

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

for the year ended March 2014

Union Government
(Department of Revenue –Customs)
(Compliance Audit)
No. 8 of 2015

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PREFACE

This Report for the year ended March 2014 has been prepared for submission to the President of India under the Article 151 of the Constitution of India.

The Report contains significant results of the Compliance audit of the Department of Revenue – Customs under the Ministry of Finance.

The instances mentioned in this Report are those, which came to notice in the course of test audit for the period 2013-14 as well as those which came to notice in earlier years, but could not be reported in the previous Audit Reports; instances relating to the period subsequent to 2013-14 have also been included, wherever necessary.

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

EXECUTIVE SUMMARY

The Report has a total revenue implication of ₹ 2428 crore covering 150 paragraphs and four long thematic paragraphs. This includes 92 paragraphs involving money value of ₹ 38.90 crore on which rectificatory action was taken by the department/Ministry in the form of issuing show cause notices, adjudicating of show cause notices and recovery of ₹ 15.40 crore. A few significant findings included in this report are mentioned in the following paragraphs.

Chapter I: Customs revenue

- Customs revenue as a ratio of GDP has been stagnant at an average of 1.6 percent over the last five years.
{Paragraph 1.5}
- Exports have recorded a growth of 17 per cent while imports registered growth of 2 per cent during FY 14. Customs receipts grew at 4 per cent during the same period.
{Paragraphs 1.6 to 1.8}
- The Customs Revenue forgone ranged from 43 to 63 percent between FY 10 to FY 14. Five schemes accounted for 79 per cent of total revenue foregone under the Schemes.
{Paragraph 1.11}
- Customs revenue of ₹ 17,986 crore demanded up to March 2014 was not realized by the department at the end of the FY 14. Of this, ₹ 5,964 crore was undisputed. Seven Zones accounted for 72 per cent of total revenue arrears pending during FY 14.
{Paragraph 1.13}
- In the last five audit reports (including current year's report), we had included 656 audit paragraphs involving ₹ 4533 crore. Of these, the Government had accepted audit observations in 575 audit paragraphs involving ₹ 320 crore and had recovered ₹ 109 crore.
{Paragraph 1.28}

Chapter III: Working of Directorate General of Valuation

- The valuation tools developed and data bases maintained by DGOV have a scope for improvement with consequent revenue implication.
{Paragraphs 3.1 to 3.16}

Chapter IV: Incorrect assessment of customs duties

- We detected incorrect assessment of customs duty totaling ₹ 115.52 crore. These arose mainly due to irregular extension of warehousing period, clearance of hazardous textiles dyes into India, payment of

interest on terminal excise duty refunds, excess payment of drawback, non levy of anti dumping duty, and project imports benefits allowed incorrectly etc.

{Paragraphs 4.1 to 4.11}

Chapter V: Incorrect application of General exemption notifications

- Duty of ₹ 30.56 crore was short levied due to incorrect application of exemption notifications.

{Paragraphs 5.1 to 5.6}

Chapter VI: Mis-classification of goods

- Duty of ₹ 9.99 crore was short levied due to misclassification of goods.

{Paragraphs 6.1 to 6.9}

Chapter VII: Duty exemption/Remission schemes

- Revenue of ₹ 1.90 crore was due from exporters/importers who had availed of the benefits of the duty exemption schemes but had not fulfilled the prescribed obligations/conditions.

{Paragraphs 7.1 to 7.2}

- This chapter also includes one long paragraph on 'Net Foreign Exchange Earnings by Hospitality Sector' highlighting cases of licences issued to Service providers without valid Registration certificates, non-submission of installation certificates and progress reports, incorrect/excess grant of duty scrip, consideration of ineligible foreign exchange earned etc with a total money value of ₹ 180.75 crore.

{Paragraphs 7.3 to 7.24}

Chapter VIII: Audit of DGFT's EDI system

- The DGFT and its regional offices are now heavily dependent on the DGFT EDI System for their mandated work. Analysis of the DGFT EDI databases and processes revealed several shortcomings on issues relating to systemic issues, inadequate controls, incorrect or insufficient mapping of FTP provisions, lack of validations, permissions for too many manual interventions and alterations of data and incorrect updation of important rate directories.

- **There is a need of a commensurate IS organization in the DGFT with the capability to manage the business critical online system having considerable revenue implication.**
- **Audit has noticed cases of Inadequate validation, input and process controls with money value of ₹ 1062.40 crore and incorrect mapping of business processes and rules with money value of ₹ 987.21 crore.**

{Paragraphs 8.1 to 8.8}

Glossary of terms and abbreviations

Expanded form	Abbreviation
Accredited Client Programme	ACP
Advance authorization	AA
Authorised Economic Operator	AEO
Advance release order	ARO
Anti Dumping Duty	ADD
Basic customs duty	BCD
Bill of entry	BE
Comprehensive Payment and Accounting Package	COMPACT
Customs tariff heading	CTH
Central Board of Excise and Custom	CBEC
Central Excise tariff heading	CETH
Central Statistical organization	CSO
Central Sales Tax	CST
Cost Insurance Freight	c.i.f.
Commissionerate of custom	Commissionerate
Countervailing duty	CVD
Directorate of Data Management	DDM
Department of Revenue	DoR
Department of Commerce	DoC
Director General of Foreign Trade	DGFT
Development Commissioner	DC
Director General of Anti Dumping	DGAD
Director general of commercial intelligence and statistics	DGCIS
Directorate General of Valuation	DGOV
Domestic tariff area	DTA
Duty Entitlement Pass Book	DEPB
Duty Exemption Entitlement Certificate	DEEC
Duty Free Entitlement Credit Certificate	DFECC
Duty Free Replenishment Certificate	DFRC
Electronic Data Interchange	EDI
Export obligation	EO
Export obligation discharge certificate	EODC
Export Oriented Unit	EOU
Export Performance	EP
Export Promotion Capital Goods	EPCG
Export Processing Zone	EPZ
Export and Import	EXIM
Financial year	FY
Fiscal Responsibility and Budget Management Act	FRBM
Free on Board	FOB
Foreign Trade Policy	FTP

Expanded form	Abbreviation
Gross Domestic product	GDP
Hand Book of Procedures	HBP
High speed diesel	HSD
Harmonised system of nomenclature	HSN
High sea sale	HSS
Information and Communication Technology	ICT
Importer Exporter Code	IEC
Incremental exports incentivisation scheme	IEIS
Importer exporter code	IFC
Indian Customs Electronic Data Interchange system	ICES
Inland Container Depot	ICD
International Tariff Classification(Harmonised System)	ITC(HS)
Joint Director General of Foreign Trade	JDGFT
Letter of permission	LOP
National e-governance plan	NEGP
Mission mode project	MMP
On Site Post Clearance Audit	OSPCA
Public Accounts Committee	PAC
Performance monitoring and Evaluation system	PMES
Principal Chief Controller of Accounts	Pr.CCA
Regional licensing authority	RLA
Result Framework Document	RFD
Real effective exchange rate	REER
Risk Management System	RMS
Rupees	₹
Special additional duty of customs	SAD
Special Economic Zone	SEZ
Served from India Scheme	SFIS
Software Technology Park	STP
Standard input output norms	SION
Service oriented architecture	SOA
User requirement specification	URS
Vishesh Krishi and Gram Udyog Yojana	VKGUY

CHAPTER I
DEPARTMENT OF REVENUE -CUSTOMS REVENUE

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 (FY) 2013-14.

TABLE 1.1: RESOURCES OF THE UNION GOVERNMENT

	Cr. ₹
A. Total Revenue Receipts	15,36,024
i. Direct Tax Receipts	6,38,596
ii. Indirect Tax Receipts including other taxes	5,00,400
iii. Non-Tax Receipts including Grants-in-aid & contributions	3,97,028
B. Miscellaneous Capital Receipts	27,553
C. Recovery of Loan & Advances	24,549
D. Public Debt Receipts	39,94,966
Receipts of Government of India (A+B+C+D)	*55,83,092
Note: Total Revenue Receipts include ₹ 3,18,230 crore, share of net proceeds of direct and indirect taxes directly assigned to states. *Figures rounded off.	

Source: Union Finance Accounts of FY 2013-14. The figures are provisional.

1.1.1 In FY 2013-14, total receipts of the Union Government amounted to ₹ 55,83,092 crore¹ for FY 2013-14. Out of this, its own resources were ₹ 15,36,024 crore including gross tax receipts of ₹ 11,38,996 crore.

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) **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).
- b) **Central Excise duty:** 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).

¹ Source: Union Finance Accounts of FY 2013-14. The figures are provisional. Direct Tax Receipts and Indirect Tax Receipts including other taxes have been worked out from the Union Finance Accounts of FY 2013-14.

- c) Taxes on Services:** 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 66 B of the Finance Act envisages that there shall be a tax levied at the rate of 12 per cent 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. 'Service' has been defined in section 65 B (44) of the Finance 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 serviceable territory (Entry 97 of List 1 of the Seventh Schedule of the Constitution).

1.3 Organisational Structure

The Department of Revenue (DoR) of 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 Customs are looked after by the CBEC.

In addition, DoR is also responsible for the Indian Stamp Act 1899 (to the extent falling within the jurisdiction of the Union), the Central Sales Tax Act 1956, the Narcotic Drugs and Psychotropic Substances Act 1985 (NDPSA), the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (SAFEMA), the Foreign Exchange Management Act, 1999 (FEMA) and the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA), the Prevention of Money Laundering Act, 2002 (PMLA) and the attached/ subordinate offices for intelligence, enforcement, ombudsman and quasi judicial functions.

The overall sanctioned staff strength of the CBEC is 73,817²(as on 1 July 2014). The organizational structure of CBEC is shown in Annual Report 2014, Ministry of Finance.

1.4 Growth of Indirect Taxes - Trends and composition

Table 1.2 gives the relative growth of indirect taxes during FY 10 to FY 14. The percentage share of indirect taxes to GDP³ was slightly above 4 per cent during last five years.

² Figures furnished by the Directorate General of HRD (Customs, Central Ex. & STax as on 1 July 2014.

³ Source: Union Finance Accounts of respective years, GDP Figures of GDP provided by Central Statistical Organisation in February 2014.

Table 1.2: Growth of Indirect Taxes

Year	Indirect Taxes	GDP	Indirect Taxes as % of GDP	Gross Tax Revenue	Indirect Taxes as % of Gross Tax Revenue
FY 10	2,45,373	64,77,827	3.79	6,24,527	39
FY 11	3,45,371	77,95,314	4.43	7,93,307	44
FY 12	3,92,674	90,09,722	4.36	8,89,118	44
FY 13	4,74,728	1,01,13,281	4.69	10,36,460	46
FY 14	5,00,400	1,13,55,073	4.20	11,38,996	42

Source: Finance Accounts, Figures for FY 14 are provisional

Indirect taxes as a percentage of GDP in FY 14 were lower than the average of 4.3 per cent in the last five years. The share of indirect taxes to gross tax revenues of FY 14 were lower than the five years average of 43 per cent. GDP has grown by 75 percent and gross tax revenue by 82 percent during this period, which saw major rationalization and reduction of indirect taxes. GDP increased from ₹ 64.78 lakh crore in FY 10 to ₹ 113.55 lakh crore in FY 14 whereas Indirect Taxes increased from ₹ 2.45 lakh crore in FY 10 to ₹ 5 lakh crore in FY 14.

1.5 Growth of Customs Receipts - Trends and composition

Table 1.3 below gives the growth trends of Customs Revenue in absolute and GDP terms during FY 10 to FY 14.

Table 1.3: Growth of Customs Receipts

Year	GDP	Gross Tax Revenues	Gross Indirect Taxes	Customs Receipts	Customs Revenue as % of GDP	Customs Revenue as % of Gross tax	Customs as % of Indirect taxes
FY 10	64,77,827	6,24,527	2,45,373	83,324	1.29	13	34
FY 11	77,95,314	7,93,307	3,45,371	1,35,813	1.74	17	40
FY 12	90,09,722	8,89,118	3,92,674	1,49,328	1.66	17	38
FY 13	1,01,13,281	10,36,235	4,74,728	1,65,346	1.63	16	35
FY 14	1,13,55,073	11,38,996	5,00,400	1,72,033	1.52	15	34

Source: Finance Accounts, FY 14 figures are provisional

The Customs Revenue as percentage of GDP shows declining trend in the FY13 and FY 14. Though, the Customs Revenue as a percentage of Indirect taxes showed increase from 34 percent in FY 10 to 38 percent in FY 12, but it declined to 34 percent in FY 14. Customs revenue as a percentage of gross tax is also at the lowest level after FY 11. Customs revenue as a ratio of GDP has been stagnant at an average of 1.6 percent.

1.6 India's export and import for FY 10 to FY 14

Exports have recorded a growth of 17 percent (₹ 2,70,692 crore) during FY 14 as compared to 11 percent (₹ 1,68,360 crore) in FY 13 (Table 1.4).

Table 1.4: India's Import and Export

Year	Imports	Growth %	Customs Receipts	Growth %	** %	Exports	Growth %	Trade Imbalance	Cr. ₹ % #
FY 10	1363736	(-) 1	83324	(-) 17	4	845534	1	-518202	38
FY 11	1683467	23	135813	63	5	1142922	35	-540545	32
FY 12	2345463	39	149328	10	4	1465959	28	-879504	37
FY 13	2669162	14	165346	11	4	1634319	11	-1034843	38
FY 14	2715434	2	172033	4	4	1905011	17	-810423	30

Source: EXIM data, Department of Commerce, ** Customs Receipts as percent of (Imports + Exports), # Trade imbalance as percent of Imports

Imports have fluctuated between (-) 1 per cent (FY 10) to 39 per cent (FY 12) in the last five years. Imports registered a growth of 2 percent (₹ 46,272 crore) as compared to growth of 14 percent (₹ 3,23,699 crore) last year. In the last five years growth in exports has fluctuated between 1 percent (FY 10) to 35 percent (FY 11). There seems to be no clear relation between the growth in imports to the growth in exports over the last five years. The trade imbalance is lowest at 30 per cent in FY 14 which was highest in FY 10 and FY 13 at 38 percent. Customs receipts has remained at an average of 4 percent of the total trade in the last five years after the peak custom rates were brought down and maintained at 10 percent after 2009.

1.7 Tax base

The customs revenue base comprises of the Importers and Exporters issued with Importer Exporter Code (IEC)⁴ by the Director General of Foreign Trade (DGFT). As on November 2014 there are 864022 active IECs. For managing the foreign trade there are 414 Import ports (93 EDI, 67 Non-EDI, 60 Manual and 194 SEZ) and 362 Export ports (108 EDI, 65 Non-EDI, 40 Manual and 149 SEZ). During 2013-14, ₹ 19.05 lakh crore exports and ₹ 27.15 lakh crore worth of imports transactions took place. Eighteen trade agreements⁵ providing some kind of tariff concession, Customs Receipts (₹ 1,72,033 crore) along with revenue forgone (₹ 3,49,405 crore) forms the basis of the tax audit.

1.8 Growth in Imports and Customs Receipts

The table 1.5 depicts growth in Imports and Customs Receipts.

Table 1.5: Growth in imports and Customs Receipts

Year	Imports	Growth %	Customs Receipts	Growth %	Peak rate of duty	Cr. ₹
FY10	1363736	(-) 1	83324	(-) 17	10	
FY 11	1683467	23	135813	63	10	
FY 12	2345463	39	149328	10	10	
FY 13	2669162	14	165346	11	10	
FY 14	2715434	2	172033	4	10	

Source: Union Budget, EXIM Data- Department of Commerce

⁴ IEC is issued by DGFT, Delhi to every importer/Exporter.

⁵ <http://commerce.nic.in/trade/international>

During FY 14 the value of imports had shown growth of two percent, while customs receipts have increased by four percent over previous year. The customs revenue collected has not grown in tandem with the value of imports.

1.9 Monitoring of Departmental performance

Department of Revenue does not have a Results Framework Document (RFD)⁶. In the absence of measurable performance indicator its revenue policy strategy and methodology of gauging its performance is not known. Department of Revenue prepares one annual report and outcome budget for the entire Ministry of Finance with five big departments and Responsibility Centres (RCs).

1.10 Budgeting issues in Customs receipts

Table 1.6 depicts Budget and Revised estimates vis-a vis actual Customs receipts.

Table 1.6: Budget and Revised estimates, Actual receipts

Year	Budget estimates	Revised budget estimates	Actual receipts	Diff. between actuals and BE	% variation between actuals and BE	% variation between actuals and RE
FY 10	98000	84477	83324	(-)14676	(-)14.98	(-)1.36
FY 11	115000	131800	135813	(+)20813	(+)18.10	(+)3.04
FY 12	151700	153000	149328	(-)2372	(-)1.56	(-)2.40
FY 13	186694	164853	165346	(-)21348	(-)11.43	(+)0.30
FY 14	187308	175056	172033	(-)15275	(-)8.16	(-)1.73

Source: Union Budget and Finance Accounts

Despite the actual collections falling short of the budget estimates year after year, the Government continued to make optimistic projections during presentation of the Annual Budget. The percentage variation during the last five years between budget estimates and actual collections was in the range of (-) 14.98 percent to (+) 18.10 percent as shown in Table 1.6 below. The revised estimates to actual receipts also varied from (-) 2.40 percent to (+) 3.04 percent.

Ministry listed (November 2014) following reasons for variation in BE, RE and actual in 2013-14 in Customs revenue:

- i. Economic slowdown (the GDP at constant prices has registered a growth of 4.7 percent in 2013-14 over 2012-13).
- ii. The total imports in rupee terms have registered a growth of 1.73 per cent in 2013-14 over 2012-13, against the import growth of 13.8 per cent in 2012-13 over 2011-12.

⁶ RFD is required to be prepared under the "Performance Monitoring and Evaluation System (PMES)" of Cabinet Secretariat.

- iii. The non-oil imports in rupee terms have registered a negative growth in 2013-14 over 2012-13.

The factors were existent for the last few years and were known before preparing the BE and could have been factored therein.

1.11 Customs Revenue forgone under Customs Act, 1962

The Central Government has been delegated powers of duty exemption under Section 25(1) of the Customs Act, 1962 to issue notifications in public interest so as to prescribe duty rates lower than the tariff rates prescribed in the Schedule to the Customs Tariff Act. These rates prescribed by notification are known as the “effective rates”.

The revenue forgone is thus defined by Ministry of Finance to be the difference between duty that would have been payable but for the issue of the exemption notification and the actual duty paid in terms of the relevant notification. In other words,

$$\text{Revenue forgone} = \text{Value} \times (\text{Tariff rate of duty} - \text{Effective rate of duty})$$

Table 1.7: Customs Receipts and Total Customs Revenue forgone

Year	Customs Receipts	Revenue forgone on commodities including Schemes	Refunds	Drawback paid	Rev. forgone +Refunds+ DBK	Cr.₹
						Revenue forgone as % of Customs Receipts
FY 10	83324	233950	2309	9219	245478	295
FY 11	135813	230131	3474	9001	242606	179
FY 12	149328	285638	3202	12331	301171	202
FY 13	165346	298094	3031	17355	318480	193
FY 14	172033	326365	4501	18539	349405	203

Source: Union Receipts Budget, CBEC DDM, CBEC

The Revenue forgone as percentage of Customs Receipts during the last five years ranged from 179 to 295 percent (Table 1.7). During the FY 14, 87 percent of the Revenue forgone was on the commodities, Crude and mineral oils, Diamond and Gold, vegetable oils and cereals, Machinery, textiles and chemicals and plastics.

Table 1.8: Revenue forgone under various Export promotion schemes

Scheme	Amount forgone/disbursed				Cr.₹
	FY10	FY 11	FY 12	FY 13	FY 14
1. Duty Drawback excluding SEZ	9219	9001	12331	17422	21799
2. Advance Licence	10089	19355	18306	18971	20956
3. EPCG	7020	10621	9672	11218	8990
4. Focus Product Scheme (FPS)	396	1209	3056	4579	7640
5. SEZ	4019	8668	4567	4503	6206
6. Others *	21863	22174	20564	15649	17261

Scheme	Amount forgone/disbursed				Cr.₹
TOTAL	52606	71028	68496	72342	82852
% of Customs Receipts	63	52	46	43	48

*Others include EOU/EHT/STP, DFIA Schemes, FMS, Vishesh Krishi and Gram Udyog Yojana (VKGUY), Target plus schemes, Status Holder Incentive scrip scheme (SHIS), Served from India Scheme (SFIS), DEPB (exclud. SEZ), DFEC Schemes, DFRC etc.

Source: Directorate of Data Management, CBEC, Ministry of Finance

The Revenue forgone under Export Promotion schemes accounts for 48 percent of the Customs Receipts during the FY 14 (Table 1.8).

Scheme wise duty forgone ranged from 63 percent to 43 percent between FY 10 to FY 14 (Table 1.8). During FY 14 top five schemes on which duty was foregone were Duty drawback scheme, Advance licence scheme, EPCG, Focus Product Scheme and SEZ. These five schemes accounted for 79 percent of total duty foregone under the schemes. Revenue outcome assessments of the various promotional schemes, trade agreements and general exemptions are not made available as a part of the budget document.

1.12 Human Resources management in CBEC

Director General of Human Resource Development formed in November 2008 has specific roles with respect to Cadre management, Performance management (of group and individual levels), capacity building, strategic vision development and welfare and Infrastructure divisions for a 73,817 strong work force (as on 1 July 2014). After cadre re-structuring in 2013, total 18067 additional posts have been sanctioned (December 2013) by the Ministry which included 490 posts of Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/ Commissioners so that:

- Indirect tax to GDP ratio could be improved;
- A robust RMS covering all ports and transactions could be in place;
- Officials and officers are trained to use ICES proficiently;
- Technical audit procedures are strengthened.

The RFD FY 14 of CBEC already covers the important activities mentioned above. The measurement and success indicators have not been correlated with the policy decisions already taken by Government in case of self assessment, OSPCA, RMS and use of ICT, ICES. Customs duty is intertwined with other tax and foreign policies of Government necessitating, restructuring and re-allocation of human resources with appropriate skills to fill the capacity gaps.

CBEC has not provided information about the trainings conducted by their Regional training institutes during FY 14 despite several reminders.

1.13 Arrears of customs duties

Table 1.9 depicts Customs revenue demanded up to March 2014 but not realised by the department at the end of the FY 14.

Table 1.9: Arrears of Customs duties

Cr.₹

Zone	Amt. under dispute				Amt. not under dispute				Grand total (Col.5+9)
	Less than 5 years	Five years but < 10 years	More than 10 years	Total (Co.2+3+4)	Less than 5 years	Five years but < 10 years	More than 10 years	Total (Co.6+7+8)	
1	2	3	4	5	6	7	8	9	10
Ahmedabad	2896	79	45	3020	101	495	234	830	3850
Mumbai III	1008	229	57	1294	897	38	25	960	2254
Bangalore	938	148	5	1091	476	14	12	502	1593
Delhi	987	209	68	1264	191	66	55	312	1576
Mumbai I	378	358	29	765	157	271	212	640	1405
Chennai	567	117	38	722	207	232	29	468	1190
Delhi Prev	763	2	1	766	270	24	7	301	1067
Sub total	7537	1142	243	8922	2299	1140	574	4013	12935
Others	2166	748	186	3100	1022	678	251	1951	5051
Grand Total	9703	1890	429	12022	3321	1818	825	5964	17986
%									71.91%

Source: Chief Commissioner, Tax Arrears Recovery, Central Excise, Customs & Service Tax

Customs revenue of ₹ 17,986 crore demanded up to March 2014, was not realised by the department at the end of the FY 14 (Table 1.9). Of this, ₹ 5,964 crore was undisputed. However, ₹ 2,643 crore (15 percent of total arrears) of the undisputed amount had not been recovered for a period of over five years. Customs revenue arrears for top seven zones account for 72 per cent of total arrears pending during FY 14. There is a need to strengthen the recovery mechanism of the department.

1.14 Trade remedial duties due to Safeguards, Antidumping and Anti Subsidy measures

The Director General of Safeguards is required under Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 to investigate the existence of 'serious injury' or 'threat of serious injury' to the domestic industry as a result of increased imports of an article into India and submit his findings to the Central Government. The Directorate General of Safeguards has carried out 28 investigations during FY 12 to FY 14 as shown in Table 1.10 below. Safeguard measures could also take the form of quantitative restrictions.

Table 1.10 Investigation done by the Director General of Safeguards

	FY 11	FY12	FY13	FY14	
No. of cases in hand	2	2	4	11	
No. of active SGs	3	3	5	3	
Name of Commodities involved (*)	(a) N1, 3-Dimethyl butyl N' Phenylene diamine (b) Aluminium flat rolled products and foil 7606 & 7607 (Review)	(a)Phthalic Anhydride (b)Carbon black	(a) Di octyl Phthalate (DOP) (b) Electrical insulators (c) Hot rolled flat products or stainless steel 304 grade (d) Phthalic anhydride (Review)	(a) Sodium Nitrite (b) Seamless pipes, Tubes and Hollow profiles of Iron or non alloy steel (c) Methyl Aceto acetate (d) Rubber Chemicals N-1, 3 – dimethyl butyl N Phenylene diamine (GPPD) (e) Fatty Alcohols (f) Sodium Citrate	

Source: Directorate General of Safeguards, Customs and Central Excise

1.15 Anti Dumping Duties

Director General of Antidumping, Department of Commerce, initiated the first anti-dumping investigation in 1992. During this period the DGAD received large number of applications for initiating anti-dumping investigations. During FY 12 to FY 14 anti-dumping investigations were initiated in 92 cases and 109 cases were finalized involving 31 countries.

The countries prominently figuring in anti-dumping investigations are China PR, EU, Chinese Taipei, Korea RP, Japan, USA, Singapore, Indonesia, Thailand, Russia, France, South Africa etc.

The major product categories on which anti-dumping duty levied are PVC paste Resin, chemicals, petrochemicals, pharmaceuticals, fibres /yarns, steel & other metals and consumer goods. The duties collected due to the remedial measures are nominal compared to total Customs duty. The duties form (0.22 percent in 2014) of the total customs duties. The current CAG's Compliance Audit report has reported some ways adopted by importers to evade the Anti dumping duties. Total duties collected vide safeguards, anti subsidy and anti dumping has not been computed by DoR.

1.16 Cost of Collection for the FY 10 to FY 14

Table 1.11 indicates the cost of collection for the five year financial period from 2009-10 to 2013-14.

Table: 1.11: Cost of Collection during FY 10 to FY 12

Year	Expdr. on Revenue, Import /export and trade control functions	Expenditure on preventive and other functions	Transfer to Res. Fund, Deposit A/c and other expdr.	Total	Customs receipts	Cost of collection as % of customs receipts	Cr.₹
FY 10	304	1218	10	1532	83324	1.84	
FY 11	293	1421	5	1719	135813	1.27	
FY 12	306	1577	5	1888	149876	1.26	
FY 13	315	1653	10	1979	165346	1.20	
FY 14*	333	1804	5	2142	172033	1.25	

Source: * Provisional figures from Finance Accounts

Expressed in terms of percentage of receipts, cost of collection was in the range of 1 to 2 percent during FY 10 to FY 14 (Table 1.11). Despite automation and extensive use of ICT, the cost of collection has increased in FY 14 as compared to FY 13. CBEC did not provide to audit the methodology to calculate the Reserve fund and Deposit Account expenditure in the overall cost of collection mentioned in the table above. Notwithstanding automation and extensive use of ICT, cost of collection continues to show a rising trend.

1.17 Tax accounting and internal Audit irregularities

1.17.1 Audit of Tax accounting, controls and reconciliation in the offices of PCCA, PAOs, Customs Commissionerates and their subordinate field offices for the period 2011-14 (three years) revealed that the system suffered from several inadequacies. There were instances of:

- Lack of internal audit at PAO (Customs), New Delhi, Kolkata, Kandla, Tiruchirapalli, Chennai and Tuticorin for the period 2011-14 in contravention of the codal provisions.
- Non-reconciliation of revenue collected by the 9 Commissionerates⁷ with PAO figures for the period 2011-14. Thus, total Customs Duty receipt of ₹ 1,07,875 crore pertaining to the Commissionerates and Refund/ drawback in respect of 3 Commissionerates⁸ amounting to ₹ 8,652 crore was not reconciled.
- In e-PAO (Customs), Delhi (March 2014), there were 7853 cases (₹ 538.16 crore) of mismatch of ICEGATE data with Bank data for Customs Duty. Similarly, there were 8464 cases (₹ 628.37 crore) in bank which did not match with ICEGATE data.
- In PAO Hyderabad, Ghaziabad, Cochin, Kandla the banks had drawn from the Government Account but did not make payment of Drawback, for 1 to 82 days, due to transaction failure or various amounts having been drawn from the Government Account without actual payment to exporters. In Customs Commissionerate, Kandla, the undisbursed amount returned through Banker's cheques to Customs department remained with Customs, for a period ranging from 40 to 1568 days. Similarly, in PAO Cochin, cases of drawback payments were noticed which were neither paid to the exporters nor credited back to Government Account. PCCA had instructed department to transfer such amount to the Government Account in its reply to audit (PAO Kandla, Cochin, October 2014).

⁷ Kandla, Kolkata (Preventive Customs), Kolkata (Port & Airport), Delhi (Customs), Amritsar, Chennai (Customs), Cochin (Customs), Tirupati and Tuticorin

⁸ Kolkata (Preventive Customs), Delhi PAO(Customs) and Kandla

- Misclassifications of Education Cess and Secondary Higher education cess under different accounting head during 2011-14 were noticed in PAOs Ahmedabad / Cochin.
- In PCCA New Delhi, an amount of ₹ 223.26 crore (2013-14) was booked under Suspense account resulting in understatement of Government's receipts. PCCA stated (October, 2014) that this amount includes receipt of advance payments of ₹ 144.13 crore of the year 2014-15. Outstanding balance of ₹ 79.13 crore pertains to previous years.
- Discrepancies between Date-wise Monthly Statements (DMS) and Put-Through Statements (PTS) prepared by CAS, RBI, Nagpur were noticed in four PAOs/e-PAOs⁹. For Customs receipts, this difference amounted to ₹ 11.66 crore (₹ 4.80 crore more in DMS and ₹ 6.86 crore excess in PTS). For Customs refunds/drawbacks, difference amounting to ₹ 1.03 crore (₹ 30.82 lakh excess in DMS and ₹ 71.68 lakh excess in PTS) was noticed.
- Non-maintenance of Cash Book 2014 in Petrapole Preventive Unit, Kolkata Customs Commissionerate, resulted in non-reconciliation of the amount collected through Challans and the figure reported to Chief Commissioner (Preventive), West Bengal. Similarly, registers of Bank Scrolls and Lost Challans were not maintained in PAO Kandla, Delhi, Amritsar and Kolkata for the period 2011-14. Non maintenance of these registers indicate weak internal controls.

1.17.2 Principal Chief Controller of Accounts (Pr.CCA), CBEC audits different payment and accounting functions of CBEC. Though internal audit is an integral part of the internal control system, the internal audit reports of Pr.CCA indicated pendency to the tune of 10 internal audit paras with gross total value of ₹ 145607.24 crore¹⁰.

Pr.CCA audit comments comprised the following irregularities apart from points of establishment audit till FY 14:

- a. Non recovery of dues from Govt. Department/State Government Bodies/Private parties/ Autonomous bodies; ₹ 67888.61 crore.
- b. Loss/ Infructuous expenditure; ₹ 59537.46 crore.
- c. Blocking of government money; ₹ 1835.97 crore.

The internal audit report does not provide a control based assurance in line with its risk assessment. C&AG's report on the audit of the accounting done by Pr.CCA would be presented in the year 2015-16.

1.18 Technical audit by DG (Audit), CBEC

Custom department has been computerized by introducing ICES in 1994 which has been further upgraded to ICES 1.5 version (2009). It has also

⁹ Kolkata, Tirupati, e-PAO(Customs) Delhi and Cochin

¹⁰ Pr.CCA DO letter No. IA/NZ/HQ/CAG INFO/2014-15/616 dated 3 November 2014

introduced Risk Management System (RMS) by flagging various risk factors on valuation, classification, notification etc. in the system. Computerization seeks to improve the assessment process of imported goods as well as exported goods and minimizes irregularities of incorrect calculation of duty, application of tariff rates, application of exemption notifications, misclassification of goods in general.

Table 1.12: Departmental audit during FY 11 to FY 14

FY	Audits conducted	Duty detected	Duty recovered	Duty detected to Customs Receipts %	Duty recovered to Detected %	Cr.₹	
						Duty recovered to Customs Receipts %	Duty recovered to Customs Receipts %
FY 11	323399	548	447	0.40	82		0.32
FY12	525406	439	459	0.29	105		0.31
FY13	446911	1824	1058	1.10	58		0.64
FY14	494393	294	223	0.17	76		0.13

Source: Directorate General of Audit, Customs & Central Excise

Departmental audit is an important instrument of internal control which detects non compliance and inefficiencies and initiates remedial action on shortcomings. To ensure effective inspection system CBEC issued instructions on the subject recently. Table 1.12 above gives quantitative achievements in this area during FY 11 to FY 14.

1.19 Customs procedure and Trade facilitation

The Government continued to streamline customs procedures and implement various trade facilitation measures. Self Assessment is a major trade facilitation measure that could result in significant reduction in the time taken for clearance of imported/export goods through Customs as witnessed in the case of Excise and Service tax department. Some of the initiatives taken include the introduction of EDI, "self assessment" for imports as well as exports and increased coverage of the risk management system (RMS) to carry out assessment on randomly selected bills of entry based on risk parameters and On Site Post Clearance Audit (OSPCA). The level of customs intervention in the clearance of import and export cargoes is intended to progressively reduce. In addition, AEO (Authorized Economic Operator) and large taxpayer unit (LTU) have been introduced for international and national facilitation. For expeditious sanction and refund of 4 per cent SAD, the procedures applied in general and especially for ACP importers have been simplified for sanction of refund without pre-audit within a fixed time of 30 days. Further, the utilization of refund of 4 percent SAD paid through different scrips such as DEPB/Reward Schemes has been relaxed by allowing manual registration of such scrips. Time release studies have been conducted in limited ports. It was observed that ICT based solutions (ICES) were not extended to all customs transactions.

1.20 Risk Management system (RMS)

Efficiency of RMS hinges on the precision of the outliers highlighted and increasing the coverage of the ICT application to all air cargo, sea port and land ports, SEZ / EOU. It does not include the non-EDI ports and all filings in the EDI ports. Table 1.13 depicts number of Import and export transactions flagged by RMS vis-a-vis import and export transactions during FY13 and FY 14.

Table 1.13: Transactions flagged by the RMS

No. of transactions flagged by RMS	FY 11	FY 12	FY 13	FY 14
Imports	16,31,287	12,52,001	12,52,001 [#]	16,21,734 [#] (23.24 %)
Exports	-	-	3007	3,20,047 [#] (03.80 %)
Total transactions (Imports)		62,36,748	65,61,921*	69,15,958*
Total transactions (Exports)		67,81,392	74,60,630*	84,11,542*

Source: [#] Risk Management Division, DRI, CBEC, * DGCI&S, MOC and Industry, Govt. of India

RMS in exports has been launched in July 2013 and 3.20 lakh (3.80 %) transactions against total export transactions of 84.11 lakh were flagged in FY 14.

1.21 On Site Post Clearance Audit (OSPCA) Scheme

After introduction of OSPCA, on the one hand Customs department had effectively reduced the audit of ACP clients, while on the other the OSPCA scheme had not fully picked up. During the FY14, out of 483 planned, audit of only 226 units under OSPCA, was conducted which resulted in detection of short levy of ₹ 55.85 crore, of which ₹ 5.95 crore (10.65 percent) was recovered.

1.22 24X7 Customs Clearance Operation

In order to facilitate import and exports the Board decided to begin on a pilot basis 24X7 customs clearance with effect from September 1st 2012 at identified Air cargo complexes (Chennai, Mumbai, Delhi and Bangalore) and seaports (Kandla, JNPT, Chennai and Kolkata) in respect of following categories of imports and exports:

- a. Facilitated Bills of Entry where no examination and assessment is required; and
- b. Factory stuffed export containers and export consignment covered by Free Shipping Bills.

In order to further facilitate trade, coverage of 24X7 customs clearance operations was extended to cover export consignments at four air cargo complexes. Further, 24X7 services for select import and export documents have now been extended (May 2013) to 13 more air cargo complexes working on EDI. The facility was extended to airports such as Chennai, Mumbai, Delhi and Bangalore.

1.23 Single window Customs clearance

In order to cut transaction cost and time, as well as for better utilization of resources, implementation of single window scheme has been conceptualized by CBEC with customs being lead agency to implement the same.

Single window in customs aims to provide a platform for traders to file a common declaration electronically, meeting requirements of other regulatory agencies involved in clearance process of imported/exported goods. Under single window regime, data fields/information relating to other regulatory agencies is transmitted electronically to get their clearance/input before clearance is allowed by customs.

1.24 Audit effort and Customs Audit Products

Compliance Audit Report

Compliance audit was managed as per the Comptroller and Auditor General's (CAG) Audit Quality Management Framework, 2009 employing the Auditing Standards, 2nd Edition, 2002.

1.25 Sources of information and the process of consultation

Data from the Union Finance Account, Annual Import/Export Data of Customs (CBEC), Single Sign On (SSO id) based access of ICES 1.5 was used along with examination of basic Records/ documents in DoR, CBEC, Department of Commerce and their field formations. MIS, MTRs of CBEC along with other stake holder reports were used. We have nine field offices headed by Director Generals (DGs)/ Principal Directors (PDs) of audit, who managed audit of 415 units in FY 14 and issued 15050 Audit observations. Transaction level data of ICES 1.5 for imports and exports in 2013-14 as per the data directory was not provided by Director General (System), CBEC despite several reminders.

Remedial action taken on the compliance audit report and their status as of March 2013 is given in Table 1.14.

Table 1.14: Remedial action taken on the compliance audit report

Report No.	CBEC, Customs		DoC	
	ATNs pending	ATNs not received	ATNs pending	ATNs not received
CA 7 of 2006 (Cus,CX,ST)		-	2	-
CA 20 of 2009-10 (Cus, CX, ST)		-	1	-
CA 14 of 2009-10		-	2	-
CA 24 of 2010-11		-	2	-
CA 31 of 2011-12	-		3	3
CA 14 of 2013		2	-	-
CA 12 of 2014	1	47	-	7
Total	1	49	11	10

Source: CBEC, Ministry of Finance, Deptt. of Commerce

The current report has 150 paragraphs and four long thematic paragraphs of ₹ 2428 crore. There were generally six kinds of observation: Incorrect classification; Incorrect application of exemption notification; Condition of notification not fulfilled; Incorrect exemption due to miscalculation; Scheme based exemption, Incorrect assessment of customs duties in addition to systemic issues and matters of Policy interpretations. The department/ Ministry has already taken rectificatory action involving money value of ₹ 38.90 crore in case of 92 paragraphs (**Annexure-1**) in the form of issue of show cause notices, adjudication of show cause notices and reported recovery in some cases.

1.26 Performance Audit Report

This year we have covered Performance audit on '100% Export Oriented Units' and 'Imports and exports Trade facilitation through customs ports'. Performance audit of the Scheme/Institutions/ processes are conducted employing professional auditing standards and Performance Auditing Guidelines, 2014.

1.27 Public Accounts Committee (PAC)

PAC has taken up performance review on 'ICES 1.5', SEZ and three long paragraph on 'Management of Narcotic substances (Department of Revenue)', Disposal of seized and confiscated goods and Public and private bonded warehouses for examination/discussion. PAC's advance questionnaires to the Department of Revenue/ Commerce have been broad based at the levels of tax policy, administration and implementation. It has also observed lack of inter-ministerial coordination, scheme outcomes as well as inadequate monitoring in the past.

1.28 Response to CAG's audit, revenue Impact/follow-up of Audit Reports

In the last five audit reports (including current year's report) we had included 656 audit paragraphs (Table 1.15) involving ₹ 4533 crore.

Table 1.15: Follow up of Audit Reports

Year	Paragraphs included		Paragraphs accepted						Recoveries effected					
			Pre printing		Post printing		Total		Pre printing		Post printing		Total	
	No.	Amt.	No.	Amt.	No.	Amt.	No.	Amt.	No.	Amt.	No.	Amt.	No.	Amt.
FY 10	124	80	102	33	16	4	118	37	63	18	3	-	66	18
FY 11	118	131	102	99	29	18	131	116	56	18	3	4	59	22
FY 12	121	62	108	48	14	11	122	59	79	30	9	1	88	31
FY 13	139	1832	100	66	0	0	100	66	63	17	4	5	67	22
FY14	154	2428	104	42	-		104	42	65	16	-		65	16
Total	656	4533	516	288	59	33	575	320	326	99	19	10	345	109

Source: CAG Audit reports

Government had accepted audit observations in 575 audit paragraphs involving ₹ 320 crore and had recovered ₹ 109 crore.

CHAPTER II

Working of Directorate of Revenue of Intelligence

2.1 Introduction

The Directorate of Revenue Intelligence (DRI) was constituted on 4 December 1957 and exercises all the powers specified in Section 100, 101, 103, 104, 106, 107 and 110 of the Customs Act, 1962. DRI has established an intelligence gathering network which relies on traditional human intelligence resources as well as contemporary technical gathering tools. DRI collects, analysis and disseminates intelligence to the field formations, help in investigation and keeps statistics of seizures and prices/rates etc, for watching trends of smuggling, movement of other contraband and suggest remedies for fixing loopholes in existing laws and procedures. Its organization set up is given in website dri.nic.in.

2.2 Scope and coverage

The scope of audit was limited to the internal controls and monitoring arrangements. The records relating to rewards to the informers, cases under investigation and the database of the organization known as ISS (Intelligence Support System) were not produced to audit though the audit intervention was at the level of Director General of Audit.

The report has been prepared on the basis of interviews, reply / information received against the audit memos issued to the department.

2.3 Audit Objectives

The objective of the Audit is to review whether:-

- DRI has adequate resources in terms of manpower, equipments etc. to take suo moto cognizance of cases.
- A suitable monitoring, coordination, communication network and feedback exists for sharing of alerts/intelligence between DRI and other agencies.
- Efficiency of intelligence gathering and application.

2.4 Audit Findings

2.4.1 Tax Evasion, Investigation and Seizures

There has been an increasing trend in evasion of cases both in terms of numbers and the amount during the last five years (FY 10 to FY 14) as shown in the **Annexure 2**. The duty evasion cases went up from 391 to 694 which valued between ₹ 615 crore to ₹ 3,113 crore during the same period.

DRI unit (CBEC) detected 2873 cases of tax evasion involving ₹ 10025.30 crore during the FY 10 to FY 14. The products involved were mainly second hand machinery, electronic goods, memory cards, helicopters, luxury cars,

mobile phone and its batteries, vehicles and their parts, rough diamonds and jewellery.

2.4.2 Trend in Seizures of Specified Commodities

Scrutiny of seizures of Specified Commodities during FY 10 to FY 14 (**Annexure 3**) reveals that there was an increasing trend in seizures of gold at All India level because of increase in import duties, other government measures to regulate import of gold for improving the current account deficit.

It was seen that total amount of seizures at all India level have gone up from ₹ 2156.50 crore to ₹ 2271.82 crore. Maximum rise was in Gold, Machinery/Parts and Vehicles/Vessel/Aircrafts etc. This was despite tariff rationalization, increasing trade openness, facilitation and advanced surveillance. FY 12 had the highest value of seizures both for all India (₹ 2755.68 crore) and DRI (₹ 2130.67 crore).

2.4.3 DRI has adequate resources in terms of manpower and equipments to meet the challenges posed by the dynamic and rising trend and sophistication of the commercial frauds and smuggling cases. Its utilisation and performance has been commented upon in the following paragraphs.

2.4.4 Staff Position

The working strength of DRI is 544 against a sanctioned strength of 740. The zone-wise position of sanctioned strength vis-à-vis men-in-position as on 31 March 2014 is as under:

Table 2.1: Sanctioned and working strength

Sl. No.	DRI Zone	Sanctioned strength	Working staff DRI staff	Deputation staff	% of deputation staff against Working Strength	Vacancy	% of vacancy against sanctioned strength
1	HQrs	154	100	12	10.7	42	27.27
2	New Delhi	104	40	34	45.9	30	28.85
3	Mumbai	124	40	57	58.8	27	21.77
4	Chennai	80	26	32	55.2	22	27.50
5	Kolkata	77	25	27	51.9	25	32.47
6	Ahmadabad	58	25	25	50.0	8	13.79
7	Lucknow	77	28	27	49.1	22	28.57
8	Bangalore	66	25	21	45.7	20	30.30
TOTAL		740	309	235	43.2	196	26.50
				544			

From the above table it was observed that the shortage in staff is evenly distributed except in case of Ahmedabad, where vacancy was lowest at 13.79 percent. Further, the percentage of deputation staff against the DRI's own staff was also evenly distributed except at Headquarters where it was as low

as 10.7 per cent. However, the percentage of deputation staff is about 43 per cent of the posted strength and average vacancy is at 26.50.

Information relating to the tenure of staff on deputation was not provided by DRI. There was no document on record or produced to audit to indicate the use of modern work norms in the present ICT environment.

2.4.5 Financial Arrangement

The funds of DRI are released by the Director General of Human Resource Development in the form of Non-Plan grants. The heads of account also include 'Reward to informer' and 'Secret Service Fund'. The consolidated budget received by the DRI (headquarters) is further allocated to the zonal offices. The zone-wise budget and actual expenditure for the year 2011-12 to 2013-14 is as under:-

Table 2.2: Budget and Expenditure

(₹ in thousand)

Sl. No.	DRI zone	Sanctioned budget	Actual Expdr.	Sanctioned budget	Actual Expdr.	Sanctioned Budget	Actual Expdr.
		2011-12		2012-13		2013-14	
1	DRI (HQrs.)	109358	97385	160434	150310	150725	145294
2	New Delhi	69226	65969	68184	66203	70220	69765
3	Mumbai	126135	123673	131797	120125	91867	91787
4	Chennai	64565	63814	52192	52115	62955	62493
5	Kolkata	53607	49149	61265	57927	62147	62071
6	Ahmadabad	56057	50293	59620	51579	63911	63726
7	Lucknow	43496	42286	50861	48954	61650	61650
8	Bangalore	50885	50729	52341	48946	53750	53750
	Total	573329	543298	636694	596159	617225	610536

There is also a separate special equipment fund. The salary component of budget expenditure of Headquarter was showing a decreasing trend against the working strength during 2011-12 to 2013-14. There was no budget analysis to show the basis of allocation.

Amount sanctioned for rewards and Secret Service Fund during the year 2011-12 to 2013-14 is tabulated below:

Table 2.3: Reward and Secret Fund

(₹ in thousand)

Year	Reward to informer		Secret Service Fund	
	Sanction	Exp.	Sanction	Exp.
2011-12	35000	27009	20000	20000
2012-13	5000	48062	24000	24000
2013-14	70000	83659#	25000	25000

(#) vide letter No. 8/B/10(184)HRDEMC/2014 dated 20 March 2014, the O/O the DGHRD has also authorised DRI to divert funds from one item to another within the same area (i.e. within Commissionerate/Land Customs for central Excise or within Revenue Functions/ Preventive functions in respect of "Reward (Officers)" to Rewards informer and vice versa.

Certification of the "Secret Service Fund "was not produced to Audit, however, audit observed that DG (DRI) himself certifies its "Secret Service Fund" and no independent agency certifies its veracity.

2.5 Suo-moto cognizance of cases on the basis of its own intelligence network developed and on the basis of past experience

DRI uses IT systems for Intelligence Support System (ISS) and DRI Profiling System (DRIPS). It is also connected to its Zonal offices. We requested DRI for access to DRIPS and other data, but the same was not provided. The following audit findings are made based on the results of analysis of papers provided, interviews and system navigation of the DRI System and the challenges to the cyber security as stated above.

1. DRI does not have any IS Strategic plan for Database Management system. The data maintained manually is not internally audited or monitored.
2. It was also observed that there was no HR (Human Resources) management policy for recruitment, capacity building, skill up- gradation of manpower required to strategically manage and monitor a critical intelligence system.
3. There is a risk of undetected non compliance of a multi location, multi user critical application like ISS/ DRIPS handling sensitive intelligence data, in an IS organization. The follows is therefore recommended:
 - a. Independent third party evaluation/assessment.
 - b. Appointing/Posting the right skilled persons.
 - c. Creation of an appropriate IS organization within DRI.
 - d. Building internal walls inside the IS network.
 - e. Audit of the database, change management, operating system, infrastructure, hardware configuration, network, IS security etc.

2.5.1 Intelligence/information received and gathered

Information is received through various sources such as e-mails, phone calls, personal visits, post, etc. After the receipt of information, it is examined and analysed and if found to be prima facie correct/actionable it is further developed. The intelligence/information is recorded under DRI-1 (a specific mechanism for recording of information which also enables the informer to reward) which is maintained in a database i.e. the DRI-1 register. In addition to information, cases are also detected and investigated on the basis of intelligence gathered and developed through analysis of import/export data.

DRI-1 register has not been provided to audit. There is no technical audit or counterfactual verification of the process and procedure of DRI.

The details of intelligence received/gathered and selected for investigation during last three year are given below:

Table 2.4: Intelligence and investigation

Year	No. of Intelligence received*	No. of cases selected for investigation	No. of cases closed before investigation	No. of cases closed after investigation	No. of cases reopened for investigation
2011-12	139	124	15	4	Nil
2012-13	67	65	2	2	Nil
2013-14	43	41	2	1	Nil
Total	249	230	19	7	Nil

*information received from informers in commercial fraud case and recorded under DRI-1

The above table denotes that the number of intelligence/information of commercial fraud cases received in DRI declined in the year 2012-13 and 2013-14.

Table 2.5: % variation of Reward Paid to Informers and Officers

Year	Amount Paid (₹ in lakh)			
	Informers	% variation	officers	% variation
2011-12	52		362	
2012-13	374	619	484	34
2013-14	399	667	699	93

Though, the amount of reward paid to the informers had increased to 619 percent and 667 percent during the year 2012-13 and 2013-14 respectively as compared to the year 2011-12. The number of intelligence received was decreasing gradually.

Similarly, reward to Officers had increased to 34 percent and 93 percent during the year 2012-13 and 2013-14 as compared to the year 2011-12 which is not commensurate with the number of intelligence/information of cases received/investigated.

On audit enquiry, DRI replied that general information/intelligence cases which include highly sensitive NDPS (Narcotic Drugs and Psychotropic Substances) and other cases were not reported as information related to them could not be shared. Therefore, the actual number of cases selected for investigation and action thereon could not be verified.

2.5.2 Investigation

Investigation is done in terms of the various provisions as envisaged in the Customs Act, 1962. Database of investigations during the year is maintained in DRI Profiling System (DRIPS) along with the status of SCN. Hard copies of DRIPS are not kept. Access to DRIPS was not provided to audit.

The variation in number indicated as "Number of cases" selected for investigation and age analysis below vary because of data entry practices which was indicative of lacking in input controls.

The zonal unit wise position of investigation pending as on 31st March of 2014 is given in table 2.6.

Table 2.6: Details of investigation pending

Name of Zonal Unit	No. of investigation still alive	No. of investigation pending beyond prescribed period of (as on 31 March of 2014)				% of Investigation pending more than 6 months
		< 6 months	> 6 months but < 1 year	> 1 year but < 5 years	> 5 years	
Ahmadabad	147	64	20	63	NIL	56.46
Bangalore	60	42	7	11	NIL	30.00
Chennai	145	50	28	67	NIL	65.52
Delhi	97	56	12	29	NIL	42.27
Kolkata	116	31	32	50	3	73.28
Lucknow	44	27	9	8	NIL	38.64
Mumbai	221	74	26	121	NIL	66.52
HQrs.	38	27	6	5	NIL	28.95
Total	868	371	140	354	3	57.26

The above table denotes that the percentage of investigation pending for more than six months is ranging from 29 per cent to 73 per cent, with 3 cases pending in Kolkata for more than 5 years.

In addition, there are 497 investigations (57 per cent) pending for more than six months of a total of 868 investigations, although as per section 110 of the Customs Act, 1962, SCNs are stipulated to be issued in a time period of six months. There is a risk that on finalisation of investigation, these cases may become time barred for any revenue realisation.

DRI was requested to furnish the files of cases closed after recovery or dropped. DRI replied that the desired data is secret and confidential in nature and hence cannot be shared. In addition, it appeared that DOR/CBEC had left the entire functioning of DRI without any checks and balances or performance appraisal mechanism.

2.5.3 Customs Overseas Intelligence Network (COINS)

The COIN units pass on intelligence gathered from overseas or collected on request from the Zonal units, which assists in DRIs investigation. This report is on the work done by them as prescribed by their mandate.

The following information /files/documents interalia were requisitioned by audit from the DRI:

- (i) The success ratio of intelligence given by the COIN officers in terms of SCN, seizure and recovery.
- (ii) The efficiency of information exchanged with REIC and other intelligence agencies.

DRI replied that all the aforesaid information/files/documents are highly confidential and such details could not be shared with statutory audit. DRI did not even provide information on the number and value of cases aided by COIN.

It is not known to audit how is the efficacy of the COIN system independently evaluated especially because there is no technical audit of DRI.

2.6 Feedback system to monitor SCN issued

Show cause notices (SCNs) are issued after investigation is over within the stipulated time period of six months or special extension is taken as provided for in section 110 of Customs Act 1962, wherever goods are seized during investigations, unless provisional release of goods is allowed. In cases of duty evasion in imports, whenever the extended period of 5 years is invoked in terms of Section 28 of the Customs Act, 1962, SCN has to be issued within 5 years. In other cases such as export frauds, or policy violations, etc. there is no stipulated time period for issuance of SCN.

Year-wise details of SCN issued during the last three years are as under:-

Table 2.7: Position of SCN

Year	Number of SCN issued on the basis of intelligence/information received from informers	Number of SCN issued on Suo Moto basis	Total number of SCN issued	No. of Transactions	
				Imports*	Exports*
2011-12	99	566	665	62,33,000	67,79,000
2012-13	85	735	820	74,60,630	65,61,921
2013-14	273	743	1016	84,11,542	69,15,958
Total	457	2044	2501	1,46,44,542	1,36,94,958

*Source: Directorate General of Commercial Intelligence and Statistics, Kolkata

The adjudication of cases lies with the adjudicating authority which is part of the Commissionerate system. A copy of the adjudication order is sent to the respective DRI Zonal Unit for updation of the adjudication records in DRIPS.

The total number of SCNs issued does not seem to be commensurate to the total customs transactions that had taken place during these years.

DRI stated that it has no control over adjudication of SCN and hence no monitoring is done in this respect. The number of cases adjudicated along with value of goods confiscated and duty confirmed for last three years as given below.

Table 2.8: Cases adjudicated

	2011-12	2012-13	2013-14	Cr. ₹
No. of cases adjudicated	134	357	355	
Duty Confirmed	296	4310	3774	
Value of Goods Confiscated	693	3271	7419	
TOTAL (Row 2 + 3)	989	7581	11193	

The table overleaf denotes that there was an increase in adjudication cases in 2012-13 which only slightly declined in 2013-14. There were a number of cases where adjudication had not started (e.g. 2501 cases).

Table 2.9: Duty confirmed and value of goods confiscated

Year	Customs Receipts*	Revenue Forgone on Commodities includ. Schemes	Total	Duty confirmed	Value of goods confiscated	Cr. ₹	
						% of Col.5 over Col.4	% of Col.6 over Col.4
1	2	3	4	5	6	7	8
2011-12	149328	285638	434966	296	693	0.07	0.16
2012-13	165346	298094	463440	4310	3271	0.93	0.71
2013-14	172033 (P)	326365 (P)	498398	3774	7419	0.76	1.49

Source: *Union Receipts Budget, CBEC-DDM,

The duty confirmed is a small per cent (0.07 to 0.76 per cent) of the total Customs Receipts and Duty foregone. The value of goods confiscated is 0.16 to 1.49 percent of the total Customs Receipts and Duty foregone indicating a need for improvement in intelligence gathering.

DRI was asked to furnish the records/register maintained for recording/monitoring the final outcome of SCNs adjudicated by the concerned Commissionerates. The DRI replied that the brief points of adjudication orders as and when received from the adjudicating authority are entered in the DRIPS and could be viewed therein. They are not independently monitored. The current position though is maintained by the DRI was not provided to audit for verification.

2.7 Co-ordination and communication network for sharing of alerts/intelligence between DRI and other agencies

Revenue realised at the behest of DRI and its percent share in the total trade value (Exports + imports) is shown below. It appears that the contribution of DRI's action are negligible.

Table 2.10: Revenue realized at the behest of DRI

Year	Exports*	Imports*	Total	Revenue realized at the behest of DRI#	Cr. ₹	
					% Col.5 over Col.4	% Col.6 over Col.4
1	2	3	4	5	6	7
2011-12	14,65,959	23,45,463	38,11,422	1728	0.05	0.11
2012-13	16,34,319	26,69,162	43,03,481	4743	0.11	0.07
2013-14	19,05,011	27,15,434	46,20,445	3113	0.07	

Source: * Ministry of Commerce and Industry, Exim data, www.commerce.nic.in

Directorate of Revenue Intelligence, CBEC

(a) Intra-departmental co-ordination

Information/intelligence is shared with the zonal units, field formations and other ministries and departments on a case to case basis depending on the nature of information/intelligence. Further action in these cases depends on the respective unit's own analysis and examination of the matter.

(b) Inter-departmental co-ordination

Sharing of intelligence / information is done with other agencies such as ED, IT, etc. through Central Economic Intelligence Bureau (CEIB) and Regional Economic Intelligence Committee (REIC) meetings which are held periodically. Secret information / intelligence is also shared with RAW, IB, CBI, etc. on a case to case basis and on a need to know basis and there is no specific protocol prescribed for this.

(c) International co-ordination

The international coordination is also done now by Regional International Liaisoning Office (RILO) which works under the umbrella of World Customs Organisation (WCO). DRI is the nodal point of contact with RILO.

2.7.1 Monitoring of alerts issued within DRI and its zones

Alerts are issued by DRI Hqrs to sensitize the field formations regarding undervaluation, overvaluation, incorrect grant of notification benefits, concealment, etc. & modus operandi employed by traders. No record is maintained by DRI for number of cases detected by the field formations on the basis of such alerts and on the SCNs issued or adjudications done consequently. CBEC also does not do any internal audit of the alerts issued by DRI and those acted upon by the field formations, thus leaving the use of intelligence information at the discretion of the Assessing Officers (AOs). A feedback mechanism is required for effective use of alerts by the commissionerates.

2.7.2 Rewards

The informers and Government servants are eligible for reward upto 20 per cent of the net sale-proceeds of the contraband goods seized and/or amount of duty evaded plus amount of fine and penalty levied/imposed and recovered as stipulated in the Ministry of Finance's circular no. R-13011/6/2001-Cus (AS) dated 20 June 2001. Award paid to informers and Government officers during the period 2011-12 to 2013-14 is given in table below:

Table 2.11: Cases detected and reward paid to informers

Year	No. of cases detected	No of informers rewarded	Amount paid (₹ in thousand)	Amount paid to officers (₹ in thousand)
2011-12	289	36	5206	36204
2012-13	362	26	37411	48384
2013-14	514	45	39929	69945
Total	1165	107	82546	154533

Though the amount of the reward paid to informers and officers was increasing gradually, when compared to the numbers of Intelligence received and cases

selected for investigation as shown in Table 2.4, the intelligence/ information and number of cases received/investigated seemed to be decreasing.

2.8 Internal Control and audit

Pr. Chief Controller of Accounts (Pr. CCA), Central Board of Excise and Customs conducts establishment and expenditure audit of the DRI without certification of 'Secret Service Fund' (SSF). The DG DRI certifies the SSF. The last audit of Pr. CCA was done in March 2011 after a gap of five years for the period April 2006 to March 2010.

The Director General of Audit, Customs and Central Excise, CBEC, Ministry of Finance does not audit the DRI to check its internal control or for its performance. No technical audit of the DRI organisation was being done.

Periodic reports are sent by Policy Section of DRI to the Board and Department of Revenue which are produced, collated and delivered by DRI without any provision for cross checks.

No Internal control mechanism is in place to get assurance about the effective fulfillment of the tasks/mandate as evident from the cases taken up by DRI. Relied upon documents (RUD) were not provided in the first instance in some cases which could reduce the opportunity given to the parties to respond.

The Statutory audit conducted was closely monitored at the level of Director General of Audit (Central Receipts), Delhi. DRI did not co-operate with audit in terms of sharing the processes and information required to form adequate assurance of its systems and performance.

CHAPTER III

Working of Directorate General of Valuation

3.1 Introduction

The Directorate of Valuation (DOV) was established in the year 1997¹¹ and upgraded as Directorate General of Valuation (DGOV) in December 2002. The main function of the DGOV is to assist the Central Board of Excise & Customs in Policy matters concerning valuation of Imported, exported and excisable items; developing valuation tools and best practices for the effective and uniform application of valuation law; monitoring valuation trends of sensitive commodities; carrying out valuation inspections at Customs stations; coordinating with relevant international organizations; providing data for Risk Management System(RMS); monitoring and examining quality of orders passed by Special Valuation Branches (SVBs) of the Customs Commissionerates, etc. DGOV in its website (www.dov.gov.in) hosts the National Import Database (NIDB), Central Excise Valuation Data base (CEDB), Central Registry of Special Valuation cases (SVB), Export Commodity Database, alerts and monthly Valuation Bulletin "Customs Valuation Bulletin" as well as "Central Excise Valuation Bulletin" are published and disseminated. The website also shows the organizational structure of DGOV. From December 2012, the functional control of Special Valuation Branches at Mumbai, Delhi, Chennai, Kolkata and Bangalore were delegated to DGOV.

3.2 Audit Scope and Methodology

Audit covered the functioning of Directorate General of Valuation, Mumbai for the period 2011-12 to 2013-14 involving audit of manpower deployment, Information Technology (IT) system (IS) and database maintained by DGOV; internal control mechanism in place, monitoring of functioning of Special Valuation Branches, etc.

The report has been prepared on the basis of entry conference, exit conference, interviews, system data navigation, websites of DGOV, CBEC, MOC and reply/information received against the audit memos issued to the department.

3.2.1 National Import Data Base (NIDB)

An electronic data base of imported goods has been developed in June 2004 which involves compilation of import data on weekly basis from all Customs stations in the country and its analysis by specially developed software (Mulyaankan) to determine outliers¹²; unit values, weighted average values

¹¹ vide CBEC letter under F. No. A 11013/34/96-Ad-IV/pt-II dated 2.6.1997

¹² Outliers means entries whose unit prices are more than 10% lower than the weeks average.

of identical goods, percentage deviations and outliers, supplemented with international price information.

3.2.2 Export Commodity Data Base (ECDB)

It is a export valuation data base, developed in the year 2005 with a view to check over/under valuation and misuse of export incentive schemes. This involves capturing of export data from the Customs Stations, consolidation and analysis of this data with the help of a specially designed software for providing results (viz. weighted averages, standard deviations, outliers), leading to detection of potential cases of valuation fraud.

3.2.3 Central Registry Database (CRD)

CRD is maintained by DGOV on its website which contains details of Special Valuation Branch (SVB) cases pertaining to related party imports, payment of royalties, license fees, supply of materials and services by the importer, etc. registered in the five major Custom Houses at Mumbai, Chennai, Delhi, Kolkata and Bangalore. Each case registered under SVB has to be uploaded in the CRD by the respective Custom House. DGOV has been vested with functional control over the SVBs with effect from 1 January 2013¹³.

3.2.4 Central Excise Valuation Database (CEDB)

Central Excise Valuation database has been developed¹⁴ in respect of 9 sensitive commodities are being received from the central excise zones with effect from July 2008 and being analyzed. A monthly report is generated containing the average, maximum and minimum assessable values for different commodities.

3.3 Additional revenue generated

Additional revenue generated by Customs Department because of DGOV databases as reported by DGOV is as follows:

Table 3.1: Additional revenue generated

Year	Amount realised (Cr. ₹)	Remarks
2009-10	790	DGOV stated that commodity wise data is not available. DGOV also stated that Number of import/export items valued and import/export transactions flagged may be treated as nil as the data comes to DGOV only after assessment by the field formations
2010-11	930	
2011-12	1096	
2012-13	1411	
2013-14	1711	
Total	5938	

Audit observations

Observations made by audit on examination of the systems, databases and records maintained in the office of DGOV are discussed below:

¹³ vide Circular No.29/2012-Customs dated 7 December 2012

¹⁴ As per CBEC letter No.F.No.224/23/2005/CX-6 dated 16.10.2007

3.4 Performance of IT systems deployed by DGOV

Audit did not get direct access to the IT systems deployed by the DGOV and therefore various databases maintained by DGOV could not be examined for their control objectives. The following audit findings are made based on system navigation and the results of analysis of the documents and replies provided by DGOV. It was observed that DGOV:

- a) does not have any IS Strategic Plan for Database Management System of DGOV.
- b) It has not conducted the audit of its software.
- c) It does not capture the number of hits in the system.
- d) It does not have the exact number of outliers generated for the commodities at a point of time (at eight digit level)

DGOV's IS organisation with a critical application and databases linked to the RMS, has significant revenue implication which creates a risk of undetected non-compliance if uncontrolled. The following is therefore recommended:

- i. Independent third party evaluation/assessment.
- ii. An IS organization within DGOV with the right skilled persons.
- iii. Audit of the database, operating system, networking, Infrastructure, hardware configuration, IS security, change management etc.

3.5 Non integration of DGOV databases with Indian Customs EDI System (ICES) 1.5

DGOV data base is not integrated with ICES 1.5. Assessing officer has to log in to the DGOV website and separately search for the required information. CBEC had directed its field formations on 28th November 2009 to use of DGOV databases while assessing import bill of entries or shipping bills by integrating it with ICES 1.5.

However, in reply to audit, DGOV stated that the issue of integration of DGOV databases with ICES was discussed with the officers of DG Systems as well as software developers in January 2010 and it was found that such integration of databases with ICES was not feasible. This defies the objective of real-time utilization of DGOV database by the assessing officers.

3.6 Incomplete database of imported and exported goods

Audit of the value of imports and exports of all commodities from DGOV, compared with the data reported by MOCI indicated that total value of imports in DGOV database was less to the extent indicated that total value of imports in DGOV database was less to the extent of 35.58 percent, 39.06 percent and 33.53 percent for the year 2011-12, 2012-13 and 2013-14 respectively (Table 3.2) in comparison to value of imports as published by MOCI which also relies on the ICES 1.5 data. Similarly total value of exports in

DGOV database was less to the extent of 27.53 percent in the year 2012-13 and 34.06 percent in the year 2013-14.

The main reasons for the difference appear to be non-inclusion of data of imports/exports made by Special Economic Zones (SEZs/EOUs) in DGOV database and non-existence of any mechanism with DGOV to ensure that data receipt in DGOV is complete.

Table 3.2: Comparison of import/export figures

Year	Ministry of Commerce data*		DGOV data		Difference (%)	
	Value of imports	Value of exports	Value of imports	Value of exports	Imports	Exports
2011-12	23,45,463	14,65,959	15,10,872	#	8,34,592 (35.58%)	#
2012-13	26,69,162	16,34,319	16,26,423	11,84,350	10,42,739 (39.06%)	4,49,969 (27.53%)
2013-14	27,15,434	19,05,011	18,04,849	12,56,121	9,10,585 (33.53%)	6,48,890 (34.06%)

*source: www.commerce.nic.in

Data not furnished to audit. It was stated that data was not available for 2011-12 due to technical reasons.

DGOV also informed that assessments of imports and exports in SEZs are handled by MOCI and their system was not connected with Customs EDI systems. It was observed that alerts issued by the DGOV are not being marked by DGOV to the Development Commissioners of SEZs which was confirmed by Development Commissioner, SEEPZ.

3.7 Effectiveness of National Import Database (NIDB)

The revenue realised by the customs department due to use of valuation tools in comparison with total customs revenue and revenue realised by DRI on account of undervaluation is tabulated below.

Table 3.3: Revenue realised using valuation tools

Year	Customs Revenue(*)	Total Revenue realised by customs department by using DGOV valuation tools	% of revenue realised by DGOV to total customs revenue	Cr.₹	
				Total revenue realised by DRI on account of undervaluation	% of revenue realised by DRI on valuation issues compared to total customs revenue
2009-10	83324	790	0.95	166	0.20
2010-11	135813	930	0.68	132	0.10
2011-12	149328	1096	0.73	466	0.31
2012-13	165346	1411	0.85	282	0.17
2013-14	17033	1711	0.99	433	0.25

(*) Union Receipts Budget, CBEC- DDM

From above it can be observed that additional revenue realised because of DGOV inputs is not commensurate to the total customs receipts. DGOV in its response stated that as per the information received by them from DG Systems, the total revenue realised by Customs Department on account of

usage of alerts issued by DGOV was only ₹ 251.71 crore in 2012-13 and ₹ 351.71 crore in the year 2013-14 which is less than the revenue realised by DRI on undervaluation based on information inputs.

The DGOV did not share the methodology in which list of sensitive commodities are prepared and given to Risk Management Division (RMD) of DG system. The constituent factors comprising the sensitive list were not known to audit. Against a specific query by audit it was informed that DGOV did not have commodity wise data of transactions. Since outliers are flagged commodity wise in the NIDB, audit could not find any reason as to why commodity wise data could not be generated.

In response to the recent unearthing of ₹ 29000 crore scam on coal imports by DRIs, DGOV stated (December 2014) that no alert has been issued during the period 2011 to 2014. It was also not known to audit why coal was not part of the sensitive list.

3.8 Ineffective use of Export Commodity Data Base (ECDB)

DGOV had identified 13 commodities at eight digit levels as most sensitive with facility of flagging outliers in the software. DGOV felt it did not give meaningful result as analysis of export data showed that for the identical description of the goods, there was huge variation in values. It was stated that the description declared in shipping bills do not capture attributes which may help distinguishing the product from other similar products. DGOV also stated that exports from India take place under various export promotion schemes and exporters quote the rates for exports keeping in view the export incentives available, thus making every transaction unique. DGOV further stated that unlike imports, no reference from Board or trade/industry had been received for examination of export valuation of any commodity.

It was observed during audit that no alert has been issued in last the 10 years in respect of any commodity included in ECDB, although, DRI has continuously flagged issues regarding over valuation of the exports. It was also observed that the list of sensitive commodities remained static at 13 commodities, since commencement of the ECDB indicating ineffective analysis and use of data contained in ECDB.

Ministry of Finance report of March 2012, also exhorted proper analysis of import/export data and its dissemination in the field formation for use during assessment. However ECDB, one of the major databases maintained by DGOV, has been prepared in an adhoc manner which failed to achieve the intended purpose of identifying and detecting cases of overvaluation in exports as was indicated (January 2015) in an export over valuation case of 'Carpets and floor covering' exposed by DRI.

3.9 Observation on Central Excise Valuation Data Base (CEDB)

CEDB is compiled monthly on the basis of information supplied by 23 Central Excise Zones and 4 Large Tax Payer Units (LTUs) and uploaded on the website.

Nine commodities were identified as sensitive by the Central Board of Excise Customs at the time of notifying creation of Central Excise Valuation Division under DGOV. This remained stagnant with no addition or modification in the last seven years out of around 1200 odd 4 digit level headings, 180 headings, accounting for 94 per cent of the total central excise revenue. It indicates that there is no regular risk/sensitivity analysis of commodities included in CEDB as the product profiling as well as manufacturing practices may have undergone various changes since 2007.

It was also seen from the DGOV website, that CEDB database was updated beyond March 2019. Examination of records maintained by DGOV for 2013-14 & 2014-15 (up to September 2014) showed that required information was not submitted by the field formations in time.

3.10 Delay in sending CRD database to RMD

As per CBEC Circular once a case is registered with any Special Valuation Branch (SVB), detailed information regarding the same along with PAN of the importer should be furnished to DGOV to update the Central Registry Database (CRD).

Audit observed that CRD cases were not circulated through monthly valuation bulletins as required in CBEC Circular 11/2001-Cus dated 23.02.2001. It was also observed that additions made to CRD during the months from December 2013 to June 2014 were forwarded to RMD only on 16th August 2014. We test checked a few cases of imports made by the importers included in the list of SVB cases for the period December 2013 to June 2014 sent to RMD in August 2014. It was noticed that in 13 cases pertaining to two importers (M/s Fronius India Pvt Ltd and Swiss Singapore India Pvt Ltd), imports made by the importers from related parties valued at ₹ 8.58 crore (registered with SVB) were not subjected to the prescribed provisional assessment during April –May 2014 in violation of the Board's instructions.

In response to audit query DGOV replied that no mechanism exists to ensure that all SVB cases have been timely uploaded into CRD through monthly valuation bulletins, and the case of non-assessment on provisional basis as listed above, were being taken up with the concerned commissioners to ascertain the factual position.

It is imperative that details of cases added in CRD is communicated properly to RMD at regular intervals so that such cases of related party import are not facilitated without assessment and delay are not cleared in assessing imports made by related parties registered with SVB without recourse to provisional assessment.

3.11 Inspection of Customs stations by DGOV

The audit system EA 2000 based on the Canadian Model had four distinct features: scientific selection after risk analysis, emphasis on pre-preparation, scrutinising of records and monitoring of audit points. As per the information furnished to audit 27, 21, 12 & 7 inspections were conducted by DGOV in the last four years respectively.

Five Inspection reports were test checked. The number of inspections conducted has declined from 27 in the year 2010-11 to 7 in the year 2013-14. It was observed that there was no plan or targets set for inspection of custom stations and there was no system of risk analysis of customs stations while selecting the customs stations to be inspected. DGOV also do not have any records of total customs stations to be inspected, necessary for proper planning and inspection.

3.12 Deficiencies in follow up of inspection reports

Valuation inspection is an important mechanism to monitor implementation of various valuation tools developed by DGOV at all Customs stations. It was noticed that in none of the test checked cases, the respective Customs stations have forwarded any compliance report till date (October 2014).

Department in its reply stated (November 2014) that lower number of inspections were due to shortage of working strength in the Directorate reminders were being sent to all the five Customs station for submission of compliance reports at the earliest. Reduction in number of inspections has consequential impact on effective utilisation of alerts issued by DGOV and the training of the field formation on DGOV databases/software.

3.13 Pendency of cases in Special Valuation Branch (SVB)

CBEC delegated functional control of SVBs to the office of the DGOV in December 2012¹⁵ to closely monitor the pendency of cases in SVBs, approve the initiation of SVB enquiries and supervise investigations. The investigations¹⁶ and finalisation of the assessments are to be completed within four months from the date of reply to the questionnaire issued by the SVB.

The pendency position of cases as on 1.10.2014 is shown in table 3.4.

¹⁵Vide Circular No. 24/2012 CUS dated 7.12.2012.

¹⁶No.11./2001-cus dated 23.2.2001

Table 3.4: Pendency of cases in SVB

SVB Unit	Closing Balance as on 30.09.2014	Age wise break up				
		Up to 3 month	3-6 month	6-12 month	1-3 years	More than 3 years
Mumbai	1084	13	37	143	647	244
Delhi	555	43	30	128	272	82
Chennai	421	25	31	41	141	183
Bangalore	388	72	61	40	26	189
Kolkata	85	06	0	08	19	52
Total	2533	159	159	360	1105	750

In the above table, 360 cases (14 percent) are pending for more than six months, 1105 cases (44 per cent) are pending for period 1 to 3 years and 750 cases (30 per cent) are pending for more than 3 years. During exit conference, Commissioner (Valuation) stated that DGOV do not have details of the amount of the involved cases pending with SVB and also the values of SVB cases under litigation. DGOV further stated that SVB registration is done on receipt of reference from field formations when first import from related party takes place and subsequently all the imports of such importer are assessed on provisional basis and field formations don't send report of such subsequent imports to SVB. DGOV stated that though functional control of SVBs was given to DGOV with intention to strengthen SVBs, it remained only on paper in the absence of any administrative instructions in this regard from the Board. It was observed that though all SVBs send report of pendency to DGOV on quarterly basis, DGOV did not take any action on such reports.

In reply to audit, DGOV stated that issue of pendency was being followed up with respective commissioners and necessary instructions were being issued from time to time. DGOV further stated that all SVBs are under administrative control of Customs Commissionerate and DGOV did not have any control over posting, leave, APAR, etc. of the officers working in SVBs. DGOV also stated that there was acute shortage of officers in SVBs.

Delay in finalising cases registered with SVB also defeats the purpose for which SVBs are established and also leads to accumulation of provisional assessment cases in the department delaying collection of government revenue.

3.14 Internal Control and Audit

It was informed by DGOV that no internal audit or review of functioning of DGOV had been conducted by CBEC or any other agency in the last five years. It was stated by DGOV that certification of Secret Service Expenditure has been done by Commissioner, Valuation. Further, neither any expenditure nor establishment audit by Pr. CCA, CBEC nor any technical audit by CBEC was done. In the absence of any audit of functioning of DGOV and their budgeted

expenditure, assurance has to be established on compliance of the mandate; efficiency and effectiveness of the systems and procedure.

3.15 Mismatch between the defined objectives and manpower deployment

Table 3.5 Sanctioned strength and men in position in DGOV

Sr. No.	Post	Strength as per last cadre structuring in the year 2002	Sanctioned strength as per cadre restructuring on 1-8-2014	Working strength as on 1-10-2014	Vacancy
1	Chief Commissioner/Directorate General	1	1	1	0
2	Commissioner	1	2	1	1
3	Addl./Jt. Commissioner	5	2	3	-1
4	Dy./Asst. Commissioner	6	10	3	7
5	Chief Accounts Officer/ Administrative Officer	2	4	0	4
6	Superintendent CE /Superintendent Cus.(P)	15	6	8	-2
7	Appraiser	0	3	1	2
8	Inspector CE/PO/Examiner	5	3	3 +8*	0
9	Others	44	46	0 +11*	46
Total		79	77	20	57

*Working on diversion basis i.e. staff diverted from other Customs Department to work for DGOV.

It is noted from above that against the sanctioned strength of 77 officials, DGOV is currently having a working strength of only 20 officials which is 26 percent of its sanctioned strength leaving a huge shortfall of 74 percent in the working strength.

Audit observed that eight inspectors (CE/PO/Examiners) and 11 other officials were working on diversion basis. However, the norms under which they were working in DGOV (Whether under deputation or posting) were not provided to audit. It is also not understood as to how DGOV would be able to meet its objectives with only 26 percent men in position.

3.16 Expenditure incurred in excess of sanctioned budget

The Budget sanctioned and expenditure incurred by DGOV for the years 2011-12 to 2013-14 was as follows:

Table 3.6: Budget and Expenditure of DGOV

Object Head MH 2037-Customs	(lakh ₹)					
	2011-12		2012-13		2013-14	
	Total Budget	Actual Expdr.	Total Budget	Actual Expdr.	Total Budget	Actual Expdr.
Salaries	200.00	208.28	220.00	231.09	250.00	255.08
Medical Treatment	0.80	0.02	0.80	0.44	1.00	0.07
Domestic Travel Expenses (DTE)	11.00	18.89	21.00	24.68	23.00	10.79
Foreign Travel Expenses(FTE)	2.50	1.78	2.50	2.10	2.50	2.23

Object Head MH 2037-Customs	2011-12		2012-13		2013-14	
	Total Budget	Actual Expdr.	Total Budget	Actual Expdr.	Total Budget	Actual Expdr.
Office Expenses-General	40.00	39.53	42.00	34.71	42.00	30.05
Office Expenses-M. Vehicles	22.00	22.39	23.20	29.59	23.00	22.26
M. Vehicles - hiring	0	2.22	0	4.23	0	3.01
Publication	10.00	9.94	11.00	12.62	11.00	8.05
Other Administrative Expenses	1.00	0	1.00	0.24	1.00	0
Secret Service Expenditure	1.80	2.00	2.00	2.10	2.20	2.20
Information Technology(O.E)	31.00	35.50	31.00	56.47	40.00	30.94
Total	320.10	340.69	354.50	398.22	395.70	364.72

The classification of the budget of DGOV has the making of an intelligence organisation with a secret service fund and provision of a special valuation. Expenditure on IT hovered around 8.5 to 14 percent and salary & expenses on establishment was between 83 to 89 percent in this ICT intensive organisation.

It was observed that in the years 2011-12 and 2012-13, the actual expenditure had exceeded the sanctioned budget. In the year 2011-12 the expenditure incurred was ₹ 340.69 Lakh against a provision of ₹ 320.10 Lakh. Similarly in the year 2012-13, the expenditure incurred was ₹ 398.22 Lakh against a provision of ₹ 354.50 Lakh. It was also seen that expenditure on Motor Vehicle hiring was incurred to the extent of ₹ 9.46 Lakh during 2011-12 to 2013-14 without any sanctioned budget expenditure.

CHAPTER IV ASSESSMENT OF CUSTOMS REVENUE

We found from test check (August 2010 to March 2014) of records, a few cases of incorrect assessment of customs duties having revenue implication of ₹ 115.52 crore. They are described in the following paragraphs and two assessment cases are listed in **Annexure 4**.

Irregular extension of warehousing period

4.1 As per Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, Rule-3 (as amended), no drawback shall be allowed on any of the goods falling within Chapter 72 or headings 1006 or 2523 of the first Schedule to the Customs Tariff Act, 1975. Since introduction of the said debarring provisions, several other headings were added or existing ones were deleted by subsequent CBEC notifications, but the heading 1006 continues to exist till date.

M/s Jai Gurudev Industries & warehousing and 113 others exported "Rice in various forms" falling under CTH 1006 through the Commissioner of Customs (Port) Kolkata & Commissioner of customs (Preventive) West Bengal between October 2011 and February 2013 against 789 shipping bills. Scrutiny of Customs ICES data on exports revealed that the department allowed drawback on export of these goods in contravention of the aforementioned provisions of the Drawback Rules, 1995. This has resulted in inadmissible payment of drawback of ₹ 2.27 crore which is recoverable along with interest of ₹ 49.66 lakh from the exporters.

The Kolkata (Port) commissionerate, while not admitting (January/March 2014) the audit observation, intimated (March 2014) that after issue of demand notices, ₹ 38.74 lakh was recovered from 12 exporters against 137 shipping bills and in respect of 165 shipping bills instructions have been issued to bank to stop the payment of drawback of ₹ 45.13 lakh.

The department further stated that subsequent to introduction of aforementioned debarring provisions, the Government of India introduced single 1 per cent duty drawback rate against export of all cereals (including Rice under heading 1006) under chapter heading 10 of Custom Tariff Act, 1975 vide notification no.68/2011-cus (NT) dated 22 September 2011, which was subsequently made 'nil' in respect of heading 1006 (Rice) vide notification no.92/2012-cus (NT) dated 4 October 2012, indicating that during the objected period (i.e. September 2011 to September 2012) the drawback under heading 1006 was not 'nil'. West Bengal (Preventive) commissionerate also contested audit observation on similar lines.

The department was informed (February/March 2014) that their reply was not tenable because drawback at the rate of 1 per cent in respect of Cereals of Chapter – 10 was always there and was also existing at the time of issue of

debaring notification no.64/2008-cus (NT) dated 29 May 2008. The notification no. 92/2012-cus (NT) dated 4 October 2012 only split the single drawback schedule heading in respect of cereals of chapter – 10 into different sub-heading in line with the classification of several cereals (like Wheat, Rye, Barley, Oats, Maize, Rice etc) in the Custom Tariff Act, 1975, out of which drawback on exported Rice (CTH-1006) was shown 'nil' in conformity with the aforementioned debaring provisions. Their response is awaited (January 2015).

Ministry reply has not been received (January 2015).

Extension of warehousing period

4.2 Goods except capital goods and spares shall be utilized by EOU/EHTP/STP/BTP units within a period of three years or as may be extended by Customs authorities {paragraph 6.6 (c) of Handbook of Procedures (HBP) 2009-14}. However, imported tea "shall be" utilized within a period of six months from the date of import. Non-compliance of specified conditions attract recovery of duty foregone involved alongwith interest.

M/s Tata Global Beverages Ltd., Cochin a 100 % EOU cleared (October/December 2011) 53,376 kg 'Tea' vide three Bills of Entry free of duty under notification no.52/2003-cus dated 31 March 2003. Scrutiny of records revealed that the unit did not utilize 35,196 kg of Tea within six months as required in FTP. Accordingly, the unit was liable to pay duty amounting to ₹ 74.66 lakh plus interest on 35,196 kg of unutilized quantity of Tea. Instead of initiating action against non-compliance of conditions of import, the department granted extension of warehousing period for a further period of six months, in terms of Section 61 of the Customs Act, 1962 and in accordance with the general conditions of import by EOUs as specified in the FTP and HBP Rules.

The department stated (May 2013) that the Commissioner of Central Excise, Cochin had granted extension of warehousing period based on the extension allowed by the Assistant Development Commissioner subject to the condition that the imported tea is re-exported within the extended period and shall conform to the quality standard stipulated in paragraph 2(v) of Tea (D&E) control order. It was further stated that the extension approved was duly authorized by the Policy Relaxation Committee (PRC) vide Meeting No. 03/AM/09 dated 31 July 2008 and though the extension allowed by the PRC was for one year only, extensions were granted for subsequent exports/consignments after expiry of one year by the Assistant Development commissioner, CSEZ. It was also added that the goods have been re-exported and therefore involved no revenue impact.

The reply of the department that decision of the PRC is applicable to imports made by the firm in October and December 2011 i.e., after the date of issue of decision of PRC dated 31 July 2008 is not acceptable. The decision of PRC has been in respect of a particular import made by the firm and there was no mention of applicability of relaxation to the subsequent imports. Though the PRC in the meeting issued directions to examine general amendment in paragraph 6.7 (c) and 4.22 of HBP after taking the views of the Tea Board, no such amendment has been made yet in respect of conditions specified in paragraph 6.7 (c) {now 6.6 (c) of HBP 2009-14}. Hence, the contention of the department that the PRC has granted extension to all imports made by a specific importer (M/s. Tata Tea Ltd now renamed as M/s Tata Global Beverages Ltd) is also not tenable as no evidence was produced to Audit for verification. There are no provisions in FTP for applying the approval of PRC (July 2008) for subsequent imports.

Ministry response has not been received (January 2015).

Clearance of hazardous Azo dyes into India which may have caused immeasurable damage to the environment

4.3 According to Condition 10 (earlier Condition 11) of Chapter 1A to ITC (HS), 2012 Schedule 1—Import Policy, import of textile and textile articles is permitted subject to the condition that they shall not contain any of the hazardous dyes whose handling, production, carriage or use is prohibited by the Government of India under the provisions of clause (d) of sub-section (2) of Section 6 of the Environment (Protection) Act, 1986 (29 of 1986) read with the relevant rule(s) framed there under. For this purpose, the import consignments shall be accompanied by a pre-shipment certificate from a textile testing laboratory accredited to the National accreditation agency of the Country of Origin. In cases where such certificates are not available, the consignment will be cleared after getting a sample of the imported consignment tested & certified from any of the Indian agencies listed in Ministry of Commerce and Industry Public Notice No.12 (RE-2001)/1997-2002 dated 3 May 2001.

The mandatory requirement of submission of a valid pre-shipment certificate certifying absence of hazardous dyes such as Azo-dyes in the imported textile and textile articles has also been reiterated both by the Ministry of Commerce as well as the Ministry of Finance through DGFT Public Notice Nos. 29(RE-2004)/2002-07 dated 28 January 2004 and 26/2004-09 dated 22 February 2005 and CBEC circular no. 23/2004-cus dated 15 March 2004.

Non-fixed, water-soluble Azo dyes could enter human body through perspiration fluid besides oral ingestion, dermal absorption and direct inhalation and could be broken down by certain enzyme systems in the human body. These dyes may undergo reductive cleavage inside the living body to aromatic amines and some of which are proven or suspected

carcinogenic. Therefore, these Azo dyes, which forms about 60 to 70 per cent of the dyes used presently in Bangladesh Textile Sector, are hazardous in nature and were banned in India in 1997 by Ministry of Environment and Forest (MoEF).

Audit scrutiny of documents enclosed with the Manual Bills of Entry relating to imports of various textile and textile articles such as, fabrics, yarns, handloom products like sarees and lungis, readymade garments, etc. from Bangladesh through Petrapole and Changrabandha Land Custom Stations under West Bengal (Preventive) Commissionerate revealed that nearly all such imports were being routinely allowed clearance into India on the basis of pre-shipment test reports from 'Bangladesh University of Textiles (BUT)', Dhaka', an agency not accredited with the Bangladesh Accreditation Board (BAB), the National authority responsible for accreditation in Bangladesh. There are only nine entities accredited by the BAB to certify such goods, and BUT, Dhaka is not one of them. Therefore, every such import should have been allowed clearance only after getting its sample tested and certified from any of the notified Indian testing agencies as per DGFT and CBEC directives which was not done.

A sample check of import data revealed that un-regulated imports of 162 consignments and 283 consignments of Readymade garments and other textile articles valued at ₹ 27.97 crore and ₹ 53.95 crore were allowed through Petrapole and Changrabandha land Customs stations (LCS) during June 2013 and 2013-14 respectively which may have caused immeasurable damage to the environment defeating the motive of MoEF for the protection and improvement of human environment thereby risking public health and safety in India.

The Preventive Commissionerate (WB) stated (September 2014) that it has been accepting Azo Dye testing certificates issued by BUT, Dhaka on the basis of intimation (November 2005) from the Deputy High Commissioner of Bangladesh on the premise that BUT has been recognised by the Government of Bangladesh to issue certificates.

The department reply may be viewed in the context of the fact that the information provided by the Deputy High Commissioner about BUT is not backed by the evidence authorising it to issue such certificates by the Government of Bangladesh. On the contrary, Government of Bangladesh had specifically set up the BAB in 2006 as the National authority with the responsibility of accreditation in Bangladesh.

Ministry response has not been received (January 2015).

Interest paid on terminal excise duty refunds

4.4 Deemed exports shall be eligible for refund of Terminal Excise Duty (TED) paragraph 8.3 (c) of FTP, 2004-09). Further, as per paragraph 8.5.1, simple interest at the rate of 6 per cent per annum will be payable on delay in refund of TED, which have not been settled within 30 days of its final approval for payment by the Regional Authority of Director General of Foreign Trade (DGFT) organization.

Despite repeated highlighting cases of interest payments in earlier Audit Reports the Ministries (Ministry of Commerce/Ministry of Finance) had not taken any remedial action to avoid payments on this count as cases were still being noticed by audit as narrated below:-

Audit scrutiny of TED payment records of office of Joint DGFT, Ludhiana for the period 2010-11 and 2011-12 revealed that in 480 cases, the claims for refunds were not settled within prescribed time limit resulting in payment of interest amounting to ₹ 90.73 lakh.

The Joint DGFT, Ludhiana stated (November 2012/November 2014) that payment of interest was made as per the policy and claims could not be settled because of delay in allocation of funds from the DGFT, New Delhi.

The fact remains that the interest of ₹ 90.73 lakh had to be paid due to delayed payment of TED refunds which had arisen because of lack of coordination between the Regional Licensing authority (RLA) and DGFT, Delhi as well as Ministry of Finance and the same could have been avoided with the timely allocation of funds.

Double refund of central excise duty due to irregular refund of TED

4.5 Supply of goods by a Domestic Tariff Area (DTA) unit to a 100 % EOU will be eligible for refund of Terminal Excise Duty (TED), provided recipient of goods does not avail CENVAT credit/rebate on such goods (paragraph 8.5 of FTP, 2009-14). A declaration to this effect, in Annexure II of Aayaat Niryaat Form (ANF) 8, from recipient of goods, shall be submitted by applicant.

M/s Modern India Con-Cast Ltd, a 100 % EOU under the jurisdiction of the Development Commissioner (DC), Falta SEZ, was paid a TED refund of ₹ 152.99 lakh under two separate refund orders (May 2012 and January 2013) for supply of goods from 56 DTA suppliers under 380 Excise Invoices for the period April to September 2009. However, scrutiny of the entry book of duty credit (Form R.G.23A Part II, maintained under Rule 9 of CENVAT Credit Rules 2004) and the CENVAT return (ER-2 return) enclosed with the application revealed that in respect of 333 Excise Invoices the recipient EOU had also taken CENVAT credit which tallied with the CENVAT credit amount reported in the ER-2 return submitted to the Haldia Central Excise commissionerate. Moreover, at the time of filing application for refund of

TED in Form ANF 8, the claimant EOU had also declared in paragraph 10 (i) that they had availed of CENVAT benefit under Rule 3 of CENVAT Credit Rules, 2004, in respect of raw materials/components received by them. Therefore, the said EOU was not entitled for the refund of TED in view of the aforesaid provisions of FTP.

Thus, grant of TED refund of ₹ 143.61 lakh on the objected 333 supply invoices to the EOU, when the CENVAT credit on such goods was already availed by the recipient EOU, has resulted in double refund of excise duty in the form of TED refund and CENVAT credit which was in contravention to the provisions of FTP.

The matter was reported in March 2014 and also brought to the notice of the Development Commissioner, Falta SEZ and the Haldia Central Excise Commissioner in May & June 2014, their reply has not been received.

Ministry response has not been received (January 2015).

Irregular grant of drawback on exported goods

4.6 Duty drawback as per rates notified every year by the Ministry of Finance shall not be applicable to a product or commodity manufactured or exported by a unit licenced as 100 % EOUs. Such condition could be traced back to General note no.2 (c) of the Drawback Schedule notified vide Ministry of Finance (DR) notification no.31/1999 (NT) dated 20 May 1999 which continued to exist in every subsequent Drawback Schedule notified till September 2013 {notification no.98/2013-cus dated 14 September 2013, condition no.8 (c)}.

M/s Narendra Tea Co. Pvt. Ltd. and five other 100 % EOUs exported (between March 2000 and September 2012) 81 consignments of 'Indian Black Tea' through Kolkata (Port), Commissionerate. Although ineligible for receiving drawback as per the aforementioned notification, the department sanctioned drawback of ₹ 33.40 lakh to these EOUs against exports, which was irregular and recoverable along with interest of ₹ 71.72 lakh from the exporters.

Deputy Commissioner of Customs (IAD), Custom House, Kolkata intimated (June 2014) recoveries of drawback of ₹ 4.63 lakh besides interest of ₹ 1.24 lakh from one exporter (M/s Madhu Jayanti International Ltd.). Ministry response has not been received (January 2015).

Excess payment of drawback on goods exported

4.7 "Mild-Steel Stranded Wire" classifiable under Customs tariff heading (CTH) 731204 attract drawback at the rate of 3 per cent of FOB value (notification no.68/2011-cus (NT) dated 22 September 2011).

The stranded wires are classifiable under Sub-Tariff Item no.731299 for which drawback was admissible at the rate of 8.1 per cent of FOB value with a drawback cap of ₹ 800/MT, if CENVAT facility was not availed and at the rate of

1 per cent of FOB value with a drawback cap of ₹ 593/MT, if CENVAT facility was availed.

Moreover, as per CBEC circular no.34/95-Cus dated 6 April 1995, a sample should be drawn from every consignment where the amount of drawback per shipping bill is above ₹ 1 lakh and admissibility of the drawback could not be decided on the basis of visual examination of the case.

Scrutiny revealed that in respect of five shipping bills of M/s. U. B. Impex (P) Ltd & M/s. Rayban Metals Pvt Ltd., the Siliguri Customs, Central Excise and Service Tax Commissionerate sanctioned drawback at the rate of 3 per cent on the value of “Un-Galvanised stranded wires” exported during April to September 2012 by classifying them under All-Industry Drawback Schedule tariff item no.731204 as Mild Steel Stranded wire. However, scrutiny of the test reports revealed that the Deputy Chief Chemist, Custom and Central Excise, Custom House, Kolkata in his respective Test report categorically mentioned that as per literatures available with them the export consignment was not made of mild steel as the carbon content of all these export consignment was in the range of 0.72 per cent to 0.74 per cent by weight, which was much more than the maximum permissible carbon content of 0.35 per cent by weight for classification of exported goods as Mild-Steel stranded wire. The department ignored the Test report result and classified the goods under CTH 731204 as Mild Steel stranded wire instead of its classification as ‘others’ under CTH 731299 for drawback at the rate of 1 per cent, as the exporter has already availed CENVAT credit on raw materials, resulting in excess grant of drawback.

Similarly in respect of another three consignment of “Un-Galvanised stranded wire” exported (January 2012 to September 2012) by M/s. R.B. Agarwall (P) Ltd. drawback was irregularly sanctioned by the same Commissionerate under Drawback Tariff Item no.731204 without any sample testing of exported goods resulting in grant of higher drawback at the rate of 3 per cent instead of at the rate of 1 per cent of the FOB value. This has resulted in excess sanction of drawback of ₹ 8.91 lakh recoverable along with applicable interest of ₹ 1.26 lakh.

On this being pointed out (February 2014), the Deputy Commissioner of Custom (Siliguri Customs Division) stated (March/May 2014) that in the former case the Test report findings were ignored as the sample testing authority did not specify the literature relied upon by them; hence they relied on the definition of Mild Steel from the Wikipedia, according to which Steel containing carbon upto 2 per cent was considered mild steel. Further, department informed that in latter case samples were not drawn in line with the provisions of circular no.34/95-cus dated 6 April 1995, as previous drawn

samples from similar export consignment of the exporter were well within the standard referred by the testing authority.

The department's reply is not tenable because they never asked the testing agency for copy of the literature which clearly indicated that maximum permissible carbon content in an item made up of Mild Steel would not be more than 0.35 per cent by weight. Alternatively, the exported goods also did not fit the referred definition of Mild Steel from the Wikipedia because as per the Test report the mandatory presence of other specified alloying agent of Manganese (1.65 per cent), Copper (0.6 per cent) and Silicon (0.6 per cent) in fixed percentage, along with other elements like Cobalt, chromium etc. with the variable percentage mentioned in the said definition were also absent in the exported goods. Moreover, the circular dated 6 April 1995 or any other provisions under Customs Act, 1962 does not empower the Department to rule out result of a Test report without any contrary Test report from any other agency. In latter cases the sample testing was mandatory in terms of the provisions of the said circular as the drawback sanctioned by the department in the objected cases were more than ₹ 1 lakh each. Deputy Commissioner of Customs, Siliguri Customs Division subsequently issued (May 2014) SCN to the exporter.

Ministry reply has not been received (January 2015).

Refund of additional duty of custom on ineligible goods

4.8 The additional duty of custom (SAD) collected at the rate of 4 per cent on goods imported into India for subsequent sale may be refunded to the importer subject to compliance with the conditions of the notification no.102/2007-cus dated 14 September 2007. The conditions of notification specify, inter alia, that refund of SAD is available only in case the imported goods are subsequently sold on payment of VAT, without carrying out any process. This point was further clarified vide circular no.15/2010-cus dated 29 June 2010 emphasizing that if, the imported and sold goods are classifiable under distinct Custom tariff heading (CTH) then refund of SAD is not admissible.

M/s Bengal Tools Ltd Kolkata, engaged in assembling and selling 'Power Tillers' under Shrachi brand had imported complete Power tillers as well as Power tiller body from China and Diesel engines from China and Thailand and claimed refund of SAD paid on them under notification dated 14 September 2007. While granting refund on imported Power tiller, the department also allowed refund of SAD on imported 'Power tiller body' and Diesel engines (CTH-84089090) which were imported separately from different countries and assembled before clearing the final goods in India as Power tiller (CTH-84329090) with all other accessories. As the imported goods underwent assembling process before sale in India and their CTHs were different from

the final product, the goods sold in India were not the same as the imported goods. Hence, these imported goods were ineligible for refund of SAD. Thus, sanction of refunds on ineligible imports through 21 Bills of Entry under five refund orders issued between September 2010 & June 2011 resulted in excess refund of SAD of ₹ 26.59 lakh.

Deputy Commissioner of Customs, Custom House, Kolkata while agreeing (February 2012/ June 2014) to involvement of assembling process on imported goods before their sale in Indian market justified the grant of refund on the ground that such processing did not tantamount to manufacture.

The department's reply may be viewed in the context of the fact that in the instant case classification nomenclature of the goods imported (CTH 84089090) is distinct from the final product sold in the market (CTH 84329090), accordingly, ineligible for SAD refund as reiterated in the Board circular of June 2010.

Ministry response has not been received (January 2015).

Imports cleared without levying or short levying the applicable anti dumping duty

4.9 As per section 9A of the Customs Tariff Act, 1975, where any article is exported from any country to India at less than its normal value, then upon the import of such article into India, the Central Government may, by a notification, impose an anti dumping duty. Accordingly, anti dumping duty was imposed from time to time on goods like 'Sodium Ascorbate,' Phosphoric acid, Melamine, and Glass fibre etc. when these were imported from specified countries like Taiwan, Saudi Arabia and China.

We found that assessing officers cleared 23 consignments of such goods imported by M/s Bajaj Healthcare Ltd., and 12 others from these specified countries without levying or short levying applicable anti dumping duty of ₹ 73.00 lakh.

Ministry/department reported recovery of ₹ 7.98 lakh from three importers {(JNCH, Mumbai, ₹ 3.29 lakh - M/s Balaji Impex), (ICD, Tughlakabad, Delhi, M/s Orient Paper and Industries Ltd., ₹ 3.89 lakh along with interest of ₹ 0.60 lakh and M/s Aditya International - ₹ 0.80 lakh)} and issued less charge/show cause notices to two importers {(i) M/s Bajaj Healthcare Ltd., - JNCH, Mumbai and (ii) M/s Classic Prime – JNCH, Mumbai}. Reply in respect of eight importers is awaited (January 2015).

Excess abatement allowed on imported goods

4.10 Government of India had notified commodities which are to be assessed with reference to their retail sale price (RSP) after admitting an abatement as

prescribed against them {notification no. 49/2008-CE (NT) dated 24 December 2008 9 (as amended)}. Against serial no.108, 109 of the aforesaid notification, parts, components and assemblies of vehicles/automobiles falling under any chapter of Customs tariff heading (CTH) and earthmoving machinery/excavators falling under CTH 8429 would be assessed on the basis of their RSP after allowing an abatement of 30 per cent.

M/s Yokohama India Pvt. Ltd., and 27 others imported (August 2013 to March 2014) 99 consignments of 'Car and Truck Tyres with Tubes and Flaps,' Piston sets/earthmoving machinery/excavators' through ICD Tughlakabad. The goods were classified under CTH 4011/8409/8429/8431 and assessed to CVD at the rate of 12 per cent with reference to RSP and allowed abatement of 35 per cent.

Since the Car and Truck Tyres with Tubes and Flaps/Piston sets were parts of the vehicles/automobiles while, earthmoving machinery/excavators parts are classifiable under CTH 8429 therefore CVD should have been allowed abatement of 30 per cent instead of abatement of 35 per cent as per aforesaid notification. Thus, excess allowance of abatement on RSP resulted in short levy of duty amounting to ₹ 33.51 lakh.

Commissionerate of Customs, ICD, Tughlakabad intimated (October/December 2013, September 2014) recovery of ₹ 2.55 lakh along with interest of ₹ 0.32 lakh in 10 consignments and issued (October 2013) protective demands for ₹ 2.71 lakh in respect of 10 consignments. Reply in respect of remaining 79 consignments is awaited.

Ministry response has not been received (January 2015).

Non levy applicable duty

4.11 As per the Commissioner of Customs (Port) Kolkata order (October 2011), the pending valuations (August 2011 onwards) of imported "Polyester coated & Nylon coated fabric" falling outside the list of the DRI/SIB alert notice (May 2011) was to be finalized in line with the practice followed by the Commissioner of Customs, ICD-TKD enhancing the value of imported goods (i) upto the thickness of fabric 0.25 mm to US\$ 0.35/meter (ii) Upto the thickness of fabric 0.35 mm to US\$ 0.5/meter(iii)beyond the thickness of fabric 0.35 mm to 1.4 times of thickness in US Dollar subject to minimum of 0.5 USD/meter and (iv) in case of Nylon, the enhanced value to be 20 per cent more than that of Polyester. However, the goods falling in the DRI list (fabrics below the thickness of 0.25 mm) was to be valued at the rate prescribed by the DRI (US\$0.91/meter). On the basis of this order the department collected differential duty of ₹ 22.27 lakh in respect of 15 provisionally assessed Bills of Entry (BE) in six case files.

M/s. Anukul Enterprise Pvt. Ltd & M/s. MAPSA Tapes Pvt. Ltd. imported (June 2011 to July 2011) "Polyester Fabric with PVC backing" through Kolkata (Port)

Commissionerate and were provisionally assessed (August 2011 to December 2011), due to non-finalisation of valuation of such goods, on submission of PD-Test Bond with the undertaking to pay the difference of the duty if any, on finalization. The test reports of the sample collected from the imported consignments obtained from Regional Laboratory Textile Committee (Kolkata) reported, inter alia, the thickness of the samples ranging from 0.41 mm to 0.58 mm. Considering the thickness of the fabric from the sample test report, the revised value of the imported consignment, as per commissioner of customs order dated 3 October 2011, was found to be much higher than declared in the commercial invoices and corresponding bills of entry which would entail collection of higher customs duty compared to duty provisionally assessed. However, the Department discharged (January 2012 to July 2012) the Provisional duty (PD) Bond along with the corresponding Bank Guarantee in all these cases without collecting the differential duty as mentioned above. This resulted in short levy of ₹ 15.59 lakh which needed to be recovered along with applicable interest.

Assistant Commissioner of Customs, Custom House, Kolkata intimated (December 2012) that the Commissioner of Customs (Port) order of October 2011 was not applicable on the objected Bills of Entry (BsE) as they pertained to period prior to said order. Moreover, as the imported goods did not fall under DRI list they were assessed on the basis of value available in the appraising group.

The department's reply is not tenable because although the objected BsE pertained to period prior to the order dated 3 October 2011 but they were provisionally assessed (August 2011 to December 2011) only on the basis of the Commissioner of Customs order dated 4 August 2011 which were subsequently to be finalised as per the directives issued under order dated 3 October 2011. Moreover, final assessment of 15 BsE pertaining to period before and after the date of objected BsE by the same appraising group on the basis of order dated 3 October 2011 indicates that the said order was applicable on the objected BsE also. This was communicated to the department in March/April 2013, their response is awaited (January 2015).

Ministry reply has not been received (January 2015).

CHAPTER V

INCORRECT APPLICATION OF GENERAL EXEMPTION NOTIFICATIONS

The Government under section 25 (1) of the Customs Act, 1962 is empowered to exempt either absolutely or subject to such conditions as may be specified in the notification, goods of any specified description from the whole or any part of duty of customs leviable thereon. Some illustrative cases of non-levy/short levy of duties aggregating ₹ 30.56 crore due to incorrect grant of exemption noticed (September 2011 to April 2014) are discussed in the following paragraphs and two exemption cases have been listed in **Annexure 5**.

Incorrect exemption of sugar and rubber cess

5.1 Government of India, in response to the revision application of M/s Bombay Burmah Trading Corporation Ltd. [2012(278) E.L.T.566 (G.O.I.)] held that where any Central law providing for levy and collection of any duty of excise, no notification issued under the Central Excise Act or Rules can grant exemption from such duty of Excise unless such notification expressly refers to the provisions of the said central law in the preamble. In this regard, it has been concluded that explicit provision referring to levy under central law is a statutory requirement and any interpretation by implication is statutorily barred.

Accordingly various types of cess (viz, tea cess, rubber cess, sugar cess etc.,) imposed by Central laws other than by Finance Act (viz., Tea Cess Act, Sugar Cess Act etc.) leviable as duties of Excise are levied for definite purpose (and not to augment the government revenues) and they need express mention in the Central Excise exemption notifications in order to be exempted.

It is pertinent to mention that such cess leviable under Central laws on domestic manufacturers are also leviable on imports as additional duty of Customs under Section 3 of the Customs Tariff Act 1975 (CTA). Thus, express mention of the central law is equally applicable to notifications issued under the Customs Act and Rules in order to provide exemption to cess levied under the Central laws.

Goods imported under Advance authorization scheme (DEEC) are exempted from additional duty leviable thereon under Section 3 of the CTA, 1975 (notification no.96/2009-cus dated 11 September 2009). However, express mention about any exemption from cess leviable under any of the Central Act (viz., Sugar Cess Act/Rubber Act 1947) has not been mentioned in the aforesaid exemption notification. Similar duty exemption has been provided to goods by notification no.97/2009-cus under DEPB scheme.

'Raw sugar' attract 'sugar cess' at the rate of ₹ 24 per quintal and 'natural rubber' attracts 'rubber cess' (imposed under Section 12 of the Rubber Act

1947) at the rate of ₹ 2 per kilogram (prior to September, 2011 rate was ₹ 1.50/kg) in terms of MOC notification SO.2020(E) dated 28 August 2011.

M/s Shree Renuka Sugars Ltd. and M/s Simbholi Sugar Ltd., Imported (March 2013 to December 2013) 5649687.30 quintal of 'Raw sugar' through Custom House (Kandla) for which exemption from 'Sugar cess' amounting to ₹ 1355.92 lakh was irregularly allowed under Advance authorization {(DEEC notification no.96/2009-cus dated 11 September 2009)}.

Similarly exemption from 'Rubber cess' was allowed irregularly to M/s Apollo tyres (₹ 142.61 lakh), M/s Balkrishna Industries (₹ 87.05 lakh) & M/s Malhotra Rubbers Ltd (₹ 2.06 lakh) for import of natural rubber through ICD Dashrath (Vadodara) & Custom House (MP & SEZ), Mundra by debiting Advance authorization DEPB license (notification no.97/2009-cus).

Since the aforesaid notifications governing DEEC and DEPB authorizations do not expressly provide exemption from Sugar cess or Rubber cess, this resulted in incorrect grant of exemption from sugar and rubber cess totaling ₹ 1587.64 lakh.

When we pointed this out (October 2012/January/March 2014) the department did not accept the observation stating that Board, vide circular no.17/99-cus dated 19 April 1999 has taken the view that exemption issued under Section 3 would have the effect of exempting the goods both from Central Excise duty as well as cess and no separate exemption from cess need to be issued under the Sugar Cess Act. It was also contested that notifications governing DEEC/DEPB scheme exempted imported goods from whole of additional duty leviable under Section 3 of CTA 1975 thus exempting it from rubber/sugar cess as it is levied under the Section 3 of Act.

Reply of the department is not tenable in view of the aforesaid GOI order which is self explanatory. It was held that exemption from cess levied under Cess Act could not be granted applying notification issued under Central Excise Rules/Act. On this analogy exemption from Sugar/Rubber cess was also not available for advance authorizations/DEPB licence.

Ministry response has not been received (January 2015).

Exemption from safeguard duty on carbon black

5.2 Safeguard duty is leviable under section 8C of Customs Tariff Act at the rate of 30 per cent less the anti-dumping duty payable, if any, on Carbon black falling under tariff heading (CTH) "28030010", if imported from the People's Republic of China during the period from 5 October, 2012 to 4 October 2013 (notification no.4/2012 (Safeguard) dated 5 October 2012).

M/s J K Tyre & Industries Ltd. and five others imported (December 2012 to March 2013) 96 consignments of Carbon black, originated from China PR,

valued at ₹ 31.50 crore through Chennai (Sea) and Tuticorin Commissionerates. The imported goods were exempted from payment of duty under the Advance authorization scheme in terms of notification no. 96/2009 dated 11 September 2009. The Advance authorization notification provides for exemption from whole of duty of customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and from the whole of the additional duty, safeguard duty and anti-dumping duty leviable thereon, under Section 2, 3, 8B and 9A respectively of the said Act.

Audit pointed out (December 2013) that Carbon black imported from China is subject to levy of safeguard duty under Section 8C of the Customs Tariff Act, 1975 which was not exempted by the aforesaid notification issued under Advance authorization Scheme and therefore the safeguard duty is leviable on import of Carbon Black. The incorrect grant of exemption had resulted in short levy of duty of ₹ 7.48 crore.

Tuticorin Commissionerate authorities issued demand cum show cause notice to M/s PRS Tyre Ltd., for ₹ 2.48 lakh. Reply in respect of remaining importers is awaited (January 2015).

Ministry response has not been received (January 2015).

Exemption to Electric Rickshaws

5.3 Electrically operated vehicles are classifiable under CTH 8703 90 10 and as leviable to countervailing duty (CVD) at the rate of 6 per cent (serial no. 274 of the Central Excise notification no.12/2012 dated 17 March 2012).

Further, as per the Central Motor Vehicles Rules, 1989 battery operated vehicle means a vehicle adopted for use upon roads and powered exclusively by the electric motor whose traction energy is supplied exclusively by traction battery installed in the vehicle provided that if the following conditions are verified and authorized by any testing agency specified in Rule 126, the battery operated vehicle shall not be deemed to be a motor vehicle.

- (i) The thirty minutes power of the motor is less than 0.25 KW (250 Watts)
- (ii) The maximum speed of the vehicle is less than 25 KM/H.

During test check of the Bills of entry (BsE) and ICES data audit noticed that various importers imported 332 consignments of 'Electric Rickshaws' during August 2013 to February 2014 valued at ₹ 61.26 crore through ICD, Tughlakabad. The goods were classified under CTH 8703 90 10 and assessed to concessional rate of CVD under notification no.12/2012 (serial no. 274).

Audit scrutiny revealed that the power of motors operating these vehicles is more than 250 Watts and apparently a 250 Watts power motor vehicle may not carry 5 to 7 persons on roads with gradients. Since the power of the

motor of these vehicles is more than maximum limits of 250 Watts, as per the Central Motor Vehicles Rules, 1989, these vehicles shall not be deemed to be battery operated motor vehicle eligible for concessional rate of CVD. Thus, extension of aforesaid notification benefit resulted in short levy of CVD amounting to ₹ 5.17 crore. Information was also sought (May and June 2014) from the Transport department of Delhi regarding the power of the motor and capacity to carry person by these electric rickshaws but their reply was awaited as of November 2014.

The Customs department stated (June 2014) that Serial no.274 of the notification no.12/2012-CE dated 17 March 2012 provides that the only condition for exemption is that the sole source of energy shall be electrical energy derived from an external source or from one or more electrical batteries fitted to such vehicles which was fulfilled in the instant case as in all battery operated E-rickshaws, the sole source of energy is electrical energy obtained from the rechargeable battery attached or fitted with the body of the such e-rickshaw. The capacity of motor does not in any way influence the classification of the subject goods, neither has it influenced the benefit provided under aforesaid notification. The department further stated that the protective demand to the importers is also being issued.

The reply of the department is not tenable as the power of motors operating these electric vehicles are more than 250 Watts and therefore, these vehicles should be deemed to be motor vehicles and thus were also required to comply with Central Motor Vehicles Rules, 1989. All the rules including Type Approval certification, as per the rule 126, are applicable on such vehicles which was not undertaken.

As the importers of these vehicles have not complied with Central Motor vehicles rules, 1989, passed by the Parliament under the Central Motor Vehicle Act, therefore, extension of the benefit of notification no.12/2012-CE (serial no.274) by the department while clearing these vehicles was incorrect.

Ministry response has not been received (January 2015).

Irregular refund of additional duty of customs on imported goods

5.4 The additional duty of custom (SAD) collected at the rate of 4 per cent on goods imported into India for subsequent sale may be refunded back to the importer subject to compliance with the conditions of the notification no.102/2007-cus dated 14 September 2007. The conditions of notification specify, inter alia, that refund of SAD is available only in case the imported goods are subsequently sold on payment of VAT. The CESTAT, New Delhi in its judgment in the case of Commissioner of Customs (ICD), New Delhi vs M/s. Reliance Communication Infrastructure Ltd [2012 (279) ELT 85(Tri- Del)] held that in absence of word 'sale' being defined in the Notification ibid, the

definition of sale in the VAT Act of State Government or the Central Sales Act, 1956 will have to be considered for this purpose.

M/s. Tata Sky Ltd., had imported (March 2009 to August 2010) "Set Top Box (Digicomp)" along with 'Viewing card and Accessories' for a composite landed cost per set without any breakup of the price for each of the imported items either on the commercial invoice or on the bills of entry of the imported goods. The imported 'Set Top Box' were sold to buyers in India at abnormally low price ranging between ₹ 1121.33 to ₹ 1032.44 as compared to import value per set ranging between ₹ 4087.56 to ₹ 2417.40 (i.e. 27 per cent to 42 per cent of import invoice price) but the viewing card and other accessories were not sold. While Tata Sky Ltd retained their ownership as these were transferred to the buyers of Set Top Box through specific endorsement on the body of the sale invoices and "Terms and Condition" of their subscription contract with the buyer. As these items were neither sold to buyers nor transferred to the buyers for any consideration that may be considered as sale as per the definition of sale in the State VAT Act, no VAT could be charged on value of such goods. Thus, it was apparent that the importer had neither sold imported viewing card and accessories nor appropriate VAT was paid on them thereby making them ineligible for refund of SAD under aforesaid notification dated 14 September 2007. However, the Kolkata (Port) Commissionerate authorities irregularly granted (June to August 2010) refund of ₹ 87.06 lakh on such goods imported under 19 Bills of Entry.

On this being pointed out (January 2012), the department stated (June 2014) that the objected viewing card and other accessories were sold with the imported set top boxes on the basis of the assumption that the set top box could not be functional in absence of any viewing card of the concerned service provider and their accessories.

The Department's contention was not tenable because the imported items were "Set Top Box (including viewing card & accessories)" whereas the items sold through the sale invoices were only "Set Top Boxes" without any accessories. Although the set top boxes contained viewing cards the latter were transferred to the buyers without any value consideration that may be covered under the definition of sale in the State VAT Act.

Ministry reported (January 2015) issued of demand notice to the importer. Further progress is awaited (January 2015).

Incorrect exemption from customs duties on sugar imports

5.5 The Board (CBEC) vide circular no.883/3/2009-CX dated 26 February 2009 has clarified that though all products viz., sugar, pharmaceutical sugar and bura sugar fall under the same CTH i.e. 1701, "Chemically Pure Pharma Grade

sugar” is a “product of Sugar”. Thus, the “Extra fine Sugar (Chemically pure Pharma Grade)” are different from 'Refined or White Sugar'.

“Pharma Grade Sugar” classifiable under Customs tariff heading (CTH) 1701 are leviable to basic customs duty at the rate of 60 per cent (notification no.21/2002 and 12/2012) and additional duty of customs equivalent to excise duty along with the levy of cess under the Sugar Cess Act, 1982. Consequently, the concessional rate of basic customs duty applicable to “Refined or White Sugar” in terms of notification Nos. 21/2002 dated 1 March 2002 and 12/2012 dated 17 March 2012 could not be extended to “Pharma Grade Sugar”.

M/s Micro Labs and M/s K.P Manish Global Ingredients Pvt. Ltd., imported (February 2012 to March 2013) seven consignments of ‘Extra fine Sugar (chemically pure Pharma Grade)’ valued at ₹ 81.99 lakh, through Chennai (Sea), Commissionerate. In respect of one consignment (February 2012), the goods were incorrectly classified under CTH 17049090 and exempted from basic customs duty at ‘nil’ rate (applicable to goods of CTH 1701) in terms of serial no.37J of notification no. 21/2002 and additional duty of customs equivalent to excise duty at 10 per cent in terms of serial no.5 of notification no.2/2008-CE. In respect of other consignments, the goods were classified under CTH 17019990 and assessed to basic customs duty at ‘nil’ rate /10 per cent in terms of Serial no.77 of notification no.12/2012-cus. Moreover, the additional duty of customs equivalent to excise duty was levied at different rates i.e, ₹ 38 per quintal/₹ 71 per quintal (notification no.12/2012-CE serial no.14 (a)/14 (b) dated 17 March 2012), 12 per cent (notification no.18/2012 –CE, Serial no.4).

Audit noticed that the concessional rate of duty available in terms of notification no.21/2002/notification no.12/2012-cus is applicable to “Refined or White Sugar” only and it could not be extended to “Pharma Grade Sugar” and the goods are leviable to basic customs duty at 60 per cent under notification no.21/2002 Serial no.38 notification no. 12/2012 Serial no.75 and additional duty of customs equivalent to excise duty at 10 per cent/ 12 per cent with applicable Sugar Cess. Thus, incorrect extension of concessional rate of duty resulted in short levy of duty amounting to ₹ 51.08 lakh.

When we pointed this out (November 2012, March and November 2013), the department replied (March and April 2014) that demand notices were issued to the importers for short levy of duty of ₹ 25.11 lakh in respect of five consignments. Further progress is awaited (January 2015).

Ministry reply has not been received (January 2015).

Incorrect exemption to re-imported goods

5.6 Re-import of exported goods, within three years from the date of exportation, for repairing or reconditioning, shall be exempted from levy of whole of the duty of customs and additional duty, subject to fulfillment of the prescribed conditions (notification no.158/95-cus dated 14 November 1995). In case of failure to re-export the same, within prescribed time, the importer is liable to pay duty benefits availed.

M/s Engser Ltd., and three others had re-imported (March 2010 to November 2010) their earlier exported products through Commissionerate of Custom (Port), Kolkata for repairing, without payment of duty under aforesaid notification dated 14 November 1995. However, the importers neither submitted the evidence of re-export of imported goods even after expiry of more than one year from import date nor paid back the duty exemption availed at the time of their import in compliance to the conditions of the said notification. The department did not initiate any action to recover the duty leviable but for exemption. The omission resulted in non-recovery of duty of ₹ 44.69 lakh.

The department reported (September 2013 and March 2014) that a demand notice for ₹ 3.93 lakh issued in respect of M/s Engser Ltd., had been confirmed and ₹ 21,000/- was realized by encashment of their Bank Guarantee (BE).

The department further stated that in remaining three cases importers have submitted documents in support of re-export of their imported goods.

However, audit scrutiny of re-export documents (four re-export shipping bills) submitted by M/s Supreme & Co. Pvt. Ltd., revealed that the date of all four shipping bills (6 and 8 September 2010) and their export General Manifest (EGM) date (15 September 2010) were prior to the out of charge (OOC) date (18 September 2010) of corresponding bill of entry of re-imported goods, indicating that the goods exported under these shipping bills were different from the re-imported goods. Thus, the condition prescribed under aforesaid notification to re-export the imported goods after repairs remained unfulfilled for which duty exemption benefits amounting to ₹ 30.40 lakh was recoverable from the importer along with applicable interest.

This was reported to the department in April 2014, their response has not been received (January 2015).

Ministry reply has not been received (January 2015).

CHAPTER VI

MIS-CLASSIFICATION OF GOODS

During test check (May 2012 to April 2014) of records, we noticed that assessing officers mis-classified various imported goods which caused short levy/non levy of customs duties of ₹ 9.99 crore. They are discussed in the following paragraphs and six cases of mis-classification of goods have been listed in **Annexure 6**.

Motor cycle parts misclassified as articles of iron or steel

6.1 Parts of Motorcycle are classifiable under Customs tariff heading (CTH) 871410 as parts and accessories of vehicles of heading nos. 87.11 to 87.13 and assessable to BCD at the rate of 10 per cent.

M/s Daido India Pvt. Ltd. imported (October 2013 to May 2014) 57 consignments of 'Motorcycle chain and sprockets and parts thereof' from Thailand valued at ₹ 24.78 crore through ICD, Tughlakabad. The imported goods were classified under CTH 73151100 and 84839000 and cleared after levy of basic customs duty at 2.5 per cent and 6 per cent (up to 31 December 2013), and at 'nil' rate of duty and 5 per cent (from 1 January 2014) in terms of serial nos. 968 and 1284 of notification nos. 46/2011 dated 1 June 2011 (as amended).

Audit scrutiny revealed that the Motorcycle chain and sprockets and parts thereof were classifiable under CTH 8714090 as other parts and accessories of motorcycle which attracts BCD at the rate of 10 per cent. Thus, misclassification of imported goods led to short levy of duty amounting to ₹ 2.66 crore.

The matter was pointed out to the Department/ Ministry in April/May/September 2014, their reply is awaited (January 2015).

Motor parts misclassified as instruments for measuring and checking the flow, level and pressure of liquids or gases

6.2 Parts and accessories if suitable, for use solely or principally with a particular kind of machine, instrument or apparatus or with a number of machines, instruments or apparatus of the same heading are to be classified with the machines, instruments or apparatus of that kind (Note 2(b) to Section XVIII of the Custom Tariff).

'Hot Film Air Mass Meters' is used to measure the air mass flow in internal combustion engines of motor vehicles to enable and to adjust the amount of injection current to the exact power requirement, air pressure and air temperature in order to ensure statutory emission limits. As they are principally used in motor vehicles of chapter 87, the said goods are classifiable under CTH 8708 and leviable to BCD at the rate of 10 per cent.

Eighty five consignments of 'Hot film air mass meters', were imported by M/s Bosch Ltd. between April 2012 to March 2013. Out of this, 45 consignments were classified under CTH 90268090 as 'Other instruments or apparatus for measuring and checking the flow, level, pressure or other variables of liquids or gases' and the remaining 40 under CTH 90328990 as 'Other automatic regulating or controlling instruments and apparatus' and levied 'BCD at 'nil' or 7.5 percent instead of applicable 10 per cent. The misclassification of goods has resulted in short levy of duty to the tune of ₹ 1.82 crore.

This was pointed out to the Ministry in October 2014, their response has not been received (January 2015).

Surgical microscope misclassified as other instruments and appliances

6.3 Surgical Microscope and accessories thereof are classifiable under Customs Tariff heading (CTH) 9011 and leviable to BCD/CVD at the rate of 7.5/12 percent respectively.

Fifty five consignments of 'Surgical microscope' imported through Air Cargo Complex (ACC), Mumbai during April 2012 to March 2013 were classified under CTH 90185090/90189099 as other instruments and appliances used in Medical, Surgical, Dental or Veterinary Science and assessed to BCD at rate of 5 per cent under notification no.12/2012-cus serial no.473 dated 17 March, 2012 and also exempted from CVD under notification no.12/2012-CX dated 17 March, 2012 instead of applicable BCD/CVD rate of 7.5/12 percent respectively. The misclassification resulted in short levy of duty of ₹ 1.19 crore.

This has been brought to the notice of the department/Ministry in November 2013/September 2014, their reply is awaited (January 2015).

Brush cutters misclassified as mechanical appliances for dispersing or spraying liquids/Harvesting or threshing machinery

6.4 Brush Cutters, being portable machines having self contained internal combustion engine mounted on a light metal frame and equipped with cutting devices are classifiable under the tariff item "84672900" of the Customs Tariff in view of their exclusion from heading 8433 as per the explanatory notes to Harmonised System of Nomenclature (HSN). The subject goods are leviable to additional duty of customs equivalent to excise duty at the rate of 12 per cent, in terms of serial no.75 of notification no.18/2012-CE dated 17 March 2012.

Seventeen consignments of Brush cutters/Reapers/Grass cutters of various models, imported (May 2012 and March 2013) by M/s Foggers India Pvt. Ltd. and five others through Chennai (Sea) Commissionerate were classified under various headings like "8424/8433" of the Customs and central Excise Tariff considering them as Agriculture/Horticulture/Harvesting machinery and additional duty of customs at 'nil' rate instead of 12 per cent. The imported

goods being grass cutting machinery merit classification under CTH 8467 in view of the aforesaid HSN explanatory notes.

The misclassifications had resulted in short collection of duty of ₹ 87.33 lakh.

On this being pointed out, the Ministry reported (January 2015) recovery of ₹ 2.22 lakh and interest of ₹ 0.31 lakh from two importers (M/s Rekha Agriplus Ltd, M/s Venkateshwara Engg. Works) and confirmed a demand of ₹17.70 lakh in respect of M/s Greaves Cotton Ltd. Recovery in respect of the remaining five importers is awaited (January 2015).

Parts and accessories of motor vehicles misclassified as Gears and gearing

6.5 In terms of Note 2(e) to sections XVII of Customs Tariff, only those parts and accessories which constitute integral parts of engines or motors of heading 8483 are excluded from this section whether or not they are identifiable as the goods of this section. All other parts, if they are identifiable as being suitable for use solely or principally with the motor vehicles of headings 8701 to 8705, would therefore remain classified under Section XVII under heading 8708 of the Customs Tariff and leviable to BCD at the rate of 10 per cent.

M/s Carraro India Pvt. Ltd. and M/s Jtekt Sona Automotive India Pvt. Ltd. imported (February 2010 to March 2014) 66 consignments of 'Torgue converters/Gears, Reduction parts (parts of automotive steering)' through JNCH, Nhava Sheva/ICD Tughlakabad. The imported goods were misclassified under CTH 84834000/87089400 as transmission shafts and gears / gearing instead of under CTH 8708 and levied BCD at the rate of 7.5 percent instead of 10 percent . The misclassification resulted in short levy of duty of ₹ 73.99 lakh.

This was pointed to the Department/Ministry in January/September 2014, their reply is awaited (January 2015).

Railway maintenance or service vehicles misclassified as Railway goods vans and wagons

6.6 Railway or tramway maintenance or service vehicles, whether or not self propelled (for example, workshops, Cranes, ballast tampers, track liners, testing coaches and track inspection vehicles etc. are classifiable under CTH 8604 attracting CVD at the rate of 12 per cent.

M/s Pratibha Industries Ltd. and M/s HCC Samsung JV had imported (September 2013 to November 2013) eight consignments of 'Floor shaft car/segment cars' etc at an assessable value of ₹ 8.69 crore through ICD, Tughlakabad. The imported goods were classified under CTH 86069900 and assessed to CVD at the rate of 6 per cent instead of 12 per cent.

The imported goods were rail bound segment cars and floor shaft cars meant for tunneling equipment and merit classification under CTH 8604 and attract

CVD at the rate of 12 per cent. Thus, misclassification of imported goods resulted in short levy of duty amounting to ₹ 61.44 lakh.

The facts were brought to the notice of the Department/Ministry in January/September 2014, their response is awaited (January 2015).

Food processing machinery misclassified as other machinery for manufacture of food or drink

6.7 Machinery, plant or laboratory equipment, whether or not electrically heated for the treatment of materials by a process involving a change of temperature such as heating, cooking, roasting etc., other than machinery or plant of a kind used for domestic purposes is classifiable under CTH 8419 and leviable to BCD at the rate of 10 per cent.

M/s Balaji Wafers Pvt. Ltd. and another imported (June/November 2013) three consignments of 'Food processing machinery snack frying system' through JNCH, Nhava Sheva, Mumbai. The goods were misclassified under CTH 84388090 as 'other machinery for industrial preparation of food or drink' levying BCD at the rate of 5 per cent instead of applicable 10 per cent. Thus, misclassification resulted in short levy of duty to the tune of ₹ 52.09 lakh.

This was pointed out to the department /Ministry in December 2013/October 2014, their reply is awaited (January 2015).

Rice mill rubber roller misclassified as rice mill machinery

6.8 'Rice Mill rubber roller' are classifiable under CTH 40169990 and leviable to BCD at the concessional rate of 7 per cent under notification no.46/2011-cus dated 1 January 2012 (serial no.534, Appendix-I), when imported from Vietnam. The CBEC (Board) in their circular no. 2/90-CX.3 dated 11 January 1990 also clarified that 'Rubber Rolls' used in 'Rice mill' merit classification under CTH 4016. Further, Central Excise notification no. 12/2012 (serial no.155) dated 17 March 2012 clearly specify classification of 'Rice rubber rolls' for 'Rice Machinery' under CTH 4016.

M/s PRS Tradecom and four others imported (May 2012 to February 2013) 19 consignments, of "Rice mill rubber roller" through JNCH, Mumbai/Chennai (Sea) Commissionerate. The imported goods were mis-classified under CTH 84378090 as rice mill machinery and levied BCD at the concessional rate of 2.5 per cent allowing benefit under notification no.46/2011-cus (serial no. 1170) instead of applicable rate of 7 per cent. Thus, misclassification of the imported goods resulted in short levy of duty to the tune of ₹ 44.07 lakh.

On being pointed out to the Department in January/September/October 2014, Chennai Customs House authorities issued show cause notice to M/s Srinivas Mill stores. Reply in respect of other importers is awaited (January 2015). Ministry response has not been received (January 2015).

Animal feed preparations misclassified as fish meal unfit for human consumption

6.9 As per the HSN Note given under Chapter 23, Customs tariff heading (CTH) 2309 includes products of a kind used in animal feeding, not elsewhere specified or included, obtained by processing vegetable or animal materials to such an extent that they have lost the essential characteristics of the original material. "Squid Liver Powder" is a high quality ingredient for aqua feed (especially shrimp) which is prepared from squid liver paste and well-fined soyabean meal in equal proportions is appropriately classifiable under CTH 2309 and leviable to BCD at 30 per cent.

Four consignments of "Squid Liver Powder" imported (April to November 2012) by M/s Godrej Agrovet Ltd. & three others through Chennai (Sea), Commissionerate were classified under CTH 23012019/ 23012011/23012090 as "Other fish meal unfit for human consumption" and assessed to basic customs duty at 5 per cent instead of 30 per cent in terms of notification no.12/2012-cus (serial no.99) dated 17 March 2012.

The imported item being a mixtures of nutrients viz. energy nutrients obtained from animals and body building nutrients (proteins) obtained from leguminous vegetables in appropriate proportions, merited classification under CTH 23099090 as "other preparations of a kind used in animal feeding" and leviable to basic customs duty at 30 per cent. The misclassification had resulted in short levy of duty of ₹ 34.04 lakh.

The department while accepting audit observations issued a protective demand to one of the importers (M/s Avanti Feeds Ltd). Reply from the Ministry was awaited (January 2015).

CHAPTER VII

DUTY EXEMPTION/REMISSION SCHEMES

The Government may exempt wholly or part of customs duties for import of inputs and capital goods under an export promotion scheme through a notification. Importers of such exempted goods undertake to fulfill prescribed export obligations (EO) as well as comply with specified conditions, failing which the full rate of duty becomes leviable. During test check (March 2012 to February 2014) of records, a few illustrative cases noticed where duty exemptions were availed of without fulfilling EOs/conditions are discussed in the following paragraphs and 13 cases of duty exemption/remission have been listed in **Annexure 7**. The total revenue implication in these cases is ₹ 182.65 crore.

Served from India Scheme (SFIS)/Focus Product Scheme (FPS)

Grant of excess duty credit of ₹ 58.01 lakh

7.1 Served from India Scheme (SFIS) provides for duty credit at 10 per cent of the foreign exchange earned by the Service Providers in the current financial year for the services listed in Appendix 41 of HBP. However, export of “goods” shall not be entitled for benefits under SFIS (paragraph 3.12.3 of the FTP).

M/s Shriram EPC Ltd., Chennai was granted (September 2012) duty credit scrip for ₹ 396.95 lakh by RLA, Chennai under SFIS Scheme at 10 per cent of the free foreign exchange of ₹ 4050.55 lakh earned during the year 2011-12 for providing “Construction and Engineering related services”, after imposing a late cut of 2 per cent in terms of paragraph 9.3 of the Handbook of Procedures (Vol.I), 2009-14 for delayed submission of application.

Audit scrutiny revealed that as per the self declaration made by the company on 25 August 2012 in respect of the remittances received for rendering of services and as per the Certificate issued by the Chartered Accountant furnished as Annexure to ANF 3B, the Foreign exchange earned during the year 2011-12 was ₹ 3458.59 lakh only. However, while filing the application online it was wrongly mentioned as ₹ 4050.55 lakh (the foreign exchange earned during the previous year 2010-11). As a result, the duty credit of ₹ 396.95 lakh was granted whereas the actual entitlement was ₹ 338.94 lakh only after imposing late cut of 2 per cent. Thus, incorrect reckoning of the free foreign exchange earned resulted in excess grant of duty credit of ₹ 58.01 lakh.

The Assistant Director General of Foreign Trade, Chennai informed (November 2014) that demand notice has been issued to the firm.

Duty credit allowed for ineligible services

7.2 Supreme Court in the case of Tata Consultancy Services Vs the State of Andhra Pradesh (STC Vol.137 of 2004) and in the case of BSNL Vs the Union of India and others (STC Vol. 145 of 2006) upheld levy of Sales Tax on canned software treating them as goods because Copy right of a programme may remain with the originator of the programme but the moment copies are made and marketed, it becomes goods which are susceptible to sales tax. Accordingly, on the analogy of being goods not entitled to duty credit under SFIS.

M/s Kalaignar TV Private Limited was granted duty credit of ₹ 54.71 lakh by RLA, Chennai under SFIS, at 10 per cent of the free foreign exchange earned by them during the year 2011-12 considering the “License fee for supply of video programmes” earned by them through various TV channels abroad as rendering of “entertainment services”.

Since the earnings were on account of transfer of right to use the title or Copy right and not on account of rendering of any service, it could not be reckoned for duty credit under SFIS. This had resulted in irregular grant of duty credit of ₹ 54.71 lakh which was recoverable with interest.

DGFT, New Delhi stated (November 2014) that transmission of programme through satellite communication falls under Srl. No. 2A of Appendix 41 of the HBP under communication Services- Audio visual service and this could not be classified as “Goods” and the “copyright” have not been excluded from the grant of duty credit.

DGFT’s reply may be viewed in the context of the fact that the earnings were on account of transfer of right to use the title or “copyright” and not on account of rendering of service. According to aforesaid judicial pronouncement “copyright” or right to use the title are termed as “goods” under the Sale of Goods Act thus ineligible as service for grant of credit.

Net Foreign Exchange Earnings by Hospitality Sector (Paragraphs 7.3 to 7.24)

7.3 Introduction

The hospitality industry is a broad category within the service industry that includes lodging, event planning, theme parks, transportation, cruise line, and additional fields within the tourism industry. A hospitality unit such as a restaurant, hotel, or even an amusement park consists of multiple groups such as facility maintenance, operations (servers, housekeepers, porters, kitchen workers, bartenders, etc.), management, marketing and human resources. Indian hospitality sector is estimated to contribute between 8-9 percent towards India’s GDP. During the period 2011 to 2013, 19.84 million foreign tourist visited India and total foreign exchange earned was ₹ 279749

crore¹⁷. India ranked 16th in World Tourism receipts with an average share of 1.61 percent. While in Asia and the Pacific region tourism receipts its rank was 8th with an average share of 5.45 percent during the same period.

Growth opportunities in travel & tourism could not be realized without the development of the hospitality sector. Export promotion measures for service sector are mainly covered under SFIS and EPCG scheme. The total duty foregone under these two schemes (including hospitality sector) is shown in table 7.1.

Table 7.1- Duty foregone

				(Cr. ₹)
Duty foregone	2011-12	2012-13	2013-14	Total
EPCG	9672	11218	8990	29880
SFIS	555	590	639	1784
Total	10227	11808	9629	31664

Source: Union Receipt Budget, CBEC DDM

7.4 While announcing highlights of annual supplement 2013-14 of Foreign Trade Policy it was declared that under SFIS scheme, service providers are entitled to duty credit scrips under the scheme at the rate of 10 percent of free foreign exchange earned during a financial year. The entitlement w.e.f 18.4.2013 is to be calculated on the basis of net foreign exchange earned (i.e., after deducting foreign exchange spent from the total foreign exchange earned during the financial year).

7.5 As per policy circular no. 60/97-2002 dated: 24.12.1998 various categories of rupee payments which would be regarded as foreign exchange earned for the purpose of EPCG scheme are:-

- Payment received from foreigners in Indian rupees against encashment certificate.
- Payment received in Indian rupees from travel agents/tour operators earned from hotel stay of foreign tourist (considered as foreign exchange under section 80HHD of Income Tax Act).
- Payment received by (a) air/flight catering unit, stand alone and others and (b) by hotels for staying of foreign airline crew from foreign airlines in Indian rupees against their repatriable earnings.
- Payment received in Indian rupees, from diplomats, embassies, UN organization out of their convertible foreign exchange.

¹⁷ Source:- India tourism statistics at a glance- 2011, 2012 & 2013, Ministry of tourism, GOI

The foreign exchange earned through money changers licence (not against hotel bills) shall not be treated as foreign exchange earnings for the purpose of EPCG scheme. In respect of the above services, the licence holder shall be required to submit a CA certificate in lieu of certificate from the bank.

7.6 Audit Objective

- Whether the hospitality sector is facilitated by the duty benefits of Foreign trade policy (FTP) under the mainly two schemes; Export promotion Capital goods (EPCG), and Served from India scheme (SFIS), with the objective to earn foreign exchange as per Foreign Trade Policy (FTP) Guidelines.
- Whether the internal control systems and monitoring mechanisms are effective for promoting foreign exchange earnings by the service providers in the hospitality sector.
- Whether the duty credit scrips have been utilized as per the prescribed provisions for import of eligible items relating to the line of business be the entitled service providers such as hotels, restaurants, tour operators etc.

7.7 Audit Coverage

Records were examined of various agencies viz. Regional Licencing Authority (RLA) of DGFT, Customs Ports and Bank involved in administration, implementation and foreign exchange earnings of EPCG & SFIS licences, service providers/beneficiaries in the hospitality sector and EPCG licences issued during 2005-07 (considering the EO period of 6-8 years).

EPCG Licences redeemed during the period 2012-14 and SFIS licences issued during the period for 2012-13 & 2013-14 were examined.

7.8 Audit methodology and sample selection

(i) In case of EPCG, the licences issued during 2005-06 & 2006-07 were selected on the basis of duty foregone, export obligation and foreign exchange earned. EPCG authorizations in which duty saved is ₹ 100 crore or more where the EO period is 12 years were examined separately.

(ii) In case of SFIS, the licences issued during 2012-13 & 2013-14 were selected on the basis of CIF value of duty credit scrips issued to the licence holders against the foreign exchange earnings in the relevant financial year.

(iii) The sample selection was done based on the records made available to audit.

Audit Observations

7.9 Audit observed that duty benefits availed under SFIS & EPCG schemes were to the tune of ₹31664.64 Crore. However, DGFT did not have the segregated figures of benefits availed in the hospitality sector. It has not been captured separately in the DGFT EDI also. Therefore, the impact of this sector and its correlation with the FTP will not be known. The task forces constituted by the DOC also have not considered it necessary to look into the hospitality sector to rationalize its transaction cost. Though the hospitality sector is an emerging sector growing at the rate of 8-9 % of the GDP with FEE to the tune of Rs 279749 Crore (2011-13).

7.10 Internal control & monitoring

We observed that control for avoiding any leakages in revenue generation or misuse of the duty benefits availed were lax. Few cases have been shown below:

7.10.1 Internal controls procedures and internal audit system

DGFT had issued an instruction in January 2000 under which a Post Issue Audit Wing (PIAW) was required to be constituted in all RLAs for the purpose of test audit of five percent of the licences issued for ensuring the veracity of documents submitted along with application. The FTDOs of the sections will generate a list of files on 1 and 16 of every month on random basis by selecting a minimum of 5 percent of files for audit. Accordingly the authorization list for particular section and for particular scheme has to be generated. The sections will verify the genuineness of all the relevant documents submitted like RCMC, BRCs/FIRCs, Shipping Bills/Bill of exports, and registration with different authorities. A separate register as prescribed of circular dated August 2007, be maintained for recording and monitoring the progress of the exercise.

7.10.2 Regional Licensing Authorities (Ahmedabad and Vadodara) were not auditing the selected 5 percent of EPCG/SFIS licence files. Further, cross verification of genuineness of the relevant documents submitted like RCMC, BRCs/FIRCs and registration with different authorities was also not being carried out. A separate register was either not maintained for recording and monitoring the progress of the exercise or wherever maintained, no periodic entries were made. Further, there was no set up of Post Issue Audit Wing (PIAW) at RLA Bangalore also. RLA, Bangalore has intimated (November 2014) about reconstitution of the PIAW.

RLA Ahmedabad stated (June 2014) that specific reply would be furnished after examination of the case. RLA, Vadodara stated that they have selected 5 percent of files on random basis for Post Issue Audit and made a reference to concerned authorities for verification of RCMC, BRC/FIRC, and Shipping Bills/Bills of Exports. A register was also maintained by the department.

Reply of the RLA, Vadodara is not tenable because no Post Issue Audit Wing (PIAW) was set up nor register maintained was as per prescribed proforma. Moreover there was no entry in the register after May 2012.

7.10.3 RLA, Jaipur had issued a show cause notice M/s North West Marwar Resort & Health Spa (P) Ltd on the basis of DRI letter No.840/JPR/19-XVIII/2004/1842 dated 16.11.2005 regarding mis-use of authorizations under EPCG scheme. The matter was also filed in Customs & Central Excise Settlement Commission, Principal Bench, New Delhi in June 2006. As per details available in the files, out of ₹ 120.72 lakh admitted as liability, an amount of ₹ 92.54 lakh was stated to be paid during investigation and ₹ 28.18 lakh was lying pending for recovery.

RLA, Jaipur accepted the audit observation and stated that there was no updated position available in these cases after February 2007. RLA further stated that DRI office would be asked for updated position in those cases.

The fact remains that weak monitoring of the recovery cases has led to postponement of recovery even after lapse of seven years. In all the audit observations, it was amplified that the percentages prescribed for post audit has not been adhered to.

7.11 Lack of co ordination between RLA and Customs / Service tax department

Deficiency/inadequacy in monitoring mechanism in respect of EPCG scheme was observed and highlighted in subsequent paragraphs, SFIS does not involve monitoring since it is a post export scheme but in 12 out of 13 SFIS files examined in audit, no 'statement of imports' as prescribed under Para 3.12.6 of FTP had been submitted by the service providers.

As regards online transmission of licenses as well as transfer of live data relating to imports and exports, EDI system exists for online transmission of licenses and exports between RLA and Customs in case of EDI enabled Ports but it has been observed in RLA Kolkata that there is no system to exchange live data relating to imports. However, in the case of exports of services, particularly services rendered by hospitality sector, there is no involvement of customs department in the transaction (where there is no requirement of filing shipping bills) by such service providers and of RBI on foreign exchange realization. Nor the FE earned by Hospitality Service Sector was mapped with Service Tax Form (ST-3) required to be filled by the service provider or importer of services.

7.12 Improper monitoring and Implementation of EPCG/SFIS scheme

Audit observed at RLA Kolkata that no system in the RLAs to verify (other than by correspondence with the applicants) the correctness of

data/information i.e BRCs and other related documents submitted by the exporter for determining the eligibility under the SFIS/EPCG schemes. Complete reliance is made on the declarations by the service providers of the nature of services provided, and statement of exports certified by the chartered accountants for grant of SFIS duty credit certificates/fixation and discharge of average exports in case of EPCG scheme.

Absence of controls to correlate these declarations with other statutory documents like annual accounts, BRCs, IT returns and foreign inward remittance certificate is a risk area which needs to be looked into. This is more so in case of exports of services of the hospitality sector in which the customs department has no role in the transactions and also where cases of pending foreign exchange, if any, is not reflected in the outstanding statement (XOS) issued by the Reserve Bank of India .

For instance, in case of M/s Parikh Inn Private Ltd., Jamshedpur (RLA Kolkata), it was noticed that the invoices for import of capital goods was addressed to the applicant on behalf of Fortune Hotel Centre point by Welcome Group and the capital goods were installed at the Fortune Hotel as per the certificate issued by chartered accountant.

Similarly, in case of benefit of SFIS granted to M/s Sincere Developers Pvt. Ltd. the service provider was Hotel Radisson Agra, as per FIRCs.

Again, while Hyatt Regency, Kolkata was the service provider, the claim was made by M/s Asian Hotels (East) Ltd.

In all these cases, the relationship between the applicant-claimant and the service provider was not on record. Further, the IEC of the applicant did not show the name of the actual service provider as branches/units of the claimant. In these cases, it was also not clear whether the claimant had earned foreign exchange from business other than that was eligible and admissible as per the provision under the schemes. The department does not have the mechanism to track whether the benefit under the schemes is being availed by the actual users/licence holders.

7.13 Foreign exchange actually realized vis a vis export

DGFT did not have aggregated information of the foreign exchange actually realized by the hospitality sector with respect to the services provided. This would have been a reliable measure to evaluate the success of the scheme with regards to the hospitality sector.

Compliance issues

Audit observed that compliance to the FTP provisions of the EPCG and SFIS schemes are not being adhered to in many cases leading to slippage in FE earnings and grant of undue benefits to the licencees.

SECTION- I (Export Promotion Capital Goods (EPCG))

7.14 Irregular / short fixation of export obligations amounting to ₹110.54 lakh

In case of domestic sourcing of capital goods, export obligation shall be reckoned with reference to notional custom duties saved on FOR value (Para 5.7 FTP).

7.14.1 In two cases (one licence each of RLA, Ahmadabad and Vadodara) the licence holders invalidated their EPCG licences for procurement from indigenous sources and the EO was fixed taking into account the central excise/customs duty applicable on capital goods. It was noticed that non fixation of EO on the basis of notional customs duty resulted in short declaration of duty saved to the extent of ₹ 5.81 lakh and corresponding short fixation of EO to the extent of ₹ 46.49 lakh. Department has also issued EODC for these licences. This has resulted in short fulfillment of Export obligation of ₹ 38.41 lakh.

DGFT, New Delhi stated (January 2015) that RLA, Vadodara has intimated that the firm has submitted revised ANF 5B showing total fulfillment of EO. DGFT further stated that RLA, Ahmedabad had asked concerned exporter to regularize the case. However a copy of the revised document was not submitted for verification by audit.

7.15 Violation of actual user condition

Import of capital goods shall be subject to actual user condition till export obligation is completed (Para 5.4 of FTP).

JDGFT, Trivandrum issued five percent EPCG authorization (Licence No 5330000997 dated 22.09.2006) to M/s Dodla International Ltd, (IEC No 0405007884) with a specific export obligation of ₹ 365.77 lakh for the duty saved amount of ₹45.72 lakh. The licensee imported the capital goods during October 2006 to January 2007 for an actual duty saved amount of ₹ 45.55 lakh but failed to fulfil the prescribed export obligation.

Meanwhile, M/s Oriental Hotels Ltd. intimated (April 2014) JDGFT, Trivandrum that M/s Dodla International Ltd. had leased out the property to them and an application has been filed (September 2010) to the DFGT to transfer the EO of M/s Dodla International to M/s Oriental Hotels Ltd.

EPCG Committee decided (letter No. 01/36/218/151/AM-11/EPCG-I dated 21.12.2011) to allow the transfer of EO imposed against the authorizations issued to M/s Dodla International Ltd to M/s Oriental Hotels Ltd, subject to the condition of submission of fresh Bank Guarantee/ LUT as applicable before endorsement of EPCG licence. Even though two and half years have elapsed, M/s Oriental Hotel Ltd had not executed any BG/LUT in this regard.

DFGT while accepting the fact about non-execution of a fresh BG/LUT by M/s Oriental Hotels Ltd as per decision of the EPCG committee stated (January 2015) that the firm's request for exemption from BG/LUT being a Star Export House is being examined. However, it was further contended that execution of fresh BG/LUT is not relevant at this stage because (i) M/s Oriental Hotels have already executed BG with Customs which will not be released until redemption is allowed by the RLA and (ii) the firm have furnished documents fulfilling the prescribed EO which are under scrutiny. DFGT further added that EPCG committee was considering the transfer of EO and not the EPCG licence.

The DGFT's reply may be viewed in the context of the fact that M/s Dodla International Ltd. was issued EPCG licence and had availed duty benefits but failed to fulfil the prescribed EO, action for which has not been taken by the licencing authority. Later M/s Oriental Hotels Ltd. has gone ahead utilizing the goods imported by M/s Dodla International Ltd. without fulfilling the conditions imposed (fresh BG/LUT) by the EPCG committee and subsequently claimed fulfillment of EO without endorsement of EPCG license in their favour. It is not understood how DGFT is considering transfer of EO to M/s Oriental Hotels Ltd. without endorsement of EPCG licence in their favour.

7.16 Monitoring of export obligation

7.16.1 Non fulfillment of export obligation

The EPCG authorization holder shall fulfil 50 percent export obligation in the block of 1st to 6th year from the date of authorization (Para 5.8 of HBP Vol.I). Where export obligation of any particular block of years is not fulfilled such authorization holder shall, within 3 months from the expiry of the block of years, pay duties of customs along with applicable interest of an amount equal to that proportion of the duty leviable on the goods which bears the same proportion as the unfulfilled portion of the export obligation bears to the total export obligation.

At JDGFT office Varanasi fixed export obligation of ₹ 59.77 lakh was not found to be fulfilled by Mall Hotel Varanasi Cantt (licence No. 1530000229 dated 19.04.2006. Similarly at JDGFT, Trivandrum in two cases evidence of fulfilment of export obligations of ₹420.49 was not submitted even after expiry of EO period.

At RLA Kolkata four EPCG authorizations between August 2005 and January 2006 were issued to two service providers M/s Hotel Hindustan International, Kolkata, (3 nos.) and M/s Speciality Restaurants (P) Ltd. The authorization holders had failed to fulfill the conditions of the authorization, customs duty foregone amounting to ₹15.37 lakh along with interest thereon amounting to ₹18.47 lakh (June 2014) aggregating ₹33.84 lakh stood recoverable. In

another 13 EPCG Authorizations between June 2006 and March 2008 to M/s Hotel Hindustan International and two others for import of various capital goods for duty saved amount of ₹ 85.80 lakh. The authorization holders had not submitted evidence of fulfilment of prescribed EO for the 1st block (50 per cent in 1st to 6th year). It had also not submitted annual progress reports in compliance of Para 5.9.1 of HBP, Vol-I. Therefore, the authorization holders were liable to pay proportionate customs duty foregone (i.e 50 percent of total duty foregone) amounting to ₹ 42.96 lakh and interest thereon.

At RLA Bengaluru, in respect of three cases, it was observed that block wise fulfilment of the obligation of Rs 549.61 lakh was not achieved even after the due date which involved a duty saved amount of ₹ 68.36 lakh. RLA has intimated (November 2014) that SCN has been issued.

DGFT, New Delhi informed (January 2015) that in respect of licence issued by RLA, Varanasi utilization certification from Customs (ICD, TKD) is awaited. RLA, Kolkata have issued letters to the firms for submission of correct FIRC in four licences. RLA, Bengaluru reported that the firms have submitted documents fulfilling the EO in the first block itself in all the three licences.

Audit would like to verify the papers stated to have been submitted regarding cancellation of the licence and fulfillment of EO.

7.16.2 Non submission annual progress report

The EPCG authorization holder shall submit to the licensing authority by 30th April of every year, report on the progress made in fulfilment of export obligation against the licence issued as well as annual average level of exports achieved (Para 5.9.1 of HBP). The report shall be submitted electronically on the DGFT website. The licensing authority may issue partial EO fulfilment certificate to the extent of EO fulfilled in a particular year.

Annual performance reports were neither submitted by the authorization holders nor were insisted upon by the RLAs. RLA, Bengaluru (11 cases), RLA Cochin (15 cases), RLA Trivandrum (4 cases), RLA, Ahmedabad (1 case) and RLA, Jaipur (all licences).

DGFT, New Delhi informed (January 2015) that out 11 cases of RLA, Bengaluru, in 4 cases annual progress reports have not been submitted, however, documents fulfilling the EO have been submitted, SCN has been issued in 1 case, in 3 cases licensees have been asked to furnish the documents, EO has been discharged in 1 case, 1 licence has been surrendered, while in remaining one case firm has completed the EO during 2007-08, accordingly annual report was not required.

In respect of RLA, Cochin (15 cases) it was stated that 12 licences have already been redeemed, EO period was extended up September 2015 in 1 licence, while 2 licencees have been asked to regularize their cases.

In four cases of RLA, Trivandrum it was stated that annual performance report was called for but could not be submitted by the licencees because of non-compilation. However, in 2 cases EO have been fulfilled and licences were redeemed, in another case EO documents submitted are under scrutiny, while remaining 1 case is under adjudication.

RLA, Ahmedabad informed that the licence has been surrendered. Reply from RLA, Jaipur is awaited (January 2015).

The fact remains that cases were not monitored as per the FTP provisions and procedures.

7.17 Incorrect fulfillment of export obligation against duty saved of ₹ 111.02 lakh by non group company

Export obligation shall be fulfilled under EPCG scheme, through direct export by the license holder or through third party (s) {Para 6.5(ii) 1997-2000}. If a merchant exporter is EPCG authorization holder, name of supporting manufacturer shall also be indicated on shipping bills. At the time of export, EPCG authorization number and date shall be endorsed on shipping bills which are proposed to be presented towards discharge of export obligation.

Group Company as defined in paragraph 9.28 of the FTP, means two or more enterprises which, directly or indirectly, are in a position to exercise 26 percent. Or more of the voting rights in the other enterprise; or (ii) appoint more than fifty percent, of the members of the board of directors in the other enterprise, or for the group companies to claim benefits or have their exports counted for benefits to be claimed by another member of the group, the group company should have been in existence at least two years prior to the date of application under any of the export promotion schemes notified in the policy., where license has been issued to any Group Company” the export obligation may also be fulfilled by export of manufactured goods by any other company(s) belonging to such Group Company.

RLA, Bhopal issued EPCG license No.AAAC9739KST001 to M/s Entertainment World Developers Pvt. Ltd., Indore for import of capital goods during the period 2005-06 to 2006-07. The authorization holder fulfilled the export obligation through its group company i.e M/s Flexituff International Ltd. Pithampur. The memorandum and article of association of the company revealed that M/s Flexituff International Ltd. Pithampur was not approved as a group company. It was further revealed that the authorization holder relates to Export of Items under ITC HS Code 94032090 i.e Tourism and Travel-related Services and supporting group co. M/s Flexituff International

Ltd. Pithampur is exporter of HDPE/PP Woven sacks/ Fabrics/PP jumbo bags etc. The licensee neither disclosed its group company during issuance of licenses nor indicated as supporting exporter company in shipping bills, in compliance of EXIM Policy. This resulted in incorrect savings of customs duty of ₹111.02 lakh, liable to be recovered along with interest as per aforesaid Rules and penalty as per Foreign Trade (Development & Regulation) Act 1992.

DGFT, New Delhi citing RLA Bhopal report without furnishing documentary evidence stated (January 2015) that M/s Flexituff International Ltd. is a Group Company of M/s Entertainment World Developers Pvt. Ltd and exports of products manufactured by M/s Flexituff International Ltd. are eligible under para 5.4 (i) of the FTP for fulfillment of EO.

Audit would like to re-examine the issue after receipt of documentary evidence from the department regarding eligibility of Group Company and export obligation imposed over and above the average exports achieved by the group company in preceding three years for both the original and the substitute product(s) as envisaged in para 5.4 (i) of the FTP.

7.18 Delay in issue of export obligation discharge certificate

Regional licensing authority shall ensure disposal of application of redemption of EPCG licence within 30 days. Shortcomings, if any, shall be pointed out in one go (Para 5.13 of HBP). All correspondence, thereafter, shall relate to these deficiencies only. Fresh correspondence, if necessary, shall be made within 15 days. Once documents are complete, EO will be discharged within 30 days of receipt of complete documents/information. In case of failure to fulfil export obligation or any other condition of authorization, authorization holder shall be liable for action under FT (D&R) Act,1992, orders and rules made hereunder, provisions of FTP and the Customs Act,1962 (Para 5.17).

Process of issue of final discharge certificate/rejection shall be completed within a period of 90 days from the date of receipt of initial request. Application that remains outstanding beyond a period of 90 days shall be reported to DGFT along with reasons thereof, immediately thereafter.

At RLA, Jaipur, the audit noticed that in the two cases the export obligation discharge certificate (EODC) was issued beyond 90 days from the date of receipt of application for EODC and no report along with reasons thereof was found sent to DGFT (Table 7.2).

Table 7.2: EODC cases

Sr. No.	Name of Service Provider	Licence No. & Date	Amount of duty saved (lakh ₹)	Date of receipt application for redemption	Date of issue of EODC	Time taken for issue of EODC (in days)
1.	Heritage Inn Pvt. Ltd., Jaipur	1330001112 dated 26.10.2005	11.42	02.09.08	13.05.09	254
2.	Shaina Builders Pvt. Ltd., Jodhpur	1330001178 dated 02.02.2006	11.32	03.08.09	30.11.09	120

RLA Jaipur stated that matter is being examined and reply will be sent.

7.19 SECTION- II Served From India Scheme (SFIS)

7.19.1 Incorrect grant of duty credit scrip amounting to ₹ 7589.49 lakh for promoting foreign brands against objective of SFIS

Objective of SFIS is to accelerate growth in export of services so as to create powerful and unique "Served From India" brand, instantly recognized and respected world over (Para 3.12.1 of FTP).

In this regard, the Policy Interpretation Committee (PIC) vide its minutes of meeting No.09/AM09 dated 27.01.2009 & No. PIC 10/AM-12 held on 27th December 2011, explained the basic objective of SFIS scheme of creating a unique "Served from India" brand and stated that the scheme is essentially for encouraging Indian brands. It was further clarified that the FTP did not intend to incentivize any brand which is created outside India. Such Indian brand should be so unique as to be easily recognizable and create a distinct identity for itself both domestically and internationally. Essentially such a brand should enhance the Indian image and hence the FTP used the phrase "Served from India" brand. The Committee, therefore, concluded that grant of SFIS benefits to companies which represent brands, not identified as Indian brands would not be harmonious with the intent behind the scheme.

Ninety one duty credit scrips were issued by the RLA Mumbai and Pune and 19 scrips by other RLAs (RLA Kolkata-8, RLA Ahmedabad-5, RLA, Jaipur-4, RLA Bengaluru-2) to various service providers using brand names of established foreign brand hotels during 2011-14. This resulted in irregular grant of duty credit scrips in these 110 cases amounting to ₹ 7589.49 lakh.

RLA, Jaipur accepted the audit observation. RLAs Bengaluru and Kolkata stated that FTP never differentiates between Foreign and Indian company in matters related to availing benefits under its schemes including SFIS. Brand name is universal in nature and does not belong to a country. These hotels are owned/ managed by Indian companies which run these hotels in brand name under an agreement with the foreign company, who is the owner of that brand. Accordingly, they are eligible for benefits under the scheme.

The reply of RLAs Bengaluru/ Kolkata were contradictory to the decisions taken by the Policy Interpretation Committees (09/AM09 and 10/AM 12) and may be viewed in the context of the fact that the basic objective of SFIS is to create a unique 'Served from India' brand. Replies from other RLAs were awaited (January 2014).

7.19.2 Incorrect grant of duty credit scrips on earnings in Indian Rupees/Foreign exchange through travel agents

- i. In 55 duty credit scrips of ₹290.50 lakh (RLA, Mumbai-28 cases, ₹ 145.71 lakh, RLA, Goa- 27 cases, ₹144.79 lakh) were irregularly issued to six service providers on earnings in Indian rupees/Foreign exchange through tour operators & travel agents which is recoverable from the licencees.
- ii. RLA, Jaipur issued (December 2012) a Served from India Scheme (SFIS) Authorization for duty credit ₹ 335.46 lakh to Rajasthan Tourism Development corporation Ltd. (RTDC), Jaipur without fulfillment of required conditions. The RTDC was engaged in tour operator services of Palace on Wheels (a joint venture with Indian Railways) and as per agreement (June 2009), RTDC has 44 per cent share whereas Indian Railways has 56 per cent share. Since the Indian Railways was the major shareholder of the joint venture, but the Disclaimer Certificate from them was neither obtained and nor submitted with the application. Application submitted by RTDC revealed that total Foreign Exchange earned during 2011-12 was shown ₹ 3354.61 lakh which includes ₹ 2448.58 lakh earned by other Travel Agents and only ₹ 906.03 lakh was earned directly by RTDC. Foreign Inward Remittance Certificate was also not found submitted. In spite of these deficiencies RLA has accepted the application and issued authorization under SFIS, which resulted in irregular grant of duty credit scrip of ₹ 335.46 lakh.

RLA, Jaipur justified (April 2014) the claim on the grounds that RTDC exclusively is organizing the joint venture and the foreign exchange earned was directly deposited in their account, which was subsequently paid to Indian Railways. Further, RLA reiterated that travel agents who receive foreign exchange earnings were also entitled for SFIS and also stated that as per Chartered Accountant's certificate, total amount was received in foreign exchange directly by RTDC Ltd.

The reply of the department is not tenable as disclaimer certificate from Indian Railways was not submitted even though the Indian Railways ultimately received 56 per cent of foreign exchange earned. Further, foreign exchange earned directly by RTDC was only ₹ 906.03 lakh accordingly benefits for foreign exchange earned ₹ 2448.58 lakh by travel

agents without obtaining disclaimer certificate from them was not justified/ irregular.

- (iii) In case of other six service providers 50 duty credit scrips of ₹ 92.59 lakh were incorrectly granted on encashment of foreign currency by hotel guests at hotel counter.

RLA, Mumbai issued demand cum show cause notice to M/s Laxmi Ventures (India), while reply in respect of other scrips was awaited (January 2015).

- (iv) In case of M/s. B D & P Hotels (I) P. Ltd under RLA, Mumbai, ineligible remittance of ₹ 694.24 lakh (₹ 525.30 lakh from Saudi Arabian Airlines towards crew accommodation charges and ₹ 168.94 lakh by conversion for foreign exchange from Asian Forex Pvt. Ltd) were considered for issuing duty credit scrip without deducting the same resulting in excess allowance of duty credit of ₹ 69.42 lakh.

- (v) Five duty credit scrips amounting to ₹ 217.67 Lakh were issued by the various RLAs (Vadodara-1, Ahmedabad-1, Jaipur-1, Bangalore-1, Chennai-1) to service providers. Out of this ₹ 17.29 lakh of duty credit was issued in excess due to inclusion of FEE pertaining to different period not covered in the SFIS licences.

RLA Jaipur accepted the audit observation while, RLA Chennai issued recovery notice and recovered Rs. 4.57 lakh. RLA Bengaluru stated that the firm has not utilised the scrips fully. Further progress is awaited (January 2015).

7.20 Issue of duty credit scrips without production of prescribed documents

7.20.1 Incorrect grant of duty credit scrips of ₹60.87 lakh on time barred claims due to non-submission of document.

The last date of submission of application for SFIS is 12 months from the end of the financial year (Para 3.6 of HBP Vol. I). Delay in submission of application up to a maximum period of 2 years attract late-cut fee at the rate prescribed in Para 9.3 of HBP. Thus, claim can be filed only within a period of 2 years after expiry of due date and applications submitted after expiry of two years from due date will not be considered for entitlement .

M/s Speciality Restaurants (P) Ltd. (Mainland China) was issued 13(split) duty credit scrips (No. 210194314-26 dated 16 September 2013) for ₹60.87 lakh against FEE of ₹621.15 lakh by RLA Kolkata after late cut at the rate of two percent. On the basis of decision of the SFIS committee (meeting dated 18.07.11), the RLA called for (letter dated 22.07.11) RCMC issued by service EPC (SPEC) instead of that from FIEO. The RCMC issued on 31.08.2012 by Service EPC, New Delhi was submitted by the applicant subsequently

furnished, vide letter dated 02.09.2013. As the RCMC was submitted to RLA after a lapse of more than 2 years from last date of filing application, grant of duty credit for ₹60.87 lakh was time barred as per Para 9.3 of HBP, Vol-I.

The matter was brought to the notice of department (September 2014), their reply is awaited (January 2015).

7.20.2 An exporter applying for benefit under the FTP is required to furnish valid (on the date of application) RCMC, from the competent authority (Para 2.44 of FTP read with P.C No. 27/2007 dated 17.01.2008). Further, specific services as listed in Appendix 2 of HBP, Vol.1 are required to register themselves with SEPC. 'Hotel and tourism related services' was specifically included at Sl. No. 14 in Appendix -2 w.e.f 31.03.2008 (Public Notice No. 135 dated 31.03.2008). Thus, for availing benefit under any scheme under FTP, hotels are required to furnish RCMC from SEPC.

In case of M/s Walled City Hotel Pvt. Ltd., Jodhpur (SFIS licence No. 1310045373 dated 12.12.2013) was issued duty credit of ₹ 21.18 lakh against foreign exchange earned ₹ 211.82 lakh without obtaining/cross verification of foreign inward remittance certificate.

In six other cases at RLAs (Mumbai & Goa) duty credit scrips were issued to service providers for ₹247.23 lakh without obtaining import details.

On being pointed out in August/ July 2014, RLA Jaipur accepted the audit observation while reply of RLA Mumbai /Goa was awaited as of January 2015.

7.21 Incorrect adjustment of interest dues against duty credits through Scrips

Penalty/interest payable to Customs department is required to be paid in cash only (Para 3.17.11 of FTP).

Excess duty credit scrips were issued to M/s. Appu Hotels Ltd., (IEC No.0494016868), and other three other service providers by RLA Chennai (**Annexure 8**). These excess amounts of duty credits were later adjusted by reduction of the duty credit in the entitlements. However it was noticed that the Interest on these amounts were also adjusted along with the duty credit, instead of being recovered in cash as per the above provision.

Similarly in two cases {M/s APA Hotels (P) Ltd and M/s Hotels & Enterprises Ltd; **Annexure 9**} only the excess amount was adjusted while the interest was not recovered.

The amount of interest adjusted by adjusting the amount in amended duty credit scrips was against the provisions of FTP while ₹ 37.39 Lakh is recoverable from the beneficiaries.

7.22 Non/short levy of late cut

As per paragraph 3.6 (b) of HBP 2009-14, application for duty credit scrip shall be filed within 12 months from the end of relevant month / quarter / half-year /year. Further, as per paragraph 9.3 of HBP Vol-I, whenever application is received after expiry of due date, such application may be considered after imposition of late cut at the rate of 2/5/10 percent as applicable.

Various cases detailed in **Annexure 10** were noticed at RLAs where late cut was either not levied or short levied due to delay in submission of application for SFIS duty credit scrips. Accordingly, total late cut amounting to ₹ 61.44 lakh remains recoverable from the beneficiaries

RLA Jaipur accepted the audit observation and RLA, Mumbai issued demand notice in case of M/s Pride Hotel Ltd. RLA Puducherry intimated recovery of Rs. 0.86 lakh in case of M/s. Hi Design India Pvt. Ltd. Further progress was awaited (January 2015).

7.23 Other interesting points noticed

7.23.1 Incorrect grant of benefit under both SFIS and EPCG scheme

As per Para 5.4 (v) of EPCG scheme (FTP RE-2007), foreign exchange counted towards fulfilment of export obligation (over and above the average) shall not be eligible for incentives / rewards under promotional measures / schemes. This clause was deleted in FTP RE2008.

In case of grant of dual benefits under SFIS, and the EPCG authorizations, the DGFT issued Policy circular no. 15 (RE-2008)/2004-2009 dated 4th July 2008 and clarified that the service providers have to first utilize foreign exchange earned during 1.4.2007 till 31.3.2008 for fulfilment of pending EO under EPCG authorizations (over and above the average, if any) and SFIS would be entitled only on any additional foreign exchange earned during 1.4.2007 till 31.3.2008 thereafter. Accordingly, RLAs were directed to call for details of all pending EO under EPCG authorizations and to effect recovery in case it was found that excess SFIS benefit had already been granted for foreign exchange earned during 2007-08 in any particular case. Further, at the time of redemption of EPCG authorizations of service providers, RLAs were to ensure that SFIS had not been granted for foreign exchange earned during 1.4.2007 till 31.8.2008, which was used for discharge of pending EO against an authorization.

7.23.2 In the six cases (**Annexure 11**) FEE for the year 2007-08 were considered for export obligations under EPCG scheme as well as for SFIS claim for the subsequent years against the aforesaid provisions of Para 5.4(v) of the FTP 2009-14 introduced with effect from 19th April, 2007. Further the counting of exports for redemption under EPCG scheme in a particular year

as well as for imports made without payment of customs duty under SFIS in the subsequent year, off-set the actual exports by these beneficiaries and availing of two benefits based on the same earning This resulted in erosion of FEE defeating the intended purpose of the two schemes under FTP.

7.24 Conclusion

The hospitality sector is facilitated by the duty benefits of Foreign trade policy mainly under the two schemes; Export promotion Capital goods (EPCG) at and Served from India scheme, with the objective to earn foreign exchange.

DOC's RFD/ Strategy plans/ outcome budget does not have any specific plan for hospitality sector which contributes approximately 8-9 percent in the GDP with a total foreign exchange earnings of ₹ 2,79,749 crore during the period 2011-12 to 2013-14 with potential for further growth and employment generation. There is no single point of information on NFE earned in the hospitality sector due to the FTPs.

Audit observations covered mainly the EPCG and SFIS schemes facilitating the hospitality sector. Under the EPCG scheme, cases of incorrect / short fixation and short / non fulfillment of export obligations were noticed. Under the SFIS, cases of incorrect grant of duty credit scrips, issue of duty credit scrips to service providers having established foreign brands, non /short imposition of late cut etc. were noticed. The internal control mechanism to get assurances on the end use of the schemes in the hospitality sector has been found wanting.

Besides the above observations, several cases of lack of inter-departmental coordination, monitoring and internal control were also noticed which may lead to revenue leakages.

The department does not maintain any system manually or in the DGFT-EDI to get the assurances/ outcome about benefits availed and revenue realized by the hospitality sector which could provide feedback to the department to further refine the sectoral requirements of different FTP.

CHAPTER VIII

Audit of DGFT's EDI System

8 Introduction

The Directorate General of Foreign Trade (DGFT) under the Department of Commerce (DOC) formulates and implement the Foreign Trade Policy (FTP). It has 36 Regional Licensing Authority (RLAs) offices all over the country, including the 4 Zonal Offices, at Delhi, Mumbai, Chennai and Kolkata.

The Directorate General of Foreign Trade (DGFT) started web based application processing in the late nineties for a few export promotion schemes. All 36 RLA offices are computerized and connected to the DGFT Central server through National Informatics Centre's NICNET service. The DGFT's EDI system is part of e-Trade, an Integrated Mission Mode Project (MMP) under National e-Governance Plan (NEGP). This seeks to simplify procedures, introduce electronic delivery of services by regulatory and facilitating organisations, provide 24x7 access to users, increase transparency in procedures, reduce transaction cost and time, and introduce international standards and practices in the area of clearance of export/ import of cargo. Other organisations involved in this integrated EDI implementation are Airports, Airlines, Export Promotion Councils, Banks and RBI, Customs, Container Corporation of India (CONCOR), DGFT, Export Promotion Organisations, Director General of Commercial Intelligence and Statistics (DGCIS) and Inland Container Depots (ICDs)/ Container Freight Stations (CFS), Indian Railways and Port Trusts.

8.1 Salient Features of the DGFT EDI System

The System architecture employed is a mix of centralized server application, and Distributed functions. All the applications are developed by NIC except the application for digital signatures which is outsourced. All the data is stored at the Central Server at New Delhi. Data pertaining to each RLA is distributed to the respective licensing office for processing and the processed data is reverted back to the Central Server. Filing of applications and processing under two licensing schemes are directly being done from Central Server over the web without transferring the data to RLAs. DGFT is presently using IBM DB2 9.7 Enterprise Version Database software after migration from DB2 Ver.8.2. Migration has been completed at the central level and is in progress at RLAs.

DGFT's EDI data is stored in four databases, namely, DGFTMAIN, DGFTRLA, EBRC and DGFT. While the first three forms the set of central databases the database named DGFT resides with each Regional Licensing Authority (RLA).

8.2 Audit Objectives, Scope and Methodology

8.2.1 Audit Objectives

The Theme Based Audit was taken up with the objective of conducting a control objective based Systems Audit of the DGFT's EDI Systems to gain an assurance that adequate controls are in place to ensure the safeguard of IT Assets and the essential attributes of data/ information are appropriately maintained in terms of its Effectiveness, Efficiency, Confidentiality, Integrity, Availability, Compliance and Reliability.

Audit findings have been arranged based on the Systemic Issues, adequacy of process controls and mapping of the business processes and rules.

8.2.2 Scope of Audit and methodology

Central as well as local data pertaining to the last three years, i.e., 2011-12, 2012-13 and 2013-14, was analysed using SQL queries and test check was carried out from the physical files at the RLA offices under the audit jurisdiction of the 9 field audit offices at Ahmadabad, Bengaluru, Chennai, Chandigarh, Delhi, Lucknow, Hyderabad, Kolkata and Mumbai.

8.3 Audit findings

The audit findings are categorised into systemic issues and issues relating to incorrect mapping of business rules in the DGFT EDI System.

There were no mention of progress on EDI initiatives by DGFT, DOC in the Annual Report for the year 2013-14. Further, the Results Framework Document (RFD) DOC (2013-2014), shows that only 2 percent weightage has been assigned to the EDI initiatives required to fulfil this objective.

In the Financial Outlays and quantifiable deliverables section of the Outcome Budget of the DOC for the year 2013-14, the DOC has made a Plan Outlay of ₹ 10 crore towards making DGFT a paperless organization to reduce transaction cost and time. However, the Outcome Budget document does not define the deliverables, stating that the deliverables cannot be quantified and the achieved results can only be gauged in terms of intangible outcomes like more transparent decision making and reduction in transaction cost to the exporting community.

8.4 Systemic Issues

Expenditure incurred on hardware, software, security audit of the eBRC project, AMCs and outsourced manpower during FY12, FY13 and FY14 was ₹ 7.09 crore, excluding the cost of acquiring digital signatures for DGFT users and the cost of basic infrastructure with NIC.

DGFT Headquarters did not have the system design and architecture or any system documentation such as User Requirement Specifications (URS),

System Design Documentation (SDD), data flow diagrams, Service Level Agreements (SLAs), manuals, backup and restoration policies, etc. DGFT did not provide files and records relating to their EDI Systems to audit. DGFT only provided audit with the backup files of their four databases along with the table and column descriptions of only 520 of the 873 user tables in the four databases. The DGFT has admitted that its EDI System suffers from the following shortcomings;

- (i) There is no IS Organization, Steering Committee with well-defined roles and responsibilities.
- (ii) The DGFT has not developed or documented a Project Management Reports, Performance Analysis Reports for its EDI Systems, Business Continuity Plan (BCP).
- (iii) There is no Data Backup Policy; Disaster Recovery Plan (DCP) documents, Data Storage Policy, Password Policy, Access Control Policy, Hardware change policy etc.
- (iv) The DGFT EDI System does not provide for a recorded trail of all transactions and no internal audit of the EDI System was carried out.

In RFD for action 2.1 to 2.6, namely, 'Online' redemption (EODC) discharge of AA and EPCG, Online registrations and status-monitoring of EDI errors of various authorisations, consolidation and expansion of eBRC and Electronic Fund Transfer (EFT) initiatives of DGFT, message exchange program for chapter 3 schemes, operationalization of Niryat Bandhu scheme and reduction in transaction costs, the targets have not been achieved in qualitative terms. Further, in the Outcome Budget for year 2013-14, there is only a mention of the quantifiable deliverables. The claimed outcome regarding Advance Authorisation (AA), Duty Free Import Authorisation (DFIA) and EPCG schemes being made completely online is incorrect, because neither has any mechanism for online discharge of Export Obligation against these schemes been introduced (December 2014), nor was there any facility in the DGFT EDI System to automatically calculate allowable import quantities of duty free inputs based on Standard input output norms under AA and DFIA schemes.

DGFT, employes a business critical EDI System through which most of the FTP policy provisions relating to issue of licences is carried out. Therefore a regular audit for IT security audit, Source code, Application configuration, ICT infrastructure configuration, Vulnerability assessment, operating system optimization, Change management, Analysis of SLA (Service Level Agreement) indicators, Technology migration, IT Act and National Cyber Security Policy is required.

The above audits can provide an assurance on the confidentiality, integrity, accessibility and overall robustness of the DGFT (EDI) system.

8.5 Inadequate process controls

8.5.1 FOB Value found different in SB data entered manually *vis-à-vis* data supplied by Customs for same Shipping Bills

Under the FTP, many of the benefits to exporters are based on Shipping Bill information. Customs provides EDI SB data to DGFT on regular basis. Such information is stored in the SHBI_MAST_9001 table. Further, an applicant for duty credit benefit creates a repository of his SBs which is stored in the SHB_MAST_9100 table. This is filled with either customs supplied data, or fed manually by the applicants themselves and marked 'Y'/'N' accordingly.

It was noticed that total number of Shipping Bill records supplied by Customs, from April 2011 onwards, was 26,80,612. However, in the SHB_MAST_9100 table, only 3,16,205 (10 %) of the customs supplied records had been used as against 28,23,012 (i.e. 90 %) number of manually entered SB records.

It was also noticed that the although Customs supplied records existed for a particular SB, the data were manually entered in case of 2,60,458 SBs. On matching the SB number, SB date and IEC number (exporter details) the actual number of such SB records supplied by customs for which manual records were used instead, was not ascertainable because many SB numbers have been found entered in slightly different format from the numeric customs EDI SB format.

In the 2,60,458 SB records where the manually entered SB number matched with the Customs supplied SB number, it was noticed in 11,220 cases (4 %), that the FOB value entered in manual data was different from that provided by Customs. The FOB value of exports, which is the basis for granting duty credit, was found higher in 3097 cases amounting to ₹ 1,200 crore. Reduction in FOB value was also noticed in 8,123 cases amounting to ₹ 440.16 crore. Thus, it was noticed that there was a net increase in FOB value by ₹ 799.84 crore. Even at the minimum allowed duty credit rate for Chapter 3 schemes, i.e. 2 percent of FOB value for FPS and MLFPS, this increase in net FOB value translates into grant of excess duty credit benefits amounting to ₹ 16.00 crore in 11,220 cases. Change in Customs port of export was also noticed in 2,389 cases.

The DGFT EDI System does not have the necessary checks to ensure that authentic Customs supplied data relating to EDI Shipping Bill, which is readily available for linkage in the database, is not substituted by manually entered data by exporters while creating Shipping Bill repositories for claiming FTP benefits through eCOM applications. Lack of this validation may result in

entry of incorrect data, including inflated FOB values, which, in turn, may lead to misuse of scheme benefits.

8.5.2 Different FOB values of same SB item for VFFM Schemes and DEPB Scheme

Same shipping bills could be used for duty credit entitlement under Duty Entitlement Passbook Scheme (DEPB) Scheme of chapter 4 of the FTP and simultaneously under Chapter-3 schemes viz. Vishesh Krishi Upaj Yojana (VKUY), Focus Market Scheme (FMS), Focus Product Scheme (FPS) and Market Linked Focus Product Scheme (MLFPS), jointly known as the VFFM schemes.

A comparison of the FOB values of such SBs which had been used for availing two different scheme benefits, viz. DEPB & VFFM, during the period from April 2011 onwards, revealed that in 1,17,864 cases (77 %) out of 1,52,406 item level records, where same item were used in the both the schemes, the FOB values were different, although in 1,08,290 cases out of these, even the Bank Realisation Certificate (BRC) Number date of the SB also matched, indicating that the claims under both schemes were made post-realisation claims.

If duty credit is calculated on the lower of the two FOB values allowed, the excess duty credit allowed comes to ₹ 77.33 crores (on prorata basis) in the above 1,08,290 cases. Out of the 1,08,290 cases, there are 65,791 cases where such difference in FOB values was more than ₹ 1000.

Thus, FOB values were modified after considering values as per Shipping Bill or the bank realization information available in the relevant tables, indicating the need to improve input control to avoid grant of excess duty credit.

8.5.3 Grant of duty credit under VFFM schemes where Export date is incorrect

Shipping bills (SBs) data relating to VFFM duty entitlement claims revealed that export date was before the Let export order (LEO) date for 1,06,055 SBs. This was seen in 7,752 cases of EDI SB data also, clearly indicating that the data was incorrect and had been altered, despite the correct dates having been supplied by Customs.

Duty credit under VFFM schemes amounting to ₹ 858.01 Crore was allowed against 1,00,711 such SBs involving 1,42,456 items during the period from 2011-12 to 2013-14, where export date was before the LEO date.

There is a need to augment controls in the DGFT EDI System to prevent the alteration of Customs supplied EDI Shipping Bill data, which should have been adopted as authentic.

8.5.4 Grant of Status Holder Incentive Scheme (SHIS) Scrips in cases where Status of Applicant/ Status Certificate Issuing Authority is not available in database

Exporters are granted Status certificates and known as Status Holder, depending on their total export performance during the previous three years from the date of application for status certificate. A Status Holder is eligible for various privileges including duty entitlements benefits to the extent of 1 percent of FOB value of export made during previous year under Status Holder Incentive Schemes (SHIS) (Para 3.16 of the FTP). As per Para 3.10.2 of HBP Application for grant of Duty Credit Scrip under SHIS for exports made during 2009-10 onward, shall be made to jurisdictional RA concerned in Application Format ANF3E with Status Holder Certificate details including their Status Type and Status Certificate issuing Authority. This information is vital for availing the benefit under SHIS as the scheme is meant for the Status Holder only.

It was noticed that the applications for SHIS were accepted and SHIS scrips were granted without information regarding Status/ status certificate issuing authority entered in online applications. In 233 SHIS applications against which SHIS Duty Credit Scrips valuing ₹ 57.88 crore were granted, either the Status of the applicant or the Status Issuing Authority or both were indicated as '0' i.e. 'None', indicating insufficient validation of online application submission process.

Thus, there were no validations to ensure submission and recording of crucial data like Status of the Applicant or the Status Issuing Authority details for grant of SHIS benefits.

8.5.5 Invalid IEC Allotment date

Only one Importer Exporter Code (IEC) is allowed against a single Permanent Account Number (PAN) issued by Department of Income Tax (Paragraph 2.9 of HBP). The IEC data indicates the genuineness of an exporter/ importer and determines his/her unique identity in the Trade and helps the regulatory agencies in tracking the holder in cases of default. This IEC data is transmitted online to Customs by the DGFT.

Scrutiny of the IEC master records revealed that the IEC allotment dates were *prima facie* incorrect in 42 cases, since the date of IEC allotment was found to be after the current date, viz. between 18 March 2088 and 07 January 2992. All 42 such IECs are active in the database.

Thus, the DGFT EDI System lacks output control checks even for important IEC data such as the issue date.

8.5.6 Existence of varied licence Validity periods in database for a particular type of licence

Every Duty credit/ remission schemes, Advance Authorization, EPCG schemes has fixed validity period during which the importation could be made under the licence.

A comparison of licence validity date (LIC_VLDT_1500) with the licence issue date (LIC_DATE_1500) stored in LIC_MAST_1500 table revealed that the validity periods granted varied widely from the prescribed validity periods. For example, Advance Authorisation validity period is 24 months, as per the LIC_CATG_144 table, while in licence data, the validity period was found to vary from 0 to 56 months in different cases. In 36,712 cases the validity period was found incorrect and in one case, the licence validity date was found to be even before the Licence issue date.

Similarly, as per the LIC_CATG_144 table, SFIS and VFFM schemes of chapter 3 have also the validity period of 24 months from the date of issue of licence. However, it was found incorrect in 511 cases where it varied between be 5 to 35 months. Here too, there were two cases where validity date was before the licence issue date. In another 3,99,019 cases, the validity date of scrips of Chapter-3 schemes was found entered as '01-01-1900', the default date setting.

Incorrect validity periods will allow importations even beyond the prescribed validity periods of the licences under various schemes and violate the policy provision relating to the respective schemes.

8.5.7 Differences in licence data in Central Database vs Local database:

A comparison was done between duty credit value (CIF), amendment details etc. of licences issued by RLA, Kolkata, during 1 April 2011 and 17 April 2014 (till which the backup of database was provided to Audit), stored in table LIC_MAST_1500 in LICM schema of DGFT database and the same data stored in central server in the table with same name in DGFTRLA database. It was noticed in audit that in 89 licence records, there were differences in CIF Value of ₹ 174.72 crore (in 85 cases of AA/DFIA) and Duty credit amount of ₹ 0.76 crore (in 4 cases of VKUY/EPCG) totalling ₹ 175.48 crore.

Further scrutiny revealed that the Advance Release Order (ARO) or invalidation of direct imports were issued against 85 AA/DFIA license and the reason for the difference in CIF value could be ascertained in only 77 cases from ARO data stored in table ARO_MAST_1700 in the local RLA's DGFT database. In the remaining 12 cases, difference in CIF/duty credit entitlement could not be ascertained from the database.

Thus, the amendments in licence data at local RLA databases after issuance of AROs/ invalidations were not fully reflected in central server data, which may lead to incorrect information being transmitted to Customs through message exchange, and consequently to unauthorised duty free importation of invalidated imports under the licences. The duty implication involved in the excess imports of ₹ 174.72 crore in 85 AA/DFIA cases above in the form of duty foregone worked out (on the basis of peak import duty rates; (10 % BCD+12 % CVD+4 % SAD=28.13 %), to ₹ 49.15 crore. Hence, total revenue implication in the above 89 cases comes to ₹ 49.91 crore (49.15 + 0.76).

Though in the present system of manual discharge of EO by RLAs, any excess imports in AA/DFIA/EPCG cases come to notice and are regularised by recovery of differential duties, such cases may go undetected once the proposed system of online discharge of EO commences on the basis of the data stored in the central server.

8.5.8 Multiple ECOM references with same file number and Licence data without file number

Every online application for seeking Licence/ duty credit scrips/ or Authorisation to import duty free generates a unique ECOM reference number.

In audit it was noticed that separated ECOM reference numbers has the same file number in 10 cases, which resulted in invalid trail of the online ECOM application in the database.

Further, the file number was found to be missing in licence master table, LIC_MAST_1500 of DGFTRLA database in 48 cases where total duty credit granted was ₹ 3.27 crore under VFFM Schemes. The Licence Numbers of these records could not be traced to duty credit calculation table of specific schemes either. Thus, it could not be verified as to how these duty credit entitlements were arrived at. This indicates poor process controls to fill in the information in the relevant tables or manual interventions which could allows licences to be irregularly issued.

8.5.9 Absence of password storage security in DGFT's EDI databases

Login identification and password details of importers/exporters and authorised DGFT employees using DGFT's online application utilities are stored in three tables of DGFT database.

Audit observed that application processing is done by DGFT users at the RLAs who gain access to the local system using their login and password details and not digital signatures. Although the uploading of the consolidated data is authenticated using digital signatures, the contents of this consolidated data are secured only by usernames and passwords. Further, it was observed from the DGFT website (<http://dgft.gov.in/e-commerce/ecom/EcomHelp.htm>) that

electronic filing of applications is also allowed using IEC, IEC Branch Code and Password under the heading User Name-Password Based Access, in addition to filing of applications using digital signatures.

During audit it was noticed that in the above two tables, the user passwords are stored in unencrypted form and visible to anyone having access to these tables. The entire user password database is thus at the risk of being compromised, as anyone who gains access to these tables will know the user passwords, and the password preferences of the users.

User passwords, being private and confidential data of the users, should therefore not be kept in a format that makes it visible to even DGFT and NIC staff, and instead, should be stored in an irreversibly encrypted format using a hash generator algorithm or a more secure algorithm.

Therefore, storage of passwords as text data in the DGFT database tables, entails the risk of compromising the login access details of DGFT users and importers/exporters, eBRC loading banks, etc.

8.5.10 VKGUY on ineligible items

Products eligible for duty credit benefit under VKGUY Scheme are specified in Appendix 37A to the FTP. As per this appendix, certain products, such as those under ITC (HS) code 0903, 0904 (except those under 09041110) are not eligible for any duty credit benefits under the Scheme.

An audit check for confirming the correct implementation of this FTP provision by analysing VKGUY scheme records pertaining to the 3 year period from April 2011 onwards in the VFFM and VKGUY duty entitlement tables in the database revealed that duty credits under the VKGUY scheme amounting to ₹ 0.20 crore were allowed in 172 records on such ineligible products, indicating absence of sufficient checks in the DGFT EDI system to ensure disallowance of VKGUY benefits for ineligible products.

Incorrect grant of VKGUY credit in 22 cases was also pointed out to RLA Chennai in October 2014. Reply of the RLA is awaited.

8.6 Improper maintenance of directory tables

8.6.1 Import Quantity & Export Quantity is kept in text format in SION directory and cannot be used for calculation of eligible Import quantity against declared / actual Export quantity

A Standard Input Output Norm (SION) exists for most export products. In case SION for the said product is notified, SION would be made applicable for deciding wastage norms and Export Obligation (Para 4.7 of HBP Vol. 1), and where SION is not fixed, same is to be got fixed by the proper authority, within prescribed time.

The calculation of input that can be imported is an important aspect in the issue and regularisation of Advance Authorization (AA) and Duty Free Import Authorization (DFIA). Tables EXP_ITEM_1401 and IMP_ITEM_1402 in SION Schema of the DGFTMAIN Database are used as directory table for Export Product (7,391 in total) and related inputs required for importation, respectively. It was noticed that the export quantity and import quantity of respective inputs (in total more than 35,500 import items) are stored in text/character format which is not amenable to calculation, thus requiring manual intervention during the issue of license or at the time of redemption.

The total Revenue forgone against 67,801 such Advance Authorisations and Duty Free Import Authorisations, whose duty free import entitlements had been computed manually with the aforementioned risks, amount to ₹ 64,558 crore during three financial year period from 2011-12 to 2013-14.

Therefore, it was observed that the Standard Input Output Norm (SION) directory in the DGFT EDI System is in text form, making it un-amenable to automatic calculation of eligible input quantities from the SION standards, and necessitating manual calculation of entitlements with the attendant risk of human omissions.

8.6.2 Double entry of an item in DEPB directory with different rate on the same date

Duty Entitlement Passbook Scheme rates are stored in DEPB_RAT_413 table, with reference to the product Code and DEPB serial Number for which applicable, from the given effective date.

It was noticed that the same DEPB serial number was entered twice in the directory with different rates, effective from the same date. There were 6 such cases noticed, apart from 8 duplicate entries for the same product.

8.6.3 Incorrect updation of foreign currency Exchange Rate directory

CBEC notifies applicable exchange rates for various foreign currencies for the purpose of valuation of import & export goods from time to time. The exchange rate for export so notified is also used for conversion of FOB value realised in foreign currency into INR, on the basis of which duty credit entitlements are awarded. These rates notified for export consignments are stored in CUR_EXPT_181 table of COMMON Schema of DGFTMAIN database.

It was found that 15 of such exchange rates notified by CBEC since April 2011 were not updated in the said table for exchange rate. Also, in another 12 cases, it was noticed that there was incorrect data of exchange rate vis-à-vis their effective date in the said table against the rates notified.

The directory updation procedure of the DGFT EDI System is manual and without any subsequent authentication resulting in non-updation / incorrect

updation of the Exchange Rate directory on several occasions which led to incorrect computation of duty credit entitlements.

8.7 Incorrect mapping of Business processes & Rules

The DGFT carries out provisions of Foreign Trade (Development & Regulation) Act, 1992 and implements the provisions of Foreign Trade Policy (FTP) notified for every five years. During the Audit period, the FTP 2009-14 was in force. The following Audit findings relate to the provisions of FTDR Act, FTP and HBP which were not efficiently implemented in the DGFT's EDI application leading to irregularities and incorrect grant of benefits.

8.7.1 Issue of more than one Importer Exporter Code against single PAN

No export or import shall be made by any person without a valid Importer Exporter Code (IEC), unless specifically exempted (Para 2.12 of FTP). As per Para 2.9 of Hand Book of Procedures (HBP) to the FTP 2009-14, only one IEC is allowed against a single PAN issued by Department of Income Tax.

Analysis of IEC master details table revealed that multiple IECs had been issued against single PAN. Audit located 9,175 such irregularly issued IECs in the DGFT database. 409 such IECs had been issued in the last three years (i.e. after April 2011). A cross check with the Customs EDI database (ICES 1.5) further revealed that imports valuing ₹ 25,351.30 crore had been made by 929 such IEC holders during the 2 year period from April 2011 to March 2013. Further, during this period, 71 importers (PAN holders) were found to have used their multiple IECs (152 IECs used) concurrently to make imports valuing ₹ 578.16 crores. In one case, in particular, 27 IECs were found to have been issued to one PAN holder. All 27 IECs were found as having 'active' status, as per the DGFT database and 8 of these IECs (Sl. Nos.11 to 18) had been used to import 74 consignments valuing ₹ 3.84 crore between April 2011 and March 2013 (2 years).

Cross check of the result of analysis from database with the physical IEC issue files in a sample of 247 cases at 10 RLAs¹⁸ and online check of IECs data at DGFT website also confirmed the audit findings stated above. However, RLA Kanpur, in response to an Audit Query in this regard, replied that multiple IECs had not been issued by that office. In all 13 cases pointed out by audit at RLA Hyderabad, it was stated that corrective measures were being taken. Replies from other RLAs are awaited. RLA Ludhiana admitted that multiple issue of IECs had been made in 4 of the 5 cases pointed out by audit and that in 1 case, the second IEC had been issued after cancellation of the first one. However, in this case too, the cancellation was reflected in the IEC database, i.e. both IECs were found active.

¹⁸10 RLA: Kolkata, Chennai, Cochin, Hyderabad, Kanpur, Mumbai, Ahmedabad, Jaipur, Ludhiana & Delhi.

Further, test checks from RLA files revealed that several cancellations of IECs were not reflected in database. Moreover, since an IEC holder can apply for modification/ updation of IEC data, there is no provision to get an existing IEC cancelled, instead, the same IEC should be modified/updated as per the holder's requirement or in case of suspended IECs, can be revalidated/ activated again, on fulfilment of requirements of DGFT. Issuance of another IEC against cancellation of a previous one can be misused in cases where the previous IECs was cancelled as a result of default/penal action.

Thus, the DGFT EDI System does not have adequate validation check if there is any existing active IEC against the PAN submitted with the IEC application or the present IEC is being modified.

8.7.2 Imports against cancelled IECs due to delay in intimation to Customs

The DGFT issues IEC to applicants, which are also liable to cancellation in cases of default on any count under the FTP or the FTDR Act, thereby preventing the defaulting importer/exporter from making further imports/ exports. The DGFT transmits the latest status of an IEC regarding its issue, suspension, cancellation, etc. to Customs, online.

Scrutiny of the tables regarding master details of IECs, their cancellation, current status and transmission details to Customs and their cross-check with customs EDI data (ICES 1.5) relating to the 2 year period from April 2011 to March 2013 revealed that in 9 cases, the IECs had been cancelled but intimation to customs was delayed, resulting in irregular import of 35 consignments amounting to ₹ 2.02 crore against these cancelled IECs.

The time lag between the date of IEC cancellation and date of transmission of the cancellation data to customs in these cases indicates that there is lack of automation in the process of online transmission of IEC data to Customs, resulting in irregular imports against cancelled IECs. In one case in particular, the IEC (No. 0388028416) was cancelled on 17 April 2001, but the date of transmission of cancellation data is not available in the relevant field (CUST_DAT_224 of Table IEC_STAT_224) indicating that the information regarding the cancellation of the IEC has not reached Customs and their EDI data for the period from April 2011 to March 2013 shows that that 20 imports were made against this cancelled IEC.

It was observed that the process of online transmission of data relating to cancellation of IECs is not automated, resulting in delayed intimation to Customs, and consequent irregular imports against cancelled IECs.

8.7.3 Issue of Licenses to firms in the Denied Entity List (DEL)

A Denied Entity List (DEL) is maintained as per provisions of Enforcement Division of DGFT Circular vide F.No. 18/24//HQ/99-2000/ECA II dated December 31, 2003, read with Rule 7 of Foreign Trade (Regulation) Rules 1993. An IEC holder is refused any further licences if put under DEL for any violation of the FTP or FTDR Act.

Scrutiny of DGFT databases for the period from April 2011 onwards (3 years) revealed that 1,606 authorisations and duty credit scrips had been issued to 248 firms while they were in the DGFT's DEL list.

Out of the above, 1,439 cases related to issue of duty credit scrips and EPCG authorisations on which duty credit/duty saved amounted to ₹ 681.90 Crore was allowed and in another 167 cases, Advance Authorisations (AA), Duty Free Import Authorisation (DFIA) and Import Authorisations for Negative List items for imports of CIF value of ₹ 597.94Crore were allowed.

A sample of 145 such cases were cross checked from records at 10 RLAs¹⁹ for confirmation of findings of the data analysis. In response to the audit queries in this regard issued to the RLAs, RLA Kanpur stated that in all 4 cases there, licences/ scrips were issued after removal from DEL, which is incorrect because the firm was issued licences between May and October 2011 but was withdrawn from DEL in February 2012. CLA Delhi admitted in 6 out of 7 cases that licences / scrips had been issued irregularly. RLA Hyderabad replied in respect of only one licence out of 30 such cases that the firm should have been removed from DEL earlier as they had fulfilled their EO, but the removal was done only after audit raised the issue. RLA, Jaipur stated that in one case, the licensee had been put in DEL for non-compliance with an audit objection, which according to the RLA, was incorrect and hence licence was correctly granted. In another case, it stated that party's removal from DEL was not updated in time in the database. Out of 12 such cases of irregular issue of licences/ scrips at RLA Ludhiana, the RLA admitted the irregularity in 2 cases but stated that issuance was in order in the remaining cases. However, DGFT data shows that the licencees were in DEL at the time of issue of licences/scrips. In 16 cases at RLA, Mumbai and 1 at RLA, Ahmadabad it was noticed that the licences were issued keeping DEL order in abeyance. Issuance of Licences to entities in DEL keeping DEL order in abeyance was not in order, since as per Circular of December 2003 and provision of Foreign Trade (Regulation) Rules 1993, an IEC holder cannot be issued a licence, if black listed under DEL.

¹⁹10 RLA: Kolkata, Chennai, Cochin, Hyderabad, Kanpur, Mumbai, Ahmedabad, Jaipur, Ludhiana & Delhi.

Moreover, it was noticed from the RLA replies that insertion into and removal from, DEL was not being updated into the central DEL database promptly, which has resulted in creation of an unreliable DEL list.

Thus, the DGFT EDI system does not have mapping of business rules for barring entities in DEL from submitting e-COM applications or for issuance of authorisations/ duty credit scrips to such entities. DEL status is being checked manually on a case-to-case basis, resulting in lapses and irregular issuance of licences.

8.7.4 Grant of SHIS duty credit scrips to companies already issued Zero duty EPCG and vice-versa

Status Holders Incentive Scrips (SHIS) can be applied for in the year subsequent to year of export. As per Para 3.10.3 (b) of the HBP, in case an applicant has availed Zero Duty EPCG Authorisation during the year 2010-11 or 2011-12 or 2012-13, they shall not be entitled to SHIS for that year [i.e. for export made during the respective previous years (2009-10, 2010-11, 2011-12)]. Such SHIS applications will be rejected and Para 9.3 (late cut for delay in filing application) shall also not be applicable.

Similarly, zero duty EPCG scheme shall not be available to exporters, who availed in that year, the benefit of SHIS under Paragraph 3.16 of FTP {Para 5.1 (b) of the FTP (2013)}. In case they have already availed SHIS benefit, they would be eligible for Zero Duty Scheme if they surrender or refund their SHIS benefits availed with applicable interest.

However, analysis of the DGFT EDI data for the period from April 2011 onwards (3 years) revealed that 227 nos. SHIS scrips for duty credit of ₹ 181.95 Crore were irregularly issued in cases where Zero duty EPCG authorisations had already been issued to the same firm in the same year. It was also noticed that 84 Zero Duty EPCG authorisations for duty saved amount of ₹ 87.44 Crore were irregularly issued in cases where SHIS scrips had already been issued to the same firms during the year. Thus, total amount of irregularly allowed duty credit/duty saved in these 311 cases amounted to ₹ 269.40 crore.

A sample of 75 cases was cross checked at eleven RLAs²⁰ for confirmation of the data analysis. It was confirmed that licences/scrips had indeed been incorrectly issued in all these cases. However, in twenty-two cases at Chennai, Kanpur, Delhi and Bengaluru RLAs corrective action issue of SCN, cancellation of licence, duty recovery, etc. had been initiated/taken, but the cancellation data had not been updated in the database. Further, in 3 out of

²⁰ 11 RLA: Kolkata, Chennai, Cochin, Hyderabad, Kanpur, Mumbai, Ahmedabad, Jaipur, Ludhiana, Delhi & Bengaluru

the 5 cases where action had been initiated by RLA Bengaluru, it was noticed that the SHIS scrip holders had already transferred their scrips.

DGFT (HQ) instructed all RLAs (18 February 2014) to take action in cases of double benefit. However, it was noticed from the DGFT EDI data that even after 18 February 2014, SHIS scrips/zero duty EPCG licences continued to be issued irregularly, indicating that no modification of EDI application to implement this provision of the Policy had been carried out. Twenty-nine (19 SHIS and 10 EPCG) licences/scrips were issued incorrectly in the span of two months (upto 17 April 2014, the date of data backup provided by DGFT) after the issue of the DGFT circular.

In response to an Audit Query (17 October 2014) to RLA Hyderabad on this issue, the RLA stated (22 October 2014) that in one of the cases pointed out by audit, it had only issued the SHIS scrip and not the EPCG licence to the firm. From the all-India database it was found that the EPCG authorisation was issued by RLA, Vishakhapatnam. Thus neither RLA Hyderabad nor RLA Vishakhapatnam had any means of knowing that another licence/ scrip had been issued to the firm.

Based on RLA Hyderabad's response, the 311 cases of incorrect issue of EPCG authorisations/SHIS scrips, as pointed out above, was re-examined and it was found that in 37 cases (*as indicated by 'Yes' remark in the last Column: 'Mismatch RLA'*), the issuing RLAs were different for the two types of scrips, leaving no scope of detection of such cases by either of the RLAs.

Thus, the DGFT EDI system does not map the process to prevent concurrent availment of SHIS/zero-duty EPCG, in contravention of FTP provisions, resulting in irregular grant of duty credits. Moreover, there is no functionality built into the DGFT EDI system for RLAs to determine whether any SHIS/zero duty EPCG licence has been issued earlier to the same firm from any other RLA although such data can be easily retrieved from the DGFT database.

8.7.5 Multiple use of same Shipping Bills under VFFM Schemes

As per Para 3.17.8 of the Foreign Trade Policy relating to Exclusivity of Entitlement, only one benefit under Chapter 3 schemes can be claimed by an exporter for a particular shipment. Accordingly, as per the common Aayaat-Niryaat application Form for VKGUY, FMS and FPS (including MLFPS), an applicant for duty credit benefits under any Ch.3 scheme has to declare that no benefit under any other Ch.3 scheme was claimed and will be claimed for Shipping Bills currently included in his application.

Analysis of the DGFT EDI data relating to utilisation of shipping bills and grant of duty credit entitlement under Schemes of the Chapter-3 of the FTP for the 3 year period from April 2011 onwards revealed that in 12 cases, the same

Shipping Bills were used in different applications on which duty credit scrips under different schemes of Chapter 3 of the FTP were granted, resulting in incorrect duty credit of ₹ 0.05 crore.

Verification of two case files at RLA Ahmadabad and one at Delhi CLA revealed that the licence holder had surrendered the licence himself where Shipping Bill had been considered for the second time. However, re-check from the database revealed that none of these licenses had been cancelled in the EDI system. Moreover, in the Delhi case, the CLA issued a fresh scrip (No.0510354229 dated 15.5.13) for reduced amount in lieu of previous scrip and later, another duty credit was awarded against the same SB in another scrip (No. 0510382707 dated 26.03.2014), resulting in second use of the said SB.

There were inadequate checks in the EDI system to prevent repeated use of same Shipping Bill.

8.7.6 Application of incorrect Exchange Rate leading to incorrect grant of duty credit

Duty Credit Scrips under Chapter 3 and DEPB scrips shall be granted on FOB value of exports in free foreign exchange declared on the Shipping Bill (SB) and converted into Indian Rupees at the Monthly Customs Rate of Exchange on the date of the Let Export Order (LEO) (Paras 3.11.11 and 4.43 of the HBP). The customs rate of exchange, as notified from time to time by the MoF (DoR), are entered and updated in the Exchange Rate directory table.

Analysis of the DGFT EDI data for the period from April 2011 onwards (3 years) revealed that application of incorrect rate of exchange resulted in wrong computation of FOB value of exports and consequent incorrect (both higher & lower) duty credit in the case of 1,30,998 DEPB Shipping Bill items and 11,083 VFFM SB items. Out of these, grant of excess duty credit of ₹ 3.62 crore occurred against 84,739 Shipping Bill items and short duty credit of ₹ 3.43 crore occurred against 57,342 Shipping Bill items, as shown in Table 8.1.

Table 8.1: Incorrect grant of duty credit

	Excess duty credit		Short duty credit		Total no. of SB items
	No. of SB items	Amount (₹)	No .of SB items	Amount (₹)	
DEPB	77,086	1,79,37,532	53,912	2,81,06,304	1,30,998
VFFM	7,653	1,82,95,726	3,430	62,37,848	11,083
Total:	84,739	3,62,33,258	57,342	3,43,44,152	1,42,081

Source: Audit Worksheets

Thus, the total quantum of incorrect duty credit granted amounted to ₹ 7.06 crore (3.62 +3.43) in 1,42,081 records (84739+57342). It was also noticed that different exchange rates were applied to different items in the same Shipping Bill, although there can be only one LEO date for a SB and hence only one Exchange Rate for all items under it.

A sample of 759 item level DEPB Shipping Bill records and 356 VFFM Shipping Bill records were physically verified from files at 7 RLAs²¹ to confirm the results of the data analysis. In all the verified cases, it was noticed that the exchange rate were taken incorrectly, as observed from database. RLA, Hyderabad, in its reply (October 2014) to an Audit Query in this regard, stated that for applications filed online, the system automatically calculates the FOB in INR at applicable exchange rate, and the RLA has no authority to change any exchange rate. However, they assured to take up the matter with their HQ. Replies from the other RLAs are awaited.

Thus, the DGFT EDI System is applying incorrect Forex rates in a large number of cases, and even fetching different exchange rates for different items in the same Shipping Bill, leading to incorrect grant of duty credit entitlements.

8.7.7 Excess grant of duty credit entitlements under DEPB Scheme

As per Para 4.3.1 of the FTP relating to the DEPB Scheme, which was available upto 30 September 2011, an exporter could apply for duty credit, at a specified percentage of the FOB value of exports, made in freely convertible currency.

8.7.7.1 Excess DEPB credit due to application of incorrect DEPB credit rate

The DEPB credit rates, as intimated by Public Notice from time to time, are stored and updated in the DEPB_RAT_413 table of DEPB Schema of DGFTMAIN database and the data on entitlement at the Shipping Bill item level is stored in DEPB_PEP_403 table.

Analysis of data of DEPB entitlements revealed that though the applicable credit rate is fetched from the DEPB rate directory, the rate awarded was higher than the applicable rate, in 2,864 records, which led to higher award of duty credit amounting to ₹ 11.89 crore. Out of these, incorrect duty credit amounting to ₹ 8.92 crore in 2,312 records in 232 licence files related to RLA, Hyderabad alone.

A sample of 91 records was physically verified from files at 6 RLAs²² to confirm the correctness of analysis with respect to data entered in the DEPB claims, where it was found that the DEPB rate allowed was other than that fetched from the directory, as noticed in the analysis. At RLA Ahmedabad, in

²¹ 7 RLAs: Kolkata, Cochin, Hyderabad, Ahmedabad, Jaipur, Kanpur & Jaipur

²² 6 RLAs: Ahmedabad, Kolkata, Cochin, Hyderabad, Ludhiana and Kanpur.

one case 44 percent DEPB rate had been allowed eligible rate of 4 percent. Regarding the large number of such cases at RLA Hyderabad, the office stated (30.10.2014) that the facts would be verified with reference to the files. However, in view of the large number of cases (2,312 records) involved, the verification would take some time.

At RLA, Cochin it was noticed that incorrect DEPB rate was fetched in one case (Sl. No. 2587) because of incorrect LEO date and in another 4 cases (Sl. Nos. 1930 to 1933), due to incorrect product code. It was noticed that in these cases, the RLA awarded the correct duty credit rate, but the corresponding records in the EDI data was not corrected.

It was observed that the DGFT EDI system allows manual override to the RLAs to make corrections in system calculated values (worked out on data furnished in eCOM applications) on the basis of physical records presented with the hard copy of the eCOM application, but without making corresponding amendments in the database and without an electronic record (in the system) of either the reasons for the changes or record of the user who made the changes. Privilege to alter critical licensing data manually has resulted in incorrect grant of duty credit and leaves the scope for irregular grant of benefits without any electronic audit trail of the person making the changes.

8.7.7.2 Excess DEPB credit for items attracting Value Cap

Wherever a value cap is prescribed in the DEPB Schedule of rates, the credit entitlement is calculated by applying the admissible DEPB rate on the FOB value of exports or the value arrived at by applying the value cap on the export quantity, whichever is lower.

Analysis of the DEPB entitlement table specifically for items attracting value caps revealed that incorrect application of the value cap or ignoring the same resulted in grant of excess DEPB credits amounting to ₹ 9.77 crore in 3,780 records.

In 1545 records out of the above, it was also noticed that the DEPB credit amount was arrived at by directly multiplying the export quantity with the Value Cap, without applying the DEPB credit rate, resulting in excess duty credit of ₹ 7.10 crore (out of the above ₹ 9.77 crore).

There are inaccuracies in the calculation in the DGFT EDI system procedure relating to computation of DEPB credit admissible for items attracting Value Caps, resulting in grant of excess duty credit.

8.7.7.3 Irregular grant of DEPB benefit on exports made after withdrawal of the scheme

Vide Public Notice No. 54(RE-2010)/2009-2014 dated 17 June 2011 the DEPB Scheme was declared as closed w.e.f. 01 October 2011, i.e. DEPB duty credits would no longer be awarded on exports made from 01 October 2011 onwards.

Analysis of records pertaining to the period from April 2011 onwards (3 years) revealed that DEPB credits amounting to ₹ 2.56 crore had been incorrectly granted in 175 records, although the date of export in all these cases was beyond 30 September 2011.

On physical verification of a sample of 68 cases at 4 RLAs²³ and checking of 21 cases from the MIS application at RLA, Mumbai it was noticed that DEPB credits were allowed on Shipping Bills in cases where the LEO/export date as printed on ECOM application was beyond the closure of the scheme. On this being pointed out, RLA Hyderabad replied that in all 40 cases, the goods relating to the concerned SBs had been handed over to customs before the cut-off date of 30.09.2014, and hence eligible for DEPB benefits in terms of Para 9.12 of the HBP, Vol.-I. However, it is not clear how the RLA determined the 'date of handing over to customs' in these cases, since this data is not captured in the EDI system. The facts remains that there was lack of validation of the cut-off date, and DEPB benefits were allowed even in cases where the date of export entered was beyond the closure date of the scheme. Response from the remaining 3 RLAs is awaited.

Thus, there was ambiguity in determination of the date of export (LEO date, export date, date of handing over to customs, etc.) as a crucial date for cut-off date for allowing entitlement under DEPB, resulted in incorrect grant of DEPB benefits on exports made after withdrawal of the Scheme.

8.7.7.4 DEPB duty credits allowed on products withdrawn from the scheme

Different products were added as well as taken out of the Schedule of DEPB Rates from time to time through Public Notices issued by the DGFT, e.g. export of Skimmed Milk Products (SMP), Casein and any other Milk Products was declared ineligible for DEPB benefit with respect to shipments made on or after 25.01.2011 vide Public Notice No.26 (RE-2010) /2009-2014 dated 24.01.2011. Further, export of Cotton was declared ineligible for DEPB benefit for shipments made on or after 21.4.2010 vide P.N.45 (RE-2010) /2009-2014 dated 31.03.2011 and the DEPB benefits were restored w.e.f. 01.10.2010, vide P.N.68 /2009-2014(RE 2010) dated 04.08.2011.

²³4 RLAs: Kolkata, Cochin , Hyderabad and Kanpur

Audit conducted a check to confirm the correct implementation of these changes in EDI System. Analysis of DEPB scheme records pertaining to the 3 year period from April 2011 onwards revealed that DEPB duty credit was incorrectly allowed in 24 records against milk products, cotton and casein. The amount of DEPB credit allowed irregularly amounted to ₹ 0.21 Crore. The above cases again indicate poor mapping of business rules and absence of checks in the EDI system to ensure disallowance of DEPB benefits on products withdrawn from the scheme.

Five cases were physically verified at RLA, Kanpur and RLA, Mumbai, which confirmed the incorrect allowance. Department's reply to the Audit Queries was awaited.

8.7.8 Grant of excess duty credit on exports under VFFM Schemes due to incorrect calculation of entitlement

Freely Transferable Duty Credit Scrip shall be granted on FOB value of exports (Para 3.11.11 of HBP). Further, all pre-realization cases are to be monitored by RA concerned with respect to realization of export proceeds and for adjustment of excess/ short realisation, procedure in Para 3.11.13 is to be followed.

The duty credit entitlement on an export product under VFFM schemes (VKGUY, FMS, FPS and MLFPS Schemes) in post realization cases should be calculated on the basis of the realized FOB in INR multiplied by the duty credit rate admissible under the scheme, reduced by the percentage of Late Cut, if any.

As per the Data Dictionary provided by the DGFT, FOB realized in Indian currency is stored in the 'FOB_ONBC_2503' field of the VFFM duty credit entitlement calculation table. Calculation of the duty credit entitlement by Audit on the basis of FOB realized in Indian rupees, revealed that there were 5,917 records where excess duty credit amounting to ₹ 0.98 crore was allowed, during the 3 year period from April 2011 onwards.

A sample of 12 files were physically verified at 3 RLAs²⁴ to confirm the correctness of analysis with respect to data entered on VFFM claims, where it was found that the VFFM duty credit was not calculated at the FOB realized in INR but on some other value. RLA Hyderabad in a reply to an AQ in this regard, stated that corrective action was being taken in cases where scrips were issued incorrectly, as pointed out by audit. However, in two cases at RLA, Cochin it was noticed that the Foreign Currency data was entered incorrectly, leading to incorrect calculation by the EDI system and the duty

²⁴3 RLAs: Hyderabad, Cochin, Kolkata

credit scrip was issued after doing manual correction in the file, leaving the EDI data not corrected.

It was observed that, apart from incorrect allowance of duty credit by the EDI system, the RLA chose to do manual calculations rather than making necessary amendments in the system through proper change management and letting the EDI system do the calculations.

8.7.9 Grant of excess duty credit under VKGUY scheme due to non-application of reduced rates on Shipping Bills already utilised under DEPB Scheme

Products (as listed in Appendix 37A of HBP), are entitled for Duty Credit Scrip equivalent to 5 percent of FOB value of exports (in free foreign exchange) under the VKGUY Scheme. However, as per Para 3.13.3, VKGUY credit entitlement is available only at the reduced rate of 3 percent in cases where the exporter has also availed duty credit benefit at specific DEPB rate (i.e. other than Miscellaneous Category – Sr. Nos. 22 C & 22 D of Product Group 90) . Further, some products, as listed in Table 2 of Appendix 37A, are entitled to an additional Duty Credit Scrip equivalent to 2 percent of FOB value of exports; over and above the 5 percent or 3 percent reduced rate VKGUY.

Thus, for exports on which specific rate of DEPB credit has been availed, VKGUY credit is available at higher reduced rate of 5 percent for products under Table 2 of appendix 37A, and at the reduced rate of 3 percent on other products of the said appendix.

Comparison of VKGUY scrip records for the 3 year period from April 2011 onwards with records of items attracting specific DEPB rates (i.e. not falling under product codes 90/22C and 90/22D) revealed that excess duty credit under VKGUY Scheme amounting to ₹ 1.17 crore was allowed in 957 records due to non-restriction of the allowed rates to the reduced rates of 3 percent or 5 percent, as applicable. This revealed inadequate mapping of the provision of FTP relating to restriction on VKGUY rates in the EDI application, which led to incorrect grant of the above duty credit entitlements.

The issue was also taken up with the RLAs at Kolkata (19 November 2014) and Chennai (23 October 2014) in respect of 40 and 42 such cases noticed there, respectively. Their replies are also awaited.

Inadequate mapping in the EDI System of the entitlements to lower rates relating to VKGUY in cases where DEPB benefits had also been availed, resulted in excess grant of VKGUY duty credits.

8.7.10 Business process not covered under EDI System, requiring manual checks and failure to capture important data

Customs supply SB data to DGFT online on regular basis, which is an important source of genuine information for granting various benefits under different schemes of the FTP. The online receipt of data also ensures the correctness of information, minimal manual intervention, accurate and fast processing, etc.

However, it was noticed in audit that various types of information which are necessary to carry out business processes i.e. provisions of the FTP, are not captured or sought from customs along with the SB data, namely,

- a) Scheme under which exports was intended.
- b) Licence No/ Licence File mentioned in export Bill, for quick discharge of licence under EPCG/ DFIA/ AA scheme.
- c) Whether availing submitted under Duty Drawback benefits
- d) Drawback claimed/ awarded, if any, which is crucial for determination of reduced entitlement rate to be awarded under VKGUY scheme
- e) In the DGFT EDI system, the actual item description of goods is not taken from the Customs SB data for assessment of DEPB/VFFM duty credit calculations. Instead, the item description is taken from the DEPB/ VFFM schedule, thus ignoring the customs authenticated item descriptions of the export items may lead to incorrect grant of duty credit benefits.
- f) Crucial dates for determination of Late Cut applicable, such as date of printing/ release of Shipping Bill as per Para 3.11.9 of the HPB (2012-13).
- g) Date of handing over of goods to the customs, required for determination of eligibility of FTP benefits in case of changes of policy provision, as per proviso to Para 9.12.

In reply to the Audit Observations issued (14 November 2014), DGFT in its reply acknowledged audit's efforts in understanding the business rules and analyzing the issues in the database, which they believe would go a long way in improving their systems and processes.

8.8 Conclusion

The DGFT and its regional offices are now heavily dependent on the DGFT EDI System for their mandated work. Analysis of the DGFT EDI databases and processes revealed several shortcomings on issues relating to systemic issues, inadequate controls, incorrect or insufficient mapping of FTP provisions, lack of validations, permissions for too many manual

interventions and alterations of data and incorrect updation of important rate directories.

There is a need for a commensurate IS organization in the DGFT with the capability to manage the business critical online system having considerable revenue implication.

Audit noticed systemic issues and issues related to operational malfunction and incorrect mapping of business rules worth ₹ 1062.40 crore and ₹ 987.21 crore respectively.



(DR. NILOTPAL GOSWAMI)
Principal Director (Customs)

New Delhi
Dated: 10 March 2015

Countersigned



(SHASHI KANT SHARMA)
Comptroller and Auditor General of India

New Delhi
Dated: 11 March 2015

ANNEXURES

Annexure – 1

(Reference: Paragraph 1.25)

(lakh ₹)

Sl No.	Draft Audit Paragraph	Field office name	Brief subject	Amount objected	Amount Accepted	Amount recovered	Name of the Commissionerate/DGFT/DC
1	A1	AHMD	Short levy of duty due to misclassification	14.11	14.11	16.55	ACC, Ahmedabad
2	A2	AHMD	Incorrect counting of ineligible exports towards fulfillment of export obligation under EPCG scheme	401.00	401.00		RLA, Rajkot
3	A3	AHMD	Excess grant of duty credit under VKGUY Scheme	16.86	16.86	16.86	(RLA), Kandla Special Economic Zone (KASEZ), Gandhidham
4	A4	AHMD	Non-payment of clean energy cess in cash	38.50	38.50	38.50	Custom House (MP &SEZ)
5	A5	DEL	Short levy of duty due to incorrect grant of notification benefit	39.50	39.50	6.40	Tughlakabad, Delhi
6	A6	DEL	Short levy of duty due to incorrect grant of notification benefit	9.80	9.80	11.26	ICD, Tughlakabad. Delhi
7	A7	DEL	Non levy of anti dumping duty	57.81	57.81	50.55	ICD, Tughlakabad. Delhi
8	A8	DEL	Short levy of duty due to misclassification	15.57	15.57	16.52	ICD, Tughlakabad. Delhi
9	A9	DEL	Incorrect grant of notification benefit	27.56	27.56	30.83	ICD, Tughlakabad. Delhi
10	A10	CHN	Short collection of duty due to misclassification	16.96	16.96	9.08	Chennai (Sea)
11	A11	CHN	Short collection of duty due to misclassification	71.75	71.75	81.76	Chennai (Sea)
12	A12	CHN	Short levy of duty due to incorrect extension of notification benefit	10.23	10.23	12.11	Chennai (Sea)
13	A13	CHN	Non levy of additional duty of customs due to misclassification	18.85	18.85	21.68	Chennai (Sea)
14	A14	CHN	Short levy of duty due to misclassification	23.17	23.17	25.26	Chennai (Sea)
15	A15	CHN	Short levy of customs duty due to misclassification	15.59	15.59		Chennai (Sea)
16	A16	CHN	Incorrect debit of clean energy cess in duty credit scrip	15.45	15.45		Tuticoirn Customs
17	A17	CHN	Short levy to incorrect application of concessional rate of duty	14.03	14.03	15.21	Chennai (Sea)
18	A18	CHN	Short levy of duty due to incorrect extension	14.09	14.09		Chennai (Sea)

Sl No.	Draft Audit Paragraph	Field office name	Brief subject	Amount objected	Amount Accepted	Amount recovered	Name of the Commissionerate/DGFT/DC
			of notification benefit				
19	A19	CHN	Incorrect availment of exemption from special additional duty of customs	12.01	12.01	7.56	Chennai (Sea)
20	A21	MUM	Short levy of duty due to misclassification	10.73	10.73		JNCH, Nhava Sheva Mumbai
21	A22	CHN	Short levy of duty due to misclassification and incorrect extension of notification benefit	13.82	13.82	7.93	Chennai (Sea)
22	A24	MUM	Short levy of duty due to misclassification	25.11	25.11		JNCH, Nhava Sheva, Mumbai
23	A25	MUM	Non levy of anti dumping duty on DTA clearances	14.76	14.76	35.25	Goa
24	A26	KOL	Non Recovery of Duty for Non-Fulfillment of Export Obligation against Advance Authorization	145.13	145.13		ADGFT, Kolkata CE 7 Cus, Bhunaneswar-I
25	A27	KOCHI	Short levy of duty due to incorrect application of tariff value of gold	34.49	34.49	34.58	Customs House, Kochi
26	A30	MUM	Short levy of duty due to misclassification	11.14	11.14	0.22	JNCH, Mumbai
27	A31	MUM	Short levy of antidumping duty	23.94	23.94		JNCH, Nhava Sheva, Mumbai
28	A32	BAN	Non fulfillment of export obligation	122	122	131.00	RLA, Bangalore
29	A33	AHMD	Incorrect availing of notification benefit	9.53	9.53	10.47	ACC, Ahmedabad
30	A34	AHMD	Excess grant of SFIS duty credit due to incorrect FE earnings consideration	12.91	12.91	14.60	RLA, Ahmedabad
31	A37	DEL	Short levy of duty due to misclassification	12.21	12.21	9.50	ICD, Tughlakabad, Delhi
32	A38	MUM	Incorrect grant of duty credit under SFIS scheme	553.00	553.00		DGFT, Mumbai
33	A39	BAN	Excess duty credit under SFIS Scheme	10.28	10.28		RLA, Bangalore
34	A40	KOL	Short debit of duty in EPCG licence due to grant of excess depreciation on capital goods debonded from EOU	58.69	58.69		Falta, SEZ, Kolkata Central Excise, Haldia Division, Haldia
35	A41	BAN	Non fulfillment of export obligation in respect of EPCG	31.10	31.10	35.09	RLA, Bangalore

SI No.	Draft Audit Paragraph	Field office name	Brief subject	Amount objected	Amount Accepted	Amount recovered	Name of the Commissionerate/DGFT/DC
36	A42	BAN	Non fulfillment of export obligation under Advance Authorization Scheme	76.31	76.31		RLA, Bangalore
37	A43	BAN	Non fulfillment of export obligation in respect of Advance Authorization	36.62	36.62	12.05	RLA, Bangalore
38	A44	HYD	Sanction of excess duty credit in VKGUY scrip	61.50	61.50	61.50	JDGFT, Bisakhapatnam
39	A45	KOL	Incorrect Grant of Duty Exemption on Ineligible Goods Procured by EOU from DTA	34.71	34.71		DC, Falta SEZ, Kolkata CEX, Bishnupur, CEx division, Haldia
40	A46	AHMD	Incorrect grant of VKGUY duty credit for export of ineligible item	34.91	34.91	53.48	RA, Ahmedabad
41	A48	BAN	Short levy of duty due to incorrect classification	10.86	10.86	8.70	ACC, Bangalore
42	A49	BAN	Short levy of duty due to non-adoption of tariff value	8.72	8.72	10.89	ACC Bangalore
43	A50	MUM	Irregular clearance of goods in DTA	24.43	24.43	36.23	Raigad
44	A51	AHMD	Incorrect availing of duty exemption on packaged software	13.15	13.15	13.16	ACC Ahmedabad
45	A52	BAN	Short levy of duty due to incorrect classification	10.32	10.32	10.32	ACC, Bangalore
46	A53	KOCHI	Non fulfillment of export obligation under EPCG scheme	24.68	24.68		RLA, Trivandrum
47	A56	KOCHI	Ineligible grant of exemption due to misclassification	35.35	35.35		Cochin
48	A57	HYD	Misclassification of titanium dioxide based colour pigment	34.75	34.75		Hyderabad II
49	A62	CHN	Short levy of duty due to misclassification	12.2	12.2	12.19	Chennai Sea Customs
50	A64	MUM	Non levy of anti dumping duty	11.92	11.92	6.12	JNCH
51	A66	KOL	Non recovery of drawback for failure to realize export proceeds	71.17	71.17	2.37	Customs (Airport),Kolkata
52	A68	CHENNAI	Misclassification of Ice cream sticks	11.82	11.82		Chennai (Sea)
53	A70	CHN	Grant of duty credit on ineligible items under VKGUY Scheme	9.02	9.02	10.77	RLA, Chennai

SI No.	Draft Audit Paragraph	Field office name	Brief subject	Amount objected	Amount Accepted	Amount recovered	Name of the Commissionerate/DGFT/DC
54	A71	MUM	Short levy of antidumping duty	12.08	12.08	2.15	JNCH, Nhava Sheva Mumbai
55	A72	MUM	Non levy of anti dumping duty	13.74	13.74	6.51	JNCH, Mumbai
56	A74	MUM	Short levy of duty due to misclassification	75.39	75.39		JNCH, Mumbai
57	A76	MUM	Non-levy due to misclassification	35.48	35.48	6.24	ACC, Mumbai
58	A79	KOL	Non levy of duty on imported Aviation Turbine Fuel	58.41	58.41		(Airport), Kolkata
59	A80	KOL	Non recovery of duty on goods not re-exported	26.61	26.61		Custom House, Kolkata
60	A81	KOLKATA	Ineffective monitoring system for recovery of customs dues from defaulters	12.26	12.26	1.12	Customs House, Kolkata
61	A88	CHENNAI	Misclassification of Flanges	10.59	10.59	0.48	Chennai (Sea)
62	A89	MUM	Short levy of duty due to misclassification	9.59	9.59	11.09	JNCH, Mumbai
63	A91	MUM	Short levy of duty due to misclassification	11.71	11.71	8.22	JNCH, Mumbai
64	A94	CHENNAI	Misclassification of Interactive white boards	14.46	5.65		Chennai (Sea)
65	A95	CHN	Ineligible grant of duty credit under SHIS	48.05	48.05		RLA, Chennai
66	A96	CHN	Short levy of customs duty due to incorrect application of notification benefit	13.73	13.73		Chennai (Sea)
67	A97	CHN	Short levy due to incorrect grant of concessional rate of basic customs duty	19.96	19.96		Chennai (Sea)
68	A98	CHN	Short levy of duty due to incorrect availing of exemption from special additional duty of customs	34.42	34.42	38.70	Chennai (Sea)
69	A100	KOLKATA	Ineffective monitoring system for recovery of dues from defaulters	14.71	14.71		RLA kolkata
70	A104	MUM	Short levy of antidumping duty	14.19	14.19	14.19	JNCH, Nhava Sheva, Mumbai
71	A106	MUM	Incorrect exemption from additional duty of customs	10.66	7.66		JNCH, Nhava Sheva, Mumbai
72	A109	MUM	Incorrect computation of late cut leading to excess grant of duty	16.11	16.11	17.11	DGFT, Mumbai

SI No.	Draft Audit Paragraph	Field office name	Brief subject	Amount objected	Amount Accepted	Amount recovered	Name of the Commissionerate/DGFT/DC
			credit				
73	A110	MUM	Irregular DTA sale at concessional rate of duty	153.36	153.36	227.00	SEEPZ, Mumbai
74	A111	MUM	Short payment of duty clearance of raw material	16.44	16.44		CE, Range, Belapur-I
75	A112	DEL	Short levy of duty due to misclassification	12.34	12.34	13.75	ICD, Tughlakabad. Delhi
76	A113	DELHI	Misclassification of synthetic sheet of vulcanized rubber and Digital TV set top boxes	10.21	10.21	3.86	ICD, Tughlakabad, Delhi NCH, New Delhi
77	A115	DEL	Short levy of duty due to excess allowance of abatement on RSP	10.09	10.09	9.65	ICD, Tughlakabad, Delhi
78	A117	AHMD	Short recovery of establishment charges	146.91	146.91	146.70	Kandla, Ahmedabad & Jamnagar
79	A122	CHEENAI	Non levy of additional duty of customs due to misclassification	25.29	25.29		Chennai Sea Customs
80	A123	CHEENAI	Incorrect grant of notification benefit due to misclassification	44.72	44.72		Chennai (Sea)
81	A124	CHENNAI	Duty credit granted on ineligible items	16.38	16.38	1.51	Custom House, Tuticorin
82	A128	MUM	Sanctioning of excess credit under TPS Scheme	28.86	28.86	54.93	JNCH, Mumbai
83	A132	MUM	Non levy of anti dumping duty due to clearance of goods in DTA	12.90	12.90	19.06	SEEPZ, Mumbai
84	A133	MUM	Non-levy of additional duty	16.47	16.47	16.47	JNCH, Mumbai
85	A135	CHEENAI	Non levy of additional duty of customs due to misclassification	34.30	34.30		Chennai (Sea)
86	A136	CHENNAI	Short collection of duty due to misclassification	382.00	382.00		Chennai (Sea/Air)
87	A142	MUM	Non –payment of service tax	27.37	27.37		STPI/EOU, Mumbai
88	A144	MUM	Non fulfillment of pre imported condition	29.79	29.79	20.72	ACC, Mumbai
89	A145	AHMD	Short levy of customs duty due to misclassification	10.3	10.3	12.07	ACC, Ahmedabad
90	A148	MUM	Short levy of duty due to misclassification	22.20	22.20		JNCH, Mumbai
91	A149	CHENNAI	Misclassification of laser welded evaporate plates	13.44	13.44		Chennai (Sea)

SI No.	Draft Audit Paragraph	Field office name	Brief subject	Amount objected	Amount Accepted	Amount recovered	Name of the Commissionerate/DGFT/DC
92	Long para on Hospitality Sector Para 8.2	Ahmedabad	short fixation of export obligation	28.86	28.86		RLA Ahmedabad
	Para 8.3	Ahmedabad	Irregular fixation of export obligation	35.19	35.19		RLA Ahmedabad
	Para 9	Kolkata	Non/late submission of installation certificates	-	-		RLA Kolkata
	Para 11	DELHI	Import of ineligible Goods resulting in short levy of duty	2.27	2.27	1.30	RLA New Delhi
	Para 14.1	Bengaluru Chandigarh Ahmedabad	Incorrect redemption of authorizations	50.84	37.79		RLA Bengaluru (1.07 lakh) RLA Amritsar (13.05 lakh) RLA Ahmedabad (36.74 lakh)
	Para 14.2	CHENNAI	Incorrect redemption of authorizations	2.04	2.04		RLA Chennai
	Para 18.5	JAIPUR	Excess grant of duty credit scrip under SFIS scheme	7.98	7.98		RLA Jaipur
			Total	3889.91	4011.96	1540.09	

Annexure 2: Duty evasion cases detected by DRI (Scheme-wise)

(Reference Paragraph 2.4.1)

Cr.₹

S.No	SCHEME	FY 10		FY 11		FY 12		FY 13		FY 14	
		NO. OF CASES	DUTY	NO. OF CASES	DUTY	NO. OF CASES	DUTY	NO. OF CASES	DUTY	NO. OF CASES	DUTY
1	Misuse of End-Use & Other Notn .	15	24.60	26	100.55	54	304.84	39	67.79	38	1211.67
2	Misuse of EPCG	3	0.90	10	3.33	6	25.72	13	179.55	22	583.08
3	Undervaluation	105	166.18	197	132.12	184	466.17	210	282.43	140	432.71
4	Mis-declaration	100	215.24	91	110.19	111	844.44	298	2392.26	102	224.22
5	Drawback	38	91.76	102	81.42	13	25.93	71	1590.14	17	80.50
6	Misuse of EOU/EPZ/SEZ	9	3.28	4	0.04	6	9.66	7	39.07	3	6.90
7	Misuse of DEPB	21	7.40	34	3.80	26	23.93	16	22.77	5	3.09
8	Misuse of DEEC/ Advance licence	10	5.66	18	264.62	1	0.10	6	139.73	1	0
9	Others	90	100.21	99	130.40	97	27.43	49	28.92	366	570.55
Total		391	615.23	581	826.47	498	1728.22	709	4742.66	694	3112.72

Annexure 3: SEIZURES OF SPECIFIED COMMODITIES

(Reference Paragraph 2.4.2)

Cr.₹

S. No.	Commodity	FY 10		FY 11		FY 12		FY 13		FY 14	
		ALL INDIA	DRI	ALL INDIA	DRI	ALL INDIA	DRI	ALL INDIA	DRI	ALL INDIA	DRI
I	Machinery parts	480.20	9.58	249.76	106.61	133.71	113.34	69.50	38.78	563.18	535.67
II	Veh./Vess/Aircrafts	69.98	39.78	24.89	1.13	415.40	274.61	306.08	191.15	472.89	327.29
III	Gold	27.46	13.95	9.34	0.25	46.43	8.25	99.35	44.80	692.35	245.92
IV	Narcotic drugs	116.23	37.52	58.33	16.72	1711.93	1653.81	969.16	194.84	451.98	209.00
V	Electronic items	120.03	13.94	167.04	21.49	189.98	4.06	71.66	13.14	37.85	19.48
VI	Foreign Currency	3.79	0.39	3.83	1.36	35.55	0.27	9.96	0.06	14.49	5.97
VII	Diamonds	13.83	7.77	11.52	1.00	24.66	15.50	9.46	5.00	6.62	5.27
VIII	Indian Curency	3.95	2.06	2.11	1.16	18.20	0.31	4.87	2.44	5.20	2.12
IX	Indian fake currency	0.65	0.55	1.81	1.50	2.64	2.19	2.24	2.02	1.13	1.09
X	Fabric/silk yarn etc	71.95	30.74	187.7	36.45	158.79	52.38	49.89	5.45	24.03	1.04
XI	Computers/parts	15.95	7.28	5.29	2.26	4.99	1.19	18.6	0.36	0.46	0
XII	Bearings	0.66	0	0.14	0	6.10	1.98	0.32	0	0.47	0
XIII	Watches/parts	0.82	0	4.31	3.06	7.30	2.78	8.88	1.41	1.17	0
XIV	Misc./other	1231.00	516.61	1749.63	620.27	0	0	0	0	0	0
	Total	2156.50	680.17	2475.70	813.26	2755.68	2130.67	1619.97	499.45	2271.82	1352.85

Annexure 4**(Reference Chapter IV)**

Sl. No.	Brief subject	DAP No.	Amount (₹ in lakh)	Commissionerate	Whether Accepted
1.	Project import benefits incorrectly allowed	A 139	12.13	Custom (Port) Kolkata	Not accepted
2.	Excess refund of duty	A 58	8.96	Custom (Port) Kolkata	Not accepted

Annexure 5**(Reference Chapter V)**

Sl. No	Brief subject	Exemption allowed under notification No.	Amount (₹ in lakh)	DAP No.	Commissionerate	Whether Accepted	Recovery (₹ in lakh)
1.	Incorrect exemption to Steel strip/ high speed steel	12/2012-cus dated 17 March 2012	10.33	A 67	ICD, Tughlakabad and Patparganj	Partially	2.60
2.	Tariff concession to children toys	72/2005 dated 22 July 2005	10.72	A 55	ICD, Tughlakabad	No reply recd.	-

Annexure 6**(Reference Chapter VI)**

Sl. No	Brief subject	CTH under which classified	CTH under which classifiable	Amount (₹ in lakh)	DAP No.	Commissionerate	Whether Accepted
1.	Misclassification of Optical ground wire (OPGW)	85447090	85446090	19.81	A 121	Chennai (Sea)	No reply recd.
2.	Misclassification of Parts of table fan	85011019	84149030	16.77	A 134	Chennai (Sea)	Not accepted.
3.	Misclassification of Food/dietary supplements	30039011	21069099	10.23	A 78	Chennai (Sea)	No reply recd.
4.	Misclassification of Rubber gaskets for injections and rubber bulb for medical devices	9018 90 99	4016 93 40 and 4016 99 90	11.09	A 150	ICD, Thughlakabad	No reply recd.
5.	Misclassification of Protein concentrates and textured protein substances	35040091	21061000	10.45	A 147	JNCH, Mumbai	No reply recd.
6.	Misclassification of EPDM gasket, Rubber washer, IPE decking, balloons and Hair rubber	95030090	40169990	10.15	A 60	ICD Tughlakabad	Partially accepted
Total				78.50			

Annexure 7

(Reference Chapter VII)

Sl. No	Brief subject	DAP No.	Importer/ licensee (M/s)	Amt (₹ in lakh)	Commissionerate	Whether Accepted
1	Irregular debiting of cess from FMS/FPS scrips	A 54	GIMPEX Ltd. Hyderabad and M/s IMFA, Bhubaneswar	18.60	Custom House, Paradeep	Not accepted
2	Irregular DTA sale at concessional rate of duty	A 131	Viraj Profiles Ltd	16.95	DC, SEEPZ, Mumbai	Not accepted
3	Grant of excess duty credit	A 35	Shah Nanji Nagasi Export Pvt.	16.68	RLA, Nagpur	Not accepted
4	Credit granted for ineligible exports	A 127	Deepak Nitrite Ltd.	25.17	RLA, Pune	Not accepted
5	EPCG Authorisation issued to service provider without valid Registration-cum-Membership Certificate (RCMC)	Sub Para 7 of long para	Parikh Inn Private Ltd., Jamshedpur and three others	24.56	(i) RLA, Kolkata (ii) RLA, Bangalore	Not accepted
6	Excess grant of duty credit scrip	Sub Para 18.5 of long para	(i) Paradise Properties (ii) Samode Haveli (iii) Geeta Star Hotels and Resort (iv) Gstaad Hotels Pvt. Ltd (v) Hotel Mall, Varanasi (vi) M/s Gujarat JHM Hotels Ltd and others	27.40	RLAs Jaipur, Mumbai, Lucknow, Bangaluru and Surat	Partially accepted
7	Incorrect transfer of duty credit scrip to non Group Company	Sub Para 19 of long para	Manjeet Hotels Pvt. Ltd.	3.84	RLA Mumbai	No reply recd.
8	Incorrect debit of duty of ₹ 15.49 lakh from expired SFIS duty credit scrip	Sub Para 21 of long para	Asian Hotels (East) Ltd. , Hyatt Regency, Kolkata	15.49	RLA Kolkata	No reply recd.
9	Incorrect grant of allowance of import of motor car	Sub Para 22 of long para	Renaissance Grand Hotel	23.00	RLA chennai	No reply recd.
10	Non submission of statement of imports	Sub Para 24 of long para	22 SFIS scrips	-	RLA Kolkata, Bangalore and Hyderabad	Partially accepted
11	Incorrect grant of benefit	Sub Para 26.2 of long para	Peerless Hotels Ltd. Kolkota	4.02	RLA Kolkata	No reply recd.
12	Disposal of imported goods without prior permission	Sub Para 26.3 of long para	R.K.M International, Amritsar	-	RLA Amritsar	No reply recd.
13	Non-productions of files of EPCG/SFIS scheme in respect of hospitality sector	Sub Para 26.4 of long para	(ii) Shaina Builders Pvt Ltd. Jodhpur (ii) Rajasthan Fort & Palace Pvt. Ltd.	-	RLA Jaipur	No reply recd.
Total				175.71		

Annexure 8

(Reference para 7.21)

Authorization holder	Auth. No.	Excess credit Including Interest
M/s. Appu Hotels Ltd	No.041015483 and 0410154684 dated 29.1.2014	₹80.96 lakh (55.36+25.60)
M/s GRT Hotels Ltd	No: 0410143021(2011-12)	₹7.24 lakh including interest
M/S Velan Hotels	No.3210047378 dated 22 March 2011	₹12 lakh (10.10 +1.89)
M/s Poppys Hotels	3210045039 dated 10.08.2010	₹ 2.43 lakh

Annexure 9

(Reference para 7.21)

(₹ in Lakh)

1.	M/s APA Hotels (P) Ltd	File No.04/21/71/57/AM 14.	10.24
2.	M/s SAS Hotels & Enterprises Ltd	File No.04/21/71/30/AM 12.	27.15
Total			37.39

Annexure 10

(Reference para 7.22)

Name of the party	Lic. No./date	Due date of application	Actual date of application	Late cut
Apejay Surendra Park Hotels ,Bengaluru	No.710093224 dt. 22.01.2013	31.03. 2012	18.10 2012	₹ 30.54 lakh/ @ 5 percent
M/s. Hi Design India Pvt. Ltd Puducherry	No.2510003967	31.03.2012	05.02.2013	₹0.86 lakh. / @ 5 percent
M/s. Auberge Hotels Pvt. Ltd., Puducherry	No.251004074	31.03.2012	22.06 2013	₹ 0.54 lakh/ @ 10 percent
M/s.Bonjour Bonheur Ocean Spray Pvt. Ltd., Puducherry	No.251004272	31.03 2013	04.12.2013	₹ 0.25 lakh/ @ 5 percent
M/s. Cyberabad Convention centre Hyderabad	No.0910052852	31.03.2012	09.05 2012	₹7.21 lakh/ 25.01.2012
M/s Hotel Hindustan International, Kolkata	No. 0210195203 dt. 08.10.2013	31.03.2011	25.01.2012	0.27 lakh/ @ 5 percent
M/s. Pride Hotels & four other service providers, Mumbai		April 2010 to March 2012	December 2012 to December 2013	₹17.68 lakh/ various rates
M/s Walled City Hotel Pvt. Ltd., Jodhpur	No. 1310045373 dt. 12.12.2013	31.03.2013	20.09.2013	₹0.59 lakh/ @ 2 percent
M/s. Pacifica hotel Ahmedabad	No. 0810120714 dt. 3 May 2013	31.03.2013	23 .03.2013	₹ 3.15 lakh/ @ 5 percent
M/s Jewel Classic Hotel Pvt. Ltd. Panipat		31.03.2013	24.05.2013	₹ 0.35 lakh./ @ 2 percent
Total				₹ 61.44 Lakh

Annexure 11

(Reference para 7.23.2)

S.No.	Name of Licence Holder	EPCG File No	SFIS File No.
1	M/s. SAS Hotel & Enterprises Ltd, Chennai	04/36/021/00138/AM05 (Lic. No.0430001900 DT. 26.08.2004)	04/21/071/007/AM 08
2	M/s. Ceebros Hotels Pvt. Ltd., Chennai	04/36/021/00057/AM05 (Lic. No.0430001718 DT. 31.05.2004)	04/21/071/004/AM 08
3	-do-	04/36/021/00309/AM04	04/21/021/00004/AM08
4	M/s. SAS Hotel & Enterprises Ltd., Chennai	04/36/021/00699/AM06 (Lic. No.0430003236 DT. 14.12.2005)	04/21/071/007/AM 09(DFCE)
5	M/s. G R Thangamaligai Pvt Ltd., Chennai	04/36/021/10/AM05 (Lic. No.0430001629 DT. 15.04.2004)	04/79/071/00024/AM 07(DFCE)
6	M/s. Auberge Hotels (P) Ltd., Puducherry	Lic.No.2530000027 dated 17.09.2004	25/21/071/00001/AM 10