitoring of realisation of export proceeds is linked with incentives availed. For this purpose committee also stressed the need to improve the export outstanding statements (XOS), these being the instrument of control, prepared by the authorised dealer banks/RBI.

Para 6.12 (d) of Foreign Trade Policy 2004-2009 provides that EOUs have to realise their export proceeds within 12 months of exports. Previously, the period for realisation was six months. According to para 8 of Appendix-16-E of HBP Volume-1 1997-2002, it is the responsibility of the DC to monitor realisation of foreign exchange/ remittance of EOUs in coordination with General Manager, RBI, as provided for in RBI circular issued on 21 February 2000.

Audit scrutiny of 106 EOUs revealed that foreign exchange of Rs.240.76 crore was not realised and was outstanding for periods ranging between one to 12 years. Furthermore, duty attributable to unrealised export proceeds of eight units alone amounted to Rs.10.61 crore. This is indicative of inadequate monitoring of foreign exchange realisation.

Recommendation No.6

The Government should further strengthen its monitoring mechanism to watch the recovery of export incentives, in cases where units fail to achieve intended objectives like earning of foreign exchange, prescribed exports etc.

1.16 Non realisation of penalty

According to Section 11 of Foreign Trade (Development and Regulation) Act, 1992, where a person makes or abets or attempts to make any export or import, in contravention of provisions of Exim Policy, he shall be liable to pay penalty not exceeding Rs.1000 or five times value of goods, whichever is higher.

Audit noticed that penalty of Rs.15.07 crore, levied by six DC's on 114 units during 1996 to 2005 for failure to achieve positive NFEP or for breach of LOP/LUT conditions, was pending realisation for periods ranging between one to ten years. This is indicative of weak recovery mechanism available with the DCs.

Recommendation No.7

There is need to review and strengthen existing provisions of Foreign Trade (Development and Regulations) Act, 1992 to protect revenue, on the lines of property attachment rules under Section 142 of Customs Act.

1.17 Non adjudication

According to the clarification of Board, (Circular No.16/2004-cus dated 16 February 2004 read with F.No.305/119/2000-FTT dated 17 October 2002) in all cases of short/non levy of duty or evasion of duty of customs/central excise, Commissioner of Customs/Central Excise in charge of EOU, is the competent officer to investigate the case and issue a SCN and adjudicate the matter against an EOU on the basis of general B-17 bond executed by the unit. Main reason to issue SCN is that the revenue officials must ensure that demands are not time barred. However, Development Commissioner is the only competent authority to judge the issue relating to Exim Policy/Foreign Trade Policy and the demand raised in SCNs by revenue authorities are confirmed only after the findings of DC are conveyed to him.

Audit scrutiny revealed that SCNs, issued by the Customs/Central Excise commissionerates to ten units between November 1998 and July 2005, demanding duty of customs and central excise of Rs.7.17 crore, have not yet been adjudicated even after delays ranging between one to eight years, leading to risk to revenue realisation. In addition, SCNs issued by the DC,SEZ Noida in one case of Punjab and Rajasthan for non adjustment of advance DTA sales and failure to achieve NFEP are still pending adjudication, for five to nine years. Delay in adjudication on the part of revenue as well as DC,SEZ is indicative of ineffective and inadequate coordination between DCs and revenue authorities, leading to delay in adjudication and consequent risk to revenue realisation.

Illustrative cases are narrated below:-

M/s. Sobtex International Ltd. (Ludhiana) was issued LOP in August 1998. The unit never operated as EOU and was taken over by the Punjab State Industrial Development Corporation (PSIDC) as intimated by the Central Excise Range, Kharar in March 2001 to DC Noida. The AC, Central Excise, Ropar also intimated (October 2001) DC, Noida that amount of Rs.1.57 crore on account of customs and central excise duties was recoverable from the unit. Accordingly, a SCN demanding duties of Rs.1.59 crore on imported capital goods was served to the unit (October 2004) after a delay of three years from the date of intimation of taking over the unit by PSIDC (March 2001). No QPR/APR were submitted by the unit to DC, Noida to evaluate import/export and shortfall in EP. Current status of SCN was awaited.

According to information received from DC Noida, M/s. Arihant Cotspin Ltd. (Ludhiana) was shown as closed unit with effect from October 1998, whereas the information supplied by the Ludhiana commissionerate, revealed that unit was closed in September 2000. However, from the records of DC Noida, it was noticed that the unit was granted LOP in July 1990 for manufacturing of cotton textiles and blended yarn and started its commercial production in July 1993. The unit had imported capital goods worth Rs.5.33 crore.

A SCN for non-adjustment of advance DTA sale valuing Rs.4.81 crore was issued by Additional DGFT, New Delhi, in January 1997. Further progress/status of case could not be ascertained.

1.18 Irregular job work

Para 9.17/6.15 of Exim Policies 1997-2002/2002-2007 provide that EOU can, on the basis of annual permission from customs authorities, sub-contract part of their production process in the DTA, through job work. These units may sub-contract up to 50 per cent of production of previous year in value terms in DTA and EOU may also undertake job work for export on behalf of DTA exporter, provided that goods are exported directly from EOU.

M/s. Vatan Textiles (Aurangabad) an EOU was issued LOP for manufacture and export of woven jacquard upholstery fabrics. The unit had undertaken job work during the period from May to November 2003 for M/s. KSR Exports, Tamil Nadu and the manufactured goods were sent back to the DTA unit (KSR Exports) and not exported directly. As the goods valued at Rs.2.57 crore were not exported directly, duty free clearance was not in order. The duty involved amounted to Rs.1.46 crore which needs to be recovered from the EOU.

Two units (Cochin, SEZ) transferred goods valued at Rs.1.34 crore for job work in DTA without permission of the jurisdictional Customs authority and an EOU in the same zone transferred goods worth Rs.72.48 lakh for job work without having any production in the previous year, in violation of policy provisions. The duty involved in such unauthorised transfer of goods was Rs.44.34 lakh.

1.19 Probable suppression of production

EOUs have to export 100 per cent of their production with specified exceptions viz. rejects allowed to be sold in DTA, in accordance with Exim Policy. To ensure that 100 per cent of the production is exported, the Custom/Central Excise authorities have to satisfy themselves that the production of final products is shown correctly in the accounts maintained for the purpose.

M/s. Chettinadu MBF Hi Silica Pvt. Ltd. was issued a LOP on 10 October 1991 for manufacture/export of high purity silica powder. A study of input output ratio prescribed for the unit during 2000-01 to 2004-05 revealed that the production was not in accordance with SION A-1993 which provided use of 1.05 Kg. of quartz lumps for production of one Kg. of quartz powder. Audit scrutiny revealed a probable short accounting of production of 18,847.125 MTs valued at Rs.19.82 crore involving duty of Rs.4.71 crore, which had escaped the notice of the Central Excise department.

Additionally, it was also noticed that there was discrepancy of 13,539.51 MTs between the actual production of 69,337.49 MTs reflected in the balance sheet and 82,877 MTs according to the statement of consumption of power for manufacture of high purity silica powder, obtained from the unit. Thus, 13,539.51 MTs produce valued at Rs.17.16 crore and involving duty of Rs.4.43 crore was unaccounted for.

Recommendation No.8

The department should investigate the reasons for probable short accountal/suppression of production involving duty of Rs.4.43 crore and take appropriate steps to prevent recurrence of such lapses by the EOUs.

1.20 Inadequate monitoring, coordination and internal control mechanism

Appendix 16-E of HBP Volume-1 read with Board's circular No.35/2001-cus dated 15 June 2001 provide that performance of EOUs was to be jointly reviewed by the DC and concerned Customs/Central Excise officers. The purpose of joint review is to ensure that the performance of EOUs is effectively monitored and action taken against the defaulting units; besides, such joint monitoring gives an opportunity to the Government to discuss and help resolve the problems/difficulties being faced by EOUs. The idea is to remove all bottlenecks in export promotion efforts, while not jeopardizing the interest of revenue.

Further, the Range officers are required to visit EOUs under their jurisdiction once a month with a view to check the receipt of raw materials, its consumption, clearance of finished goods for export/DTA, payment of duty thereon, etc.

Test check of records pertaining to 94 EOUs, under seven SEZs, revealed various lapses in monitoring/internal control mechanism leading to non recovery of duty amounting to Rs.6.75 crore from two units apart from improper maintenance of records, non submission of QPR/APR to licensing authorities, incorrect reporting of FOB value of Rs.1,009.20 crore by seven units against the FOB value of Rs.944.78 crore specified in Customs record, incorrect reporting of CIF value of imported and indigenous capital goods of Rs.50.56 crore by three units against the CIF value of Rs.30.45 crore specified in Customs record, non maintenance of receipt/issue registers and non submission of returns to Customs/Central Excise authorities, leading to inadequate monitoring and control over the performance of units.

A few cases are illustrated below:-

According to the provisions of para 4.1 (Appendix 14-I of HBP Volume-1 2002-07), application for setting up of an EOU shall be submitted in the form given in Appendix 14-I A to DC of SEZ concerned.

During review it was noticed that M/s. Anita Texprint, Kaladera, Jaipur a DTA unit was converted into EOU on 29 October 2001. This unit had imported raw materials on which customs duty of Rs.6.54 crore (Rs.4.93 crore during 2001-02 and Rs1.61 crore during 2002-03) was foregone. Finished products manufactured out of these raw materials were illegally/clandestinely sold in DTA, instead of export. In this regard, five adjudication orders confirming demand for Rs.13.97 crore (duty and penalty Rs.6.98 crore each) were passed by the Commissioner, Central Excise, Jaipur-I in December 2003, against which no amount has been recovered so far (June 2006).

It was noticed that the unit, in its entity as DTA unit, was already a defaulter in duty payments. Three adjudication orders, confirming demand for Rs.2.57 crore were already passed by the Assistant Commissioner, Central Excise Division II, Jaipur before granting LOP by the DC, Noida in October 2001.

In view of the facts mentioned above, if jurisdictional Central Excise office had been consulted before issue of LOP for EOU, the unit might have not been converted into EOU and after conversion into EOU, duty foregone amounting to Rs.6.54 crore on imported raw materials could have been recovered.

The Ministry intimated (January 2007) that a writ petition had been filed by Central Excise commissionerate, Jaipur-I in the High Court for stay of disbursement of sale proceeds.

M/s. Monalisa Garment was granted LOP in September 2002 by the DC/FSEZ for production of T-shirts/nighties and trousers, from fabrics. In APR, unit claimed that exported goods worth Rs.5.58 crore were manufactured from indigenous raw materials and applied for premature de-bonding which was accepted on 26 March 2004. However, Haldia commissionerate intimated (28 April 2004) DC/FSEZ that the unit had procured fabrics worth Rs.11.75 crore from two EOUs and the exported goods were made out of these raw materials. Taking the inter unit transfer into account, the NFE became negative (minus Rs.6.16 crore). The unit was allowed to de-bond in March 2004. In spite of the negative EP based on the report of jurisdictional revenue authorities, the DC/FSEZ did not initiate any action against the unit. Had there been proper internal control mechanism, action to recover duty foregone would have been taken by invoking the bond.

Variance between export performance recorded by Customs and DCs

Scrutiny of the performance shown in annual performance reports submitted by the EOUs to DCs and that maintained by the Customs and Central Excise commissionerates revealed following variations:-

Table – 5 : Export performance recorded by Customs and DCs

(Amount in lakh of rupees)

Licensing authority/ commissionerate	Name of EOU (M/s.)	Year	Exports as per Customs record	Exports as per APRs submitted to DCs	Over statement of performance by the EOUs
DC/CSEZ, Kerala	Body Gear International Pvt. Ltd.	2000-01	118.27	193.02	74.75
-do-	-do-	2001-02	350.04	407.59	57.55
-do-	Indian Products Ltd.	2000-01	1,534.96	1,613.25	78.29
-do-	AVT McCormick Ingredient Pvt. Ltd.	2002-03 to 2004-05	18,758.16	21,366.56	2,608.40
-do-	AVT Natural Products Ltd.	2001-02 to 2004-05	14,067.42	15,823.00	1,755.58
-do-	GTN Textiles Ltd.	2000-01 to 2004-05	15,398.95	19,109.64	3,710.69
-do-	Tata Tetly Ltd.	2002-03	7,688.15	8,048.40	360.25
-do-	-do-	2003-04	6,618.23	6,661.94	43.71
-do-	-do-	2004-05	8,178.26	8,518.86	340.60
	Total		**72,712.44**	**81,742.26**	**9,029.82**

In the aforesaid cases, EOUs have overstated their FOB value on the basis of which DCs have to decide the performance of the unit. But as per Customs/Central Excise record, the FOB value was less to the extent of Rs.90.30 crore in respect of six units. The possibility of incorrect decision on fulfilment of VA/EO/NFE cannot be ruled out.

Recommendation No.9

Government should (i) ensure that export performance evaluation of EOUs is done only on the basis of Customs records and not APRs/QPRs submitted by the EOUs as the ports are the

point of exit of exported goods and (ii) increase the coordination mechanism between Revenue and Commerce Ministries to achieve foregoing recommendation efficiently without causing inconvenience to exporters.

1.21 Other irregularities

In 19 other cases, irregularities like manufacture of goods not covered under LOP, improper accounting of goods, export of restricted goods without permission of DGFT etc. resulting in incorrect grant of exemption from payment of duty and non levy of penalty amounting to Rs.58.46 crore were noticed in audit.

The Ministry, in one case of Vadodara commissionerate, replied (January 2007) that the unit has paid penalty of Rupees ten lakh and Ministry of Commerce had restored IEC code of the unit. Reply is not tenable as penalty imposed on the unit was in reference to 'advance licences' and not for export of restricted goods produced as an 'EOU'.

1.22 Conclusion

Review has revealed:-

- Lack of well-coordinated and concerted action by DCs and Customs/Central Excise authorities providing opportunity to defaulting EOUs to misuse provisions of Exim Policy and Customs/Central Excise notifications.
- Evidence of non/short fulfilment of EO, excess and inadmissible imports, irregular and unauthorized DTA sales.
- Excess reimbursement of CST and drawback on DTA sales.
- Non realisation of export proceeds, irregular de-bonding, non receipt of re-warehousing certificates, insufficient coverage of duty through execution of bond/BG.

1.23 Recommendations

The review has identified few critical risks, which if not mitigated could impact adversely in achieving the mandated goals and objectives of EOUs. Nine constructive and implementable recommendations were given to remedy the irregularities noticed by audit. If implemented, these would mitigate the risk of similar irregularities in future. The Ministry of Finance was in agreement (till January 2007) with three recommendations and specific replies to the remaining six recommendations were awaited.

CHAPTER II : ADJUDICATION AND APPEAL CASES

The review of adjudication and appeal cases (Customs) was conducted by audit in 35 commissionerates through test check of 11,905 cases out of 47,031 cases pertaining to 2002-2003 to 2004-2005, to ascertain if there was compliance to rules, regulations and procedures under the Customs Act 1962, with the intended goal of adjudicating show cause notices (SCNs) within a period of six months/one year. The review has revealed several instances of abnormal delays, non adjudication, lapses, inadequate response and monitoring leading to loss as well as risk to revenue. Audit has given nine implementable recommendations, which would lead to substantive reduction in pendency and safeguarding of Government revenue apart from addressing systemic weaknesses and mitigating the associated risks. The Ministry of Finance had till January 2007 accepted eight of these recommendations. Final reply on the remaining one recommendation, in consultation with Ministry of Commerce, had not been received. Some of the major findings are abstracted below:-

2.1 Highlights

- **The data provided/maintained by the department regarding adjudication cases and revenue involved therein was incomplete, inconsistent, inaccurate, un-reconciled and hence unreliable. In the absence of accurate data regarding the numbers and revenue involved, the assurance that the Board is monitoring these cases effectively is minimal.**

(Paragraph 2.5)

- **Cases pending adjudication increased by 89 per cent as on 31 March 2005 compared to 1 April 2002, when a time limit of six months/one year for completing adjudication was brought in. During 2002-03 to 2004-05, only 24 to 57 per cent cases were finalised within six months or one year.**

(Paragraph 2.5)

- **Revenue of Rs.448.67 crore was locked up in 1,173 pending adjudication cases for period ranging between one to 46 years. Of these, 17 cases each having revenue implication of Rupees one crore and above were awaiting adjudication from two to eight years.**

(Paragraph 2.6.1)

- **Files in 165 cases involving demand of duty of Rs.26.48 crore apart from interest and penalty of Rs.89.81 lakh were reported missing in four commissionerates.**

(Paragraph 2.6.2)

- **An amount of Rs.962.32 crore was confirmed in adjudication after a delay of one to nine years in 152 cases. However, recovery details could be ascertained only for Rs.3.69 crore.**

(Paragraph 2.6.3)

- **Fourteen cases remanded back for denovo adjudication (revenue implication of Rs.16.25 crore) were pending adjudication with a delay of 13 to 66 months. In 22 other cases, denovo adjudication was completed after a delay of 12 to 151 months.**

(Paragraphs 2.6.4 and 2.6.5)

- **The Board had issued a circular in December 1999 in consultation with Ministry of Law stating that corrigendum to order in original tantamounts to review of the decision and is not legally sustainable. Corrigendum was issued to orders in original in eight cases which had caused risk to revenue realisation of Rs.30.98 crore.**

(Paragraph 2.6.7)

- **Appeals filed by the department in 33 cases were either dismissed on grounds of delay or the department could not stake its claim owing to belated action/non submission of proper evidence, leading to non realisation/loss of revenue of Rs.160.38 crore.**

(Paragraph 2.7.2)

- **In ten cases, department failed to initiate recovery action in spite of non compliance of pre-deposit orders of the Courts/dismissal of appeals, leading to non realisation of revenue of Rs.23.33 crore, even after delay of eight months to nine years. Further, confirmed demands of Rs.240.59 crore were pending realisation as on 31 December 2005 in 1,467 cases.**

(Paragraphs 2.8.1 and 2.8)

- **Failure of the department to consolidate all cases to take a unified action to effect recovery by getting the stay orders vacated according to orders of the Board, resulted in non realisation of revenue of Rs.33.32 crore in 65 cases.**

(Paragraph 2.8.2)

2.2 Introduction

'Adjudication' is a quasi-judicial function, provided under Section 122/124 of the Customs Act, 1962 to adjudicate show cause notices (SCNs) on matters relating to confiscation of goods, imposition of penalty and violation of any provisions of the Customs Act and other related Acts. In cases of non-levy/short levy of duty, Section 28, ibid provides for issue of SCNs and confirmation of demand. Based on the recommendation of Public Accounts Committee (PAC) in its 84th Report, Board issued instructions (17 January 1983) that:-

(a) demand cases should be decided within a maximum period of six months from the date of issue of SCN.

(b) a list of all cases which cannot be adjudicated within six months should be sent to the Commissioner every month giving precise reason for non adjudication.

(c) a suitable time limit may be fixed by the Commissioner for each such case within which the Assistant Commissioner should adjudicate the demand cases.

(d) if the cases are still not decided within the extended time limit, the matter should be further examined to consider the reason for delay.

Further, Section 28(2A) (amended with effect from 11 May 2001) ibid, provides that the adjudication order should, "where it is possible to do so", be passed by the adjudicating authority within six months in normal course and within one year in the case of collusion, wilful misstatement, suppression of facts or fraud etc., from the date of service of SCN. The adjudication order can be challenged by way of appeal and revision as provided in Chapter XV of the Customs Act within the time frame allowed and conditions laid down, therein. Settlement Commission is an alternative channel for resolving disputes without going through the process of adjudication/appeals/ revision etc., the order of which is conclusive and cannot be reopened in any proceedings.

Adjudication setup of the Board

There are 35 commissionerates of Customs and Customs (Preventive) spread all over the country. They have been assigned the functions of implementation of the provisions of Customs Act, 1962 and the allied Acts, which include levy and collection of customs duties and enforcement functions in their jurisdictions. There are six Commissioners of Customs (Appeals) dealing with appeals against orders passed by the officers lower in rank than Commissioner of Customs and Central Excise. In addition, there are 12 Commissioners (Adjudication) to decide the cases having all India ramifications and high revenue. These Commissioners attend to matters relating to Central Excise as well as Customs. Six posts of Commissioners have been re-deployed in the Central Board of Excise and Customs (CBEC) with effect from 25 April 2005, from its field formations.

The legal cell in the Board is primarily responsible for handling matters relating to litigation arising out of indirect taxes namely, Customs, Central Excise and Service tax. The cell is also entrusted with the responsibility of appointment of Special Public Prosecutors and Special Counsels to represent the department in various courts and tribunals.

2.3 Scope of audit

The review of adjudication and appeal cases (Customs) was conducted by audit between July 2005 and May 2006 through test check of 11,905 cases out of 47,031 cases pertaining to three years i.e. 2002-2003 to 2004-2005 in 35 commissionerates.

2.4 Audit objectives

Review was conducted with a view to ascertain that:-

(a) there was compliance to rules, regulations and procedures framed under the Customs Act 1962, especially the intended goal of adjudicating SCNs within a period of six months/one year.

(b) grant of stay against recovery of demand is duly defended by the department, stay orders got vacated and dues collected in time.

(c) the department reviewed all cases pending in the Court/CESTAT and the departmental cases were not allowed to fall through because of default or weak presentation.

(d) internal control and monitoring mechanism were in place to ensure compliance with relevant provisions of the Act/Rules.

FINDINGS AND RECOMMENDATIONS

2.5 Inconsistent/unreliable macro data

The position of demand cases pending adjudication in respect of 31 commissionerates is given in the table below:-

Table - 1 : SCNs pending adjudication

(Amount in crore of rupees)

	As on 1 April 2002	**Additions during 2002-03 to 2004-05**	**Clearance during 2002-03 to 2004-05**	**Closing balance as on 31 March 2005**
No. of cases due for adjudication	2139	18885	17193	4051
Revenue involved	3134.55	4260.92	5677.99	2125.78

Figures furnished by commissionerates suffered from the following: -

- Data was either inconsistent or unreliable
- Arithmetical inaccuracies in number of cases and money value
- Incomplete
- Not reconciled
- Data not provided for all years
- Data not provided by all commissionerates

Revenue involved in adjudication cases was not furnished by Delhi (I & G), Tughlakhabad (ICD), Chennai (Sea), Trichy, Chennai (Air) and Tuticorin commissionerates in 2002-03 and Tuticorin in 2003-04 and 2004-05 and are accordingly excluded from the above table.

Arithmetical inaccuracies were noticed even in the number of cases during 2003-04 in, Bhubaneshwar (CE & Cus), Mumbai (Imports) and during 2004-05 in Mumbai (Imports) and Pune commissionerates.

A comparison of the data provided by the commissionerates could not be made with those collected in audit since CC Appeals, Cochin, commissionerate of Central Excise and Customs, Cochin, CC Appeal I and II, Delhi did not provide the requisite data. Some other commissionerates did not provide complete data for the period under study.

Aforesaid table reveals that against the addition of 18,885 cases, adjudication of 17,193 during 2002-03 to 2004-05 led to increase in pendency by 1,692 cases. Accordingly pendency comes to 3,831 (2139 + 1692) while the closing balance as on 31 March 2005 is 4,051 cases. This is indicative of inadequate and improper maintenance of data/records. Additionally, absence of revenue involved in SCNs issued in few commissionerates, indicates weak monitoring mechanism.

Our conclusion is that in the absence of accurate data regarding the numbers and revenue involved, the assurance that the Board is monitoring these cases effectively is minimal.

Recommendation No.1

The Board should verify and reconcile the number and amount involved in pending SCNs as a first step to effectively monitor the disposal of these cases.

The Ministry accepted (January 2007) the recommendation.

Agewise analysis of pendency in 31 commissionerates as on 31 December 2005

Table - 2 : Duration of pendency

(Amount in crore of rupees)

Pendency	Number of cases	Revenue involved
Over 5 years	356	97.62
Over 2 and below 5 years	696	239.01
Over 1 year and below 2 years	492	506.89
Below 1 year	935	606.85
Total	**2479**	**1450.37**

It was noticed in audit that data of seven out of 31 commissionerates was arithmetically inaccurate either with regard to number or money value involved and the pendency over five years includes the pendency upto 46 years.

Analysis reveals that 1,544 cases involving revenue of Rs.843.52 crore were pending for a period ranging from one to more than five years. The provisions of Section 28 (2A) to complete the adjudication within one year in case of collusion, wilful misstatement, suppression of facts, "where it is possible to do so" and within six months in normal course has thus, been observed more in breach than in practice.

Furthermore, we observed that when a SCN is pending for more than six months/one year, there is no requirement for the adjudicating authorities, to seek formal orders of their superiors (Chief Commissioner/Board) giving reasons why it has not been possible to dispose these cases within the prescribed time limit.

Pace of disposal

The extent to which the time limit in the statute was adhered to by adjudicating officers in disposal of cases was evaluated in audit, by an analysis of disposal of cases which are required to be adjudicated within time frame of six months/one year. The result of such analysis from the information furnished by 21 commissionerates is provided in the following table:-

Table - 3 : Analysis of adjudication within six months/one year

Cases required to be adjudicated within	Opening balance of cases as on 1 April 2002, 2003 and 2004	Cases cleared from the opening balance during					
		2002-03		2003-04		2004-05	
		No.	Percentage	No.	Percentage	No.	Percentage
*Six months	1284 1353 1987	380	29.60	612	45.23	481	24.21
**One year	937 1048 1397	227	24.22	603	57.54	487	34.86

**Data of 15, 17 and 21 commissionerates received in 2002-03, 2003-04 and 2004-05 respectively.*

***Data of 13, 16 and 15 commissionerates received in 2002-03, 2003-04 and 2004-05 respectively.*

The disposal of cases pending adjudication as on 31 March of 2002, 2003 and 2004 was 29.60, 45.23 and 24.21 per cent of cases which were to be finalised within six months. It was 24.22, 57.54 and 34.86 per cent respectively for cases to be finalised within one year during the same period.

As regards, pace of disposal of adjudication cases within six months/one year, while acknowledging the concern of audit, the Ministry stated (January 2007) that the pace of disposal is to be judged on the basis of total number of disposal, including the cases which were disposed of beyond the time limit of six months/one year. The fact remains that the rate of disposal of cases within six months/one year remained between 25 to 30 percent/25 to 58 percent during the last three years.

2.5.1 Analysis of revenue wise pendency of cases

Revenue wise pendency of cases in 15 commissionerates as on 1 April 2002 and 31 March 2005 is given below:-

Table - 4: Analysis of pendency in terms of revenue involved

Cases involving Revenue	Cases pending as on 1 April 2002	Cases pending as on 31 March 2005	Percentage increase/decrease
Up to Rs.5 lakh	210	691	229
More than 5 lakh but not more than 10 lakh	97	145	49
More than 10 lakh but not more than 20 lakh	87	75	(-) 14
Above 20 lakh	118	206	75

It is noticed that pendency of cases in all categories had increased from 49 per cent to 229 per cent except in category of cases involving revenue of more than Rs.ten lakh to 20 lakh, where the pendency had reduced.

Recommendation No.2

Government may consider (i) reviewing the time limit of six months/one year of disposing SCNs with 'wherever possible to do so' rider and fix a realistic time frame without exceptions and (ii) make provisions for recording and/or justifying reasons for going beyond prescribed time limit and obtaining orders from superior authorities to do so. This would also help in monitoring the adjudication process more easily at the top management level.

The Ministry replied (January 2007) that the present indicative time frame of one year/six months for disposal of SCNs is adequate and does not merit amendment, as this can become a ground of legal challenge in many cases. However, keeping in view of audit observation, monitoring would be further strengthened to ensure that pendency is reduced considerably in the next one year.

2.6 Adjudication

According to Section 28 (2A) of Customs Act (amended with effect from 11 May 2001), the adjudication order, "where it is possible to do so", should be passed by the adjudicating authority within six months in normal course and within one year in case of collusion, wilful misstatement, suppression of facts, fraud etc. from the date of issue of SCN cum demand notice. Fixation of time limit has, thus, been qualified by the clause "where it is possible to do so".

Para 33 of the Adjudication Manual provides that seizure cases should be adjudicated within five days from the date fixed on the SCN for reply in order to ensure that the goods do not remain in a state of seizure for more than four to six weeks. Section 126 provides that on confiscation, property to goods vests with Central Government. Unlike Section 28 (2A), no time limit has been prescribed in the Customs Act, 1962 for adjudication of cases of seizure/confiscation.

2.6.1 Non-adjudication

Audit scrutiny revealed that adjudication process has not been completed in 1,142 cases in 18 commissionerates, even after delay ranging between one to 46 years. Of these, 778 cases were from Kolkata (Air) and West Bengal (Preventive) commissionerates, involving goods seized between 1960 and 2005, valued at Rs.8.51 crore. These were awaiting adjudication from one to 46 years, despite provisions in the manual to adjudicate these within five days from the date fixed for response of SCNs, to ensure that goods seized do not remain in that state, for more than four/six weeks. These goods might have lost their value as well as utility.

In 31 cases pertaining to five commissionerates, SCNs were issued between January 1998 and October 2005. But transfer of files to adjudicating authorities was delayed by three to 44 months. Transfer of files finally took place between January 2003 and January 2006, but the cases are yet to be adjudicated.

Thus 1,173 cases involving revenue of Rs.448.67 crore (duty Rs.442.69 crore, interest Rs.4.80 crore and penalty Rs.1.18 crore) as quantified in SCNs are locked up apart from blockage of Rs.8.51 crore of goods under seizure.

Board's circular No.79/88-CX.6, dated 15 November 1988 prescribed specific time limit of one year for adjudication of cases involving duty of Rupees one crore and above. In 17 cases, SCNs were issued between May 1997 and June 2004, yet these are pending adjudication for two to eight years. Thirty five per cent of revenue demanded in 1,142 cases is locked up in these cases alone.

Table – 5 : Cases pending adjudication for two to eight years

(Amount in crore of rupees)

Sl. No.	Commissionerate	Importer (M/s.)	Date of SCN	Delay in months	Duty
1.	Chennai (Air)	BPL Mobile	09.09.2003	30	2.83
2.	Chennai (Sea)	Otel International Chennai	30.06.2004	21	1.34
3.	-do-	Tamil Nadu Cricket Association	16.12.2002	39	2.28
4.	-do-	Madras Fertilizers Ltd.	30.09.2003	30	32.76
5.	-do-	Arman Electric Ltd.	20.09.2002	42	1.43
6.	-do-	Bharati Export House Chennai	10.12.2003	27	13.40
7.	-do-	Everest Organics Ltd.	18.12.2003	27	1.22
8.	-do-	Thiruveni Steel Pvt. Ltd.	31.07.2003	32	2.94
9.	-do-	Kunal Overseas	5/2003	34	1.42
10.	-do-	Lotus Chocolate (P) Ltd	28.05.1997	106	6.55
11.	Tuticorin	Swami Fashions Pvt. Ltd.	02.07.2003	32	1.58
12.	-do	Skyline Marketing Mumbai	02.07.2003	32	2.27

13.	Kolkata (Port)	Harsh International	1/2001	62	5.34
14.	-do-	Kanhaiya Export Pvt. Ltd.	7/2001	56	61.04
15.	CC (I&G) New Delhi	Olga Kozireva	8/2001	55	1.76
16.	-do-	Care Foundation	3/2004	24	2.35
17.	CC (I) JNCH Mumbai	Hamco Mining & Smelting Ltd.	9/1997	96	8.79
	Total				**149.30**

Apart from above, a few illustrative cases are discussed below:-

M/s. Hamco Mining and Smelting Ltd. availed duty exemption for imports in 1993 under advance licensing scheme. A SCN was issued in September 1997 demanding duty of Rs.8.79 crore for incorrect availment of input stage credit, in respect of goods exported towards fulfilment of Export Obligation (EO), in contravention of provisions of para 126 of Hand Book of Procedure (HBP) 1992-97 Volume-1/condition of notification No.203/1992-cus. Personal hearings were held in March 1999 and November 2000. During personal hearing in November 2002, the adjudicating authority ordered to put up the case to his successor, as he was under orders of transfer. Thereafter, no follow up action was taken and the case is still pending adjudication for more than eight years.

Test check of records in two commissionerates viz West Bengal (Preventive) and Kolkata (Air), revealed that 43 seizure cases effected between 1972 and 2003, involving goods of perishable and hazardous nature (photographic films, cell and batteries, patent and proprietary medicines, liquors etc.) and valued at Rs.34.30 lakh, remained un-adjudicated for two to 33 years. Further scrutiny of records of seizure shed, currency shed and appraising disposal (sale shed) in these commissionerates revealed that 346 seizure cases involving goods valued at Rs.2.43 crore seized between 1960 and 2003 (electronic goods, cellular phones, ball bearings, zip fasteners, textiles etc. that are prone to rapid depreciation in value due to rapid changes in technology and design) were awaiting adjudication for a period of two to 45 years. Non adjudication of these cases resulted in non disposal of goods that are already in a state of deterioration and depreciation in quality and value.

Recommendation No.3

Government may consider prescribing an appropriate time limit in the Customs Act for adjudication of cases relating to search/seizures.

While acknowledging (January 2007) the need for early adjudication of seizure cases, the Ministry replied that delay was due to involvement of voluminous records besides observation of principles of natural justice. However, accepting the recommendation, Ministry intimated that revised time frame, to complete adjudication in respect of seizure cases not involving demand of duty, has since been prescribed.

Recommendation No.4

Board should issue instructions to its field formations to take old cases involving substantial revenue for priority adjudication.

The Ministry accepted (January 2007) the recommendation and informed that necessary instructions for priority adjudication would be issued.

2.6.2 Loss of revenue due to missing files

Scrutiny of records revealed that in four commissionerates, 165 case files of demands involving duty of Rs.26.48 crore, apart from interest and penalty of Rs.89.81, lakh were missing.

Improper maintenance of records had led to risk of non realisation of revenue, as adjudication in these cases are pending.

Few illustrative cases are discussed below:-

Test check of records of export Commissioner (NCH, Mumbai–Group VII) revealed that adjudication of 104 modvat cases was held up as relevant files were not traceable. In these cases SCNs involving revenue of Rs.18.57 crore were issued between 1998 and 1999 for irregular availment of input stage credit.

In one appraising group (Kolkata Port), 59 files concerning unconfirmed demands of Rs.7.54 crore raised between 1997 and 2002 against 49 importers were reported missing (October 2004). This was not reported to higher authority. As a result, the cases remained un-adjudicated (May 2006).

In the absence of these case files, there is no assurance that revenue involved would get realised.

Recommendation No.5

Board should investigate the reasons for which these files went missing and based on the result of probe, fix responsibility and initiate appropriate action.

While accepting (January 2007) the recommendation, the Ministry stated that Director General of Inspection had been instructed to conduct special inspection of the commissionerate to probe the cases involving missing files and to prepare an effective action plan to liquidate the pendencies and further informed that action would be taken for fixing the responsibility.

2.6.3 Delay in adjudication and non recovery of demands confirmed

Section 28 AA of Customs Act, 1962 provides for recovery of duty determined under Section 28(2) within three months, failing which in addition to duty, interest on duty also becomes payable after expiry of three months, till the date of payment of such duty.

Test check of records in 22 commissionerates revealed that 152 cases, involving duty of Rs.750.46 crore were adjudicated with delays ranging from one to nine years. In addition, interest, penalty and fine of Rs.211.86 crore was also confirmed. Our further analysis revealed that out of such confirmed demands of Rs.962.32 crore, the recovery details of only Rs.3.69 crore could be ascertained by audit, despite the demands having being confirmed upto five years earlier.

Few illustrative cases are narrated below:

M/s Daewoo Motors India Ltd., New Delhi (ICD, Tughlakabad) imported goods worth Rs.18.54 crore duty free, against a quantity based advance licence issued on 7 December 1999 by Director General of Foreign Trade (DGFT). As per conditions of notification No.30/97-cus dated 1 April 1997, importer was required to produce evidence of fulfilment of EO through (1) DEEC Export Book duly logged and (2) Export Obligation Discharge Certificate (EODC) issued by the licensing authority within 30 days of expiry of the said licence, failing

which he was required to pay an amount equal to duty leviable on the imported material together with interest at 24 per cent per annum from the date of clearance of imported goods. The importer had defaulted on the EO in many cases and the letters issued to the firm by DGFT were received back undelivered with the postal remarks "Office Sealed by Delhi High Court". Accordingly, the SCN issued on 6 February 2003 in this case was finally adjudicated ex-parte (14 July 2005) ordering the importer to deposit duty of Rs.19.48 crore along with interest at 15 per cent per annum from the date of first import.

Audit scrutiny further revealed that the importer was also issued five licences under the Export Promotion of Capital Goods (EPCG) Scheme by DGFT on 14 July 1997 and was to fulfil EO, worth US $ 426437140 (FOB) within a span of eight years (up to 14 July 2005). It was learnt through public notice dated 20 November 2002 published in the Times of India that the plant/project at Noida unit of the importer was on offer for sale by the Debt Recovery Tribunal (DRT) for the recovery of dues of M/s. ICICI Bank Ltd. Keeping in view the above position and the fact that the company had failed to fulfil its EO, duty amounting to Rs.90.61 crore with interest of Rs.158.70 crore was confirmed by CC (ICD), Tughlakabad vide order in original on 14 February 2003.

Inability of the department to pursue its case with DRT, non-correlation of other cases of the importer, delay in follow-up action to pursue the party to submit evidence of fulfilment of EO during the validity period of the advance licence and non-coordination with the licensing authority not only resulted in delay in adjudication of case by one and a half year but also led to undue financial accommodation to the assessee. Total revenue amounting to Rs.268.79 crore apart from interest on duty relating to DEEC licences remain unrealised, despite the assessee being a well known and big manufacturer/importer.

The Ministry replied (January 2007) that bank guarantee of Rs.69.28 crore was encashed. For remaining amount, department's application for revenue's preferential right over secured creditors was rejected by DRT-III, Mumbai on 31 August 2004. On the advice of Solicitor General of India, department filed an appeal with Debt Recovery Appellate Tribunal, Mumbai on 18 October 2004. At present the case was being pursued by Commissioner of Customs (Export Promotion), Mumbai with Assets Reconstruction Co. (India) Ltd. to recover the arrears of revenue. Ministry further informed that Board was in the process of reaching a MOU between department and the first charge holder for recovery of consolidated amount due.

Recommendation No.6

Government should require and review past performance of a licence seeker under export promotion scheme, before issuing fresh licence to ensure that all dues to Government are realised.

The Ministry of Finance stated (January 2007) that the information regarding past performance was being obtained in the AAYAAT-NIRYAAT form by DGFT for issue of licences and Ministry of Commerce's views on this recommendation have been sought.

M/s Jagson International Ltd., Chennai (Sea), imported second hand jack up rig deep-sea mat drill and parts in April 1993 and claimed it to be classifiable under customs tariff heading (CTH) 8905.90 read with notification No.133/87-cus attracting 'NIL' rate of duty, whereas the department viewed that it was classifiable under CTH 8905.20, without any exemption from duty. The importer filed a suit (481/93) in Delhi High Court and obtained an order restraining the department from causing obstruction in the movement of the drill to ONGC

sites in Indian waters, till disposal of appeal subject to the condition that the importer was liable to pay customs duty, if any, under heading 8905.90. Consequently, goods were cleared without assessment and collection of duty.

A SCN was issued on 23 May 1995 classifying the goods under CTH 8905.20 and demanding a duty of Rs.13.30 crore. Though non existence of stay for adjudication proceedings was confirmed by the Ministry of Law in their letter dated 11 July 1996 and also by the sub-judge, Delhi, yet adjudication was not taken up immediately but completed only on 22 March 2002 and 20 April 2002, ex-parte, confirming the duty of Rs.13.30 crore along with penalty and fine of Rupees seven crore. It was also noticed that no early hearing petition was filed by the department. Even after ascertaining that there was no stay, the adjudication was completed after seven years from the issue of SCN. Revenue of Rs.13.30 crore and penalty/fine of Rupees seven crore has still not been realised.

A SCN issued to M/s. Global Filters Ltd. (January 2002), an unit of Falta special economic zone (SEZ), for non achievement of minimum net foreign exchange performance (NFEP) and EO as per Exim Policy was adjudicated by Commissioner of Customs, Kolkata (Air) in December 2005 confirming demand of duty of Rs.1.02 crore apart from interest, after a delay of nearly four years, leading to financial accommodation to the exporter. The amount has not yet been realised.

Three SCNs issued (January 2002 and March 2003) by DRI, Ahmedabad were adjudicated (March 2005 and May 2005) confirming demand of Rs.11.45 crore, after a delay of 27 months beyond permissible period of 12 months. In reply it was contended (August 2005) that adjudication proceedings are quasi judicial processes and noticees are to be given reasonable opportunity to defend their case before adjudicating authority. Principle of natural justice has to be observed in accordance with Board Circular No.65/2000-cus dated 27 July 2000 and the post of Commissioner was vacant from August 2003 to October 2004 for 14 months. The reply is not tenable as the adjudication was delayed due to issue of corrigendum in two cases after a delay of 35 and nine months while in third case there was delay of more than 22 months between first and second personal hearings. Further progress of recovery is not known.

Two SCNs were issued by CC (Preventive), Mumbai (December 2000 and February 2001) to M/s. Quality Apparels for over invoicing inferior quality of garments/rags, under the guise of readymade garments. The SCNs made answerable to CC (Preventive), Mumbai were transferred in January 2002 to CC (Imports), ACC Mumbai, in the light of judicial pronouncement that the case of seizure due to illegal violation and fraudulent intentions is to be decided by the adjudicating authority in whose jurisdiction goods were cleared. Even though the committee of Chief Commissioners decided that CC (Imports), ACC would adjudicate the case, but due to lack of effective follow up action, case was pending (September 2005) adjudication for more than 63 months, leading to the risk of revenue of Rs.14.90 crore not being realised.

The Ministry replied (January 2007) that the SCNs were finally adjudicated by Commissioner of Customs (Export) in March and April 2006 confirming penalty and fine of Rs.13.25 crore.

2.6.4 Denovo adjudication cases kept pending beyond time limit

Adjudication of cases remanded back by appellate authorities for denovo 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 28 (2A) of Customs Act.

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.

Scrutiny of records of 11 commissionerates revealed that 14 cases remanded back for denovo adjudication involving revenue of Rs.16.25 crore were not adjudicated, even after delays of 13 to 66 months. Lack of proper attention at Board's level resulted in prolonged pendency of cases remanded back between April 1998 and February 2005.

Four other cases in Tuticorin, Chennai (Sea) and Kolkata (Port) involving revenue of Rs.35.87 crore were remanded back by the CESTAT and High Court (July 2001 to February 2005). The cases are pending adjudication for 13 to 56 months, while in two cases of ICD, Bangalore adjudicated in January 2006 after a period of ten years, realisation of Rs.9.50 lakh is still pending. In Mangalore and Mumbai (ACC, JNCH) commissionerates, main reason for remanding back of four cases by CESTAT were, non observance of principle of natural justice in the orders of adjudicating authority. The cases are awaiting adjudication even after a delay of 21 to 71 months and involve revenue of Rs.1.20 crore.

Recommendation No.7

Board should strengthen its internal control mechanism for monitoring denovo adjudication cases so that these cases are adjudicated within six months/one year, having been adjudicated/examined/extensively earlier by consuming much time/human resources.

The Ministry accepted (January 2007) the recommendation and informed that the Board vide circular No.4 dated 10 January 2007 has instructed that denovo cases should be treated as fresh receipts and hence should be disposed of within six months/one year.

2.6.5 Delay in denovo adjudication led to risk of revenue realisation

Scrutiny of records of eight commissionerates revealed that in 22 cases involving revenue of Rs.22.09 crore, denovo adjudication was made after delays ranging from 12 to 151 months. In addition, recovery particulars of Rs.19.95 crore out of this confirmed demand, could not be ascertained from the department.

An illustrative case is given below:-

A SCN issued on 12 July 1999 by DRI, Trichy to M/s. Pillaiyarpattiyar Textiles Ltd., for violation of EPCG Scheme was adjudicated by the Commissioner, Chennai (Sea), on 30 August 2000 confirming duty of Rs.1.82 crore, along with interest at 24 per cent from the date of clearance and imposing a fine of Rs.18 lakh and penalty of Rupees two lakh. On appeal, the CESTAT, in its order dated 28 March 2001, remanded the case for denovo adjudication. The denovo proceedings were initiated only after two years in 2003 stating that the copy of the final order of CESTAT was not received by the adjudication officer (though the copy was received by the review cell on 5 May 2001 itself). The denovo adjudication was completed on 25 March 2005 confirming duty of Rs.1.82 crore apart from interest at 24 per cent, fine of Rs.50 lakh and penalty of Rupees five lakh and enforcement of bank guarantee (BG) for Rs.99.23 lakh ordered. Thus, the avoidable delay in denovo adjudication resulted in postponement/risking revenue realisation of Rs.3.97 crore.

The Ministry in one case accepted (January 2007) the delay and replied that an amount of Rs.1.78 crore had been recovered and recovery of balance amount of Rs.12 lakh was under persuasive action.

2.6.6 Non/delay in issue of SCN led to loss of revenue

Section 28 of Customs Act, 1962 provides that when any duty has not been levied/short levied or erroneously refunded, the proper officer may issue SCN within one year in case of import made by individual or by Government or by educational, research or charitable institution or hospital and in any other case, within six months from the relevant date. Provided that where the duty has not been levied, short levied or erroneously refunded by reason of collusion or wilful mis-statement or suppression of facts by the importer/exporter, SCN could be issued within five years. The issue of SCNs has to be followed with adjudication and recovery process as provided in Section 28 (2A), ibid. Board's circular issued on 20 January 1997 provides that SCN must not be waived in high money value cases.

Test check of records revealed that issue of SCN in four cases involving revenue of Rs.4.64 crore was delayed from five months to 18 years while in two cases SCNs were not issued at all. Thus non/delayed issue of SCN resulted in loss of revenue of Rs.7.31 crore, essentially because of time bar.

The Ministry replied (January 2007) that the delays were due to requirement of scrutiny of records, technical literature, expert opinion etc. The view for change in assessment practice may take a long time and some imports may become time barred.

A few illustrative cases are given below:-

Four SCNs, issued in January 2002 to M/s. Baccarose Perfumes and Beauty Product Ltd., (Kandla), after delay from six to 27 months, for domestic tariff area (DTA) clearance during December 1996 to September 1999, were dropped by adjudication authority on the ground of time limitation, leading to loss of duty amounting to Rs.2.26 crore.

A SCN was issued to M/s. United Telecom (CC, Bangalore) in June 2004 demanding duty of Rs.3.09 crore, out of which Rs.56.92 lakh pertained to ten imports between September and November 2003. The SCN was adjudicated (February 2005) confirming duty of Rs.2.53 crore apart from interest. The demand of Rs.56.92 lakh in respect of ten bills of entry were not confirmed due to these having become time barred. In reply, department stated (March 2006) that the issue of classification of goods was decided in Chief Commissioner's conference held in January 2005, by that time a few imports had become time barred. The reply is not acceptable as the exemption to the same importer for similar imports through ICD, Bangalore was objected by audit in November 2003, as such the department could have taken protective action by issue of SCN in time.

The Ministry admitted (January 2007) the delay and stated that the department issued demand notice on 5 June 2004 after careful examination and by that time, few imports were hit by limitation. Ministry further stated that since audit did not raise objection on the issue, no protective demand was issued. Reply was not acceptable as audit conducts selective scrutiny and responsibility to protect revenue lies with department.

M/s. Micro Village Communication Pvt. Ltd., Chennai (Air) imported software between 25 September 1999 and 7 February 2000. The Additional Commissioner of Customs (ACC-SIIB) passed final orders on 8 November 2003, determining duty liability of Rs.2.14 crore. On appeal, Commissioner (Appeals), in his order dated 27 December 2004, confirmed the order of the original authority. The importer filed an appeal in CESTAT and also a writ petition in the High Court, Madras on the ground that natural justice was denied, as no SCN

was issued by the adjudicating authority. The High Court issued interim stay order. Non issue of SCN, despite instructions of the Board for non waiver of issue of SCN in such high money value cases, resulted in avoidable litigation and possible revenue loss of Rs.2.14 crore.

2.6.7 Violation of Board's instruction by issue of corrigendum to order in original

Based on opinion of the Law Ministry, Board had issued circular on 16 December 1999 that corrigendum to order in original tantamounts to review of the decision, which is not legally sustainable.

Issue of corrigendum to order in original in eight cases noticed in audit, has, thus questioned the legality of adjudication and caused risk of recovery of revenue of Rs.30.98 crore, in four commissionerates.

An illustrative case is discussed below:-

A demand issued on 7 February 2003 under Section 28 (1) (b) of Customs Act to M/s. Akash Trading Co. for recovery of anti dumping duty of Rs.2.10 lakh, on import (15 November 2002) of 75000 pieces of electrical goods was confirmed on 15 June 2003 by the DC (Imports), Custom House, Kochi. Subsequently, on realisation of error in computing anti dumping duty, DC (Imports) issued a corrigendum on 25 August 2003 increasing the demand to Rs.1.02 crore under Section 154, ibid as the corrigendum was necessary due to non conversion of short levied amount from U.S. dollars to Indian rupees. On appeal by the importer, Commissioner (Appeals) Kochi in his order dated 30 March 2004 set aside the demand for antidumping duty on the ground that Section 154 can be invoked only for the correction of errors. Confirmed demands cannot traverse beyond the scope of SCN/original demand and held that modified demand under corrigendum order is not sustainable in law. Department's appeal before CESTAT, Bangalore bench was also dismissed terming the departmental action in issuing corrigendum order under Section 154 as 'bad in law'. This has resulted in loss of revenue of Rs.99.89 lakh.

The Ministry replied (January 2007) that there was a mistake in conversion of currency. Ministry further replied that no corrigendum increasing the duty liability were to be issued after the issue of adjudication orders.

2.6.8 Irregular transfer of cases to 'call book'

According to Board's circular No.53/90-CX3 dated 6 September 1990, if current cases have reached a stage where no action can be taken to expedite the disposal for at least six months, following categories of cases may be transferred to the call book with the approval of the competent authority.

(i) Cases in which the department has gone in appeal.

(ii) Cases where injunctions have been issued by Supreme Court/High Court/CEGAT etc.

(iii) Cases where audit objections are contested.

(iv) Cases where Board has specifically ordered to keep the case pending.

It was noticed that 22 SCNs in five commissionerates issued between May 1998 and August 2003 demanding duty of Rs.103.84 crore, were transferred to call book either on the ground of pendency of similar cases in CESTAT/Courts or for want of appointment of common adjudicator without fulfilling conditions of aforesaid circular leading to non pursuance and consequent delay in finalising adjudication and realising revenue due to Government.

The Ministry while appreciating (January 2007) the concern pointed out by audit regarding irregular transfer of cases to call book, replied that some cases were transferred to call book as either the commissionerate could not proceed with adjudication or matter was required to be taken up with some agencies/Board.

Non decision by Board risking realisation of revenue

Two SCNs issued by Jamnagar commissionerate demanding duty of Rs.505.04 crore on crude oil/natural gas/gas condensates produced at platforms and brought from off shore fields (non designated areas) were kept in call book on directions (August 2001) of the Board not to take any action in enforcing demand till a final view is taken. These cases are still pending adjudication for more than 55 months for want of decision from Board, leading to blockage of revenue of Rs.505.04 crore. There is an immediate need for the Board to finalise its decision on the issue.

The Ministry replied (January 2007) that Board was pursuing the matter with Ministry of External Affairs. Ministry further replied that Board had decided to put in place a framework that would indisputably treat production from the continental shelf/EEZ as 'indigenous production' and should not treat production from these areas as an 'import'. The implementation of the same was being worked out in consultation with relevant wings of CBEC.

2.6.9 Undue financial accommodation

Section 127 (C) of Customs Act, 1962 provides that on receipt of an application, settlement commission shall call for a report from Commissioner of Customs and on the basis of such report, the commission may proceed further for settlement of the case.

Shri Ravi Kapoor, managing partner of M/s. RKL Printers was issued a SCN on 11 May 2001 demanding a differential duty of Rs.55.30 lakh, for fabrication of documents and undervaluation of imported used printers. Personal hearings were afforded several times during 2001 and 2002. On 9 November 2002, representative of importer informed adjudicating officer (Chennai Sea) that his client proposed to settle the case through settlement commission. Without verifying the facts with the settlement commission, the adjudication proceedings were kept pending though the importer had not filed any application with the settlement commission. The importer filed the application under Section 127B to the settlement commission only on 20 June 2005. Stopping the process of adjudication, based on a letter from importer amounted to unintended benefit to the extent of about Rupees one crore (including duty and interest) for nearly four years. The case has since been settled (24 July 2006) by the settlement commission with duty liability of Rs.44.15 lakh along with ten per cent interest on duty from the date of imports. The amount of duty has been reported as recovered but interest is yet to be recovered.

2.6.10 Non compliance of orders of settlement commission

According to Section 127C (3), applicant shall within 30 days of receipt of a copy of order allowing the application to be proceeded with, pay the amount of additional duty admitted by him and shall furnish proof of payment to the commission. Section 127K provides that any sum specified in the order passed under Section 127C (7) be recovered, in accordance with provisions of Section 142 by the proper officer.

In a case of M/s. Daehsan Trading (I) Pvt. Ltd. (Chennai Air), settlement commission ordered (2 December 2003) for payment of interest at ten per cent on duty. Audit noticed that the

interest was not calculated and communicated. This has resulted in non recovery of interest of Rs.34.69 lakh.

Another unit M/s. Aglow Exports, Moradabad (Chennai Sea) filed a case before settlement commission against SCN issued on 17 December 2002 for misuse of DEEC scheme, which was settled with duty of Rs.31.18 lakh. Settlement commission in its order (18 March 2005) had specifically mentioned for payment of interest on the amount settled as per his contractual obligation entered with department through execution of bond. Of this, Rs.17.83 lakh was recovered through enforcement of BG on 28 March 2003, but the balance of duty Rs.13.35 lakh apart from interest and penalty of Rs.19.49 lakh has not been recovered even after one year, due to inaction of the department.

Non compliance of aforesaid provisions of the Act resulted in non realisation of Rs.67.53 lakh in above two cases.

II. APPEALS

2.7 Increase in pendency of appeal cases

Comparative pendency of appeal cases in respect of 28 commissionerates as on 31 March 2005 vis-à-vis on 1 April 2002, is given below:-

Table - 6 : Pendency position of appeal cases in higher forums

(Amount in crore of rupees)

Appellate authority	1 April 2002		31 March 2005		Increase/decrease			
	No.	Amount	No.	Amount	No.	Percentage	Amount	Percentage
CEGAT	2014	1124.34	3152	975.47	1138	57	(-) 148.87	(-) 13
High Court	1795	336.98	2017	1346.65	222	12	1009.67	300
Supreme Court	264	173.27	258	332.91	(-) 8	(-) 3	159.64	92
Total	**4073**	**1634.59**	**5427**	**2655.03**	**1354**	**33**	**1020.44**	**62**

Table - 7 : Pendency position of appeal cases with Commissioners (Appeal)

(Amount in crore of rupees)

Year	Opening balance		Addition		Cases decided		Closing balance	
	No.	Amount	No.	Amount	No.	Amount	No.	Amount
2002-03	3354	470.75	1955	656.13	2795	261.50	2718	879.52
2003-04	2718	879.52	2993	184.10	4673	534.04	1029	518.85
2004-05	1029	518.85	3578	313.57	3745	684.84	862	147.56
Total			**8526**	**1153.80**	**11213**	**1480.38**		

Aforesaid table compiled on the basis of data furnished by 21 commissionerates revealed that pendency of appeal cases with Commissioners (Appeal) on 31 March 2005 had reduced by 74 per cent in number and 69 per cent in value terms, in comparison to the pendency as on 1 April 2002. Basically, the opening balance plus additions minus clearance should be equal to the closing balance. Accordingly, the closing balance of the aforesaid table should be 667 numbers with revenue of Rs.144.17 crore instead of 862 cases with revenue of Rs.147.56 crore. Inconsistency in the data of Delhi (Appeal-I and II) and Bhubaneshwar were the main

reasons of arithmetical inaccuracy. Accordingly, audit could not give assurance as to the reliability of the data.

The Ministry replied (January 2007) that delay in posting of CESTAT officials, statutory changes brought out vide Finance Act, 2003 by way of Section 130 of the Customs Act and Section 35G of Central Excise Act, substantial pendency before Mumbai bench of CESTAT led to overall increase in pendency. However, a new bench at Ahmedabad setup on 13 October 2006 to hear the appeals of Gujarat region would reduce pendency at Mumbai.

Recommendation No.8

Board should reconcile the number of appeal cases and amount involved therein which are pending at departmental level in all commissionerates, as first step to strengthen its internal control mechanism to monitor these pending appeal cases.

The Ministry accepted (January 2007) the recommendation and stated that reconciliation would be undertaken.

2.7.1 Pendency of cases beyond prescribed time limit

Section 128 A (4A) provides that every appeal 'where it is possible to do so' be decided by Commissioner (Appeal) within six months from the date of filing appeal.

Two hundred and thirteen cases, involving revenue of Rs.12.93 crore under six commissionerates were pending with Commissioner (Appeals) for periods ranging between seven to 69 months, beyond the prescribed time limit.

The Ministry replied (January 2007) that strict instructions were being issued to field formations concerned, whose performance was not upto the mark.

2.7.2 Dismissal of appeal due to delay in filing, leading to loss of revenue

In para 1.37 of their 170th Report (Seventh Lok Sabha), PAC had recommended that there should be a separate Directorate in the Central Board of Excise and Customs (CBEC) to pursue and keep a watch on all cases of litigation, relating to Excise and Customs to ensure that departmental cases are not allowed to fall through because of default or inadequate presentation. Board through its letter F.No.275/4/2003-CX8A dated 12 May 2003 intimated that the Directorate of Legal Affairs has been constituted and functioning to handle Court matters.

Test check in audit revealed that 33 appeal cases filed by the department in five commissionerates were dismissed by the Supreme Court/High Court/CEGAT on the ground of delay or the department could not stake its claim on revenue due to belated action/non submission of proper evidence justifying its stand. This resulted in non realisation/loss of revenue to the tune of Rs.160.38 crore to the Government.

Some illustrative cases are narrated below: -

Twenty three SCNs issued by nine commissionerates to M/s. Visakhapatnam Steel Plant Ltd., and 22 others demanding duty of Rs.139 crore for misuse of DEEC scheme were dropped by CC (I) NCH, Mumbai (November 1996). CEGAT rejected the appeal of department (November 2001) and Supreme Court dismissed the special leave petition (SLP) filed belatedly by department, on ground of delay (January 2003). The delay in filing appeal had resulted in a probable loss of Rs.139 crore to the exchequer. The original files of

Visakhapatnam Steel Ltd. were not made available to audit, despite request having been made in April 2006.

In case of M/s. IOC Ltd., a SCN issued (September 2000) for irregular import of Naptha falling in negative list of imports, was confirmed (February 2001) by levy of penalty and fine of Rs.1.39 crore and Rupees ten crore, respectively. On appeal of the importer, CESTAT set aside the order (April 2003). Against the aforesaid order, department filed appeal belatedly (May 2004) in High Court after delay of 145 days. High Court dismissed the appeal in July 2005 on the ground of delay in filing appeal leading to a probable loss of Rs.11.39 crore.

2.7.3 Failure to file appeal

A SCN issued to M/s. Shasun Chemicals and Drugs Ltd., demanding duty and interest for violation of DEEC scheme was dropped by CC (Adjudication), Chennai. On appeal of the department, CEGAT confirmed (April 2004) the demand of duty of Rs.2.06 crore but ordered that interest and penalty are not leviable under Customs Act. Department had failed to file an appeal for interest leviable clearly in terms of bond executed under Exim Policy provisions, despite favourable decisions in case of Devan Rubber Industries Ltd. Vs. Commissioner of Customs, Meerut {2004 (172) ELT 201 (Tri, Delhi)}. The same view was held by the settlement commission in the case of M/s. K.N. Guruswamy Oil Mills Ltd., {2005 (188) ELT 539 (settlement commission, Mumbai)}. Failure to appeal against this decision resulted in loss of interest of Rs.5.56 crore.

2.7.4 Failure to take follow up action by the department

Section 129 B (2A) provides that where an order of stay is made in any proceedings relating to an appeal filed under Section 129 A (1), the appellate tribunal shall dispose of the appeal within a period of 180 days from the date of such order. If such appeal is not disposed of within the period of 180 days, the stay order shall, on expiry of that period, stand vacated.

Audit scrutiny revealed that recovery of revenue of Rs.27.46 crore was delayed in 27 cases in seven commissionerates, due to inaction of department for periods ranging between 12 to 60 months, even though the stay stood automatically vacated, after a period of six months.

Some cases are illustrated below:-

In case of M/s. Bayer India Ltd. (CC Import, NCH Mumbai), CESTAT stayed the recovery of confirmed demand of Rs.14.52 crore and waived the pre-deposit requirement in March 2003. Since the tribunal did not dispose the appeal within 180 days, the stay stood vacated (September 2003). Despite high stake involved in the case, department could invoke the provisions of Section 129 B (2A) of the Customs Act, 1962 only after a delay of 22 months in August 2005. Importer again approached the tribunal and it extended (17 August 2005) the stay, till final decision.

In Hyderabad-II commissionerate, CESTAT granted (February 1998 to August 2004) stay on recovery of Rs.9.12 crore against M/s. Sujana Industries and 16 others. The stay granted by tribunal stood vacated after a period of six months, as provided in Section 129 B (2A) ibid. Department had not initiated any action to recover the revenue. The cases were pending before tribunal (March 2005).

The Ministry acknowledged (January 2007) audit's concern for taking follow up action after 180 days from the date of passing of stay order by CESTAT. However, it informed that the department may not be able to take up follow up action for recovery in certain cases as further stay could be granted by CESTAT after expiry of initial six months.

2.7.5 Non-vacation of stay orders

Interim stay

Macro analysis of data furnished by ten commissionerates revealed that 791 cases involving revenue of Rs.82.45 crore were pending as on 31 March 2005 with various appellate forums where interim stay had been granted. Details are given in the table below:-

Table - 8 : Pendency position of interim stay cases

(Amount in crore of rupees)

Appellate authority	No. of Comm.	Pending position as on 1 April 2002		Pending position as on 31 March 2005		Increase/decrease			
		No. of cases	Amt.	No. of cases	Amt.	No. of cases	Amt.	% of No.	% of Amt.
Commissioner (A)	3	108	3.66	563	0.15	455	(-) 3.51	421	(-) 96
CEGAT	3	19	6.92	135	55.77	116	48.85	611	706
High Court	6	3	2.42	93	26.53	90	24.11	3000	996
Total		**130**	**13.00**	**791**	**82.45**	**661**	**69.45**	**508**	**534**

Permanent stay

In nine commissionerates 214 cases involving revenue of Rs.996.46 crore were pending as on 31 March 2005, with various appellate forums, wherein permanent stays had been granted. Details are given in the following table:-

Table - 9 : Position of permanent stay cases

(Amount in crore of rupees)

Appellate authority	No. of Comm.	Pending position as on 1 April 2002		Pending position as on 31 March 2005		Increase/ decrease		% of increase/ decrease	
		No.	Amt.	No.	Amt.	No.	Amt.	No.	Amt.
Commissioner (A)	3	8	1.05	28	7.42	20	6.37	250	607
CESTAT	8	19	288.15	137	942.13	118	653.98	621	227
High Court	6	12	3.70	41	40.35	29	36.65	242	991
Supreme Court	4	00	00.00	8	6.56	8	6.56	800	656
Total		**39**	**292.90**	**214**	**996.46**	**175**	**703.56**	**449**	**240**

The PAC in their 9th Report (8th Lok Sabha) recommended that Government should review all cases pending in Courts, CEGAT and take all steps to get the stay orders vacated and the dues collected immediately. It was noticed in many cases that the stay orders were not vacated and interim stay was made absolute, for want of counter arguments resulting in delay and risk to realisation of revenue.

Audit scrutiny revealed that 18 cases where stay had been granted by High Court and CEGAT, involving revenue of Rs.35.56 crore in ten commissionerates, were pending for periods ranging between one to eleven years. In most of these cases, department had not taken adequate steps, to get the stay vacated. This has resulted in postponement of realisation of revenue.

A few illustrative cases are mentioned below:-

A SCN was issued to M/s. Metal Sales, (Chennai Sea), by DRI for misuse of DEEC licence, demanding duty of Rs.8.54 crore and interest under Section 28AB of the Customs Act, 1962. The importer filed a writ petition in High Court in WP 9890 to 9892/2003 and the Court considering the payment of Rs.46 lakh paid by the importer, ordered (April 2003) stay and conditional release of goods within a week, on execution of personal bond for the remaining amount. In the case of M/s. Varadariya Exports involving filing of writ petition at SCN stage, the High Court had dismissed the case on 22 October 2003 and the SLP filed by the party in the Supreme Court was also dismissed on 19 March 2004 {(2004(166) ELT 153(SC)}. The department failed to present the case appropriately in the case of M/s. Metal Sales and get the stay vacated citing dismissal of similar case involving writ petition against SCN. The delay in vacation of stay resulted in locking up of revenue of Rs.8.54 crore.

On denovo adjudication (August 1998), Commissioner of Customs (Kolkata Port) confirmed demand of Rs.11.01 crore with penalty, fine of Rs.25 lakh and Rs.50 lakh respectively against M/s. S.B. International Ltd. for evasion of customs duty by mis-declaration and over valuation of exports of ball pen barrels, tooth brush and toys etc. On appeal of importer, CESTAT granted stay and directed for pre-deposit Rupees two crore before final hearing. Importer did not honour the order of CESTAT and appealed to High Court and obtained stay in October 1995. The stay is yet to be vacated. Audit ascertained that non co-ordination between various wings of commissionerate and absences of counsels on the dates of hearing were the main factors which have contributed to prolonged litigation.

The Ministry replied (January 2007) that efforts were being made for early vacation of stay or early disposal in consultation with the Government counsel.

2.7.6 Non receipt of judgment leading to non realisation of revenue

M/s. Ultra Marine Pigments Ltd., filed a writ petition No.6392/94 in the High Court against demand of duty of Rs.5.58 lakh, on account of rate of duty on bonded goods, lying in warehouse after the expiry of the bond period. The departmental representative stated (July 2001) that the case was dismissed by the High Court on 10 July 2001, in favour of revenue and copy of the order would be forwarded soon. In the meantime, the departmental representative was transferred and copy of the order was yet to be received by the department, in the absence of which department had not initiated any action to recover Rs.5.58 lakh for more than four years.

Aggrieved by the demand notice issued by the department, based on withdrawal of the benefit under notification 64/88-cus dated 1 March 1988 by Director General of Health Services (DGHS), M/s. Trichur Heart Hospital filed an appeal before CESTAT where the hospital was ordered to pre-deposit Rs.15 lakh. The writ petition and writ appeal filed by importer against the interim order of CEGAT for pre-deposit were dismissed by the High Court on 4 September 2002. However, copy of judgement of High Court was yet to be received by the Commissioner, Chennai (Sea). The appeal involving revenue of Rs.1.66 crore is pending in CESTAT for more than three years, after dismissal of the writ petition at the High Court due to non receipt of copy of judgement.

2.7.7 Pendency even after receipt of court's orders

M/s. Tamil Nadu Hospitals Ltd. filed a writ petition No.1095/97 against the adjudicating order dated 20 December 1996 demanding duty of Rs.30.09 lakh by withdrawing the

notification benefit due to non production of the installation certificate. The Madras High Court dismissed the appeal on 8 June 2001. However, the case was shown as pending till date in the 'Register of cases pending in the Court'. The company was wound up and an official liquidator was appointed. The department is yet to file the petition to the official liquidator regarding the claim of duty, resulting in non realisation of revenue of Rs.30.09 lakh for more than four years, after receipt of Court order.

M/s. S.R.S Engineering Industries Ltd. filed a bill of entry on 27 February 1989 for import of ball bearings with Madras Customs. The date of entry of vessel carrying goods was 2 March 1989. The rate of duty on goods imported was increased from 1 March 1989. As the entry of vessel was on 2 March 1989, the revised rate of duty was demanded. The importer filed a writ petition in the Supreme Court against the demand. The Apex Court upheld the view of the department in December 1992 and made it open for the Government to consider the case of the petitioner sympathetically and pass appropriate order. The importer made representation to the Finance Ministry and it was rejected. The importer filed a writ petition on 5 May 1993 in the Delhi High Court and it was admitted by the High Court on 1 August 1994 as the respondent (Collector of Customs, Madras) neither filed the counter affidavit nor opposed the petition and the case is still pending. The omission to oppose the petition/file the counter affidavit, resulted in non realisation of revenue of Rs.1.86 crore for nearly 17 years.

2.7.8 Ineffective monitoring of cases pending in Courts/CESTAT

Consequent on recommendations of PAC contained in para 1.11 in 9th Report (8th Lok Sabha) and para 14.5 in 39th Report (13th Lok Sabha), in order to monitor the cases relating to Customs pending in High Courts, Tribunals and Supreme Court, Ministry in their F.No.275/4/2003-CX8A dated 12 May 2003 instructed all Chief Commissioners of Customs that a Directorate of Legal Affairs has been constituted and entrusted with the work of monitoring and follow up action on receipt of the Court decisions. The jurisdictional Commissioners were advised to work in close coordination with newly formed Directorate of Legal Affairs, New Delhi.

Audit scrutiny revealed that 208 cases were pending in various appellate forums due to lack of adequate follow up action by the department, for periods ranging between 18 months to 36 years, leading to non realisation/loss/blockage of revenue of Rs.502.42 crore.

A few cases are narrated below:-

A SCN issued (June 1995) to M/s. MRF Ltd for violation of DEEC scheme was adjudicated by Commissioner, Chennai (Sea) in January 2002, confirming demand of duty of Rs.72.88 crore, interest Rs.214.91 crore and penalty Rs.five crore. The appeal filed by party against adjudication order was pending in CESTAT till January 2006 due to non production of A.R.4 form pertaining to the period of import, by the department. The delay in adjudication and appeals resulted in postponing the recovery of Rs.292.79 crore (including interest) by more than ten years.

A SCN, issued to M/s. Cosmo Steel Pvt. Ltd. (March 1989) by DRI Kolkata Zone for evasion of duty by mis-declaration of description, weight and value of 173 consignments imported between 1984 and 1988, was adjudicated (September 2003) by Commissioner, customs Kolkata (Port) confirming demand of Rs.2.70 crore along with fine and penalty of Rs.92 lakh. On appeal of the importer before CEGAT, New Delhi alleging that he had been provided only 13 bills of entry out of 173, CEGAT directed the senior departmental representative to provide all the copies of bills of entry to the importer. The department desired that the issue

be addressed by the DRI while the DRI stated (June 2004) that department might provide the original bills of entry. Thus, lack of co-ordination between two authorities resulted in non submission of documents to CEGAT thereby leading to weakening of the case involving revenue implication of Rs.3.62 crore. The CEGAT, New Delhi, decided the case (6 June 2006) setting aside the demands on the issue of valuation dispute in excess of duty of Rs.6.45 lakh and penalty of Rupees three lakh. Department submitted a proposal to the Board for filing appeal to Supreme Court.

Based on search and seizure on 9 November 1993, three SCNs for mis-declaration and under-invoicing of imported electronic goods were issued to M/s. Vintron Industries Ltd., M/s Vintron Electronics Pvt. Ltd. and M/s Ritika Electronics Pvt. Ltd. in July/August 1994 demanding duty of Rs.23.97 crore. The SCNs were also issued to nine other persons. The importers filed writ petition in Kolkata High Court against the SCNs and also challenged the competency of adjudicating authority of Commissioner of Customs, Delhi (Air cargo) who was appointed to adjudicate these SCNs. As per panchanama of search and seizure, the resume documents included four hard discs but during hearing (7 August 1999) DRI informed that no hard discs were seized at all. High Court vide order dated 20 September 2001 dismissed the writ petition and ordered that "the petitioner shall apply before the authorities to get the copies of the hard discs and authorities shall hand over these within three weeks of such application, copies of the relied upon documents to the petitioner requiring him to reply to the SCNs within a month from the date of receipt of such documents. The respondent authorities shall adjudicate the matter in question within three months from the date of receipt of reply to the SCNs after giving a hearing in the case." During the course of hearing on 2 February 2005, it was noticed that five noticees had not received SCNs whereas another two got orders from High Court for issue of SCNs. DRI was requested (16 February 2005) to expedite the process of providing SCNs. The noticee has been insisting on supply of seized hard discs and the adjudicating authority has not been able to resolve the issue of hard/floppy discs. As a result, the case was still pending leading to non-realisation of revenue to the tune of Rs.23.97 crore for the last 13 years.

The Ministry admitted (January 2007) the facts and replied that the Directorate of Legal Affairs was mainly concentrating on cases pending in Supreme Court.

2.7.9 Lack of proper action and inadequate pursuance

M/s. Kasturi and Sons Ltd., (Chennai Sea) imported laser press facsimile equipment in May 1984 which was cleared classifying it under CTH 8435. Subsequently, a notice under Section 28(1) for a differential duty of Rs.38.07 lakh was issued on 29 May 1984 classifying the goods under different CTH 8515. On appeal, the Collector of Customs (Appeals) Madras-1, remanded (13 June 1985) the case back for reconsideration by the lower authority, after waiving pre-deposit.

Instead of completing denovo adjudication, department issued a SCN under Section 28(1) on 6 August 1985. The fresh SCN was challenged in High Court Madras in 1985, on grounds of being time barred and disputing re-classification under different CTH. High Court directed (21 January 1998) the department after 13 years to pass appropriate orders on merit. Department instead of completing denovo adjudication, once again issued a letter on 25 October 1998 calling for payment of arrears Rs.38.07 lakh. On further writ petition of importer in 1998, High Court granted interim stay on 16 November 1998/absolute stay on 27 December 2002 and finally appeal was allowed on 10 August 2004 on grounds that duty demanded was not based on adjudication process. The order in original was passed on

30 September 2004 confirming demand of Rs.38.07 lakh along with applicable interest. Lack of proper action, inadequate pursuance and demanding duty without adjudication process resulted in non realisation of revenue for nearly 20 years.

A SCN issued (August 1995) to M/s. Kusum Alloys demanding duty of Rs.1.78 crore with penalty of Rs.1.65 crore for misuse of DEEC scheme was confirmed (February 1998) after 29 months, despite Board's circular No.79/88 requiring adjudication of cases involving duty of Rupees one crore and above within one year. On importer's appeal, CEGAT remanded (March 1999) the case back with direction to pre-deposit Rs.50 lakh. In May 2002, settlement commission also rejected the application of the party. However, despite rejection of application by settlement commission and non compliance of orders of CEGAT to pre-deposit Rs.50 lakh, department filed application before CESTAT in November 2004 after a delay of 29 months for dismissal of appeal. Further outcome of the case is awaited.

2.8 Lack of provision in the Act/Rules binding the assessee to pay the duty within a fixed time

Section 28 AA of Customs Act, 1962 provides three months time limit for payment of demand of duty determined under Section 28 (2) from the date of determination failing which importer is liable to pay duty along with interest.

Review of adjudicated cases revealed that in six commissionerates 1,467 cases involving confirmed demand of Rs.240.59 crore were pending realisation as on 31 December 2005. These cases are pending from 2000-01 to 2004-05.

Recommendation No.9

Government should consider fixing time limit for paying duty on confirmation of demand beyond which coercive action should be initiated.

The Ministry accepted (January 2007) the recommendation and informed that necessary instructions have since been issued.

2.8.1 Non initiation of recovery action

Scrutiny of records in nine commissionerates revealed that after exhausting appeal channels, ten cases were fit enough for action for recovery due to non compliance of pre-deposit orders of the courts/dismissal of party's appeals, but the department failed to initiate recovery action resulting in non realisation of revenue amounting to Rs.23.33 crore even after delays ranging between eight months to nine years. Interest on delay in payment of duty is also recoverable.

The Ministry replied (January 2007) that in one case, departmental claim had been referred to official liquidator and in two cases, action to file early hearing petition had been initiated.

2.8.2 Non initiation of unified action even after Court's decision

Notification No.64/88-cus issued on 1 March 1988 provides exemption from payment of duty on equipments imported by hospitals approved by the Government of India, Ministry of Health and Family Welfare or by DGHS on production of Customs Duty Exemption Certificate (CDEC) subject to following conditions:-

(i) Hospital certified by the Ministry of Health and Family Welfare in each case, has to provide medical, surgical or diagnostic treatment without any distinction of caste, creed, race, religion or language and also provide treatment.

(ii) Free treatment to at least 40 per cent of its outdoor patients.

(iii) Free treatment to all indoor patients with an income of less than Rs.500 per month and keeping at least ten per cent of beds reserved for such patients and

(iv) Treatment at reasonable charges, to patients other than those specified in clause (ii) and (iii).

It was noticed in 65 cases of Chennai Sea and Air commissionerates (as on 30 April 2006) that the exemption granted under above notification was withdrawn for non production of CDEC and non fulfilment of conditions stipulated in the said notification. However, due to stay orders in 15 cases involving Rs.12.46 crore, the demands are yet to be confirmed and in 39 cases involving a revenue of Rs.17.53 crore though the demands were confirmed, realisation of revenue is pending due to appeals in High Court/CESTAT and in 11 cases revenue of Rs.3.33 crore is pending realisation after the cases were finalised.

Apex Court in their decisions 2004 (166) ELT 153 (SC) upholding the order of High Court dismissing writ petition against mere SCN, held that the Court should not interfere at the SCN stage. In the case of Mediwell Hospital and Health Care Pvt. Ltd. Vs Union of India, Supreme Court held that availability of concession under the notification would be subject to compliance of conditions of the notification mentioned above and the hospital should notify in the local newspaper every month the total number of patients they have treated and whether 40 per cent of them are persons below income of Rs.500 per month with full particulars/address thereof to ensure that condition to treat requisite percentage of patients free of cost is continuously fulfilled. In the event of default, there should be coercive action to perform their obligation.

Despite this, no effort was made to consolidate all these cases to take a unified action to effect recovery by getting the stay orders vacated till November 2004. On 9 November 2004, Chairman, CBEC addressed all Chief Commissioners of Customs to adjudicate all such cases within two months and take concerted efforts to get the stays vacated. Even after that, no effective action has been taken as seen from the records of the department, resulting in non realisation of revenue of Rs.33.32 crore.

2.8.3 Inadequate internal control mechanism

Board through their instructions issued on 23 April 2003 stressed the need for close monitoring of appeal cases and judicial pronouncements of the Supreme Court/High Court/CEGAT daily on internet and desired that Chief Commissioners should examine the cases critically and develop adequate mechanism to implement the directions of the Court.

In two cases of M/s. HPCL {(CC (I), NCH Mumbai)} on appeal of the importer, orders in original were set aside by CC (Appeal) in September 2002 and March 2003. It was observed that though substantial revenue of Rs.14.36 crore was involved, yet both the orders were submitted (June 2005) for acceptance after a delay of 27/33 months.

Review of register maintained in legal/review cell of Chennai (Air) and Mumbai commissionerates revealed that the nature of order whether adverse or in favour of department, money value, details of stay, interim stay, vacation of stay were not recorded, in many cases.

Audit scrutiny revealed that eight cases in Chennai (Air) and CC (Import) JNCH, Mumbai involving revenue of Rs.18.75 crore were shown as closed but these cases have not reached finality. Five cases in CC (I) JNCH, Mumbai were shown as closed due to non availability of files and these cases were not reflected in MTR as pending adjudication till December 2005.

In MTR of CC (ICD), New Delhi for June 2005, two cases involving revenue of Rs.11 lakh were shown as pending in High Court whereas in annexure of same MTR, cases where stay had been granted by High Court were shown as nine involving revenue of Rs.4.06 crore. As such, correct position of pendency was not clear.

In three other cases of Chennai (Sea) and (Air) though these cases involving revenue of Rs.3.84 crore are pending in High Court, they were neither shown pending in call book nor in MTR as arrears of adjudication and another 21 call book cases in Chennai (Sea) and Trichy commissionerates involving revenue of Rs.29.42 crore were not shown pending in MTR.

This is indicative of inadequate monitoring and non identification of cases for priority action.

The Ministry admitted (January 2007) the facts in respect of four cases of Trichy commissionerate and replied that revised format of MTR contains separate column for call book cases.

2.9 Conclusion

The review has revealed non adjudication of cases even upto 46 years, abnormal delay in adjudication including denovo adjudication, issue of corrigendum to orders in original in violation of Board's instructions, avoidable litigation, pendency of cases in call book, non/delayed filing of appeal leading to dismissal, non vacation of stay orders, non monitoring of court cases effectively and consequent risk to revenue realisation. Adjudication officers were prone to postponing finalisation of adjudication by taking recourse to 'where it is possible to do so' proviso. Various measures initiated by the Government to speed up finalisation of adjudication and appeal cases did not meet the objectives largely due to lack of consistent monitoring and inadequate internal controls.

2.10 Recommendations

The review has identified few critical risks, which if not mitigated could impact adversely in achieving the mandated goals and objectives of timely realisation of Government revenue held up in adjudication and appeals cases. Nine actionable and implementable recommendations were given to remedy the irregularities noticed by audit. If implemented, these would mitigate the risk of similar irregularities in future. The Ministry of Finance had till January 2007 accepted eight of these recommendations. Final reply on the remaining one recommendation, in consultation with Ministry of Commerce, had not been received.