Report of the
Comptroller and Auditor General of India

for the year ended March 2016

Union Government
Department of Revenue
(Indirect Taxes – Central Excise)
Report No. 3 of 2017

Laid on the table of Lok Sabha/Rajya Sabha _____

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Preface

This Report for the year ended March 2016 has been prepared for submission to the President of India under Article 151 of the Constitution of India.

The Report contains significant results of the compliance audit of the Central Board of Excise and Customs under the Department of Revenue – Indirect Taxes (Central Excise) of the Union Government.

The instances mentioned in this Report are those, which came to notice in the course of test audit for the period 2015-16, as well as those which came to notice in earlier years but could not be reported in the previous Audit Reports.

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

Executive Summary

Central Excise collection was ₹ 2,87,149 crore during financial year 2015-16 (FY16) and accounted for 40 per cent of Indirect Tax revenue in FY16.

This Report has 93 audit observations on Central Excise duties, having financial implication of ₹ 178.68 crore. The Ministry/Department had, till December 2016, accepted audit observations involving revenue of ₹ 132.13 crore and reported recovery of ₹ 30.44 crore. Some significant observations and findings are as follows: -

Chapter I: Department of Revenue – Central Excise

- Central Excise revenue has shown 52 per cent growth in FY16 compared to FY15.

(Paragraphs 1.7)

- During FY16, increase in Central Excise duty on petrol and high speed diesel led to overall growth of Central Excise.

(Paragraph 1.8)

- Revenue forgone for FY16 in respect of Excise duties was ₹ 2,24,940 crore (₹ 2,05,940 crore as general exemptions and ₹ 19,000 crore as area based exemptions) which is 78.34 per cent of revenue from Central Excise.

(Paragraph 1.11)

- Huge amount of Central Excise revenue amounting to ₹ 92,162 crore is under litigation at various levels. The amount is increasing every year.

(Paragraph 1.21)

Chapter II: Recovery of Arrears

- Arrears of Central Excise increased by 50 per cent in 2014-15 as compared to 2012-13. However, the recovery of arrears has been showing a decreasing trend over the last three years. In Chennai-I Commissionerate, increase in arrears was 387.33 per cent.

(Paragraph 2.7)

- In 37 test checked cases, under 12 Commissionerates, action for recovery under section 11 of Central Excise Act, 1944, and section 142 of Customs Act, 1962, were not taken, which resulted into non-recovery of ₹ 95.87 crore.

(Paragraph 2.8.2)

- In 23 test checked cases, pending from 2 to 10 years involving revenue of ₹ 137.81 crore, in four Commissionerates, applications for early hearing were not filed.

(Paragraph 2.8.3)

- If no recovery is made by Departmental efforts, cases need to be transferred to the Recovery Cells which have been empowered to take action for recovery by attachment and sale of property of the defaulter. No cases were transferred to the Recovery Cells in 23 Commissionerates during 2014-15, there were 15,388 cases amounting to ₹ 18,700.27 crore pending for recovery. Non-transfer of cases has not only resulted into Recovery Cells becoming redundant but has also led to piling of arrears and poor recoveries thereof.

(Paragraph 2.8.6)

- The Board constituted, in 2004, a Centralised Task Force (CTF) to co-ordinate, facilitate, monitor and oversee the efforts of Customs and Central Excise field formations in recovery of arrears. We observed that though the Task Force was entrusted with finalising and implementing strategies for realisation of arrears it did not take any such action for realization of arrears. As on March 2015, out of total arrears of ₹ 63,925.42 crore, cases involving arrears of ₹ 44,747.82 crore, ₹ 1,485.15 crore and ₹ 77.07 crore were pending with CESTAT, Commissioner (Appeals) and Settlement Commission respectively which constituted 72.44 per cent of total arrears for recovery.

(Paragraph 2.11.1)

Chapter III: Effectiveness of Internal Audit

- We requisitioned 750 Assessee Master Files (AMF) and 1125 Internal Audit Files (IAF) out of which we received only 565 AMF and 1039 IAF respectively. Further five Commissionerates did not produce Audit Planning Register and Audit follow-up register during the period of audit. Poor maintenance of records by a wing which is the backbone of compliance verification mechanism reflects poorly on the functioning of the Department.

(Paragraph 3.6)

- Draft Audit report of M/s Amritsar Crowns Cops (P) Ltd in Chandigarh and of M/s Young India Prestress Pvt. Ltd in Kolkotta Audit II Commissionerates were submitted with a delay of 331 and 241 days respectively.

(Paragraph 3.9.3)

- We observed in eight Commissionerates, that out of a total 580 Internal Audit Files, no scoring had been done for evaluation of Audit Reports in 434 files. In three Commissionerates no scoring had been done in any of the Internal Audit Files.

(Paragraph 3.9.4)

- Final audit report of M/s Kanchor Ingredients Ltd. In Kochin audit I and M/S Trimurti Fragrance Pvt. Ltd. in Delhi audit I Commissionerate were issued after a delay of 589 and 206 days respectively

(Paragraph 3.9.5)

Chapter IV: Non-compliance with Rules and Regulations

- We observed 35 cases of irregular availing and utilisation of CENVAT credit, non/short payment of Central Excise duty involving revenue of ₹ 73.99 crore.

(Paragraph 4.1)

Chapter V: Effectiveness of Internal Control

- We observed 56 instances of deficiencies in internal audit carried out by departmental officials and other issues involving revenue of ₹ 104.68 crore.

(Paragraph 5.1)

Chapter I

Department of Revenue – Central Excise

1.1 Resources of the Union Government

The Government of India's resources include all revenues received by the Union Government, all loans raised by issue of treasury bills, internal and external loans and all moneys received by the Government in repayment of loans. Tax revenue resources of the Union Government consist of revenue receipts from direct and indirect taxes. Table 1.1 below shows the summary of resources of the Union Government for the Financial Year (FY) 16 and FY15.

Table 1.1: Resources of the Union Government

(₹ in crore)

	FY 16	**FY 15**
A. Total Revenue Receipts	19,42,200	16,66,717
i. Direct Taxes Receipts	*7,42,012*	*6,95,792*
ii. Indirect Tax Receipts including other taxes	*7,13,879*	*5,49,343*
iii. Non-Tax Receipts	*4,84,428*	*4,19,982*
iv. Grants-in-aid and contributions	*1,881*	*1,600*
B. Miscellaneous Capital Receipts[1]	42,132	37,740
C. Recovery of Loan and Advances[2]	41,878	26,547
D. Public Debt Receipts[3]	43,16,950	42,18,196
Receipts of Government of India (A+B+C+D)	**63,43,160**	**59,49,200**

Source: Union Finance Accounts of respective years. Direct Tax receipts and Indirect tax receipts including other taxes have been worked out from the Union Finance Accounts. Total Revenue Receipts include ₹ 3,37,808 crore in FY15 and ₹ 5,06,193 crore in FY16, share of net proceeds of direct and indirect taxes directly assigned to states.

The total receipts of the Union Government increased to ₹ 63,43,160 crore in FY16 from ₹ 59,49,200 crore in FY15. In FY16, its own receipts were ₹ 19,42,200 crore including Gross Tax receipts of ₹ 14,55,891 crore of which Indirect Tax receipts including other taxes accounted for ₹ 7,13,879 crore.

[1] This comprises of value of bonus share, disinvestment of public sector and other undertakings and other receipts

[2] Recovery of loans and advances made by the Union Government

[3] Borrowing by the Government of India internally as well as externally

1.2 Nature of Indirect Taxes

Indirect Taxes attach themselves to the cost of the supply of goods/services and are, in this sense, transaction-specific rather than person-specific. The major Indirect Taxes/duties levied under Acts of Parliament are:

a) **Central Excise duty:** Central Excise duty is levied on manufacture or production of goods in India. Parliament has powers to levy excise duties on tobacco and other goods manufactured or produced in India except alcoholic liquors for human consumption, opium, Indian hemp and other narcotic drugs and narcotics but including medicinal and toilet preparations containing alcohol, opium etc. (Entry 84 of List 1 of the Seventh Schedule of the Constitution).

b) **Service Tax:** Service Tax is levied on services provided within the taxable territory (Entry 97 of List 1 of the Seventh Schedule of the Constitution). Service Tax is a tax on services rendered by one person to another. Section 66B of the Finance Act, 1994 envisages that there shall be a tax levied at the rate of 15 per cent (which includes 0.5 per cent of Swachh Bharat Cess and 0.5 per cent of Krishi Kalyan Cess) on the value of all services, other than those specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.[4] 'Service' has been defined in section 65B (44) of the Act to mean any activity for consideration (other than the items excluded therein) carried out by a person for another and to include a declared service.[5]

c) **Customs duty:** 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).

1.3 Organisational Structure

The Department of Revenue (DoR) of Ministry of Finance (MOF) functions under the overall direction and control of the Secretary (Revenue) and coordinates matters relating to all the Direct and Indirect Union Taxes through two statutory Boards namely, the Central Board of Excise and Customs (CBEC) and the Central Board of Direct Taxes (CBDT) constituted under the Central Board of Revenue Act, 1963. Matters relating to the levy and collection of Service Tax are looked after by the CBEC.

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[4] Section 66B was inserted by the Finance Act, 2012 with effect from 1 July 2012; section 66D lists the items the negative list comprises of

[5] Section 66E of the Finance Act lists the declared services

Indirect Tax laws are administered by the CBEC through its field offices, the Commissionerates. For this purpose, the country is divided into 27 zones of Central Excise and Service Tax headed by the Chief Commissioner. Under these 27 zones of Central Excise and Service Tax, there are 83 composite executive Commissionerates that deal with both Central Excise and Service Tax, 36 exclusive Central Excise executive Commissionerates and 22 exclusive Service Tax executive Commissionerates headed by the Commissioner. Divisions and ranges are the subsequent formations, headed by Deputy/ Assistant Commissioner and Superintendents respectively. Apart from these executive Commissionerates, there are eight Large Tax Payer Units (LTU) Commissionerates, 60 Appeal Commissionerates, 45 Audit Commissionerates and 20 Directorates General/Directorates dealing with specific function.

The overall sanctioned staff strength of the CBEC is 91,756[6] as on 1 January 2016. The organisational structure of CBEC is shown in Appendix I.

1.4 Growth of Indirect Taxes - Trends and Composition

Table 1.2 depicts the relative growth of Indirect Taxes during FY12 to FY16.

Table 1.2: Growth of Indirect Taxes

(₹ in crore)

Year	Indirect Tax revenue	GDP	Indirect Taxes as % of GDP	Gross Tax revenue	Indirect Taxes as % of Gross Tax revenue
FY12	3,92,674	90,09,722	4.36	8,89,118	44.16
FY13	4,74,728	99,88,540	4.75	10,36,460	45.80
FY14	4,97,349	1,13,45,056	4.38	11,38,996	43.67
FY15	5,46,214	1,25,41,208	4.36	12,45,135	43.87
FY16	7,10,101	1,35,76,086	5.23	14,55,891	48.77

Source: Tax revenue - Union Finance Accounts, GDP – Press note of CSO[7]

It is observed that Indirect tax collection have risen in FY16 vis a vis FY15 as a ratio of GDP and as a ratio of Gross Tax revenue.

[6] Figures provided by the Ministry

[7] Press note on GDP released on 31 May 2016 by Central Statistical Office (CSO), Ministry of Statistics and Programme Implementation. This indicates that the figures for GDP for FY14 and FY15 are based on New Series Estimates; and figure for FY16 are based on provisional estimates at current prices. The figures of GDP for FY12 and FY13 are based on current market price with base year 2004-05. Figures are being continually revised by CSO and this data is meant for an indicative comparison of fiscal performance with macro economic performance

1.5 Indirect Taxes – Relative Contribution

Table 1.3 depicts the trajectory of the various Indirect Tax components in GDP terms for the period FY12 to FY16.

Table 1.3: Indirect Taxes – percentage of GDP

(₹ in crore)

Year	GDP	CE revenue	CE revenue as % of GDP	ST revenue	ST revenue as % of GDP	Customs revenue	Customs revenue as % of GDP
FY12	90,09,722	1,44,901	1.61	97,509	1.08	1,49,328	1.66
FY13	99,88,540	1,75,845	1.76	1,32,601	1.33	1,65,346	1.66
FY14	1,13,45,056	1,69,455	1.49	1,54,780	1.36	1,72,085	1.52
FY15	1,25,41,208	1,89,038	1.51	1,67,969	1.34	1,88,016	1.50
FY16	1,35,76,086	2,87,149	2.12	2,11,415	1.56	2,10,338	1.55

Source: Figures of tax receipts are as per Union Finance Accounts of respective years.

The share of Central Excise, service Tax and Customs revenue as a percentage of GDP has increased during FY16.

1.6 Growth of Central Excise Receipts - Trends and Composition

Table 1.4 depicts the trends of Central Excise revenue in absolute and GDP terms during FY12 to FY16.

Table 1.4: Growth of Central Excise revenue

(₹ in crore)

Year	GDP	Gross Tax revenue	Gross Indirect Taxes	Central Excise revenue	Central Excise Revenue as % of GDP	Central Excise Revenue as % of Gross tax revenue	Central Excise as % of Indirect taxes
FY12	90,09,722	8,89,118	3,92,674	1,44,901	1.61	16.30	36.90
FY13	99,88,540	10,36,460	4,74,728	1,75,845	1.76	16.97	37.04
FY14	1,13,45,056	11,38,996	4,97,349	1,69,455	1.49	14.88	34.07
FY15	1,25,41,208	12,45,135	5,46,214	1,89,038	1.51	15.18	34.61
FY16	1,35,76,086	14,55,891	7,10,101	2,87,149	2.12	19.72	40.44

Source: Figures of tax receipts are as per Union Finance Accounts of respective years.

It is observed that Central Excise as a ratio of GDP, Gross Tax Revenue and Indirect Taxes has increased during FY16 and it constituted approximately 20 per cent of Gross Tax revenue in FY16.

1.7 Central Excise Receipts vis-à-vis CENVAT Credit Utilised

A manufacturer can avail credit of duty of Central Excise paid on inputs or capital goods as well as Service Tax paid on input services related to his manufacturing activity and can utilise credit so availed in payment of Central Excise duty.

Table 1.5 growth of Central Excise collections through cash (PLA) and CENVAT credit during FY12 to FY16.

Table 1.5: Central Excise Receipts: PLA and CENVAT utilisation

(₹ in crore)

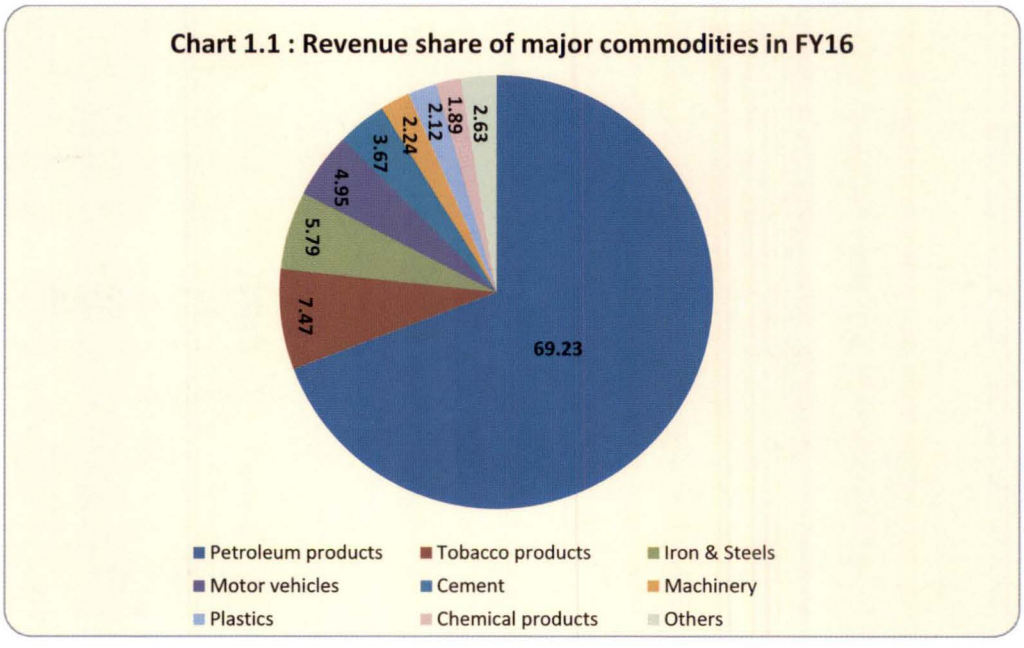
Year	CE duty paid through PLA		CE duty paid through CENVAT credit		CE duty paid from CENVAT credit as % of PLA payments
	Amount#	% increase from previous year	Amount*	% increase from previous year	
FY12	1,44,901	5.23	2,14,014	25.85	147.70
FY13	1,75,845	21.36	2,58,697	20.88	147.12
FY14	1,69,455	-3.63	2,73,323	5.65	161.30
FY15	1,89,038	11.56	2,91,694	6.72	154.30
FY16	2,87,149	51.90	3,10,335	6.01	108.07

Source: # Union Finance Accounts, * Figures furnished by the Ministry

It is observed that Central Excise revenue (PLA) has shown 51.90 per cent growth in FY16 compared to FY15. Payment from CENVAT credit, has increased over last five years from 148 per cent of PLA in FY12 to 154 per cent in FY15 and decreased to 108 per cent in FY16 which is mainly due to increase in duty on petroleum products.

1.8 Central Excise Revenue from Major Commodities

Chart 1.1 depicts the share of commodity groups in the Central Excise revenues (FY16).



Source: Figures provided by the Ministry

It is observed that Petroleum products (69.23 per cent), Tobacco products (7.47 per cent), Iron and Steel (5.79 per cent), Motor vehicles (4.95 per cent),

Cement (3.67 per cent), Machinery products (2.24 per cent) Plastic (2.12 per cent) and Chemical products (1.89 per cent) were the highest revenue earners and altogether, contributed 97.37 per cent of the total Central Excise revenue in FY16.

Table 1.6 depicts revenue from these commodities during last five years.

Table 1.6 : Revenue from top yielding commodities during last five years

(₹ in crore)

Commodities	FY12	FY13	FY14	FY15	FY16
Petroleum products	74,112	84,188	88,065	1,06,653	1,98,793
Tobacco products	15,682	17,991	16,050	16,676	21,463
Iron and Steels	13,813	17,603	17,342	15,970	16,632
Motor vehicles	7,447	10,038	8,363	8,546	14,220
Cement	8,952	10,712	10,308	9,572	10,544
Machinery	3,452	4,559	3,761	3,707	6,421
Plastics	2,931	4,259	4,298	5,150	6,092
Chemical products	3,443	4,872	4,845	5,103	5,419

Source: Figures provided by the Ministry

It is observed that during FY16, there is huge increase in Central Excise collection from petroleum sector as specific Central Excise duty on petrol and high speed diesel increased from ₹ 1.2 per litre and ₹ 1.46 per litre to ₹ 8.95 per litre and ₹ 7.96 per litre during the last two years.

1.9 Tax Base

"Assessee" means any person who is liable for payment of duty assessed or a producer or manufacturer of excisable goods or a registered person of a private warehouse in which excisable goods are stored and includes an authorised agent of such person. A single legal entity (company or individual) can have multiple assessee identities depending upon location of manufacturing units.

Table 1.7 depicts the number of Central Excise assessees during the last five years:

Table 1.7: Tax base in Central Excise

Year	No. of registered assessees	% growth over previous year	No. of assessees who filed return	% age of assessees who filed return
FY12	3,81,439	-	1,45,667	38
FY13	4,09,139	7.26	1,61,617	40
FY14	4,35,213	6.37	1,65,755	38
FY15	4,67,286	7.37	1,72,776	37
FY16	4,98,273	6.63	1,83,501	37

Source: Figures furnished by the Ministry

It is observed that there is a steady growth in number of registered assessees. However, only 37 per cent assessees are filing returns. Ministry needs to look into the reasons for the same.

The data furnished by the Ministry this year related to registered assessees does not tally with the data furnished last year by the Ministry and reported in CAG's report no. 2 of 2016.

1.10 Budgeting Issues in Central Excise

Table 1.8 depicts a comparison of the Budget Estimates and the corresponding actuals for Central Excise receipts.

Table 1.8: Budget, Revised estimates and Actual receipts

(₹ in crore)

Year	Budget estimates*	Revised budget estimates*	Actual receipts#	Diff. between actuals and BE	%age variation between actuals and BE	%age variation between actuals and RE
FY12	1,64,116	1,50,696	1,44,901	(-)19,215	(-)11.71	(-)3.85
FY13	1,94,350	1,71,996	1,75,845	(-)18,505	(-)9.52	(+)2.24
FY14	1,97,554	1,79,537	1,69,455	(-)28,099	(-)14.22	(-)5.62
FY15	2,07,110	1,85,480	1,89,038	(-)18,072	(-)8.73	(-)1.92
FY16	2,29,809	2,84,142	2,87,149	57,340	24.95	(+)1.06

Source: *Union Receipts Budget and # Union Finance Accounts.

It is observed that in FY16, actual receipt of Central Excise have risen of Budget estimates by 24.95 per cent and variation increased to 1.06 per cent in comparison of revised estimate.

1.11 Central Excise Revenue Forgone Under Central Excise Act

Central Government has been granted powers under Section 5A(1) of the Central Excise Act, 1944 to issue exemption notifications in public interest so as to prescribe duty rates lower than the tariff rates prescribed in the Schedules. The rates prescribed by exemption notifications are known as the "effective rates". Revenue forgone is defined to be the difference between the duty that would have been payable but for the exemption notification and the actual duty paid in terms of the said notification –

- In cases where the tariff and effective rates of duty are specified as ad valorem rates - **Revenue forgone= Value of goods X (Tariff rate of duty - Effective rate of duty)**
- In cases where the tariff rate is on ad valorem basis but the effective duty is levied at specific rates in terms of the exemption notification,

then – **Revenue forgone = (Value of goods X Tariff rate of duty) - (Quantity of goods X Effective rate of specific duty)**

- In cases where the tariff rates and effective rates are a combination of ad valorem and specific rates, revenue forgone is calculated accordingly
- In all cases, where the tariff rate of duty equals the effective rate, revenue forgone will be zero.

Besides the powers to issue general exemption notifications under Section 5A(1) ibid, the Central Government also has the powers to issue special orders for granting excise duty exemption on a case to case basis under circumstances of an exceptional nature, vide Section 5A(2) of the Central Excise Act. However, unlike general exemptions which form part and parcel of fiscal policy of the Central Government, the main object behind issue of exemption orders is to deal with circumstances of exceptional nature. As such, the duty forgone on account of issue of special exemption orders is not being calculated towards revenue forgone figures.

Table 1.9 depicts figures of Central Excise related revenue forgone during last five years as reported in budget documents of the Union Government.

Table 1.9: Central Excise receipts and total revenue forgone

(₹ in crore)

Year	Central Excise receipts#	Revenue forgone*	Revenue forgone as % of Central Excise receipts
FY12	1,44,901	1,95,590	134.98
FY13	1,75,845	2,09,940	119.39
FY14	1,69,455	1,96,223	115.80
FY15	1,89,038	1,96,789	104.10
FY16	2,87,149	2,24,940	78.34

Source: Union Receipts Budget and #Union Finance Accounts.

It is observed that the revenue forgone for FY16 in respect of Excise duties was ₹ 2,24,940 crore (₹ 2,05,940 crore as general exemptions and ₹ 19,000 crore as area based exemptions) which is 78.34 per cent of revenue from Central Excise.

Tax administration in Central Excise

1.12 Scrutiny of Central Excise Returns

CBEC introduced self-assessment in respect of Central Excise in 1996. With the introduction of self-assessment, the department also provided for a strong compliance verification mechanism with scrutiny of returns.

Assessment is the primary function of Central Excise officers who are to scrutinise the Central Excise returns to ensure correctness of duty payment. As per the manual for the Scrutiny of Central Excise Returns, a monthly report is to be submitted by the Range Officer to the jurisdictional Assistant/Deputy Commissioner of the Division regarding the number of returns received and scrutinised. Scrutiny is done in two stages i.e. preliminary scrutiny by ACES and detailed scrutiny, which is carried out manually on the returns marked by ACES or otherwise.

1.12.1 Preliminary Scrutiny of Returns

The purpose of preliminary scrutiny is to ensure completeness of information, timely submission of the return, timely payment of duty, arithmetical accuracy of the amount computed as duty and identification of non-filers and stop-filers.

Considering the fact that mandatory electronic filing of Central Excise returns had been introduced with effect from 1 October 2011, returns scrutiny through ACES should have stabilised at least by 2014-15. One of the main intentions behind introducing preliminary scrutiny online was to release manpower for detailed scrutiny, which could then become the core function of the Range/Group.

Table 1.10 depicts the performance of department in respect of preliminary scrutiny of Central Excise returns.

Table 1.10: Preliminary scrutiny of Central Excise returns

Year	No of returns filed in ACES	No. of returns marked for R&C*	% of returns marked for R&C	No. of returns cleared after R&C	No. of returns pending for R&C	% of marked returns pending correction
FY14	12,65,913	11,79,583	93.18	10,03,789	2,81,686	23.88
FY15	13,18,880	12,31,714	93.39	9,57,712	2,74,002	22.24
FY16	13,88,572	12,93,987	93.19	8,36,728	4,57,259	35.34

Source : Figures furnished by the Ministry
*R&C – Review and correction

Data relating to FY14 and FY15 does not tally with similar data provided by the Ministry last year. The very high percentage of scrutinised returns being thrown up for R&C and resultant high number of returns pending corrective action are indicative of deficiencies in the ACES system. Marking so many returns for R&C would increase the workload of departmental officer though online system was aimed to reduce it. This is evident from the pendency of

35 per cent returns at the end of FY16 which is almost one and a half times of pendency at FY15. As R&C is carried out at range level and there are 2,518 ranges dealing with Central Excise, on an average, only 514 (FY16) R&C are to be carried out by a range in a year. Instructions may be issued to ranges to carry out R&C in all cases.

1.12.2 Detailed Scrutiny of Returns

The purpose of detailed scrutiny is to establish the validity of information furnished in the tax return and to ensure correctness of valuation, availing of CENVAT credit, classification and effective rate of tax applied after taking into consideration the admissibility of exemption notification availed etc. Unlike preliminary scrutiny, detailed scrutiny is to cover only certain selected returns, identified on the basis of risk parameters, developed from the information furnished in the returns submitted by the taxpayers.

Table 1.11 depicts the performance of the department in carrying out detailed scrutiny of Central Excise returns.

Table 1.11: Detailed scrutiny of Central Excise returns

Year	No. of returns marked for detailed scrutiny	No. of returns where detailed scrutiny was carried out	Number of returns where detailed scrutiny was pending	Age-wise breakup of pendency		
				Returns pending for between 6 months to 1 year	Returns pending for between 1 to 2 year	Returns pending for over 2 years
FY14	6,379	4,914	1,465	1,022	254	205
FY15	9,132	6,728	2,404	2,239	267	208
FY16	DNP*	DNP	DNP	DNP	DNP	DNP

Source: Figures furnished by the Ministry
*DNP - Data for FY16 was provided only for five months

It is noticed that data for FY14 and FY15 supplied by the Ministry was not only arithmetically incorrect but was also supplied to audit after obtaining the same from their field formations which led to considerable delays.

Further data relating to FY16 provided is relating to only five months i.e., from November 2015 to March 2016 with a detail of number of Central Excise returns where detailed scrutiny is carried out without the details of number of returns marked for scrutiny and without any age-wise analysis. Hence, due to part information, the Audit is not in a position to comment on detailed scrutiny.

1.13 Refunds

Section 11B of the Central Excise Act, 1944 provides the legal authority for claim and grant of refund of any Central Excise duty. The term refund includes rebate of excise duty paid on excisable goods exported out of India as well as of excise duty paid on material used in the manufacture of goods exported out of India. Further, section 11BB of the Act stipulates that interest is to be paid on refund amount if it is not refunded within three months of the date of application of refund.

Table 1.12 depicts the details of refund related performance of the department during last three years.

Table 1.12: Refunds in respect of Central Excise during the last three years

(₹ in crore)

Year	OB plus claims received during the year		Disposals during the Year						Closing Balance	
			Refunds sanctioned/rejected during the year		Cases disposed of within 90 days	Delayed disposal	Cases where interest has been paid			
	No. of Cases	Amt.	No. of Cases	Amt.	No. of Cases	No of cases	No. of Cases	Interest paid	No. of Cases	Amt.
FY14	2,70,321	28,461	2,09,549	11,875	1,98,256	64,215	241	91	60,754	4,714
FY15	2,47,196	DNP*	2,04,353	DNP	DNP	DNP	DNP	DNP	42,843	30,714
FY16	4,18,760	35,707	3,73,062	29,356	3,24,340	DNP	3	0.01	45,698	6,351

Source: Figures furnished by the Ministry
*DNP - Data not provided

It is observed on the basis of data available that despite the fact that there is a liability on department to pay interest on delayed refunds, department is not paying interest to the assessees in most of the cases. Board must ensure that the provisions regarding payment of interest on delayed refunds are implemented in right earnest.

Despite best pursuance of Audit, Ministry failed to provide certain figures as shown in table above. Data provided also seems incorrect as number of cases in closing balance for FY16 has increased from FY15 but amount has reduced by 80 per cent.

1.14 Internal Audit

Modernisation of Indirect Tax administration in India is based on the Canadian model. The new audit system EA 2000 has four distinct features: scientific selection after risk analysis, emphasis on pre-preparation, scrutinising of business records against statutory records and monitoring of audit points.

Audit processes include preliminary review, gathering and documenting systems' information, evaluating internal controls, analysing risks to revenue and trends, developing audit plan, actual audit, preparation of audit findings, reviewing the results with the assessee/Range Officer/Divisional Assistant Commissioner and finalisation of the report.

The Audit framework consists of three parts. Directorate General of Audit and the field Commissionerates share the responsibility of administration of Audit. While the Directorate is responsible for collection, compilation and analysis of audit results and its feedback to CBEC to improve tax compliance and to gauge levels of client satisfaction, audit parties from Commissionerates undertake audit in terms of EA 2000 audit protocol. In order to improve audit quality, CBEC took the assistance of Asian Development Bank in developing audit manuals, risk management manuals and manuals to train auditors in EA 2000 and CAATs, which prescribe detailed processes for conduct of audit.

Table 1.13 depicts details of Central Excise units due for audit (during FY16) by audit parties of the Commissionerates vis-à-vis units audited.

Table 1.13: Audits of assessees conducted during FY16

Slab of annual duty (PLA+CENVAT)	Number of units due	Number of units audited	Shortfall in audit (%)
Large	4,874	2,720	44.19
Medium	7,204	3,777	47.57
Small	11,442	4,739	58.58

Source: Figures furnished by the Ministry

The Ministry furnished the figures from October 2015 to March 2016 i.e., only for six months. It is observed that during the above six months, there was a huge shortfall in the Internal audits conducted, as compared with audits due, across all categories of units.

The results of the audit, conducted by the department, is tabulated in table 1.14.

Table 1.14: Amount objected and recovered during the year

(₹ in crore)

Category	Amount of short levy detected	Amount of total recovery
Large	2,084	605
Medium	564	249
Small	257	133
Total	**2,905**	**987**

Source: Figures furnished by the Ministry

It is observed that amount of short levy detected and recovered in large units are significantly higher than the medium and small units. The Ministry needs to ensure internal audit of all large units. This year a subject specific audit has been done on "Effectiveness of Internal Audit", which have been included in chapter III.

1.15 Call Book

Extant circulars on the subject envisage that cases that cannot be adjudicated due to certain reasons such as the department having gone in appeal, injunction from courts, contesting CAG audit objection etc. may be entered into the call book. Member (CX), vide his D.O.F.No. 101/2/2003-CX-3, dated 3 January 2005, had emphasised that call book cases should be reviewed every month. Director General of Inspection (Customs and Central Excise) has reiterated the need for monthly review in his letter dated 29 December 2005 stating that review of call book may result in substantial reduction in the number of unconfirmed demands in call book.

Table 1.15 depicts the performance of the department in respect of call book clearance in Central Excise during recent years.

Table 1.15: Call book cases pending on 31 March

Year	Opening balance	New Cases transferred to call book during the year	Disposals during the year	Closing balance at the end of year	Revenue involved (₹ in Cr)	Age-wise break up of pendency at the end of the year		
						Less than 6 months	6-12 months	Over 1 year
FY14	30,966	9,624	4,126	36,464	64,356	6,179	3,419	26,866
FY15	35,617	9,552	8,846	36,323	65,765	4,841	2,276	29,206
FY16	37,018	7,437	7,994	36,461	64,260	5,157	2,479	28,394

Source : Figures furnished by the Ministry

It is observed that the pendency of cases in the call book is very high indicating the need for close monitoring of the process of review of call book items. During FY16, the number of cases pending in call book had reached 36,461 involving revenue of 64,260 crore. It is further observed that the opening balance does not match with closing balance of previous years.

1.16 Arrears of Central Excise Duties

Every year we comment on arrears of service tax on the basis of data received from the Ministry in chapter I. However, this year a subject specific audit has been done on this subject and all the findings have been included in chapter II.

1.17 Additional Revenue Realised Because of Anti-Evasion Measures

Both, Director General of Central Excise Intelligence (DGCEI) as well as the Central Excise and Service Tax Commissionerates have well-defined roles in the task of detection of cases of evasion of Central Excise duty. While the Commissionerates, with their extensive database about units in their jurisdiction and presence in the field, are the first line of defense against duty evasion, DGCEI specialises in collecting specific intelligence about evasion of substantial revenue. The intelligence so collected is shared with the Commissionerates. Investigations are also undertaken by DGCEI in cases having all India ramifications.

Tables 1.16 depict the performance of Anti-evasion wing of the department during last three years.

Table 1.16: Anti-evasion performance of DGCEI during last three years

(₹ in crore)

Year	Detection		Voluntary payment during Investigation
	No. of cases	Amount	Amount
FY14	2,606	4,737	813
FY15	2,123	4,335	546
FY16	2,366	5,297	804

Source: Figures furnished by the Ministry.

It is observed that number of cases detected and voluntary payment during investigation by DGCEI in FY16 increased as compared to FY15.

1.18 Revenue Collection Due to Departmental Efforts

Besides, the voluntary payment of Central Excise by the tax payers, there are various methods by which the department collects the revenue due but not paid by the taxpayers. These methods include Scrutiny of Returns, Internal Audit, Anti-Evasion, Adjudication etc.

The result of departmental efforts is tabulated in Table 1.17.

Table 1.17: Revenue recovered by departmental efforts

(₹ in crore)

Sl. No.	Departmental Action	Recovery during FY15	Recovery during FY16
1	Internal audit	569	368
2	Anti-Evasion	357	376
3	Confirmed Demands*	1,262	791
4	Scrutiny of Returns	447	297
5	Recovery from Defaulters**	1,244	2,871
6	Others***	198	324
	Total	**4,077**	**5,027**

Source: Figures furnished by the Ministry

* After adjudication of SCN

** Recovery from defaulters is after issue of SCN and adjudication thereof.

*** Interests/late filing fee etc.

Total Central Excise collection during FY16 is ₹ 2,87,149 crore out of which only ₹ 5,027 crore is collected due to departmental efforts which is only 1.75 per cent of total revenue. Further, it is noticed that revenue collection shown above under Internal Audit (₹ 368 crore) does not tally with amount shown in table 1.14 (₹ 987 crore). Similarly, recovery shown above under anti-evasion (₹ 376 crore) does not tally with amount shown in tables 1.16 (₹ 804 crore).

1.19 Cost of Collection

Table below depicts the cost of collection vis-a-vis the revenue collection.

Table 1.18: Central Excise and Service Tax receipts and cost of collection

(₹ in crore)

Year	Receipts from Central Excise	Receipts from Service Tax	Total receipts	Cost of collection	Cost of collection as % of total receipts
FY12	1,44,540	97,356	2,41,896	2,227	0.92
FY13	1,75,845	1,32,601	3,08,446	2,439	0.79
FY14	1,69,455	1,54,780	3,24,235	2,635	0.81
FY15	1,89,038	1,67,969	3,57,007	2,950	0.83
FY16	2,87,149	2,11,415	4,98,564	3,162	0.63

Source: Union Finance Accounts of respective years

It is observed that cost of collection is less than one per cent of the total receipt.

1.20 Adjudication

Adjudication is the process through which departmental officers determine issues relating to tax liability of assessees. Such process may involve consideration of aspects relating to, inter alia, CENVAT credit, valuation, refund claims, provisional assessment etc. A decision of the adjudicatory authority may be challenged in an appellate forum as per the prescribed procedures.

Table 1.19 depicts an age-wise analysis of Central Excise adjudication.

Table 1.19: Cases pending for adjudication with departmental authority

(₹ in crore)

Year	Cases pending as on 31 March		No. of Cases Pending for more than 1 year
	No.	Amount	
FY14	20,428	21,734	3,142
FY15	27,425	23,765	4,984
FY16	23,014	29,355	3,637

Source: Figures furnished by the Ministry

It is observed that cases involving duty of ₹ 29,355 crore were pending as on 31 March 2016 for adjudication. It was also observed that 3,637 cases were

pending for more than one year. Ministry may initiate measures for adjudication of pending cases as large amount of revenue is blocked.

1.21 Appeal Cases

Besides the adjudicating authorities, there are several other authorities including departmental appellate authorities, courts of law etc. where issues of law, interpretations etc. are considered. Besides, the department also resorts to coercive recovery measures in many instances. Huge amounts of revenue thus remain outside the Consolidated Fund of India for substantial periods of time. Based on data furnished by CBEC, we have tabulated the pendency of cases at various forums in Table 1.20.

Table 1.20: Pendency of Appeal in CX and ST

Year	Forum	Appeals pending at the end of the year					
		Details of party's appeals		Details of departmental appeals		Total	
		No. of Appeals	Amount Involved (Cr. ₹)	No. of Appeals	Amount Involved (Cr. ₹)	No. of Appeals	Amount Involved (Cr. ₹)
FY14	Supreme Court	855	1,835	1,702	6,078	2,557	7,913
	High Court	5,856	9,359	5,505	6,764	11,361	16,123
	CESTAT	41,257	90,447	16,685	14,806	57,942	1,05,253
	Settlement Commission	109	230	4	1	113	231
	Commissioner (Appeals)	23,783	7,054	3,225	669	27,008	7,723
	Total	**71,860**	**108,926**	**27,121**	**28,318**	**98,981**	**1,37,244**
FY15	Supreme Court	815	2,202	1,754	6,428	2,569	8,630
	High Court	5,577	10,206	5,408	9,231	10,985	19,437
	CESTAT	44,710	1,05,905	16,719	14,240	61,429	1,20,145
	Settlement Commission	155	349	2	1	157	350
	Commissioner (Appeals)	25,617	6,272	3,676	655	29,293	6,927
	Total	**76,874**	**1,24,935**	**27,559**	**30,554**	**1,04,433**	**1,55,489**
FY16	Supreme Court	766	3,112	1,525	7,437	2,291	10,549
	High Court	5,663	13,507	4,900	11,073	10,563	24,580
	CESTAT	48,071	1,20,689	15,159	24,396	63,230	1,45,085
	Settlement Commission	129	192	0	0	129	192
	Commissioner (Appeals)	26,821	7,814	4,534	766	31,355	8,580
	Total	**81,450**	**1,45,314**	**26,118**	**43,672**	**1,07,568**	**1,88,986**

Source: Figures furnished by the Ministry

It is observed that cases involving revenue of ₹ 1,88,986 crore were pending in appeals at various levels out of which ₹ 92,162 crore pertained to Central Excise. The amount is increasing every year.

Disposal of appeal cases relating to Central Excise and Service Tax in various forum is depicted below in Table 1.21:

Table No. 1.21: Breakup of cases decided during the year

Year	Forum	Department's Appeal				Party's Appeal			
		Decided In favour of Deptt.	Decided Against the Deptt.	Remanded	% of Successful appeal of Deptt.	Decided in favour of party	Decided against party	Remanded	% of Successful appeal of party
FY14	**Supreme Court**	21	82	5	19.44	14	33	3	28.00
	High Court	193	355	22	33.86	379	1,247	223	20.50
	CESTAT	248	1,407	151	13.73	2,314	2,125	1,574	38.48
	Comm. (Appeals)	1,141	1,248	31	47.15	7,064	12,888	697	34.21
	Total	**1,603**	**3,092**	**209**	**32.69**	**9,771**	**16,293**	**2,497**	**34.21**
FY15	**Supreme Court**	24	149	16	12.70	16	52	29	16.49
	High Court	230	712	130	21.46	447	1,397	206	21.80
	CESTAT	216	1,121	218	13.89	2,255	1,987	1,874	36.87
	Comm. (Appeals)	717	869	87	42.86	4,202	9,151	931	29.42
	Total	**1,187**	**2,851**	**451**	**26.44**	**6,920**	**12,587**	**3,040**	**30.69**
FY16	**Supreme Court**	64	465	29	11.47	110	77	16	54.19
	High Court	216	926	56	18.03	289	456	123	33.29
	CESTAT	666	1,619	165	27.18	2,415	856	742	60.18
	Comm. (Appeals)	443	525	12	45.20	3,561	3,311	219	50.22
	Total	**1,389**	**3,535**	**262**	**26.81**	**6,375**	**4,700**	**1,100**	**52.20**

Source: Figures furnished by the Ministry

It is observed that success ratio of department's appeal against adjudication order has decreased from 32.69 per cent in FY14 to 26.81 per cent in FY16. The success ratio registered a steep decline when the department went in appeal to High Court (from 34 per cent in FY14 to 18 per cent in FY16) and to Supreme Court (from 19 per cent in FY14 to 11 per cent in FY16).

1.22 Non-furnishing of Data and Discrepancy in Data Furnished by the Ministry

We have compiled this chapter based on data mainly obtained through CBEC. The Ministry could not provide data related to detailed scrutiny of returns

(refer paragraph 1.12.2) and disposal of refund cases (paragraph 1.13) for FY15 as format of data and responsibility to maintain the data were revised from November 2014. This indicates that continuity of maintenance of critical data is not ensured during change management in CBEC. Further, it is observed that same data obtained from different sources did not tally (paragraph 1.18) and in some instances, data furnished this year did not tally with data furnished for last Audit Report no. 2 of 2016 (Para 1.9, 1.12.1 and 1.12.2). There is a need to improve the quality of data maintenance in respect of Central Excise.

1.23 Audit Efforts and Central Excise Audit Products - Compliance Audit Report

Compliance audit was conducted as per Regulations on Audit and Accounts, 2007 (as amended) and in conformity with the Auditing Standards, 2nd Edition, 2002 issued by the Comptroller and Auditor General of India.

1.24 Sources of Information and the Process of Consultation

Data from the Union Finance Account, along with examination of basic records/documents in DoR, CBEC, and their field formations, MIS, MTRs of CBEC along with other stake holder reports were used. We have nine field offices headed by Directors General (DGs)/Principal Directors (PDs) of audit, who managed audit of 1,082 (CX and ST) units in FY16.

1.25 Report Overview

The current report has 93 paragraphs involving money value of ₹ 178.68 crore. There were generally four kinds of observations: incorrect availing/utilisation of CENVAT credit, non/short payment of Central Excise duty, effectiveness of internal control and other issues. The department/Ministry admitted audit observations in case of 79 paragraphs involving money value of ₹ 132.13 crore and reported recovery of ₹ 30.44 crore in 48 cases.

1.26 Revenue Impact of Audit Reports

In the last five audit reports (including current year's report) we had included 374 audit paragraphs (Table 1.22) involving ₹ 703.88 crore.

Table 1.22: Follow up of Audit Reports

(₹ in crore)

Year			FY12	FY13	FY14	FY15	FY16	Total
Paragraphs included		No.	87	62	68	64	93	374
		Amt.	69.32	182.90	125.11	147.87	178.68	703.88
Paragraphs accepted	Pre printing	No.	85	58	60	47	79	329
		Amt.	67.07	179.44	90.71	135.85	132.13	605.20
	Post printing	No.	2	-	1	2	-	5
		Amt.	8.34	-	0.36	1.20	-	9.90
	Total	No.	87	58	61	49	79	334
		Amt.	75.41	179.44	91.07	137.05	132.13	615.10
Recoveries effected	Pre printing	No.	48	36	28	30	48	190
		Amt.	24.72	21.29	27.44	27.95	30.44	131.84
	Post printing	No.	1	1	3	2	-	7
		Amt.	0.04	0.56	3.09	1.20	-	4.89
	Total	No.	49	37	31	32	48	197
		Amt.	24.76	21.85	30.53	29.15	30.44	136.73

Source: CAG Audit reports

Ministry had accepted audit observations in 334 audit paragraphs involving ₹ 615.10 crore and had recovered ₹ 136.73 crore.

Chapter II

Recovery of Arrears

2.1 Introduction

Tax administration in Central Excise & Service Tax envisages that the assessee has to make self assessment of duty payable and after payment of duty submit returns to the Department. The Department scrutinizes the returns filed by the assessee and in case of any short /non-levy of duty, takes action by way of issuing demand cum Show Cause Notice (SCN) for recovery of the amount. The SCN is then adjudicated by the appropriate authority. Any amount recoverable from the assessee due to confirmation of demands in favour of the Department by virtue of Orders-in-Original (OIOs), or further Orders-in-Appeal (OIA), Tribunal orders, and Courts' Orders, becomes arrear.

Arrears of revenue arise as a result of the following:

- Confirmation of demands by the adjudicating authority
- Rejection of appeal by the appellate authority
- Grant of stay applications with condition of pre-deposits
- Order in favour of the Department by Tribunals, High courts and Supreme Court.

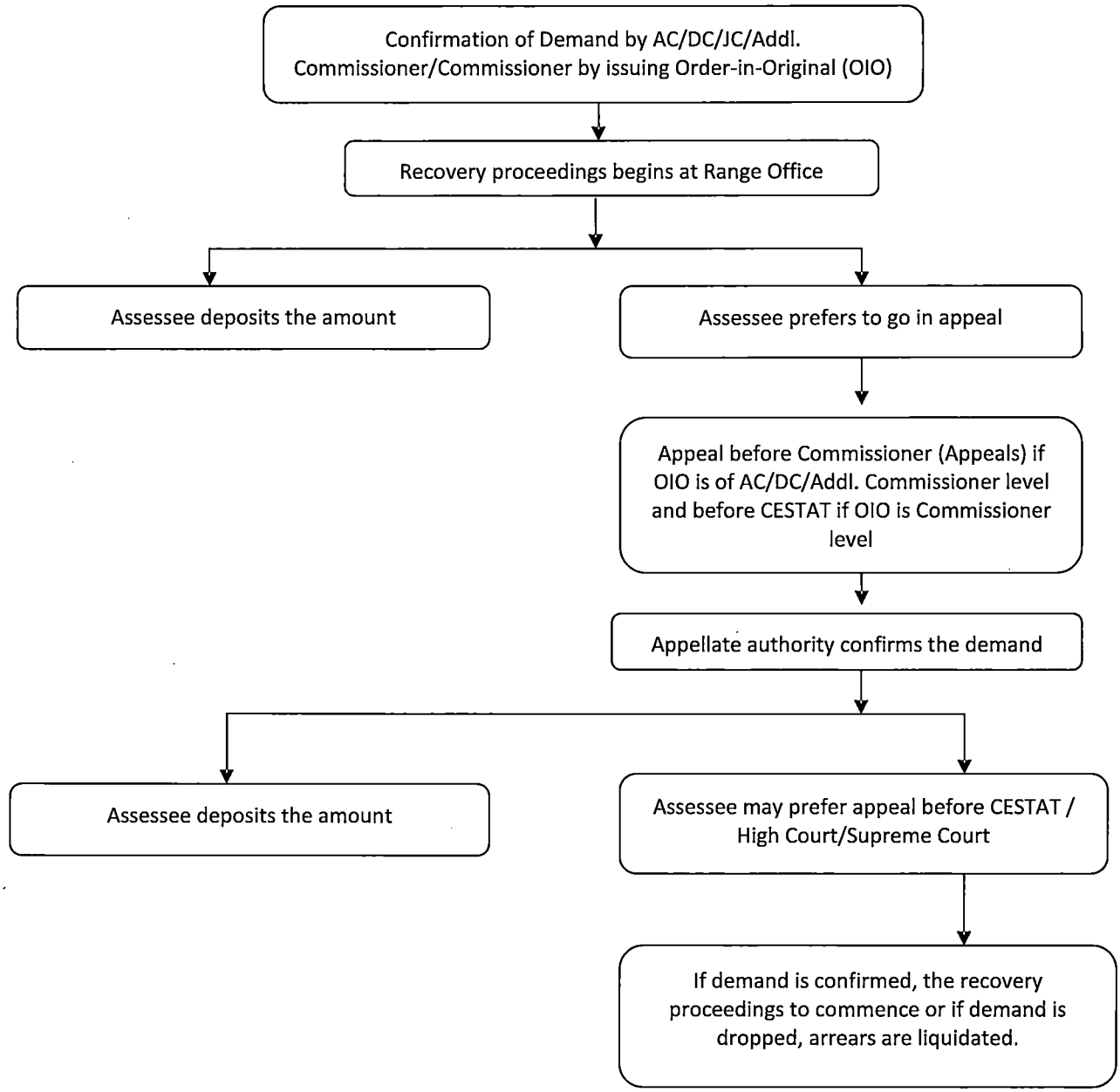
Recovery of arrears constitutes a crucial function of the Department of Revenue. The main statutory provisions dealing with recovery of arrears in Central Excise are as follows:

Section 11 of the Central Excise Act, 1944, empowers Central Excise officers to take action for recovery of arrears and pursuing the recovery with the assessee.

If dues remain unrecovered even after taking action under section 11 of Central Excise Act, 1944, action is to be taken under provisions of section 142 of the Customs Act, 1962 which have been made applicable in Central Excise cases, vide Notification No. 68/63-Central Excise dated 4 May 1963 issued under section 12 of the Central Excise Act, 1944.

The process of recovery of arrears starts with confirmation of demand against the defaulter assessee and includes a number of appellate forums wherein assessee as well as Department can go for appeal. The process of Recovery of arrears is depicted in following flowchart:

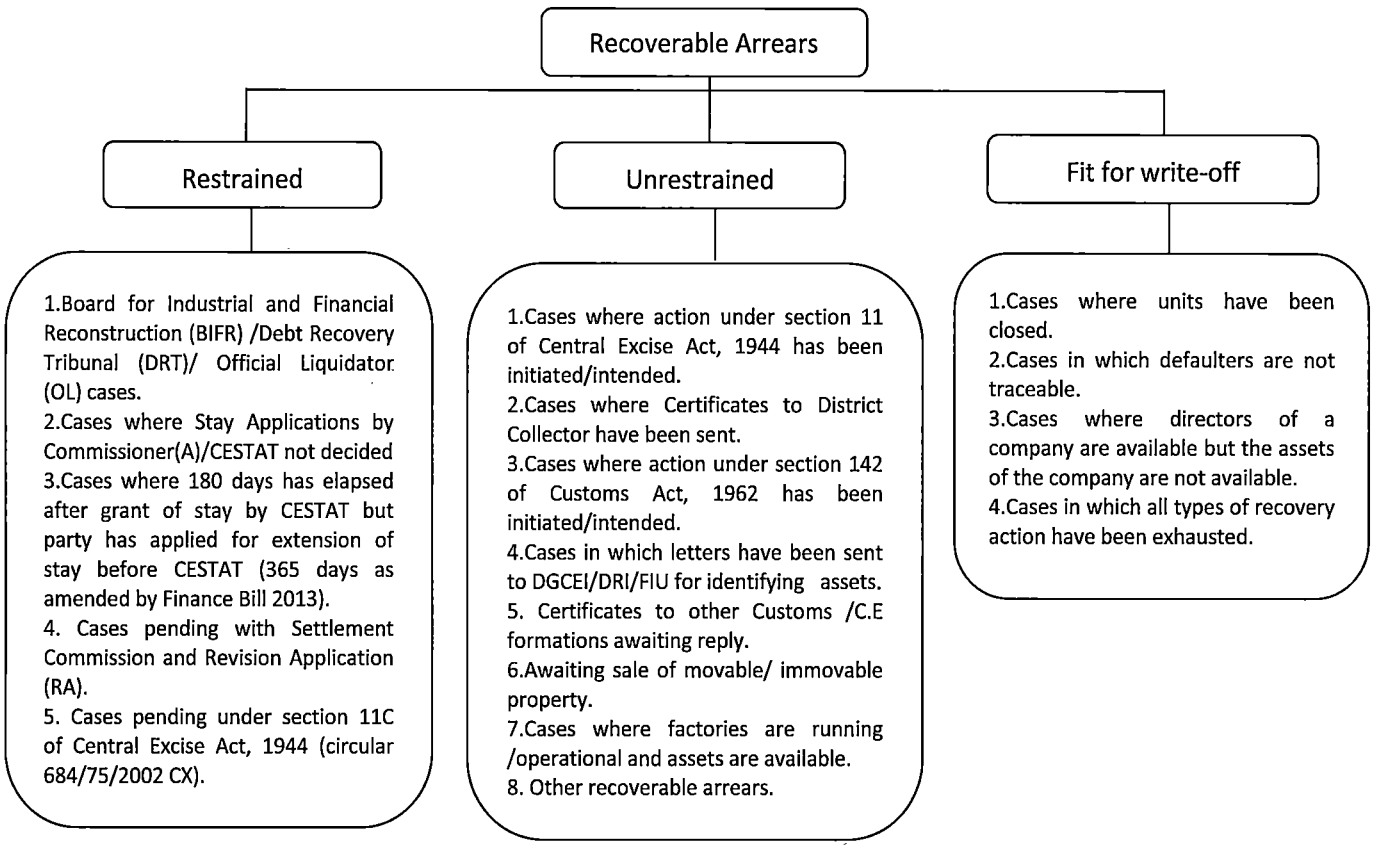
Chart 2.1: The process of Recovery of arrears



2.2 Classification of Arrears

Arrears are classified into two main categories viz. recoverable and irrecoverable arrears. All stayed arrears are irrecoverable. The recoverable arrears are further classified as restrained, unrestrained and fit for write-off as explained in Chart below:

Chart 2.2: Classification of Recoverable Arrears



2.3 Organisational Structure

The functions, in respect of recovery of arrears in CBEC, have been divided between field formations and the Task force for recovery as follows:

Field formations

i. **Range:** Ranges are the lowest level field formation entrusted with the task of maintaining the records relating to arrears and appeals, initiating recovery process and submitting reports to higher authorities.

ii. **Division:** Divisional Officers (Assistant/ Deputy Commissioner) are entrusted with supervising Range officers and to ensure that they are

performing their duties in accordance with the prescribed rules/regulations/instructions.

iii. **Commissionerates:** Recovery of arrears is the overall responsibility of the jurisdictional commissioners. They are required to review and monitor the functions of range and divisional officers regarding recovery of arrears. Besides, they should exercise the functions for vacation of stay orders, filing for early hearing of CESTAT/Court matters, taking action for attachment of property of defaulters and follow up of cases pending in BIFR/DRT/OL etc. and watching progress and performance of Recovery Cells through monthly progress reports and taking follow up action.

iv. **Recovery Cell:** Recovery Cell operates under the supervision and control of a jurisdictional Commissioner. The major functions of Recovery Cell are to serve notice upon defaulters, attachment and sale of defaulter's property by public auction. It also has to send a monthly progress report to the Commissionerate regarding arrears.

Task Force for Recovery

The Board (August 2004) constituted a centralized Taskforce for recovery of outstanding arrears of Central Excise and Custom duties, with a view to co-ordinate, facilitate, monitor and oversee the efforts of the Customs & Central Excise field formations towards recovery of arrears. Task force is headed by Chief Commissioner (Tax Arrears Recovery) stationed at New Delhi with Six Nodal Officers (Tax Arrears Recovery) at Delhi, Mumbai, Kolkata, Chennai, Vadodara and Nagpur.

The Task Force is entrusted with the following responsibilities:

- Review of extent of revenue arrears
- Formulation and implementation of strategy for recovery.
- Monitoring the efforts of the Central Excise field formations.

Zonal Chief Commissioners are responsible to identify potential cases of high revenue (i.e., arrear of more than ₹ one crore pending before CESTAT), appeal cases and other cases and furnish the information to the Nodal Officer. Nodal Officer has to make strategy, impart necessary instructions to field formations to deal with such recovery cases and monitor the progress of the same vide OM No.F.No.296/34/2004-CX.9(Pt) dated 11 August 2004.

2.4 Audit Objective

The subject specific compliance audit sought to assess

- The level of compliance with the prescribed rules and regulations as well as the guidelines issued by the Department relating to recovery of dues
- Effectiveness of monitoring and control mechanism

2.5 Audit Coverage

We examined records of office of the Chief Commissioner (TAR) Delhi, six nodal offices under it and 32 Commissionerates out of total 124 Commissionerates. The period covered was from 2012-13 to 2014-15.

2.6 Audit Findings

We found instances of inordinate delay in communication of Order-in Originals to Range offices, initiation/delay in recovery proceedings, filing of application for early hearing, transfer of cases to Recovery Cells, updation of status of arrear cases, updation of status of cases, maintenance of Appeal Register, formulation of strategy by zonal TAR, maintenance of relevant records/data at TAR, inadequate inspection of the Commissionerates by TAR etc. The observations are discussed in succeeding paragraphs.

2.7 Departmental Performance in respect of Recovery of Arrears

The performance of the Department in respect of recovery of Central Excise arrears, during the years 2012-13 to 2014-15, is depicted below:

Table 2.1: Arrears of Central Excise during last three years

(₹ in Crore)

Year	Arrears at commencement of the year	Arrears Recovered during the year	Arrears pending at the end of year			
			Stayed	Un-stayed		
				Restrained	Unrestrained	
					Recoverable	Non –recoverable
2012-13	37,005.56	3,919.88	23,537.10	20,779.97	2,997.35	3,030.18
2013-14	50,344.60	1,413.99	29,598.22	19,710.90	8,355.82	2,219.75
2014-15	59,884.69	1,615.88	35,559.35	7,200.74	7,019.18	370.05

Source: information provided by Directorate General of Performance Management vide letter C.No.CC (TAR) 48/2015-14408 dated 18.12.2015

It is observed that the arrears of Central Excise have increased by 62 per cent in 2014-15 as compared to 2012-13. However, the recovery of arrears has decreased by 60 per cent over the period.

It is further observed that recovery during the year as a percentage of unrestrained recoverable arrears at the beginning of the year, which was 47 per cent (₹ 1,413.99 crore as a percentage of ₹ 2,997.35 crore) during 2013-14, decreased to 19 per cent (₹ 1,615.88 crore as a percentage of ₹ 8,355.82 crore) during 2014-15.

The performance of 22 Commissionerates out of 32 selected Commissionerates which provided complete data for last three years, is given in the table below. As the data furnished by remaining 10[8] Commissionerates was incomplete, no inference could be drawn regarding performance of above 10 Commissionerates.

Table 2.2: Performance of 22 selected Commissionerates during last three years

(₹ in crore)

Year	Arrears at commencement of the year	Recovered during year	Arrears pending at the end of year			
			Stayed	Un-stayed		
				Restrained	Unrestrained	
					Recoverable	Non – recoverable
2012-13	10,508.58	226.59	5,739.22	5,593.90	1,568.99	241.76
2013-14	13,535.38	244.25	7,695.33	4,812.65	2,106.69	164.90
2014-15	15,813.21	144.80	7,085.13	4,153.94	2,376.53	199.96

It is observed that the arrears of Central Excise increased by 50 per cent in 2014-15 as compared to 2012-13. However, the recovery of arrears has been showing a decreasing trend over the last three years.

It is further observed that recovery during the year, as a percentage of unrestrained recoverable arrears at the beginning of the year, which was 16 per cent (₹ 244.25 crore as a percentage of ₹ 1,568.99 crore) during 2013-14, decreased to seven per cent (₹ 144.80 crore as a percentage of ₹ 2,106.69 crore) during 2014-15.

From the data provided, it is also observed that:

- In 12 Commissionerates i.e. LTU Chennai, Jaipur, Rajkot, Vadodra-I, Vishakapatnam, Raipur, Chandigarh-I, Panchkula, Kolkata-III, Bolpur, Guwahati and Patna, recovery in 2014-15 decreased in comparison to 2012-13. In eight out of above 12 Commissionerates, the decrease in recovery of arrears was more than 50 per cent.
- In four Commissionerates i.e. Chennai-I, LTU Chennai, Chandigarh-I and Kolkata-III, pendency of arrears increased more than 100 per cent.
- In Chennai-I Commissionerate, increase in arrear was 387.33 per cent.

[8] Position of recovery of all three years was not provided by ten Commissionerates (Bangalore III, Mangalore, Ghaziabad, Hapur, Jamshedpur, Central Excise Delhi-I, LTU Delhi, Gwalior, Bhubaneswar-I, Nagpur-II)

- Bangalore-I, Thane-I, Rajkot, Surat-II, Vishakapatnam, Bolpur and Patna Commissionerates performed well and the arrear pendency decreased in 2014-15.
- In seven Commissionerates i.e. Chennai-I, LTU Chennai, Puducherry, Surat-II, Vadodara-I, Ludhiana and Kolkata-III, increase in stayed arrear was more than 100 per cent.

Ministry offered no comments (December 2016), citing it introductory para and did not furnish any reply on the performance of these Commissionerates.

2.8 Functioning of Field Formations

2.8.1 Inordinate Delay in Communication of Orders-in-Original to Range Offices

Board, in its circular dated 24 December 2008 stipulated that the details of Adjudication Orders shall be entered in the Confirmed Demand Register and action taken for recovery as laid down in Chapter 18 Part III of the CBEC's Central Excise Manual. However, the circular did not prescribe any time limit for communication of OIO to Range Office.

Audit observed (October 2015 to February 2016) that out of 32 test checked Commissionerates, in 139 cases under 13 Commissionerates, the time taken to communicate OIOs to the Range Officers, ranged between 01 to 227 days. In absence of a prescribed time limit, considering one week time as acceptable to communicate OIO to range, audit analysed Commissionerate wise delays and details of the Commissionerates are depicted in table below:

Table 2.3: Delay in communication of Orders-in-Original

Sl. No.	Name of the Commissionerate	Delay up to 1 month	Delay from 1 to 3 months	Delay beyond 3 months	Total cases
1	Surat-II	6	4	1	11
2	Jaipur	3	0	0	3
3	Chennai – I	2	1	0	3
4	LTU Chennai	3	0	1	4
5	Puducherry	6	0	0	6
6	Central Excise Delhi-I	18	1	0	19
7	Gwalior	12	0	0	12
8	Raipur	5	2	0	7
9	Hyderabad I	12	2	0	14
10	Visakhapatnam	26	2	0	28
11	Thane I	18	0	0	18
12	Ghaziabad	4	1	0	5
13	Hapur	9	0	0	9
	Total	**124**	**13**	**2**	**139**

A few cases are illustrated below:

i) In case of M/s. Ford India Ltd., in LTU Chennai Commissionerate, OIO dated 29 August 2008 was delivered to the Range Office on 20 April 2009 i.e. after 227 days.

The Ministry stated (December 2016) that there was no delay in communication of OIO, the date of communication was wrongly recorded due to technical problem.

ii) In case of M/s. Al-Flah Export in Surat-II Commissionerate, OIO dated 31 July 2013 was delivered to the Range Office on 13 December 2013 i.e after a delay of 128 days.

The Ministry stated (December 2016) that there is no prescribed time frame for delivery of OIOs and requested for condonation of delay. It was also stated that efforts will be made to get the OIO delivered to range office at the earliest/within time in future.

In remaining 137 cases, the Ministry replied (December 2016) as follows:

In 34 cases, it was stated that there is no prescribed time frame for communicating the OIO to Ranges. However, efforts will be made in future to deliver OIO in time.

In 28 cases, it was stated that delay was within one month and instructions have been issued to adjudication sections to communicate OIO to Ranges, without delay in future.

In 27 cases, it was stated that delay was within 10 days and was due to distant location of Ranges.

In 14 cases, it was stated that instructions have been issued to communicate OIO to Ranges, without delay.

In 12 cases, it was stated that some delay is inevitable due to holidays and postal delay but efforts will be made in future to deliver OIO in time.

In seven cases, it was stated that the delay was mostly on account of transfer of an incumbent dealing hand.

In six cases, it was stated that delay was between 2-27 days and was minor. It was further stated that no coercive measures can be taken during appeal period.

In three cases, no reason for delay was intimated, however, Audit observation was noted.

In three cases, it was stated that OIO could not be communicated as they remained inadvertently in files. However, efforts will be made in future to deliver OIO in time.

In three cases, it was stated that OIO were communicated in time, however, incorrect date of communication was recorded in e-register due to some technical error.

From different replies furnished by the Ministry to same audit observation, it appears that Ministry forwarded the replies received from field formations without taking final view on the issue. Reply of field formation that delay of 10-30 days is reasonable, is not tenable as period of seven days has already been considered by Audit. OIO should be communicated to Range within reasonable time otherwise communication of the same to assessee would be delayed and consequently appeal period (counted from communication of OIO to the assessee) would be further delayed.

2.8.2 Non-Initiation/Delay in Recovery Proceedings

The officers of the Central Excise have been empowered under section 11 of Central Excise Act, 1944, to recover the arrears of revenue of Central Excise.

In case the Government dues are not paid, the action for recovery of dues is to be taken under section 11 of the Central Excise Act, 1944.

If no recovery is made by the action stipulated under section 11, action is to be taken under the provision of section 142 of the Customs Act, 1962, which have been made applicable in Central Excise cases vide Notification No. 68/63-Central Excise dated 4 May 1963 issued under section 12 of the Central Excise Act, 1944. Section 142 of the Customs Act, 1962, empowers the Department to deduct the amount so payable from any money owing to the defaulter, to sell the goods belonging to the defaulter which are under the control of the proper officer and to take action to distrain and sell any movable or immovable property belonging to such person.

Audit observed (October 2015 to February 2016) that in 37 cases under 12 Commissionerates, action for recovery under section 11 of Central Excise Act, 1944, and section 142 of Customs Act, 1962, were not taken, which resulted into non-recovery of ₹ 95.87 crore as detailed in Table 2.4:

Table 2.4: Failure to take timely action for recovery

(₹ in crore)

Commissionerate	Total cases	Amount	Year-wise Break up			
			Less than 5 years		More than 5 years	
			Number	Amount	Number	Amount
Kolkatta-III	4	37.75	0	0	4	37.75
Guwahati	2	0.88	0	0	2	0.88
Central Excise Delhi-I	8	19.56	0	0	8	19.56
Bangalore-I	2	1.30	1	0.24	1	1.06
Bangalore-III	2	1.17	0	0	2	1.17
Trivandrum	1	0.07	0	0	1	0.07
Thane-I	3	16.51	1	8.91	2	7.6
Ghaziabad	4	5.74	2	0.72	2	5.02
Jamshedpur	1	0.59	0	0	1	0.59
Patna	8	4.35	2	0.34	6	4.01
Hyderabad-I	1	6.76	0	0	1	6.76
Bhubaneswar	1	1.19	0	0	1	1.19
Total	**37**	**95.87**	**6**	**10.21**	**31**	**85.66**

A few cases are illustrated below:

i) A demand of ₹ 36.27 crore was confirmed (December 2008) against M/s. Ashok Electrical & Stamping Pvt., Ltd., in Kolkata III Commissionerate. The assessee preferred an appeal against the OIO in CESTAT and was granted stay on 24 August 2012, subject to pre-deposit of 25 per cent within period of eight weeks. The period of eight weeks ended on 15 October 2012 but the assessee did not deposit the amount. Hence, CESTAT dismissed the appeal on 15 November 2012. Audit discussions with the Department revealed that the assessee had filed an appeal in the Hon'ble High Court against the CESTAT order, dated 15 November 2012 and was granted four weeks time (3 June 2014) to pre-deposit 25 per cent of the duty. The assessee did not deposit the amount. The Department did not proceed with measures envisaged for recovery of dues till date.

The Ministry stated (December 2016) that several correspondences made with assessee, were returned with remarks "addressee moved", however, efforts are being made to trace out the defaulter. However, no details of action taken was provided, thus, timeliness of action taken could not be verified.

ii) Demands of ₹ 19.42 crore were confirmed (October 2003) against M/s Geco Engineering Company in Delhi – I Central Excise Commissionerate. Though the property of the assessee had been attached under section 142 of Customs Act, 1962, but the same had not been auctioned till date.

Ministry stated (December 2016) that property of defaulter was attached in 2010 and letter was being written to jurisdictional Assistant Commissioner to take steps for auction of attached property and recover Government dues.

Reply is not tenable as the Department failed to auction the attached property in more than six years and started action after being pointed out by Audit. Clearly, the department has not been monitoring and holding the officials concerned accountable for such failures to act in a timely manner

iii) A demand of ₹ 8.91 crore was confirmed (September 2011) against M/s Venus Overseas in Thane-I Commissionerate. No action under section 11 of Central Excise Act 1944/under section 142 of Customs Act, 1962 was taken.

The Ministry stated (December 2016) that the assessee could not be traced and letters have been sent to all the Government agencies to get details of the defaulter. However, no details of action taken were provided.

iv) A demand of ₹ 6.76 crore was confirmed (November 2005) against M/s. Amar Textiles in Hyderabad-I Commissionerate vide OIO No.2/2005-Hyd-I/Adjn dated 29 November 2005. The party made a payment of ₹ 2.20 lakh on 28 May 2007 and 16 January 2008 leaving a balance of ₹ 6.74 crore. No action for recovery under section 11 was taken by the Department.

The Ministry stated (December 2016) that the unit had been closed since 2003 and no properties were available for recovery of arrears. Letters have been addressed to Banks, Post office, RTA etc for whereabouts of the party.

Reply of the Department is not tenable as the assessee had deposited ₹ 2.20 lakh in May 2007/January 2008, indicating that the assessee was traceable till then and the Department did not initiate the recovery action and pursue the case properly.

v) We observed (November 2015) that the attachment of property for recovery of arrears of ₹ 4.57 crore (confirmed between 2000 to 2009) was carried out in case of M/s. Mira Silk Mills under Thane-I Commissionerate, for plant & machinery in March 2006 and for land in April 2014 but auctioning of attached property is pending since then.

The Ministry stated (December 2016) that the factory premises were attached but the legal heir of the assessee had filed writ petition (1622/2016) with Mumbai High Court challenging the attachment. The Department has further identified residential properties of the deceased proprietor and same has been attached (26 February 2016) and certificate under section 142 has been issued.

Thus, the Department failed to dispose the attached property in seven years and the attachment was challenged by the legal heir only in 2016. Further, the residential property was also attached after the issue was pointed out by Audit. The Department also failed to fix the responsibility.

vi) Two demands of ₹ 4.46 crore were confirmed (between November 2007 and March 2008) against M/s Lancer Telecom (India) Pvt., Ltd., in Hapur Commissionerate vide OIO Nos.20/ADC/GZV/07 and 21 in November 2007 and 15/Comm/GZV/08 dated 31 March 2008. Though, certificate under section 142 of the Customs Act 1962 was issued on 3 September 2012 to Delhi-I Central Excise Commissionerate, no recovery was made.

The Ministry stated (December 2016) that letters had been written to the various authorities seeking information regarding the assets of the assessee.

The reply is not tenable as more than eight years have passed after confirmation of demands. Further, details regarding action was not provided, thus, timeliness of action taken could not be verified.

vii) A demand of ₹ 3.03 crore was confirmed in 2001 against M/s Haria Textile Processors in Thane- I Commissionerate. Though, certificates under section 142 of Customs Act 1962 was issued, no recovery was made.

The Ministry stated (December 2016) that there was no property in the name of the proprietor or his family members in the native village and also no property was identified from Bank/residential society. However, the reply was silent about the status of factory premises which might have been disposed off, due to inaction by the Department.

viii) A demand of ₹ 1.18 crore was confirmed (March 2007) against M/s. Suntech Vision in Bhubaneshwar Commissionerate. CESTAT, Kolkata vide its Order dated 23 June 2008, dismissed the appeal filed by the assessee. After the dismissal of the appeal, the Department was required to initiate actions immediately to recover the amount but the Department came to know only in January 2010 that the unit was closed. Thus, during the period of one and a half year i.e. from July 2008 to December 2009, the Department did not take any action for realization of dues. Further, the Department should have initiated action under section 142 of Customs Act, 1962. Inaction of the Department led to non-recovery of Government dues amounting to ₹ 1.18 crore.

The Ministry stated (December 2016) that the unit was not traceable and proposal of writing off was being considered. Audit is of the view that, had the timely action for realization of dues been taken, there could have been chances of recovery of arrears. The Department also failed to fix the responsibility of the errant officials.

ix) A demand of ₹ 56.32 lakh was confirmed (October 1990) against M/s. North India Tobacco, in Ghaziabad Commissionerate against which the assessee filed an appeal before CESTAT. The CESTAT set aside (July 1992) the appeal of the assessee. Though Department issued (1995) certificate under

section 11 but recourse to section 142 of the Customs Act (made applicable to Central Excise Act, 1944) was taken in January 2004 i.e. after nine years but no recovery could be made as of date.

The Ministry stated (December 2016) that efforts were being made to trace the account / asset of the party.

The reply of the Department which failed to take action in 12 years suggests that the efforts are not adequate and serious.

In remaining 24 cases, the Ministry replied (December 2016) as follows:

In 12 cases, it was stated that actions were taken by the Department, however, dates/details of action taken were not provided, hence, timeliness of action taken could not be verified.

In three cases, it was stated that assessees were not traceable and issues were under consideration for write-off.

In two cases, actions were taken, but there was no continuity in action as there was gap of 1-4 years between actions taken.

In two cases, it was stated that actions were being taken for recovery, however, action had been started in 2016, after being pointed out by Audit.

In one case, it was stated that out of total Arrears of ₹13.84 lakh, ₹6.92 lakh had been realized and efforts are being made to recover the remaining dues.

In one case, it was stated that assessee was asked to furnish details of buyer and details of bank account but no reply was received.

Audit is of the view that the Department is not giving due attention to the Recovery of Arrears and same is not being monitored by higher formations, resulting in non-realisation of any significant revenue. Audit is also of the view that accountability needs to be fixed for such lapses.

x) As per section 11, the Department can deduct the recoverable duty of the defaulters from the money owed by the Department (i.e. the refund allowed) to such defaulters.

We observed in two cases, the Department paid refund of ₹ 4.98 lakh, though Department had the option to appropriate such refund against the arrears, which were free from restraint.

Table 2.5: Cases of non-adjustment of refund against arrear

(₹ in lakh)

Sl. No.	Name of the assessee	Commissionerate	Arrears of confirmed demand	Refund allowed
1	Phoenix Conveyor Belt India (P) Ltd.	Kolkata – III	6.03	4.77
2	Associated Pigments	Kolkata – III	13.72	0.21
		Total	**19.75**	**4.98**

This led to non-adjustment of revenue and unwarranted financial benefit of ₹ 4.98 lakh.

We pointed these out in (November 2015). The Ministry stated (December 2016) that in case of Phoenix Conveyor Belt India (P) Ltd., letters were sent to the assessee to pay the dues immediately. In case of Associated Pigments it was stated that due to oversight of the facts, rebate of ₹ 0.21 lakh was sanctioned and that revenue of ₹ 13.72 lakh was recoverable and persuasive action for same was being taken.

2.8.3 Non-Filing of Application for Early Hearing

CBEC, vide circular no. 746/62/2003-CX, dated 22 Septemer2003, stated that the Commissionerates should file Miscellaneous Applications, in terms of Rule 28C of the Customs, Excise & Gold (Control) Appellate Tribunal (CEGAT) (Procedure) Rules, 1982, for out-of-turn early hearing of the cases with high revenue stakes, indicating clearly the grounds for such prayer. It was further stated that in order to get interim stay orders vacated, the Commissionerates must take proactive measures by filing Miscellaneous Petition before Supreme Court/High Court/CESTAT for early hearing, specifying the grounds clearly and for prompt follow-up of appeal matters, particularly in respect of Civil Appeals/SLPs before the Supreme Court, through effective liaisoning with the Directorate of Legal Affairs. Further, Chief Commissioner (TAR) vide letter C.No. CC/TAR/54/2009/3 dated 15.01.2010 instructed field formations to monitor all cases involving revenue of more than ₹ 50 lakh (irrespective of age) and approaching CESTAT for early decision.

Audit observed (December 2015 to February 2016) that in 23 cases in four Commissionerates, pending from two to 10 years involving revenue of ₹ 137.81 crore, applications for early hearing were not filed. The Commissionerate wise position is depicted in table below:

Table 2.6: Non-filing of application for early Hearing

(₹ in crore)

Sl. No.	Name of the Commissionerates	No. of Cases	Amount
1	Surat-II	8	84.64
2	Vadodara-I	4	12.38
3	Kolkata-III	2	6.60
4	Hapur	9	34.19
	Total	**23**	**137.81**

A few cases are illustrated below:

Audit noticed that (December 2015) in five cases viz., M/s. Kiran Syntex Ltd. (Unit I & II)., involving arrears of ₹ 71.53 crore and M/s. Kamdhenu Exim Pvt., Ltd., involving arrears of ₹ 5.78 crore in Surat II Commissionerate, M/s. Forbes Gokak Ltd., involving arrears of ₹ 19.02 crore, in Hapur Commissionerate M/s. Racili Udyog involving arrears of ₹ 5.74 crore, in Kolkata-III Commissionerate M/s. Solace Engg. Pvt., Ltd., involving arrears of ₹ 5.65 crore, in Vadodara-I Commissionerate where the stay was granted

between June 2011 and September 2014, the Department should have taken early action as per circular dated 22 September 2003.

The Ministry stated (December 2016) that in one case application for early hearing had been filed whereas in 4 cases process was underway for the filing of application.

For remaining 18 cases, reply of the Ministry was as follows:

In two cases, application for early hearing had been filed whereas in seven cases, process was underway for the filing of application.

In remaining nine cases, it was stated that Courts/Appellate authorities decides the cases on their own priorities and do not entertain requests for early hearing. Two such request filed earlier were not considered and cases are still pending in CESTAT. However, applications are being filed for early hearing in cases pointed out by Audit.

Ministry needs to examine the issue and give suitable and clear instructions to field formations after being vetted by legal cell for compliance so that early hearing applications of the Department are entertained by CESTAT/Courts.

2.8.4 Bunching of Cases

CBEC, vide circular No. 296/34/2004-CX.9(Pt), dated 11 August, 2004, stipulated that the Jurisdictional Commissioner should also organize bunching of cases on same issues involving substantial revenue and request the Tribunal for disposal on priority.

Audit observed (October 2015 to January 2016 and July 2016) that bunching of cases on same issues involving substantial revenue, was not done in any of the 17[9] Commissionerates and Tribunal was not requested for disposal of those cases on priority, at any time. The information from rest of 15 Commissionerates, was not received as of date (July 2016).

Detailed examination in three[10] Commissionerates out of the 17 Commissionerates mentioned above, revealed that there were seven cases which could have been bunched, as detailed in Table 2.7:

[9] Puducherry, LTU Chennai, Chandigarh-I, Chandigarh-II, Ludhiana, Punchkula, Guwahati, Kolkata-III, Bolpur, Ghaziabad, Jamshedpur, Patna, Gwalior, Bhavnagar, Raipur, Surat-II, Vadodara-I

[10] LTU Chennai, Central Excise Delhi-I, Raipur

Table 2.7: Bunching of cases not done

(₹ in crore)

Sl. No.	Name of the Commissionerate	No. of cases	Amount
1	LTU Chennai	3	0.60
2	Central Excise Delhi-I	3	19.11
3	Raipur	1	3.81
	Total	**7**	**23.52**

Inaction of the Department to send the list of identical issues to CDR, for requesting CESTAT for early disposal of the case, resulted in pendency of revenue arrear of ₹ 23.52crore.

A few illustrative cases are given below:

i) Demand of ₹ 53.30 lakh, in three OIAs, was confirmed against M/s. Schwing Stetter India Ltd., in LTU Chennai Commissionerate for "irregular availment of exemption notification No.108/95 CE". The demand was stayed by the appellate authorities but the bunching of cases was not done by the Department.

The Ministry stated (December 2016) that action was being initiated to file application for bunching of cases.

ii) Demand of ₹ 15.69 crore in two OIOs was confirmed against M/s Sunrise Food Products and demand of ₹ 2.78 crore in two OIOs was confirmed against M/s K.P.Pouches Pvt., Ltd., in Delhi-I Commissionerate for "Clandestine removal of goods". The demand was stayed by the appellate authorities but the bunching of cases was not done by the Department.

The Ministry, in case of M/s Sunrise Food Products, stated (December 2016) that these are two different assessees, one a proprietary firm and other a registered company. As the appellants are different, cases were not recommended for bunching.

The reply is not tenable as bunching is to be done of cases having same issues. It does not require appellants being same type.

In case of M/s K.P.Pouches Pvt., Ltd., it was stated that nature and modus operandi was different in both the cases. However, no details were provided to verify the same.

In remaining six cases Ministry replied as follows :

In three cases it was stated that action was being initiated to file application for bunching of cases.

In one case, it was stated that nature and modus operandi of cases were different. However, no details were furnished, hence, Ministry views could not be ascertained.

In one case, it was stated that though the cases were relating to wrong availing of CENVAT credit on structural items but also included other items, hence, were not fit for bunching.

Reply is not tenable as the major issue is wrong availing of items where it was not allowed. Hence, case is fit for bunching. The main idea of bunching is to clear pendency of cases in appeals in similar issues.

2.8.5 No Action to Write-off Irrecoverable Arrears

Board's circular No. 946/2011, dated 1 June 2011 stipulates that a three-member committee of Chief Commissioners and Commissioners shall be constituted to examine the proposals for write-off of irrecoverable arrears and recommend deserving cases to the authority competent to order such write-off in terms of the Board's circular, dated 21 September 1990. Whenever a proposal for write-off of irrecoverable arrears is submitted by the Deputy/Assistant Commissioner in the prescribed format, the committee shall examine the proposals and on the basis of the recommendation of the Committee, the competent authority shall write-off arrears in deserving cases, in accordance with the powers delegated for the purpose.

The constitution of the Committee and the powers to write-off, delegated to the competent authorities are as under:

Table 2.8: Power for writing off of arrear

Sl. No.	Constitution of the Committee	Competent Authority	Power Delegated
1	Chief Commissioner of Customs & Central Excise/ Central Excise/ Customs	Committee of two Chief Commissioners of Customs & Central Excise/Central Excise/ Customs and the Chief Commissioner (TAR)	(a) Full powers for abandonment of irrecoverable amounts of fines and penalties imposed under Customs Act, 1962, and Central Excise Act, 1944. (b) To write-off irrecoverable amounts of Customs /Central Excise duties up to ₹ 15 lakh subject to a report to the Board.
2	Excise / Commissioner of Customs/ Commissioner of Central Excise of Customs & Central Excise/ Central Excise/ Customs and one Commissioner (TAR) nominated by CC (TAR))	Excise/Commissioner of Customs / Commissioner of Central Excise of Customs & Central Excise/ Central Excise/ Customs and one Commissioner (TAR) nominated by CC(TAR) of Customs & Central Excise/ Central Excise/ Customs and one Commissioner (TAR) nominated by CC(TAR)	(a) Full powers for abandonment of irrecoverable amounts of fines and penalties imposed under Customs Act, 1962, and Central Excise Act, 1944. (b) To write-off irrecoverable amounts of Customs/ Central Excise duties up to ₹ 10 lakh subject to a report to the Chief Commissioner.

We observed (October 2015 to February 2016) that out of 32 test checked Commissionerates, in seven Commissionerates[11] there were 177 cases involving revenue arrear of ₹ 188.35 crore, as tabulated below:

Table 2.9: No action to write-off irrecoverable arrears

(₹ in Crore)

Sl. No.	Commissionerate	No. of cases	Amount
1	Chandigarh-II	2	4.78
2	Central Excise Delhi-I	44	167.64
3	Ghaziabad	11	0.17
4	Kolkata III	5	4.02
5	Guwahati	13	5.67
6	Vadodra (TAR)	1	0.39
7	Bhubhaneswar	101	5.67
	Total	**177**	**188.35**

The possibility of recovery of above arrears is remote as:

- In 80 cases, assessees were not traceable, 79 units were closed, and 14 units did not exist.
- 146 cases out of above 177 cases the amount involved was less than ₹ 15 lakh.
- Eight cases out of above 177 cases the amount involved was less than ₹ 1,000 and in one case it was as low as ₹ 28.
- 119 cases out of above 177 cases pertained to the period from 1968 to 2000.

Two cases are illustrated below:

i) We observed (December 2015) that in Bhubaneswar-I Commissionerate, there were 101 cases amounting to ₹ 5.89 crore, including nine cases pertaining to the period 1968 to 1978 which were not written off, despite the nodal officer TAR Kolkata's instructions "that in cases fit for write-off, suitable steps may be taken and in cases, where defaulters are not traceable, reference may be made to DGCEI/DRI to locate them for realization of arrears". It was further noticed that neither enquiries about the existence of the unit were made nor proposals for write-off of these cases were submitted.

The Ministry stated (December 2016) that write-off is a tedious process and involves a reasonable period of time. It was further stated that proposal for write-off would come for consideration accordingly.

The reply is not acceptable as some cases were as old as 1968-1978 and required process should have been completed so far.

[11] Chandigarh-II, CX Delhi-I, Ghaziabad, Kolkata-III, Guwahati, Vadodara (TAR), Bhubaneswar

ii) We observed (December 2015) that a write-off proposal of M/s. A-1 Products in Bhavnagar Commissionerate, for ₹ 39.74 lakh was sent to the Board (August 2006) by the Commissioner (TAR) Vadodra. The Board sought some clarification from the Chief Commissioner, Ahmedabad Zone (April 2007). The case has not been finalised so far, since the reply from the Chief Commissioner to the clarification sought by the Board was not furnished, even after a period of seven years.

Ministry stated (December 2016) that after verification of facts, necessary action would be initiated for write-off.

Thus, Department failed to provide information to the Board for more than nine years, on the write-off proposal sent by itself.

In remaining 75 cases, reply of the Ministry was as follows :

In 60 cases, it was stated that necessary actions are being taken for writing off of irrecoverable arrears.

In 11 cases, it was stated that the cases were forwarded by the field formation but have been sent back with the direction to exhaust all norms prescribed and are yet not ripe for write-off. The reply is not tenable as the cases pertained to the period 1991-2003 where defaulters were not traceable and a view needs to be taken, when they could be considered as 'ripe for write off'.

In three cases, it has been stated that possibility of recovery action, is being examined.

In one case, it was stated that recommendation of the Division dated 30 March 2016 has been sent back for resubmission, with all relevant details on 04 April 2016. Thus, action was taken after being pointed out by Audit.

2.8.6 Non-Transfer of Cases to Recovery Cells

The Central Excise Officers have been empowered to attach and sell movable and /or immovable properties of any person who has failed to pay any sum due to Government vide Notification No. 48/97-CE (NT) dated 2 September 1997 issued under section 12 of the Central Excise Act, 1944 which made section 142 (1)(C) (ii) of the Customs Act, 1962 applicable to like matters in Central Excise.

If no recovery is made by Departmental efforts, cases need to be transferred to the Recovery Cells which have been empowered to take action for recovery by attachment and sale of property of the defaulter.

Further, the Board desired[12] (October 2000) that all cases, of 1999 and earlier years, already referred to District Authorities, where there is no effective action or response, should be referred to Recovery Cell of the Commissionerate where the assessee may have, as per available information, some movable/immovable property, so that action can be initiated as per circular No. 365/81/97-CX, dated 15 December 1997.

Audit observed (October 2015 to February 2016) that out of 32 test checked Commissionerates, only three Commissionerates, namely Kolkata-III, Bolpur and Hyderabad, transferred 234 cases, involving amount of ₹ 437.41 crore to Recovery Cells, during 2014-15.

No cases were transferred to the Recovery Cells in 23 Commissionerates[13] during 2014-15. Out of these 23 Commissionerates, in 20 Commissionerates, who provided data of arrears, there were 15,388 cases amounting to ₹ 18,700.27 crore pending for recovery. Six[14] out of 32 Commissionerates did not provide the details of cases transferred to the Recovery Cells. Further, in the data furnished by the three[15] Commissionerates out of 20 Commissionerates, who provided data regarding cases transferred to the Recovery Cells, it was mentioned that revenue of arrear was nil, while in these Commissionerates, there were 1,235 cases involving revenue of ₹ 913.82 crore.

Thus, non-transfer of cases has not only resulted into Recovery Cells becoming redundant but has also led to piling of arrears and poor recoveries thereof.

The reply of the Ministry, in respect of 29 Commissionerates (December 2016) was as follows :

In seven cases, it was stated that there is no Recovery Cell and recovery is being monitored at the Division level. In 10 cases, Recovery Cells exist but action for recovery are still being taken by the Divisions.

In three cases, it was stated that cases have been transferred to Recovery Cells, However, in two cases details of cases transferred were not provided.

In two cases, it was stated that there was no case fit for transfer to Recovery Cells.

In two cases, it was stated that instructions have been issued/efforts are being made to identify cases to transfer to Recovery Cells.

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[12] vide circular No 552/48/2000-C Dated 4-10-2000

[13] Puducherry, LTU Chennai, Chennai I, Trivandrum, Chandigarh-I, Chandigarh-II, Ludhiana, Panchkula, Guwahati Bangalore -I, Bangalore III, Mangalore, Patna, Delhi I, Bhavnagar, Jaipur, Rajkot, Surat-II, Vadodara-I, Visakhapatnam, Bhubaneswar-I, Thane I, Nagpur-II

[14] Ghaziabad, Hapur, Jamshedpur, Gwalior, Raipur, LTU Delhi

[15] LTU Chennai, Puducherry, Patna

In one case, it was stated that cases are being transferred to Recovery Cells, however, no details of cases transferred was provided.

In one case, it was stated that that cases of arrears more than ₹ 50 lakh, are being monitored by Recovery Cells.

In one case, reply was general in nature as it was stated that efforts are being made to recover the dues.

In one case, it was stated that Audit observation had been noted.

In one case, it was stated that the circular no. 368/81/97-CX, dated 15 December 1997, suggests that cases be referred to the Recovery Cells of those Commissionerates where the assessee may have some movable/immovable property. The Recovery Cell is therefore expected to deal with the references received from other Commissionerates in the form of Appendix-I, giving details of movable and immovable property in this Commissionerates. Therefore, all the arrears of the Commissionerate are not expected to be transferred to the Recovery Cells.

The reply is not tenable as circular no. 365/81/97-CX, dated 15 December 1997 is not limited to the cases transferred to the Recovery Cells of other Commissionerates. There are cases, where the property of the defaulter may exist in the same Commissionerate and the authorised officer has to issue Appendix-II accordingly. Thus, the Commissionerate has to identify the cases, where no recovery is made by Departmental efforts and transfer all such cases to Recovery Cells of same or other Commissionerates, where any asset/property of the defaulter is available.

From the above, it appears that Recovery Cells exist in most of the Commissionerates, but the same are not functional and different field formations are having different views on the function of the Recovery Cells. Further, Ministry has simply forwarded these different views of field formations without any analysis. In case of Puducherry Commissionerate, which is not even aware about the role of Recovery Cell, the Ministry failed to clarify the role of Recovery Cell to its field formation. As, the purpose of creating Recovery Cells is to take action for recovery, by attachment and sale of property, the Board may issue clear instructions to field formations for effective functioning of Recovery Cell, and monitoring of the same.

2.9 Internal Control

2.9.1 Non-Updation of Status of Arrear Cases

We observed that in some cases, Department was not monitoring the cases and consequently, the cases were not classified properly as detailed below. In

the absence of proper monitoring of these cases, there was a risk of losing sight of cases, though recoverable being kept pending, resulting in inaction to recover the arrears.

i) We noticed (January 2016) that in Hapur Commissionerate, the case of M/s. Shree Acids & Chemicals amounting to ₹ 54.92 lakh was being shown in the Monthly Technical Report (MTR) under the Heading "BIFR" though the case was already abated by BIFR in 2011. BIFR, vide its order dated 21 December 2011, also directed the Government Departments to file suit/pursue the suit, if already filed, before the Competent Court of Law. The Department, however, has not filed any suit for recovery and continued to show the case under "BIFR" cases.

The Ministry stated (December 2016) that the case has been removed from BIFR list and the status updated accordingly. Action is being taken for recovery.

ii) We noticed (December 2015) that in Patna Commissionerate's MTR for the month of November 2015, three cases of M/s. Patliputra Industries Pvt. Ltd., amounting to ₹ 28.48 lakh were being shown under BIFR (restrained arrear) but these were actually deregistered at the requests of the assesses and were unrestrained arrears. Accordingly, the units were no longer under BIFR and the Department was free to take initiative to recover the arrear of ₹ 28.48 lakh but no action was taken by the Department and all three cases were shown under BIFR cases till date.

The Ministry stated (December 2016) that cited three cases, shown under BIFR, were deregistered. It was further stated that two cases have been decided in favor of the assessee and in one case, out of total amount recoverable, only ₹ 0.72 lakh was remaining and action for recovery of the same is under process.

iii) We noticed (January 2016) in Cuttack and Rayagada Divisions in Bhubaneswar Commissionerates that 21 and seven cases involving ₹ 12.32 crore and ₹ 2.26 crore were shown pending in CESTAT and Commissioner (Appeals) respectively in the MTR. However, cross-verification of the position of pending stayed arrears in Tribunal section revealed that they were not actually pending before CESTAT and Commissioner (Appeals). Due to non-reconciliation, these cases were being shown as pending and recovery is stalled resulting in inaction of the Department to recover Government dues of ₹ 14.57 crore.

The Ministry stated (December 2016) that efforts were being made to reconcile differences in various statistical reports.

iv) We noticed (January 2016) that in Central Excise Division Patna-I, in Patna Commissionerate, one case of M/s. Radhey Forging, involving arrear of ₹ 1.40 lakh, was shown in the MPR of March 2015 under appeal before Hon'ble High Court Patna. On cross checking with web site of Patna High Court, it was found that the case was rejected by High Court Patna on 3 August 2010. After disposal of case in the favour of revenue, the case became recoverable arrear, but the Department continued to keep this case under restrained arrear and no action for realization was initiated, even after lapse of more than five years.

The Ministry stated (December 2016) that notice under section 142 (1)(C)(ii) of Customs Act, 1962 had been issued to the assessee. There is a need on the part of the Department to fix the accountability.

2.9.2 Inflated Arrears

The monthly Tax Arrear Report reflects the amount of arrears outstanding against the defaulter at the end of each month. In test check, we observed that TAR/MTR were not being updated and thus showing the incorrect status of arrears, as detailed below:

i) We observed (December 2015) that in Trivandrum Commissionerate, arrears in respect of M/s. Rainbow Roofing India Pvt., Ltd., were shown as ₹ 12.71 crore of which ₹ 59.90 lakh was appropriated in OIO (December 2013) itself and the balance amount due was ₹ 12.11 crore. However, the Department, in its TAR (September 2015), had not updated the amount and continued to show the entire amount of ₹ 12.71 crore as outstanding, resulting in an overstatement of arrear amount by ₹ 59.90 lakh.

ii) We observed (January 2016) that a demand of ₹ 17.50 lakh was set aside (October 2012) by the Commissioner (Appeal) in case of M/s. Saral Wire[16], in Hapur Commissionerate, but the case was being shown as arrear in the Tax Arrear Report (TAR) of the Division (October 2015). Thus, the arrear was inflated by ₹ 17.50 lakh.

The Ministry, in both the cases, stated (December 2016) that necessary instructions have been issued to delete the overstatement.

2.10 Monitoring

2.10.1 Non-Tracking of Assessees' Activities

Board circular No. 224/37/2005-CX-6, dated 24 December 2008 stipulates the range inspectors "to keep abreast of any development regarding closure or

[16] OIO no. 132(42/11, 59/11, 88/11, 111/11, & 37/12) AC / HLD /2012 dt: 16.08.2012 (demand: ₹ 35 lakh)

transfer of operations by assesses against whom arrears of revenue are outstanding and inform all such relevant development to the Range Officer".

We noticed that the above prescribed procedure was not being followed. Few illustrative cases are discussed below:

i) We observed (November 2015) in three cases viz. M/s Bhagawati Impex, M/s. Lancer Telecom (India) and M/s. L. B. Electronics, the SCNs for ₹ 65.30 lakh, ₹ 4.46 crore and ₹ 39.55 lakh respectively, were issued in Ghaziabad Commissionerate. These assessees stopped filing returns from October 2004, July 2006 and January 2009 respectively. But, the Department did not visit the premises to take stock of activities. During the period, the assessees sold out their premises and became untraceable.

The Ministry admitted the observation (December 2016) and stated that the field formations have been sensitized about their duties/responsibilities and have been directed to monitor the assessees on regular basis. However, the reply did not mention, whether any action was taken against the erring officials.

ii) We observed (December 2015) that against M/s. Dudheshwar Steels & Alloys Pvt. Ltd., in Hapur Commissionerate, a demand of ₹ 52.28 lakh was confirmed in May 2010. The departmental officer visited the premises (November 2013) and found that there was only a damaged boundary wall and no plant and machinery were available on the site. Prompt action such as immediate site visit would have enhanced the chances of recovery.

The Ministry stated (December 2016) that the assets of the unit were attached by the Canara Bank and the bank informed that it had approached Debt Recovery (DRT) Tribunal for recovery. The Department also lodged its claim with DRT on 10 October 2016. Thus, the Department took action after the same was pointed out by Audit. Though the Ministry accepted the failure, it failed to fix the responsibility.

2.10.2 Updation of Status of Cases

Audit observed that there is no mechanism in field formations to know the status of the cases of recovery. During the scrutiny of records, it was noticed that in many cases, Department requested the assessees to furnish the status of the cases pending in the CESTAT, rather than monitoring the cases itself. Few instances are mentioned below:

i) A demand of ₹ 1.52 crore and equal penalty was confirmed (March 2011) against M/s. Saint Gobain Glass India Ltd., in LTU Chennai Commissionerate. We noticed from records of the Commissionerate that they requested (April 2013) the assessee to inform whether any

stay was granted in the case, instead of monitoring the status of the case by themselves.

The Ministry stated (December 2016) that the status of cases are available at website of CESTAT and same are being verified. Audit observation have also been noted for compliance.

ii) A demand of ₹ 19.17 lakh was confirmed (April 2009) against M/s. Nexus Electro Steel Limited, Unit-I in Puducherry Commissionerate. Scrutiny of records revealed that the Range Officer requested (30 June 2011) the assessee to intimate the "present position" of the case.

The Ministry stated (December 2016) that it was a solitary case where assessee was asked about the status of case and same could be obtained from website of the CESTAT.

iii) A demand of ₹ 4.89 crore was confirmed (October 2009) against M/s. Jindal Pipes in Hapur Commissionerate. The assessee preferred an appeal in the CESTAT (February 2010) and was allowed stay (August 2010). The Range office wrote letters to assessee on 29 December 2014 and 23 December 2015 requesting the assessee to inform the latest position of the case.

The Ministry stated (December 2016) that the audit observation was noted and records relating to arrears had been updated but Ministry failed to fix any accountability for such casual approach which given bad impression about the working of the department in the eyes of taxpayers.

2.10.3 Use of Software Application by the Department to monitor Recovery of Arrears

Though the positions of recoveries are reflected in Tax Arrear Reports, there is no software/module exclusively for arrears compilation. Use of an IT system/ computer software/program in the Department for recovery of arrears may be an effective tool. Adequacy of the system, application and procedural controls, availability of MIS reports for management and sharing of information etc. cannot be ensured, in the absence of such IT system /computer software/program.

Audit noticed that in 15 Commissionerates, the Department had no computerised software/program or a system to monitor the extent of arrears of revenue, compliance of prescribed rules and regulations at different level of execution etc., ensuring arrears recovery by the Department in an efficient and effective manner. The information from rest of the 17 Commissionerates was not received as of date.

Lack of IT enabled system has resulted in poor monitoring of recovery process.

We pointed these out between January and March 2016.

The Ministry stated (December 2016) that Department has been pursuing modern IT enabled methods for monitoring the recovery of Tax Arrears. CBEC has devised a Management Information System (MIS) so that information relating to key areas including that of Recovery of Tax Arrears are collected in a reliable, efficient and useful manner. MIS has been designed to be implemented in two stages. Stage 1 involved web based utility for uploading the Monthly Progress Reports by the fields formations made operational w.e.f. June 2015. In stage 2 the manual registers from which information is called out for preparation of MPRs, are to be replaced by digital registers. A working committee for implementation of Second stage has been constituted.

It is expected that the digitization would improve the monitoring of recovery of arrears.

2.10.4 Non-Maintenance of Appeal Register

Board circular No 224/37/2005-CX 6, dated 24 December 2008, prescribed various measures, such as preparation of draft para-wise comments on the appeal filed by the assessee and regular upkeep of register through monthly review of records for effective monitoring of cases pending with legal forums.

We observed (October 2015 to February 2016) that in 49 Ranges under the jurisdiction of nine Commissionerates[17], the Appeal Register was not being maintained.

The Ministry stated (December 2016) as follows :

In case of seven Ranges, it was stated that procedure are being followed by the field formations.

In case of 10 Ranges, it was stated that Appeal registers are now being maintained.

In case of 23 Ranges, it was stated that instructions have been issued to maintain the appeal registers.

In case of nine Ranges, it was stated that Audit point was noted for compliance.

[17] Trivandrum, Kolkata-III, Guwahati, Hyderabad, Vishakapatnam, Gwalior, Raipur, Bhavnagar, Jaipur

2.10.5 Non-Maintenance of Record of Detained Goods

We observed (January 2016) that in Hapur Commissionerate, goods belonging to M/s. Shree Acids & Chemicals Ltd.[18], valuing ₹ 45.87 lakh were detained by the Department, as per Tax Arrear Report for the month of October 2015. The Department, however, was unable to furnish any details or whereabouts of the detained goods.

The Ministry stated (December 2016) that goods valuing ₹ 45.87 lakh were detained by the Department. Meanwhile the assessee went to BIFR and the company was taken over by ARSEC(I) Ltd which auctioned the assets of the company. Shri DK Tyagi who purchased the assets informed that no excisable goods were lying in the factory. The detained goods have apparently been disposed off after removing Department's seal. Opinion has been sought for taking legal action against Sri Tyagi.

Thus, non-disposal of seized goods in time, led to loss of detained goods and non-recovery of any amount. Audit is of the view that instead of taking any legal action against Shri Tyagi, there is a need to fix accountability of its own officials, for non-disposal of seized goods in time.

2.10.6 Non-Review of Demand Registers

Para 7.1 of CBEC's instruction No. 224/37/2005-CX-6, dated 24 December 2008, provides duty and responsibilities of Range Officer regarding maintenance of confirmed demand register. The Range Officer should ensure the correctness of entry in respect of confirm demand, in register and should review every month and a certificate to this effect be endorsed while preparing monthly abstract in the register.

We observed (November 2015 to February 2016) that in 31 ranges under the jurisdiction of five[19] Commissionerates, neither monthly review was done by Range officer nor a certificate to this effect was endorsed in the registers after preparing monthly abstract. Non-review of the demand register leads to ineffective monitoring, enhancing the risk of accumulation of arrears and it becoming non-recoverable.

We pointed these out (between January and March 2016).

The Ministry stated (December 2016) that in six Ranges, monthly review was being done but the same was not being endorsed in registers. Instruction have been issued to all remaining Ranges to review the register monthly and endorsing the same properly.

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[18] OIO no. Clubbing of 25 different OIOs issued during 09 January 2004 to 28 February 2005 (demand: ₹ 54.93 lakh)

[19] Hyderabad-I, Vishakapatnam, Gwalior, Raipur, Jaipur

2.11 Functioning of Task Force for Recovery

2.11.1 Non-Formulation of Strategy by Zonal TAR

The Board constituted (August 2004) a Centralised Task Force (CTF) to co-ordinate, facilitate, monitor and oversee the efforts of Customs and Central Excise field formations, in recovery of arrears. CTF was entrusted with a vital task of reviewing the position of arrears of revenue of Central Excise and Customs and to finalise and implement the strategy for realisation of arrears, with the objective of meeting the targets. This strategy covers all cases before CESTAT, Commissioner (Appeals) and Settlement Commission. Apart from them, in respect of Commissioners' undisputed arrears, CTF was to formulate a collection strategy.

We observed that though the Task Force was entrusted with the finalising and implementing strategies for realisation of arrears, it did not take any such action for realization of arrears. This may be correlated with the fact that huge arrears were pending in CESTAT, due to indefinite timeline for stay, where the CTF had not finalised any planning and issued direction in this regard. As on March 2015, out of total arrears of ₹ 63,925.42 crore[20] (all zones), cases involving arrears of ₹ 44,747.82 crore, ₹ 1,485.15 crore and ₹ 77.07 crore were pending with CESTAT, Commissioner (Appeals) and Settlement Commission respectively which constituted 72.44 per cent of total arrears for recovery.

Even more the arrear of revenue is showing an increasing trend and recovery is decreasing as highlighted in the para 2.7.1.

When we pointed this out (January 2016), the Ministry stated (December 2016) that strategies have been formulated by the TAR, involving a number of initiatives and same are being followed by the Commissionerates and monitored by TAR. In respect of cases before legal entities, the Ministry stated that these are independent entities and departmental instruction can not override them.

The reply is not tenable as Audit has not insisted on directing the legal entities but preparing strategies to pursue the cases with legal entities, by way of request for early hearing, vacation of stay etc as envisaged in TAR functions.

[20] Source: Monthly Performance Report, TAR-CE-I, March 2015

2.11.2 Non-Maintenance of Relevant Records/Data at TAR

Maintenance of relevant data is the basis to formulate strategy and action plan to discharge functions effectively. To discharge its functions, envisaged by O.M. dated 11 August 2004, Zonal TARs are required to maintain data, relating to arrears of field formations under its jurisdiction.

We observed that in TAR Nagpur, the information could not be compiled, due to restructuring and shifting of office.

Information in respect of TAR Chennai and Vadodara were not provided by the Department.

Since the data was not made available, Audit could not comment on the working of these TARs.

We pointed these out in February 2016. The Ministry stated (December 2016) that restructuring of TAR has taken place in August 2015 shifting the responsibility of CC(TAR) to Director General of Performance Management (DGPM) and placing zonal nodal offices under Director General of Tax Payers Services (DGTPS). The transition was taking place at the time of Audit, due to which records could not be furnished to Audit.

Reply is not tenable as the Board should ensure that at the time of change management/transition, functioning of the Department is not hampered.

2.11.3 Non/Inadequate Inspection of the Commissionerates by TAR

OM No. F. No. 296/34/2004-CX 9 (PT), dated 11 August 2004, prescribes test check of the performance of the Commissionerates by initial inspection in all the Commissionerates in his charge and thereafter by periodical inspection/interaction with jurisdictional officers.

We observed (November 2015) that the Nodal Office Kolkata did not carry out any inspection during 2013-14, and only three Commissionerates were inspected, out of 19 Commissionerate, under its jurisdiction, in 2014-15.

Thus, the Nodal Officers, TAR Kolkata did not comply with the Board instructions for inspection of the Commissionerates under its jurisdiction.

Information in respect of TAR Chennai and Vadodara were not provided by the Department, and hence, we are not in a position to comment on working of TAR at Chennai and Vadodara.

We pointed these out (February 2016), the Ministry stated (December 2016) that inspection by nodal offices could not be carried out as there was shortage of staff due to restructuring/transition of TAR.

Reply is not tenable as the objection pertained to period 2012-13 to 2014-15 and restructuring took place in August 2015. Further, the Board should ensure that at the time of change management/transition, functioning of the Department is not hampered.

2.12 Conclusion

Recovery of arrears is not being given due importance despite the mounting arrears. Elaborate instructions of the Board regarding monitoring of arrears, taking effective steps like requesting for early disposal, bunching of cases, and prompt action on finalization of Appeals or vacation of stay to safeguard Government revenue are not being complied with. Special institutional arrangement like creation of Recovery Cells and Task force, have not made any significant impact on the recovery process. In the age of digital environment, the Board has failed to exploit the potential of IT for monitoring of arrears. Even after being pointed out, no accountability is being fixed in specific cases which can act as deterrent.

Chapter III

Effectiveness of Internal Audit

3.1 Introduction

Internal Audit is one of the main compliance verification mechanisms in the Central Excise department in the era of self assessment and is undertaken under Rule 22 of Central Excise Rules, 2002. The Internal Audit function involves selection of assessee units on the basis of risk parameters and scrutiny of records of the assessee in a uniform, efficient and comprehensive manner in accordance with the audit standards. For this purpose, the Central Board of Excise and Customs has laid down detailed guidelines in the form of the Central Excise Audit Manual (CEAM), 2008 for audit of Central Excise, which prescribe detailed processes for conduct of audit.

3.2 Organisational Set-up

The Central Excise department was restructured in October 2014. Before restructuring, Internal Audit was conducted by an Audit Cell in each Commissionerate, headed by an Additional/Joint Commissioner.

After the restructuring, separate Audit Commissionerates were created under the supervision of Directorate General of Audit (DG Audit). Each Audit Commissionerate is assigned jurisdiction over assessees, associated with two or three executive Commissionerates.

The Directorate General of Audit, Customs and Central Excise, New Delhi (headed by Director General) with its seven zonal units at Ahmedabad, Bengaluru, Chennai, Delhi, Hyderabad, Kolkata and Mumbai, each headed by an Additional Director General, is required to ensure the efficient and effective implementation of the audit system (based on EA 2000 Methodology) and also to evolve and improve audit techniques and procedures through periodic review.

In the restructured set-up, Audit Commissionerate comprises of a headquarters, similar to an Executive Commissionerate and subordinate offices, called Circles, similar to Divisions. Each Circle is headed by a Deputy/Assistant Commissioner and comprises of Audit Groups equivalent to the Range offices which have Superintendents and Inspectors.

3.3 Audit Objective

The objective of this audit was to verify the extent of compliance of the Internal Audit Commissionerates with the laid down:-

- Rules/manual/norms/ guidelines and
- Mechanism for the follow-up of audit findings and rectificatory action thereof.

3.4 Audit Criteria

The sources of audit criteria include the provisions/ guidelines in the following Act, Manuals and Circulars of the department:-

a) Rule 22 of Central Excise Rules, 2002
b) Central Excise Audit Manual, 2008
c) Manual for Quality Assurance Review, 2007
d) Notifications, Circulars, Instructions, Guidelines etc issued by the CBEC from time to time

3.5 Scope, Coverage and Audit Methodology

There are 124 executive Commissionerates and 45 Audit Commissionerates all over India, out of which, total 15 Audit Commissionerates were selected for the purpose of Audit.

We examined the Assessee Master Files (AMF), Internal Audit files (IAF), Audit Planning Register (APR) and Audit follow-up register (AFR) etc., for the period 2012-13 to 2014-15 available with selected Audit Commissionerates and Executive Commissionerates.

3.6 Non-Production of Records

During audit, we requisitioned 750 Assessee Master Files, out of which we received 565 Assessee Master Files. We requisitioned 1125 Internal Audit Files, out of which we received 1039 Internal Audit Files. Further, five Commissionerates[21] did not produce APR, AFR for the whole period. In the absence of these records, we are not in a position to comment on extent of compliance by the Internal Audit wing of the department with the laid down procedures.

3.7 Audit Findings

We found instances of non/incomplete maintenance of Assessee Master Files, Audit Planning Register, Audit Follow up Register etc. Further, during scrutiny of sample Internal Audit Files, we noticed, lack of documentation of Desk Review, Audit Plan and Verification Report. The observations are discussed in succeeding paragraphs.

[21] Chennai Audit I, Cochin Audit, Hyderabad Audit, Bhubaneswar Audit and Kolkata Audit II

3.8 Desk Review and Conduct of Field Audit

3.8.1 Assessee Master File

As per chapter 9 of Central Excise Audit Manual (CEAM), 2008, Risk-based audit requires a comprehensive data base for profiling each taxpayer, so that risk factors, relevant to a taxpayer, may be identified in a scientific manner and audit planned and executed accordingly. A comprehensive data base of assessees is an essential pre-requisite for selection of units as well as for undertaking preliminary Desk Review and for effective conduct of audit. As per the CEAM, 2008 this information has to be collected and kept in a separate file for each assessee, called Assessee Master File (AMF). The AMF is to be prepared and updated by the Audit cell in the Commissionerate. The Audit Cell would be responsible for the data management, updation and upkeep of the AMF. This file should invariably be created for each assessee. If not already done, it may be done immediately, in any case, before conduct of next audit.

A list of documents as indicated in Annexure A (Registration application, copies of past three years returns, copy of past three years audits, cost audit/tax audit report and financial statements of past three years) & Annexure B (Details of goods manufactured and exempted, production details, duty payment and issue of SCN of past three years and details of litigation) of the manual is to be kept in each AMF. The AMF is to be maintained both as a hard copy as well as in electronic form.

During the Audit by CERA, it was observed that the required database of the assessees for risk assessment, is not being maintained, as evidenced from the observations mentioned below.

- Though there were 62,993 registered assessees under 14 Commissionerates[22], AMFs were created in respect of only 11,184 assessees (17.75 per cent) for the period 2012-13 to 2014-15. Patna Audit Commissionerate did not intimate the total number of assesses.
- Out of sample of 565 AMFs in selected Commissionerates, 545 files were not complete and did not have all the documents mentioned in Annexure A/Annexure B of the CEAM, 2008.
- In nine Commissionerates[23], the AMFs had been maintained/ updated only after selection of units for Internal Audit.

[22] Bangalore CX Audit (Bangalore I, II,III), Pune Audit-I, Kolkata Audit-II, Chandigarh Audit, Bhopal Audit I, Bhopal Audit II (Raipur), Chennai Audit I (Chennai I & III) , Cochin Audit, Ahmedabad Audit-II, Jaipur Audit, Hyderabad Audit, Bhubaneswar Audit, Delhi Audit-I and Lucknow Audit

[23] Ahmedabad Audit-II, Jaipur Audit, Chandigarh Audit-II, Hyderabad Audit, Bhopal Audit II, Bangalore CX Audit, Kolkata Audit-II , Pune Audit-I and Lucknow Audit

- In all selected Commissionerates AMFs had not been maintained in electronic format as prescribed in the CEAM, 2008.

When we pointed this out (October 2015 to January 2016), the Ministry admitted the facts (December 2016) in all the cases and reported shortage of manpower in newly created Audit Commissionerates, as the main reason for the same. All the Commissionerates noted the audit observation for future compliance. Bhubaneswar Audit Commissionerate further stated that after formation of Audit Commissionerate, the risk factor is calculated centrally by the DG, Audit and made available to all Audit Commissionerates which are relied upon for selection of units for auditing.

In view of practical constraints expressed by almost all the Commissionerates in maintaining AMFs for all the assessees and response of Bhubaneswar I Commissionerate regarding role of DG Audit in calculating risk scores of assessees centrally, the Ministry needs to evolve a practical way of risk profiling of assessees by Commissionerates which will capture the localised risk and can be used in combination with centralised risk scoring done by DG Audit.

3.8.2 Inadequate Desk Review/Audit Plan/ Verification Report with Working Papers

As per para 10.4.1 of CEAM 2008, Desk Review is the first phase of the audit programme. The idea is to gather as much information about the assessee as possible before visiting the unit. In Desk Review, major items to be examined includes Assessee Master File, Trial Balance, Annual Financial Statements (P&L and Balance Sheet), results of last audit, availing of exemptions, returns filed with other authorities like Sales Tax, Income Tax etc. Analysis of this information for preparation of Desk Review and results of the same should be submitted to the Deputy/Assistant Commissioner (Audit) for approval. Further as per para 10.4.14 of CEAM, 2008, Audit Plan containing the exact formulation of issues selected for detailed examination in respect of every assessee and should be finalised after approval by Additional Commissioner/Joint Commissioner (Audit). This is to be prepared in the form of Annexure H of the CEAM, 2008[24]. The audit party conducts the verification (at the assessee premises) by checking the points mentioned in the Audit Plan and the auditor should prepare a "Verification Paper", as prescribed in Annexure I of the CEAM, 2008[25] outlining the audit checks in the Audit Plan, verification done on each check and auditor's observations in brief.

[24] Format of Annexure H is Subject, Specific Issue, Source Document, Back-up Document, Coverage Period and Selection Criteria

[25] Format of Annexure I is Date of verification, Name of the auditor verifying the issue, issue in brief, Ref. No. of Audit Plan, Documents verified, Brief account of the process and extent of verification, Auditor's observation and conclusion in brief, Quantification of revenue, if any and Documents relied upon

To assess the compliance of above three procedures viz. Desk Review, Audit Plan and Verification Report, Audit conducted a test check of 1039 assessee audit files in 15 Audit Commissionerates of central excise and found inadequate documentation in 166 files, in nine Commissionerates[26]. Summary of the observation is given below:

- Desk Review was not found attached or poorly prepared in 53 Internal Audit files in six Commissionerates[27].
- Audit Plan was not found attached or not prepared as per the prescribed format of annexure H of CEAM, 2008 in 81 Internal Audit files in four Commissionerates[28].
- Verification Report was not found attached as mandated in annexure I of CEAM, 2008 in 121 Internal Audit files, in eight Commissionerates[29].

Some of important observations are as under:

- In Cochin Audit Commissionerate (including Cochin, Calicut and Trivandrum executive Commissionerates), we noticed that in 34 out of 67 test checked files, working papers were not prepared. In these cases, the Audit Parties merely prepared a note titled 'Desk Review' indicating the dates of audit and the general areas proposed to be examined during the audit and some basic data like Balance Sheet, Profit and Loss Account, ER-1 returns etc. without any analysis of these records. As Working Papers were not prepared, there was no evidence that there was proper examination of the various financial statements, calculation of various financial ratios and conduct of trend analysis. This indicated that no proper Desk Review was conducted in these cases, affecting the preparation of good quality Audit Plans.
- In Kolkata Audit II Commissionerate, we noticed that out of 51 test checked files, summary result of Desk Review were not available in 6 files, Audit Plan was not available in one file and verification papers were not available in 34 files.
- In Patna Audit Commissionerate (including Patna, Ranchi I & II and Dhanbad executive Commissionerates), we noticed that out of 75 files

[26] Cochin Audit, Bangalore CX Audit, Chandigarh Audit, Hyderabad Audit, Kolkata Audit II, Lucknow Audit, Patna Audit, Pune Audit I and Jaipur Audit.

[27] Cochin Audit, Chandigarh Audit, Bangalore CX Audit, Kolkata Audit II, Lucknow Audit and Jaipur Audit.

[28] Cochin Audit, Chandigarh Audit, Kolkata Audit II and Patna Audit.

[29] Cochin Audit, Chandigarh Audit, Hyderabad Audit, Kolkata Audit II, Lucknow Audit, Patna Audit, Pune Audit I and Jaipur Audit.

test checked, Audit Plan in 45 were not in accordance with the Annexure H of the Manual.

- In Lucknow Audit Commissionerate (including Agra, Kanpur, Lucknow and Allahabad executive Commissionerates), we noticed that out of 75 files test checked files, in nine files, Desk Reviews were not attached and in 39 files, verification papers were not available.

When we pointed this out (October 2015 to January 2016), the Ministry accepted the audit objection in all the cases and stated that (December 2016) necessary rectification measures have been taken/will be taken in due course.

3.8.3 Lapses Not Detected by Internal Audit Parties

Lapses not detected by the Internal Audit detected in Central Excise Revenue Audit (CERA) by CAG of India subsequently

In 7 cases in three audit Commissionerates[30], CERA audit, conducted subsequent to Internal Audit, detected lapses/irregularities involving revenue of ₹ 86.18 lakh which had not been detected by the Internal Audit of the Commissionerate. The observations relates to non/short payment of duty, irregular availing of CENVAT Credit, short payment of interest etc.

The Ministry in its reply (December 2016) accepted the audit objection in six cases and did not furnish reply in one case.

Poor Desk Review and audit planning adversely affected the quality of Internal Audit. Further, due to non availability of Verification Report and working papers, proper accountability of Internal Audit party cannot be ensured.

3.9 Monitoring of Internal Audit Process

3.9.1 Maintenance of Audit Planning Register (APR)

As per para 12.3.1 of CEAM 2008, the Audit Planning Register[31] is to be maintained in the prescribed format. It will facilitate in ensuring: (i) all units allotted to an Audit Group have been audited; and (ii) wherever audit has been completed, the Audit Reports are issued in time and it will also ensure that if audit of any unit could not be taken up, the same can be included in the schedule for the subsequent period.

[30] Bhopal Audit II, Hyderabad Audit and Patna Audit

[31] Format of Audit Planning Register is Sl. No., Name of Unit, IAP No., Propose Month of Audit, Actual date of Audit, Submission of DAR to Audit Cell, Audit Report No, Date of Issue etc.

We observed in nine Commissionerates[32], that the APR was not maintained according to CEAM, 2008 and entries such as date of submission of Internal Audit Report (IAR) to audit cell, Audit Report number and date of issue of IAR were not filled up. Consequently, it was not possible to monitor, from these registers, whether the audit reports were issued on time.

In Chennai I and III Commissionerates, the planning files/registers for the three years (i.e. 2012-13 to 2014-15) were not produced to Audit. Hence, the maintenance of the registers could not be ascertained.

When we pointed this out (October 2015 to January 2016), the Ministry accepted the facts and stated that (December 2016) now the register is being maintained properly, as per new audit manual.

3.9.2 Maintenance of Audit Follow-up Register

As per clause 12.1.3 of CEAM, 2008, the details of audit reports discussed by monitoring meeting, the decision taken in the meeting and the further follow up action should be entered in the Audit Follow up Register[33] (maintained in the format given in the manual), as soon as the audit report is approved. A monthly abstract should be put up by Audit cell to Additional/Joint Commissioner (Audit) by 10th of the following month in the format given the manual.

We observed in nine Commissionerates[34] that most of columns were not filled up in the Audit Follow up Registers.

The 'Monthly Abstract of Audit Follow up Register' was not being prepared/ submitted to Addl. / Joint Commissioner (Audit) in four Commissionerates[35].

When we pointed this out (October 2015 to January 2016), the Ministry accepted the facts and stated that (December 2016) now the register is being maintained properly as per new audit manual.

[32] Delhi Audit-I, Bangalore Audit I, Jaipur Audit, Chandigarh Audit, Lucknow Audit, Patna Audit, Cochin Audit, Bhopal-II, Pune Audit-I

[33] Format of Audit Follow up Register is AR No., Name of Assessee, Range and Division, Reg. No. of Assessee, Period of Audit, Date Audit, IAP No., Para No., whether accepted by MCM, duty involved, Spot Recovery, Recovery other than spot recovery before issuance of SCNs, Division file No. SCN No. & Date, Amount in SCN, Reason of closure of para & date of closure of para.

[34] Ahmedabad Audit-II, Chandigarh Audit, Lucknow Audit, Patna Audit, Pune Audit-I, Delhi Audit-I, Bhopal II , Hyderabad Audit, Chennai Audit I

[35] Lucknow Audit, Patna Audit, Delhi Audit I, Pune Audit-I

3.9.3 Submission of Draft Audit Report (DAR)

According to Para 12.1.3 and Para 12.2.1 read with Board's circular dated 16 February 2000[36], the draft Audit Report should be finalised within the time frame envisaged i.e. within 20-25 days of the commencement of audit in the assessee's Unit in standardized format (*Annexure N* of the manual) along with enclosures to Audit Cell for considering in Monitoring Meeting. Auditor should submit draft Audit Report to the Assistant Commissioner / Deputy Commissioner (Audit), with all enclosures for examination and vetting.

We observed in eight Commissionerates[37] that out of 497 test check files, there was delay upto three months, in respect of 122 draft audit reports and there was delay of more than three months, in submission of 43 draft audit reports.

Few cases are illustrated below:

- In Kolkata Audit II Commissionerate, in case of M/s Young India Prestress Pvt. Ltd., the DAR was submitted with the delay of 241 days.
- In Dhanbad Executive Commissionerate, in case of M/s BCCL., the DAR was submitted with the delay of 193 days.
- In Chandigarh Audit Commissionerate, in case of M/s Amritsar Crown cops (P) Ltd., the DAR was submitted with the delay of 331 days.

When we pointed this out (October 2015 to January 2016), the Ministry accepted the audit objection and stated (December 2016) that the delay in submission of draft audit report was due to delay in receipt of documents/replies or non-cooperation by the assessees.

3.9.4 Evaluation of Audit Reports

Clause 12.2.4 of CEAM 2008, provides that the monitoring committee meeting (MCM) shall also evaluate the working of audit group in respect of each audit. The scoring of audit report and working papers should be carried out by the Commissioner and Addl. Commissioner/Joint Commissioner (Audit). As instructed in Ministry's circular No. 514/10/2000-CX dated 16 February 2000, the scoring committee should score the audit report and the working papers with a view to evaluate the standard of the audit conducted as per Annexure-O of the manual.

We observed in eight Commissionerates[38], that out of a total 580 Internal Audit files, no scoring had been done in 434 files (74.83 per cent). In three

[36] No.514/10/2000-CX

[37] Delhi Audit I, Bangalore CX Audit, Lucknow Audit, Patna Audit, Kolkata Audit II, Chandigarh Audit, Cochin Audit and Pune Audit-I

[38] Jaipur Audit, Bangalore CX Audit, Chennai Audit-I, Delhi Audit-I, Kolkata Audit-II, Lucknow Audit, Patna Audit and Cochin Audit

Commissionerates[39], no scoring had been done in any of the Internal Audit files examined.

When we pointed this out (October 2015 to January 2016), the Ministry accepted the facts and stated that (December 2016) the audit comment is noted for future compliance.

In the absence of scoring of Audit Reports, quality of Internal Audit cannot be evaluated.

3.9.5 Finalization and Issuance of Final Audit Report

As per para 12.2.3 of EA 2000, based on the decision of the MCM, the draft Audit Report should be finalised by the Audit Cell within fifteen days from the date of MCM.

We observed in all selected Commissionerates that out of 1039 test check files, there was delay upto three months in respect of 356 final audit reports and delay of more than three months, in issue of 121 final audit reports.

Few cases are illustrated below:

- In Delhi Audit I Commissionerate, in case of M/s Trimurti Fragrances Pvt. Ltd., the delay was of 206 days. Further, it was also noticed that in 19 files, date of MCM was not mentioned and in one file the date of issue of inspection report was not mentioned. In two files, inspection reports were not available.
- In Kolkata Audit II Commissionerate, out of the selected sample, FARs could not be found on record in any file. Based on the decisions in the MCMs, none of the DARs were found to have been actually converted into FARs.
- In Cochin Audit I Commissionerate, in case of M/s Kancor Ingredients Ltd., the delay was of 589 days in issuing the Final Audit Report, after the conclusion of audit at the assessee's unit.

When we pointed this out (October 2015 to January 2016), the Ministry accepted the audit objection and stated (December 2016) that the delay in finalization of draft audit reports was for want of recovery particulars in respect of the observations accepted by the assessees or compliance of queries raised in MCM committees.

Improper maintenance of Audit Planning and Follow up Registers have direct impact on effective watch on Internal Audit process. Further, non maintenance of timeliness in issuance of FAR to the assessee does not reflect well on the image of the department.

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[39] Delhi Audit I, Jaipur Audit and Kolkata Audit II

3.10 Miscellaneous Issues

3.10.1 Audit of Units Under Computerized Assisted Audit Programme (CAAP)

Central Board of Excise and Customs has taken several initiatives in the past to introduce "e-governance in the department. Computer Assisted Audit Programme (CAAP) is an electronic tool, meant to carry out audit verifications of assessee's electronic business records more comprehensively to meet the objectives of EA-2000. Computer Assisted Audits (CAAs) involve examination and analysis of business (private) records that are maintained electronically. Result Framework Documents (RFD) circulated by DGICCE vide D.O.F No. 503/32/2007/Pt-II dated 05 July 2012 stipulates that all mandatory units are to be audited through CAAP.

We observed in Jaipur Audit Commissionerate, that out of total 464 mandatory units, only 21 units of Central Excise were audited under CAAP during the year 2014-15.

When we pointed this out (December 2015), the Ministry stated (December 2016) that CAAP training for Officers is being organized regularly.

3.10.2 Wrong Depiction of Figures/ Information in Monthly Performance Report (MPR)

We observed the following discrepancies in MPR of Delhi Audit-I Commissionerate for the months of December 2014 and January 2015:-

- In Annexure 7 of MPR of December 2014, amount of closing balance of para was shown as ₹ 94.56 crore instead of ₹ 92.58 crore.
- Annexure 7 (Para B) of MPR of December 2014, showed Nil paras in closing balance instead of correct figure of three paras amounting to ₹ 1.77 lakh.
- Annexure 7 (Para B) of MPR of January 2015, showed Nil paras in closing balance instead of correct figure of three paras involving ₹ 2.83 lakh.

When we pointed this out (November 2015), the Ministry admitted the facts and stated (December 2016) that the discrepancies observed have been rectified and actual figures are being reflected in the prescribed reports. The inadvertent error is regretted.

3.11 Conclusion

Risk based audit has been adversely affected due to non/ incomplete maintenance of Assessee Master Files in most of the cases. Poor Desk Review, audit planning and non-documentation of Verification Reports raise questions on the work done by IAP. Further, Draft Audit Reports are being

finalised with significant delay and no monitoring of the timelines is being carried out. Poor maintenance of records by a wing which is the backbone of the compliance verification mechanism, reflects poorly on the functioning of the department.

Chapter IV

Non-Compliance with Rules and Regulations

4.1 Introduction

We found from test check of records, 35 cases of incorrect availing/utilisation of CENVAT credit, non/short payment of Central Excise duty and non payment of interest, involving revenue of ₹ 73.99 crore. 6 cases are illustrated below and remaining 29 cases are listed in Appendix-II.

4.2 Non/Short payment of Central Excise Duty

We noticed 15 cases where duty was not paid/short paid. Ministry/department admitted observation in all cases and initiated/taken corrective action. 2 cases are illustrated below. Remaining 13 cases are detailed in Appendix-II.

4.2.1 Non-Payment of Central Excise Duty on Loss on Assets Sold/ Discarded/ Scrapped

As per Rule 3(5A) of CENVAT Credit Rules, 2004 (CCR), if the capital goods, other than computers and computer peripherals on which CENVAT credit has been taken, are removed after being used, the manufacturer or provider of output services shall pay an amount equal to the CENVAT credit taken on the said capital goods, reduced by the percentage points, calculated by straight line method, at the rate of 2.5 per cent for each quarter of a year or part thereof, from the date of taking the CENVAT credit. If the amount so calculated is less than the amount equal to the duty leviable on transaction value, the amount to be paid shall be equal to the duty leviable on transaction value. Further, as per Rule 3 (5B) of CCR, if the value of any, input or capital goods before being put to use, on which CENVAT credit has been taken, is written off fully or partially or where any provision to write off fully or partially has been made, in the books of accounts then the manufacturer or service provider, as the case may be, shall pay an amount equivalent to the CENVAT credit taken in respect of the said input or capital goods.

M/s Bajaj Auto Ltd. in LTU Mumbai Commissionerate, is a manufacturer of two and three wheelers falling under chapter heading 87 of Central Excise Tariff Act, 1985. Scrutiny of financial records revealed that during the period from 2010-11 to 2012-13, the assessee had debited its Profit and Loss Account with an amount of ₹ 20.12 crore, ₹ 7.49 crore and ₹ 7.04 crore respectively towards loss on assets sold, demolished, discarded and scrapped. However, no records were maintained to prove whether or not

the central excise duty, if any, involved on these assets had been paid by the assessee, in view of the aforesaid provisions.

When we pointed this out (July 2013), the department (December 2015 and March 2016) while admitting the objection, stated that SCN amounting to ₹ 47.24 lakh, covering the period 2010-11 to 2013-14 and periodical SCN amounting to ₹ 44.01 lakh, for the period 2014-15, had been issued to the assessee.

4.2.2 Short Payment of Duty on Goods Cleared to Sister Unit

Rule 8 read with proviso to Rule 9 of the Central Excise Valuation (Determination of Price of excisable Goods) Rules, 2000 envisages that where excisable goods are not sold by the assessee but are consumed by it or by a related person of the assessee in the manufacture of other articles, the assessable value of such goods shall be one hundred and ten per cent of the cost of production or manufacture of such goods. On belated payments if any, interest is payable as per section 11AA of Central Excise Act, 1944.

M/s Bharat Petroleum Corporation Ltd. Mahul Refinery in Central Excise Mumbai-I Commissionerate is engaged in the manufacture of goods falling under chapter 27 of the CETA 1985. Scrutiny of records during the period 2010-11 to 2012-13 revealed that the assessee had transferred base oil amounting to ₹ 2,640.32 crore to its sister unit i.e. Lube Plant at Wadibunder. However, no costing records to determine the cost of production had been maintained by the assessee. The assessee was required to determine the cost of production as per CAS-4 and pay differential duty accordingly. Thus, non-adoption of correct assessable value on the clearances made to its related unit, resulted in short payment of duty, which was recoverable alongwith interest.

When we pointed this out (December 2013), department intimated (March 2016) that SCN was issued, demanding duty of ₹ 20.16 crore alongwith interest of ₹ 5.07 crore for the period 2010-11 to 2014-15.

4.3 CENVAT credit

We noticed 17 cases of incorrect availing/utilization of CENVAT Credit by the assessees. 3 cases are illustrated in following paragraphs. Remaining 14 cases are detailed in Appendix-II.

4.3.1 Irregular Availing of CENVAT Credit on Exempted Inputs

As per Tariff item 26.01 of Central Excise Tariff Act 1985, read with Notification no. 4/2006 CE dated March 2006 as amended, iron ore attracts nil rate of duty (effective rate of duty) and as per Notification no. 13/2001, iron ore and iron ore concentrates are the same for integrated steel plant. The

tribunal also held that the iron ore mining from mines and then subjecting it to the process of crushing, grinding etc. to remove foreign materials and to concentrates, does not result in the manufacture of any commercial commodity. Hence, no central excise duty is leviable on iron ore concentrates.

Further, as per circular No.940/01/2011 CEX dated 14 January 2011, the manufactures cannot opt to pay the duty in respect of unconditionally fully exempted goods and they cannot avail the CENVAT credit of the duty paid on inputs.

M/s Shah Sponge & Power Ltd and M/s Kohinoor Steel Private Ltd under Jamshedpur Commissionerate, availed and utilised CENVAT credit of ₹ 3.71 crore (₹ 42.84 lakh and ₹ 3.28 crore respectively) on iron ore pellets during 2011-12 and 2012-13. As no central excise duty was leviable on iron ore pellets, the utilization of CENVAT credit was irregular and was recoverable with interest and penalty from the assessee.

When we pointed this out (December 2013), the department accepted the audit observation and stated (November 2015) that SCN amounting to ₹ 11.15 crore, covering the period from April 2010 to January 2015, had been issued to M/s Kohinoor Steel Private Ltd., Jamshedpur while another SCN for issue to M/s Shah Sponge & Power Ltd., Jamshedpur was under process.

4.3.2 Irregular Utilization of CENVAT Credit of Cess

Rule 3(7)(b) of CENVAT Credit Rules, 2004, as amended vide Notification No. 12/2015/Central Excise (N.T.) dated 30 April 2015, prescribes that the credit of Education Cess and Secondary and Higher Education Cess on inputs, capital goods or input services, received in the factory of manufacture of final product on or after 1st day of March 2015, can be utilised for payment of Central Excise Duty. The Notification did not permit utilization of such credit, availed prior to the said date and remaining unutilized in the CENVAT account on the said date.

M/s Bosch Automotive Electronics India Pvt. Ltd. Bengaluru in Bangalore-I Commissionerate, engaged in the manufacture of electronic and electrical equipments, falling under Chapters 85 and 90 of the First Schedule of Central Excise Tariff Act, 1985. The assessee had unutilized balance of ₹ 104.71 lakh of CENVAT credit of Education Cess and Secondary and Higher Secondary Cess as on 1 March 2015, which was availed prior to the said date. The assessee utilised the said credit for payment of Duty during the period from June 2015 to August 2015, in violation of the CENVAT Credit Rules.

When we pointed this out (December 2015), the Commissionerate stated (April 2016) that the assessee reversed CENVAT credit of ₹ 104.71 lakh and

paid (December 2015) interest of ₹ 6.49 lakh on the basis of the audit observation.

4.3.3 Non-Reversal of CENVAT Credit on Destroyed Inputs

As per rule 2(k)(i) of CENVAT Credit Rules, 2004, inputs means all goods used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not. Further, as per rule 3(5B)(i) of the said rules, if the value of any inputs on which CENVAT credit has been taken, is written off fully or where any provision to write off fully has been made in the books of account, then the manufacturer shall pay an amount equivalent to the CENVAT credit taken in respect of the said inputs.

From the profit and loss account for the year 2014-15 of M/s Berry Alloys Ltd. Bobbili in Visakhapatnam Commissionerate, engaged in the manufacture of Silicon Manganese falling under Chapter 72 of CETA-1985, It was noticed that raw material/inputs worth ₹ 227.31 lakh were destroyed in cyclone. However, the assessee did not reverse CENVAT credit availed on these inputs even after receipt of insurance claim. As per the rules ibid, the assessee was required to reverse CENVAT credit of ₹ 28.10 lakh availed on inputs which were destroyed.

When we pointed this out (December 2015), the Commissionerate replied (April 2016) that the audit objection was accepted and required documents were called for, so as to arrive at the value of raw materials stated to have been destroyed.

4.4 Non/Short Payment of Interest

We noticed 3 cases of non-payment of interest by the assessees. One case is illustrated below. Remaining 2 cases are detailed in Appendix-II.

4.4.1 Non-Payment of Interest on Delayed Payment of Duty

As per Rule 8 of Central Excise Rule 2002, duty on the goods removed from the factory during a month shall be paid by 6th of following month and in case of goods removed during March, the duty shall be paid on 31st day of March. Further, Rule 8A(3) of the Rule stipulates that if the assessee fails to pay the amount of duty by due date, he shall be liable to pay the outstanding amount along with interest, at the rate specified by the Central Government vide notification issued under Section 11AA of the Act on the outstanding amount, for the period starting with the first day, after due date, till the date actual payment of the outstanding amount.

M/s Rexam HTW Beverage Can (India) Ltd., in Belapur Commissionerate, disposed off and cleared the capital goods in the month of May 2014 on which central excise duty of ₹ 4.21 crore was payable. However, verification of records revealed that the assessee paid only ₹ 1.41 crore during the clearance of capital goods (May 2014) and debited the balance differential duty of ₹ 2.80 crore in CENVAT register (December 2014). This resulted in delayed payment of duty on which interest of ₹ 27.85 lakh was to be recovered.

When we pointed this out (March 2015), department admitted the para (June 2015) and stated that the assessee had paid interest of ₹ 27.85 lakh in March 2015.

Chapter V

Effectiveness of Internal Controls

5.1 Internal Control

Internal control is an integral process carried out by an entity's management and personnel which is designed to address risks and provides reasonable assurance that following general objectives are achieved:

- executing orderly, ethical, economical, efficient and effective operations;
- fulfilling accountability obligations;
- complying with applicable laws and regulations;
- safeguarding resources against loss, misuse and damage.

5.2 Audit findings

Central Excise Department exercise internal controls by way of two functions i.e. Scrutiny of Returns and Internal Audit. We found from test check of records, 56 cases of failure of internal control, having revenue implication of ₹ 104.68 crore, which are illustrated below.

5.3 Non-Conduct of Internal Audit

We noticed 9 cases, where Internal Audit was due but not conducted by the Department, which are illustrated below.

5.3.1 Short Payment of Central Excise Duty

5.3.1.1 Short Payment of Duty Due to Undervaluation

As per section 4(1)(b) of Central Excise Act, 1944, read with Rule 7 of Central Excise (Valuation) Rules, 2000, where the excisable goods are not sold by the assessee at the time and place of removal but are transferred to a depot, premises of a consignment agent or any other place or premises (hereinafter referred to as "such other place") from where the excisable goods are to be sold after their clearance from the place of removal and where the assessee and the buyer of the said goods are not related and the price is the sole consideration for the sale, the value shall be the normal transaction value of such goods sold from such other place at or about the same time and, where such goods are not sold at or about the same time, at the time nearest to the time of removal of goods under assessment.

M/s. Esquire Multiplast Pvt. Ltd., Kalamasserry, under Cochin Commissionerate, engaged in manufacture of plastic furniture, toys, articles of conveyance and packing goods of plastic sold these goods through the factory gate as well as through their depots. The assessee was paying Central Excise duty for all clearances including that from depots, on the basis of value as per invoices issued from the factory. The goods transferred to the depots were sold at a higher price and the average depot price was higher than the invoiced price for sale from factory by 8.47 per cent. As per trial balance for the year 2012-13, value of clearance of depot was ₹ 16.67 crore and value of goods cleared from depot was ₹ 18.08 crore. This resulted in undervalue of goods and short payment of duty of ₹ 17.45 lakh.

Though the assessee fell in biennial category for Internal Audit, no Internal Audit was conducted since December 2011.

When we pointed this out (March 2014), the Ministry admitted the observation (September 2016) and stated that the assessee had deposited amount of ₹ 18.87 lakh with interest of ₹ 3.62 lakh. On the lapse of Internal Audit, it stated that audit was not conducted due to manpower constraints.

5.3.1.2 Short Payment of Excise Duty

Rule 8 of Central Excise Rules, 2002, provides that Central Excise Duty should be paid on monthly basis by 5th day of succeeding month, (6th day of the following month in case of e-payment through internet banking) except for the month of March, when duty is to be paid by 31st March. Further, as per Rules 8 (3A) of the above mentioned rule as amended vide notification no. 19/2014-CE (NT) dated 11 July 2014, if the assessee fails to pay the duty declared as payable by him in the return, within a period of one month from the due date, then the assessee is liable to pay the penalty at the rate of one percent, on such amount of the duty not paid, for each month or part thereof calculated from the due date, for the period during which such failure continues.

Audit examination of records along with ER-1 returns of M/s Trading Engineers (International) Ltd Unit-II, Lakeshwari, Roorkee under Dehradun Commissionerate, revealed (May 2016) that during the month of March 2016, the assessee cleared finished goods having assessable value of ₹ 11.01 crore on which Central Excise duty of ₹ 1.38 crore was payable. We noticed that the assessee paid excise duty of ₹ 34.55 lakh only, during the month of March 2016. Thus, the assessee short paid excise duty, to the extent of ₹ 1.03 crore.

Although this unit was to be mandatorily covered under Internal Audit, the Internal Audit Wing of the Department did not conduct audit during 2015-16.

When we pointed this out (May 2016), the Ministry stated (October 2016) that the assessee has deposited the excise duty of ₹ 1.03 crore along with interest of ₹ 2.08 lakh and penalty of ₹ 2.06 lakh. On not conducting of Internal Audit, it stated that unit was audited upto November 2014 and selected for next audit in November 2016.

5.3.2 Irregular Availing of CENVAT Credit

5.3.2.1 Irregular Availing of CENVAT Credit on Input

As per Rule 2(k) of CENVAT Credit Rules, 2004, "input" means all goods used in the factory by the manufacturer of the final products. Sub-rule (k) of the Rule defines "Final products" as excisable goods manufactured or produced from input, or using input service. Further Rule 3(1) of CENVAT Credit Rules, 2004 allows a manufacturer of final products to take credit of specified duties paid on inputs.

M/s. Baramati Agro Ltd., in Pune III Commissionerate, manufactured both excisable products viz. Sugar, Molasses and Denatured Ethyl Alcohol falling under chapter heading 17 and 23 of CETA 1985 and non-excisable products such as Rectified Spirit, Extra Neutral Alcohol (Un-denatured Ethyl Alcohol and Un-denatured Spirits). Scrutiny of records revealed that the assessee manufactured non-excisable goods from both captively consumed Molasses and Molasses purchased from outside parties. Further scrutiny revealed that the assessee availed CENVAT credit on the duty paid on Molasses purchased from outside parties. As the Molasses were used for the manufacturing of non-excisable goods, the availment of CENVAT credit on the purchased Molasses was not in order, in view of above mentioned provisions.

Further, during the verification of records of Range V (Walchand Nagar) of the said Commissionerate, audit noticed that SCN of ₹ 14.95 crore was issued to the assessee in December 2014, covering the period from November 2009 to March 2014, for payment of duty for denial of exemption under notification on captively consumed Molasses, on the ground that these Molasses were used for manufacturing non-excisable goods i.e. Rectified Spirit, Extra Neutral Alcohol. It was also noticed that the unit being the mandatory unit for audit, it was not audited for the period from 2012-13 to 2014-15.

When we pointed this out (September 2015), the Ministry contested the observation and stated (December 2016) that similar issues have been decided by CESTAT and Karnataka High Court. On the lapse of internal audit, it stated that internal audit could not be completed due to time constraints.

If the decision of Karantaka High Court is accepted by the Ministry, the same needs to be clarified to all field formations for similar compliance.

5.3.2.2 Irregular Availing of CENVAT Credit on Input Services

As per Rule 2 (1) of CENVAT Credit Rules, 2004, following services have been excluded from the purview of the definition of 'input service':

(i) Service portion in the execution of works contract and construction services, including service listed under clause (b) of section 66E of the Finance Act, 2004, in so far as they are used for construction or execution of works contract of a building or a civil structure or a part thereof or laying of foundation or making of structure for support of capital goods

(ii) Service provided by way of renting of a motor vehicle, in so far as they relate to a motor vehicle which is not a capital goods

(iii) Service of general insurance business, servicing, repair and maintenance, in so far as they relate to a motor vehicle which is not a capital goods and

(iv) Such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as leave of home travel concession, when such services are primarily used for personal use or consumption of an employee.

Audit examination of records of M/s Indian Oil Corporation Ltd. Refinery Division, Barauni, in Patna Commissionerate revealed (March 2016) that the assessee availed and utilised CENVAT credit of ₹ 23.35 lakh during 2014-15 on Service Tax paid for civil works e.g. barricading, construction of rooms, renovation of canteen. Administrative buildings and toilets, repair and maintenance, painting works and maintenance of garden etc. Since all these services do not fall within the definition of the input service, CENVAT credit of Service Tax paid on these services, was not admissible.

Although M/s Indian Oil Corporation Ltd. Barauni was a mandatory unit, the Internal Audit of the Commissionerate, did not conduct audit for the period 2014-15.

When we pointed this out (March 2016), the Ministry admitted the observation (November 2016) and stated that SCN for 23.59 lakh had been issued. On not conducting of the Internal Audit, it stated that Audit Commissionerate, Patna had planned to conduct audit of the unit in 2016 covering the period of 2014-15 also.

5.3.2.3 Irregular Availing of CENVAT Credit on Ineligible Documents

Rule 3(1) read with Rule 9 of the CENVAT Credit Rules, 2004 prescribes the conditions and documents, on which a manufacturer or producer of final

products or provider of output service, shall be allowed to take credit of duties specified there under, paid on any input or capital goods received in the factory of manufacturer of final product or premises of the provider of output service.

M/s Corrtech International (P) Ltd., a service provider falling under jurisdiction of Ahmedabad Service Tax Commissionerate, availed CENVAT credit (August 2010 to October 2012) of capital goods, without documents, as specified in CENVAT Credit Rules, 2004. This resulted into irregular availment of CENVAT credit to the tune of ₹ 14.94 lakh.

Preventive wing of the Department, visited the assessee premises and covered period upto August 2013, but failed to detect the issue. Moreover, audit of the assessee has not been conducted by the Department in due time.

When we pointed this out (March 2015), the Ministry admitted the observation (December 2016) and stated that the assessee had reversed the CENVAT credit of ₹ 14.94 lakh. It further stated that preventive wing is restricted to specific issues relating to intelligence/information available, it can not be equated to audit. It further stated that unit was not selected for audit due to preventive investigation and shortage of staff.

5.3.2.4 Irregular Availing of CENVAT Credit of Education Cess and Secondary and Higher Education Cess

(vi) Rule 3(1) of CENVAT Credit Rules, 2004 provides that a manufacturer of final products shall be allowed to take credit of specified duties paid on any input or capital goods received in factory of manufacturer of final products on or after 10 September 2004.

Government of India vide notification number 13/2012-Customs and 14/2012-Customs, dated 17 March 2012, exempted the imported goods from payment of Education cess and Secondary and Higher Education cess, leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975.

In Range IV under Haldia-II Division of Haldia Commissionerate, checking of returns revealed that M/s Ennore Coke Ltd. availed CENVAT credit of Education cess and Secondary and Higher Education cess on imported inputs during April 2013, September 2013 and November 2013, which was exempted vide notifications ibid. This resulted in irregular availing of CENVAT credit of ₹ 12.49 lakh which was recoverable from the assessee, along with applicable interest.

Further, the assessee is a mandatory unit and was to be covered annually in Internal Audit, as per Departmental norms. But the Department did not audit

the assessee since March 2013. Thus, the lapse remained undetected until pointed out by CERA.

When we pointed this out (March 2015), the Ministry admitted the observation (November 2016) and stated that the assessee had reversed the CENVAT credit of 12.49 lakh with interest of ₹ 4.32 lakh. On the lapse of Internal Audit, it stated that audit was not conducted, due to manpower constraints.

5.3.3 Short Reversal of CENVAT Credit

According to Rule 6 (2) of CENVAT Credit Rules, 2004, manufacturer availing CENVAT credit of inputs or input services and manufacturing such final products which are chargeable to duty as well as exempted goods, shall maintain separate accounts for receipt, consumption and inventory of inputs and input services and take CENVAT credit only on that quantity of input or input service, which are intended for use in the manufacture of dutiable goods. Rule 6(3) states that the manufacturer, opting not to maintain separate accounts, shall either pay an amount equal to six per cent of value of exempted goods and services; or pay an amount as determined under sub-rule (3A). Sub-rule (3A) stipulates provisional reversal of CENVAT credit by the manufacturer in each month and at the end of the financial year, actual reversal of CENVAT credit attributable for manufacturer of exempted goods.

M/s Cipla Ltd. Kumrek in Siliguri Commissionerate manufactured both dutiable and exempted pharmaceutical products availing credit on common inputs and input services. The assessee opted not to maintain separate accounts for inputs and input services and thus exercised option (ii) of rule 6(3) of CENVAT Credit Rules, 2004. In each month the assessee provisionally paid the amounts under the said rule and at the end of the financial year, determined and paid the differential amount. During the year 2013-14, the assessee availed CENVAT credit of ₹ 590.29 lakh on input services on which proportionate credit of ₹ 38.66 lakh was to be reversed. The assessee provisionally reversed ₹ 7.28 lakh and at the end of the year determined the amount of input service credit attributable to exempted goods as per the formula u/r 6(AS) and reversed an amount of ₹ 1.83 lakh, although the assessee was actually liable to pay differential amount of ₹ 31.38 lakh. This resulted in short reversal of CENVAT credit of ₹ 29.55 lakh, which was recoverable from the assessee along with interest as applicable.

The assessee is a mandatory unit and to be annually audited but the unit was not audited by the Department since December 2013. Thus, the lapse remained undetected until pointed out by CERA.

When we pointed this out (March 2015), the Ministry admitted the observation (November 2016) and stated that SCN for ₹ 52.05 lakh had been issued to the assessee. On the lapse of Internal Audit, it stated that audit was not conducted due to manpower constraints.

5.3.4 Non/Short Payment of Interest

5.3.4.1 Non-Payment of Interest

Rule 3 of Section the CENVAT Credit Rules, 2004 allows a manufacture or provider of output service to avail CENVAT credit of Central Excise duty/ Service Tax paid on inputs, capital goods or input service provided that said inputs, capital goods, input service should be used in manufacture of dutiable products or providing taxable output service. Further, Rule 14 of the CENVAT Credit Rules, 2004 provides that interest is liable to be paid on wrongly availed and utilized CENVAT credit.

M/s. Jai Corp Limited, under Commissioner of Central Excise, Daman, reported loss of plant and machineries, stock of raw materials, finished goods etc., due to fire, which broke out in the factory on 11 October 2012 and intimated details of credit availed on the inputs and capital goods destroyed in fire, vide its letter dated 8 October 2013. CENVAT credit of ₹ 2.66 crore, involved in the goods destroyed in the fire, was paid by the assessee on 7 October 2013 through PLA and CENVAT account, after a period of around one year. However, the assessee did not pay applicable interest on the belated reversal of CENVAT credit, availed and utilized.

Moreover, audit of assessee was not conducted by the Department in due time.

When we pointed this out (July 2015), the Ministry admitted the observation partially (November 2016) and stated that interest actually payable was ₹ 38.34 lakh which has been paid by the assessee. For not conducting the Internal Audit, no reply was furnished by the Ministry.

5.3.4.2 Short Payment of Interest

According to Notification No. 46/2001 CE (NT) dated 26 June 2001, Central Government extended the facility of removal of excisable goods from the factory of production to a warehouse, without payment of duty. As per para 10.3 of CBEC Circular No. 581/18/2001 CX dated 29 June 2001 read with Notification No. 46/2001-Central Excise (NT) dated 26 June 2001, when goods were diverted for home consumption with the permission of jurisdictional Deputy/Assistant Commissioner, interest should be paid at the rate of 24 per cent per annum on the duty payable, calculated from the date of clearance

from the factory of production, till the date of payment of duty and clearance.

M/s. Bharat Petroleum Corporation Ltd. – Kochi Refinery (BPCL-KR), under Cochin Commissionerate, cleared 8958 KL of HVFO (Furnace Oil) to Bunkering Terminal, Jawaharlal Nehru Port Trust, Sheva, Navi Mumbai, for export warehousing. This was intended for sale as bunker fuel for vessels on foreign run/voyage. Out of the 8958 KL, quantities of 1025 KL and 3454 KL were diverted for home consumption on 13 February 2014 and 03 March 2015 respectively, by paying duty and interest. However, interest was paid at the rate of 18 per cent as against 24 per cent payable in the case of clearance of 3454 KL. This resulted in short payment of interest of ₹ 22.23 lakh.

Even though the assessee was a mandatory unit for Internal Audit, no Internal Audit was conducted since March 2014.

When we pointed this out (September 2015), the Ministry admitted the observation (September 2016) and stated that the assessee had deposited amount of ₹ 22.23 lakh. On the lapse of Internal Audit, it stated that audit was not conducted due to manpower constraints.

5.4 Incomplete Coverage of Period by Internal Audit

Central Excise Audit Manual 2008, stipulates that audit should extend upto one completed month preceding the date of current audit. We noticed 2 cases where audit was not extended to the adequate period, which are illustrated below.

5.4.1 Irregular Availing of CENVAT Credit on Invalid Documents

Rule 9 of CENVAT Credit Rules, 2004 read with notification no. 26/2014-C.E.(N.T.) dated 27 August 2014, provided that CENVAT credit shall be allowed on a Service Tax Certificate for Transportation of goods by Rail (STTG Certificate) issued by the Indian Railways, along with the photocopies of the railway receipts mentioned in the STTG Certificate.

M/s Maithan Alloys Ltd and M/s Impex Ferro Tech Pvt. Ltd. in Bolpur Commissionerate, availed CENVAT credit of ₹ 9.39 lakh and ₹ 6.05 lakh respectively during August 2014 to March 2015, on the basis of photocopy of Railway receipt but did not have the statutory STTG Certificates required for such credits. This resulted in irregular availing of CENVAT credit of ₹ 15.44 lakh, which was recoverable along with interest.

Both the assessees were mandatory units and Department audited the first unit during May 2015 and second unit during March 2015, both covering the period 2013-14, although the provisions of Central Excise Audit Manual 2008,

stipulates that audit should extend up to one completed month preceding the date of current audit. The lapse remained undetected until pointed out by CERA.

When we pointed this out (September 2015), the Ministry while accepting the observation intimated (December 2016) that irregularly availed credits were reversed by the assessees in September 2015. Further, it stated that the auditors conducted the audit for the period as per the plan which was approved for 2013-14 and observation raised by CERA pertains to 2014-15. It further added that the objection of CERA has been noted for future guidance.

The reply of the Ministry as regards to the non-coverage of the issue by the internal audit is not acceptable as Central Excise Manual 2008, stipulates that audit should extend upto one completed month, preceding the date of current audit.

5.4.2 Non-Reversal of CENVAT Credit

Rule 6(3) of the CENVAT Credit Rules, 2004 provides that if CENVAT credit is availed on common inputs/input services, which are used in manufacture of exempted goods as well as in dutiable goods and separate accounts for inputs are not maintained, then the manufacturer shall either pay an amount equivalent to six per cent (five per cent upto 31 March 2012) of value of the exempted goods or pay an amount equivalent to the CENVAT credit attributable to inputs and input services used in or in relation to the manufacture of exempted goods or provision of exempted services.

M/s Dabur India Ltd., in Kolkata-V Commissionerate (under erstwhile Kolkata-VII Commissionerate) cleared the exempted goods Honey/ Madhu amounting to ₹ 14.39 crore during 2011-12 using common input services like BAS, Management Consultant Services, CFA services etc. for the manufacture of said exempted goods. However, the assessee neither maintained separate accounts for inputs and/or input services nor paid amount equivalent to six/five per cent of the value of the exempted goods. This resulted in non-payment of ₹ 71.95 lakh which is recoverable along with interest at applicable rates.

The assessee was a mandatory unit and was audited by Internal Audit in December 2011. Provisions of Central Excise Audit Manual 2008, stipulates that audit should extend upto one completed month preceding the date of current audit. However, the lapse remained undetected until pointed out by CERA.

When we pointed this out (August 2012), the Ministry while accepting the observation intimated (December 2016) that three show cause notices have been issued periodically covering the entire period of lapse and out of these,

in two SCNs demand have been confirmed. As regards failure of Internal audit, it stated that internal audit was conducted for the period 2011-12 in December 2012, during which the subject issue was detected and necessary action in form of SCNs was initiated.

The reply of the Ministry is not relevant to the audit observation as audit pointed out non-detection of issue during the internal audit conducted in December 2011.

5.5 Non-Detection of Assessees' Lapses by Internal Audit

We noticed 41 cases where Internal Audit was conducted by the Department but they failed to detect the lapses committed by the assessees, which are illustrated below.

5.5.1 Non-payment of Duty

5.5.1.1 Non-payment of Differential Duty

According to Rule 4 of Central Excise Rules, 2002, every person who produces or manufactures any excisable goods, shall pay duty leviable on such goods in the manner provided in Rule 8. Rule 6 states that the assessee shall himself assess the duty payable on any excisable goods. As per Rule 5, the rate of duty, applicable to any excisable goods, shall be the rate in force on the date, when such goods are removed from factory. Section 11 A (1) (b) (i) of Central Excise Act 1944 stipulated that, where any duty of excise has not been levied or paid or has been short levied or short paid or erroneously refunded, for any reason other than fraud or collusion etc., the person, chargeable with the duty may, before service of notice under clause (a), pay on the basis of his own ascertainment of such duty; the amount of duty along with interest payable thereon under section 11 AA.

M/s. Traco Cables Co. Ltd., a Central Excise assessee in Cochin Commissionerate, manufacturing Electrical wires, cables, telephone cables etc., did not pay an amount of ₹ 25.81 lakh being differential duty which became payable on account of upward revision of sale price of goods, sold to Kerala State Electricity Board (KSEB) and M/s. BESCOM, during the period 2013-14 to 2014-15. Interest was also payable.

Even though Internal Audit covering the period up to March 2014 was conducted in July 2014, the lapse detected by CERA was not found out.

When we pointed this out (August 2015), the Ministry admitted the observation (October 2016) and stated that the assessee had paid (September 2015 and November 2015) differential duty of ₹ 25.81 lakh along with interest of ₹ 5.32 lakh. On the lapse of Internal Audit, it stated that Audit

was conducted for the period April 2013 to March 2014, while most of the sales of goods, amounting to 23.80 lakh, as reflected in CERA audit observation, took place between April 2014 to November 2014. Sale of only ₹ 2.02 lakh pertained to the period covered by Internal Audit. However, clarification had been sought from the Internal Audit Party regarding non-detection of the lapse.

5.5.1.2 Non-Payment of Duty on Clearance of Capital Goods

Rule 3(5) of the CENVAT Credit Rules provide that if the capital goods on which credit has been taken are removed after being used, the manufacturer or provider of output service shall pay an amount equal to the CENVAT credit, taken on the said capital goods reduced by 2.5 per cent for each quarter of a year. Further, if the capital goods are waste and scrap, the manufacturer shall pay an amount equal to the duty leviable on transaction value.

M/s Bilag Industries Ltd. (now Bayer Vapi Pvt. Ltd.) under Valsad Commissionerate, which used to avail CENVAT credit on its Capital goods, had shown 'Deletion of Plants and Machineries' amounting to a total ₹ 12.79 crore, in its Balance Sheet for the period 2008-09 to 2011-12. Since the audited entity had availed CENVAT credit on its capital goods, duty was required to be paid on their clearance as scrap or capital goods as such. However, it could not furnish evidence of any duty payment, made on the amount of the plant and machinery, deleted from its accounts. We brought this to the notice of the Department (December 2012) with a request to ascertain the actual amount of duty payable on the scrap and above plant and machinery.

When we pointed this out (December 2012), the Ministry admitted the observation (November 2016) and stated that two SCNs issued to the assessee had been adjudicated, resulting in confirmation of demand of ₹ 1.67 crore. The assessee appealed in CESTAT, which was pending. On the lapse of Internal Audit, the Ministry stated that the explanation, called from the officers, would be examined for further action.

5.5.1.3 Non-payment of Duty on Intermediate Goods

Rule 12BB of Central Excise Rules, 2002, permits large taxpayers to remove excisable goods from one registered premises to another registered premises, without payment of duty, provided that the final products manufactured out of such intermediate products, are cleared on payment of duty, within a period of six months, from the date of receipt of intermediate goods, in the recipient premises. In case such final products are not cleared by the recipient premises within the stipulated period of six months, duty on the said intermediate goods shall be paid by the recipient with interest.

M/s Karnataka Soaps and Detergents Ltd. Bangalore, under Large Taxpayer Unit (LTU) Bangalore, procured sandalwood oil fraction from its Sandalwood Oil Division, Mysore, without payment of duty under Rule 12BB ibid, for manufacture of final products. Audit scrutiny revealed that out of 451.704 kg of oil (including opening balance of 114.904 kg as on 1st April 2012), received during the period upto August 2016, only 19.491 kg was utilised for manufacture, within the stipulated time of six months, 285.139 kg was utilised beyond six months and the balance of 147.074 kg was yet to be utilised (August 2016). As such, the assessee was liable to pay duty of ₹ 19.94 lakh alongwith interest on the unutilized oil, besides interest on oil utilised beyond six months. The Internal Audit Wing of the LTU, Bangalore did not detect this non-payment during its audit (July-September 2014), covering the period upto March 2014.

When we pointed this out (May 2015), the Ministry admitted the observation (November 2016) and stated that SCN for ₹ 19.94 lakh had been issued to the assessee. Ministry further stated that the assessee is complying with rule 12BB as the final product is being cleared within six months. Though, a residual quantity of sandalwood oil fraction is lying in stock beyond a period of six months, but it is only a procedural lapse, as if the duty is to be paid by the Mysore unit, the credit of the same can be availed by the Bangalore unit.

The reply is not tenable as the period of six months has been prescribed by the Board to give the manufacturer ample time to clear the manufactured goods. The assessee should follow the procedure beyond this period and Department should ensure compliance, even if the process is revenue neutral.

5.5.1.4 Non-Payment of Duty on Clearance of Exempted as Well as Dutiable Goods

As per Rules 6(2) of the CENVAT Credit Rules, 2004 where a manufacturer or provider of output service avails CENVAT credit in respect of any inputs or input services and manufacturers such final products or provides such output service which are chargeable to duty or tax as well as exempted goods or services, then the manufacturer or provider of output service maintain separate accounts for receipt, consumption and inventory of input and input service, meant for use in the manufacture of dutiable final products or in providing output service and the quantity of input meant for use in the manufacture exempted goods or services. Further, as per rule 6(3) if the assessee does not maintain a separate account, then the assessee has to pay an amount equal to 5 per cent up to (16 March 2012) and 6 per cent from 17 March 2012 of the value of the exempted goods.

M/s Domino Printech India Ltd. Plot No. 299 Sector 6, IMT Manesar, Gurgaon was engaged in the manufacturing of Printing-ink-reseroir, Printing-ink-cartridge, printing ink content, printing ink made-up-cartridges and wash-solution under chapter head 32159090 and 29141990. During preliminary scrutiny of ER-I for the year 2011-12 and 2012-13, it was noticed that the assessee was manufacturing and clearing dutiable as well as exempted goods and no separate account was maintained of common input used in or in relation to manufacturing of dutiable and exempted goods. The assessee cleared exempted goods valuing ₹ 27.45 crore in 2011-12 and ₹ 31.11 crore in 2012-13, but the assessee did not pay the duty amounting to ₹ 1.37 crore (₹ 27.45 crore X 5 per cent) in 2011-12 and ₹ 1.86 crore (₹ 31.11 crore X 6 per cent) in 2012-13. This resulted into non-payment of duty to the tune of ₹ 3.24 crore. Internal Audit, though carried out for the period 2011-12 and 2013-14, had not pointed out the lapse, detected by CERA.

When we pointed this out (November 2013), the Ministry while not accepting the observation, intimated (December 2016) that the inputs used for manufacture of dutiable and exempted goods are different. Therefore, the assessee is not availing CENVAT credit on inputs used in exempted goods.

The reply of the Ministry is silent on the aspect of non detection of the lapse by the internal audit and obligation on the part of assessee to maintain separate accounts.

5.5.2 Short Payment of Duty

5.5.2.1 Short Payment of Duty Noticed Due to Discrepancies in the Sales Amount

According to sub-section 1(a) of Section 3 of the Central Excise Act, 1944, Central Excise duty shall be levied and collected on all excisable goods which are produced or manufactured in India as, and at the rates, set forth in the First Schedule to the Central Excise Tariff Act, 1985.

M/s Bilag Industries Pvt. Ltd. (now Bayer Vapi Pvt. Ltd.), under Valsad Commissionerate, was having a DTA unit and a hundred per cent EOU unit at Vapi for which it was maintaining a consolidated balance sheet. We noticed that Balance Sheet and ER-1 returns of the audited entity depicted abnormal variations in the sales figures (including export of the units) as detailed below:

Table 3.1: Sales as per Balance Sheet

(Amount in ₹)

Year	2008-09	2009-10	2010-11	2011-12
Domestic Sales	2,02,45,92,104	2,02,16,42,330	2,38,32,02,414	885,60,00,000 (Bifurcation not given)
Export	6,45,97,74,670	5,86,79,62,966	5,08,58,30,464	
Total	8,48,43,66,774	7,88,96,05,296	7,46,90,32,878	885,60,00,000

Table 3.2: Sales as per ER-1

(Amount in ₹)

Year	2008-09	2009-10	2010-11	2011-12
Domestic Sales	1,74,65,89,247	1,49,29,98,057	1,79,39,88,348	2,13,93,36,279
Export	3,14,99,37,217	3,60,93,29,323	3,71,93,05,348	4,37,04,79,245
Total	4,89,65,26,464	5,10,23,27,380	5,51,32,93,696	6,50,98,15,524

The assessee could not provide reconciliation of the discrepancy in sales figures of Balance Sheet with the ER-1 and ER-2 returns. Department was requested (December 2012) to verify the discrepancy noticed and recover the differential duty payable, if any.

Internal Audit was conducted for the period upto 2011-12 but failed to detect the observation noticed by the CERA audit.

When we pointed this out (December 2012), the Ministry admitted the observation (November 2016) and stated that the demand of ₹ 7.62 crore had been confirmed (March 2016). Assessee's appeal against the order was pending in CESTAT. Ministry further stated that lapse on the part of Internal Audit was regretted and explanation will be sought from the concerned officer.

5.5.2.2 Short Payment of Duty Due to Incorrect Rate of Duty

(i) Sl. No. 292A of Notification No.12/2012-CE dated 17 March 2012, as amended by Notification No.12/20013-CE dated 1 March 2013, prescribes 14 per cent basic excise duty on clearance of bus chassis and other goods falling under Tariff item 87060029.

M/s Volvo India Pvt. Ltd. Bangalore, a large taxpayer unit in LTU Bangalore Commissionerate, manufactures tippers, tractors, trailers and chassis falling under Chapter 87 of the First Schedule of Central Excise Tariff Act, 1985. Audit of the Central Excise records of the assessee revealed that the assessee

cleared bus chassis under Tariff item 87060029 by paying basic excise duty at the rate of 13 per cent instead of at 14 per cent, during the period from March 2013 to December 2013 on assessable value of ₹ 28.95 crore, resulting in short payment of duty (including cess) of ₹ 29.82 lakh.

Though the Internal Audit Wing of the Large Taxpayers Unit, Bangalore audited the unit twice (during June-July 2013 and September-October 2015), this short payment of duty was not detected.

When we pointed this out (January 2016), the Ministry stated (October 2016) that the assessee paid duty of ₹ 29.82 lakh and interest of ₹ 13.76. On the lapse of Internal Audit, the Ministry stated that Internal Audit was conducted during June-July 2013 and covered the period upto March 2013, hence, the short payment was not detected. Subsequent Internal Audit for the period April 2013 to March 2015 was finalized in March 2016. As, CERA audit was conducted in January 2016 and short payment of duty was already covered by it, same was not included by Internal Audit.

The reply of the Ministry is not tenable as Internal Audit for the period April 2013 to March 2015 was completed on 8 October 2015 which failed to detect and the short payment was not detected. Only, the meeting of monitoring committee was conducted in March 2016 to discuss and finalise the audit observation.

Thus, Internal Audit not only failed to detect the lapse of the assessee, it also tried to give wrong facts to hide its lapse. Ministry may examine the facts and suitable action may be taken against the erring officials.

(ii) As per Rule 5 of Central Excise Rules 2002, the rate of duty of tariff value applicable to any excisable goods, shall be the rate or value in force on the date when such goods are removed from a factory or a warehouse, as the case may be.

During the course of audit of Central Excise records of the office of the Superintendent of Central Excise, Gandhinagar Range, it was noticed from the ER-1 returns of M/s Nucon Aerospace Pvt. Ltd., for the period from February 2014 to April 2014, that the assessee paid central excise duty at the rate of 10.30 per cent, instead of at the rate of 12.36 per cent, on the goods falling under CETSH-84792090. This incorrect application of rate of duty, resulted in short payment of duty of ₹ 41.62 lakh (as detailed in Addendum-V) which needs to be recovered from the assessee along with interest.

Though the ACES had thrown this error in Preliminary scrutiny, the Department did not initiate any action. Further, this aspect was not noticed by the Department, even in the Internal Audit during August 2014.

When we pointed this out (July 2015), the Ministry, while accepting the observation, stated (December 2016) that the assessee have paid duty of ₹ 41.62 lakh along with interest of ₹ 14.02 lakh. On the lapse of internal audit, the Ministry stated that issue could not be detected due to randomly selected months. Further, it stated that assessee suppressed the information while filing his returns.

5.5.2.3 Short Payment of Duty on Clearing Used Capital Goods

Rule 3(5) of the CENVAT Credit Rules provide that if the capital goods on which credit has been taken, are removed after being used, the manufacturer or provider of output service, shall pay an amount equal to the CENVAT credit taken on the said capital goods, reduced by 2.5 per cent for each quarter of a year. As per proviso under Rule 3(5A) of CENVAT Credit Rules, 2004, if the amount calculated under Rule 3(5A) (b) of the rule ibid, is less than the amount equal to the duty leviable on transaction value, the amount to be paid, shall be equal to the duty, leviable on transaction value.

M/s Shree Cement Limited (Grinding Project), Bhiwadi in Alwar Commissionerate, has cleared old & used machineries on transaction value ₹ 6.09 crore, for which an amount of ₹ 75.30 lakh was required to be paid as per proviso of rule ibid, whereas the assessee paid an amount of ₹ 49.69 lakh as per calculation of rule 3(5A) (b) of CENVAT Credit Rules, 2004. This resulted in short payment of ₹ 25.62 lakh.

Internal Audit, though carried out up to May 2014, covering the period, but did not point out the lapse detected by CERA.

When we pointed this out (November 2015), the Ministry contested the observation (November 2016) and stated that capital goods was not sold but merely transferred to the sister unit, hence, concept of transaction value was not applicable and duty payable was correct as per rule 3(5A) (a) (ii).

The reply is not tenable as the assessee issued invoice for removal of capital goods to its own unit, thus declaring a transaction value. Hence, assessee was required to arrive at the amount payable, by following rule 3(5A)b.

5.5.2.4 Short Payment of Duty Due to Undervaluation

Section 4 of the Central Excise Act defines 'transaction value' as the price actually paid or payable for the goods, when sold, including any amount that the buyer was liable to pay to, or on behalf of, the assessee, by reason of, or in connection with the sale. Rule 6 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 stipulates that when the price is not the sole consideration for sale, the value for Central Excise purpose, of such goods should be deemed to be the aggregate of such transaction value and

the amount of money value of any additional consideration flowing directly or indirectly from the buyer to the assessee.

(i) M/s Swastik Copper Pvt. Ltd., in Jaipur Commissionerate is engaged in manufacture and maintenance of Transformers. The assessee made a contract for repair of transformer making provision to deduct value of scrap emerged during repairs from the total cost of repaired transformers. Accordingly, the assessee adjusted the cost of scrap amounting to ₹ 1.69 crore during 2012-13 to 2014-15 in the invoices before payment of the excise duty, which resulted in suppression of assessable value to the extent of cost of scrap. This resulted in short payment of duty of ₹ 20.05 lakh which was recoverable with interest.

Internal Audit of the assessee was carried out up to March 2014, partially covering the period mentioned in observation, but it failed to detect the lapse.

When we pointed this out (May 2015), the Ministry admitted the observation (September 2016) and stated that the assessee had deposited duty of ₹ 20.05 lakh with interest of ₹ 6.17 lakh. On the lapse of Internal Audit, the Ministry stated that the explanation was being called for from the concerned audit officer.

(ii) M/s Jindal Aluminium Ltd. Bangalore in Bangalore LTU Commissionerate, manufactures customer specific dies for articles as per the customers' requirements. The customers are bound to purchase the stipulated minimum quantity within the stipulated period. The quotation issued by the assessee states that cost of development of new section will be charged as 'security for new die', which will be forfeited, in case the assessee fails to purchase the minimum specified quantity of the articles, within the stipulated time. Thus, the forfeited amount is towards the cost of dies and in relation to the sale and should have been considered as an additional consideration, flowing directly from the buyer to the assessee. Although the assessee realised an amount of ₹ 8.46 crore, by way of forfeiture of security deposits, during the years from 2010-11 to 2013-14, the assessee did not include this amount in the assessable value, which resulted in short payment of Central Excise duty and cess of ₹ 96.43 lakh during the said period.

Though the Internal Audit was carried out by the Department, covering the period 2010-11 to 2013-14, the lapse remained undetected until pointed out by CERA audit.

When we pointed this out (December 2014), the Ministry stated (November 2016) that forfeited charges are in the nature of liquidated

damages wherein the large taxpayer is compensated for the die manufacturing charges, when customer fails to lift the agreed quantity of extrusion. The security deposit collected, is not the cost of the die and to be refunded to the customer, if agreed quantity is taken delivery by the customer. Ministry further stated that the CESTAT decision in case of M/s Jindal Praxair Oxygen Co. Ltd. [2007 (208) ELT 181 (Tri. Bang)] was also applicable in the present case.

The reply is not tenable as the terms and conditions for supply of new dies specified that the security deposit is collected towards tooling charges, incurred for development of customer-specific sections/dies. Since these additional charges are directly related to sale, the same cannot be considered either as liquidated damages or as service charges liable to Service Tax. The CESTAT decision in the case of M/s Jindal Paraxair Oxygen Co. Ltd. is not applicable in the present case as the decision was on the basis of 'normal wholesale price' concept and the valuation rules which existed prior to July 2000, while the present case is based on Valuation rules which came into existence from 1 July 2000.

(iii) M/s Mahanadi Coalfields Ltd (MCL), in Rourkela Commissionerate who is a producer of coal (Chapter heading 27), received ₹ 19.46 crore in March 2011, as additional consideration (Performance Incentive) from its customers. However, the assessee did not include this additional consideration in the assessable value, resulted in non-levy of Central Excise duty of ₹ 1 crore which was recoverable with interest of ₹ 46.31 lakh.

Even in the Internal Audit by the Department, lapse was not detected.

When we pointed this out (February 2013), the Ministry admitted the observation (November 2016) and stated that demand of ₹ 1 crore had been confirmed with applicable interest. On the lapse of Internal Audit, it stated that issue was not detected due to audit being test check basis.

5.5.2.5 Short Payment of Duty Due to Undervaluation of Goods

Rule 5 of Central Excise valuation (Determination of price of excisable goods) Rules, 2000, provides that where excisable goods sold in the circumstances specified in clause (a) of sub-section (1) of section 4 of the Act except the circumstances in which the excisable gods are sold for delivery, at a place other than the place of removal, then the value of such excisable goods shall be deemed to be the transaction value, excluding the cost of transportation from the place of delivery of such excisable goods. Further, explanation 2 below the said rule clarified that the cost of transportation from the factory to the place of removal, where the factory is not the place of removal, shall not be excluded for the purposes of determining the value of the excisable

goods. Rule 6 of the valuations rules provides that in case, where price is not the sole consideration for the sale, but other requirement clause (a) of sub section (1) of section-4 of the Act are satisfied, the value shall be determined in accordance with the provisions of Rule 6 of the valuation rules.

(i) M/s Dynamic Cables Pvt. Ltd., Jaipur in Jaipur Commissionerate, executed agreements with Vidyut Vitran Nigams/ Railways etc. for supplying of Cables/ Conductors on FOR destination basis. Price was inclusive of packing and forwarding charges, Excise Duty, VAT and freight and insurance charges for delivery of materials at buyer's Stores. We noticed that the assessee received a sum ₹ 4.06 crore during 2011-12 to 2014-15 towards freight and insurance charges from buyers which were not included in assessable value of goods for payment of Excise duty. Thus, assessee undervalued the goods by ₹ 4.06 crore, resulted in short payment of duty ₹ 48.64 lakh.

Internal Audit, though conducted up to August 2014, partially covering the period, mentioned in CERA Audit observation, failed to detect the lapse.

We pointed this out in February 2016. In reply, Commissionerate intimated (April 2016) that SCN for ₹ 48.64 lakh has been issued.

When we pointed this out (February 2016), the Ministry admitted the observation (September 2016) and stated that SCN for ₹ 48.64 lakh with interest and penalty had been issued to the assessee. On the lapse of Internal Audit, the Ministry stated that the explanation was being called for from the concerned audit officer.

(ii) M/s ShriShakti Cylinders Pvt. Ltd., in Hyderabad-IV Commissionerate, engaged in the manufacture of LPG Cylinders falling under Chapter-73 of CETA-1985, supplied LPG Cylinders to M/s Indian Oil Corporation Ltd. Mumbai, M/s Hindustan Petroleum Corporation Ltd, Mumbai and M/s Bharat Petroleum Corporation Ltd, Mumbai during 2013-14 and 2014-15. It was observed from purchase orders and sale invoices that the assessee had cleared the above said goods on FOR destination basis. Hence, the title in goods would be passed to the buyer only on delivery of goods at destination. Therefore, the assessable value should include transportation charges and transit insurance charges, if any. However, the assessee discharged excise duty only on the cost of the goods, excluding freight charges incurred. Thus, non-inclusion of outward freight charges of ₹ 1.79 crore in assessable value, resulted in short payment of duty of ₹ 22.17 lakh which needs to be recovered from the assessee along with interest.

Though Internal Audit was conducted upto March 2014, this aspect was not noticed.

When we pointed this out (February 2016), the Ministry admitted the observation (September 2016) but stated that issue was already known to the Department, as the issue was taken up for investigation before being pointed out by CERA Audit. Based on investigation of anti-evasion wing, SCN of ₹ 42.43 lakh was issued to the assessee in April 2016. Regarding failure of Internal Audit, it stated that there are divergent views in light of various judgments and issue involves interpretation of Law.

The reply is not tenable as the Department issued the SCN after being pointed out by CERA Audit in February 2016. Also, if there issue is subject to different interpretations, Ministry need to issue suitable clarification to end the ambiguity.

(iii) M/s Vidyut Control Systems Pvt. Ltd., in Hyderabad-IV Commissionerate, engaged in the manufacture of 'Instrument Transformers' falling under Chapter-85 of CETA 1985, had supplied goods to various customers viz. AP Transco, TS Transco, AP Genco, TS Genco, TNSEB, KPTCL and KSEB during 2011-12 to 2014-15. It was observed from sale invoices that the assessee had quoted freight charges in addition to basis price of each item and cleared goods to above customers on the FOR destination basis and the risk of transportation and ownership of the goods rests with assessee, during the transport of the goods. Accordingly, the assessee had also received freight, insurance, forwarding and packing charges from the said customers. However, the assessee had not included the said amount in the assessable value for calculation of excise duty, as required under the above provisions. This resulted in short payment of excise duty ₹ 21.97 lakh (i.e. duty of ₹ 15.25 lakh and interest of ₹ 6.73 lakh, calculated up to 31 January 2016) which needs to be recovered from the assessee.

Though Internal Audit was conducted up to March 2014, this aspect was not noticed.

When we pointed this out (February 2016), the Ministry admitted the observation (September 2016) and stated that the assessee had paid ₹ 0.23 lakh with interest of ₹ 0.12 lakh and an SCN for ₹ 20.04 lakh with interest and penalty had also been issued. Regarding failure of Internal Audit, it stated that there are divergent views in light of various judgments and issue involves interpretation of Law.

The reply is not tenable as, if the issue is subject to different interpretations, The Ministry needs to issue suitable clarification to bring the ambiguity to a logical end.

5.5.2.6 Short Payment of Duty on Goods Cleared to Sister Unit

Rule 9 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, as amended from 01 December 2013, stipulates that where the whole or part of excisable goods are sold by an assessee except to or through a person who is related in the manner specified in any of sub clauses (ii), (iii) or (iv) of clause (b) of sub section (3) of section 4 of the Act, the value of goods shall be the normal transaction value at which these are sold by the related person at the time of removal, to the buyers (not being related person) or where such goods are not sold to such buyers, to buyers (being related person), who sells goods in retail. Provided that in a case where the related person does not sell the goods but uses or consumes such goods in the production or manufacture of articles, the value shall be determined in the manner specified in rule 8 i.e. the value shall be one hundred and ten per cent of the cost of production or manufacture of such goods.

(i) M/s Mangala Product Private Limited, in Jaipur Commissionerate sold finished goods to its sister concern M/s Mangala Ispat (Jaipur) Limited, Jaipur on transaction value ₹ 74.11 crore, during December 2013 to March 2015. However, as per the provision of rule 8 ibid, value of goods works out to ₹ 78.00 crore. Thus the assessee suppressed the value of goods by ₹ 3.89 crore, on which duty payable, works out to ₹ 48.16 lakh, which was recoverable with interest.

Internal Audit was carried out by Department up to October 2014, partially covering the period, but it failed to detect the lapse.

When we pointed this out (November 2015), the Ministry admitted the observation (September 2016) and stated that the assessee deposited Excise duty of ₹ 48.16 lakh with interest of ₹ 10.62 lakh and penalty of ₹ 7.22 lakh. The assessee also agreed to pay differential duty from April 2015 onwards, as soon as CAS-4 certificate for the year 2015-16 would be prepared. On the lapse of Internal Audit, the Ministry stated that the explanation was being called for from the concerned audit officer.

(ii) Two units of M/s Pidilite Industries Ltd, (Registration nos. AAACP4156BXM002 and AAACP4156BXM011) in Raigad Commissionerate, are engaged in the manufacture of goods falling under Chapter 39 of the CETA, 1985. Scrutiny of sales invoices of 2014-15 revealed that the units had cleared excisable goods to its related units. However, no costing records to determine the cost of production had been maintained by them. The assessee was required to determine the cost of production as per CAS-4 and pay differential duty for the year 2014-15. This resulted in short payment of duty of ₹ 41.79 lakh, which was recoverable with interest.

The Internal Audit was conducted in June 2015 covering the period from February 2014 to March 2015, however, Audit Report was issued with 'Nil' objection.

When we pointed this out (August 2015), the Department stated that total duty of ₹ 41.79 lakh with interest of ₹ 7.73 lakh, was paid by both the units.

The Ministry contested the observation (November 2016) stating that the issue was periodical one and the assessee used to pay differential duty annually, in the month of October, for the previous year, after the availability of CAS-4 certificate. It also confirmed the payment of differential duty for the year 2014-15, amounting to ₹ 27.45 lakh, along with interest of ₹ 5.76 lakh, by one unit. On the lapse of Internal Audit, the Ministry stated that during the Internal Audit, the assessee stated that CAS-4 certificate was not ready and it was being finalized.

The reply of the Ministry is not tenable, as there is no provision to allow clearance of goods periodically without preparing CAS-4 certificate. In case, assessee was not able to decide the duty correctly, he should have opted for provision assessment under rule 7 of the Central Excise Rules, 2002. Also, if the assessee had not prepared the CAS-4 certificate during Internal Audit, the audit party should have raised the issue for monitoring of the same.

(iii) M/s BASF India Ltd in Belapur Commissionerate is engaged in the manufacture of excisable goods classifiable under Chapter 28 of CETA, 1985. Scrutiny of clearance details for the period 2012-13 and 2013-14, revealed that the assessee had cleared excisable goods amounting to ₹ 7.43 crore and ₹ 8.68 crore respectively to its related units. However, no costing records, to determine the cost of production, had been maintained by the assessee. The assessee was required to determine the cost of production as per CAS-4 and pay differential duty accordingly. Thus, non-adoption of correct assessable value on the clearances made to its related unit, resulted in sort payment of duty which was recoverable along with interest.

Though Internal Audit was carried out by the Department in December 2013, covering the period April 2010 to March 2013, the lapse remained undetected until pointed out by CERA.

When we pointed this out (April 2015), the Ministry admitted the observation (November 2016) and stated that the assessee had debited the differential duty of ₹ 87.36 lakh with interest of ₹ 29.39 lakh. On the lapse of Internal Audit, the Ministry stated that in the absence of CAS-4 certificate, the correct payment of duty could not be ascertained.

The reply of the Ministry is indicating that the Internal Audit failed to raise the issue for monitoring of the same.

(iv) M/s Tata Metaliks Ltd., Kharagpur in Haldia Commissionerate engaged in manufacture of Pig Iron, Molten Metal etc. cleared molted metal during the period 2013-14 to its related party M/s Tata Metaliks DI Pipes Ltd. (formerly M/s Tata Metaliks Kubota Pipes Ltd.), for further consumption by the related party, at a price lower than the one hundred and ten per cent of the cost of production. This was in violation of the aforementioned rule, resulting in short payment of excise duty of ₹ 18.34 lakh during the period 2013-14. The same was recoverable along with applicable interest.

Though Internal Audit of the unit was conducted in July 2014, the lapse remained undetected until pointed out by CERA.

When we pointed this out (April 2015), the Ministry admitted the observation (November 2016) and stated that the entire amount had been recovered with interest. On the lapse of Internal Audit, it stated that Internal audit was conducted in July 2014 for the period of 2013-14 and the financial documents i.e. balance sheet for the financial year 2013-14 were not finalized, therefore, lapse could not be detected.

The reply is not tenable as the objection could be detected from basic documents i.e. copy of CAS-4 certificate, prepared on monthly basis and invoices showing the clearance of molten metal.

(v) The audit of Office of the Superintendent of Central Excise, Annur-I Range, Tiruppur Division under Coimbatore Commissionerate was conducted during May and June 2014 where in the records of M/s Anugraha Valve Casting Limited, Unit-IV and M/s Jayachandran alloys (P) Ltd. were examined. Audit noticed that during the years 2012-13 and 2013-14, the assessees had cleared goods to their respective sister concerns for captive consumption by adopting rates which were less than one hundred and ten per cent of the cost of production of such goods, computed as per CAS-4 statement. The non-adoption of prescribed transaction value had resulted in under-valuation of goods and consequent short payment of duty, which has to be recovered along with applicable interest. Internal Audit conducted audit of the units in October 2013 and February 2014, but these aspects were not raised.

When we pointed this out (July 2014), the ministry admitted the observation (November 2016) and stated that M/s Anugraha Valve castings had paid duty of ₹ 7.09 lakh with interest of ₹ 4.03 lakh and M/s Jayachandran Alloys (P) Limited had paid duty of ₹ 3.47 lakh with interest of ₹ 0.65 lakh. On the lapse of Internal Audit, it stated that in case of M/s Jayachandran Alloys, explanations were being asked from the concerned officers. For M/s Anugraha Valve Castings, it stated that no Internal Audit was conducted

during 2012-13 to 2014-15 and information prior to this period was not available.

(Vi) M/s VVF (India) Limited, Kolkata falling under Kolkata-I Commissionerate (erstwhile Kolkata-V Commissionerate), engaged in manufacture of soap and toothpaste, transferred 4592.26 MT of manufactured soap noodles and neat soap to their sister units located at Baddi and Kutch during April 2011 to June 12, for captive consumption by those units. Hence, the assessee was liable to pay duty on 110 per cent of the cost of production, determined as per CAS-4 which was not done in this case and clearances were made on a lower assessable value. Subsequently, in November 2012, the assessee prepared a cost sheet and paid ₹ 64.13 lakh as differential duty and interest for above mentioned clearances but such cost sheet was not prepared in accordance with CAS-4 method and also did not include appropriate margin as required under rule. For discharging differential duty, assessable value in respect of soap noodles was determined by adding margin of five per cent only and in case of neat soap no margin was added to the cost of production. This resulted in short payment of duty of ₹ 10.31 lakh, which was recoverable along with applicable interest.

Internal Audit of the unit was conducted by the Department in March 2012. Provisions of Central Excise Audit Manual 2008, stipulates that audit should extend upto one completed month preceding the date of current audit. However, the lapse remained undetected until pointed out by CERA.

When we pointed this out (September 2013), the Ministry admitted the observation and stated (December 2016) that demand had been confirmed for ₹ 84.24 lakh along with applicable interest and penalty of ₹ 50.22 lakh. The assessee had paid ₹ 59.24 lakh with interest of ₹ 26.97 lakh. It further stated that issue was also detected by internal audit in November 2013.

The reply is not relevant to the audit observation which pointed out that the issue was not detected in the internal audit conducted in March 2012.

5.5.2.7 Short Payment of Duty Due to Incorrect Availing of Exemption

As per Notification 8/2003-CE dated 01 March 2003 as amended, the unit whose clearances was less than ₹ 4 crore in the previous year are entitled to full exemption up-to the clearance of ₹ 1.50 crore during the current Financial year in respect of specified goods listed in the annexure to the Notification. Further, as per para 2(i) of the said Notification, "a manufacturer has the option not to avail the exemption contained in this notification and instead pay the normal rate of duty on the goods cleared by him. Such option shall not be withdrawn during the remaining part of the financial year.' As per the said Notification, normal rate of duty means the aggregate of duty of

excise, specified in the First Schedule of the Central Excise Tariff Act, 1985 and the special duty of excise, specified in the Second Schedule of the Act, read with any relevant Notification issued under Section 5A(1) of the Central Excise Act, 1944. Notification No. 1/2011-CX dated 1 March 2011 was issued under Section 5A (1) of the Act.

M/s Intellectual Building Systems Private Ltd, in Pune-I Commissionerate, is engaged in the manufacture of precast hollow core slab, precast slab, ready mix concrete (RMC) etc. Scrutiny of ST-3 Return for the period 2011-12 to 2012-13 revealed that the assessee cleared RMC on payment of duty at the rate of 1 per cent and 2 per cent as applicable by availing Notification 01/2011-CE dated 01 March 2011 as amended, whereas for the clearance of other goods, the assessee availed value based exemption under Notification 08/2003-CE dated 01 March 2003 as amended and accordingly cleared such goods without payment of duty. Since the assessee had opted to clear RMC on payment of duty, the same should have been applicable for the clearances of all the other goods as stipulated in para 2(i) of the said notification. Non adherence to the above notification resulted in non-payment of duty amounting to ₹ 19.54 lakh which needs to be recovered alongwith interest.

Though Internal Audit was carried out by the Department in July 2013 covering the period September 2010 to June 2013, the lapse remained undetected until pointed out by Audit.

When we pointed this out (September 2014), the Ministry admitted the observation (November 2016) and stated that demand of ₹ 19.56 lakh was confirmed with interest and penalty of ₹ 9.78 lakh. On the lapse of Internal Audit, the Ministry stated that the assessee had not produced the required documents, though Departmental officer detected various other issues.

The reply is not acceptable as the assessee furnished details of exemption availed as per Notification No. 8/2003 and the duty paid on ready mix concrete in its ER-3 returns. Hence the issue should have been detected even during desk review. Detecting some issues can not be an excuse for leaving other lapses, involving recovery of revenue.

5.5.2.8 Short Payment of Duty due to Captive Consumption of Exempted Goods

Rule 4(1) of the Central Excise Rules, 2002 provides that every person who produces or manufactures any excisable goods, shall pay the duty leviable on such goods in the manner provided in Rule 8 and no excisable goods, on which duty is payable, shall be removed without payment of duty. Rule 2(K) of CENVAT Credit Rules, 2004 defines 'inputs' as all goods used in the factory by the manufacturer of the final products including accessories, all goods

used for generation of electricity or steam, for providing any output service but excludes goods used for (a) construction of execution of works contract of a building or a civil structure or a part thereof or (b) laying of foundation or making of structures for support of capital goods. Further, as per Sl. No. 206 of Notification No. 12/2012-CE dated 17 March 2012 (as amended) all goods falling under Chapter heading 7305 or 7308 are exempted from payment of duty, where goods are fabricated at site of construction work.

M/s Jindal Steel & Power ltd. Angul, under the jurisdiction of Bhubaneswar-II Commissionerate, engaged in manufacture of Calcined Lime, Steel Slab and Steel plate, used 3443.29 & 7225.78 MTs of fabricated steel structures viz. girder, Column, bracing etc. for its own consumption without payment of duty during 2013-14 and 2014-15 claiming exemption vide notification, ibid. The fabricated steel structures are falling under exclusion clause of the definition of inputs as they were consumed in structural work within the factory. Further, the assessee had claimed exemption under Notification ibid, which applies only in respect of goods fabricated at site of the work for use in construction work at such site. Therefore, the assessee was not entitled to exemption and as such duty of ₹ 5.45 crore was payable. Though Internal Audit was conducted, the lapse remained undetected until the issue was pointed out by Central Revenue Audit.

When we pointed this out (July 2015), the Ministry admitted the observation in principal (December 2016) but stated that issue was already in notice of the department and same was raised by Internal Audit in May 2015. It further stated that SCN for ₹ 6.26 crore was issued to the assessee and SCN for subsequent period was also under process.

The reply is not tenable as CERA Audit was conducted in April 2015 and Internal Audit raised the issue after being pointed out by CERA Audit.

5.5.3 Incorrect Availing of CENVAT Credit

5.5.3.1 Irregular Availing of CENVAT Credit on Ineligible Services

(i) Rule 2(l) of CENVAT credit Rules, 2004 as amended from time to time defines "Input Service" as any service "(i) used by a provider of taxable services for providing an output service, or (ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacturer of final products and clearance of final products upto the place of removal; and includes services used in relation to modernization, renovation or repairs of factory premises of provider of output services or an office relating to such factory or premises, advertisement or sales promotion, market research storage upto the place of removal, procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitments and quality

control, counseling and training, computer networking, credit rating, share registry and security, inward transportation of inputs or capital goods and outward transportation up to the place of removal".

M/s KEC International Ltd., Silvassa under Silvassa Commissionerate, availed CENVAT credit of Service Tax paid on Land Development, Housekeeping, gardening, grass cutting etc., during the period from 2009-10 to 2012-13 to the tune of ₹ 32.12 lakh. Since these services are not related to manufacturing activities, availing of CENVAT credit to the tune of ₹ 32.12 lakh was irregular and recoverable with interest.

Internal Audit of the Assessee was conducted in April 2012 for the period upto 2011-12 but failed to detect the lapse pointed out by CERA audit.

When we pointed this out (September 2013), the Ministry admitted the observation (September 2016) and stated that demand of ₹ 37.09 lakh along with interest and penalty had been confirmed. Assessee had appealed against the adjudication order. On the lapse of Internal Audit, the Ministry stated that the eligibility of disputed input service was subject to legal interpretations and different courts had decided that Garden Maintenance Service, Landscaping Service and Housekeeping Service were relating to manufacturer of final products. Hence, non-detection of such issue can not be considered as lapse of duty.

The reply of the Ministry appears contradictory as on one hand it has admitted the observation and on other hand it is stating that issues is subject to legal interpretation. Audit is of the view that Ministry need to issue suitable clarification to end the ambiguity on the issue of eligible services.

5.5.3.2 Irregular Availing of CENVAT Credit on Time Barred Invoices

According to Rule 4(1) of CENVAT Credit Rules, 2004, manufacturers or providers of output service is not eligible to take CENVAT credit on invoices, issued more than six months back. This provision was effective during the period from 1 September 2014 to 28 February 2015. Thereafter the six months barrier was changed to one year.

M/s Maithan Alloys Pvt. Ltd. in Bolpur Commissionerate took CENVAT credit of ₹ 76.07 lakh during September 2014 and November 2014 on invoices which were more than six months old. This resulted in irregular availing of CENVAT credit of ₹ 76.07 lakh and was recoverable along with applicable interest.

The assessee is a mandatory unit and the Internal Audit of the unit was conducted by the Department in May 2015 covering the period upto 2013-14, although the provisions of Central Excise Manual 2008, stipulates that

audit should extend upto one completed month preceding the date of current audit. The lapse remained undetected until pointed out by CERA.

When we pointed this out (September 2015), the Ministry while accepting the observation intimated (December 2016) credit reversal of ₹ 76.07 lakh by the assessee. Further, it stated that the auditors conducted the audit for the period as per the plan which was approved for 2013-14 and object raised by CERA pertains to 2014-15. It further added that the objection of CERA has been noted for future guidance.

The reply of the Ministry as regards to the non-coverage of the issue by the internal audit is not acceptable as Central Excise Manual 2008, stipulates that audit should extend upto one completed month preceding the date of current audit. As such the CERA's objection period i.e. 2014-15 should have been covered in internal audit in accordance with the laid provisions.

5.5.3.3 Irregular Availing of CENVAT Credit on Capital Goods, Exclusively Used for Manufacturing of Exempted Goods

As per rule 6 (4) of the CENVAT Credit Rules, 2004, capital goods used for manufacture of exempted goods or providing exempted service, are not eligible for CENVAT credit.

M/s Sangam (India) Ltd. in Udaipur Commissionerate engaged in manufacture of Polyster Viscose yarn, Cotton and Knitted yarn, availed CENVAT credit of ₹ 1.38 crore on imported machines, used exclusively in manufacture of exempted cotton yarn, during 2013-14. As machines were being used exclusively in the manufacturing of exempted goods, CENVAT credit amounting to ₹ 1.38 crore, availed on the same, was irregular.

Internal Audit was carried out by the Department for the period up to March 2014, partially covering the period mention in the audit observation but failed to detect the lapse.

When we pointed this out (March 2015), the Ministry admitted the observation (September 2016) and stated that SCN for ₹ 4.90 crore had been issued to the assessee. He had also deposited ₹ 50.00 lakh during investigation. On the lapse of Internal Audit, the Ministry stated that the explanation was being called for from the concerned audit officer.

5.5.3.4 Incorrect Availing of CENVAT Credit Pertaining to Other Unit

'Input service' is defined under Sub-Rule (l) of Rule 2 of the CENVAT Credit Rules, 2004 as any service used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products up to the place of removal. Interest is leviable under Rule 14

of the said Rules for belated reversal/repayment of wrongly availed CENVAT credit.

In Chennai-IV Commissionerate, it was noticed that unit-II of M/s. Dymos Lear Automotive India Private Ltd., Irungattukottai (Unit 2) had incorrectly availed (October 2010) input service tax of ₹ 17.89 lakh in respect of Intellectual Property service (paid under Reverse Charge basis) relating to another unit i.e. Unit-I . The incorrect availing of CENVAT credit was pointed out for reversal along with levy of interest applicable. Internal Audit conducted audit of the unit in March 2011, but this aspect was not raised.

When we pointed this out (March 2012), the Ministry admitted the observation (November 2016) and stated that the assessee had paid the duty of ₹ 17.89 lakh with interest of ₹ 14.93 lakh and penalty of ₹ 4.47 lakh. On the lapse of Internal Audit, the Ministry stated that reasons for the lapse were being ascertained from the audit team.

5.5.3.5 Incorrect Availing of CENVAT Credit of Duty Paid Under Suppression of Facts

Rule 9(1) (bb) of CENVAT Credit Rules (CCR), 2004 stipulates that CENVAT Credit shall be taken, based on a supplementary invoice, bill or challan issued by a provider of input service, in terms of provision of Service Tax Rules, 1994 except where the additional amount of tax became recoverable from the provider of service on account of any non-levy or non-payment or short payment by reason of fraud, collusion or any willful misstatement or suppression of acts or contravention of any provision of the Finance Act or the Rules made there under with intent to evade payment of Service Tax.

Head office (HO) at Mumbai (Input Service Distributor) of M/s. Welknown Polyesters Ltd, Daman (Unit–III) falling under jurisdiction of Daman Commissionerate, had obtained three loans (External Commercial Borrowings) from Germany and paid (2008-09 to 2010-11) certain charges (viz. up-front fees, management fee, commitment fee, security agent fees, appraisal fees etc.) to overseas service providers for obtaining these loans. Directorate General of Central Excise Intelligence, Ahmedabad issued SCN (January 2013) to the assessee's HO for non-payment of service tax on 'Banking and other financial services' from overseas service provider under the provisions of Section 66A of the Finance Act, 1994 of ₹ 105.44 lakh and suppression of facts after which the assessee paid total service tax of ₹ 30 lakh (vide challans dated 9 October 2012 and 20 March 2014) out of the total demand of ₹ 105.44 lakh issued to its HO. We noticed that the assessee availed CENVAT credit of the amount paid in November 2012 and March, 2014. Since the issue involved suppression of facts, CENVAT credit of

₹ 30 lakh was not admissible in terms of provision above. This resulted in incorrect availing of CENVAT credit of ₹ 30 lakh.

Internal Audit of the assessee was conducted by the Department in October 2014 for the period upto September 2014 but it failed to detect the observation raised by CERA audit.

When we pointed this out (August 2015) the Ministry admitted the observation (November 2016) and stated that SCN of ₹ 30.58 lakh was issued to the assessee. On the lapse of Internal Audit, it stated that incorrect credit was availed in the months of November 2012 and March 2014 and these months were not selected by Internal Audit, hence the lapse was not detected.

The reply is not tenable as the observation was based on SCN issued by DGCEI. The issue could have been detected even during desk review if the Assessee Master File had been prepared by Internal Audit by collecting information about SCNs issued for last three years.

5.5.3.6 Irregular Availing of Suo Moto Credit Against Refund

Notification 56/2003-CE dated 25 June 2003, as amended, provides area based exemption to specified goods cleared form state of Sikkim, by way of refund of duty that was paid through e-payment (PLA) after mandatory utilization of CENVAT credit available. According to the notification, the manufacturer in each month may take credit of amount paid and at the end of the financial year, differential amount if any shall be refunded by the Assistant Commissioner or the Deputy Commissioner of Central Excise by 15th day of May of subsequent financial year, subject to conditions as laid down. There is no scope of taking self credit of such differential amount by the manufacturer at his own.

M/s Sun Pharma Laboratories Ltd. and M/s Torrent Pharmaceuticals Ltd. Gangtok under Siliguri Commissionerate, after each financial year submitted refund claim of differential amount to the Department and availed self-credit of such differential amount in the subsequent months without having refund order issued by the competent authority. The refund claims of the assessees were neither scrutinized by the Department nor any refund order in respect of such claims were passed by the Department in stipulated time as was required under the statute. Availing credit of differential amount suo-moto and utilization of same for payment of Excise duty was irregular. This resulted in non-payment of duty of ₹ 5.39 crore during the period from 2010-11 to 2013-14, which was recoverable along with applicable interest.

M/s Sun Pharma Laboratories Ltd. was audited by Department in December 2013 while M/s Torrent Pharmaceuticals Ltd. was audited in February 2014.

However, the lapses in both the cases remained undetected until pointed out by CERA.

When we pointed this out (March 2015), the Ministry admitted the observation (November 2016) and stated that SCN for ₹ 4.06 crore had been issued to the assessee. On the lapse of Internal Audit, the Ministry stated that the assessee did not intimate the Range Superintendent regarding taking differential re-credit Suo-Moto. However, explanation had been called from the concerned officer.

The reply is not acceptable as the assessee intimated regarding availing of self credit of differential duty to the Deputy Commissioner of Gangtok Division with a copy to the Superintendent of the Gangtok Range. Hence, Department was aware about the fact of availing self credit.

5.5.4 Non/Short Reversal of CENVAT Credit

5.5.4.1 Non-Reversal of CENVAT Credit on Obsolete Input

Rule 3(5B) of CENVAT Credit Rules 2004 provides that if the value of any input or capital goods, before being put to use, on which CENVAT credit has been taken is, written off fully or partially or where any provision to write of fully or partially has been made in the books of account, then the manufacturer or service provider, as the case may be, shall pay an amount equivalent to the CENVAT credit taken in respect of the said input or capital goods.

(i) M/s Hindustan Zinc Ltd. (HZL), Chanderiya in Udaipur Commissionerate, had made provisions of non-moving inventory of store items/inputs valuing ₹ 11.71 crore during 2012-13 to 2013-14 in their books of accounts. Since these provisions were made before store items/inputs being put to use, the assessee was required to pay an amount of ₹ 1.69 crore as per provision of rule ibid, which was not paid.

Internal Audit, though carried out up to March 2013, partially covering the period mentioned in the LDP, had not pointed out the lapse deducted by CERA.

When we pointed this out (January 2015), the Ministry admitted the observation (November 2016) and stated that SCN for ₹ 17.22 crore had been issued to the assessee. On the lapse of Internal Audit, the Ministry stated that the explanation was being called for from the concerned audit officer.

(ii) M/s National Engineering Industries Limited in Jaipur Commissionerate had made provision of ₹ 1.53 crore in the books of account towards obsolete inputs during 2013-14 and 2014-15. However, CENVAT credit attributable to these inputs, amounting to ₹ 18.96 lakh, was not paid which was recoverable with interest.

Internal Audit of the assessee was carried out by the Department but it failed to detect the lapse pointed out by Audit.

When we pointed this out (January 2016), the Ministry admitted the observation (November 2016) and stated that the assessee had debited the amount and deposited ₹ 18.96 lakh with interest of ₹ 7.68 lakh and penalty of ₹ 2.84 lakh. On the lapse of Internal Audit, the Ministry stated that Internal Audit is selective audit, based on approved audit plan where no point related to CENVAT credit on obsolete input was specifically mentioned.

The reply is not tenable as provision of obsolete input/capital goods are mentioned in annual financial statement and detailed examination of these statements is to be compulsorily done by the Audit.

5.5.4.2 Non-Reversal of CENVAT Credit on Exempted Clearances

Rule 6(1) of CENVAT Credit Rules, 2004, envisages that CENVAT credit shall not be allowed on such quantity of input or input service which is used in the manufacture of exempted goods or for provision of exempted services. In case the manufacturer opts not to maintain separate accounts of inputs used for manufacture of taxable and exempted goods, then as per rule 6(3), the manufacturer shall follow any one of the following options, as applicable to him, namely:-

(i) Shall pay an amount equal to six per cent of value of the exempted goods; or

(ii) Shall pay an amount equivalent to the CENVAT credit attributable to inputs and input services used in or in relation to manufacture of exempted goods as determined under sub-rule 6(3A); or

(iii) Maintain separate accounts of inputs and take CENVAT credit only on inputs used for manufacture dutiable final products and pay an amount equivalent to the CENVAT credit attributable to input services used in or in relation to, the manufacture of exempted goods as determined under sub-rule 6(3A).

Further, as per rule 6(2) of CCR, 2004 maintenance of separate accounts for 'inputs' entails keeping of separate account for receipts, consumption and inventory of inputs used in or in relation to manufacture of dutiable and exempted goods and taking CENVAT credit only on 'inputs' used in dutiable goods.

Verification of records at M/s Sun Pharma Laboratories Ltd. Gangtok in Siliguri Commissionerate revealed that the assessee manufactured and cleared both dutiable and exempted Pharmaceutical products and opted to maintain separate accounts for inputs as provided in the rule 6(3) (iii) of CCR

2004. Audit scrutiny, however, revealed that the assessee adopted a system of taking and utilizing entire credit on inputs received in the factory for manufacture of dutiable and exempted products. Subsequently, before the manufacture of exempted goods, the assessee reversed the CENVAT credit attributable to exempted goods being manufactured. Thus, the assessee failed to maintain separate account for inputs as stipulated in rule 6(3)(iii) and 6(2) of CCR 2004 and ought to have paid six per cent of value of the exempted goods. This resulted in short payment of ₹ 9.34 crore during 2012-13 and 2013-14 which is recoverable with interest.

The assessee is a mandatory unit and is required to be covered annually in Internal Audit as per Department norms. The said unit was last audited in December 2013 covering the period 2012-13. But the lapse remained undetected until pointed out by CERA.

When we pointed this out (March 2015), the Ministry contested the observation and stated (December 2016) that the assessee has option either to maintain separate account or pay an amount equivalent to the CENVAT credit attributable to inputs used in exempted goods. In this case the assessee reversed the proportionate credit.

The reply is not acceptable, as the rule require assessee to intimate the department about the option exercised and follow the same which is not adhered to in this case.

5.5.4.3 Non-Reversal of Proportionate CENVAT Credit on Services Used in Trading

As per Rule 6(3) of CENVAT Credit Rules 2004, the manufacturer of goods or provider of services, opting not to maintain separate accounts for receipt and use of inputs/input services in the manufacture of both dutiable and exempted goods or provision of taxable and exempted services has got the option of paying an amount under Rule 6(3)(i) at the prescribed percentage on the value of the exempted services/exempted goods or paying an amount determined by the method prescribed under Rule 6(3A). Trading is an 'exempted service' as per the explanation under Rule 2(e) of the said rules.

M/s Spraying Systems India Pvt. Ltd., Bangalore under Bengaluru-II Commissionerate, was using its registered premises for trading of various goods in addition to manufacture of excisable goods. The assessee availed CENVAT credit of Service Tax paid on rent of factory building, charges for security services, Chartered Accountant's services, etc., the services of which were commonly utilised for manufacturing and trading activities. Since the assessee did not maintain separate accounts in respect of utilization of these input services for manufacturing of duty paid goods and for providing

exempted services (trading), the assessee should have paid 5/6 per cent of value of exempted service or amount to CENVAT credit involved in exempted service.

Internal Audit was conducted twice, covering the period upto August 2013, but it failed to detect the lapse.

When we pointed this out (June 2014), the Ministry stated (September 2016) demand of ₹ 47.41 lakh was confirmed and the assessee paid ₹ 18.94 lakh.

For the lapse of Internal Audit, the Ministry stated that Internal Audit was conducted by the Department in 2012 and 2015 and the issue was long before detected by it and recovery of ₹ 18.94 lakh had been made.

The reply of the Ministry is not tenable as assessee was audited twice before CERA audit but the issue was not detected by them as evident from Audit note Nos. 248/2012 dated 28 August 2012 and 380/2013 dated 4 December 2013. Then, CERA conducted the audit of the assessee in April-May 2014 and raised the issue in June 2014. Subsequently, the third audit was conducted by the Department in October 2014, which detected the issue and audit note No. 469/2014 was issued containing an observation on the issue and stating that ₹ 4.89 lakh was recovered. Thus, Ministry's statement that issue was long before detected by Internal Audit, is not correct.

Thus, Internal Audit not only failed to detect the lapse of the assessee, it also tried to give wrong facts to hide its lapse. Ministry may examine the facts and suitable action may be taken against the erring officials.

5.5.4.4 Non Reversal of CENVAT Credit on Electricity and Security Trading

As per Rule 6 of the CENVAT Credit Rules, 2004 (CCR), CENVAT credit shall not be allowed on such quantity of input or input service which is used in the manufacture of exempted goods or for provision of exempted services. The term 'exempted services' as defined in rule 2 (e) means taxable services which are exempt from the whole of the Service Tax leviable thereon and also include services on which no Service Tax is leviable under section 66B of the Finance Act, 1994. As per Rule 6(2) of CCR, where a manufacture or provider of output service avails inputs and input services and manufacture dutiable as well as exempted goods or provides taxable as well as exempted services, separate accounts shall be maintained for the receipt, consumption and inventory of inputs used and receipt and use of input services used in or in relation to the manufacture of dutiable and exempted goods and for the provision of taxable and exempted services. If the separate accounts as mentioned above are not maintained, the manufacturer or service provider shall pay an amount as per provisions contained Rule 6(3) of CCR, 2004. Further the difference between the sale price and the purchase price of the

securities traded or one per cent of the purchase price of the securities traded, whichever is more, shall be treated as the value of exempted services as per notification 28/2012(CX) in case of trading of securities.

M/s Godrej Industries Ltd. in Mumbai-II Commissionerate is engaged in the manufacturer of excisable goods falling under chapter heading 34, 38 and 39 of CETA 1985. Scrutiny of financial statements of 2012-13 revealed that the assessee had carried out trading activity of ₹ 13.83 crore at their retail shop and also sold electricity generated form windmill amounting to ₹ 4.26 crore. It was also observed that during the same year assessee had earned profit on sale of investment of ₹ 74.77 lakh. However, assessee neither maintained separate account nor paid any amount under rule 6(3) of the CENVAT Credit Rules, 2004 as per above provision. This resulted in non-reversal of CENVAT credit to the tune of ₹ 14.59 crore.

Internal Audit, though carried out up to March 2013, had not pointed out the lapse detected by CERA.

When we pointed this out (March 2014), the Ministry admitted the observation (November 2016) and stated that SCN for ₹ 14.59 crore had been issued to the assessee. On the lapse of Internal Audit, the Ministry stated that the explanation was being called for from the concerned audit officer.

5.5.4.5 Non-Reversal of CENVAT Credit on Input Value Set Off by Credit Notes

Rule 14 of the CENVAT Credit Rules, 2004 stipulates that where CENVAT credit has been taken and utilized wrongly, the same shall be recovered from the manufacturer and the provisions of section 11A shall apply for effecting such recoveries.

During the audit of the Office of the Superintendent of Central Excise, Irungattukottai-III Range, Sriperumpudur Division falling under Chennai-IV Commissionerate, the accounts of an assessee, M/s Surin Automotive Pvt. Ltd. was taken up for detailed scrutiny. On a scrutiny of the CENVAT records maintained for the years 2012-13 and 2013-14, it was noticed that the assessee had received imported/ indigenous raw materials from their supplier, M/s Sungwoo Gestamp Hitech (Chennai) Ltd. and availed CENVAT credit passed on provisionally by the supplier without taking into account the credit notes issued by the supplier at the end of each month. This resulted in excess availing and utilization of CENVAT credit amounting to ₹ 14.72 lakh for the year 2012-13 and ₹ 27.93 lakh for the year 2013-14. Internal Audit conducted audit of the unit in December 2014, but this issue was not raised.

When we pointed this out (December 2015), the Ministry admitted the observation (November 2016) and stated SCN for ₹ 40.62 lakh had been

issued to the assessee. On the lapse of Internal Audit, the Ministry stated that Commissioner (Audit II) had been asked to take action against the audit officer who failed to detect the lapse.

5.5.4.6 Short Reversal of CENVAT Credit on Inputs Cleared as Such

As per Rule 3(5) of the CENVAT Credit Rules 2004, when inputs or capital goods on which CENVAT credit has been taken, are removed as such from the factory or premises of the provider of output service, the manufacturer of the final product or the provider of output service as the case may be, shall pay an amount equal to the credit availed in respect of such inputs or capital goods. Further, as per rule-14 of the Rules, ibid, when CENVAT credit has been taken and utilised wrongly or has been erroneously refunded, the same along with interest shall be recovered from the manufacturer or the provider of output service.

Audit of ER-1, Sales Register, CENVAT credit Register of M/s HINDALCO Industries Ltd. (Flat Rolled Product Unit) Hirakund, for the year 2013-14, a manufacturer of Aluminium Flat rolled Products (Ch. 76069290) under the jurisdiction of Rourkela Commissionerate, revealed that the assessee had availed CENVAT credit of ₹ 1.90 crore on inputs i.e. CG Ingots. However, the same were removed as such on payment of duty of ₹ 1.52 crore, resulting in short reversal of CENVAT credit of ₹ 37.61 lakh, in contravention to the Rule, ibid.

When we pointed this out (August 2015), the Ministry admitted the observation (November 2016) and stated that the assessee had reversed amount of ₹ 37.61 lakh along with interest of ₹ 10.53 lakh. On the lapse of internal Audit, it stated that Internal Audit was conducted on test check basis and the issue escaped the attention of Internal Audit.

5.5.4.7 Short Reversal of CENVAT Credit Availed on Inputs Destroyed in Fire

Rule 21 of Central Excise Rules, 2002 provides that where it is shown to the satisfaction of the Commissioner that goods have been lost or destroyed by natural causes or by unavoidable accident or are claimed by the manufacturer as unfit for consumption or for marketing, at any time before removal, he may remit the duty payable on such goods, subject to such conditions as may be imposed by him by order in writing. Rule 3(5C) of the CENVAT Credit Rules, 2004 further provide that where on any goods manufactured or produced by an assessee, the payment of duty is ordered to be remitted under Rule 21 of the Central Excise Rules, 2002, the CENVAT credit taken on the inputs used in the manufacture or production of said goods shall be reversed.

Test check of records of M/s Akal Electricals Pvt. Ltd. Doraha, engaged in the manufacturing or transformers under chapter 8504, in Ludhiana Commissionerate revealed that inputs (Transformer Oil, CRGO, Aluminium, Copper) which were destroyed in a fire incident in August 2008, were written off by the assessee during 2008-09 and CENVAT credit of ₹ 33.38 lakh was reversed. However, amount of CENVAT credit to be reversed worked out to ₹ 76.09 lakh. This resulted in short reversal of CENVAT credit amounting to ₹ 42.71 lakh.

Internal Audit, though carried out in May 2010, covering the period mentioned in audit observation, failed to detect the lapse.

When we pointed this out (April 2010), the Ministry admitted the observation (November 2016) and stated that that the SCN issued to the assessee had been adjudicated, confirming the demand of ₹ 76.09 lakh alongwith equal penalty and interest. Assessee filed appeal before CESTAT which was pending. On the lapse of Internal Audit, it stated that the issue was examined by Internal Audit but the assessee had not provided claim filed with insurance company at the time of Audit.

5.5.4.8 Short Reversal of CENVAT Credit on Used Capital Goods

Rule 3(5A) of CENVAT Credit Rules, 2004 provides for the procedure on removal of used capital goods, wherein an assessee needs to pay an amount equal to credit availed after allowing depreciation at the rate of 2.5 per cent per quarter subject to the condition that if the amount computed is less than the duty payable on 'Transaction Value', then amount equal to duty on 'Transaction Value' has to be paid.

M/s Bothra Shipping Services Pvt. Ltd. under Visakhapatnam-I Commissionerate, had sold used capital goods for a transaction value of ₹ 1.94 crore for which duty of ₹ 23.98 lakh was payable as per the rule ibid. However, the assessee reversed CENVAT credit of ₹ 16.14 lakh only after availing depreciation of 2.5 per cent per quarter. This resulted in short reversal of CENVAT credit of ₹ 7.84 lakh which was recoverable with interest of ₹ 3.60 lakh. Similarly M/s HBL Power Systems Ltd. sold capital goods for ₹ 98.08 lakh on which duty of ₹ 12.12 lakh was payable but the assessee paid ₹ 8.54 lakh. This resulting in short payment of credit of ₹ 3.59 lakh which was recoverable with interest of ₹ 2.12 lakh. The short reversal of CENVAT credit and interest payable aggregated to ₹ 17.15 lakh was recoverable.

Though, Internal Audits of the two assessees were conducted upto September 2014 and January 2015, the short reversal was not noticed.

When we pointed this out (January-February 2016), the Ministry admitted the observation (December 2016) and stated that M/s Bothra Shipping

Services Pvt. Ltd. reversed the duty of ₹ 7.84 lakh along with interest of ₹ 3.60 lakh and M/s HBL Power Systems Pvt. Ltd. reversed the duty of ₹ 3.59 lakh along with interest of ₹ 2.12 lakh. On the lapse of Internal Audit, it stated that in Internal Audit, CENVAT issues were randomly verified for sample months and the months examined by CERA Audit were not covered in sample.

5.5.4.9 Short-Reversal of CENVAT Credit on Common Input and Input Services

As per Rule 6(3)(ii) of CENVAT Credit Rules, 2004, the manufacturer of goods or the provider of output service, opting not to maintain separate accounts for receipt and use of inputs/services in the manufacture of both dutiable and exempted goods, has got the option of paying an amount determined by the formula prescribed under Rule 6(3A).

M/s Pepsico (I) Holdings Pvt. Ltd., Bangalore, under Bangalore – III Commissionerate, a manufacturer of carbonated soft drinks, mineral water, fruit juice and syrups had cleared fruit juice by availing the benefits of exemption under Notification No.1/2011-CE dated 01 March 2011 during 2011-12, in addition to clearance of other final products on payment of duty. The assessee availed CENVAT credit on inputs and input services utilised commonly for manufacture of the dutiable and the exempted final products, but did not maintain separate accounts in respect of them. The assessee reversed a portion of the CENVAT credit as per the provisions of Rule 6(3A) amounting to ₹ 27.25 lakh against ₹ 1.24 crore, reversible during the year 2011-12, resulting in short reversal of ₹ 96.71 lakh which was recoverable with interest.

Though the Internal Audit (December 2012 to January 2013) was conducted covering the period 2011-12, it failed to detect the short reversal.

When we pointed this out (December 2014), the Ministry stated (September 2016) that SCN for ₹ 96.47 lakh had been issued to the assessee and assessee had filed an appeal before the CESTAT. On the lapse of Internal Audit, the Ministry stated that the Department only verified documents for a particular test month as per the pre-approved audit plan and if the issue was non-existent during the said test checked month, the issue could not have been detected.

The reply of the Ministry is not tenable as CERA noticed short reversal of CENVAT credit in all the months of the year 2011-12 which was included in the period of 22 months (January 2011 to October 2012) covered by Internal Audit.

Thus, Internal Audit not only failed to detect the lapse of the assessee, it also tried to give wrong facts to hide its lapse. Ministry may examine the facts and suitable action may be taken against the erring officials.

5.5.5 Non-Payment of Interest

5.5.5.1 Non-Payment of Interest on Payment of Differential Duty

Section 11AA of the Central Excise Act, 1944, envisages that where any duty of excise has not been levied, the person, in addition to the duty, is liable to pay interest at the rate specified after due date in which the duty ought to have been paid.

M/s BESCO Ltd. (Unit-I) and M/s Gontermann-Peipers (India) Ltd. in Kolkata-V Commissionerate, M/s Hindustan Unilever Ltd. in Haldia Commissionerate paid differential duty at a later date for collection of extra amount in respect of sales made earlier. The assessee however failed to pay interest on such delayed payment of duty. Non-payment of interest in respect of M/s BESCO Ltd. was ₹ 4.70 lakh for the period 2013-14 and 2014-15, in respect of M/s Gonternmann-Peipers (India) Ltd. such interest amount was ₹ 8.53 lakh for the period 2013-14 and in respect of M/s Hindustan Unilever Ltd. the same was ₹ 4.98 lakh for the period 2013-14 and 2014-15.

M/s BESCO Ltd (Unit-I) was audited by the Department in January 2013 covering the period 2011-12, although, as per the audit manual the same should have been covered upto December 2012. M/s Gontermann-Peipers (India) Ltd. was taken up for Internal Audit by the Department in June 2015 covering the period 2013-14 only. M/s Hindustan Unilever Ltd., although, was a mandatory unit and was required to be covered annually in Internal Audit as per Departmental norms but the unit was not audited since July 2013. In all the three cases the lapse remained undetected until pointed out by us.

When we pointed this out (Between March 2015 and September 2015), the Ministry contested the observation (October 2016) stating that Supreme Court in the case of M/s SAIL [2015(326) ELT 450] viewed that interest was not payable in case of payment of differential duty. The matter has been transferred to larger bench and judgment is pending. It further stated that as the objection is contested, the lapse on part of Internal Audit does not arise.

The reply is not tenable, as in the case of sub-judice issue, objection should have been raised and SCNs should have been transferred to call book, so that, if the issue is decided in favor of the Department, there is no revenue loss. In the absence of issuance of demand, the issue will be time barred even if matter is decided in favor of the Department. Ministry need to examine the issue and issue suitable instruction to field formations.

5.6 Miscellaneous Issues

5.6.1 Incorrect Reduction of Penalty and Non-Detection of Short Payment of Interest

According to first proviso to section 11 AC of Central Excise Act 1944, where any duty, as determined under sub-section 2 of section 11A and the interest payable thereon under section 11 AB, is paid within thirty days of the date of communication of order of the Central Excise Officer, who has determined such duty, the amount of penalty liable to be paid by such person shall be twenty five per cent, of the duty so determined.

M/s Gasha Steels Pvt. Ltd. Kanjikode, under Calicut Commissionerate was engaged in clandestine removal of CTD/TMT bars and scrap, on parallel invoices during the period May 2004 to February 2006. Duty payable on this removal amounted to ₹ 67.77 lakh and interest was also payable. SCN, demanding duty of ₹ 67.77 lakh alongwith interest and penalty, issued, based on an offence case, was confirmed vide Order in Original (O-I-O), dated 12 May 2009 alongwith interest and penalty of ₹ 67.77 lakh. Personal penalty of ₹ 20,000 each was also imposed on Director and Managing Director (MD).

As per the O-I-O, if the duty and interest under section 11 AB of the Act was paid within thirty days of receipt of the order, the amount of penalty shall be restricted to 25 per cent of the amount of duty confirmed. It was also ordered to adjust ₹ 30.00 lakh and ₹ 20.00 lakh already paid by the assessee in February 2006 and June 2006 respectively, towards demand of duty confirmed. The assessee paid (July 2009) balance duty of ₹ 17.78 lakh, penalty of ₹ 16.94 lakh, being 25 per cent of duty confirmed and interest. The assessee, however, paid interest of only ₹ 0.19 lakh as against interest of ₹ 12.27 lakh, payable for the period May 2004 to July 2009. The assessee also preferred appeal in CESTAT misrepresenting that the full amount of duty alongwith interest and penalty have been deposited and also informed (July 2009) jurisdictional Superintendent accordingly. Department, however, overlooked the misrepresentation made by the assessee regarding non-payment of interest in full. This had resulted in short payment of interest of ₹ 12.08 lakh. Further, the assessee was also not entitled for the benefit of reduced penalty of 25 per cent as they failed to discharge the interest liability in full. Even though Internal Audit of the assessee covering the period upto June 2011 was conducted in July 2011, this lapse was not found out.

When this was pointed out (December 2011), the Department replied (August 2012) that no coercive action was taken to realize the dues since two stay orders against recovery of penalties were issued (January 2010 and February 2010) by CESTAT.

CERA pointed out (October 2012) that the stay orders were only in relation to personal penalty imposed on the MD and Director and that while granting these stays, the Tribunal observed that the entire amount of duty, Interest and penalty confirmed was deposited by the main appellant. Clarification was also sought from the Department regarding informing CESTAT about the short payment of interest by the party and consequent ineligibility for reduced penalty.

The Department stated (April 2014) that a Miscellaneous Application was filed (January 2014) in CESTAT submitting that the assessee was yet to pay the interest of ₹ 12.08 lakh and balance penalty of ₹ 50.83 lakh and that the assessee have misrepresented facts before the Tribunal. The Department also informed (December 2014) about initiation of action under section 11(2)(i) of the Act for recovery of balance interest of ₹ 12.08 lakh and penalty of ₹ 50.83 lakh. The CESTAT rejected (March 2014) the miscellaneous application stating that it was filed not in respect of appeal filed by M/s Gasha Steels, against O-I-O 11/2009 CE dated 12 May 2009, but in respect of stay orders granted to the MD and a Director for waiver of pre-deposit and against recovery of personal penalty. The Tribunal also cited delay of nearly four years in filing the miscellaneous application and stated that there was no stay against recovery of entire amount of interest and balance penalty and the Department could have recovered the same from the assessee/ appellant M/s Gasha Steels.

The Department further stated (July 2015 and November 2015) that the assessee had filed (June 2015) writ petition along with stay application in Hon. High Court of Kerala to quash the O-I-O and to restrain recovery of balance amount of interest and penalty.

The Department was under the impression that the assessee had paid the entire amount of interest so they were eligible for reduced penalty of 25 per cent and that CESTAT stayed recovery of interest and penalty. This revealed absence of a system in place for proper monitoring and follow up of recovery of un-stayed confirmed demands. Lapse on the part of Department in understanding the facts of the case and ascertaining that the stay orders were only in respect of personal penalty against the MD and a Director had resulted in non-initiation of action in a case where there was no stay for recovery of arrears in respect of interest amounting to ₹ 12.08 lakh and balance penalty of ₹ 50.83 lakh (75 per cent) of nearly seven years. This had also resulted in extension of unwarranted financial accommodation to the assessee since no interest was leviable on arrears of interest amount relating to the period May 2004 to July 2009 and as no action was taken for recovery of un-stayed interest and penalty for nearly seven years.

Ministry stated (December 2016) that CERA's observation 'reduction of penalty was granted to the assessee' was not correct as the Department intimated CESTAT (January 2014) that the assessee was yet to discharge the interest liability of 12.08 lakh and was not entitled for the reduced penalty of 25 *per cent*.

The reply is not tenable as the Department intimated CESTAT about non-payment of interest only after clarification for the same was sought by CERA from the department.

5.6.2 Raising of Short Demand in SCN

Under the provisions of section 11A and 11AA of the Excise Act, Central Excise Officers are empowered to serve a notice, within the period of limitations prescribed, requiring a person chargeable with duty which has been short paid to show cause as to why he should not pay the short paid duty specified in the SCN.

Audit of the Central Excise receipts and refunds relating to the Office of the Assistant Commissioner of Central Excise, LTG III Group under LTU Commissionerate was conducted from June 2015 to September 2015 wherein Audit noticed from two SCNs issued to M/s. CPCL, Manali, Chennai for the years 2012-13 and 2013-14 that the differential duty payable by the assessee on account of reversal of CENVAT on exempted goods, was erroneously specified therein, resulting in short raising of demand amounting to ₹ 14.53 lakh and ₹ 62.02 lakh respectively. This was due to non-verification of assessees claim by the Department resulted in short raising of demand.

When we pointed this out (October, December 2015), the Ministry accepted the observation and stated (December 2016) that differential duty was payable, though, there was no error in the SCNs regarding the gross demands. It was further stated that shortcomings in the system of issue of SCNs has been noted and necessary action are being initiated.

The reply is not acceptable as the issue was not about the gross demands but about the determination of net amount payable after incorrectly adopting the amount already reversed which have since been paid by the assessee.

5.6.3 Irregular Transfer of SCN to Call Book

CBEC Circular No. 162/73/95-CX dated 14 December 1995, specifies the circumstances under which a case can be transferred to Call Book as below:-

(i) Cases in which the Department had gone in appeal to the appropriate authority,

(ii) Cases were injunction had been issued by Supreme Court/ High Court/ CEGAT. Etc.

(iii) Cases where audit objections were contested,

(iv) Cases where the Board had specifically ordered the same to be kept pending and to be entered into the Call Book.

Also, instructions were being issued to the Commissionerates requiring periodical review of pending Call Book items.

Scrutiny of SCNs pending in Call Books (May 2015) at the Office of the Commissioner of Central Excise, Bangalore-III Commissionerate, revealed that the SCN dated 01 February 2011 issued to M/s Victoria Marine and Agro Exports Ltd. Bangalore, demanding ₹ 3.70 crore towards CENVAT credit availed/ utilised irregularly, was pending for adjudication. However, the SCN was transferred (April/May 2012) to Call Book with the remarks that "further verification required" although the case did not fit into any of the categories mentioned above. Even after the Department noticed (January 2014), during subsequent review of Call Book cases, that the case was not fit for retention in Call Book, the same was not taken out of Call Book for adjudication.

When we pointed this out (May 2015), the Ministry stated (October 2016) that SCN had been taken out from call book and adjudicated in December 2015, resulting in confirmation of demand of ₹ 3.70 crore and penalty of ₹ 5.14 crore. The Ministry further stated that issue was already detected by the Department in review of call book and was same was inadvertently remained in call book.

Though, the wrong retaining of SCN in call book was detected by the Department, no remedial action was taken, till the same was pointed out by CERA and case was adjudicated in December 2015. Had the Department taken timely action, demand of ₹ 8.84 crore could have been decided earlier. Ministry need to look into the matter and take necessary action against the erring official as deemed fit and take effective steps to avoid similar lapses in future.

5.6.4 Avoidable Expenditure on Payment Towards Electric Power Consumption

The office complex of Commissionerate of Central Excise, Belagavi, is maintained by Central Public Works Department (CPWD). The Commissionerate entered into a contract with Karnataka Electricity Board [presently, Hubli Electricity Supply Company Ltd. (HESCOM)], Belagavi for supply of 210 KVA (contract demand) power. As per the agreement, the Commissionerate has to pay 75 per cent of the contract demand of 210 KVA

i.e., 158 KVA (demand contract) or the actual usage (recorded demand) whichever is higher.

A review of electricity supply bills and the allied records conducted during the audit of Belagavi Commissionerate for the period 2007-08 to 2014-15 revealed that, the Commissionerate paid electricity charges for 158 KVA per month as the recorded demand ranged only between 38.42 KVA and 68.94 KVA per month, during the said period. Thus, the actual power demand varied between 18 to 33 per cent of the contract demand. No action was taken by the Commissionerate to reduce the contract demand to an acceptable level of 100 KVA. Failure to take timely action to reduce the contract demand, resulted in incurring excess expenditure of ₹ 15.13 lakh during the period from 2007-08 to 2014-15, which was avoidable.

When we pointed this out (April 2013), the Department replied (July 2016) that HESCOM reduced (June 2016) the contract demand to 100 KVA per month. The Ministry stated (November 2016) that it was a technical issue requiring technical opinion of executive (Electrical) CPWD Bangalore. The electricity requirement, planning designing etc was done by CPWD and the demand of 210 KVA was arrived at by them at the time of construction of the building. The issue was not known to the Department and all the aspects, electricity requirement, demand and supply were being handled by the CPWD.

The reply is not tenable as electricity supply was being handled by CPWD but the electricity bills were being received and payments were being made by the Commissionerate. Since, the electricity consumption by the office was less than the contracted demand, it should have take action to reduce the demand. The Department even took more than three years to take action, after issue been pointed out by CERA which resulted in continuity of the avoidable expenditure.

5.6.5 Irregular Payment of Tribal Area Allowance

As per the Government of India, Ministry of Finance order (August 2008), the concession of Scheduled Area/ Tribal Area Allowance (TAA) to the Central Government employees is of temporary nature and will be reviewed by the Government at appropriate time in the light of the continued admissibility or otherwise, of the allowance to the State Government employees in the respective areas. Besides, TAA shall ceases to be admissible in those States where it has been discontinued for the State Government employees. Further, Government of India, Ministry of Finance, Department of Revenue, New Delhi vide Office Memorandum No. 17(1)/2008-E.II(B) dated 22 March

2016 clarified that payment of Tribal Area Allowance to the Central Government employees in Jharkhand was irregular.

Although TAA is not admissible for State Government employees in Jharkhand, we noticed (2012-13 to 2015-16) that employees of Central Excise and Service Tax Department in 10 offices of Jharkhand were paid TAA amounting to ₹ 47.87 lakh during the period 2012-13 to 2015-16.

When we pointed this out (December 2015 and March 2016), the Ministry admitted the observation (November 2016) and stated that Department headquarters and field formations have discontinued the payment of tribal area allowance and order for recovery of TAA paid was being issued. Till date, amount of ₹ 0.06 lakh had been recovered.

New Delhi
Dated: 24 January 2017

(SANJEEV GOYAL)
Principal Director (Central Excise)

Countersigned

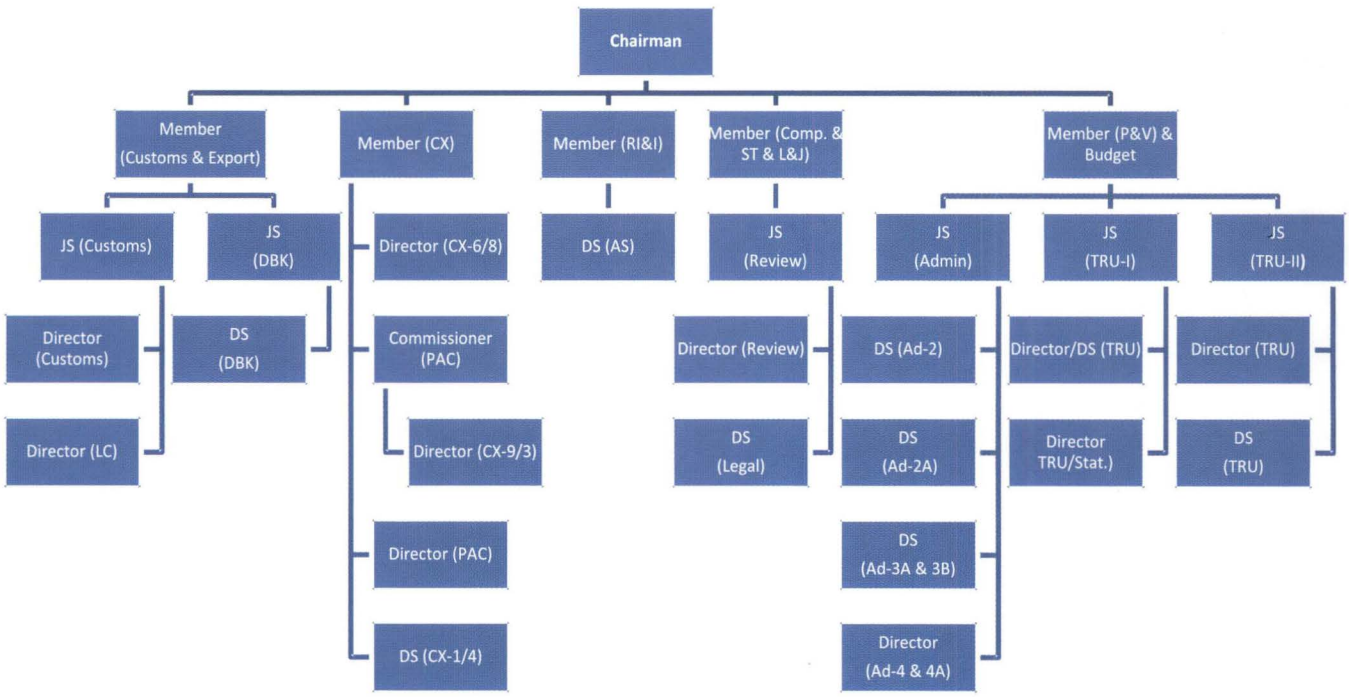
New Delhi
Dated: 24 January 2017

(SHASHI KANT SHARMA)
Comptroller and Auditor General of India

APPENDICES

Appendix I

Organisational structure of CBEC



Appendix II

(₹ in lakh)

Sl. No.	DAP No.	Brief Subject	Amount objected	Amount Admitted	Amount recovered	Commissionerate
1	2B	Non-payment of interest and penalty on belated payment of duty	17.98	17.98	17.98	Hyderabad-I
2	4B	Short levy of duty	25.36	25.36	25.36	Jamshedpur
3	5B	Short-payment of Central Excise duty due to undervaluation of final products	81.90	81.90	81.90	Bangalore-II
4	6B	Non-payment of Excise duty on waste and scrap	11.42	11.42	11.42	Trivandrum
5	7B	Clearance of goods without following the valuation rules	21.50	21.50	21.50	Kolhapur
6	8B	Irregular availment and utilization of CENVAT credit	26.66	26.66	26.66	Nagpur-II
7	11B	Non reversal of CENVAT credit	15.11	15.11	13.13	Thane-I
8	12B	Irregular availment of CENVAT credit	24.78	24.78	24.78	Pune
9	13B	Irregular availment of CENVAT credit on common services	62.39	62.39	NIL	Hyderabad-I
10	14B	Short levy of duty due to undervaluation	1056.00	1056.00	NIL	Ranchi
11	15B	Non recovery of interest on delayed payment of Excise duty	25.21	25.21	NIL	Mumbai-IV
12	18B	Non-reversal of input service credit attributable to trading activity	25.95	25.95	25.95	Visakhapatnam-II
13	19B	Short payment of Central Excise duty	80.62	80.62	80.62	Hyderabad-I
14	20B	Short payment of duty due to incorrect adoption of assessable value	53.95	53.95	53.95	Trichipali
15	21B	Incorrect availing of CENVAT credit beyond time limit	112.22	112.22	112.22	Chennai LTU
16	23B	Clearance of goods without following valuation rules	50.92	50.92	50.92	Thane-I

Sl. No.	DAP No.	Brief Subject	Amount objected	Amount Admitted	Amount recovered	Commissionerate
17	24B	Irregular availment of CENVAT Credit	20.00	20.00	NIL	Jamshedpur
18	25B	Non-recovery of Excise duty consequent upon non-grant of remission of duty on the goods lost in fire	21.15	21.15	NIL	Indore
19	26B	Short levy of Central Excise duty	114.41	114.41	NIL	Valsad
20	1D	Incorrect valuation of goods resulting in short payment of duty	105.90	105.90	105.90	Chennai LTU
21	2D	Non reversal of CENVAT credit	16.34	16.34	16.34	Pune-III
22	11D	Excess availment of CENVAT credit on inputs	17.22	17.22	17.22	Hyderabad-I
23	14D	Non-payment of duty on freight charges	31.34	31.34	NIL	Vadodara-I
24	20D	Short-payment of duty due to undervaluation	84.18	84.18	44.49	Bolpur
25	24D	Ineligible CENVAT credit availed on civil work related services	37.97	37.97	37.97	Chennai LTU
26	25D	Incorrect availing of CENVAT credit	19.77	19.77	19.77	Chennai LTU
27	26D	Incorrect availing of unrelated input Service Tax credit	56.26	56.26	56.26	Chennai LTU
28	29D	Wrong availment of CENVAT Credit of ineligible input service	26.63	26.63	26.63	Vadodara-I
29	52D	Incorrect availing of CENVAT credit	51.89	51.89	15.98	Chennai LTU
		Small money value observations which were accepted by the department and rectificatory action taken but not converted into Draft Audit Paragraphs	1270.57	1270.57	1026.64	
		Total	**3565.60**	**3565.60**	**1913.59**	

Glossary

AC	Assistant Commissioner
ACES	Automation of Central Excise and Service Tax
AFR	Audit follow-up register
AMF	Assessee Master Files
APR	Audit Planning Register
ATN	Action Taken Note
BE	Budget Estimates
BIFR	Board for Industrial and Financial Reconstruction
Board	Central Board of Excise and Customs
CAA	Computer Assisted Audits
CAAP	Computer Assisted Audit Programme
CAAT	Computer Assisted Audit Techniques
CAG	Comptroller and Auditor General of India
CAO	Chief Accounts Officer
CAS	Cost Accounting Standards
CBDT	Central Board of Direct Taxes
CBEC	Central Board of Excise and Customs
CC	Chief Commissioner
CCR	CENVAT Credit Rules
CDR	Commissionerate Division and Range
CE/CX	Central Excise
CEAM	Central Excise Audit Manual
CEGAT	Customs, Excise and Gold (Control) Appellate Tribunal
CENVAT	Central Value Added Tax

CERA	Central Excise Receipts Audit
CESTAT	Customs, Excise and Service Tax Appellate Tribunal
CETA	Central Excise Tariff Act
CPWD	Central Public Works Department
CSO	Central Statistical Office
CTD	Cold Twisted Deformed
CTF	Centralised Task Force
DAR	Draft Audit Report
DC	Deputy Commissioner
DG	Director General
DGCEI	Directorate General of Central Excise Intelligence
DGPM	Director General of Performance Management
DGTPS	Director General of Tax Payers Services
DNP	Data Not Provided
DoR	Department of Revenue
DRI	Directorate of Revenue Intelligence
DRT	Debt Recovery Tribunal
DTA	Domestic Tariff Area
EA 2000	Excise Audit 2000
EC	Education Cess
ELT	Excise Law Times
EOU	Export Oriented Unit
ER	Excise Return
FIU	Financial Intelligence Unit
FY	Financial Year

GDP	Gross Domestic Product
HESCOM	Hubli Electricity Supply Company Ltd.
IAF	Internal Audit Files
IAP	Internal Audit Party
IAR	Internal Audit Report
IT	Information Technology
JC	Joint Commissioner
KSEB	Kerala State Electricity Board
LTU	Large Taxpayer Unit
MCM	Monitoring Committee Meeting
MIS	Management Information System
MOF	Ministry of Finance
MTR	Monthly Technical Report
OIA	Order in Appeal
OIO	Order in Original
OL	Official Liquidator
OM	Office Memorandum
PD	Principal Director
PLA	Personal Ledger Account
R&C	Review and Correction
RE	Revised Estimates
RFD	Result Framework Documents
RTA	Regional Transport Authority
SCN	Show Cause Notice
SHEC	Secondary and Higher Education Cess

ST	Service Tax
STTG	Service Tax Certificate for Transportation of Goods
TAA	Tribal Area allowance
TAR	Tax Arrear Report/Recovery
TMT	Thermo-Mechanical Treatment