

**Report of the  
Comptroller and Auditor General  
of India**

**for the year ended March 2019**

**Union Government**  
**(Department of Revenue - Customs)**  
**(Compliance Audit)**  
**No. 17 of 2020**

Laid on the table of Lok Sabha and Rajya Sabha on .....



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## PREFACE

This Report for the year ended March 2019 has been prepared for submission to the President of India under the Article 151 of the Constitution of India.

The Report contains significant results of the compliance audit of the Department of Revenue – Customs under the Ministry of Finance, and Directorate General of Foreign Trade under Ministry of Commerce and Industry.

The Government has made significant investment in Indian Customs EDI System (ICES) which has resulted in comprehensive, paperless, fully automated customs clearance system and availability of transactional information in the form of electronic data. This provides a good opportunity to Audit to review hundred *per cent* data, instead of test check transactions in a few locations, and provide assurance to the Government and the Parliament on correctness of application of tax laws across all Customs Commissionerates. The availability of complete data also minimises the requirement of physical visits of Audit to the Customs premises for test check of transactions. However, since the Department was unable to provide complete data for pan-India transactions, Audit was carried out in 48 out of 70 Customs Commissionerates.

The instances mentioned in this Report are those, which came to notice in the course of test audit for the period 2018-19 as well as those which came to notice in earlier years, but could not be reported in the previous Audit Reports. Instances relating to the period subsequent to 2018-19 have also been included, wherever necessary.

The audit has been conducted in conformity with the Auditing Standards issued by the Comptroller and Auditor General of India.



## EXECUTIVE SUMMARY

Customs duty is levied on import of goods into India and on export of certain goods out of India (Entry 83 of List 1 of the Seventh Schedule of the Constitution). Customs receipts form part of the indirect tax revenue of the Government.

Duties of Customs are levied under the Customs Act, 1962 (the Act), and the rates of duties are governed under the Customs Tariff Act and notifications issued from time to time.

Customs receipts before the introduction of Goods and Services Tax (GST) comprised of the Basic Customs duty (BCD), Countervailing duty (CVD) and Special additional duty of Customs (SAD). After introduction of GST w.e.f. 1 July 2017, the CVD and SAD on import of all commodities, except petroleum products and spirits, have been subsumed and replaced by Integrated Goods and Services Tax (IGST).

Department of Revenue (DoR) under Ministry of Finance (MoF) is responsible for administration of Indirect taxes and Direct taxes, through two statutory Boards namely, the Central Board of Indirect Taxes and Customs (CBIC) and Central Board of Direct Taxes (CBDT) constituted under the Central Board of Revenue Act, 1963.

The levy and collection of Customs duty and cross-border preventive functions are administered by the CBIC through 70 Customs Commissionerates across the country.

The Department of Commerce (DoC) under Ministry of Commerce and Industry (MoCI), through Directorate General of Foreign Trade (DGFT) formulates, implements and monitors the Foreign Trade Policy (FTP) which provides the basic framework of policy and strategy to be followed for promoting exports and trade.

During 2018-19, exports worth ₹23.08 lakh crore (1,33,60,422 transactions) and imports worth ₹35.95 lakh crore (1,21,88,592 transactions) took place. The Customs receipts to GDP ratio was 0.62 *per cent* while Customs receipts as percentage of gross tax receipts was six *per cent*. Customs receipts as a percentage of indirect taxes was 14 *per cent*.

The compliance audit of Customs revenue covers transactions involving levy and collection of Customs duties, any other levies of Customs, transactions of imports and exports undertaken under various schemes implemented under the FTP and specific compliance areas reviewed by audit from time to time.

This year the compliance audit had reviewed the “Show Cause Notices (SCN) and Adjudication process” in Customs Commissionerates/ Regional authorities (RA) of DGFT and Development Commissioners (Special Economic Zone) (DC-SEZ)). The transactions covered in this report pertain to FY 2018-19, but in some cases prior period transactions have also been reviewed for getting a holistic picture.

The sample of Commissionerates selected for test check included 48 out of total of 70 Customs Commissionerates. We audited 285 assessment units and 206 non-assessment units working under the Customs Commissionerates selected for audit. The audit was based on the examination of Bills of Entry (BsE) and Shipping bills (SBs) filed electronically into the Indian Customs EDI System (ICES) through a Customs House Service Centre or web based ICEGATE. In non-EDI Customs locations, the BsE and SBs are physically filed and assessed. The ICES uses Risk Management System (RMS) to process the data through a series of automated steps and results in an electronic assessment. This assessment determines whether the BE will be taken-up for action, i.e. manual appraisal by assessing officer or examination of goods, or both, or be cleared after payment of duty and out of charge directly, without any assessment and examination. We audited BsE and SBs cleared by both the RMS and manual appraisal system.

Audit of incentives provided under FTP was carried out in 28 RAs under the DGFT through test check of license files under various schemes of the FTP.

This report is divided into five chapters. Chapter I provides a brief description of functions of DoR and DoC and an overview of statistical information regarding Customs receipts, India’s Imports and Exports, performance of Special Economic Zones, arrears of Customs receipts and results of Department’s internal audit. Chapter II describes the CAG’s audit mandate, scope and results of audit efforts. Chapters III, IV and V contain significant audit findings. There are 114 paragraphs with revenue implication of ₹10,909 crore in this report. In 93 paragraphs involving money value of ₹62 crore, rectificatory action has been taken by the Department/Ministry in the form of issuing SCNs, adjudicating SCNs and recovery of ₹32 crore in 66 cases has been effected till date.

Responses received from DoC and DoR have been included in the report at appropriate places.

## Chapter I: Overview- Customs Revenue

- After introduction of GST w.e.f. 1 July 2017, the CVD and SAD on import of all commodities, except petroleum products and alcohol, have been subsumed and replaced by IGST. The IGST is in addition to the applicable BCD which is levied as per the Customs Tariff Act. In addition, GST compensation cess is also leviable on certain luxury and demerit goods under the GST (Compensation to States) Cess Act, 2017. Levy of education cess as well as anti-dumping duty and safeguard duty remains unchanged.

**{Paragraph 1.4.2}**

- During FY 2018-19, Customs receipts realised were ₹1,17,813 crore as against ₹1,29,030 crore realised in FY 2017-18. One of the reasons for decrease in the Customs receipts during FY 2018-19 may be attributed to the fact that after introduction of GST, CVD and SAD which used to be part of Customs receipts, have been subsumed into IGST.

**{Paragraphs 1.6.1 to 1.6.3}**

- Imports registered growth of 19.78 *per cent* during FY 2018-19, while Exports registered a growth of 17.95 *per cent* during the same period.

**{Paragraph 1.7}**

## Chapter II: CAG's audit mandate and extent of Audit

- During FY 2018-19, audit issued 353 inspection reports to the respective Commissionerates/ RAs containing 2,299 observations and carrying a revenue implication of ₹3,296 crore. Out of these, 114 audit observations with revenue implication of ₹10,909 crore noticed during FY 2018-19 have been included in this report. The remaining cases are being pursued by respective field formations.

**{Paragraph 2.6}**

## Chapter III: Show Cause Notices and Adjudication process

- An SCN is issued when the Department contemplates any action prejudicial to the assessee, giving him an opportunity to present his case. SCN is to be served under Section 28(1) or 28 (4) of the Act, in the cases where Customs duty has not been paid or short paid or erroneously refunded. The issue of SCN under Section 28 (1) or 28 (4) of the Act is followed by adjudication which is a quasi-judicial function of the officers of the Customs department under the Act. There shall be a written Order in Original (OIO) after the completion of adjudication process, detailing facts of the case and justification of the adjudication order under Section 28 of the Act.
- Audit was conducted in 25 Customs Commissionerates, 12 RAs of DGFT and eight DC-SEZs. Audit examined the adjudication process of SCNs, SCNs

issued and OIOs passed during the financial years 2016-17 to 2018-19 and the SCNs pending for adjudication as on 31 March 2019.

- Audit noticed shortcomings in issue of SCNs, deficiencies in the process and procedures leading to adjudication, lack of proper follow up of adjudication and review orders and deficiency in monitoring and internal controls. Total 141 audit observations were issued with a money value of ₹10,649 crore.
- Audit of the issue of SCNs and adjudication process in Customs Commissionerates revealed non-compliance to the extant provisions of the Act and rules at various stages from Pre Notice Consultation (PNC) stage till issue of adjudication orders and follow up of review orders.
- On one hand, SCNs were issued instead of issuing a simple letter for failure of licence holder to submit proof of discharge of export obligation (EO) and on the other, failure to issue SCNs within the prescribed period rendered them time-barred. Extended period of time under Section 28 (4) of the Act was invoked even in cases where SCNs were ought to be issued within the normal period under Section 28 (1) of the Act.
- In case of SEZs, delays were noticed in issue of SCNs by DCs as well as dropping of SCNs by the Adjudicating authority because of non-adherence to prescribed procedures and mis-representation of facts.
- Absence of provisions for prescribed timelines for issue of SCNs and their adjudication in the Foreign Trade (Development and Regulation) {FTDR} Act, 1992 to act swiftly against the defaulters left discretion in the hands of administrative authorities of RAs and DCs and avoidable delays in recovery of Government revenue. Considerable delays were noticed in issue of SCNs by RAs, even though the EO period had already expired, including cases where the EO period expired 2 to 11 years ago.
- The SCNs were pending for adjudication beyond prescribed timelines, with highest pendency being 182 months beyond prescribed time limit, inspite of timelines for adjudication of SCNs being clearly laid out in the Act. Even in cases where adjudication was completed, there were considerable delays, with 37 *per cent* cases, representing 32 *per cent* of total revenue involved in delayed cases, getting adjudicated with delay of more than 6 months. The Personal Hearing (PH) was granted beyond permissible number and delays were noticed in issue of adjudication order even after holding last PH, leading to avoidable blocking of revenue. SCNs were pending adjudication for want of Relied Upon Documents (RUDs), a basic requirement for issuing SCN.

- In the absence of prescribed provisions in FTDR Act, 1992 regarding fixing of PH, it was noticed that the DCs were providing PH without any limit to numbers, leading to delay in adjudication.
- While the adjudication process itself was fraught with delays, deficiencies were noticed even in follow up of adjudication orders in both Customs Commissionerates and RAs.
- The DRI Intelligence Gathering and Investigation Tools (DIGIT), made mandatory since 1st April 2018 with the objective of creating a complete database of Customs offences was found to be partly functional.
- Deficiencies were also noticed in key monitoring and reporting mechanisms such as data discrepancies in Monthly Progress Reports, incomplete SCN and Confirmed Demand registers in Customs Commissionerates. The lax monitoring in RAs is evident from non-issuance of adjudication orders despite preparation of fact sheet.
- Inconsistencies were noticed in the redemption status of Export Promotion Capital Goods (EPCG) licences furnished by RA and Customs department. It was also noticed that Customs department was not using Export obligation discharge certificate (EODC) details available on DGFT's EODC Monitoring System, available in public domain, leading to non-closure of SCNs even in cases where EODC was granted by DGFT. Thus, in spite of standing orders on monitoring EO and sharing of information between the Customs and RAs through institutional mechanism, there is no established mechanism in place and the Departments continue to function as independent silos.
- *Audit recommended:*
  - (i) *Ministry may consider providing specific time limit in FTDR Act, 1992 for issuance and adjudication of SCN.*
  - (ii) *In order to give a fair opportunity to the noticee to reply to SCN and also to prevent unlimited discretion in hands of Adjudicating authority to allow any number of PH, express provision needs to be incorporated in the FTDR Act, 1992 regarding number of PH to be granted on same lines as in Customs Act.*
  - (iii) *The monitoring and reporting mechanisms need to be strengthened to ensure that timely and proper action as per the Act is taken by the field formations in issuing and adjudicating SCNs.*

- (iv) Cases of irregularities including issuance of SCN under inapplicable section of the Act may be examined in detail and responsibility may be fixed for errors of omission and commission.*
- (v) The database of Customs offences as envisaged under DIGIT must be completed in a time bound manner.*
- (vi) Monitoring of RAs need to be enhanced. Coordination between Customs Department and DGFT's EODC monitoring system needs to be improved.*
- (vii) As audit has checked only a sample of cases, the Department may examine all other cases also to identify and fix systemic deficiencies.*

***{Paragraphs 3.1 to 3.5}***

#### **Chapter IV: Non-compliance to provisions of Customs Act, Customs Tariff Act and Tariff notifications**

- Data for import and export transactions for the year 2018-19 was not received. In the absence of data, the conclusions in this chapter on compliance audit were based on limited audits carried out in the field. However, the range of audit findings noticed even in the test check point to systemic deficiencies that need to be addressed by the Department.
- During 2018-19, a total of 1.22 crore BsE and 1.34 crore SBs were generated, out of which Audit selected a sample of 4.09 lakh BsE and 2.21 lakh SBs. Significant audit observations with revenue implication of ₹10 lakh or more noticed during test check of import/export documents in the Customs Commissionerates have been reported in this Report. Audit has, wherever applicable, attempted to quantify potential risk to revenue by ascertaining the total number of similar transactions by using the import data received from CBIC for the year 2017-18.

The cases of non-compliance noticed during audit could be broadly categorized as follows:

- I. Incorrect application of notifications
  - II. Misclassification of imports
  - III. Incorrect levy of applicable levies and other charges
- Audit noticed 86 cases of under assessments of applicable Customs duties due to incorrect application of notifications, misclassification of imported goods and Incorrect levy of applicable levies and other charges, as result of which revenue of ₹233 crore was at risk etc.

***{Paragraphs 4.1 to 4.13}***

### Systemic issues

Audit noticed systemic issues in few import cases wherein the Risk Management System (RMS) allowed clearance even though the prescribed import conditions were not fulfilled. The RMS needs to address the issues flagged by audit so that the prescribed import conditions are complied with and applicable duties are automatically charged once the BE passes through the system.

Few cases are mentioned below and also discussed in Chapter IV of the Report.

- Short levy of BCD on I phones (Smart phones) imports due to incorrect application of the notification.  
**{Paragraph 4.7.1}**
- Short levy of BCD on incorrect exemption granted to 'Camera module and printed circuit Board Assembly'.  
**{Paragraph 4.7.2}**
- Import of restricted commodity below Minimum Import Price.  
**{Paragraph 4.7.3}**
- Improper exemption of IGST on import of pharmaceutical products.  
**{Paragraph 4.8.3}**
- Incorrect application of IGST rate on import of Carpets and other textile floor coverings.  
**{Paragraph 4.8.5}**

### Persistent irregularities

Similar instances of non-realisation of cost recovery (establishment) charges from the units in the SEZ and misclassification of imports flagged to the Ministry in the previous Audit Reports continue to be reported in the Customs field formations, notwithstanding assurances of the CBIC that their field formations have been sensitised to check similar issues cautiously. Few cases are mentioned below:

- Non realisation of cost recovery charges from the developers.  
**{Paragraph 4.12.1}**
- Misclassification of machinery for animal feed.  
**{Sl.No.5, Annexure 9}**
- Misclassification of RFID tags.  
**{Sl.No.6, Annexure 9}**

### General Recommendations

Though the Ministry has taken corrective action to recover duty in many cases, it may be pointed out that audit paragraphs in this Report are only a few illustrative cases. There is every likelihood that such errors of omission and

commission, whether in RMS based assessments or manual assessments, may exist in many more cases. Audit has, wherever applicable, attempted to quantify potential risk to revenue by ascertaining the total universe of similar transactions by using the import data received from CBIC for the year FY 2017-18. These need to be examined by the Department.

It is pertinent to note that a large number of BsE examined by audit in test check had been assessed through the RMS which indicated that the assessment rules mapped into the RMS to facilitate system based assessments were inadequate.

The process of mapping and updating of risk parameters in the RMS also needs to be reviewed.

***{Paragraphs 4.7 to 4.11}***

## **Chapter V: Non-compliance to provisions of various Export Promotion schemes of FTP**

### **Irregularities in Export promotion schemes of FTP**

- Test audit of 28 RAs revealed instances of violations of prescribed rules, procedures framed to give effect to the provisions of the FTP and procedures regarding fulfilment of EO and awarding export incentives. Revenue of ₹27.74 crore was due from exporters/ importers who had availed the benefits of the duty under Export promotion schemes but have not fulfilled the prescribed obligations/conditions.
- Irregularities reported, especially the issue of non-fulfilment of EO and other non-fulfilment of conditions by exporter/ importer as per FTP seem to be widespread and need to be addressed by the DGFT, New Delhi and CBIC. The cases pointed out in above paragraphs are illustrative based on test check by audit and similar violation of rules and procedures and errors of omission and commission cannot be ruled out. Department is advised to review all cases of non-fulfilment of conditions of EPCG and other schemes and take necessary action. Appropriate action to recover the duty saved in cases pointed in Audit also needs to be taken.

***{Paragraphs 5.1 to 5.3}***

**Glossary of terms and abbreviations**

<b>Abbreviation</b>	<b>Expanded form</b>
AA	Advance Authorization
ACC	Air Cargo Complex
ADD	Anti Dumping Duty
ADGFT	Additional Director General of Foreign Trade
AEO	Authorised Economic Operator
ANF	Aayat Niryat Form
AO	Assessing Officer
APRs	Annual Performance Reports
BCD	Basic Customs Duty
BE	Bill of Entry
BE	Budget Estimates
BRC	Bank Realisation Certificate
CBDT	Central Board of Direct Taxes
CBIC	Central Board of Indirect Taxes and Customs
CEIB	Central Economic Intelligence Bureau
Commissionerate	Commissionerate of Customs
CRA	Customs Receipt Audit
CRC	Cost Recovery Charge
CTH	Customs Tariff Heading
CVD	Countervailing Duty
DC	Development Commissioner
DC	Deputy Commissioner of Customs
DEEC	Duty Exemption Entitlement Certificate
DEL	Denied Entity List
DFCE	Duty Free Credit Entitlement
DGFT	Directorate General of Foreign Trade
DGOV	Directorate General of Valuation
DIGIT	DRI Intelligence Gathering and Investigation Tools
DL	Deficiency Letter
DoC	Department of Commerce
DoR	Department of Revenue
DRI	Directorate of Revenue Intelligence
DTA	Domestic Tariff Area
e-BRC	Electronic Bank Realisation Certificate
ECA	Enforcement Cum Adjudication
EDI	Electronic Data Interchange
EO	Examination Officer
EO	Export Obligation
EODC	Export Obligation Discharge Certificate
EOU	Export Oriented Unit

<b>Abbreviation</b>	<b>Expanded form</b>
EPCG	Export Promotion Capital Goods
EXIM	Export and Import
FEMA	Foreign Exchange Management Act
FOB	Free on Board
FTP	Foreign Trade Policy
FTDR	Foreign Trade Development and Regulation
FY	Financial Year
GDP	Gross Domestic Product
GST	Goods and Services Tax
GTR	Gross Tax Revenue
HBP	Hand Book of Procedures
ICD	Inland Container Depot
ICEGATE	Indian Customs Electronic Commerce Gateway
ICES	Indian Customs Electronic Data Interchange System
IEC	Importer Exporter Code
IGST	Integrated Goods and Service Tax
JDGFT	Joint Director General of Foreign Trade
KASEZ	Kandla Special Economic Zone
LEO	Let Export Order
LOP	Letter of Permission
MEIS	Merchandise Exports from India Scheme
MIDC	Maharashtra Industrial Development Corporation
MIP	Minimum Import Price
MOCI	Ministry of Commerce and Industry
MOU	Memorandum of Understanding
MPR	Monthly Performance Report
MTR	Monthly Technical Report
NIC	National Informatics Centre
NSEZ	Noida Special Economic Zone
OIO	Order in Original
OM	Office Memorandum
OSPCA	On Site Post Clearance Audit
PH	Personal Hearing
PIC	Policy Interpretation Committee
PMT	Per Metric Tonne
PNC	Pre Notice Consultation
PO	Preventive Officer
Pr.CCA	Principal Chief Controller of Accounts
PTFE	Poly Tetra Fluoro Ethylene
₹	Rupee
RA	Regional Authority
RC	Recovery Cell

<b>Abbreviation</b>	<b>Expanded form</b>
RE	Revised Estimates
RF	Redemption Fine
RMS	Risk Management System
RUD	Relied Upon Documents
SAD	Special Additional Duty of Customs
SB	Shipping Bill
SEEPZ	Santacruz Electronic Export Processing Zone
SEIS	Service Exports from India Scheme
SEZ	Special Economic Zone
SFIS	Served from India Scheme
SIIB	Special Intelligence Investigation Branch
SOP	Standard Operating Procedure
SSCA	Subject Specific Compliance Audit
STP	Software Technology Park
VSEZ	Visakhapattanam Special Economic Zone
YOY	Year on Year



## CHAPTER I

### Customs Revenue

#### 1.1. Nature of Customs Duties

**1.1.1** Customs duty is levied on import of goods into India and on export of certain goods out of India (Entry 83 of List 1 of the Seventh Schedule of the Constitution). Customs receipts form part of the indirect tax revenue of the Government.

**1.1.2** Duties of Customs are levied under the Customs Act, 1962, and the rates of duties are governed under the Customs Tariff Act, 1975 and notifications issued from time to time.

#### 1.2. Customs revenue base

**1.2.1** The Customs revenue base comprises of the Importers and Exporters issued with Importer Exporter Code (IEC) by the Directorate General of Foreign Trade (DGFT). As on March 2019 there are 3,00,402 active IECs<sup>1</sup>. During FY 19, exports worth ₹23.08 lakh crore (1,33,60,422 transactions) and imports worth ₹35.95 lakh crore worth of imports (1,21,88,592 transactions) took place.

#### 1.3. Organisation and functions of Administrative departments

**1.3.1** The Department of Revenue (DoR) under Ministry of Finance is the apex department of Government of India responsible for administration of the Direct and Indirect Union Taxes, through two statutory Boards namely, the Central Board of Indirect Taxes and Customs (CBIC) and the Central Board of Direct Taxes (CBDT) constituted under the Central Board of Revenue Act, 1963.

**1.3.2** The levy and collection of Customs duty and cross-border preventive functions are administered by the CBIC through 20 Zones headed by Chief Commissioners across the country.

**1.3.3** The Department of Commerce (DoC) under Ministry of Commerce and Industry (MOCI), through DGFT formulates, implements and monitors the FTP which provides the basic framework of policy and strategy to be followed for promoting exports and trade. Besides, the DoC is also entrusted with responsibilities relating to multilateral and bilateral commercial relations, SEZs, state trading, export promotion and trade facilitation, and development and regulation of certain export oriented Industries and commodities.

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<sup>1</sup>IEC is issued by DGFT, Delhi to every importer/Exporter.

**1.3.4** The FTP is implemented through the RAs who are responsible for providing IECs and granting licenses under various schemes of export promotion. During FY 19, there were 38 RAs across India.

#### 1.4. Customs receipts

**1.4.1** Customs receipts, before the introduction of GST, comprised of the BCD, CVD and SAD. All imports are also subjected to Education cess. In addition, Anti-dumping duty and Safeguard duty are leviable wherever applicable.

**1.4.2** After introduction of GST w.e.f. 1 July 2017, the CVD and SAD on import of all commodities, except petroleum products and alcohol, have been subsumed and replaced by IGST. The IGST is in addition to the applicable BCD which is levied as per the Customs Tariff Act. In addition, GST compensation cess is also leviable on certain luxury and demerit goods under the GST (Compensation to States) Cess Act, 2017. Levy of education cess as well as anti-dumping duty and safeguard duty remains unchanged.

#### 1.5. Budget Estimates and Actual Receipts

**1.5.1** The Revenue Budget of the Union Government provides budget estimates of tax and non-tax revenues of the Government. Comparison of budget estimates with actual receipts is an indicator of quality of fiscal management. The actuals may differ from the estimates either due to unexpected events or due to unrealistic assumptions.

**1.5.2** Budget estimates (BE), Revised estimates (RE) and actual Customs receipts during FY 15 to FY 19 are given in Table 1.1 below:

**Table 1.1: Budget and Revised estimates, Actual receipts**

Year	Budget estimates ₹ in Cr.	Revised estimates ₹ in Cr.	Actual receipts ₹ in Cr.	Diff. between actual and BE	Per cent variation between actual and BE	Per cent variation between actual and RE
FY 15	2,01,819	1,88,713	1,88,016	(-)13,803	(-)6.84	(-)0.37
FY 16	2,08,336	2,09,500	2,10,338	(+)2,002	(+)0.96	(+)0.40
FY 17	2,30,000	2,17,000	2,25,370	(-)4,630	(-)2.01	(+)3.85
FY 18	2,45,000	1,35,242	1,29,030	(-) 1,15,970	(-)47.33	(-) 4.59
FY 19	1,12,500	1,30,038	1,17,813	(+) 5,313	(+)4.72	(-)9.40

Source: Union Budget and Finance Accounts for respective years.

**1.5.3** The variation between RE and actual receipts ranged between (-)9.40 per cent to 3.85 per cent during FY 15 to FY 19. Variation between BE and Actuals was in the range of (-) 47.33 per cent to 4.72 per cent during the same period.

**1.5.4** Actual Customs receipts during FY19 were more than BE by 4.72 *per cent* (by ₹5,313 crore), while in comparison to RE they were short by 9.4 *per cent* (by ₹12,225 crore) during the same period. DoR stated (March 2020) that BE and RE for a financial year were fixed while taking various economic factors into account and the final outcome of these factors for the whole year was not known in advance.

## 1.6 Growth of Customs receipts

**1.6.1** Table 1.2 (a) below gives the relative growth of Customs receipts with reference to Gross Domestic Product (GDP), Gross Tax Revenue (GTR) receipts and Gross Indirect Tax receipts

**Table 1.2 (a): Growth of Customs receipts**

Year	Customs receipts ₹ in Cr.	Year on year growth <i>per cent</i>	GDP ₹ in Cr.	Customs receipts as % of GDP	Gross Tax Revenue (GTR) ₹ in Cr.	Customs receipts as % of GTR	Gross Indirect taxes ₹ in Cr.	Customs receipts as % of Indirect taxes
FY 15	1,88,016	9	1,25,41,208	1.50	12,45,135	15.10	5,46,214	34.42
FY 16	2,10,338	12	1,35,76,086	1.55	14,55,891	14.45	7,10,101	29.62
FY 17	2,25,370	7	1,51,83,709	1.48	17,15,968	13.13	8,62,151	26.14
FY 18	1,29,030	(-)43	1,67,73,145	0.76	19,19,183	6.72	9,16,445	14.07
FY 19	1,17,813	(-)09	1,90,10,164	0.62	19,68,456	5.99	8,43,177	13.97

Source: Finance Accounts for respective years

**1.6.2** Customs receipts growth rate, on Year on Year (YoY) basis were in the range of 9 to 12 *per cent* during the years from FY 15 to FY 17, but showed negative trend in FY 18 to FY 19 compared to the previous year. **Customs receipts in FY 18 and FY 19 are not comparable with earlier year as after introduction of GST, Customs receipts comprise of only BCD excluding CVD and SAD, which used to be part of Customs receipts earlier have been subsumed into IGST.**

**1.6.3** During FY 19 the percentage of Customs receipts to GDP was 0.62 *per cent* compared to 0.76 *per cent* in previous year FY 18. Customs receipts as percentage of GTR had declined to 5.99 *per cent* in FY 19 as compared to 15.10 *per cent* in FY 15. The decrease in percentage of Customs receipts as compared to GDP/GTR during FY 18 and FY 19 was mainly because of subsuming of CVD and SAD into IGST. CVD and SAD together accounted for 65 to 67 *per cent* of Customs receipts during FY 15 to FY 17.

Customs receipts as percentage of total Indirect taxes have progressively declined from 34 *per cent* in FY 15 to 14 *per cent* in FY 19.

**1.6.4** During FY 19, the Customs receipts to GDP ratio was less than one *per cent* (0.62 *per cent*) while Customs receipts as percentage of GTR were 6 *per cent*. Customs receipts as a percentage of indirect taxes were 14 *per cent*.

**1.6.5** The share of CVD and SAD which were also a part of Customs receipts before introduction of GST from July 2017 is shown in the table 1.2(b) below.

**Table 1.2 (b): Share of CVD and SAD in Customs receipts during FY 15 to FY 19**

Year	Customs receipts (₹ in Cr.)	CVD (₹ in Cr.)	SAD (₹ in Cr.)	Total of (CVD+SAD) (₹ in Cr.)	Customs receipts excluding (CVD+SAD) (₹ in Cr.)	YoY growth of Customs receipts excluding (CVD+SAD)	(CVD+SAD) as percentage of Customs receipt
FY 15	1,88,016	93,245	29,298	1,22,543	65,473		65.18
FY16	2,10,338	1,06,250	30,033	1,36,283	74,055	13	64.79
FY17	2,25,370	1,11,982	39,944	1,51,926	73,444	(-)0.8	67.41
FY 18	1,29,030	33,489	9,603	43,092	85,938	17	33.40
FY 19	1,17,813	1,835	78	1,913	1,15,900	35	1.62

Source: Budgets & Finance Accounts for respective years and information given by MoF

After introduction of GST in July 2017, the percentage of CVD plus SAD was 1.62 *per cent* in FY 19 as these duties have been subsumed into GST except on few commodities (Motor spirit, Diesel and alcohol).

Considering Customs receipts excluding (CVD+SAD), there was increase from ₹65,473 crore in FY 15 to ₹1,15,900 crore during FY 19. YoY growth of Customs receipts excluding (CVD+SAD) was 35 *per cent* in FY 19 compared to FY 18.

## 1.7 India's imports and exports

**1.7.1** Table 1.3 depicts trend of growth of India's imports and exports during FY 15 to FY 19.

**Table 1.3: India's Import and Export**

Year	Imports ₹ in Cr.	% growth over previous year	Exports ₹ in Cr.	% growth over previous year	Trade Imbalance ₹ in Cr.
FY 15	27,37,087	0.79	18,96,348	(-) 0.45	(-)8,40,739
FY16	24,90,298	(-) 9.00	17,16,378	(-) 9.49	(-)7,73,920
FY17	25,77,422	3.49	18,52,340	7.92	(-)7,25,082
FY 18	30,01,033	16.44	19,56,515	5.62	(-)10,44,518
FY 19	35,94,675	19.78	23,07,726	17.95	(-)12,86,949

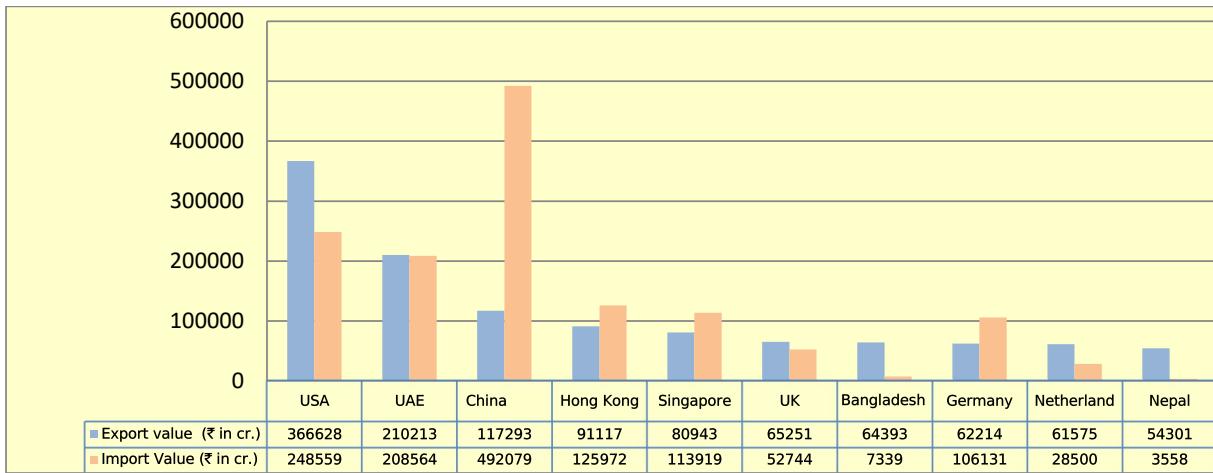
Source: EXIM Data, Ministry of Commerce & Industry

**1.7.2** India's imports increased in value to ₹35.95 lakh crore during FY 19 from ₹30.01 lakh crore in FY 18, and the exports also increased to ₹23.08 lakh crore in FY 19 from ₹19.56 lakh crore in FY 18.

YoY growth rate of imports increased during FY 17 and FY 18 after a negative growth of (-) 9 per cent during FY 16. The growth rate in exports also increased from (-) 9.5 per cent in FY 16 to 17.95 per cent in FY 19. The imports grew by 19.78 per cent in FY 19 over FY 18, while exports grew by 17.95 per cent during the same period.

**1.7.3** During FY 19 India’s top trading partners in terms of value of imports and exports were USA, UAE, China, Hong Kong, Singapore, UK, Bangladesh, Germany, Netherland and Nepal. The details of imports and exports from top ten countries during FY 19 are depicted in chart 1 below:

**Chart 1 : Export vis-a-vis Import from Top 10 Countries during FY 19**



Source: EXIM Data, Ministry of Commerce & Industry

## 1.8 Share of top five commodities in imports and exports during FY 19

**1.8.1** Growth of imports in FY 19 was led by five major commodity groups, namely,

- (i) Mineral fuels and products of their Distillation (Chapter 27 of Customs Tariff)
- (ii) Natural or Cultured Pearls, Precious or semi-precious stones, Gold and articles thereof (Chapter 71 of Customs Tariff)
- (iii) Electrical machinery and equipment and parts (Chapter 85 of Customs Tariff)
- (iv) Machinery and appliances and parts (Chapter 84 of Customs Tariff) and
- (v) Organic chemicals (Chapter 29 of Customs Tariff)

These commodities accounted for 68 per cent share of the total imports made during FY 19 as depicted in Table 1.4.

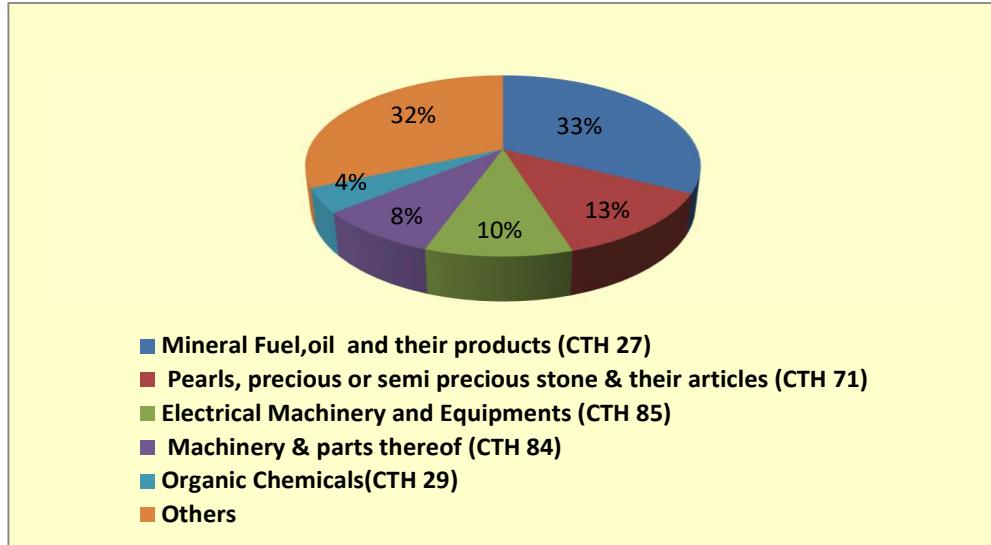
**Table 1.4: Share of top five commodities in imports during FY 19**

Sl. No.	Commodity	Import (₹in cr.)	% to total imports
1	Mineral Fuel, oil and their products (CTH 27)	11,74,715	33
2	Pearls, precious or semiprecious stone & their articles (CTH 71)	4,51,505	13
3	Electrical Machinery and Equipments (CTH 85)	3,64,152	10
4	Machinery & parts thereof (CTH 84)	3,06,368	8
5	Organic Chemicals (CTH 29)	1,56,552	4
6	Others	11,41,383	32
	Total	35,94,675	

Source: EXIM Data, Ministry of Commerce & Industry

The share of top five commodities in imports during FY 19 is pictorially depicted in chart 2 below.

**Chart 2: Share of top five commodities in imports during FY 19**



**1.8.2** Top five commodities exported during FY 19 were:

- (i) Mineral fuels and products of their Distillation (Chapter 27 of Customs tariff)
- (ii) Natural or Cultured Pearls, Precious or semi-precious stones, Gold and articles thereof (Chapter 71 of Customs tariff)
- (iii) Machinery and appliances and parts thereof (Chapter 84 of Customs tariff)
- (iv) Organic chemicals (Chapter 29 of Customs tariff) and
- (v) Vehicles and parts and accessories thereof (Chapter 87 of Customs tariff) in their respective order.

The share of the five major commodities in exports during FY 19 was 44 per cent of the total exports made as depicted in Table 1.5 below.

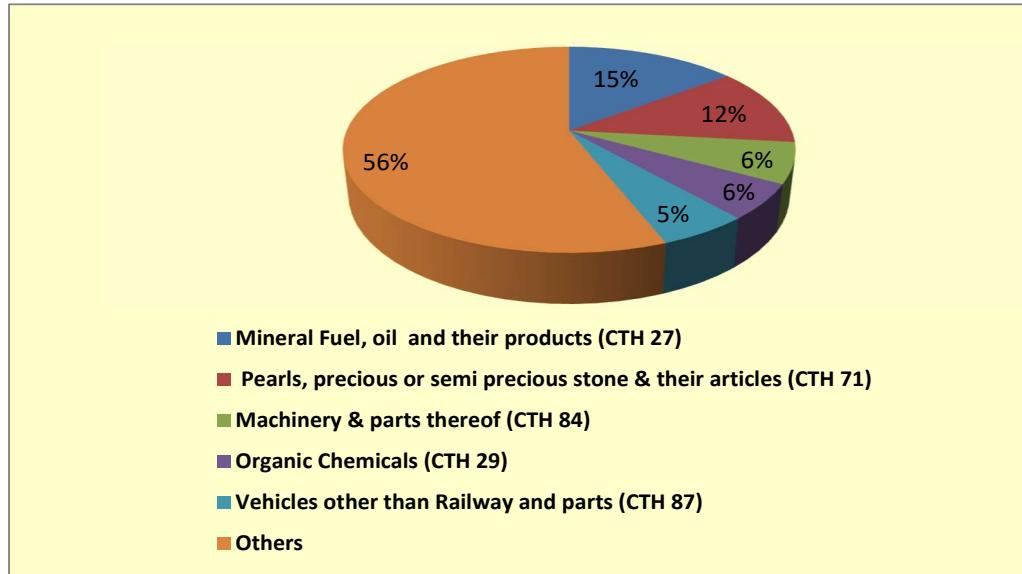
**Table 1.5: Share of top five commodities in exports during FY 19**

Sl. No.	Commodity	Export (₹ in cr.)	% to total exports
1	Mineral Fuel, oil and their products (CTH 27)	3,35,474	15
2	Pearls, precious or semiprecious stone & their articles (CTH 71)	2,82,794	12
3	Machinery & parts thereof (CTH 84)	1,46,652	6
4	Organic Chemicals (CTH 29)	1,27,567	6
5	Vehicles other than Railway and parts (CTH 87)	1,26,533	5
6	Others	12,88,706	56
	<b>Total</b>	<b>23,07,726</b>	

Source: EXIM Data, Ministry of Commerce & Industry

The share of top five commodities in exports during FY 19 is pictorially depicted in chart 3.

**Chart 3: Share of top five commodities in exports during FY 19**



### 1.9 Performance of Special Economic Zones

The SEZ Act, 2005, supported by SEZ Rules, came into effect on 10 February, 2006, providing for simplification of procedures and for single window clearance on matters relating to central as well as State Governments. The main objectives of the SEZ Act are:

- generation of additional economic activity
- promotion of exports of goods and services

- promotion of investment from domestic and foreign sources
- creation of employment opportunities
- development of infrastructure facilities

While 416 SEZs were formally approved, only 351 were notified as on 1 April 2019, of which only 232 SEZs were operational (**Annexure 1**) i.e. only 55.77 *per cent* of the approved SEZs.

The three parameters of SEZ performance (i) Export performance, (ii) Investment and (iii) Employment for the period FY 16 to FY 19 are given in **Table 1.6** below.

**Table 1.6: Performance of SEZs**

	FY 16	FY 17	FY 18	FY 19
<b>Export performance ( ₹ in crore )</b>	4,67,337	5,23,637 (12%)*	5,81,033 (11%)*	7,01,179 (21%)*
<b>Investment ( ₹ in crore )</b>	3,76,494	4,33,142 (15%)	4,92,312 (14%)	5,07,644 (3%)
<b>Employment (in person)</b>	15,91,381	17,78,851 (12%)	19,96,610 (12%)	20,61,055 (3%)

Source: Ministry of Commerce & Industry

\*Figures in bracket indicate YoY growth

Exports from SEZ, which stood at ₹7.01 lakh crore in FY 19, had overall growth of 50 *per cent* (₹2,33,842 Cr.) over exports made in FY16. The exports growth percentage was 21 *per cent* in FY 19 over FY 18 with exports of ₹5.81 lakh crore. The YoY growth in exports had increased from one *per cent* in FY 16 to 21 *per cent* in FY 19 as compared to previous years (**Table 1.6 and Annexure 1**).

A total of ₹5.07 lakh crore has been invested in SEZs during FY 19 which resulted in generation of employment for 20.61 lakh persons. The investment had registered a growth of 35 *per cent* in FY 19 over investment of ₹3.77 lakh crore made in FY 16. During the same period employment generated had registered growth of 30 *per cent* (**Table 1.6 and Annexure 1**).

#### **1.10. Cost of Collection of Customs receipts during FY 15 to FY 19**

**1.10.1** Cost of collection is the cost incurred on collection of Customs duties and comprises of expenditure on Import/Export Trade control functions, preventive functions, transfers to reserve fund/deposit account and other expenditure.

**1.10.2** The cost of collection of Customs receipts for FY 19 was 3.75 *per cent* of Customs receipts. The cost of collection of Customs receipts for the period from FY 15 to FY 19 is given in Table 1.7.

**Table 1.7: Cost of Collection during FY 15 to FY 19**

Year	Expenditure on Revenue-cum Import /export and trade control functions	Expenditure on preventive and other functions	Transfer to Res. Fund, Deposit A/c and other expenditure	Total Expenditure	Customs receipts	Cost of collection as percentage of Customs receipts
	₹ in Cr.	₹ in Cr.	₹ in Cr.	₹ in Cr.	₹ in Cr.	
1	2	3	4	5	6	7
FY 15	382	2,094	20	2,496	1,88,016	1.33
FY 16	412	2,351	36	2,799	2,10,338	1.33
FY 17	544	2,771	7	3,322	2,25,370	1.47
FY18	640	3,262	39	3,941	1,29,030	3.05
FY 19	743	3,667	9	4,419	1,17,813	3.75

Source: Finance Accounts of the Union Government for respective years

**1.10.3** Expressed in terms of percentage of Customs receipts, cost of collection ranged between 1.33 *per cent* (FY 15) to 3.75 *per cent* (FY19). On implementation of GST, IGST on import and export is levied and collected by Customs department but the IGST receipts are booked under GST Accounting Head.

### 1.11 Arrears of Customs duties

**1.11.1** Recovery of arrears is the overall responsibility of the jurisdictional commissioners. They are required to review and monitor the functions of recovery cell functioning within the Commissionerates. As per Ministry of Finance circular dated 15.12.1997, a “Recovery Cell (RC)” should be created in each Customs Commissionerate for the purpose of making recovery of Government dues. Every year recovery targets are fixed for each Commissionerate.

**1.11.2** The arrears of Customs duty are duties which have been raised by the Department but have not been recovered due to various reasons like pendency of adjudication, disputed claims, and provisional assessments. The Customs arrears amounted to ₹35,827 crore as on 31 March 2019.

**1.11.3** The Customs revenue arrears for FY 16 to FY 19 are depicted in the table 1.8:

**Table 1.8: Arrears of Customs duties**

Year	Arrear of Customs duties under dispute ₹ in Cr.	Arrear of undisputed Customs duties ₹ in Cr.	Total ₹ in Cr.	Percentage of disputed arrears to total arrears
FY16	12,300	12,322	24,622	49.95
FY17	21,780	4,700	26,480	82.25
FY18	18,836	5,849	24,685	76.31
FY19	27,972	7,855	35,827	78.08

Source: DG Performance management (TAR), Customs, Central Excise & Services

**1.11.4** The arrears of Customs duties have risen steadily during FY 16 to FY 19 except in the FY 18. The total arrear of Customs revenue pending as on March 2019 (₹35,827 crore) had increased by 45.14 *per cent* in comparison to pendency as on March 2018 (₹24,685 crore) indicating that the Department is not acting proactively for recovery of the arrears.

The overall arrears in Customs duties have grown by 46 *per cent* in FY 19 compared to FY 16.

**1.11.5** Amount of arrears under dispute as a proportion to total arrears rose from 50 *per cent* in FY 16 to 78 *per cent* for the FY 19 and stood at ₹35,827 crore. There was 34 *per cent* increase in undisputed arrears in FY 19 from previous year FY 18.

Details of arrears of Customs duties realised during the FY 19 have been sought from the CBIC, response to which was awaited (July 2020).

**1.11.6** Out of total 23 Zones (11 Customs Commissionerates and 12 combined Commissionerates (Customs and GST), 10 zones accounted for 87 *per cent* (₹31,084 crore) of total arrears pending (₹35,827 crore) during FY 19 as shown in Table 1.9 below.

**Table 1.9: Zone wise Arrears of Customs revenue as on 31 March 2019**

Sl. No.	CC Zones	Amount under Dispute	Amount Undisputed	Amount pending as on 31.03.19
		₹ in Cr	₹ in Cr	₹ in Cr
1	Mumbai II Cus	9,708	1,571	1,1279
2	Ahmedabad Cus	4,248	720	4,968
3	Delhi Cus	1,828	1,336	3,164
4	Mumbai III Cus	1,986	128	2,114
5	Bhopal CE & GST	950	1,109	2,059
6	Bangalore Cus	1,769	126	1,895
7	Kolkata Cus	1,049	513	1,562
8	Chennai Cus	1,127	424	1,551
9	Mumbai-I Cus	1,239	143	1,382
10	Visakhapatnam CE & GST	998	112	1,110
	<b>Sub Total</b>	<b>24,902</b>	<b>6,182</b>	<b>31,084</b>
11	<b>Others</b>	<b>3,070</b>	<b>1,673</b>	<b>4,743</b>
	<b>Grand total</b>	<b>27,972</b>	<b>7,855</b>	<b>35,827</b>

Source: DG Performance management (TAR), Customs, Central Excise & Services

**1.11.7** Chief Commissionerates of Customs, Mumbai-II had the highest quantum of arrears of Customs duty in FY 19, followed by Ahmedabad, Delhi, Mumbai-III and Bhopal Customs/CE-GST Zones in that order.

**1.11.8** Undisputed arrears (₹7,855 crore) pending as on 31 March 2019 were 22 per cent of total arrears (₹35,827 crore) indicating that the Department is not acting proactively for recovery of the arrears which are undisputed.

**1.11.9** Age analysis of undisputed arrears revealed that out of total ₹7,855 crore, ₹2,494 crore (32%) were lying unrecovered for more than five years. An amount of ₹1,663 crore was pending for recovery for more than ten years indicating need for strengthening department's recovery mechanism.

**Table 1.10: Age wise Arrears of Customs revenue for FY 14 to FY 19**

Year	Amount under dispute (*)				Amount not under dispute (*)				Grand total (col.5+9)
	Less than 5 years	Five years but < 10 years	More than 10 years	Total (Col.2+3+4)	Less than 5 years	Five years but < 10 years	More than 10 years	Total (Col.6+7+8)	
1	2	3	4	5	6	7	8	9	10
FY 14	9,703	1,890	429	12,022	3,321	1,818	825	5,964	17,986
FY 15	12,430	1,813	355	14,597	2,951	2,082	1,178	6,211	20,808
FY 16	8,681	2,494	1,125	12,300	5,162	4,714	2,446	12,322	24,622
FY 17	17,919	2,716	1,145	21,780	2,538	1,245	917	4,700	26,480
FY 18	15,554	2,279	1,005	18,836	3,931	980	938	5,849	24,685
FY 19	24,670	2,373	929	27,972	5,361	831	1,663	7,855	35,827

Source: DG Performance management (TAR), Customs, Central Excise & Services

## 1.12 Internal Audit

**1.12.1** The internal audit of CBIC and its field formations comprises of technical audits conducted by Directorate General of Audit {DG (Audit)} and audit of payments and accounts conducted by the Principal Chief Controller of Accounts (Pr. CCA). DG (Audit) has its Headquarter located in Delhi, headed by Director General (Audit) with seven zonal units at Ahmedabad, Bangalore, Chennai, Delhi, Hyderabad, Kolkata and Mumbai each headed by Additional Director Generals under its ambit. Every zonal unit of DGA has area wise jurisdictional control over zonal units of Chief Commissioner and Commissionerates there under.

**1.12.2** The details of technical category of internal audits planned and conducted by DG (Audit) for the year FY 19 were not provided by CBIC.

**1.12.3** Pr. CCA conducts internal audit of payments and accounts of CBIC and its field formations. According to information given by the CBIC of the audit comments raised by Pr. CCA during 2018-19, 137 observations

amounting to ₹9,040 crore<sup>2</sup> were pending as on 31 March 2019. These mainly consisted of the following irregularities:

- a) Non recovery of dues from Government Department/State Government bodies/Private parties/ Autonomous bodies; ₹7,383 crore;
- b) Blocking of government money; ₹314 crore on account of infructuous expenditure, irregular purchase/expenditure etc,

### **1.13 Tax Evasion and Seizures**

**1.13.1** According to information furnished by Directorate of Revenue Intelligence (DRI), the number of duty evasion cases moved up from 407 in FY 15 to 752 in FY 19 while the value increased from ₹2,926 crore to ₹6,228 crore during the same period (**Annexure 2**). However, details of recoveries made during FY 19 in cases detected were not provided.

**1.13.2** Major commodities involved in evasion cases were Gold, Foreign and Indian currency, Narcotics, Diamonds and precious stones, Electronic items (including Computer parts), Textiles and watches.

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<sup>2</sup> Pr. CCANo. IA /NZ/HQ/CAG/Information/2017-18/366 dated 18 February 2020

## CHAPTER II

### CAG's Audit mandate and extent of Audit

#### 2.1 Authority of the CAG for audit of receipts

**2.1.1** Section 16 of the CAG's DPC Act, 1971 authorizes CAG to audit all receipts (both revenue and capital) of the Government of India and of Government of each state and of each Union territory having a legislative assembly and to satisfy himself that the rules and procedures are designed to secure an effective check on the assessment, collection and proper allocation of revenue and are being duly observed. Regulations on Audit & Accounts, lay down the principles for Receipt Audit.

**2.1.2** Compliance audit of Customs revenue covers transactions involving levy and collection of Customs duties, any other levies of Customs, transactions of imports and exports undertaken under various schemes implemented under the FTP and specific compliance areas reviewed by audit from time to time. The transactions covered in this report pertain to FY 19, but in some cases, prior period transactions have also been reviewed for getting a holistic picture. In addition, this year the audit had commented on SSCA "Show Cause Notices (SCNs) and Adjudication process".

#### 2.2 Scope of Audit

**2.2.1** CAG examines the records, selected on a risk based sample, of the various functional wings of the CBIC, along with the sample of transactional records of Customs field formations relating to imports, exports and refunds. CAG also examines records relating to departmental functions like adjudication and recovery of arrears and preventive functions.

**2.2.2** Records of concerned RAs under DGFT in respect of customs exemption benefits availed by importers/exporters under FTP are examined. Similarly CAG conducts audit of DCs of SEZs/ EOUs and Software Technology Parks (STPs), including certification of accounts of government owned SEZ.

#### 2.3 Audit Universe

**2.3.1** Audit universe includes CBIC, its Customs field formations and the ports (both EDI linked and non-EDI) and transactions executed there under i.e BsE and SBs.

**2.3.2** Customs field formations are divided into 11 Customs Zones and 09 Combined (Customs and GST) Zones with 70 Principal Commissioners / Commissioners in 20 Zones headed by one Chief Commissioner each. As on 1 April 2019, there were 44 Customs Executive Commissionerates, 13 Customs Preventive Commissionerates, Nine Customs Appeal Commissionerates and four Customs Audit Commissionerates.

**2.3.3** For the audit of export promotion schemes, the audit universe comprises of the DGFT, its RAs and DCs of SEZ/EOU/STP. DGFT is an attached office of the MOCI and is headed by Director General of Foreign Trade. DGFT is responsible for formulating and implementing the FTP with the main objective of promoting India's exports. The DGFT issues scrips/authorization to exporters and monitors their corresponding obligations through a network of 38 regional offices and an extension counter at Indore.

**2.3.4** The schemes which are implemented through SEZs and EOUs, are audited at the office of respective DCs of SEZs/EOUs. The Customs audit is also responsible for annual certification of accounts of seven public sectors SEZ<sup>3</sup>.

#### **2.4 Access to Auditee data**

Audit relies on Customs transaction data to draw assurance<sup>4</sup> that laws have been applied correctly to prevent loss of revenue. Lack of full access to pan-India data limits the audit scrutiny to test check of transactions and a limited assurance in certifying revenue receipts.

For Pan India transactional data transfer, Audit has entered into a Memorandum of Understanding (MoU) with CBIC in March 2015, duly complying with CBIC's data sharing policy and requirements for maintaining data integrity and confidentiality.

Pan India import and export transactions data for the FY 19 requisitioned (June 2019) by audit was not received despite repeated requests. In the absence of Pan India transactional data, audit was conducted by physically visiting the 48 Commissionerates through Customs Receipt Audit (CRA) Module interface of ICES, which had its limitations.

Audit has, to the extent possible based on the findings in test check, quantified total number of transactions at risk, through the CRA Module access provided by the Department.

The instances mentioned in this Report are those which came to notice in the course of test audit conducted during the period 2018-2019 and in some cases earlier year also. Audit has, to the extent possible based on the findings in test check, quantified total number of transactions at risk, based on the data that has been provided by the Department.

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<sup>3</sup>Santacruz Electronics Export Processing Zone (SEEPZ), Kandla SEZ, Madras SEZ, Cochin SEZ, Visakhapatnam SEZ, Noida SEZ and Falta SEZ

<sup>4</sup> 'expressing a conclusion designed to enhance the degree of confidence of the intended users other than the responsible party about the outcome of the evaluation or measurement of a subject matter against criteria'

## 2.5 Audit sample

Test check of transactions was carried out in **48** out of 70 (**69 per cent**) Commissionerates. The audit of Commissionerates of Customs involved 36 out of 44 Executive Commissionerates, Nine out of 13 Preventive Commissionerates and three out of Nine Appeal Commissionerates. Audit of licenses under various schemes of FTP granted by the DGFT through its RAs was done in 28 out of 38 RAs.

**Table 2.1: Audit Universe and Sample**

	Audit Universe		Audit Sample
	Audited Entity	Total	
Department of Revenue	Chief Commissionerates Customs & Preventive	11 <sup>5</sup>	7 (64 %)
	Principal Commissionerate/ Commissionerate	70	48(69 %)
	Executive Commissionerate	44	36 (82%)
	Exclusive Preventive Commissionerate	13	9 (69%)
	Appeal Commissionerate	9	3 (33%)
	Audit Commissionerate	4	0
	Assessment Units	285	203(71%)
	Non Assessments Units	206	62(30%)
	Department of Commerce	Regional authority	38
	Development Commissioner	8 <sup>6</sup>	8 (100%)

## 2.6 Audit efforts

**2.6.1** During FY 19, 353 Inspection Reports were issued to the respective Commissionerates/RAs/DCs containing 2,299 observations and carrying a revenue implication of ₹3,296 crore.

**2.6.2** Significant and high value cases noticed during audit were issued to the Ministry for comments before inclusion in the Audit Report. This report contains 114 audit observations with revenue implication of ₹10,909 crore noticed during FY 19.

**2.6.3** The Ministry has taken rectificatory action involving money value of ₹62.50 crore in respect of 93 paragraphs in the form of issue of SCNs, adjudication of SCNs and has reported recovery of ₹31.58 crore in 66 cases of incorrect assessment of Customs duties.

<sup>5</sup>Customs Zones-11 (Ahmedabad Cus, Bangaluru Cus., Chennai Cus., Trichi Prev., Delhi Customs, Delhi Prev., Kolkata Customs, Patna Prev., Mumbai-I, Mumbai-II, Mumbai-III)

<sup>6</sup> Santacruz Electronics Export Processing Zone (SEEPZ), .Kandla SEZ, Madras SEZ, Cochin SEZ, Visakhapatnam SEZ, Noida SEZ and Falta SEZ and one SEZ-Indore

**2.6.4** An SSCA on ‘SCNs and Adjudication process’ in Customs, RAs and DCs office has also been included in this report as Chapter III. Audit examined compliance to Customs procedures regarding ‘SCNs and Adjudication process’ and the findings with revenue implication of ₹10,649 crore are reported.

**2.6.5** In Chapter IV, Audit reported significant findings noticed during test check of BsE and other records at selected Commissionerates with a revenue implication of ₹233 crore. The audit findings generally pertained to incorrect application of General exemption notifications; Mis-classification of imports; and incorrect levy of applicable levies and other charges. Audit findings also comprise of following systemic issues and persistence irregularities.

**(A) Systemic issues**

Audit noticed systemic issues in few import cases wherein the RMS allowed clearance even though the prescribed import conditions were not fulfilled. The RMS needs to address the issues flagged by audit so that the prescribed import conditions are complied with and applicable duties are automatically charged once the BE passes through the system.

Few cases are mentioned below and also discussed in Chapter IV of the Report.

- (i) Short levy of BCD on I phones (Smart phones) imports due to incorrect application of the notification. .
- (ii) Short levy of BCD on incorrect exemption granted to ‘Camera module and printed circuit Board Assembly’.
- (iii) Import of restricted commodity below Minimum Import Price.
- (iv) Improper exemption of IGST on import of pharmaceutical products.
- (v) Incorrect application of IGST rate on import of Carpets and other textile floor coverings (CTH- 57033090).
- (vi) Short levy of duty due to undervaluation of goods.

**(B) Persistent irregularities**

Similar instances of non-realisation of cost recovery (establishment) charges from the units in the SEZ and misclassification of imports flagged to the Ministry in the previous Audit Reports continue to be reported in the Customs field formations, notwithstanding assurances of the CBIC that their field formations have been sensitised to check similar issues cautiously. Few cases are mentioned below:

- (i) Non realisation of cost recovery charges from the developers.
- (ii) Misclassification of machinery for animal feed.
- (iii) Misclassification of RFID tags.

**2.6.6** Irregularities reported in Chapter V, especially the issue of non-fulfilment of export obligation and other non-fulfilment of conditions by exporter/importer as per FTP seems to be widespread and need to be addressed by the DGFT, New Delhi and CBIC. The remaining cases are being pursued by respective field formations. Appropriate action to recover the duty saved in cases pointed in Audit needs to be taken.

**2.7 Revenue Impact of Audit Reports**

In the five reports pertaining to FY 15 to FY 19, Audit has included 530 audit paragraphs (**Table 2.2**) involving ₹18,014 crore. Government has accepted observations in 410 audit paragraphs involving ₹565 crore and has recovered ₹107 crore in 278 paragraphs.

**Table 2.2 : Revenue Impact of Audit Reports**

Year	Paragraphs included		Paragraphs accepted		Recoveries effected	
	No.	Amt. ( ₹ in Cr.)	No.	Amt. ( ₹ in Cr.)	No.	Amt. ( ₹ in Cr.)
<b>FY 15</b>	122	1,162	91	85	67	23
<b>FY 16</b>	103	1,063	70	19	54	15
<b>FY 17</b>	99	85	77	30	50	19
<b>FY 18</b>	92	4,795	79	368	42	18
<b>FY 19</b>	114	10,909	93	63	65	32
<b>Total</b>	<b>530</b>	<b>18,014</b>	<b>410</b>	<b>565</b>	<b>278</b>	<b>107</b>



## CHAPTER III

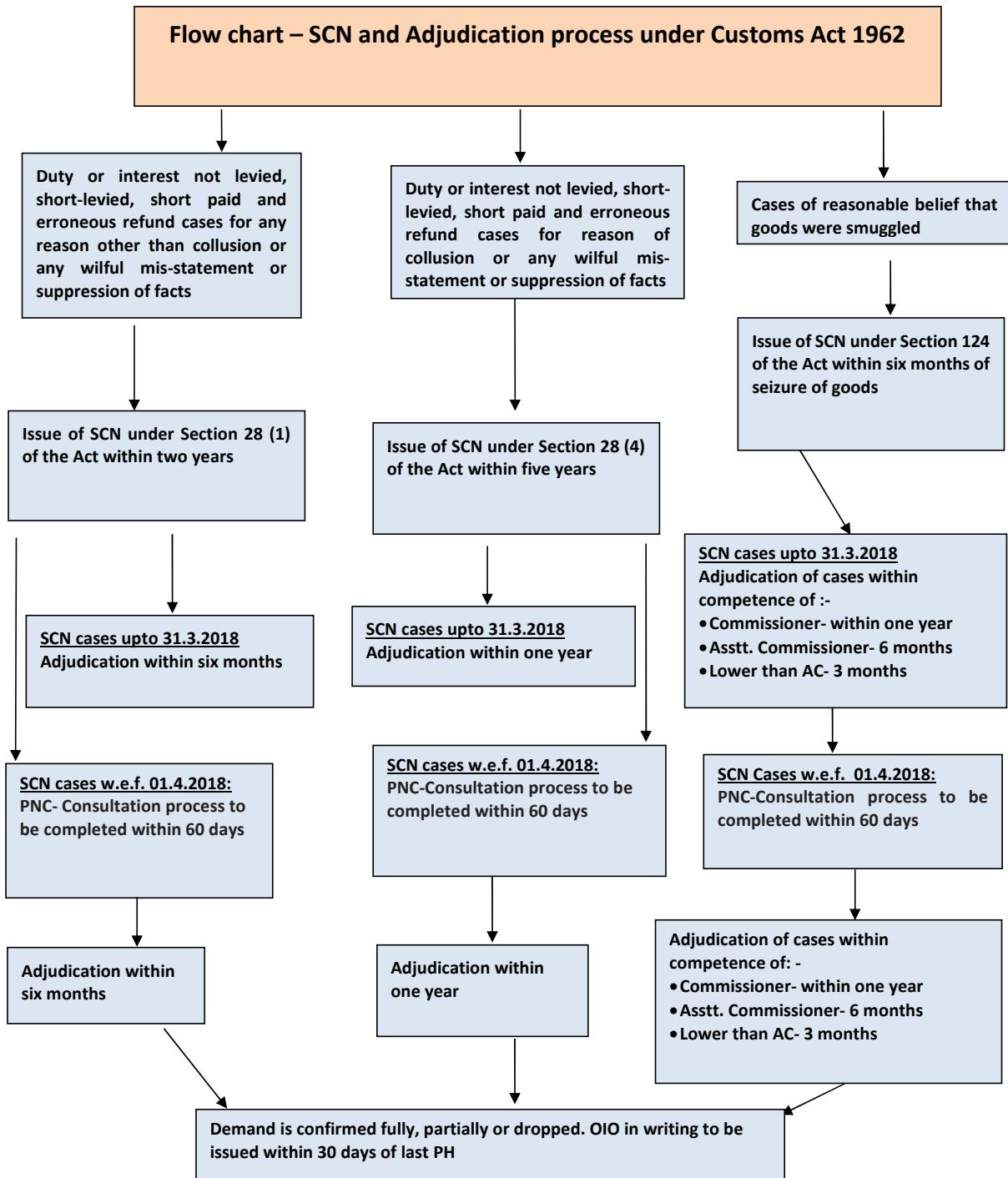
### **Subject Specific Compliance Audit on Show Cause Notices and Adjudication process**

#### **3.1 Introduction**

An SCN is issued when the Department contemplates any action prejudicial to the assessee, giving him an opportunity to present his case. SCN is to be served under Section 28(1) of the Act, in the cases where Customs duty has not been paid or short paid or erroneously refunded within two years from the relevant date in normal cases (within one year up to 13 May 2016). While, in case of collusion, wilful mis-statement or suppression of facts with the intent to evade payment of duty or to get erroneous refund, SCN is to be served under Section 28(4) of the Act within five years from the relevant date. Further, in the case of SEZ, the DC shall issue SCNs under Rule 25 of SEZ Rules 2006, if the Net Foreign Exchange (NFE) earning achieved is negative by the end of third year and if the negative performance continues till the fifth year under FTDR Act, 1992. However, no time limit for issuance of SCN and for subsequent adjudication has been fixed in the FTDR Act, 1992.

##### **3.1.1 Adjudication of SCN**

The issue of SCN under Section 28 (1) or 28 (4) of the Act is followed by adjudication which is a quasi-judicial function of the officers of the Customs Department under the Act. The noticee shall be given an opportunity of being heard in a proceeding, if the party so desires under Section 122A of the Act. There shall be a written OIO after the completion of adjudication process, detailing facts of the case and justification of the adjudication order under Section 28 of the Act. Section 28(9) of the Act prescribes that where it is possible to do so, the SCNs should be adjudicated within six months in normal cases and within 1 year in extended cases, from the date of service of the notice on the person. The words “wherever it is possible to do so” were omitted vide Finance Act, 2018 dated 29 March 2018. Similarly, the RAs are also empowered under Section 13 and 14 of FTDR Act, 1992 to levy any penalty for contravention of any provision of this Act or any rules or orders made there under or the FTP.



The legal provisions and Administrative instructions for the issue of SCNs and their adjudication are given in **Annexure 3**.

### 3.2 Audit Objectives

An SSCA on SCN and adjudication process has been carried out to gain an assurance that:

- (i) Issuance and adjudication of SCNs are in accordance with the prescribed Acts, rules, regulations, circulars / instructions and procedures;
- (ii) Suitable internal control systems and mechanisms exist to ensure effective monitoring of issue and adjudication of SCNs.

### 3.3 Scope and Audit Coverage

SSCA was conducted during the period October 2019 to January 2020. Audit examined the SCNs issued and OIOs passed during the financial years 2016-17 to 2018-19 and the SCNs pending for adjudication as on 31 March 2019. Besides adjudication process of SCNs, SCNs pending in Call Book, maintenance of various registers viz. SCN register, OIO register etc. were also examined.

The SSCA was conducted by examination of records at selected units viz. Customs Commissionerate, RAs and DC, SEZ on the basis of highest pendency and delays in adjudication of cases. The adjudicated cases and the SCNs pending for adjudication as on 31 March 2019 in these sampled units were selected through random sampling.

The details of the audit universe and sample selection and the records produced/not produced in respect of cases selected in the units selected (**Annexure 4**) for this audit are tabulated below:

**Table 3.1: Sample Selection**

Auditable unit	Total No. of Units	Units selected	Total cases in Units selected	Cases selected by audit	Cases produced to audit	Cases not produced to audit
Customs Commissionerate	70	25	21,932	4,222	3,520	702
Regional authority (DGFT)	25	12	10,358	824	811	13
Development Commissioner (SEZ)	08	08	414	210	210	0
<b>Total</b>	<b>103</b>	<b>45</b>	<b>32,704</b>	<b>5,256</b>	<b>4,541</b>	<b>715</b>

### 3.3.1 Partial production of records

To get an assurance about application of customs rules and regulations in issuing of SCNs, adjudication and monitoring of adjudication process, out of total 32,704 cases, 5,256 cases (16 *per cent*) were selected, for test check from both pending and as well as cases adjudicated as on 31 March 2019. Only 4,541 cases (86.39 *per cent*) of the total 5,256 selected cases were produced to audit. The eight DCs produced all the records sought. The 12 Customs Commissionerates<sup>7</sup>, of the 25 selected and 02 RAs<sup>8</sup> out of 12 RAs selected had partially provided the information for audit scrutiny as depicted in the above table.

Of the 715 cases not produced to audit, 220 pertain to Commissionerate of Customs, Jodhpur which did not produce these 220 cases out of 255 cases selected in that Commissionerate. The Principal Director of Audit (Central), Ahmedabad took up (November 2019) the matter with Commissioner of Customs, Jodhpur and CAG Headquarters also brought this issue to the notice of DoR (December 2019). However, the requisitioned records and information were not furnished to audit. Resultantly, audit of SCNs/adjudicated cases in Customs (Preventive) Commissionerate, Jodhpur could not be conducted.

Major audit findings emanating from audit conducted, based on verification of cases produced to audit (86 *per cent*), are described in the succeeding paragraphs.

### 3.4 Audit findings

During the course of audit, Audit noticed shortcomings in issue of SCNs (Paragraph 3.4.1), deficiencies in the process and procedures leading to adjudication (Paragraph 3.4.2), lack of proper follow up of adjudication and review orders and deficiency in monitoring and internal controls (Paragraph 3.4.4). Total 141 audit observations were issued with a money value of ₹10,649 crore.

The audit observations on the process of issue of SCN and adjudication have been summarised in Table 3.2 overleaf:

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<sup>7</sup>Commissionerate of Customs -Bengaluru, Cochin sea , JNCH Mumbai NS-I, NS-II, NS-III and NS-V, Commissionerate of Customs (Prev.) Jodhpur, Commissioner of Customs (Prev.)- Lucknow & Patna, Commissionerate of Customs, Noida, Import Commissionerate, NCH, New Delhi, Export Commissionerate, NCH, New Delhi

<sup>8</sup> CLA Delhi, RA Bengaluru

**Table 3.2: Summary of audit observations**

Sl. No.	Category of audit observation	Number of observations	Money value involved (₹ in lakh)
1	Short comings in issue of SCNs (Paragraph 3.4.1)	25	9,37,239
2	Deficiencies in the processes and procedures leading to adjudication (Paragraph 3.4.2)	43	79,483
3	Lack of proper follow up of adjudication and review orders (Paragraph 3.4.3)	13	4,973
4	Efficacy of monitoring and internal controls (Paragraph 3.4.4)	60	43,187
	<b>Total</b>	<b>141</b>	<b>10,64,882</b>

The findings are discussed in detail in subsequent Paragraphs:

### 3.4.1 Shortcomings in issue of SCN

#### 3.4.1.1 Non-compliance with Pre-Notice Consultation regulation

Paragraph 3 (1) of PNC Regulation, 2018 states that with effect from 1<sup>st</sup> April 2018 before the SCN is issued under Section 28 (1) of the Act, the proper officer shall inform, in writing, the person chargeable with duty or interest of the intention to issue the notice specifying the grounds known to the proper officer on which such notice is proposed to be issued and the process of PNC shall be initiated as far as possible at least two months before the expiry of the time limit mentioned in sub-section (3) of Section 28 of the Act.

Of the 25 Commissionerates selected for audit, Nine Commissionerates<sup>9</sup> did not provide the information and nine Commissionerates stated “Nil” in the requisitioned information. Hence audit could not comment on compliance with PNC regulations in these 18 Commissionerates. Of the remaining seven Commissionerates that provided PNC details, in three<sup>10</sup> Commissionerates, 82 SCNs involving money value of ₹401.75 crore were issued during 2018-19 without issuing PNCs. In these cases, the Department had failed to provide opportunity to the importers to present their case or for payment of duties and interest before issue of SCNs.

On this being pointed out (December 2019), Commissionerate of Customs, Hyderabad replied (December 2019) that its field formations initiated draft SCNs on issues which were approved by appropriate authority and then forwarded the same for adjudication to Adjudication section of

<sup>9</sup> Commissionerates of Customs - Ahmedabad, Mundra, Comm. of Customs (Prev.)- Jodhpur, ACC-Bengaluru, NCH-Mangaluru, Cochin, Import-NCH Delhi, Export-NCH Delhi, Indore, ACC-Kolkata, CCP-Kolkata, Mumbai- NS I, NSII, NSIII, NSV, Patna, Lucknow, Vishakapatnam,

<sup>10</sup> Customs Commissionerate Hyderabad, Noida and Preventive Commissionerate-Bhubaneswar

Headquarters along with necessary documents and hence, no PNC was conducted at Commissioner's (Headquarters) Office.

The reply of the Department was not tenable as the purpose of PNC was to avoid unnecessary litigation and Commissioner's office was required to monitor the compliance to such codal provisions. Instead of confirming whether PNC was done in these cases or not, the response of Hyderabad Commissionerate simply stating that these were initiated and approved by appropriate authority was not tenable.

Commissionerate of Customs (Preventive), Bhubaneswar stated (December 2019) that cases raised by audit pertained to misclassification of bituminous coal, the issue which was pending before the Hon'ble Supreme court of India. The Department could not take a different view in pre-SCN consultation till the issues are decided by the Hon'ble Supreme Court.

Department's argument is not justified as audit is not objecting to litigation cases but cases wherein SCNs were issued in 2018-19 without PNC in contravention to the PNC regulation.

Commissionerate of Customs (Prev.) Jodhpur stated that PNC is required in notices issued in terms of Section 28 (1) (a) of the Act only and not in notices issued under Section 28(4) of the Act. Accordingly, in two cases issued under Section 28 (4) of the Act, PNC was not issued and in nine cases Document Call (D-Call) notices were issued, while in one case the PNC was issued in May 2019.

The Jodhpur Commissionerate's reply was acceptance of the fact that the process of PNC prescribed in the Act was not followed in most of the cases and action was initiated only after audit raised the issue. Further, the reply was silent about the status of the SCNs issued even after expiry of more than one year.

Reply from the remaining five Commissionerates was awaited (July 2020).

#### **3.4.1.2 Non compliance with Board Circular regarding issuance of simple notice**

As per CBIC circular No. 16/2017 dated 2 May 2017, the field formation may issue simple notice to the licence holders for submission of proof of discharge of EO. In case where the licence holder submits proof of their application having been submitted to DGFT, the matter may be kept in abeyance till the same is decided by DGFT. However, in case where the licence holder fails to submit proof of their application for EODC/redemption certificate, extension/clubbing etc, action for recovery may be initiated by enforcement of bond/Bank guarantee. In case of fraud, outright evasion etc., field formations shall continue to take necessary action in terms of the relevant provisions.

Commissionerate of Customs, JNCH, Mumbai had issued 210 SCNs (February to August 2018), involving a money value of ₹222.83 crore, after 2 May 2017, on the issue of non-submission of EODC. This was a violation of the Board directives for issue of a simple notice to the licence holders for submission of proof of discharge of EO. These cases were still pending for adjudication as on December 2019.

Issuance of SCNs instead of simple notice and keeping it in abeyance in violation of Board directives was unwarranted.

This was pointed out by audit (January 2020); the reply was awaited (July 2020).

### 3.4.1.3 Wrong invocation of extended period of time for issue of SCN

In three<sup>11</sup> Commissionerates, extended period under Section 28(4) of the Act was invoked for issuing SCNs in 100 BsE (April 2012 to December 2017) involving a duty amount of ₹76.48 crore for issues like misclassification / extension of incorrect exemption benefit, which were in notice of the Department before clearance of the goods. As these were covered under Section 28 (1) and Section 28 (4) of the Act which is applicable for cases of wilful mis-statement or suppression of facts should not have been invoked for these cases. Out of the 100 BsE, 88 BsE involving a duty amount of ₹76.25 crore pertaining to the period April 2012 to November 2016 had become time barred for issuing SCN under Section 28(1) of the Act.

***Cases of irregularities including issuance of SCN under inapplicable section of the Act may be examined in detail and responsibility may be fixed for errors of omission and commission.***

### 3.4.1.4 Time barred SCNs

**(A)** In Commissionerate of Customs (Airport), Kolkata and JNCH Mumbai, eleven cases (32 BsE and 152 SBs) involving a duty amount of ₹87.31 lakh were declared time barred by the Commissioner for issuing SCNs under Section 28(1) of the Act.

Two such cases are narrated below

**(i)** In Commissionerate of Customs, JNCH, Mumbai, SCN was issued (May 2017) to M/s 'A' Chem Industries Private Limited for 41 BsE involving a money value of ₹97.92 lakh pertaining to the period September 2015 to September 2016. The SCN was adjudicated in January 2018 wherein Commissioner declared 30 BsE involving a duty of ₹66.15 lakh as time-barred since these BsE were pertaining to the period prior to the amendment (May

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<sup>11</sup> Chennai Sea Customs, Chennai Air Customs, Commissionerate of Customs (Prev.) Bhubaneswar

2016) under Section 28(1) of the Act and covered under the notice period of one year only.

Department's reply was awaited (July 2020).

(ii) In Commissionerate of Customs (Airport), Kolkata, there were 09 cases in respect of 152 SBs for Mica exports pertaining to the period June 2010 to March 2014 involving cess of ₹10.94 lakh. SCNs for these SBs were issued between June 2015 and April 2016 under Section 28(1) of the Act after expiry of prescribed period of six months (before 7<sup>th</sup> April 2011) or one year (from 8<sup>th</sup> April to 13<sup>th</sup> May 2016). Adjudicating authorities confirmed nine demands between January 2018 and March 2018 by invoking the provisions of Section 28(4) of the Act of wilful misstatement & suppression of facts instead of Section 28(1) of the Act. Aggrieved by the orders, the exporters preferred appeals before the Commissioner of Customs (Appeals) where the Appellate authority held (September 2018) that the SCNs were time barred. In December 2018, Department filed an appeal before CESTAT, Kolkata for restoration of OIOs passed by the Adjudicating authorities.

Though the decision of the CESTAT was pending in respect of the instant cases, yet in a similar case Hon'ble High Court, Calcutta in the case of XYZ & Co. & ANR vs UoI & Ors against WP No.314 of 2007 had decided that the SCN which was issued under Section 28(1) of the Act to the petitioner was itself barred by limitation of time at the time of issue and recovery could not be made by invoking Section 28(4) of the Act by the Adjudicating authority.

The fact remains that delay in timely issue of SCNs has resulted in avoidable dispute between the exporters and the Department for which revenue has remained locked for almost six to ten years from the date of exports and there is a risk of Department losing revenue involved in these demands due to time-barring.

Ministry's reply was awaited (July 2020).

**(B)** Section 75 of the Act and sub-rule (2) of the Rule 18 of the Customs & Central Excise Duties Drawback Rules, 2017<sup>12</sup> specify the procedure for the recovery drawback, if sale proceeds in respect of such goods are not within the time allowed of nine months under the Foreign Exchange Management Act (FEMA), 1999. The Customs Commissionerates have to watch the realisation of Foreign exchange through Bank Realisation Certificate (BRC) and in case of non-realisation, have to proceed for recovery of draw back by issue of SCN.

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<sup>12</sup> Earlier Rule 16 (A) (2) of the Customs & Central Excise Duties Drawback Rules, 1995 changed w.e.f. 01.10.2017

SCNs were issued (December 2016) under Section 75 of the Act and sub-rule (2) of the Rule 18 of the Customs & Central Excise Duties Drawback Rules, 2017<sup>13</sup> to M/s 'B' (UZ) Impex and M/s. 'C' Impex (India) for recovery of drawback amount of ₹61.13 lakh after a delay of 11 and 8 years respectively for non-production of BRCs.

The parties filed writ petition against these SCNs in Delhi High Court pointing to delay in the issuance of SCNs. The Department referred to Rule 16 (A) (2) of the Customs, Central Excise Duties & Service Drawback Rules, 1995 and submitted that there was no limitation prescribed there under. The High Court of Delhi vide its order dated 05 August 2019 quashed the SCNs on the ground that even where there was no prescribed period of limitation for completing an assessment, it did not mean that the power can be exercised at any time. The Court also observed that such power had to be exercised within a reasonable period and what was reasonable period would depend on the nature of the statute, the rights and liabilities there under and other relevant factors.

Accordingly, had the Commissionerate issued SCNs for non-production of BRC after the expiry of the prescribed nine months period under FEMA, Department would have saved itself from such litigations and safeguarded the Government Revenue of ₹61.13 lakh.

In reply Commissionerate of Customs (Export), New Customs House, New Delhi stated that henceforth, these cases are being monitored on regular basis. SCNs are being issued as per provision of Drawback Rules within the reasonable time period.

The abnormal delay in issuing SCNs needs to be investigated and responsibility fixed. Ministry may take corrective action to avoid such repetition.

Ministry's response was awaited (July 2020).

#### **3.4.1.5 Delay in issuance of SCN to SEZs**

Rule 25 of SEZ Rules 2006 stipulates that where an entrepreneur or Developer does not utilize the goods or services on which exemptions, drawbacks, cess and concessions have been availed for the authorized operations or unable to duly account for the same, the entrepreneur or the Developer, shall refund an amount equal to the benefits availed without prejudice to any other action under the relevant provisions of the Act.

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<sup>13</sup> Earlier Rule 16 (A) (2) of the Customs & Central Excise Duties Drawback Rules, 1995 changed w.e.f. 01.10.2017

In DC, SEEPZ, Mumbai and Visakhapatnam Special Economic Zone (VSEZ) in six cases,<sup>14</sup> SCNs involving Customs duty of ₹25.52 crore, were issued for suspension of manufacturing, using public premises for unauthorized operation, initiation of action for de-bonding of the unit and non-execution of sub-lease agreement. These SCNs were pending for adjudication for a period ranging from 3 years to 12 years.

Two such cases are narrated below:

(i) In DC-SEEPZ, Mumbai M/s 'D-1' Jewellery Pvt. Ltd (EOU) was issued Letter of Approval (LOA) in March 2004. The unit had suspended its manufacturing activity in January 2014 due to financial crisis. Even though, the unit was not functional and not achieving positive NFE for the period 2014-16, SCN was issued only in October 2017. During PH in March 2019, it was noticed that apart from non-functionality, outstanding government dues including customs dues also existed. Therefore, fresh consolidated SCN was issued in July 2019 covering all pending issues which were pending for adjudication. Delay in issue of SCN and non-finalization of adjudication resulted in non-recovery of Customs duty to the extent of ₹86.98 lakh and interest thereon.

(ii) The DC, VSEZ issued Letter of permission (LOP) to M/s 'D-2' Pharma India Pvt. Ltd. on 23 May 2007 for setting up of an EOU unit within three years. The unit procured capital goods and raw materials worth ₹59.55 lakh during the period from 2007-08 to 2009-10. The unit sought for renewal of LOP for a period of 5 years vide their letter dated 27 February 2013 even though LOP expired on 22 May 2010. Though no communication was made after the date of 27 February 2013 the DC, VSEZ issued SCN in January 2017 for cancellation of LOP and the case was adjudicated vide OIO dated 19 May 2017. The Department of Customs in their letter dated 12 September 2017 informed that the unit was absconding from the registered premises and no capital goods and raw materials, which were procured without payment of duty were available in the said premises. Therefore, though the LOP expired on 22 May 2010, the SCN was issued on 9 January 2017 with more than six years delay, resulting in misuse of LOP and revenue loss.

***Ministry may consider providing specific time limit in FTDR Act, 1992 for issuance and adjudication of SCN.***

Ministry's response was awaited (July 2020).

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<sup>14</sup>M/s 'D-3' Jewellery Pvt. Ltd., M/s 'D-4' Agency (Trading), M/s 'D-5' & Company & M/s 'D-6' Mobile Communication Ltd., M/s 'D-7' Pharma India Pvt. Ltd., M/s 'D-8' Solar Energy Pvt Ltd.

### 3.4.1.6 Dropping of deficient SCNs

An SCN issued shall be revised or amended, if such revision/ amendment leads to further burden to the party, by issue of a corrigendum/addendum to original SCN. While adjudicating the SCN, proper recording of the fact of amendment/revision has to be made in the OIO. Likewise any subsequent relevant communication with the party regarding the issues pointed out in the SCN has to be recorded and points of relevance such as reasons for contesting by the party and its rebuttal also have to be shown in the OIO.

Audit noticed that in two cases involving money value of ₹21.88 lakh under two Commissionerates<sup>15</sup> SCNs were dropped by the Adjudicating authority because of reasons of non-adherence to prescribed procedures and misrepresentation of facts.

The cases are discussed below:

(i) In Commissionerate of Customs (Sea) Cochin, based on Special Intelligence and Investigation Branch (SIIB) inputs SCN was issued (March 2017) under Section 28(4) of the Act to M/s 'E' care Ltd for eleven BsE pointing out short levy of duty of ₹21.32 lakh on account of misclassification of goods under the headings 30067000/34039900/ 33073090 instead of CTH 3304 9090. On the classification being contested by the party, the Customs department issued a letter in May 2018 proposing another CTH 38249090 which was also not accepted by the party. The Adjudicating authority issued a corrigendum to the original SCN in August revising short levy to ₹21.88 lakh incorporating two BsE which were not included in the original SCN. The OIO issued in August 2018 for the SCN was quashed by the Hon'ble High Court of Kerala on the grounds that the Adjudicating authority had passed an Order as per the proposal in the original SCN, classifying the goods under the heading 33049090, without rescinding the subsequent letter issued classifying the goods under CTH 38249090. The Adjudicating authority eventually dropped the proposal in the SCN to classify the goods under the chapter heading 33049090. The action of the Adjudicating authority to adjudicate the original SCN without rescinding a subsequent communication proposing a wrong tariff category (namely CTH 38249090) after the issue of SCN became a ground for the importer to challenge the adjudication order in the Court of Law. Also, the Adjudicating authority did not record the significant issues such as result of PH on proposal given in the letter and dropping of the proposal in the OIO. This had resulted in quashing the adjudication order by the Hon'ble High Court.

<sup>15</sup> Cochin ( Sea) Commissionerate, Comm. of Customs (Import) NCH New Delhi

(ii) In Commissionerate of Customs (Import), NCH, New Delhi, audit noticed that one SCN was issued (March 2018) to M/s 'F' Service Pvt. Ltd. for short levy of duty amounting to ₹85/- under Section 28 (1) of the Act. Issue of SCN for short levy of duty less than ₹100 was against the proviso of Section 28 (1) of the Act. Further, the SCN was also dropped (December 2018) by the Adjudicating authority. Issue of SCN for short levy of duty less than ₹100 not only put unnecessary litigation but also burden on Adjudicating authority which could have been avoided.

This was pointed out in January 2020, Ministry's response was awaited (July 2020).

#### 3.4.1.7 Delay / Non-issuance of notices by the RA

As per paragraph 5.13 of Handbook of Procedures (HBP) Vol.1, EPCG) authorisation holder shall submit to the concerned RA, an application along with prescribed documents as a proof of EO fulfilment. Further, Paragraph 5.8 of HBP Vol.1 read with EPCG notification prescribes block wise achievement of EO. In cases where EO of any particular block is not fulfilled, the holder shall within three months from the end of the said block pay duties of customs on imports proportionate to the unfulfilled EO. DGFT and Customs departments are responsible to implement the Scheme. Similarly, as per Paragraph 4.44(b) of HBP Vol.1, 2015-20, AA holder shall within two months from the date of expiry of EO period, file application online by linking details of SBs against the authorization. The EO period is eighteen months from the issue of licence. Further, Paragraph 4.44 (f) of HBP Vol.1 prescribes that in case, authorisation holder fails to complete EO or fails to submit relevant information/documents, RA shall enforce condition of authorisation and undertaking and also initiate penal action as per law including refusal of further authorization to the defaulting exporter. However, FTDR Act, 1992 or Rules there under or administrative instructions issued by the DGFT do not prescribe any time lines to take action against the licence holders who violate the provision of.

In six RAs<sup>16</sup>, audit found that in a total of 5,061 licences (4,849 EPCG and 212 Advance licenses) involving duty saved amount of ₹8,645 crore were issued during 2001 to 2016 and the EO period had already expired 2 to 11 years earlier. But the Department failed to take penal action under FTDR Act, 1992 against the licencees for failure to fulfil prescribed EO in 2,665 cases involving revenue of ₹5,342 crore. In 2,396 cases involving revenue of ₹303 crore,

<sup>16</sup> ADGFT, Mumbai, ADGFT, Ahmedabad, ADGFT, Rajkot, JDGFT, Chennai, DDGFT, Kanpur and ADGFT, Hyderabad

although SCNs were issued after considerable delays, these SCNs were not adjudicated as of December 2019.

In response to audit observation, (January / February 2020), Additional Director General of Foreign Trade (ADGFT), Hyderabad stated that inadequate staff was the reason for the delay; reply was awaited from remaining five RAs (July 2020)

### **3.4.2 Deficiencies in the processes and procedures leading to adjudication**

The time limits for adjudication of SCNs was different prior to April 2018 and post April 2018. Hence the comments on adherence to time limits prescribed for adjudication of SCNs have been given for both periods separately.

#### **3.4.2.1 Non-observance of Monetary Limits for adjudication**

CBIC vide Circular<sup>17</sup> dated 31 May 2011 has prescribed the monetary limit for issue and adjudication of SCNs. Accordingly, the monetary limit prescribed for issue and adjudication of SCN by Deputy Commissioner/Assistant Commissioner is up to ₹5 lakh, by Additional Commissioner/Joint Commissioner it is up to ₹50 lakh and by Commissioner without limit.

In Commissionerate of Customs (Preventive), Bhubaneswar, in two cases (M/s 'G' India Pvt. Ltd & M/s 'H' Steel Co. Ltd.) the SCNs having money value of ₹51.62 lakh and ₹36.59 lakh were adjudicated by the Assistant Commissioner, Customs Division, Paradeep which is in contravention to the conditions stipulated in the CBIC circular. The cases should have been adjudicated only by the Addl. Commissioner or Commissioner.

On being pointed out, Deputy Commissioner Customs Division Paradeep, while accepting the observation stated (December 2019) that in future the monetary limit would be considered before issuance of SCNs.

#### **3.4.2.2 Non adjudication of SCNs issued up to 31 March 2018**

Sub-section 9 of Section 28 of the Act stipulates that the proper officer shall determine the amount of duty and interest within six month from the date of SCN “where it is possible to do so”<sup>18</sup> in respect of cases falling under Section 28 (1) of the Act and within one year from the date of notice “where it is possible to do so” in respect of cases falling under Section 28 (4) of the Act.

<sup>17</sup> Circular No. 24/2011-Customs dated 31 May 2011

<sup>18</sup> Omitted vide Finance Act, 2018

In twelve Commissionerates, 117 SCNs involving money value of ₹497.49 crore were pending adjudication for a period ranging from 1 to 182 months. A case is discussed below:

In Commissionerate of Customs, Ahmedabad, an SCN was issued for duty amount of ₹49.77 crore by DRI (December 2012) for fraudulently obtaining Duty Free Credit Entitlement (DFCE) licenses. The Hon'ble High Court of Gujarat set<sup>19</sup> deadline of 31 March 2016 for adjudication of the SCN. A miscellaneous application filed by the Department seeking extension was dismissed by the Hon'ble HC vide order dated 11 August 2017. The matter was brought to notice of the Board on 02 November 2018, after lapse of more than 14 months from the date of HC order and the case was pending adjudication as on date of audit (November 2019). The matter was referred to the Ministry in May 2020, their response was awaited (July 2020). Similar seven cases involving a duty amount of ₹13.44 crore are detailed in Table 3.3 below:

**Table 3.3: SCNs pending in Commissionerate of Customs, Ahmadabad for want of review orders from DGFT, New Delhi**

Sl. No.	Name of the Exporter	DRI SCN No. & Date	DGFT OIO No. & Date	Money Value (₹ In lakh)	Remarks
1	M/s 'I' Intermediates	DRI/AZU/INV-45/2009 Dtd. 09-03-2010	08/F-3/01/AM-11/ECA dt.10.07.13	76.95	On the basis of SCNs issued by DRI, JDGFT-Ahmedabad also issued SCN which was later dropped. DRI vide letter dated 03 February 2016 requested Pr. Commissioner to keep the adjudication of the impugned SCN in abeyance till further intimation. DRI, vide letter dated 08 July 2016 requested DGFT, New Delhi for review of impugned OIOs passed by JDGFT, Ahmedabad. Further, Chief Commissioner of Customs also requested the Board to take up the issue with the Ministry of Commerce to expedite the proceedings by DGFT. Despite several reminders from Chief Commissioner of Customs, Gujarat Zone, Board did not revert back and the cases are still pending for adjudication resulting in blockage of government dues of ₹1344 lakh.
2	M/s 'J' Chemicals	DRI/AZU/INV-47/2009 Dtd. 14-08-2012	08/F-3/2/AM13/ECA dt.15.07.13	203.00	
3	M/s 'K' (P) Ltd	DRI/AZU/INQ-56/2013 dtd. 30-10-2013	08/F-3/04/AM14/ECA dtd.27.01.14	188.42	
4	M/s 'L' Chemicals	DRI/AZU/Inv-48/2009 Dtd. 15-06-2012	08/F-3/3/AM11/ECA dtd.16.07.13	120.00	
5	M/s 'M' Dye Chem Industries	DRI/AZU/Inv-6/2010 dtd 14-08-2012	08/F-3/02/AM11/ECA dtd.01.11.13	55.87	
6	M/s 'N' Dyes & Intermediates	DRI/AZU/INQ-53/2013 dtd.24.06.2013	08/F-3/05/AM14/ECA dtd.14.03.14	103.00	
7	M/s 'O' Chemicals Industries	DRI/AZU/INQ-55/2013 dtd.30.10.2013	08/F-3/05/AM14/ECA dtd.10.02.14	597.00	
			<b>Total</b>	<b>1,344.24</b>	

<sup>19</sup>vide order dated 26 November 2015

Commissionerates of Customs, Ludhiana stated (March 2020) that SCNs were issued prior to the assent of Finance Bill 2018 (29 March 2018) and therefore, the time limit of one year provided in Section 28(9) of the Act does not apply to these cases. These cases shall continue to be governed by the provision of Section 28 of the Act as it stood immediately before such date and at that time there was no time limit prescribed for adjudication, hence, there was no delay in adjudication of the cases as pointed out by audit. The replies were silent about present status of the cases.

The reply of the Commissionerate of Customs, Ludhiana was not acceptable as time limit prescribed for adjudication existed even before amendment was made in the Customs Act through Finance Act 2018 (enacted w.e.f. 29 March 2018). The amendment made was removal of the wording “where it is possible to do so” and not in the time limit prescribed. Thus, applicable to all these cases even though SCNs were issued before 29 March 2018.

Reply was awaited from the Ministry (July 2020).

#### **3.4.2.3 Non adjudication of SCNs issued after 1 April 2018 within the stipulated period**

Section 28(9) of the Act introduced w.e.f. 01 April 2018 stipulates that SCNs issued after 01 April 2018 have to be adjudicated within six months and one year from the date of issue of notice in respect of cases falling under Section 28(1) and Section 28(4) of the Act respectively. This time limit can be further extended by another six months and one year for Section 28(1) and Section 28(4) of the Act respectively by the competent authority. It was also stipulated that failure to adjudicate the cases within such extended period will result in the proceedings being deemed to have concluded as if no notice had been issued.

Accordingly, non-adjudication within the prescribed time, might lead to SCN deemed as closed and consequent non-recovery of revenue, if any, due from the defaulter, leading to loss of revenue due to the Government.

In two Commissionerates<sup>20</sup>, in six cases involving a money value of ₹9.03 crore, adjudication orders were not passed for SCNs issued during February 2018 to February 2019 under Section 28(1) and Section 28(4) of the Act even after completion of the prescribed period.

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<sup>20</sup> Commissionerate of Customs JNCH Mumbai and Commissionerate of Customs (Import), NCH, New Delhi

Two cases are illustrated below:

- i. M/s 'P' Mom Private Limited under Commissionerate of Customs JNCH, Mumbai was issued SCN in February 2018 under Section 28(4) of the Act for suppression of correct retail price of imported goods and differential duty of ₹8.71 crore was demanded. During the last PH, the party submitted Hon'ble Punjab and Haryana High Court's decision wherein it was held that post enactment of the Finance Act 2018, even SCN issued prior to 29 March 2018 must be adjudicated by 28 March 2019 and on failure to do the same, and the SCN will be treated as never issued. Further, as per paragraph 5 of Standing Order<sup>21</sup> issued by JNCH, adjudication orders in respect of cases relating to Section 28(4) of the Act should be issued by 28 March 2019. The case was pending for adjudication even after a delay of one year and revenue of ₹8.71 crore remained locked.
- ii. In Commissionerate of Customs, JNCH, Mumbai, M/s 'Q' Exports Pvt. Ltd was issued SCN in June 2018 for an amount of ₹25.20 lakh under Section 124 of the Act read with Section 28(4) of the Act. The SCN was adjudicated in October 2019 after a delay of 4 months, which was in contravention of the provisions of the Act. Further, it was confirmed from the records that no extension was sought from the competent authority for extension of the adjudication period.

Failure to adjudicate the cases within the timelines had resulted in blockage of revenue of ₹9.03 crore.

This has been pointed out to the Commissionerate (January/ February 2020); their reply was awaited (July 2020).

Ministry's response was awaited (July 2020).

#### **3.4.2.4 Grant of PH in excess of prescribed norms**

Section 122A of the Act, prescribes that the Adjudicating authority shall give an opportunity of being heard to a party in a proceeding, if the party so desires. Further, the Adjudicating authority may, if sufficient cause is shown at any stage of proceeding, grant time, from time to time, to the parties or any of them and adjourn the hearing for reasons to be recorded in writing provided that no such adjournment shall be granted more than three times to a party during the proceeding.

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<sup>21</sup> Standing Order No. 22/2018 dated 15 June 2018.

In 12 Customs Commissionerates<sup>22</sup>, the Adjudicating authority granted more than three adjournments of PHs to the parties in 56 cases involving a money value of ₹16 crore, in contravention of the above statutory provision. Out of these 56 cases, in 26 cases involving a money value of ₹6.94 crore, PHs were adjourned 4 to 11 times and the cases are pending adjudication for a period ranging from 10 months to 118 months as on 31 December 2019.

The Adjudicating authorities contravened the provision of the aforesaid Section and had given more than three adjournments of PHs which ultimately delayed the adjudication process and thereby affected the consequent recovery process.

Three cases are narrated below:

(i) In Commissionerate of Customs (Imports), NCH New Delhi, for two cases involving money value of ₹1.01 crore, six adjournments were granted by the Joint Commissioner/Commissioner of Customs and the same two cases were still pending for adjudication for periods ranging from 48 months to 118 months.

(ii) In Commissionerate of Customs (Airport), Kolkata, 4 cases involving money value of ₹5.40 crore, five to ten adjournments of PHs were granted by the Addl. Commissioner/Commissioner of Customs. The cases were still pending for adjudication for 9 to 36 months.

On this being pointed out, Chief Commissioner of Customs, Kolkata replied that shortage of manpower, multiple charges of Adjudicating authorities and frequent transfers might have contributed to granting of excess PHs. The fact remained that despite adjournments granted for the PHs in contravention to the prescribed procedures, nine cases involving money value of ₹5.48 crore were pending for adjudication.

(iii) In Commissionerate of Customs Ludhiana, in five cases involving money value of ₹1.45 crore, four to eleven adjournments of PHs were granted by the Asstt. Commissioner/Joint Commissioner/Commissioner of Customs.

In reply Commissionerate of Customs, Ludhiana replied that the opportunity for PH was given and OIO had been issued within stipulated time i.e. 30 days from the date of last PH. The reply was silent about present status of pending cases.

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<sup>22</sup> Customs(Prev.) Lucknow and Patna, Kolkata (Airport), West Bengal (Prev.), Customs (Ahmedabad), Mundra, Bhubaneshwar, Hyderabad, Ludhiana, JNCH(Mumbai), Delhi(Import) and Delhi (Export)

The reply of the Department was not tenable because adjournments were granted more than three times in contravention to provisions of Section 122A of the Act.

Replies from the other Commissionerates were awaited (July 2020).

Ministry response has not been received (July 2020).

#### 3.4.2.5 Delay in issuance of adjudication order after last PH

CBIC vide its Master Circular no. 1053/02/2017-CX dated 10.03.2017, (point no. 14.10) stated that, “In all cases where PH has been concluded, it is necessary to communicate the decision as expeditiously as possible, but not later than one month in any case, barring in exceptional circumstances to be recorded in the file”.

It was noticed in five Commissionerates<sup>23</sup> that adjudication orders were issued for 117 cases involving a money value of ₹85.46 crore with a delay ranging from 02 days to 808 days after the expiry of 30 days from the date of last PH as depicted in the Table 3.4 below:

**Table 3.4: Delay in issue of adjudication order after last PH**

Range of delay (in days)	No. of cases	Money value involved (₹ in lakh)
Upto 1 month	46	945.80
1 month to 3 months	37	3,633.73
3 months to 6 months	24	937.14
6 months to 1 year	7	3,012.12
Above 1 year	3	17.03
<b>Total</b>	<b>117</b>	<b>8,545.82</b>

Of these total 117 delayed cases, 10 cases involving money value of ₹30.29 crore, where the delay was beyond 6 months, accounted for 35 *per cent* of total money value involved in the delayed orders. In all these ten cases, the demand of ₹30.29 crore was confirmed by Adjudicating authority. Thus, delay in issuing adjudicating order, even after all steps required for adjudication were completed, resulted in blockage of revenue and increased pendency of arrears.

***The monitoring and reporting mechanisms need to be strengthened to ensure that timely and proper action as per the Act is taken by the field formations in issuing and adjudicating SCNs.***

Ministry’s response was awaited (July 2020).

<sup>23</sup> Customs(Preventive)-Lucknow, Customs Commissionerate- Noida, JNCH Mumbai, Comm(Import), New Delhi and Customs-Hyderabad

#### 3.4.2.6 Absence of provision for fixing of PH in FTDR Act, 1992

Customs Act, 1962 contains express provision for grant of hearing to parties from time to time subject to condition that no adjournment of hearing shall be granted more than three times. However, FTDR Act, 1992 does not contain any specific instruction in this regard. In absence of prescribed provisions, DCs are providing PH without any limit to numbers.

Scrutiny of 52 cases selected for audit at DC, Kandla Special Economic Zone (KASEZ) relating to SCN and adjudication revealed that in absence of specific instructions in respect of number of PH, in 03 cases Adjudicating authority granted more than 3 PHs to the party.

One such case is narrated below:

i. Scrutiny of SCN files in the Office of the DC, KASEZ, Gandhidham revealed that an SCN for non-compliance of bond condition was issued in December 2016 to M/s 'R' Shipping (India) Pvt. Ltd., Gandhidham for violation of provisions of SEZ Rules, 2006 viz. failing to furnish Annual Performance Return for the period 2014-15 to 2015-16. Opportunity of Six PH had already been given to the party between 02 December 2016 and 06 March 2018 and party appeared on 06 March 2018. No further progress was found on records and the SCN was pending for adjudication even after four years of its issue.

On this being pointed out (December 2019), DC, KASEZ replied (December 2019) that the SCN could not be adjudicated as the DC who had issued SCN and held PH, has been transferred from KASEZ. It was also stated that the SCN issued would be adjudicated by the present DC within a short period of time, after grant of PH.

***In order to give a fair opportunity to the noticee to reply to SCN and also to prevent unlimited discretion in hands of Adjudicating authority to allow any number of PH, express provision needs to be incorporated in the FTDR Act, 1992 regarding number of PH to be granted on same lines as in Customs Act.***

Ministry's response was awaited (July 2020).

### 3.4.2.7 Pendency of SCNs for want of RUDs

As per Master Circular No. 1053/02/2017-CX dated 10 March 2017, the Adjudicating authority is to examine all evidences, issues and material on record, analyze those in the context of alleged charges in the SCN and examine the reply to the SCN and accept or reject them with cogent reasoning. Para 13 provides that SCN and the documents relied upon in the SCN need to be served on the assessee for initiation of the adjudication proceedings.

In Commissionerate of Customs (Export), NCH, New Delhi, out of 86 cases, in four cases SCN involving revenue of ₹2.09 crore issued during October 2016 to March 2017 were pending adjudication as on December 2019. Audit scrutiny of the files revealed that the Adjudicating authorities could not adjudicate the cases due to non-availability of the RUDs in the files on the basis of which SCNs were issued. For adjudicating the cases, Adjudicating authorities requested (May 2017 to March 2019) SCN issuing authorities for seeking RUDs, but no further progress was available in the records. In two out of four cases, noticee's request for RUDs were also found pending since May 2017/August 2019.

Initial failure of SCN issuing authorities to issue SCNs along with RUDs was in contravention to the prescribed instructions. Subsequently, the monitoring authorities failed to act on disposal of noticee's requests for RUDs. These failures, coupled with delays in adjudication, indicated weakness of internal control mechanism in issue and adjudication of SCNs.

Commissionerate of Customs (Export), NCH, New Delhi stated (January 2020) that in three cases noticees or their advocates frequently requested for another PH. Also due to change in Adjudicating authority, further PH needs to be given which delayed the adjudication proceedings. Department further stated that PH needs to be given in compliance to principles of natural justice. However, if no response is received, the cases would be decided ex-parte.

Department's reply is acceptance of inaction in timely adjudication of the cases. The reply was also silent about missing RUD of the cases pointed, in the absence of which adjudication were pending. Present status of the cases has not been furnished (July 2020).

### 3.4.2.8 Pending adjudication Cases despite no response from parties

Section 124 of the Act stipulated that if no reply was received within 30 days of receipt of the notice or if the party fails to appear before the Adjudicating authority when the case is posed for hearing, the case will be decided ex-parte on the basis of material available on record.

In Commissionerate of Customs, JNCH, Mumbai, scrutiny of the records revealed that 111 cases involving money value of ₹101.61 crore were still pending for adjudication up to 31 December 2019 for a period ranging from 5 to 34 months after issue of SCNs. Of these, in 76 cases no PH was issued and in 35 cases, PH was issued but there was no response from the parties. Non-adjudication of these SCNs was in contravention to the aforesaid Section 124 of the Act.

This was pointed out to the Department in January 2020, their response was awaited (July 2020).

### 3.4.2.9 Delay in adjudication of seizure cases

Board has prescribed<sup>24</sup> specific time frames, within which the Departmental officers would complete adjudication in the cases which relate to seizure under Section 124 of the Act. The Commissioner or Additional/Joint Commissioner, Assistant/Deputy Commissioner and Superintendent of Customs are required to complete adjudication within one year, six months and three months respectively from the date of service of the SCN under Section 124 of the Act.

Audit scrutiny revealed non-compliance to Board instructions in adjudication of the cases, with delay in adjudications as well as cases still pending adjudication beyond prescribed time limits as detailed in Table 3.5 below:

**Table 3.5: Details of cases adjudicated with delay and pending for adjudication**

Days	Cases adjudicated with delay				Cases pending for adjudication			
	Cases		Amount		Cases		Amount	
	No.	%	₹ in crore	%	No.	%	₹ in crore	%
up to 3 months	175	35	5.90	40	16	12	9.30	18
3 months to 6 months	136	28	4.18	28	48	36	4.63	9
6 months to one year	101	20	3.26	22	44	33	7.50	15
Beyond one year	82	17	1.55	10	24	18	29.53	58
<b>Total</b>	<b>494</b>		<b>14.89</b>		<b>132</b>		<b>50.96</b>	

<sup>24</sup>Circular No.3/2007-Cus. dated 10.01.2007

In six<sup>25</sup> Commissionerates, there were delays in adjudication under Section 124 of the Act ranging from 2 to 1,122 days in 494 cases involving revenue of ₹14.89 crore. Out of these, in 183 cases (37 *per cent*) the delays in adjudication were for more than 6 months involving revenue of ₹4.81 crore which is 32 *per cent* of the total revenue involved (₹14.89 crore).

Further, in 132 cases, in eight<sup>26</sup> Commissionerates involving revenue of ₹50.96 crore, SCNs issued under Section 124 of the Act were pending adjudication (as on January 2020) beyond the prescribed period for the period ranging from 2 to 1303 days. Out of total pendency, 24 cases (18 *per cent*) pending beyond one year represented 58 *per cent* of total money value involved in cases pending for adjudication.

On being pointed about cases pending for adjudication, Commissionerate of Customs (Prev.), Jodhpur stated that investigations in these cases were not completed till date of issue of the respective notices as addendums were issued. Further, in one case, letter was received on 16 May 2019 from Investigating Agency informing about completion of Investigation. Pendency of the cases has to be counted from the date of addendum/Completion of investigation and not from the date of issue of the notices.

The reply of the Department is not tenable, as cases related to seizures and should have been adjudicated within one year from the date of service of SCN. Department issued Addendum after lapse of one year from the date of issue of SCN and in another case adjudication was still pending even after completion of investigation in May 2019.

For delays in adjudication of cases, Commissionerate of Customs, Ludhiana stated that (March 2020) the parties were originally answerable to different custom authorities for PH.

The reply of the Department was not acceptable as the OIO has not been issued within the prescribed time as per Circular No.3/2007-CUS dated 10.1.2007.

Commissionerate of Customs, Indore in response to delays in adjudication stated (March 2020) that the Customs Commissionerate, Indore was created in the month of January, 2018. The two cases mentioned were received in this Commissionerate in January, 2018, and were adjudicated within the

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<sup>25</sup> Customs Comm.(Prev.) Lucknow, Customs Comm.(Preventive) Patna, Customs Comm.-Ludhiana, Customs Comm.-Indore , Comm. Customs (Airport) Kolkata and Comm. of Customs (Prev.) -West Bengal

<sup>26</sup> Customs Comm. (Preventive- Lucknow, Comm. of Customs (Airport) Kolkata, Comm. of Customs (Prev.) West Bengal, Comm. of Customs- Ahmedabad and Comm. of Customs (Prev.)-Jodhpur

period of one year. It is reiterated that due to formation of a new Commissionerate w.e.f. 15.01.2018, teething problems existed as regards to the jurisdiction and staff position.

The reply of the Department is not acceptable in audit as the objected SCNs were issued in November 2016 and July 2017 by the Commissionerate common for Customs and Excise and these should have been adjudicated within the time limit of one year as per Circular No.03/2007-Cus dated 10-01-2007.

Reply from the remaining Commissionerates was awaited (July 2020).

#### **3.4.2.10 Delay in Adjudication of Remand Back Case**

CBIC Circular<sup>27</sup> dated 10 January 2007 stipulates that the de-novo (Remand back) cases are to be adjudicated within six month /one year from the date of remand back of the case. Further, in case the above time period could not be observed in a particular case, the Adjudicating officer shall keep his supervisory officer informed regarding the circumstances which prevented the observance of the above time frame, and the supervisory officer would fix an appropriate time frame for disposal of such cases and monitor their disposal accordingly.

(i) In Commissionerate of Customs (Import) NCH, New Delhi, two remand back cases involving a duty amount of ₹2.02 crore were pending adjudication for 19 months as of January 2020 and the reasons for the pendency were not available in the files submitted to audit. This was pointed out (January 2020), Commissionerate's reply was awaited (July 2020).

(ii) In another case pertaining to Commissionerate of Customs (Prev.), Jodhpur involving money value of ₹62.36 lakh, adjudication was done after a delay of 320 days which resulted in deferment of recovery for the period adjudication was delayed. There was nothing on record regarding any extension of time period granted for adjudication.

Commissionerate of Customs (Prev.), Jodhpur stated (March 2020) that neither provisions of Section 28 of the Act nor Circular 03/2007-Cus specify any time limits in case of adjudication carried out in remand proceedings.

The reply of the Department is not tenable as in terms of CBEC circular No. 4/2007- Cus. dated 10.01.2007, de-novo (Remand back) Customs cases were to be adjudicated within six month/ one year as the case may be, in accordance with the guidelines prescribed under Section 28(2A) of the Act. Paragraph 3 of the circular 4/2007-Cus further prescribed that in case the

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<sup>27</sup> Circular No. No.4/2007-Cus dated 10.01.2007

time period could not be observed in a particular case, the Adjudicating officer shall keep his supervisory officer informed regarding the circumstances which prevented the observance of the above time frame, and the supervisory officer would fix an appropriate time frame for disposal of such cases and monitor their disposal accordingly. But, audit was unable to ascertain whether supervisory officer had fixed any time frame for disposal of such cases. Further response was awaited (July 2020).

#### **3.4.2.11 Confirmation of duty in excess of specified in SCN**

As per Section 28(8) of the Act, the amount of duty or interest due should not be in excess of the amount specified in the notice.

In JNCH Commissionerate, Mumbai, in five cases, it was observed that the duty demanded in SCNs was ₹1.39 crore, whereas the amount confirmed in the OIO was ₹1.72 crore. Thus, the duty confirmed in OIOs was in excess of the duty demanded in the SCNs, which was not in conformity with the provisions of the Act. The reasons for the excess duty of ₹32.84 lakh demanded while adjudicating the cases were not available in the records.

Ministry's response was awaited (July 2020).

#### **3.4.3 Lack of proper follow up of adjudication and review orders**

##### **3.4.3.1 Non-enforcement of adjudication orders**

Adjudication orders are issued by the appropriate authorities under various Sections<sup>28</sup> of the Act for confiscation, payment of differential duty, payment of the redemption fine (RF) and / or penalty, re-export / destruction of imported goods for non-submission of the mandatory certificates issued by Bureau of Indian Standards (BIS), Food Safety Standards Authority of India (FSSAI), Animal Quarantine Department, Plant Quarantine Department etc.

As per the MoF Circular dated 15/12/1997, a "Recovery Cell" (RC) should be created in each Custom Commissionerate for the purpose of making recovery of Government dues. Accordingly, each Commissionerate has a Recovery Cell whose major functions are to serve notice upon defaulters, attachment and sale of defaulter's property by public auction under Section 142 of the Act and to send a monthly progress report to the Chief Commissioner regarding arrears.

In six Commissionerates<sup>29</sup> it was noticed that in 135 cases involving a money value of ₹38.65 crore, the Department did not enforce the adjudication

<sup>28</sup>Section 28,111,112,124,125 of Customs Act, 1962

<sup>29</sup> Customs Commissionerate (Import), NCH New Delhi, Indore, Chennai Sea Customs, Chennai Air Customs, Cochin Sea Customs and Bhubaneshwar Commissionerate

orders issued during December 2015 to June 2019 for goods not re-exported/improperly imported. Recovery of Government dues amounting to ₹38.65 crore under Section 142 of the Act was pending.

Commissionerate of Customs (Import), NCH, New Delhi accepted the pendency in five cases involving money value of ₹12.64 lakh.

Commissionerate of Customs, Indore stated (March 2020) that M/s 'S' Polymers Pvt. Limited had appealed (January-2020) to CESTAT and the matter relates to Indore SEZ. It was further stated that in another case the party was booked by DRI (July 2017).

The reply of the Department in the case of DRI is not acceptable as the SCN was issued by DRI in July 2017 and adjudicated in December 2018, but no efforts were made for recovery of objected amount by the Department.

Reply from other Commissionerates was awaited (July 2020).

#### **3.4.3.2 Non-compliance with Commissioner's Review orders**

Section 129 D(2) of the Act, stipulates that the Commissioner of Customs may, on his own, call for and examine the record of any proceedings in which an Adjudicating authority subordinate to him has passed any decision or order under this Act for the purpose of satisfying himself as to the legality or propriety of any such decision or order and may, by order, direct such authority or any officer of customs subordinate to him to apply to the Commissioner (Appeals) for the determination of such points arising out of the decision or order as may be specified by the Commissioner of Customs in his order.

In Chennai Sea Customs Commissionerate (Imports), scrutiny of review orders revealed that Department adjudicated 41 cases in respect of 41 BsE pertaining to import of 'Used Clothes', which were under the restricted category, by imposing redemption fine and penalty amounting to ₹1.44 crore. Commissioner (Import) reviewed (December 2017 to April 2018) the adjudication orders and directed the Adjudicating authority to file an application before the Commissioner (Appeals) for enhancing the redemption fine (₹97.46 lakh) and penalty (₹46.32 lakh) as deemed fit. Neither any evidence of filing application by the Joint Commissioner, (Group 3) before the Commissioner (Appeals) was found available on records nor the details of redemption fine and penalty were available against the 41 BsE as verified through online access provided to audit. Hence, no action was taken on Commissioner's review orders to enhance redemption fine and penalty.

This was pointed out in May 2020; the reply was awaited (July 2020).

### 3.4.3.3 Inadequate follow up of adjudication orders issued by the RAs

For non-fulfilment of EO, adjudication orders are issued under Section 13 of FTDR Act, 1992 with a copy endorsed to the Customs department, imposing penalty for contravention of any provision of this Act or any rules or orders made there under or the FTP. Further, as per Section 11 (4) of FTDR Act 1992, a penalty imposed under this Act may, if not paid, is to be recovered as an arrear of land revenue. O&M Instructions No.04/2018 dated 2<sup>nd</sup> Aug 2018 issued by the DGFT also insisted that all adjudicated orders shall be uploaded on the website maintained by the field offices and to mark one copy to the Central Economic Intelligence Bureau (CEIB) and Customs authority at the port of registration.

In five RAs<sup>30</sup>, penalty amount of ₹5.29 crore was imposed under Section 11(4) of the FTDR Act in 40 cases after adjudication during the period September 2016 to August 2019. On a scrutiny of the records, audit noticed that these cases were not marked to CEIB and Customs authorities for necessary recovery action. Further, it was also noticed that no evidence of payment of penalty were available in the files.

Some cases are illustrated below:

(i) In RA, New Delhi, scrutiny of records revealed that the three adjudication orders involving money value of ₹13.05 lakh were not transferred to the Enforcement cum Adjudication (ECA) Recovery cell.

On this being pointed out (January 2020), RA, New Delhi accepted the findings that the same were not transferred earlier and informed that these cases had been forwarded to ECA Recovery cell in January and February 2020.

(ii) Similarly, in ADGFT, Rajkot, SCN was issued first in April 2008 and second in March 2018 to M/s 'T' Chemicals Pvt. Ltd. under Section 11(5) and Section 14 of FTDR Act, 1992. The SCN was adjudicated in November 2018 after Department found that there was no company by this name. Scrutiny of the records revealed that the Department had not written to the District Collector for initiating recovery proceedings even after a lapse of 10 years from the issuance of first SCN.

On being pointed out by audit (October 2019), ADGFT, Rajkot issued (December 2019) direction to District administration for recovery action.

Non-endorsing the adjudication orders to CEIB and Customs authorities resulted in delay in action leading to pendency and consequent blockage of

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<sup>30</sup>CLA New Delhi, JDGFT Chennai, ADGFT Mumbai, ADGFT, Rajkot and ADGFT, Kolkata

revenue and burden on the Department. The Department was required to ensure proper monitoring in this regard.

Replies for the remaining cases were awaited (July 2020).

#### **3.4.3.4 Non transfer of cases to enforcement division for investigation / adjudications**

The DGFT vide circular<sup>31</sup> dated 31 December 2003 issued guidelines for treatment of cases which were kept under Denied Entity List (DEL). Further, in terms of Paragraph A (1) of the aforesaid guidelines, it was specifically mentioned to transfer the cases, kept under DEL to the enforcement division for further investigation/ adjudication.

In ADGFT, Hyderabad, 13 cases involving duty saved amount of ₹4.36 crore, which were kept into DEL list were not transferred to the enforcement division for further investigation/ adjudication.

Department had replied that as per Office Memorandum (OM) Instructions<sup>32</sup> dated 26 July 2004, ECA work would be monitored by the Licensing section.

Reply was not acceptable as it did not address the issue of not transferring cases under DEL to enforcement division for adjudication.

The fact remained that non-transfer of DEL cases for adjudication resulted in avoidable delay involving duty saved amount of ₹4.36 crore.

Ministry's response was awaited (July 2020).

#### **3.4.4 Efficacy of monitoring and internal control in Customs formations**

Monitoring and Internal Control is an integral process, which addresses risk and provides reasonable assurance about effectiveness and adequacy of systems and procedures. The Customs procedures prescribe maintenance of SCN register, adjudication register, refund register, call book, MPRs for ensuring effective monitoring of issue of SCNs and their adjudication.

Audit noticed following shortcomings in monitoring and internal control in respect of SCN and adjudication.

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<sup>31</sup>F.No. 18/24/HQ/99-2000/ECA II, dated 31 December 2003

<sup>32</sup>O&M Instructions<sup>32</sup> No.11/2004, dated 26 July 2004

### 3.4.4.1 Non-updation of the DRI Intelligence Gathering and Investigation Tools (DIGIT) database

DIGIT was introduced with the objective of creating a complete database of Customs offences for flow of vital information, its exchange and timely utilization for enforcement and risk management by the Revenue Department.

CBIC, hereinafter referred to as Board, vide instructions<sup>33</sup> dated 28 March 2018 and 2 April 2018 had made it mandatory that with effect from 1 April 2018, all SCNs and adjudication orders for offences detected by the intelligence agencies<sup>34</sup> should be issued only through the software application tool 'DIGIT' and all Customs formations were to complete entry of the legacy data in DIGIT by 31<sup>st</sup> July 2018. The DIGIT database was to be kept up to date so as to ensure the flow of vital information, its exchange and its timely utilisation for meeting the enforcement and risk management objectives of the Department. Board further impressed upon all the Commissionerates to issue SCNs within the stipulated time period and not delay till the last day. Board, through DRI, was to monitor completion of the task and also issuance of SCNs through DIGIT. It was also stated that failure of field formations to complete the task would be viewed seriously.

Out of 25 Customs Commissionerates test checked, audit noticed that issuance of SCNs and adjudication orders through DIGIT was done partially in 10 Commissionerates<sup>35</sup> and SCNs and adjudication orders were not issued through DIGIT in nine Commissionerates<sup>36</sup>. Six Commissionerates<sup>37</sup> did not provide the requisite information to audit (**Annexure 5**).

Further, audit noticed (January 2020) that while entry of legacy data was to be completed by 31 July 2018, it was done only in three Commissionerates<sup>38</sup> and in 19 Commissionerates the legacy data was not updated as of December

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<sup>33</sup> Instruction No. 5/2018 dt.28/03/2018 and 6/2018 dt.02/04/2018

<sup>34</sup> Special Intelligence Investigation Branch (SIIB), Docks Intelligence Unit (DIU), Air Intelligence Unit (AIU), (Customs Internal Investigation Agencies), Directorate of Revenue Intelligence (DRI),

<sup>35</sup> NCH-Mangaluru, Chennai (Air) Customs, Cochin (Sea) Customs, ACC(Export)-NCH-Delhi, Bhubaneswar Customs (Prev.), Customs (Prev.) Patna, JNCH NS I, NS-II, NS-III and NS-V, Mumbai

<sup>36</sup> Customs Comm-Ahmedabad, Cus. Comm-Ludhiana, Cochin (Air) Customs, ACC (Import) NCH-Delhi, Indore Customs Comm., Customs Comm- Hyderabad, Cus. Comm-Vishakapatnam, Cus. Comm (Airport) Kolkata, and Cus (Prev.) W.B.

<sup>37</sup> Customs Comm. (Mundra), Cus.(P) Comm (Jodhpur), Airport & Air Cargo Comm-Bengaluru, Chennai (Sea) Customs, Customs (Prev.) Lucknow and Customs Comm (Noida)

<sup>38</sup> Customs Comm. (Ludhiana), Cochin (Sea) Customs and Customs Comm (Vishakhapatnam)

2019. Three Commissionerates<sup>39</sup> did not provide the information regarding legacy data.

On being pointed out, Commissionerate of Customs (Export) New Delhi, Customs (Preventive) Patna and Jodhpur stated that SCNs and adjudication orders were being entered in the DIGIT database.

Audit however, noticed that only one SCN out of 110 SCNs and 13 adjudication orders in NCH, New Delhi, 68 cases in Patna and 167 cases in Jodhpur issued during 2016-19 were entered in the DIGIT database.

Further, Customs Paradeep, Cochin (Sea) and Kolkata (Air) Commissionerates stated (January 2020) that legacy data in DIGIT could not be uploaded due to technical issues and login ids and passwords of Officers have not been completed.

While, Commissionerate of Customs, Indore and Ludhiana stated (March 2020) that uploading of legacy data as on 31 March 2018 shall be taken up on top priority.

Replies were awaited (July 2020) from 15 Commissionerates<sup>40</sup>.

Non-updation of the DIGIT database by all the Customs field formations defeated the purpose of implementation of DIGIT. Ministry may take note of failures in not only achieving the target of entering the legacy data scheduled by 31 July 2018 but also entry of new cases w.e.f. April 2018 by its field formations even after lapse of more than two years and take corrective action.

***The database of Customs offences as envisaged under DIGIT must be completed in a time bound manner.***

#### **3.4.4.2 Irregularities noticed in Call Book Cases**

Board's circular<sup>41</sup> as amended provides criteria for transfer of those SCNs to call Book, where the Department has gone in appeal, injunction has been issued by the court, the board has specifically ordered the case to be kept pending and to be entered into the call book, or the case has been referred to Settlement Commission. It further clarifies that such cases shall be taken out of the Call Book and adjudicated where issue involved has been decided by the Hon'ble Court and such order of the Court has attained finality.

<sup>39</sup> ACC & Airport Customs (Bengaluru), Customs. Comm –Mundra, Cochin (Air) Customs,

<sup>40</sup> Commissionerates of Customs- ACC & Airport-Bangalore, Import, NCH, Delhi, Mundra, Vishakhapatnam, NCH-Mangalore, Cochin (Air), Chennai (Air), Chennai (Sea), , Noida (Customs), and four Commissionerates under JNCH-Mumbai (NS-1, NS-II, NS-III, NS-V) and Commissionerates of Customs (Prev.)- Lucknow, West Bengal.

<sup>41</sup>Circular No.162/73/95-CX dated 14December 1995 as amended by Circular dt.28 May 2003, 26 December 2014 and 26 April 2016.

Audit scrutiny of 286 Call Book cases in 25 Commissionerates of Customs revealed that in 07 Commissionerates<sup>42</sup> there were 8 cases having money value of ₹28.93 crore, which were incorrectly retained (August 2016 to May 2019) in Call Book for want of timely review in contravention to the directions issued by the Board vide Circular of April 2016.

Two such cases are narrated below:

(i) In Commissionerate of Customs (Import), NCH, New Delhi an SCN issued (February 2018) to M/s 'U' News Print Ltd. for ₹81 lakh was still reflected (January 2020) in the call book even though the Settlement Commission had passed the final order in January 2019 and the party had deposited all dues by February 2019.

(ii) Similarly, in Commissionerate of Customs, JNCH, Mumbai, two SCNs issued (October 2015 & November 2017) to M/s 'V' Automobiles and M/s 'W' Systems Private Limited and others for ₹1.38 crore were retained in call book even though the Settlement Commission had passed their orders (July 2018).

Inadequate monitoring of call book cases resulted in incorrect reporting to the Board as well as non-adjudication of cases fit for adjudication.

This was brought to the notice of Department (January/February 2020); their reply was awaited (July 2020).

#### 3.4.4.3 Monitoring mechanism of reporting through Monthly Technical Report (MTR)/Monthly Performance Report (MPR)

The Board vide Circular NO.717/33/2003-CX dated 23 May 2003 had requested all Chief Commissioners/Commissioners to take utmost care in compiling the data, particularly relating to pending cases and revenue involved, while sending the reports (MTRs/MPRs).

Audit test checked records in selected 25 Commissionerates and noticed following discrepancies in 10 Commissionerates<sup>43</sup> :

- a) Non reflection of SCNs issued in MPR
- b) Differences between opening and closing balances of pending cases in MPR
- c) Mismatch of data in different sections of MPR
- d) Mis-reporting of issued SCN to the Board through MPR

<sup>42</sup> Commissionerate of Customs- Mundra, (Import), Delhi, Noida, JNCH, Mumbai and Comm. of Customs (Prev.) Bhubaneswar, Paradeep Customs and Lucknow

<sup>43</sup> Commissionerate of Customs - Mundra, (Air Port & Air Cargo) Bengaluru, NCH- Mangaluru, Cochin sea port, (Import) NCH Delhi, Indore, Noida, Comm. of Customs ( Prev.)- Lucknow, Patna & Paradeep Cus House-Bhubaneswar,

On being pointed out (November 2019), the Commissionerate of Customs, Indore stated (March 2020) that the Commissionerate was created in January, 2018 and while bifurcating the figures of erstwhile Commissionerate of Customs and Central Excise, certain discrepancies had crept in the MPR of Customs Commissionerate. At present, the figures are being reported correctly.

The fact remained that the discrepancy pointed out by audit has been accepted. However, the discrepancies still exist between MPR and information furnished by the office.

Assistant Commissioner, Paradeep division replied (December 2019) that discrepancies existed in these cases because protective SCNs were issued during 2002 on the basis of audit objections and all these cases were transferred to Call Book. Case files of 136 cases were not readily available/traceable.

Audit observed that this matter of missing files was never brought to the notice of higher authorities. Accordingly, the matter needs investigation as likelihood of realization of revenue involved had further diminished.

Further response and reply from remaining Commissionerates were awaited (July 2020).

#### **3.4.4.4 Maintenance of registers**

For proper levy and collection of duty, Department maintains various registers to monitor duty demand cases right from its initiation to its final recovery viz. issue of SCN, its adjudication, demand and its recovery. The Department's field formations maintain registers like SCN control register for monitoring of issuance of SCN (Unconfirmed demand register), Confirmed Demand register, 335J register for monitoring of cases of prosecution etc.

In 08 Customs Commissionerates<sup>44</sup>, it was noticed that there was no uniform system being followed by all the field formations in maintenance of registers. Some categories of discrepancies noticed in the registers had been listed below:

- a)** SCN registers not maintained or were incomplete
- b)** Confirmed demand (OIO) register not maintained/ incomplete
- c)** Abstract of pending cases not being prepared
- d)** Call Book register not maintained

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<sup>44</sup> Commissionerate of Customs- (Export) & (Import) NCH Delhi, Indore, Hyderabad, Noida, Cochin Sea, Comm. of Customs (Prev.)-Jodhpur & Patna,

On being pointed out (November 2019), the Commissionerate of Customs (Prev.), Jodhpur replied that most of the office work was maintained on computer and copy of the same is pasted in manual register. It is only due to clerical error, the same were not pasted in the concerned register. However, the concerned staff has been directed to be more careful at the time of making entries in register and ensures that all the entries will be inserted in the register before submission of MPR.

Commissionerate of Customs Indore accepted the audit observation with assurance 'Noted for due compliance'. It further submitted to maintain Centralised SCN/OIO register at AC/DC level in future.

Reply from remaining Commissionerates was awaited (July 2020).

#### **3.4.4.5 Effectiveness of Monitoring and Internal Control in RA**

Consequent to issue of O&M Instruction No.11/2004 dated 27.7.2004, Adjudication and ECA Divisions have been restructured and ECA section was entrusted with all the post adjudication activities. The licensing sections have to forward details of defaulters to ECA Divisions for issue of SCN and adjudication and to take steps for recovery.

##### **(i) Non-issuance of SCNs and adjudication orders despite completion of required process**

Scrutiny of records revealed that in RA, Mumbai 132 cases were fit for issuance of SCN but the same were pending for issuance of SCN. Apart from this, instances were also found where adjudication orders were not passed even after preparation of factsheets.

One such case is narrated below:

In ADGFT, Mumbai an analysis of un-redeemed EPCG licences revealed that there were 132 EPCG cases involving a money value of ₹130.56 crores<sup>45</sup> (duty saved amount ₹130.56 crore) where SCNs were issued, PHs were held and fact sheet prepared for conclusion of adjudication proceedings. However, no adjudication orders were finalized at the time of audit (December 2019). The number of days lapsed since the preparation of factsheet ranged from 218 to 1213 days, as detailed in Table 3.6.

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<sup>45</sup> Duty saved amount = (₹ 1,044.50 crore divided by 8)

**Table 3.6: Pending issue of OIO even after preparation of fact sheet**

No. of days	No. of licences involved	Money value involved (₹ in Cr.) FOB
up to one year	126	1,038.21
1-2 years	0	0
More than 2 years	6	6.29
<b>Total</b>	<b>132</b>	<b>1,044.50</b>

As could be seen from Table above 126 licenses involving exports value (FOB) of ₹1,038.21 crore were pending for nine months to one year since preparation of fact sheet. Cases involving six licenses with exports value of ₹6.29 crore were pending beyond one year, with highest pendency being more than three years. No reason or justification for such delays were available on record. Non-issue of OIOs for such prolonged period despite preparing the fact sheet for OIO, indicated the failure of monitoring mechanism.

This was brought to the notice of Department (January 2020) and reply was awaited (July 2020).

#### (ii) Observations on Registers and MIS reports

Examination of maintenance of registers and accuracy of MIS reports revealed the following deficiencies in five of the 12 RAs test checked:

- a) Registers for SCN and OIO issued during 2016-17 to 2018-19 were not maintained in two RAs (Kanpur and Kolkata).
- b) In two RAs (Jaipur and Bengaluru), it was noticed that there were discrepancies of 156 and 592 cases respectively in MIS report and list of OIO/SCN cases provided to audit. The discrepancies were noticed in opening and closing balances in the MPRs in cases reported by RA, Jaipur while in RA, Bengaluru discrepancies were noticed in SCN and adjudicated cases.
- c) In JDGFT, Cochin, penalty imposed in adjudication of 34 SCNs during the period 2017-18 and 2018-19 was not incorporated in MIS Report.

Ministry's reply was awaited (July 2020).

#### 3.4.5 Lack of co-ordination between RAs and Customs

MoF in its instruction F. No. 609/119/2010-DBK dated 18<sup>th</sup> Jan 2011 stated that some Customs Houses reported that in many Drawback cases of non-realisation of foreign exchange, the SCNs have been returned undelivered as the recipient / address was non-existent. In view of this, the instruction desired that the Commissionerates should set up an institutional mechanism to liaise regularly with RAs and report names of such exporters to RAs at regular intervals or joint review meetings so that action can be taken against

them and their IE codes cancelled for furnishing wrong addresses to DGFT / Customs. Further Circular NO. 16 / 2017-Cus dated 2<sup>nd</sup> May 2017 also instructed that the institutional mechanism laid down in MoF instruction dated 18<sup>th</sup> Jan 2011 should be used to pursue cases of non-fulfilment of EO by licence / authorisation holder.

**3.4.5.1** It was noticed that there were inconsistencies in the redemption status of EPCG licences furnished by RA and Customs department. In Commissionerates of Customs-Chennai Sea, ACC Bengaluru and JNCH Mumbai, a test check revealed that in 128 licence cases where the EO period was over, the cases were not communicated to the concerned RAs. Moreover, 19 cases were closed at Customs side and pending with the RAs.

A few cases are narrated below

**(i)** In Commissionerates of Customs-Chennai Sea and ACC Bengaluru, in 19 EPCG licences involving a duty saved amount of ₹24.35 crore, audit found that the bonds were cancelled and the cases were closed by the Commissionerates. On cross verifying these licenses with the respective RAs, it was noticed that these licences were still unredeemed.

The cancellation of the EPCG licences by the Customs department without receipt of the redemption order from the concerned JDGFTs was not in order. The Department would not be in a position to act upon any Deficiency Letters(DLs) / SCNs /adjudication orders issued by JDGFT for these licences involving recovery of import duty towards the non-fulfilment of the EO.

In reply Commissionerate of Customs, ACC Bengaluru stated that:

- a)** In one case the Department accepted that a different bond was closed by oversight. Further, in the instant case the importer had completed EO and applied for EODC to DGFT which was issued on 10 March 2020.
- b)** In another case the Department replied that DGFT vide their Email dated 3 October 2019 confirmed that redemption letter has been issued.
- c)** In one more case on the basis of Importer's request wrong bond was closed on 17 March 2017. However, the importer had completed EO and addressed a letter (14-02-2020) to DGFT for action.

The reply of the Department may be viewed in light of the fact that for each licence a separate bond is executed as guarantee. Cancellation of a different bond, wrong bond on importer's request or cancellation of bond without EODC underlines that due diligence was not exercised by the Customs department to monitor the fulfilment of prescribed EOs. Further, on verification in one case wherein the Department stated that EODC has been

issued, it was noticed that details related to the licence were not available in the DGFT's EODC database (*website; eodc.online*).

The fact remained that Department initiated action against licensee only after observation by audit which indicates inadequacy of the monitoring system.

Reply from other Commissionerate was awaited (July 2020).

(ii) In Commissionerate of Customs (Sea) Chennai, in respect of 57 EPCG licenses involving a duty saved amount of ₹162.81 crore, where the EO period was over, it was noticed from the information furnished to audit that these licenses were not available in the EPCG licence master data of the Commissionerate. The given information was incorrect as test check of 10 cases in the ICES System revealed that these licences were utilised through Chennai Sea Customs for making imports.

(iii) In Commissionerate of Customs, JNCH Mumbai, M/s 'X' International (India) involving duty saved amount of ₹4.84 lakh, SCN was adjudicated in August 2018; whereas the licence was already redeemed in December 2016 by ADGFT, Mumbai.

Similarly, in 11 cases involving money value of ₹43.40 crore, SCNs (January 2017 to February 2019) were not closed by the Customs department for a period ranging from 10 months to 36 months even though parties had either submitted the EODC and proof of extension of EO period issued by ADGFT, Mumbai.

(iv) DGFT launched EODC Monitoring System<sup>46</sup>, which is available in the public portal, to facilitate exporters to know the status of their application with regard to issue of EODC.

In Commissionerate of Customs, JNCH Mumbai, in 41 cases involving ₹41.77 crore, SCNs issued during August 2017 to February 2019 were not closed by the Customs department. Even though, EODC was stated to have been issued as per EODC Monitoring System for Advance/EPCG authorisation module of DGFT. Since this information is available in the public portal, the Customs department could have utilised the facility to ascertain the position of EO at DGFT.

In spite of having instructions/standing orders on EO Monitoring and sharing of information between the Customs and RAs through institutional mechanism, there is no established mechanism in place and the Departments continue to function as independent silos.

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<sup>46</sup>Trade Notice No.1/2018-19 dated 4.4.2018

***Monitoring of RAs needs to be enhanced. Coordination between Customs Department and DGFT's EODC monitoring system needs to be improved.***

Reply of the Ministry was awaited (July 2020).

### **3.5 Conclusion**

Audit of the issue of SCNs and adjudication process in Customs Commissionerates revealed non-compliance to the extant provisions of the Act and rules at various stages from PNC stage till issue of adjudication orders and follow up of review orders.

On one hand, SCNs were issued instead of issuing a simple letter for failure of licence holder to submit proof of discharge of EO and on the other, failure to issue SCNs within the prescribed period rendered them time-barred. Extended period of time under Section 28 (4) of the Act was invoked even in cases where SCNs were ought to be issued within the normal period under Section 28 (1) of the Act.

In case of SEZs, delays were noticed in issue of SCNs by DCs as well as dropping of SCNs by the Adjudicating authority because of non-adherence to prescribed procedures and mis-representation of facts.

Absence of provisions for prescribed timelines for issue of SCNs and their adjudication in the FTDR Act, 1992 to act swiftly against the defaulters left discretion in the hands of administrative authorities of RAs and DCs and avoidable delays in recovery of Government revenue. Considerable delays were noticed in issue of SCNs by RAs, even though the EO period had already expired, including cases where the EO period expired 2 to 11 years ago.

The SCNs were pending for adjudication beyond prescribed timelines, with highest pendency being 182 months beyond prescribed time limit, inspite of timelines for adjudication of SCNs being clearly laid out in the Act. Even in cases where adjudication was completed, there were considerable delays, with 37 *per cent* cases, representing 32 *per cent* of total revenue involved in delayed cases, getting adjudicated with delay of more than 6 months. The PH was granted beyond permissible number and delays were noticed in issue of adjudication order even after holding last PH, leading to avoidable blocking of revenue. SCNs were pending adjudication for want of RUDs, a basic requirement for issuing SCN.

In the absence of prescribed provisions in FTDR Act, 1992 regarding fixing of PH, it was noticed that the DCs were providing PH without any limit to numbers, leading to delay in adjudication.

While the adjudication process itself was fraught with delays, deficiencies were noticed even in follow up of adjudication orders in both Customs Commissionerates and RAs.

The DIGIT, made mandatory since 1 April 2018 with the objective of creating a complete database of Customs offences was found to be partly functional.

Deficiencies were also noticed in key monitoring and reporting mechanisms such as data discrepancies in Monthly Progress Reports, incomplete SCN and Confirmed Demand registers in Customs Commissionerates. The lax monitoring in RAs is evident from non-issuance of adjudication orders despite preparation of fact sheet.

Inconsistencies were noticed in the redemption status of EPCG licences furnished by RA and Customs department. It was also noticed that Customs department was not using EODC details available on DGFT's EODC Monitoring System, available in public domain, leading to non-closure of SCNs even in cases where EODC was granted by DGFT. Thus, in spite of standing orders on monitoring EO and sharing of information between the Customs and RAs through institutional mechanism, there is no established mechanism in place and the Departments continue to function as independent silos.

**Recommendations:**

- 1) Ministry may consider providing specific time limit in FTDR Act, 1992 for issuance and adjudication of SCN.**
- 2) In order to give a fair opportunity to the noticee to reply to SCN and also to prevent unlimited discretion in hands of Adjudicating authority to allow any number of PH, express provision needs to be incorporated in the FTDR Act, 1992 regarding number of PH to be granted on same lines as in Customs Act.**
- 3) The monitoring and reporting mechanisms need to be strengthened to ensure that timely and proper action as per the Act is taken by the field formations in issuing and adjudicating SCNs.**
- 4) Cases of irregularities including issuance of SCN under inapplicable section of the Act may be examined in detail and responsibility may be fixed for errors of omission and commission.**
- 5) The database of Customs offences as envisaged under DIGIT must be completed in a time bound manner.**
- 6) Monitoring of RAs need to be enhanced. Coordination between Customs Department and DGFT's EODC monitoring system needs to be improved.**
- 7) As audit has checked only a sample of cases, the Department may examine all other cases also to identify and fix systemic deficiencies.**



## CHAPTER IV

### **Non- compliance to provisions of Customs Act, Customs Tariff Act and Tariff Notifications**

**4.1** Goods imported in a vessel/aircraft into India attract Customs duty and unless these are not meant for customs clearance at the port/airport of arrival and are intended for transit to another customs station or to any place outside India, detailed customs clearance formalities of the landed goods have to be followed by the importers. The importer is required to file a BE giving details of the cargo, imported tariff classification and applicable duty, and other required information. Under self-assessment, BE can be filed electronically through ICEGATE<sup>47</sup> into the Indian Customs Electronic Data Interchange (EDI) system, referred to as ICES<sup>48</sup>. In the non-EDI system, the BE is filed manually by the importer along with a prescribed set of documents.

**4.2** The assessment function of the Customs authorities is to determine the duty liability taking due note of any exemptions or benefits claimed under different export promotion schemes. They also have to check whether there are any restrictions or prohibitions on the goods imported and if they require any permission/license/permit etc., and if so, whether these requirements have been met. Assessment of duty essentially involves proper classification of the goods imported in the Customs tariff, having due regard to the rules of interpretations, chapter and sections notes etc., and determining the duty liability. It also involves correct determination of value where the goods are assessable on ad valorem basis.

**4.3** BsE filed electronically into ICES through a Customs House Service Centre or web based ICEGATE are transmitted by ICES to the RMS<sup>49</sup>. The RMS processes the data through a series of automated steps and results in an electronic assessment. This assessment determines whether the BE will be taken-up for action, i.e. manual appraisal by assessing officer or examination

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<sup>47</sup>ICEGATE stands for the Indian Customs Electronic Commerce/Electronic Data interchange (EC/EDI) Gateway. ICEGATE is a web based portal through which the department offers a host of services, including electronic filing of the BE (import goods declaration), Shipping Bills (export goods declaration), e-payment, on-line registration. A data and links to various other important websites/information pertaining to the Customs business

<sup>48</sup>The Indian Customs EDI System (ICES) has two aspects: (i) Internal Automation of the Custom House for a comprehensive, paperless, fully automated customs clearance system (ii) Online, real-time electronic interface with the trade, transport, Banks and regulatory agencies concerned with customs clearance of import and export cargo through ICEGATE.

<sup>49</sup>Risk Management System is an IT driven system with the primary objective to strike an optimal balance between facilitation and enforcement and to promote a culture of self-compliance in customs clearances. It uses econometrical modelling to identify the relevant criteria for assessing the risk associated with trade transactions and applies criteria in a systematic manner to determine the level of risk for each transaction and assigns the levels of customs intervention according to the level of risk and available resources.

of goods, or both, or be cleared after payment of duty and Out of Charge directly, without any assessment and examination. Where necessary, RMS will provide instructions for Appraising Officer, Examining Officer or the Out-of-Charge Officer. The system of clearances of imports through RMS based ICES and/ or assessment by Customs authorities should ensure that the conditions prescribed in the applicable notifications are fully met before exemptions could be granted.

**4.4** Fully automated procedures of ICEGATE have facilitated comprehensive and paperless customs procedures. The Pan-India transaction data generated at different Customs Commissionerate is available in electronic format in a centralised database maintained at the Directorate of Systems (DG/Systems) under CBIC.

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

#### **4.5 Audit Sample**

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

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

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

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

#### 4.7 Incorrect application of notifications

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

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

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

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

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

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

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

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

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

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

Ministry’s response was awaited (July 2020).

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

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

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

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

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

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

Ministry's response was awaited (July 2020).

#### 4.8 Short/non-levy levy under IGST notifications

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

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

Imports worth ₹5,726 crore under 36,861 BsE were made during July 2017 (when GST was implemented) to December 2018 through ten<sup>50</sup> Customs field formations availing benefits under IGST exemption notifications. Of these, audit test checked 5,135 BsE (14 *per cent*) of imports valued ₹2,754 crore (48 *per cent*). In this test-check, audit noticed 21 cases (485 BsE) of short/non-levy of applicable IGST, each involving revenue of ₹10 lakh or more, with a total revenue implication of ₹9.15 crore. Out of 21 cases, the

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

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

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

Analysis of import data for the period 2017-18 revealed short/non levy of IGST in analogous 1161 consignments imported through 38 Customs Ports<sup>51</sup>. The revenue amounting to ₹19.72 crore was short/non levied. CBIC may examine these cases and take corrective action.

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

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

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

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

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

Apart from these cases, analysis of data revealed that in 10 other imports of ‘Lithium ion cell’ made during 2017-18 through three Customs Ports<sup>52</sup>, IGST was levied at 18 *per cent* instead of applicable rate of 28 *per cent*. The duty

<sup>51</sup>Mumbai Air Cargo(INBOM4), Delhi Air Cargo ( INDEL4), Chennai Sea (INMAA1), Nheva Sheva Sea ( INNSA1), ICD Tuglakabad ( INTKD6), Bangaluru Air Cargo (INBLR4), Chennai Air Cargo (INMAA4), Coimbatore(INCJB4) , Cochin Air Cargo (INCOK4), ICD Patparganj (INPPG6), ICD Garhi Harsaru (INGHR6), ICD Thar Dry Port-Ahemdabad(INSAU6) , Kolkata Sea(INCCU1), ICD Bangaluru( INWFD6), ICD Sahnewal Kench (INSNI6), Vizac Sea(INVTZ1), Mundra(INMUN1), ICD Dadri - STTPL (CFS(INSTT6), Dadri - ACPL (CFS(INAPL6) , Kolkata Air Cargo(INCCU4), ICD Sachin-Surat(INSAC6), Hyderabad(INSNF6), Baroda(INBRC6), Krishnapatnam(INKRI1) , Ahmedabad Air Cargo(INAMD4), Ludhiana(INLDH6), Ahmedabad(INSAJ6), Kanakpura - Jaipur ICD(INKKU6), ICD Sahnewal GRFL(INSGF6), Hyderabad Air Cargo)INHVD4, Tiruvallur-ILP ICD( INILP6) , Noida-Dadri-ICD( INDER6) , Sabarmati ICD(INSBI6) , Faridabad(INFBD6), Dadri-CGML(INCPL6), Panchi Gujran/Sonepat ICD(INBDM6) , Mumbai Sea( INBOM1), Pipavav(Victor) Port( INPAV1)

<sup>52</sup>Delhi Air Cargo (INDEL),Nheva Sheva Sea (INNSA1), ICD Patparganj (INPPG6)

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

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

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

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

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

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

Analysis of import data (2017- 18) revealed that in 11 other imports of “Parts of pen/pencil” imported through three Customs Ports<sup>53</sup>, IGST was levied at 12 *per cent* instead of applicable rate of 18 *per cent*. The duty implication was ₹1.12 crore. CBIC may examine these cases and take corrective action.

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

#### 4.8.3 Improper exemption of IGST on import of pharmaceutical products

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

<sup>53</sup>Mumbai Air Cargo (INBOM4), Chennai Sea (INMAA1), Chennai Air Cargo (INMAA4)

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

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

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

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

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

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

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

consumables made on or after 15 November 2017 through four Customs Ports<sup>54</sup>, were exempted from IGST. Non-levy of duty implication was ₹24 lakh. CBIC may examine these cases and take corrective action.

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

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

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

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

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

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

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

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

<sup>54</sup>Mumbai Air Cargo (INBOM4), Delhi Air Cargo (INDEL4), Hyderabad Air Cargo (INHVD4), Chennai Air Cargo (INMAA4)

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

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

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

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

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

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

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

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

Ministry response was awaited (July 2020).

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

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

To verify the compliance with the prescribed conditions specified in the Notification No.50/2017 (Customs) (as amended), Audit analysed imports of Dried leguminous vegetables, Machinery and its parts, “Aircraft parts” (Chapters 7, 84, 85 and 90 of the Customs Tariff) made under this notification during 2017 to 2019 (up to February 2019) through nine<sup>55</sup> Commissionerates.

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

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

Analysis of import data (2017-18) revealed that 172 consignments of automotive parts, ice cream machinery, motor parts, gear box, sewing machine etc. imported through 22 Customs Ports<sup>56</sup> were allowed benefit of exemption notification 50/2017-Cus. The revenue involved was ₹7.94 crore. CBIC may examine these cases and take corrective action. Matter was referred to the Government (August 2020), reply is awaited.

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

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

#### 4.9.1 Incorrect grant of exemption benefit of notification to Aircraft parts

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

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

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

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

#### 4.9.2 Short levy of BCD on Ice cream making machinery imports

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### 4.10 Misclassification of Goods

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

Import of goods valuing ₹15,011 crore were made during April 2015 to March 2019 under 30,759 BsE. Audit test checked 4,333 BsE for imports valuing ₹4,850 crore and noticed short levy of duty due to misclassification in 1,644 BsE (30 cases). These thirty cases of misclassification, each involving revenue implication of ₹10 lakh or more, having total revenue implication of ₹19.84 crore, have been included in this chapter. Individual cases of misclassification of imports with money value less than ₹10 lakh have been reported to the local Commissionerates through field Inspection reports.

Out of 30 cases of misclassification, seven cases are discussed in the following paragraphs and remaining cases are listed in **Annexure 9**. The

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

Apart from cases test checked, analysis of ICES data revealed misclassification of Poultry machinery, aircraft parts, electrical machinery and equipments, CCTV camera, broadcasting equipments, paper and paper board, Plastic and articles etc in 2,768 consignments imported through 49 Customs Ports<sup>57</sup> with consequential short/non levy of duty amounting ₹141 crore. CBIC may examine these cases and take corrective action.

#### 4.10.1 Clear float glass misclassified as ‘non wired glass’

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

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

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

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

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

The reply of the Department was not acceptable because:-

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

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

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

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

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

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

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

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

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

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

Apart from these cases test checked, analysis of import data revealed that in 117 similar imports of 'Polyester Woven Fabric 58' made through nine Customs Ports<sup>59</sup> during 2017-18, BCD was levied at 10 *per cent* instead of applicable rate of ₹40 per square metre. The resultant short levy of duty was ₹11.51 crore. CBIC may examine these cases and take corrective action.

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

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

#### 4.10.3 Transmission network interface devices misclassified as its parts

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

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

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

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

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

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

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

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

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

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

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

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

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

#### 4.10.5 Misclassification of Crude Palm Stearin

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

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

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

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

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

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

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

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

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

Apart from the cases test checked, analysis of import data (2017-18) revealed that in 99 similar imports of Gear boxes and motor vehicles parts made through eight Customs Ports<sup>60</sup> were misclassified. BCD was levied at 7.5 *per cent* instead of applicable rate of 15 *per cent*. The short/non levy of duty involved was ₹1.09 crore. CBIC may examine these cases and take corrective action.

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

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

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

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

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

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

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

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

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

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

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

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

##### 4.11.1 Short levy of duty due to undervaluation of goods

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Ministry's response was awaited (July 2020).

#### 4.12 Short / Non-Levy of charges by DCs

The SEZs are headed by DCs (Joint Secretary/Director/Deputy Secretary level at the centre) with supportive customs and Ministerial staff. Central Government appoints DC in one or more SEZ {Section 11 (1) of the SEZ Act}. Central Government also appoints such officers and other employees as it considers necessary to assist the DC in the performance of his functions in the SEZs {Section 11 (2) of the SEZ Act}. It is obligatory on the part of the Developer<sup>62</sup> to bear the cost of such post which have been created on cost recovery basis. In terms of Department of Commerce (SEZ Division)'s order F.No.A-1/3/2008-SEZ dated 16 September 2010, the DC shall, upon the reporting of any of the officers, compute the tentative recovery to be affected against each officer for the half year or any part thereof and intimate it to the Developer. The Developer shall remit the same within 15 days of the demand. Delay in payment may entail a penal interest of 12 *per cent*. Further, failure on the part of developer to make timely payments shall result in withdrawal of officers till the payments are affected subsequently with interest.

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

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

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

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

Audit examination (February 2018) of records pertaining to cost recovery charges (CRCs) of DC, NSEZ, revealed that CRC amounting to ₹90.73 lakh were not paid by seven<sup>63</sup> developers during October 2015 to March 2018. Hence, the developers were liable to pay the unpaid CRCs to the tune of ₹90.73 lakh along with applicable interest.

Further, it was also noticed that 13 developers<sup>64</sup> had paid the CRCs with delays ranging from 4 to 630 days, during the period October 2011 to March 2018. Thus, these developers were liable to pay interest amounting to ₹9.83 lakh on delayed payment of CRCs.

Audit scrutiny also revealed that the Department has made the demand of CRCs from the developers with a delay<sup>65</sup> of 12 to 138 days, which contributed towards the delay in deposit of CRCs.

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

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

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

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

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

#### 4.12.2 Non levy of fire cess for maintaining the fire station

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

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

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

Audit observed (January 2018) from the monthly bills raised by the SEEPZ-Authority that the levy of fire cess had not commenced even eight years after construction of fire station. This has resulted in non-recovery of fire cess to the tune of ₹9.57 crore<sup>67</sup>.

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

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

<sup>66</sup> 395293 Sq. Metres X 10.7639=4254894.32 Sq. feet

<sup>67</sup> (0.25\*4254894.32\*90) = ₹ 957.35 lakh

Ministry's response was awaited (July 2020).

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

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

Audit scrutiny revealed that 26,674 gate passes issued by SEEPZ-SEZ Authority, Mumbai to the employees/Units had expired on or before 1 August 2017, but not surrendered to security section. Further, 17,235 gate passes that expired after 1 August 2017 onwards were also not surrendered after end of validity period. Thus, the non-surrender of gate passes even after expiry of validity period/termination of the employee/resignation of the employee attracted an imposition of penalty of ₹3.53 crore<sup>68</sup> against the concerned units, as per the aforesaid provisions. The possibility of misuse of the un-surrendered/expired gate passes also could not be ruled out.

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

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

#### 4.13 Conclusion

This Chapter highlights 85 cases of non-compliance to the extant notifications, applicable Customs Tariff, Duties and Levies, noticed by Audit in the assessments of imports. The revenue of ₹69.59 crore was at risk either due to non/short levy of duty due to incorrect application of exemption notifications, misclassification of imported items or incorrect levy of applicable duties and other charges.

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<sup>68</sup> (26674 x ₹1000)+(17235x ₹500)= ₹3,52,91,500

The Ministry/Department has accepted 70 cases and has effected recovery of ₹24.90 crore at the time of finalisation of this report. Ministry's/Department's response was awaited in 15 cases at the time of finalisation of the Report.

Though the Ministry has taken corrective action to recover duty in many cases, it may be pointed out that these are only a few illustrative cases. There is every possibility that such error of omission and commission, whether in RMS based assessments or manual assessments, may exist in many more cases.

Audit has, wherever applicable, attempted to quantify potential risk to revenue by ascertaining the total universe of similar transactions by using the import data for the year 2017-18. Analysis revealed mis-classification, non/short levy of IGST, grant of incorrect notification benefits in 4,106 BsE involving ₹163 crore imported through 58 ports. The Department is required to review all the transactions which may be at risk of loss of revenue, including the ones that have been quantified by audit based on analysis of CBIC data.

It is pertinent to note that a large number of BsE examined by audit in test check had been assessed through the RMS which indicated that the assessment rules mapped into the RMS to facilitate system based assessments were inadequate. The process of mapping and updating of risk parameters in the RMS needs to be reviewed.



## CHAPTER V

### Non- Compliance to provisions of various Export Promotion Schemes of Foreign Trade Policy

#### 5.1 Introduction

The FTP provides a framework for increasing exports of goods and services with a focus on improving trade facilitation and ease of doing business. The FTP 2015-2020 has been notified by the Central Government in exercise of powers conferred under Section 5 of the FTDR Act 1992, as amended. DGFT, under MoCI is responsible for formulating the FTP which is implemented jointly by the DGFT and Department of Revenue.

The Export Promotion Schemes under FTP can be categorised as:

**(i) Export from India Schemes:** These aim to provide rewards to exporters to offset infrastructural inefficiencies and associated costs involved in exports of goods and to provide exporters a level playing field. The two main schemes under this category are Merchandise Exports from India Scheme (MEIS) and Service Exports from India Scheme (SEIS).

**(ii) Duty Exemption and Remission Schemes:** These enable duty free imports or imports at concessional rates, of capital goods and other inputs for export production or duty remission to provide relief of taxes and duties suffered by the exporters in course of producing exported goods. Advance Authorisation, Duty Free Import Authorisation and Duty Drawback are important schemes under this category. The EPCG scheme facilitates import of capital goods under zero/ concessional rates for producing export goods and services at competitive prices.

The DGFT issues scrips to exporters under various export promotion schemes and monitors their corresponding obligations through a network of 38 RAs. All 38 RAs are computerised and connected to the DGFT Central server. To regulate imports under scrips issued by DGFT, Customs notifications are issued by CBIC and these scrips have to be registered by the exporter concerned in the Customs house under the Commissionerates. Import of inputs and capital goods under export promotion schemes are exempt, wholly or partly from Customs duties. Importers of such exempted goods undertake to fulfil prescribed EO as well as to comply with specified conditions, failing which the duty exempted becomes recoverable by the Customs department under the Act. In addition to action by the Customs department, the licensee is liable to penal action by DGFT under FTDR Act 1992, for not fulfilling the conditions of the licence issued.

In respect of certain other schemes, under Chapter 3 of FTP there is a provision of providing incentives as a certain percentage of FOB value of exports as a reward to offset the infrastructural inefficiencies and associated costs.

## 5.2 Non-compliance to provisions of Export Promotion Schemes

During test check of records, Audit noticed irregularities regarding “Non-fulfillment of EO against advance authorization (EO period 18/24 months), Irregular discharge of EPCG Authorization (EO period 6 years) leading to non realization of customs duty and interest on imports, Non-recovery of duty drawback against pending BRCs, Clearance of products into Domestic Tariff Area (DTA) in excess of permitted limits, Non- payment of SAD on finished goods by EOU at the time of de-bonding, Non levy of duty on goods cleared from SEZ to DTA units and Excess grant of Replenishment Authorisation”.

Total revenue implication involved in these 27 cases was ₹27.74 crore where duty exemptions were availed of without fulfilling provisions of FTP and HBP. The Department accepted 23 cases involving ₹15.14 crore and reported recovery of ₹6.65 crore. Out of these, 10 cases are discussed in the following paragraphs. Remaining 17 cases involving ₹4.90 crore which have been accepted by the Department and recoveries made/recovery proceedings initiated are mentioned in **Annexure 12**.

### 5.2.1 Duty Drawback Scheme

#### (a) Non recovery of duty drawback against pending BRCs

Rule 16A of the Customs, Central Excise duties and Service tax Drawback (Amendment) Rules, 2006 provides following provisions for the recovery of amount of drawback, where export proceeds are not realised:

(i) In case the export proceeds are not received within nine months from the date of exports or any period extended by RBI under FEMA, drawback allowed in such SBs shall be recovered.

(ii) If the exporter fails to produce evidence in respect of realisation of export proceeds within the period allowed under the FEMA, or any extension of the said period by the Reserve Bank of India, the Assistant Commissioner/Deputy Commissioner of Customs shall cause notice to be issued to the exporter for production of evidence of realisation of export proceeds within a period of 30 days from the date of receipt of such notice and where the exporter does not produce such evidence within the said period of 30 days, the Assistant Commissioner/Deputy Commissioner of Customs, shall pass an order to recover the amount of drawback paid and the exporter shall repay the amount so demanded within 30 days of the receipt of the said order.

Audit examined (December 2018) records of ICD Panki, Kanpur under Commissionerate of Customs (Preventive), Lucknow, pertaining to BRCs and duty drawback claims. Scrutiny revealed that out of 364 cases of SBs<sup>69</sup>, in 321 cases, Let Export Orders (LEO) were issued between April 2015 and March 2018 and drawback benefits were availed. The exporters have not produced evidence to the Department in support of realisation of export proceeds even after the expiry of prescribed nine months. Audit noticed even after 30 months or more, the Department did not initiate any action to obtain the BRCs or to recover drawback sanctioned in these 321 SBs. Hence, the duty drawback to the extent of ₹9.05 crore which has been paid to exporters was recoverable.

This was referred to the Ministry in December 2019, their response was awaited (July 2020).

**(b) Non recovery of duty drawback for non-realisation of export proceeds**

**(i)** In Commissionerate of Customs (ACC), Bengaluru, drawback amount of ₹123.89 crore was claimed in 59,241 SBs with FOB of ₹4,333.47 crore for the period 2015 to 2018. Cross-verification of RBI's XOS statement (July 2018) with DGFT' e-BRC data in 1,377 SBs involving an FOB value of ₹128.11 crore and drawback claimed of ₹4.57 crore, revealed that export proceeds of ₹36.40 crore were not realized within the stipulated time in respect of 609 SBs involving drawback claimed of ₹1.67 crore. However, no action was initiated by the Department in recovering the drawback involved amounting to ₹1.67 crore.

The Department replied (March 2019) that in respect of 62 SBs involving drawback of ₹0.15 crore and unrealized export proceeds of ₹6.75 crore, the Bank Reconciliation certificates had been received. They added further that SCNs had been issued in respect of 528 SBs (71 exporters) involving drawback of ₹1.46 crore and unrealized export proceeds of ₹27.76 crore. The Department did not furnish any reply on the remaining 19 SBs involving drawback of ₹0.06 crore and unrealized export proceeds of ₹1.89 crore.

**(ii)** Similarly in Commissionerate of Customs (City), Bengaluru, export proceeds of ₹80.21 crore were not realized within the stipulated time in respect of 373 SBs involving drawback of ₹3.29 crore.

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<sup>69</sup> As per report generated by ICES 1.5 on 26.12.2018 at ICD, Panki, Kanpur

Thus, total drawback amount of ₹4.82 crore claimed in respect of 920<sup>70</sup> SBs wherein corresponding export proceeds of ₹109.85 crore could not be realized within the stipulated period, needs to be recovered along with applicable interest.

Ministry's response was awaited (July 2020).

## 5.2.2 Export Oriented Units/ Special Economic Zone

### (a) Clearance of products into DTA in excess of permitted limits

As per Paragraph 6.8 (a) of FTP, units, other than gems and jewellery, may sell goods up to 50 *per cent* of FOB value of exports, subject to fulfillment of positive NFE, on payment of concessional duties. Within entitlement of DTA sale, unit may sell in DTA, its products similar to goods which are exported or expected to be exported from units. Units which are manufacturing and exporting more than one product can sell any of these products into DTA, up to 90 *per cent* of FOB value of export of the specific products, subject to the condition that total DTA sale does not exceed overall entitlement of 50 *per cent* of FOB value of export made during the period. The DTA sales entitlement shall be availed of within three years of the accrual of entitlement (Appendix G of HBP Vol.I).

Out of 222 EOUs under SEEPZ, Mumbai, DTA clearance was made in 150 EOUs during 2012-13 to 2016-17. Audit test checked two units, and noticed short levy of duty on excess DTA clearance in one EOU.

M/s 'A' Industries Pvt Ltd, a 100 % EOU, exported six types of manufactured goods made from the Poly Tetra Fluoro Ethylene (PTFE) in its two units. PTFE nozzle was one of the products manufactured and exported. Audit scrutiny revealed that during period 2009-10 to 2013-14, its two units exported PTFE nozzle worth ₹5.64 crore. Against entitlement of PTFE nozzle worth ₹5.08 crore (90 *per cent* of ₹5.64 crore), the unit cleared in DTA, PTFE nozzle valued Rs 33.87 crore at concessional rate of duty. Thus, for excess clearance of PTFE nozzle more than entitlement the unit was liable to pay duty of ₹1.24 crore. This was referred to the Ministry in May 2020, their response was awaited. (July 2020).

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<sup>70</sup> Remaining 547 SBs pertain to ACC- Bengaluru, and 373 SBs pertain to ICD- Bengaluru

**(b) Non-payment of SAD on finished goods by EOU at the time of de-bonding**

Paragraph 6.18 (a) of FTP stipulated that an EOU may opt out of the scheme subject to payment of applicable excise and customs duties. Further, Section 3 (1) of the Central Excise Act, 1944 provided that the duty of excise leviable on any excisable goods produced or manufactured by an EOU and brought to any other place in India, shall be an amount equal to the aggregate of the duties of customs leviable under the Act. Further, Section 3 (5) of the Customs Tariff Act, 1975 provided for levy of SAD on imports in lieu of sales tax/VAT.

Audit test checked all the four statements (raw materials, packing materials, work-in-progress and finished goods) related to de-bonding for checking duty assessed and pointed out irregularity regarding short levy of duty on de-bonded finished goods.

M/s 'B' Limited, an EOU falling under CGST, Vadodara–I Commissionerate got de-bonded in March 2016. Audit verified the entire duty of ₹8.08 crore paid by it on its de-bonded raw materials, packing materials, work in progress and finished goods and pointed out irregularity regarding short levy of duty of ₹98.34 lakh on its finished goods.

The unit had cleared its finished goods worth ₹20.22 crore on de-bonding and paid duty of ₹4.36 crore including applicable BCD, CVD and education cess but did not pay the amount of SAD leviable at the rate of four *per cent* under Section 3 (5) above. This resulted in short levy of duty of ₹98.34 lakh which was required to be recovered along with applicable interest.

The CGST, Vadodara–I Commissionerate accepting the observation (June 2018/March 2019) issued an SCN to the unit. Further progress was awaited (July 2020).

**(c) Non levy of duty on goods cleared from SEZ to DTA unit**

As per Rule 47 of SEZ Rules, 2006 a unit in SEZ may sell goods and services in the DTA on payment of custom duties.

In Office of the DC, Bantala SEZ, it was observed from BE Register that there were 11 cases of DTA clearances during 2018-19, of goods worth ₹2.44 crore. Audit of related records revealed that in all the 11 cases, M/s. 'C' Solutions India Private Limited cleared goods like industrial air filter, scraps, etc. to

different DTA units, but did not pay applicable customs duty. This resulted in non levy of duty of ₹68.67 lakh which was recoverable along with applicable interest. However, the Department did not initiate any action to recover the same.

On this being pointed, the Department intimated (December 2018) recovery of the entire duty amount of ₹68.67 lakh.

**(d) Non-payment of customs duty on clearance of reusable packing materials in DTA**

As per paragraph 6.01 (d) of FTP 2015-20, an EOU may import/procure from DTA, without payment of duty, all types of goods required for its activities. As per condition no.4(b) and (c) of notification no.52/2003-Cus dated 31 March 2003, used packing materials suitable for repeated use may be cleared on payment of duty while used packing materials unsuitable for repeated use such as cardboard boxes, polythene bags may be cleared without payment of duty. Further, paragraph 6.15 (d) of the FTP states that disposal of used packing material will be allowed on payment of duty on transaction value.

M/s 'D' Enterprises Limited, an EOU under Hyderabad GST Commissionerate, is engaged in manufacture of bulk drugs and chemicals. The EOU cleared used packing materials like drums and barrels amounting to ₹1.53 crore into DTA during April 2015 to June 2017 without payment of customs duty amounting to ₹35.78 lakh.

On this being pointed out (January/April 2019), the Department stated (August 2019) that the "used drums/barrels" are nothing but scrap and sold to scrap dealers and other buyers who are neither manufacturer of similar imported goods nor seller of similar goods hence unsuitable for repeated use i.e. packing the same chemicals which were received originally in these drums. The Department citing CESTAT – South Zone, Chennai Bench decision in the case of XYZ Vs. Commissioner of Central Excise & Service tax, Puducherry (2018-TIOL-1956-CESTAT-Madras) further stated that there was no duty liability on these clearances.

The Department reply is not tenable because CESTAT, Ahmedabad in the case of M/s 'E' Colour Private Limited Vs. C.C.E & S.T – Surat II (Appeal No.E/1063/2010-DB dated 13 November 2018) considering CESTAT – South Zone, Chennai Branch decision cited by the Department in their reply and

other similar cases held that empty drums/barrels arising out of the inputs packed therein are durable in nature and re-usable, therefore the clearances of such empty drums are liable for payment of duty as per notification no.22/2003 dated 31 March 2003 and 52/2003-Cus dated 31 March 2003.

### 5.2.3 Advance Authorisation Scheme

#### (a) Excess grant of Gem Replenishment Authorisation

As per paragraph 4.35 of FTP, 2015-20, an exporter may obtain Replenishment authorization for Gems from RA for plain or studded gold/silver/platinum jewellery and articles. The value of such authorization shall be determined with reference to realisation in excess of prescribed minimum value addition of 7 *per cent* (paragraph 4.60 of HBP, Vol-I). Paragraph 4.38 of the HBP, Vol.I stipulates that for determining value addition the value of inputs to be computed including domestically procured by considering value of gold/silver/platinum content in export product plus admissible wastage along with value of other items such as gemstone etc. The authorization entitlement is to be calculated on 50 *per cent* of remaining FOB value of exports (Appendix 4F of HBP Vol.I).

Audit scrutiny of records of office of the JDGFT, Jaipur revealed that 22 authorizations of value of ₹34.71 crore were issued during the period 2017-18. All 22 authorizations were audited and it was observed that 19 authorizations of value of ₹30.96 crore were granted against 549 SBs for export of gold and silver jewellery studded with precious and semi precious stones and diamonds etc. JDGFT while granting authorization, calculated value addition of seven *per cent* on cost of gold/silver only without taking into consideration cost of other inputs. Whereas, as per aforesaid provision, value addition of seven *per cent* was required to be made on value of inputs including cost of gold/silver/platinum content in export product plus admissible wastage along with value of other items such as gemstone etc. Accordingly, against the entitlement of ₹28.55 crore exporters were granted authorizations of ₹30.96 crore. This resulted in excess grant of authorization of ₹2.41 crore.

The JDGFT, Jaipur reported (June 2018 to January 2019) recovery of the entire amount of ₹2.41 crore along with interest of ₹50 lakh.

**(b) Non fulfilment of export obligation against Advance Authorization**

FTP, 2015-20 (Paragraph 4.22) read with HBP, Vol. I, 2015-20 (Paragraph 4.20) stipulates that any failure to fulfil the EO against AA within the prescribed time and to submit evidence of export within two months thereafter will attract recovery of customs duty foregone on the imported material along with interest.

The RA, Bengaluru issued an AA dated 16 September 2016 to M/s 'F' Timbers, Mangaluru for import of "Raw Cashew Nuts" with CIF value of ₹14.04 crore with duty saved amounting to ₹1.17 crore, with the stipulation to fulfil EO of ₹17.30 crore within 18 months (March 2018) from the date of issue of licence. The RA further extended the validity period for six months (up to 15 September 2018).

Audit observed (February 2019) that the licensee imported goods (September 2016 to June 2017) through NCH, Mangaluru, but failed to fulfil EO so far (April 2019) by furnishing the required documents. Thus, the duty foregone amount of ₹1.17 crore plus applicable interest was to be recovered from the licensee.

Ministry of Finance, DoR of stated (June 2020) that an amount of ₹40 lakh has been recovered (till February 2020) from the importer and SCN has been issued (March 2020) to recover the balance with interest.

**5.2.4 Export Promotion Capital Goods Scheme**

**(a) Irregular discharge of EPCG Authorization led to non realization of customs duty and interest on imports**

As per chapter 5 of the FTP 2009-14, the EPCG scheme allows import of capital goods for pre production, production and post production at zero customs duty. This is subject to an EO equivalent to 6 times of duty saved on capital goods imported under the scheme, to be fulfilled in 6 years reckoned from Authorization issue date. Paragraph 5.9 of FTP (2009-14) stipulates that with a view to accelerate exports, in cases where Authorization holder has fulfilled 75 *per cent* or more of specific EO and 100 *per cent* of Average EO till date, if any, in half, or less than half the original EO period specified, remaining EO shall be condoned. Paragraph 9.12 of HBP, Vol. I specifies date to be reckoned as the date of shipment/dispatch for exports in case of different modes of dispatch of cargo, such as by sea, by air, by road etc.

Audit noticed that 755 EPCG authorizations were discharged by the office of the ADGFT, Kolkata during December 2015 to March 2017 involving duty saved amount of ₹4,003 crore. Out of the 755 discharged EPCG Authorizations, audit test checked 27 authorizations involving duty of ₹1.61 crore. Out of the test checked discharged EPCG Authorizations, audit found irregularity in case of one authorization dated 29.09.2009 with duty saved amount of ₹1.50 crore as discussed below:-

Audit scrutiny of the office of the ADGFT, Kolkata revealed that a zero duty EPCG licence was issued (September 2009) to M/s 'G' Manufacturing Limited Kolkata for import of capital goods for textile industry for a duty saved amount of ₹1.50 crore. The licence was issued with an obligation to export cotton textiles valuing ₹9 crore up to 28 September 2015. The firm had actually imported capital goods worth duty saved amount of ₹1.52 crore and consequently the actual specific EO stood revised to ₹9.10 crore. The licence was discharged on 14 February 2017 by the RA, Kolkata under paragraph 5.9 of FTP (2009-14), as a case of 75 *per cent* or more of the specific EO being fulfilled within half or less than half the original EO period specified (i.e up to September 2012). Further scrutiny, however, revealed that all the exports were made in November 2012, that is, after half of the original EO period of the EPCG Authorization which had expired in September 2012. Accordingly, the provision of paragraph 5.9 of FTP (2009-14) was not applicable in the instant case. This resulted in irregular discharge of the EPCG authorization for which customs duty and interest totalling ₹73.78 lakh was recoverable.

On this being pointed out (April 2017), the ADGFT, Kolkata issued (July 2017) a SCN under FTDR Act 1992 and subsequently intimated (April 2019) that the discharge letter issued on 14 February 2017 has been withdrawn. Further progress was awaited (July 2020).

### 5.2.5 Served from India Scheme (SFIS)

#### (a) Incorrect grant of SFIS duty credit

In terms of paragraph 3.12.1 of the FTP, 2009-14, the objective of the SFIS is to accelerate growth in export of services from India which creates a powerful and unique 'Served from India' brand instantly recognized and respected worldwide. Service Providers of services listed in Appendix 41 of HBP, Vol.I, are entitled to Duty scrip equivalent to 10 *per cent* of free foreign exchange earned during the current financial year under the SFIS. "Accounting services" and "Engineering services" are eligible for SFIS benefits (serial no.1 A (b &c) OF Appendix 41 of HBP, Vol-I).

The Policy Interpretation Committee (PIC), of DGFT in their meeting (December 2011) held that the FTP did not intend to incentivize any brand which is created outside India. The aforesaid PIC decision was subsequently upheld in the case of XYZ Private Limited (in writ petition no.33 of 2015) by Bombay High Court in judgments dated 17 August 2015/16 September 2015.

Thirteen SFIS licences were issued with a value of ₹1.40 crore during the year 2017-18 by Office of the JDGFT, Coimbatore and it was observed that all the 13 licences were issued to M/s 'H' Technologies Pvt. Limited for "Engineering Services" and "Accounting Service". Audit examined all the 13 licences and noticed that duty credit scrips in all the 13 licences were incorrectly granted.

It was observed that M/s 'H' Technologies Pvt. Limited was a subsidiary of foreign company M/s 'I', USA. Hence they were ineligible for grant of SFIS credit scrips. Accordingly, the incorrect grant of duty credit scrips under SFIS to the tune of ₹1.40 crore was recoverable with interest.

Ministry's response was awaited (July 2020).

### 5.3 Conclusion

The test audit of 28 RAs revealed instances of violations of prescribed rules, procedures framed to give effect to the provisions of the FTP and procedures regarding fulfilment of export obligations and awarding export incentives.

The cases pointed out in above paragraphs are illustrative based on test check by audit and similar violation of rules and procedures and errors of omission and commission cannot be ruled out. Department is advised to review all cases of non-fulfilment of conditions of EPCG and other schemes and take necessary action. Appropriate action to recover the duty saved in cases pointed in Audit also needs to be taken.

**New Delhi**  
**Dated: 24 November 2020**

  
**(Sandeep Lall)**  
**Director General (Customs)**

**Countersigned**

**New Delhi**  
**Dated: 02 December 2020**

  
**(Girish Chandra Murmu)**  
**Comptroller and Auditor General of India**



**ANNEXURE**



**ANNEXURE: 1**  
**Fact Sheet on Special Economic Zones** (Refer paragraph 1.9)  
**As on 1 April 2019**

<b>Number of Formal approvals</b>	<b>416</b>		
<b>Number of notified SEZs</b>	351 plus 7 Central Govt. plus 12 State/Pvt. SEZs		
<b>Operational SEZs</b>	232		
<b>Units approved in SEZs</b>	5,109		
<b>Investment</b>	<b>Investment</b>	<b>Incremental Investment</b>	<b>Total Investment</b>
	<b>(As on February 2006)</b>		<b>(As on 1 April 2019)</b>
Central Government SEZs	₹ 2,279 Cr.	₹ 16,398 Cr.	₹ 18,677 Cr.
State/Pvt. SEZs set up before 2006	₹ 1,756 Cr.	₹ 11,518 Cr.	₹ 13,274 Cr.
SEZs notified under the Act	-	₹ 4,75,693 Cr.	₹ 4,75,693 Cr.
<b>Total</b>	<b>₹4,035 Cr.</b>	<b>₹ 5,03,609 Cr.</b>	<b>₹ 5,07,644 Cr.</b>
<b>Employment</b>	<b>Employment</b>	<b>Incremental Employment</b>	<b>Total Employment</b>
	<b>(As on February 2006)</b>		<b>(As on 1 April 2019)</b>
Central Government SEZs	1,22,236 persons	1,05,801 persons	2,28,037 persons
State/Pvt. SEZs set up before 2006	12,468 persons	90,584 persons	1,03,052 persons
SEZs notified under the Act	0	17,29,966 persons	17,29,966 persons
<b>Total</b>	<b>1,34,704 persons</b>	<b>19,26,351 persons</b>	<b>20,61,055 persons</b>
<b>Export performance</b>			
<b>Year</b>	<b>Exports</b>		<b>Growth percentage</b>
FY16	4,67,337		1
FY17	5,23,637		12
FY18	5,81,033		11
FY19	7,01,179		21

<b>Total Investment</b>	<b>2015-16</b>	<b>2016-17</b>	<b>2017-18</b>	<b>2018-19</b>
	₹in crore	₹in crore	₹in crore	₹in crore
Central Government SEZs	15,178	15,974	19,381	18,677
State/Pvt. SEZs set up before 2006	10,169	11,478	12,952	13,274
SEZs notified under the Act	3,51,147	4,05,690	4,59,979	4,75,693
<b>Total</b>	<b>3,76,494</b>	<b>4,33,142</b>	<b>4,92,312</b>	<b>5,07,644</b>
<b>Employment (in person)</b>	<b>2015-16</b>	<b>2016-17</b>	<b>2017-18</b>	<b>2018-19</b>
Central Government SEZs	2,38,382	2,34,861	2,39,870	2,28,037
State/Pvt. SEZs set up before 2006	84,004	95,970	1,00,669	1,03,052
SEZs notified under the Act	12,68,995	14,48,020	16,56,071	17,29,966
<b>Total</b>	<b>15,91,381</b>	<b>17,78,851</b>	<b>19,96,610</b>	<b>20,61,055</b>

Source: [www.sezindia.nic.in](http://www.sezindia.nic.in)

**ANNEXURE 2**

**Duty evasion cases detected by DRI (Scheme-wise)**

(Refer Paragraph 1.13.1)

Sl.No	Scheme	FY 15 No. of cases Duty (₹ in Cr.)	FY 16 No. of cases Duty (₹ in Cr.)	FY 17 No. of cases Duty(₹ in Cr.)	FY 18 No. of cases Duty (₹ in Cr.)	FY 19 No. of cases Duty (₹ in Cr.)
1	Misuse of End-Use & Other Notification conditions.	18 110.18	69 770.48	29 15.91	48 117.50	60 539.47
2	Misuse of EPCG	49 289.11	64 454.92	53 311.96	37 237.47	32 72.90
3	Undervaluation	85 285.64	92 254.37	154 184.89	346 1825.42	80 301.01
4	Mis-declaration	52 172.42	112 1187.61	167 309.09	163 184.72	211 791.89
5	Drawback		94 1150.46	58 99.70	146 40.22	21 6.87
6	Misuse of EOU/EPZ/SEZ	6 37.50	18 9.54	6 37.34	3 1.05	3 4.95
7	Misuse of DEEC/ Advance licence	11 1077.15	12 15.21	55 265.21	79 293.54	178 3433.40
8	Others	186 953.54	170 2780.73	145 198.08	118 364.74	167 1077.70
	<b>Total</b>	<b>407</b> <b>2925.54</b>	<b>631</b> <b>6623.32</b>	<b>667</b> <b>1422.18</b>	<b>940</b> <b>3064.65</b>	<b>752</b> <b>6228.19</b>

Source: DRI Anti smuggling performance report (ASPR)

**ANNEXURE- 3****Legal framework and Administrative instructions for SCN and Adjudication****(Refer paragraph No.3.1.1)**

<b>Sl No.</b>	<b>Section/ Rule/Circular</b>	<b>Brief Reference</b>
1.	28(1) of Customs Act (CA) 1962	SCN in cases other than the reasons of collusion or any wilful mis-statement or suppression of facts
2.	28(4) of CA 1962	SCN in cases of collusion or any wilful mis-statement or suppression of facts
3.	28(8) of CA 1962	The amount of duty and interest in SCN cases.
4.	28(9) of CA 1962	Timelines for adjudication of SCN cases
5.	111 of CA 1962	Confiscation of improperly imported goods
6.	75 of CA 1962	Regulation of Drawback for exports
7.	122 of CA 1962	Adjudication of confiscation and penalties
8.	124 of CA 1962	SCN before confiscation of goods
9.	129 D of CA 1962	Powers of Pr.Chief Commissioner/Chief Commissioner to pass certain orders
10.	Pre notice Regulations 2018	Initiation of Pre notice consultation in cases wherein SCN was proposed
11.	13 of FTDR Act 1992	Adjudicating authority in Licence cases of Search, Seizure, Penalty and confiscation
12.	14 of FTDR Act 1992	Giving opportunity (notice in writing) to the owner of the goods before order imposing a penalty or of adjudication of confiscation
13.	4.24 of HBP Vol. I	Monitoring of obligation; Advance Licence
14.	Para 5.8 of HBP Vol. I	Regulation of export obligation fulfilment; EPCG Scheme licence
15.	Para 5.13 of HBP Vol. I	Redemption procedure for EPCG licences
<b>Administrative Instructions</b>		
1.	CBIC Cir. No. 162/73/95-CX dt. 14.12.1995 as amended	Transfer of SCN cases to Call Book.
2.	CBIC Cir.No. 717/33/2003-CX dt 23.5.2003	Monthly Technical Report/ Monthly Performance Report
3.	DGFT Cir. F.No.18/24/HQ/99-2000/ECA II dt 31 Dec 2003	Guidelines for Denied Entity List cases
4.	CBIC Cir No. 3/2007-Cus dated 10 Jan 2007	Time frame for Seizure cases within which adjudication would be completed
5.	CBIC Cir No. 4/2007-Cus dated 10 Jan 2007	Remand back cases timelines for adjudication
6.	Min.of Finance F.No/609/119/2010-DBK dt. 18.1.2011	Progress in the implementation of the Bank Realization Certificate (BRC)Module
7.	CBIC Cir.No.24/2011-Cus dt 31.5.11	Monetary limit for issue of SCN and adjudication
8.	CBIC Cir.No.16/2017 dated 2 May 2017	Issue of simple notice for discharge of Export obligation
9.	CBIC, instructions No. 5/2018 dt 28.3.2018 and No.6/2018 dt 2.04.2018	Issuance of SCNs and Adjudication Orders through DIGIT
10.	DGFT Trade Notice No. 1/2018-19 dt. 4.4.2018	Export Obligation Discharge Certificate (EODC) Monitoring System

**ANNEXURE 4**  
**Scope and Audit Coverage**

(Refer paragraph No.3.3)

SI No.	Name of Selected Customs Commissionerate	Name of selected RAs	Name of Selected DC-SEZ
1	Commissionerate of Customs (Prev.)Lucknow Commissionerate of Customs Noida Commissionerate of Customs (Prev.) Patna	Kanpur	Noida
2	Commissionerate of Customs (Airport) Kolkata Commissionerate of Customs (Prev.) West Bengal	Kolkata	SEZ Falta
3	Commissionerate of Customs Hyderabad Commissionerate of Customs Vishakapattanam Commissionerate of Customs (prev.) Bhuvneswar	Hyderabad	VSEZ Vishakhapatnam
4	Commissionerate of Customs (Import), NCH Delhi Commissionerate of Customs (Export), NCH Delhi Commissionerate of Customs Indore	Delhi,  Indore	Pithampur, Gwalior
5	Commissionerate of Customs Ahmedabad Commissionerate of Customs Mundra Commissionerate of Customs (Prev.) Jodhpur	Ahmedabad, Rajkot Jaipur	Kandla
6	Commissionerate of Customs Ludhiana	No RA selected	No DC in Jurisdiction
7	Commissionerate of Customs (ACC & Airport) Bangaluru Commissionerate of Customs Mangaluru	Bangaluru	CSEZ Bengaluru (DC-Cochin)
8	Commissionerate of Customs (NS-I), JNCH MUMBAI Commissionerate of Customs (NS-II), JNCH MUMBAI Commissionerate of Customs (NS-III), JNCH MUMBAI Commissionerate of Customs (NS-V), JNCH MUMBAI	ADGFT, Mumbai	SEEPZ, Mumbai
9	Commissionerate of Customs -I (Airport), Chennai Commissionerate of Customs -II (Sea Import), Chennai Commissionerate of Customs -VII (Air Cargo), Chennai Commissionerate of Customs Cochin	Chennai,  Cochin	MEPZ, Chennai,  CSEZ, Cochin
<b>Total</b>	<b>25</b>	<b>12</b>	<b>8</b>

**ANNEXURE 5**  
**Non-updation of the DRI intelligence gathering and investigation tools (DIGIT)**  
**database**

(Refer Paragraph 3.4.4.1)

Sl.No.	Name of the Commissionerate	Whether legacy data entry has been made in DIGIT by July 2018	Whether SCNs and Adjudication orders are being uploaded in DIGIT w.e.f. 1.4.2018	Implementation of DIGIT Implemented/partially implemented/Not implemented
1	Commissionerate of Customs, Ahmedabad	Not uploaded	Not uploaded	Not implemented at all
2	Commissionerate of Customs, Mundra	Information not furnished	Information not furnished	Information not furnished
3	Commissionerate of Customs, Jodhpur	Not uploaded	Information not furnished	Information not furnished
4	Commissionerate of Customs, NCH, Mangalore	Not uploaded	Partially	Partially implemented
5	Commissionerate of Customs (ACC& Airport), Bangalore	Information not furnished	Information not furnished	Information not furnished
6	Commissionerate of Customs, Ludhiana	Partially	Not uploaded	Not implemented at all
7	Commissionerate of Customs (Sea) Chennai	Not uploaded	Information not furnished	Information not furnished
8	Commissionerate of Customs (Air), Chennai	Not uploaded	Partially	Partially implemented
9	Commissionerate of Customs(Sea), Cochin	Partially	Partially	Partially implemented
10	Commissionerate of Customs (Air), Cochin	Information not furnished	Not uploaded	Not implemented at all
11	Commissionerate of Customs, ACC (Import) NCH , Delhi	Not uploaded	Not uploaded	Not implemented at all
12	Commissionerate of Customs, Indore	Not uploaded	Not uploaded	Not implemented at all
13	Commissionerate of Customs, ACC (Export), NCH, Delhi	Not uploaded	Partially	Partially implemented
14	Hyderabad Custom Commissionerate	Not uploaded	Not uploaded	Not implemented at all
15	Commissionerate of Customs, VSKP	Partially	Not uploaded	Not implemented at all
16	Commissionerate of Customs(Prev.), Bhubaneswar	Not uploaded	Partially	Partially implemented
17	Commissionerate of Customs, Air Port , Kolkata	Not uploaded	Not uploaded	Not implemented at all
18	Commissioner of Customs (Preventive), West Bengal	Not uploaded	Not uploaded	Not implemented at all
19	Commissionerate of Customs ( Preventive), Lucknow	Not uploaded	Information not furnished	Information not furnished

Sl.No.	Name of the Commissionerate	Whether legacy data entry has been made in DIGIT by July 2018	Whether SCNs and Adjudication orders are being uploaded in DIGIT w.e.f. 1.4.2018	Implementation of DIGIT Implemented/partially implemented/Not implemented
20	Commissionerate of Customs, Noida	Not uploaded	Information not furnished	Information not furnished
21	Commissionerate of Customs(Preventive), Patna	Not uploaded	Partially	Partially implemented
22	Commissionerate of Customs (I,II,III,IV), JNCH, Mumbai	Not uploaded	Partially	Partially implemented
<b>25</b>				
<b>Summary:</b>				
<b>No. of Commissionerates not implemented at all</b>				<b>10</b>
<b>No. of Commissionerates implemented partially</b>				<b>9</b>
<b>No. of Commissionerates did not furnish data/information</b>				<b>6</b>
<b>Total</b>				<b>25</b>

## ANNEXURE 6

## Incorrect application of Exemption notification

(Refer Paragraph 4.7)

S.No.	DAP No.	Subject	Amount Objected (₹ In lakh)	Amount Accepted (₹ In lakh)	Amount Recovered (₹ In lakh)	Commissionerate
1	30	Short levy of basic customs duty	12.33	12.33	12.33	ACC, Mumbai
2	50	Non levy of special additional duty of customs due to incorrect availing of exemption	13.52	13.52	15.81	Customs Commissionerate, Mundra,
3	59	Short levy of duty due to incorrect grant of exemption	15.72	15.72	19.17	Custom House, Kochi
4	67	Short levy of countervailing duty on import of urea	27.03	27.03	5.26	JNCH, Mumbai
5	96	Short levy of duty due to incorrect application of notification	18.32	18.32	23.60	ACC, Bengaluru
6	97	Non fulfilment of export obligation	53.06	53.06	13.26	ACC, Bengaluru
7	106	Non recovery of duty and interest on goods imported under notification no.27	21.35	21.35	32.47	Kolkata (Port)
8	114	Short levy of duty due to incorrect adoption of assessable value	13.97	13.97	16.58	ICD, Ankleshwar, Ahmedabad
<b>Total</b>			<b>175.30</b>	<b>175.30</b>	<b>138.48</b>	

**ANNEXURE 7****Short/non-levy levy of IGST on imports (Refer Paragraph 4.8)**

Sl.No.	DAP No.	Subject	Amount Objected (₹ In lakh)	Amount Accepted (₹ In lakh)	Amount Recovered (₹ In lakh)	Commissionerate
1	3	Short levy of duty due to incorrect application of IGST rates	31.47	31.47	39.24	ACC, Chennai
2	5	Short levy of duty due to incorrect adoption of integrated tax	24.32	24.32	24.89	ICD, Garhi Harsaru under Patparganj Commissionerate
3	8	Short levy of duty due to incorrect application of IGST rates	15.45	15.45	17.29	CH, Pipav Jamnagar
4	14	Short levy of duty due to incorrect application of IGST rates	36.16	36.16	60.78	ICD, Garhi Harsaru
5	15	Short levy of duty due to incorrect application of IGST rates	19.43	19.43	20.83	ICD, Tughlakabad
6	16	Short levy of duty due to incorrect application of IGST rates	33.41	33.41	36.98	ICD, Garhi Harsaru
7	17	Short levy of duty due to incorrect application of IGST rates	19.44	19.44	20.45	ICD, Tughlakabad
8	28	Short levy of duty due to incorrect application of IGST rates	15.76	15.76	8.45	NCH, Chennai
9	37	Short levy of duty due to incorrect application of IGST rates	56.27	56.27	67.27	ICD, Tughlakabad
10	38	Short levy of duty incorrect application of IGST rate	43.58	43.58	38.75	NCH, Delhi
11	43	Short levy of duty due to incorrect application of IGST rates	11.47	11.47	9.16	ICD, Tughlakabad
12	54	Short levy of duty due to incorrect application of IGST rates	13.98	13.98	17.29	NCH, Delhi
13	62	Short levy of duty due to incorrect application of IGST rates	20.98	20.98		ICD, Tughlakabad
14	69	Short levy of IGST on ink cartridges	26.70	26.70	0.03	ACC, Mumbai
15	102	Short levy of IGST	24.84	24.84	30.65	ACC, Mumbai
16	105	Short levy of duty due to incorrect application of IGST rates	64.32	64.32	66.35	NCH, Delhi
<b>Total</b>			<b>457.58</b>	<b>430.91</b>	<b>458.41</b>	

**ANNEXURE 8**

**Short/non- levy of duty due to grant of notification benefits erroneously**

**(Refer Paragraph 4.9)**

S. No.	DAP No.	Subject	Amount Objected (₹ In lakh)	Amount Accepted (₹ In lakh)	Amount Recovered (₹ In lakh)	Commissionerate
1	18	Short levy of duty due to grant incorrect benefit of notification 50/2017	20.55	10.13	10.13	ICD, Garhi Harsaru
2	86	Short levy of duty due to incorrect extension of notification benefit	17.59	17.59	Nil	Custom House, Chennai
3	104	Non levy of customs duties on chickpeas imports	52.15	52.15	52.94	JNCH, Mumbai
4	112	Short levy of duty due to incorrect extended of notification benefit	31.31	31.31	34.52	Chennai (Sea)
118-Para 2.2 to Para 3.4 except Paras 2.2 and 3.3; included in the Chapter		Short levy of BCD on imports of Machinery and parts under notification 50/2017	136.73	Nil	Nil	Kochi (Sea) Chennai (Sea)
<b>Total</b>			<b>258.33</b>	<b>111.18</b>	<b>97.59</b>	

## ANNEXURE-9

## Short/Non-levy of duties due to misclassification of imports

(Refer paragraph 4.10)

S.No.	DAP No.	Subject	Amount Objected (₹ In lakh)	Amount Accepted (₹ In lakh)	Amount Recovered (₹ In lakh)	Commissionerate	Commodity
1	6	Non levy of duty due to misclassification	33.87	33.87		Chennai (Sea)	Rhizotron control growth chamber
2	9	Short levy of duty due to misclassification	26.18	26.18		ACC, Bengaluru	Tobacco feed control unit
3	13	Short levy of duty due to misclassification	18.87	18.87	23.23	ICD, Tughlakabad	White top pulp board
4	20	Short levy of duty due to misclassification	43.55	43.55	2.26	Chennai (Air)	CCTV Camera
5	21	Short levy due to misclassification	44.66	44.66	20.29	Chennai (Sea)	Machinery for animal feed
6	22	Short levy of duty due to misclassification	12.80	12.80		Chennai (Sea)	Radio Frequency Identification Tag
7	26	Short levy of duty due to misclassification	32.11	32.11	38.54	Kochi (Sea)	Media Grid Base pack & other
8	29	Short levy of IGST due to misclassification	25.88	25.88	28.53	Kochi (Sea)	Bellows assembly and Face assembly
9	35	Short levy of duty due to misclassification	19.97	19.97	22.83	ICD, Tughlakabad	Battery of mobile phone
10	40	Short levy of duty due to misclassification	65.56	65.56	77.26	ICD, Tughlakabad	Synchronizer component for gear assembly
11	41	Short levy of duty due to misclassification	13.99			ICD, Tughlakabad	Canned fruit cocktail
12	52	Short levy of duty due to misclassification	11.01	11.01	12.23	ICD, Tughlakabad	Automobile parts
13	53	Short levy of duty due to misclassification	60.12	60.12		ICD, Tughlakabad	Router line card
14	55	Short levy of duty due to misclassification	10.80	10.80	14.85	JNCH, Mumbai	Filter paper
15	57	Short levy of duty due to misclassification	10.81			JNCH, Mumbai	Coffee mate coffee creamer
16	65	Short levy of duty due to misclassification	10.07	10.07		ACC, Bengaluru	GSM/GPRS module
17	71	Short levy of duty due to misclassification	46.37	46.37		Chennai (Sea)	Inbody band fitness watch
18	72	Non levy of duty due to misclassification	90.97	90.97		ICD, Santhnagar	Fiber Reinforced plastic fibre glass
19	74	Short levy of duty due to misclassification	15.49	15.49		JNCH, Mumbai	Raw material for cosmetic
20	79	Short levy of duty due to misclassification	39.36	2.33		JNCH, Mumbai	Monitors and Microscopes
21	85	Short levy of duty due to misclassification	17.03	17.03		JNCH, Mumbai	Polypropylene bags

S.No.	DAP No.	Subject	Amount Objected (₹ In lakh)	Amount Accepted (₹ In lakh)	Amount Recovered (₹ In lakh)	Commissionerate	Commodity
22	107	Non levy of duty due to misclassification	76.45	37.68	42.45	Chennai (Sea)	Multi-purpose pilot plant for Petroleum research
23	109	Short levy of basic customs duty due to misclassification	18.22	16.43	16.43	ACC, Hyderabad	Dust monitors, Air Particle counters
			<b>744.14</b>	<b>641.75</b>	<b>298.90</b>		

**ANNEXURE-10**

**Imports cleared without levying applicable duties and other irregularities**

**(Refer paragraph 4.11)**

S. No.	DA P No.	Brief Subject	Amount Objected (₹ In lakh)	Amount Accepted (₹ In lakh)	Amount Recovered (₹ In lakh)	Commissionerate	Commodity
1	51	Short levy of Basic Customs duty	13.63	13.63	16.03	SEZ, Atladara	Pyroxasulfone
2	82	Excess refund of duty	46.48	46.48	58.07	JNCH, Mumbai	Red bull energy drink
3	45	Non levy of anti dumping duty	11.75			JNCH, NhavaSheva-I	Phthalic Anhydride
4	49	Short/non levy of anti dumping duty	11.36	11.36		JNCH, NhavaSheva-I	Injection Moulding machine
5	63	Non levy of anti dumping duty	25.49			NhavaSheva-i	Zeolite
6	89	Non levy of anti dumping duty	33.35			JNCH, Mumbai	Polypropylene
7	93	Non levy of anti dumping duty	12.23			JNCH, Mumbai	Synchronous digital hierarchy transmission equipment
8	100	Non/short levy of anti dumping duty	14.05			JNCH, Mumbai	Di-methyl acetamide
9	108	Non levy of anti dumping duty	31.99	31.99		JNCH, Mumbai	Saccharine
			<b>200.33</b>	<b>103.46</b>	<b>74.10</b>		

**ANNEXURE-11****Short / Non-Levy of charges by Development Commissioners**

(Refer paragraph 4.12)

S. No.	DAP No.	Brief Subject	Amount Objected (₹ In lakh)	Amount Accepted (₹ In lakh)	Amount Recovered (₹ In lakh)	Commissionerate
1	7	Short recovery of cost recovery charges	68.27	68.27	68.27	ICD, Ankleshwar
2	75	Non recovery of cost recovery charges	44.93	29.12	29.12	GPPL Pipavav
<b>Total</b>			<b>113.20</b>	<b>97.39</b>	<b>97.39</b>	

**Annexure-12****Non-compliance to provisions of Export Promotion Schemes**

(Refer paragraph 5.2)

S.No.	DAP No.	Brief Subject	Amount Objected (₹ in Lakh)	Amount Accepted (₹ in Lakh)	Amount Recovered (₹ in Lakh)	Commissionerate
1	34	Irregular regularization of default in respect of advance authorization	21.43	25.90	25.90	ADGFT, Kolkata
2	42	Non levy of customs education cess on DTA sale	10.48	10.48	11.50	DC, FSEZ, Kolkata
3	44	Incorrect grant of SFIS authorization	49.34	49.34	49.34	JDGFT, Vadodara
4	46	Non fulfilment of export obligation in respect of EPCG authorization	14.67			ADGFT, Kolkata
5	47	Incorrect grant of duty credit under Market Linked Focus Product Scheme	28.95	28.95	48.64	JDGFT, Chennai
6	48	Incorrect grant of duty credit scrip under SHIS scheme	8.00	8.00	11.02	ADGFT, Kolkata
7	61	Incorrect grant of reward under IEIS	9.13	9.13	11.05	JDGFT, Coimbatore
8	68	Short levy of duty on DTA sales due to misclassification	70.33	70.33		Custom House, Kochi
9	73	Excess grant of duty credit under MEIS	35.18	35.18	39.50	JDGFT, Madurai
10	76	Ineligible deemed drawback	39.04	49.08	49.08	DC-CSEZ, Kochi

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S.No.	DAP No.	Brief Subject	Amount Objected (₹ in Lakh)	Amount Accepted (₹ in Lakh)	Amount Recovered (₹ in Lakh)	Commissionerate
11	78	Short levy of excise duty	10.26	10.26	16.02	Pune III (EOU) Mumbai
12	81	Non fulfilment of export obligation against EPCG licence	30.90	11.27		ACC, Bengaluru
13	91	Incorrect availment of CST refund	30.85	24.40	24.40	CGST, Bhvnagar-I
14	98	Incorrect grant of exemption under duty free import authorization	22.13	22.13	28.98	Custom House, Mundra
15	101	Short levy of duty on excess sale of product in DTA	10.39	10.39	3.17	Aurangabad-II
16	113	Irregular availing of exemption of customs duties under MEIS	51.63	51.63		CGST (III) Gandhinagar
17	116	Non recovery of drawback on failure to realize export proceeds	46.61	46.61		Kolkata (Port)
			<b>489.32</b>	<b>463.08</b>	<b>318.55</b>	