

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

For the year ended March 2018

Union Government
(Department of Revenue –Customs)
(Compliance Audit)
No.17 of 2019

Laid on the table of Lok Sabha and Rajya Sabha on

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PREFACE

This Report for the year ended March 2018 has been prepared for submission to the President of India under the Article 151 of the Constitution of India.

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

The Government has made significant investment in Indian Customs EDI System (ICES) for creation of comprehensive, paperless, fully automated customs clearance system and availability of transactional information in the form of electronic data. This provides a good opportunity to Audit for hundred per cent review of data, instead of test check of transactions in a few locations and to provide a high level of assurance to the Government and the Parliament on correctness of application of tax laws across all Customs Commissionerates. The availability of complete data also minimises the requirement of physical visits of Audit to the Customs premises for test check of transactions. However, since the department was unable to provide complete and timely data for pan-India transactions, Audit had to be physically carried out in 38 out of 67 Customs Commissionerates.

The instances mentioned in this Report are those, which came to notice in the course of test audit for the period 2017-18 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 2017-18 have also been included, wherever necessary.

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

EXECUTIVE SUMMARY

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

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

Customs receipts before the introduction of Goods and Services Tax (GST) comprised of the basic customs duty (BCD), countervailing duty (CVD) and special additional duties of customs (SAD). After introduction of GST w.e.f. 1 July 2017, the CVD and SAD on import of all commodities, except petroleum products and spirits, have been subsumed and replaced by integrated tax (IGST).

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

The levy and collection of customs duty and cross-border preventive functions are administered by the CBIC through 67 Customs Commissionerates across the country.

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

During 2017-18, ₹ 19.57 lakh crore of exports (74,67,821 transactions) and ₹ 30.01 lakh crore worth of imports (46,04,315 transactions) took place. During FY 2017-18, the customs receipts to GDP ratio was 0.76 per cent while customs receipts as percentage of gross tax receipts was 6.7 per cent. Customs receipts as a percentage of indirect taxes was 14 per cent.

The compliance audit of Customs revenue covers transactions involving levy and collection of Customs Duties, any other levies of Customs, transactions of imports and exports undertaken under various schemes implemented under the Foreign Trade policy and specific compliance areas reviewed by audit from time to time. This year the compliance audit had reviewed the administration and collection of anti-dumping duties. The transactions covered in this report

pertains to FY 2018, but in some cases prior period transactions have also been reviewed for getting a holistic picture.

The sample of Commissionerates selected for test check included 38 out of total of 67 Customs Commissionerates under 23 Zones. We audited 142 assessment charges and 90 non-assessment charges working under the Customs Commissionerates selected for audit. The audit was based on the examination of bills of entry (BsE) and shipping bills (SB) filed electronically into the Indian Customs EDI System (ICES) through a Customs House Service Centre or web based ICEGATE. In non-EDI Customs locations, the BE and SB are physically filed and assessed. The ICES uses Risk Management System (RMS) to process the data through a series of automated steps and results in an electronic assessment. This assessment determines whether the Bill of Entry will be taken-up for action, i.e. manual appraisal by assessing officer or examination of goods, or both, or be cleared after payment of duty and Out of Charge directly, without any assessment and examination. We audited BE and SB cleared by both the RMS and manual appraisal system.

Audit of incentives provided under Foreign Trade policy was carried out in 37 regional licensing authorities under the DGFT through test check of license files under various schemes of the FTP.

This report is divided into six chapters. Chapter I provides a brief description of functions of Department of Revenue and Department of Commerce and an overview of high level statistical information regarding Customs receipts, trade balance, revenue impact of tax incentives on Customs Duty, arrears of customs receipts and results of department's internal audit. Chapters II describes the CAG's audit mandate, scope and results of audit efforts. Chapters III, IV, V and VI contain significant audit findings. There are 92 paragraphs with revenue implication of ₹4795 crore in this report. In 79 paragraphs involving money value of ₹ 368 crore, rectificatory action has been taken by the department/ Ministry in the form of issuing show cause notices, adjudicating of show cause notices and recovery of ₹ 18 crore has been effected till date.

Responses received from Department of Commerce and Department of Revenue have been included at appropriate places.

Chapter I: Overview- Customs Revenue

- After introduction of GST w.e.f. 1 July 2017, the CVD and SAD have been subsumed and replaced by integrated tax (IGST). The integrated tax is in addition to the applicable BCD which is levied as per the Customs Tariff Act. In addition, GST compensation cess is also leviable on certain luxury and demerit goods under the Goods and Services Tax (Compensation to States)

Cess Act, 2017. Levy of education cess as well as anti- dumping duty and safeguard duty remains unchanged.

{Paragraphs 1.4.1 and 1.4.2}

- During 2017-18, Customs receipts realised were ₹1,29,030 crore as against ₹2,25,000 crore realised in 2016-17. One of the reasons for decrease in the Customs receipts during FY18 may be attributed to the fact that in GST regime Countervailing duty (CVD) and Special additional of Customs (SAD) have been subsumed in IGST. Hence, customs receipts mainly comprise of Basic Customs Duty.

{Paragraph 1.6}

- Imports registered growth of 16.44 percent while Exports registered a growth of 5.62 percent during the same period.

{Paragraph 1.7}

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

- During FY 18, audit issued 479 inspection reports to the respective Commissionerates/ Regional licensing authorities containing 2715 observations and carrying a revenue implication of ₹ 1363 crore. Out of these 91 audit observations with revenue implication of ₹ 590 crore noticed during FY 18 have been included in this report. The remaining cases are being pursued by respective field formations. In addition a long paragraph involving money value of ₹ 4205 crore, on persistent irregularities regarding non-fulfilment of export obligations by the licence holders of export promotion schemes noticed consistently during audits has also been included in this report.

{Paragraphs 2.6.1& 2.6.2}

- Over the years, audit has noticed persistent cases of non-fulfilment of prescribed export obligations by licence holders of export promotion schemes like Advance authorization and EPCG. As an one time exercise, all such cases pointed out during 2000 to 2017 pertaining to 22¹ RLAs and 5 customs Commissionerates² were consolidated. In 1043 paras involving 3000 licence cases issued under Advance authorisation and EPCG schemes, non-fulfilment of prescribed export obligation involving revenue implication of ₹ 4,205 crore was noticed.

{Paragraphs 2.6.6 and 5.2}

¹ RLAs: Vadodara, Ahmedabad, Rajkot, Bengaluru, Panipat, Amritsar, Chennai, Trichy, Coimbatore, Puducherry, Madurai, Hyderabad, Vishakhapatnam, Cuttack, Kolkata, Varanasi, Moradabad, Dehradun, Kanpur, Mumbai, Surat and Pune.

² Customs Commissionerates : CH Sikka, ICD Bengaluru, ACC Bengaluru, Chennai Sea and Customs (P) Nautanvas

Chapter III: Levy of Anti-Dumping Duty (ADD) on imports

- Anti-dumping measures in India are administered by Directorate General of Trade Remedies (DGTR), (earlier the Directorate General of Anti-dumping and Allied Duties) functioning in the Department of Commerce in the Ministry of Commerce and Industry and the same is headed by the "Designated Authority", in this case the Director General. The Designated Authority's function, is to conduct the anti-dumping duty investigations and make recommendation to the Government for imposition of anti-dumping measures. Such a duty is finally imposed/ levied by a notification of the Ministry of Finance, Department of Revenue. Thus, while the Department of Commerce recommends the Anti-dumping duty (ADD), it is the Ministry of Finance, which levies such duty.
- During the period 2015-16 to 2017-18, ADD of ₹3,169 crore was collected on the imports.
- Audit noticed that the bills of entry had been cleared through the system under the Custom's Risk Management System (RMS) based clearance in the ICES. It was noticed that the RMS was unable to detect the specific conditions of ADD that were not met by the imports effected under many of the bills of entry test checked.
- Several instances of escapement of levy and instances of non-compliance with the conditions of the anti-dumping were noticed which resulted in non/short levy of anti-dumping duty amounting to ₹ 86.69 crore. The Department accepted observation amounting to ₹ 53 crore and reported recovery of ₹ 1.20 crore.

{Paragraphs 3.1 to 3.6}

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

- Data for import and export transactions for the year 2017-18 was received with much delay from CBIC, and that too with many gaps and deficiencies. In the absence of full data, the conclusions in this chapter on compliance audit were based on limited audits carried out in the field. However, the range of audit findings noticed even in the test check point to systemic deficiencies that need to be addressed by the department.
- During 2017-18, a total of 46.04 lakh BsE and 74.68 lakh Shipping Bill (SB) were generated, out of which Audit selected a sample of 4.04 lakh BsE and 1.62 lakh SB. Significant audit observations with revenue

implication of ₹ 10 lakh or more noticed during test check of import/export documents in the Customs Commissionerates have been reported in this Report. Audit has, wherever applicable, attempted to quantify potential risk to revenue by ascertaining the total number of similar transactions by using the import data received from CBIC for the year 2017-18.

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

- I. Incorrect application of General exemption notifications
 - II. Misclassification of imports
 - III. Incorrect levy of applicable levies and other charges
- Audit noticed 49 cases of under assessments of applicable Customs duties due to misclassification of imported goods, incorrect application of General exemption and Incorrect levy of applicable levies and other charges, as result of which revenue of ₹ 88.42 crore was at risk etc.

{Paragraphs 4.1 to 4.11}

Chapter V: Non-compliance to provisions of various Export Promotion schemes of Foreign Trade Policy

Deficiencies in fulfilment of Export Promotion Capital Goods (EPCG) Scheme

- Despite the Government assurances on the audit recommendations there was no substantial improvement in the control and monitoring mechanism of EPCG licences. Issues like non fulfilment of export obligation, irregular issue of EPCG licences, no/delayed action being taken on defaulters; incorrect fixation of export obligation, irregular redemption of authorizations etc. continued to plague the scheme in large number of cases in the selected sample. Revenue of ₹ 306 crore was due from exporters/importers who had availed the benefits of EPCG scheme but had not fulfilled the prescribed export obligations/conditions.

{Paragraphs 5.3 to 5.5}

Other Export Promotion Schemes

- In addition in 39 cases of licences issued under Foreign Trade Policy, test check revealed irregularities in fixation of export obligation, Clearance of restricted goods in Domestic Tariff Area, allowing benefits of Duty exemption/ Remission schemes etc. Revenue of ₹ 40.51 crore was due from exporters/importers who had availed the benefits of the duty exemption schemes but had not fulfilled the prescribed obligations/ conditions.

{Paragraphs 5.4 to 5.4.5}

Chapter VI: Irregularities in awarding major works by Santacruz Electronics Export Processing Zone (SEEPZ) Special Economic Zone (SEZ), authority

- The audit findings are indicative of weak administrative, financial and internal controls over the way in which major works; repairs and maintenance work are being outsourced to external agencies by the Authority. Expenditure involved was ₹ 67.91 crore.

{Paragraph 6.2.1}

- The instances of issue of excess work order without approval and cancellation of allotments of units due to lack of mandatory clearances from Statutory authorities are lacunae in the working of the SEEPZ Authority and need to be addressed at the highest level.

{Paragraphs 6.2.2 to 6.2.4}

General Recommendations

Though the Ministry has taken corrective action to recover duty in many cases, it may be pointed out that audit paragraphs in this Report are only a few illustrative cases. There is every likelihood that such errors of omission and commission, whether in RMS based assessments or manual assessments, may exist in many more cases. Audit has, wherever applicable, attempted to quantify potential risk to revenue by ascertaining the total universe of similar transactions by using the import data received from CBIC for the year FY 2017-18. These need to be examined by the department.

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

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

Abbreviations

Abbreviation	Expanded form
AA	Advance Authorization
AEO	Average Export Obligation
ARO	Advance Release Order
ADD	Anti Dumping Duty
BCD	Basic customs duty
BE	Bill of entry
CTH	Customs Tariff Heading
CBIC	Central Board of Indirect Taxes and Customs
CBDT	Central Board of Direct Taxes
CECAs	Comprehensive Economic Cooperation Agreements
CETH	Central Excise Tariff Heading
CSO	Central Statistical organization
c.i.f.	Cost Insurance Freight
Commissionerate	Commissionerate of customs
CVD	Countervailing duty
DMA	Disaster Management Advisor
DoR	Department of Revenue
DoC	Department of Commerce
DGFT	Director General of Foreign Trade
DC	Development Commissioner
DGAD	Director General of Anti Dumping
DGCIS	Director General of commercial intelligence and statistics
DGTR	Directorate General of Trade Remedies
DGOV	Directorate General of Valuation
DTA	Domestic Tariff Area
DEPB	Duty Entitlement Pass Book
DEEC	Duty Exemption Entitlement Certificate
DFRC	Duty Free Replenishment Certificate
EDI	Electronic Data Interchange
EO	Export obligation
EODC	Export obligation discharge certificate
EOU	Export Oriented Unit
EP	Export Performance
EPCG	Export Promotion Capital Goods
EPZ	Export Processing Zone
EXIM	Export and Import
FY	Financial year

Abbreviation	Expanded form
FOB	Free on Board
FOR	Free on Road
FTP	Foreign Trade Policy
GDP	Gross Domestic Product
GFR	General Financial Rules
GST	Goods and Services Tax
HBP	Hand Book of Procedures
HSN	Harmonised system of nomenclature
ICT	Information and Communication Technology
ICEGAT	Indian Customs Electronic Commerce Gateway
IEC	Importer Exporter Code
ICES	Indian Customs Electronic Data Interchange System
ICD	Inland Container Depot
ITC(HS)	International Tariff Classification (Harmonised System)
JDGFT	Joint Director General of Foreign Trade
LOP	Letter of permission
LRM	Local Risk Management
MEIS	Merchandise Exports from India Scheme
NFCD	National Co-operative Construction & Development Federation
OC	Occupation certificate
OSPCA	On Site Post Clearance Audit
PAC	Public Accounts Committee
Pr.CCA	Principal Chief Controller of Accounts
PSU	Public Sector Undertaking
PWO	Public Works Organization
RCMC	Registration cum Membership Certificate
RLA	Regional licensing authority
RMS	Risk Management System
₹	Rupees
SAD	Special additional duty of customs
SEIS	Service Exports from India Scheme
SEZ	Special Economic Zone
SFIS	Served from India Scheme
STP	Software Technology Park
SION	Standard Input Output Norms
UAC	Unit Approval Committee
VKGUY	Vishesh Krishi and Gram Udyog Yojana

CHAPTER I

Customs Revenue

1.1 Nature of Customs Duties

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

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

1.2 Customs revenue base

1.2.1 The Customs revenue base comprises of the Importers and Exporters issued with IEC by the DGFT. As on March 2017 there are 2,65,285 active IECs³. During 2017-18, ₹19.57 lakh crore of exports (74,67,821 transactions) and ₹30.01 lakh crore worth of imports (46,04,315 transactions) took place.

1.3 Organisation and Functions of Administrative Departments

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

1.3.2 The levy and collection of customs duty and cross-border preventive functions are administered by the CBIC through 23 Zones headed by Principal Commissioner/Commissioners across the country.

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

³ IEC is issued by DGFT, Delhi to every importer/Exporter.

1.3.4 The FTP is implemented through the Regional Licensing Authorities (RLAs) who are responsible for providing IECs and granting licenses under various schemes of export promotion. During 2017-18 there were 38 RLAs across India.

1.4 Customs Receipts

1.4.1 Customs receipts before the introduction of Goods and Services Tax (GST) comprised of the basic customs duty (BCD), countervailing duty (CVD) and special additional duties of customs (SAD). The other levies on imports included education cess and anti-dumping duty and safeguard duty wherever the latter two were applicable.

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

1.5 Budget Estimates and Actual Receipts

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

1.5.2 Budget estimates (BE), revised estimates (RE) and actual customs receipts during FY 2013-14 to FY 2017-18 are given in Table 1.1 below:

Table 1.1: Budget and Revised estimates, Actual receipts

Cr. ₹						
Year	Budget estimates	Revised estimates	Actual receipts	Diff. between actual and BE	Percent variation between actual and BE	Percent variation between actual and RE
FY 14	1,87,308	1,75,056	1,72,085	(-)15,223	(-)8.13	(-)1.73
FY 15	2,01,819	1,88,713	1,88,016	(-)13,803	(-)6.84	(-)0.37
FY 16	2,08,336	2,09,500	2,10,338	(+)2,002	(+)0.96	(+)0.40
FY 17	2,30,000	2,17,000	2,25,370	(-)4,630	(-)2.01	(+)3.85
FY 18	2,45,000	1,35,242	1,29,030	(-) 1,15,970	(-)47.33	(-) 4.59

Source: Union Budget and Finance Accounts for respective years.

1.5.3 The variation between RE and actual receipts ranged between (-)1.73 per cent to 3.85 per cent during FY 2013-14 to FY 2016-17. Variation between BE and Actuals was higher during the same period.

1.5.4 Budget Estimates during FY 2017-18 was pegged at ₹ 2,45,000 crore. After the implementation of GST, the revised estimate for Customs receipts during 2017-18 was fixed at ₹ 1,35,242 crore. The revenue realised was ₹ 1,29,030 crore. One of the reasons for decrease in the customs receipts during FY 2017-18 may be attributed to the fact that in GST regime CVD and SAD have been subsumed in IGST. Hence, customs receipts mainly comprise of BCD.

1.6 Growth of Customs Receipts

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

Table 1.2: Growth of Customs Receipts

Cr. ₹

Year	Customs receipts	Year on year growth percent	GDP	Customs receipts as % of GDP	Gross Tax Revenue	Customs receipts as % of Gross tax	Gross Indirect taxes	Customs receipts as % of Indirect taxes
FY 14	1,72,085	4	1,13,45,056	1.52	11,38,996	15.10	4,97,349	34.60
FY 15	1,88,016	9	1,25,41,208	1.50	12,45,135	15.10	5,46,214	34.42
FY 16	2,10,338	12	1,35,76,086	1.55	14,55,891	14.45	7,10,101	29.62
FY 17	2,25,370	7	1,51,83,709	1.48	17,15,968	13.13	8,62,151	26.14
FY 18	1,29,030	(-43)	1,67,73,145	0.76	19,19,183	6.72	9,16,445	14.07

1.6.2 Customs receipts growth rate, on year on year basis, increased in the first three years from FY 2013-14 to FY 2015-16, but slowed down in 2017-18 to 7 per cent compared to 12 per cent in the previous year. **Customs receipts in FY 2017-18 are not comparable with earlier years as these comprise of only Basic Customs Duty w.e.f. 1 July 2017 compared to earlier years when CVD and SAD were part of customs receipts.**

1.6.3 During FY 2013-14 to FY 2016-17, the percentage of customs receipts to GDP remained stable between 1.52 to 1.48 per cent. Customs receipts as percentage of GTR was 13 per cent in FY 2016-17 compared to 15 per cent in FY 2013-14. Customs receipts as percentage of total indirect taxes has steadily declined from 35 per cent in FY 2013-14 to 26 per cent in FY 2017-18.

1.6.4 During FY 2017-18, the customs receipts to GDP ratio was less than one per cent (0.76 per cent) while customs receipts as percentage of gross tax

receipts was 6.7 per cent. Customs receipts as a percentage of indirect taxes was 14 per cent.

1.7 India's imports and exports

1.7.1 Table 1.3 depicts trend of growth of India's imports and exports during FY 2013-14 to FY 2017-18.

Table 1.3: India's Import and Export

Year	Imports Cr.₹	% growth over previous year	Exports Cr.₹	% growth over previous year	Trade Imbalance Cr.₹
FY 14	27,15,434	-	19,05,011	-	-8,10,423
FY 15	27,37,087	0.79	18,96,348	(-) 0.45	-8,40,739
FY16	24,90,298	(-) 9.00	17,16,378	(-) 9.49	-7,73,920
FY17	25,77,422	3.49	18,52,340	7.92	-7,25,082
FY 18	30,01,033	16.44	19,56,515	5.62	-10,44,518

Source: EXIM Data, Ministry of Commerce & Industry

1.7.2 Year on year growth rate of imports picked up during FY 2016-17 and FY 2017-18 after undergoing a negative growth of (-)9 per cent during FY 2015-16. The growth in exports also picked up from (-) 9.5 per cent in FY 2015-16 to 8 per cent in FY 2016-17. The imports grew by 16.44 per cent in 2017-18 over 2016-17 while exports grew by 5.62 per cent during the same period.

1.7.3 India's imports were valued at ₹ 30.01 lakh crore during FY 2017-18 from ₹ 25.77 lakh crore in FY 2016-17, while the exports were ₹ 19.56 lakh crore in FY 2017-18 from ₹ 18.52 lakh crore in FY 2016-17.

1.8 Top imports and exports during FY 2017-18

1.8.1 Growth of imports in FY 2017-18 was led by five major commodity groups, namely, (i) Mineral fuels, mineral oils and products of their distillation (Chapter 27 of Customs Tariff) (ii) Natural or cultured pearls, precious or semi-precious stones (Chapter 71 of Customs Tariff) (iii) Electrical machinery and equipment and parts thereof, Sound recorders and reproducers, Television image and sound recorders and parts (Chapter 85 of Customs Tariff) (iv) Nuclear reactors, Boilers, Machinery and mechanical appliances, parts thereof (Chapter 84 of Customs Tariff) and (v) Organic chemicals (Chapter 29 of Customs Tariff). These commodities account for 67 percent share of the total imports made during FY 18.

1.8.2 Top five commodities exported during FY 18 were (i) Natural or cultured pearls and precious stones, precious metal and articles thereof (Chapter 71 of Customs tariff) (ii) Mineral fuels and mineral oils (Chapter 27 of Customs tariff) (iii) Machinery and mechanical appliances, parts thereof (Chapter 84 of Customs tariff) (iv) Vehicles other than railway and parts and accessories

thereof. (Chapter 87 of Customs tariff) and (v) Organic chemicals (Chapter 29 of Customs tariff) in their respective order.

The share of the five major commodities exported during FY 18 was 43 percent of the total exports made.

1.9 Cost of Collection of Customs Receipts during FY 2013-14 to FY 2017- 18

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

1.9.2 CBIC reported that the cost of collection of Customs receipts for 2017-18 was 3.05 percent of Customs receipts. The cost of collection of Customs receipts for the period from 2014-15 to 2017-18 is given below (Table 1.4).

Table 1.4: Cost of Collection during FY 14 to FY 18

Cr.₹

Year	Expenditure on Revenue-cum Import / export and trade control functions	Expenditure on preventive and other functions	Transfer to Res. Fund, Deposit A/c and other expenditure.	Total	Customs receipts	Cost of collection as percentage of Customs receipts
FY 14	333	1,804	5	2,142	1,72,085	1.25
FY 15	382	2,094	20	2,496	1,88,016	1.33
FY 16	412	2,351	36	2,799	2,10,338	1.33
FY 17	544	2,771	7	3,322	2,25,370	1.47
FY18	640	3262	39	3,941	1,29,030	3.05

Source: Finance Accounts of the Union Government for respective years

1.9.3 Expressed in terms of percentage of Customs receipts, cost of collection ranged between 1.25 percent (FY 14) to 3.05 percent (FY18).

1.10 Arrears of Custom duties

1.10.1 Recovery of arrears is the overall responsibility of the jurisdictional commissioners. They are required to review and monitor the functions of recovery cell functioning within the Commissionerates. As per Ministry of Finance circular dated 15.12.1997, a “Recovery Cell (RC)” should be created in each Custom Commissionerate for the purpose of making recovery of Government Dues. Every year recovery targets are fixed for each Commissionerate by Chief Commissioner CC (TAR). Since August 2015, function and responsibility and responsibilities of CC (TAR) have been transferred to Directorate General of Performance Management (DGPM).

1.10.2 The arrears of customs duty are duties which have been raised by the department but have not been recovered due to various reasons like

adjudication, disputed claims, short levies, provisional assessments etc. amounted to ₹ 24,685 crore as on 31st March 2018.

1.10.3 The Customs revenue arrears for 2014-15 to 2017-18 are depicted in the table 1.5 below:

Table 1.5: Arrears of Custom duties

Year	Arrear of customs duties under dispute (Cr.₹)	Arrear of undisputed customs duties (Cr.₹)	Total Cr.₹	Percentage of disputed arrears to total arrears
2014-15	14597	6210	20807	70.15
2015-16	12300	12322	24622	49.95
2016-17	21780	4700	26480	82.25
2017-18	18836	5849	24685	76.31

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

1.10.4 The arrears of customs duties have risen steadily during FY 2014-15 to FY 2016-17. However, during financial year 2017-18, the arrears came down by approximately ₹2000 crore. The overall arrears in customs duties have grown by 18.63 per cent in FY 2017-18 compared to FY 2014-15.

1.10.5 Amount of arrears under dispute as a proportion to total arrears rose from 49.95 per cent in FY 2015-16 to 82.25 per cent for the in FY 2016-17 and came down to 76 per cent in FY 2017-18, and stood at ₹ 1,88,386 crore. There was 5.81 per cent decrease in arrears under undisputed category in 2017-18 from 2014-15.

1.10.6 Out of total 23 Zones (11 Customs Commissionerates and 12 combined Commissionerates (Customs and GST), 10 zones accounted for 81 per cent (₹19,897 crore.) of total arrears pending during FY 2017-18 as shown in Table 1.6 below.

Table 1.6: Age wise and Zone wise Arrears of Customs Revenue as on 31 March 2018

CC Zone	Amount under dispute				Amount not under dispute				
	Less than 5 years	Five years but < 10 years	More than 10 years	Total (Col.2+3+4)	Less than 5 years	Five years but < 10 years	More than 10 years	Total (Col.6+7+8)	Grand total (col.5+9)
1	2	3	4	5	6	7	8	9	10
Ahmedabad Cus	2,860	596	214	3,670	278	48	157	483	4,153
Chennai Cus	1,793	368	309	2,469	269	181	169	619	3,088
Delhi Cus	1,271	108	41	1,420	1,283	123	68	1,474	2,895

Cr.₹

CC Zone	Amount under dispute				Amount not under dispute				
	Less than 5 years	Five years but < 10 years	More than 10 years	Total (Col.2+3+4)	Less than 5 years	Five years but < 10 years	More than 10 years	Total (Col.6+7+8)	Grand total (col.5+9)
Mumbai-I Cus	836	151	42	1,028	134	42	35	211	2,133
Bangalore Cus	1,348	340	91	1,779	54	41	9	104	1,883
Mumbai – II Cus	878	101	47	1,026	835	6	0	841	1,868
Kolkata Cus	920	191	26	1,137	379	38	53	469	1,606
Mumbai – III Cus	1,808	44	70	1,922	74	103	50	226	1,254
Vishakapatnam CE & GST	758	77	7	842	129	17	29	175	1,017
Pune CE & GST	552	12	2	567	11	0	35	46	613
Sub-total	13,024	1976	847	15,293	3,435	599	570	4602	19,897
Others	2,530	303	158	3,543	496	381	368	1,247	4,788
Grand Total	15,554	2279	1005	18,836	3931	980	938	5,849	24,685

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

1.10.7 Chief Commissioner of Ahmedabad Zone had the highest quantum of arrears of custom duty in FY 2017-18, followed by Chennai and Delhi zones.

1.10.8 Age wise analysis of arrears revealed that ₹ 1,918 crore (33%) out of total ₹ 5,849 crore of undisputed arrears were lying unrecovered for more than five years. An amount of ₹ 938 crore is pending for recovery for more than ten years indicating that department is not acting proactively for recovery of the arrears which are undisputed.

1.11 Internal Audit

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

1.11.2 CBIC informed that for the year 2017-18, DG (Audit) planned 19,58,900 units for audits, out of which 5,05,363 (26 percent) units were audited during the year. DG (Audit) detected short/non levy of duty of ₹ 564.75 crore out of which ₹ 53.61 crore was recovered.

1.11.3 According to information given by CBIC, during FY 18 the audit comments raised by Pr.CCA mainly consisted of the following irregularities, apart from points of establishment:

- a) Non recovery of dues from Govt. Department/State Government Bodies/Private parties/ Autonomous bodies; ₹ 2,163 crore;
- b) Blocking of government money; ₹ 3,552 crore on account of infructuous expenditure, irregular purchase/expenditure etc,

There were 244 internal audit paragraphs with gross value of ₹ 5,715 crore⁴ which were pending for final action and therefore not settled by Pr.CCA.

1.12 Tax Evasion and Seizures

1.12.1 According to information furnished by Directorate of Revenue Intelligence (DRI), the number of duty evasion cases moved up from 694 in FY 14 to 940 in FY 18 while the value decreased from ₹ 3,113 crore to ₹ 3,065 crore during the same period (**Annexure 1**).

1.12.2 Major commodities involved in evasion cases were Urea, Chemicals, Iron ore, Confectionary items, Alcoholic beverages, metal scrap, gold and gold jewellery, LED TVs, Red Sanders, Auto parts, Betel nut, PVC resin, Readymade garments, 4G LTE antennas, Smart cards and branded watches.

⁴ Pr CCA D.O. No. IA /NZ/HQ/CAG/Information/2017-18/194 dated 8 August 2018

CHAPTER II

CAG's Audit Mandate and Extent of Audit

2.1 Authority of the CAG for audit of receipts

2.1.1 Section 16 of the CAG's DPC Act 1971 authorizes CAG to audit all receipts (both revenue and capital) of the Government of India and of Government of each state and of each Union territory having a legislative assembly and to satisfy himself that the rules and procedures are designed to secure an effective check on the assessment, collection and proper allocation of revenue and are being duly observed. Regulations on Audit & Accounts, 2007 lay down the principles for Receipt Audit.

2.1.2 Compliance audit of Customs revenue covers transactions involving levy and collection of Customs Duties, any other levies of Customs, transactions of imports and exports undertaken under various schemes implemented under the Foreign Trade policy and specific compliance areas reviewed by audit from time to time. This year the compliance audit had reviewed the levy and administration of anti-dumping duties. The transactions covered in this report pertain to FY 2018, but in some cases prior period transactions have also been reviewed for getting a holistic picture. This report is based on the audit conducted up to the FY18.

2.2 Scope of Audit

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

2.2.2 Records of concerned Regional authorities under DGFT in respect of customs exemption benefits availed by importers/exporters under Foreign Trade Policy are examined. Similarly CAG conducts audit of Development Commissioners of SEZ and EOUs, including certification of accounts of government owned SEZ.

2.3 Audit Universe

2.3.1 Audit universe for Customs receipt audit comprises of Customs field formations and the ports (both EDI linked and non-EDI), regional licensing authorities under DGFT and Development Commissioners of SEZ/EOU.

2.3.2 Customs field formations are divided into 11 Customs Zones and 12 Combined (customs and GST) Zones with 23 Chief Commissioners and 67

Principal Commissioners/Commissioners. As on 1 April 2018, there were 498 Deputy/Assistant Commissioners out of which 293 were doing the assessment functions and 205 were on non-assessment charges.

2.3.3 For the audit of export promotion schemes, the audit universe comprises of the Directorate General of Foreign Trade (DGFT) which is an attached office of the Ministry of Commerce and Industry and is headed by Director General of Foreign Trade. DGFT is responsible for formulating and implementing the Foreign Trade Policy with the main objective of promoting India's exports. The DGFT issues scrips/authorization to exporters and monitors their corresponding obligations through a network of 38 regional offices and an extension counter at Indore.

2.3.4 The schemes which are implemented through Special Economic Zones (SEZ) and Export Oriented Units (EOU), are audited at the office of respective Development commissioners of SEZ/EOU. The Customs audit is also responsible for annual certification of accounts of seven public sector SEZ⁵.

2.4 Access to auditee data

Audit relies on Customs transaction data to draw assurance⁶ that laws have been applied correctly to prevent loss of revenue. Lack of full access to pan-India data limits the audit scrutiny to test check of transactions and a limited assurance in certifying revenue receipts.

Data requisitioned by audit for import and export transactions in 67 Commissionerates for the year 2017-18 was received with much delay from CBIC, and that too with many gaps and deficiencies. The deficiencies were brought to the notice of the CBIC in February 2019, for which the response is still awaited.

In the absence of full data, audits were carried out in the field by physically visiting the 38 Commissionerates.

The instances mentioned in this Report are those which came to notice in the course of test audit conducted during the period 2017-18. Audit has, to the extent possible and based on the findings in test check, quantified total number of transactions at risk, based on the data that has been provided by the department.

⁵ Santacruz Electronics Export Processing Zone (SEEPZ), Kandla SEZ, Madras SEZ, Cochin SEZ, Visakhapatnam SEZ, Noida SEZ and Falta SEZ

⁶ 'expressing a conclusion designed to enhance the degree of confidence of the intended users other than the responsible party about the outcome of the evaluation or measurement of a subject matter against criteria'

2.5 Audit Sample

Test check of transactions was carried out in 38 out of 67 (57 per cent) Commissionerates in 11 selected zones. The audit of commissionerates involved audit of 142 assessment units and 90 non-assessment units.

Audit of licenses under various schemes of FTP granted by the DGFT through its regional licensing authorities was done in 37 out of 38 licensing authorities.

Table 2.1 : Audit Universe and Sample

Audit Universe			Audit Sample
	Audited Entity	Total	
Department of Revenue	Chief Commissionerates combined Zones (customs and GST)	23 ⁷	11 (48 %)
	Principal Commissioner/ Commissioner	67	38 (57 %)
	Assessment units	293	142 (48%)
	Non-assessment units	205	90 (44%)
	Regional Licencing Authority	38	37 (97%)
Department of Commerce	Regional Licencing Authority	38	37 (97%)

2.6 Audit Efforts

2.6.1 During FY 2017-18 we issued 479 inspection reports to the respective Commissionerates/Regional licensing authorities containing 2715 observations and carrying a revenue implication of ₹ 1,363 crore.

2.6.2 We issue significant and high value cases noticed in audit to the Ministry for comments before inclusion on the Audit Report. This report contains 91 audit observations with revenue implication of ₹ 590 crore noticed during FY 18. The remaining cases are being pursued by respective field formations. In addition a long paragraph involving money value of ₹ 4205 crore, on persistent irregularities regarding non-fulfilment of export obligations by the licence holders of export promotion schemes noticed consistently during audits has also been included in this report.

2.6.3 The Ministry has taken rectificatory action involving money value of ₹ 368 crore in respect of 79 paragraphs in the form of issue of show cause notices, adjudication of show cause notices and has reported recovery of ₹ 18 crore in 42 cases of incorrect assessment of Customs duties.

2.6.4 Anti-dumping Duties are imposed by the Government on such imports which are causing injury to the domestic industry and to re-establish a situation of open and fair competition in the Indian market, which is in the general

⁷ (Customs Zones-11 + Combined (Customs + GST)-12 Zones)

interest of the country. We have examined Customs procedures regarding levy and collection of Anti-dumping Duty and the findings with revenue implication of ₹ 86.69 crore are reported in Chapter III.

2.6.5 In Chapter IV we have reported significant findings noticed during test check of Bills of Entry and other records at selected Commissionerates with a revenue implication of ₹ 88.42 crore. The audit findings generally pertained to incorrect classification of imports; incorrect application of exemption notification and non-fulfilment of conditions of notifications.

2.6.6 Persistent irregularities, especially the issue of non-fulfilment of export obligation which seems to be widespread needs to be addressed by the Director General of Foreign Trade, New Delhi and Central Board of Indirect Taxes and Customs as well as appropriate action to recover the duty saved in cases pointed in Audit needs to be taken. In Chapter V we have reported 1043 paras of non-fulfilment of export obligation which have been regularly pointed out by Audit since 2000 and for which no action has been taken by the Ministry. The issue of non-fulfilment of EOs along with several systemic deficiencies were pointed out in an earlier performance audit of the EPCG scheme for the period ending March 2011 reported in Audit Report No.22 of 2011. The recommendations of the CAG contained in this report have been accepted by the Government. However, since the deficiencies in the implementation of EPCG scheme seem to continue as evidenced in transactions audit of the EPCG licenses, a follow-up audit of EPCG scheme was done in a few selected RLA offices to examine the implementation of the scheme after the Government accepted the CAG's recommendations in the earlier Performance Audit Report of EPCG scheme. The findings of the follow-up audit are reported in Chapter V.

2.6.7 In Chapter VI we have reported irregularities in sanction of expenditure noticed during certification audit of Santacruz Electronics Export Processing Zone (SEEPZ), Mumbai.

2.7 Revenue Impact of Audit Reports

2.7.1 In the five reports pertaining to FY 2013-14 to FY 2017-18 we have included 570 audit paragraphs (**Table 2.2**) involving ₹ 9,533 crore. Government has accepted observations in 454 audit paragraphs involving ₹ 548 crore and has recovered ₹ 92 crore in 291 paragraphs.

Table 2.2 : Revenue Impact of Audit Reports

Year	Paragraphs included		Paragraphs accepted		Recoveries effected	
	No.	Amt.(Cr.₹)	No.	Amt. (Cr. ₹)	No.	Amt.(Cr. ₹)
FY14	154	2,428	137	46	78	17
FY 15	122	1,162	91	85	67	23
FY 16	103	1,063	70	19	54	15
FY 17	99	85	77	30	50	19
FY 18	92	4,795	79	368	42	18
Total	570	9533	454	548	291	92

CHAPTER III

Subject Specific Compliance Audit on Levy of Anti-Dumping Duty (ADD) on Imports

3.1 Introduction:

3.1.1 Where any article is exported by an exporter or producer from any country to India at less than its normal value, then, upon the importation of such article into India, the Central Government by the authority of **Section 9A of the Customs Tariff Act, 1975** read with **Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995** may, by notification issued by Central Board of Indirect Taxes and Customs (CBIC), impose an anti-dumping duty (ADD) not exceeding the difference between its export price and its normal value. “Normal value, means the comparable price, in the ordinary course of trade, for the like article when consumed in the exporting country as determined in accordance with the rules made under sub-section (6) of the aforesaid Section 9A of the Customs Tariff Act, 1975. The difference in these two prices is also called “margin of dumping”.

3.1.2 The notification is generally effective for a period of five years (unless revoked, superseded or amended earlier).

3.1.3 Anti dumping measures in India are administered by Directorate General of Trade Remedies (DGTR), (earlier the Directorate General of Anti dumping and Allied Duties) functioning in the Dept. of Commerce in the Ministry of Commerce and Industry and the same is headed by the “Designated Authority”, in this case the Director General. The Designated Authority’s function, is to conduct the anti dumping duty investigations and make recommendation to the Government for imposition of anti dumping measures. Such a duty is finally imposed/ levied by a notification of the Ministry of Finance, Department of Revenue. Thus, while the Department of Commerce recommends the Anti-dumping duty (ADD), it is the Ministry of Finance, which levies such duty.

3.1.4 Accordingly, ADD is being imposed by the Central Government, on the basis of final findings published by the designated authority after due investigation, from time to time. In India, ADD investigations have been initiated into 377 products during 1992-2017.⁸

3.1.5 On the other hand, India has been impacted by anti-dumping duties imposed by countries like China, European Union, and 130 products have been

⁸ PHD Chamber of Commerce and Industry (PHD, CCI)survey conducted on the topic “Impact of Anti-Dumping duties on Industry in India”

subjected to anti-dumping levies during 1995-2017. During the period 2015-16 to 2017-18, ADD of ₹ 3169 crore⁹ was collected on the imports.

3.2 Major product categories covered under ADD notifications during 2015-16 to 2017-18

3.2.1 As of 31 March 2018, 484 anti-dumping notifications were in force covering 205 products. These products could be categorised mainly into following product categories;

Table 3.1: Product Group wise Anti-dumping notifications

Product Group	Number of notification issued	Number of Commodities covered
Inorganic Chemicals	214	88
Plastics, Rubber and articles thereof	63	22
Textiles and Textile articles	48	16
Mechanical appliances and Electrical machinery & Eqpt.	48	20
Iron Steel, Aluminium and articles thereof	32	17
Articles of stones, Ceramic products, Glass and Glassware	26	11
Pharmaceuticals, Fertilisers, and Misc. Chemical Products	14	11
Others ¹⁰	39	18
Total	484	205

3.2.2 Some of the commodities whose imports grew in the three year period, despite an imposition of ADD were carbon black, soda ash, acetone, PVC rolls and adhesive films, viscose filament yarn, cold rolled stainless steel products and plastic machinery including injection moulding machinery (**Annexure 2**).

3.3 Audit Objective

Subject specific compliance audit of levy and collection of anti-dumping duties in Customs was carried to assess the department's compliance with the conditions of the anti-dumping notifications, relevant provisions under the Act, Rules and regulations involving anti-dumping duty and the internal control and monitoring mechanism to guard against misuse of ADD notifications.

⁹ Source: Finance Accounts

¹⁰ Mineral Products, Bituminous substances, Vehicles and accessories thereof, Optical, Photographic, measuring instruments, Wood and articles of wood, wood charcoal, Paper and Paperboard and articles thereof, Food industries, Furskins and artificial fur, Footwear and the like; Parts of such articles and Project Imports

3.4 Audit methodology

3.4.1 During FY 2017 imports under 12 Chapters¹¹ accounted for 26.87 per cent of total imports on which ADD was levied. Statistics for import of major commodities on which ADD has been imposed under the 12 chapters shows that the total imports of these commodities increased from ₹ 19.68 lakh crore to ₹ 22.61 lakh crore, i.e. 15 per cent during the three years from FY16 to FY18.

The audit was focussed on these 12 Chapters of Customs Tariff which accounted for a major proportion of ADD.

Audit requisitioned from CBIC pan-India transaction data of imports on which ADD had been levied for three years from 2015-16 to 2017-18. However, the data was provided by CBIC with much delay.

In the absence of data, audit was limited to 18 out of 67 Commissionerates which had largest imports of commodities under the 12 Chapters mentioned above (**Annexure 3**).

3.4.2 Random sample method was used to select the sample of bills of entry which were categorised into three strata based on assessable value. Thus Bills of entry with assessable value of more than ₹ 5 crore, between ₹ 1 to 5 crore and less than ₹ 5 crore were selected as a percentage of each strata. Total bills of entry on which ADD was levied under the 12 chapters selected for audit, was 6,44,828 during 2015-16 to 2017-18. Out of these 1,82,431 (29 per cent) BsE were selected as sample.

3.5 Audit Findings

3.5.1 Lacunae in the system based assessments in levying ADD

Payment of duties of customs and any other levies and surcharges is on self-declaration basis. After the importer files a bill of entry providing details of the imported goods, the consignments are assessed by the Indian Customs EDI system or ICES. The ICES uses Risk Management System, (RMS) to identify transactions which require additional scrutiny by the assessing officer. The business rules in ICES are expected to be updated at all times so that the applicable duty and levies are automatically charged once the BE passes through the system.

¹¹ Chapter 28- Inorganic Chemicals,29(Organic Chemicals),38 (Miscellaneous Chemical products),39(Plastics and articles thereof),44 (Wood and articles of wood, Wood Charcoal), 54 (Manmade filaments and textile materials),69 (Ceramic products),70 (Glass and Glassware),72 (Iron and Steel-Primary materials products),73 (Articles of Iron or Steel),84 (Machinery and Mechanical appliances) and 87 (Vehicles and accessories thereof).

3.5.1.1 In many of the test checked cases of non/short levy reported in following sections, Audit noticed that the bills of entry had been subject to the RMS based clearance in the ICES. It was noticed that the **RMS was unable to detect the specific conditions of ADD** especially if the product name or description varied from the notification or if the levy of ADD depended on product specifications like thickness or weight.

3.5.1.2 We also noticed that **filing of Producer/Manufactures' name not made mandatory** in the Indian Customs EDI System (ICES). The names of the 'Producer/ Manufacturer' and 'Supplier/Exporter' beside country of origin are critical for deciding rates of ADD applicable on import of specified commodities because different rates are prescribed for different manufacturers/exporters or combination thereof. However, though majority of BEs filed are passed through the Risk Management System in ICES, Audit noticed that the ICES did not have the provision for mandatory filling up the field for 'Name of Producer/ Manufacturer'.

In Kandla Commissionerate, it was noticed that 'exemption from ADD was claimed in 53 cases of import of Phenol¹², originating and exported from Korea RP and Singapore although these commodities are subjected to ADD when imported from Korea and Singapore. The field of 'manufacturer' was kept blank in the import documents filed in the system by the importer. Further, Audit could not find any comments of assessing officers in the system nor relevant files were made available to audit, due to which correctness of admissibility of exemption of ADD of ₹ 91.28 lakh, to these imports could not be ascertained.

This was brought to the notice of the Ministry in March 2019 their reply is awaited (October 2019).

3.5.2 Levy of ADD even after lapse of validity of ADD Notification

ADD is leviable from the date of imposition of publication of the notification by CBIC and is effective for a maximum period of five years unless revoked, superseded or amended earlier.

3.5.2.1 Imports of Di-Isocyanate classifiable under CTH 29291020 are leviable to ADD under notification No. 25/2017-Cus (ADD) dated 5 June 2017. The notification was valid for six months only i.e. upto 4 December 2017. Similarly, imports of Phosphoric acid, Vistamaxx 6202 propylene, Glazed/Unglazed porcelain/vitrified tiles etc. are leviable to ADD under notifications 19/2012 dated 4 April 2012, 119/2010 dated 19 November 2010 and 12/2016-Cus (ADD)

¹² Import of 'Phenol' (CTH 29071110) with various combinations of Country of origin/ export, Exporter/ Producer attracts ADD at prescribed rates (Notification No. 6/2016-Cus (ADD) dated 8 March 2016.

dated 29 March 2016 respectively with validity of five years and six months respectively.

In four Commissionerates¹³, audit noticed that the department had recovered ADD of ₹ 1.17 crore in 72 cases of Di-Isocyanate, Phosphoric acid, vistamaxx, phenol and Glazed/Unglazed porcelain/vitrified tiles imports after expiry of the prescribed notifications. Accordingly, recovery of ADD without any existing notification was irregular **(Annexure-4)**.

This was brought to the notice of the Ministry in March 2019; their reply is awaited (October 2019).

3.5.3 Non-compliance with the conditions of the ADD notifications

The ADD is levied on specific commodities and is source specific. The notification of ADD provides conditions for levy of ADD which are mainly the country of origin/country of export, name of the manufacturer, classification of imported commodity and nature of the imported good. Imports which meet all of some of these conditions, as laid down in the notifications, are leviable to ADD.

3.5.3.1 Audit observed that there was non/short levy of ADD amounting to ₹ 63.60 crore in 1205 cases **(Annexure-5)** imported through 15 Commissionerates during 2015-16 to 2017-18, due to incorrect application of ADD notification provisions. The commodities which escaped the duty as seen in the test check of transactions fell under product categories like plastics and plastic products, textile and nylon yarn, chemicals, metals and ceramics and glassware.

3.5.4 Non levy of ADD in contravention to the condition of country of origin

The levy of anti-dumping is both exporter specific and country specific. It extends to imports from those countries in respect of which duty has been notified by the Customs on recommendation by the designate authority.

During test check of transactions, Audit noticed several instances of non-levy of ADD on imports from countries in respect of which ADD was leviable. Few instances are discussed below;

(i) Machinery and Mechanical appliances

All kinds of Plastic Processing machines or Injection moulding machines also known as injection presses having clamping force not less than 40 tonnes and equal to or less than 3200 tonnes falling under CTH 84771000 originating in or

¹³ JNCH, Kandla, Kolkata and Mundra

exported from **PR China, Chinese Taipei, Philippines, Malaysia and Vietnam** attract ADD at 29 per cent of landed value.¹⁴

In five Commissionerates¹⁵, 24 consignments of injection moulding machines imported from China, Taiwan and Vietnam although correctly classified under CTH 84771000 were cleared without levy of ADD of ₹ 2.95 crore in contravention to the aforesaid notifications.

This was brought to the notice of the department in January/August 2018; their reply is awaited (October 2019).

(ii) Textiles, Fabrics and Yarn

(a) Nylon filament yarn produced by any producer originating in, or exported from **China, Taiwan, Malaysia, Thailand, Korea RP and Indonesia** and imported into India is leviable to ADD¹⁶ at the rate varying between USD 0.20 to 1.51 per kg depending upon combination of producer and exporter.

Twenty three consignments of Nylon filament yarn imported (July 2015 to January 2018) from **PR China, Korea RP and Indonesia** through Chennai Sea Commissionerate and ICD, Patparganj although correctly classified under Chapter heading 54 were cleared without levy of applicable ADD of ₹ 1.33 crore.

This was brought to the notice of the department in June 2018; their reply is awaited (October 2019).

(b) Mulberry Raw Silk Grade 3A grade and below with any specification falling under CTH 50020010, originating in or exported from **China** by any producer/exporter is subject to ADD¹⁷ at 1.85 US Dollar per kg.

In Chennai Sea Commissionerate, 5 consignments of Mulberry Raw Silk Grade 3 imported from China were cleared without levying applicable ADD of ₹ 13.67 lakh although similar imports through the same port were subjected to ADD.

This was brought to the notice of the department in March 2017; their reply is awaited (October 2019).

¹⁴ {Notification No. 57/2015 – Cus (ADD) dated 4 December 2015 and Notification No. 9/2016-Cus. (ADD) dated 15 March 2016}.

¹⁵ Chennai Sea, JNCH, Tuticorin Sea, ICD Bengaluru and ICD Patparganj

¹⁶ Notification No. 3/2012- Cus. (ADD) dated 13 January 2012, as amended by notification No.4/2017 dated 19January2017

¹⁷ Notification No 01/2016- Cus. (ADD) dated 28-01-2016 (S. No.1).

(iii) Metals and Articles of Metals

Import of 'Aluminium foil' from **China** is leviable to ADD at the rate of USD 1.63 per Kg if the combination of producer and exporter was 'any' other than those prescribed under notification¹⁸ dated May 2017.

Eight consignments of aluminium foil were imported through ICD- Tughlakabad and JNCH, Mumbai Commissionerates, from China. The imported goods were facilitated clearance through RMS without levying ADD. Non-adherence to provisions of notifications resulted in non-levy of ADD of ₹ 1.12 crore. On this being pointed out, ICD, Tughlakabad authorities reported recovery of entire non-levy of ₹ 75.11 lakh from three importers. Reply from JNCH, Mumbai is awaited (October 2019).

(iv) Chemicals and chemical products

(a) 2 Ethyl Hexanol (2EH) falling under CTH 29051620, where country of origin of the imported goods is **European Union** attracts ADD¹⁹ at prescribed rate of USD 113.47 per MT.

300 MT of 2EH imported from Romania were cleared without levy of Customs duty from Kandla Commissionerate though Romania is a member of the European Union. Imported goods were cleared without levy of ADD of ₹ 23.10 lakh.

On this being pointed out, the department reported recovery of ₹ 23.10 lakh.

(b) Imports of 'Phenol' classified under CTH 29071110, originating in or exported from **USA**, attracts ADD²⁰ at the prescribed rate of USD 159.63 per MT. As per Section 30 of Special Economic Zone (SEZ) Act, 2005, any goods removed from an SEZ to Domestic Tariff Area (DTA) shall be chargeable to duties of customs including antidumping, countervailing and safeguard duties under the Customs Tariff Act, 1975, where applicable, as leviable on such goods when imported.

Audit noticed that an SEZ Unit under Development Commissioner, Kandla Special Economic Zone (KASEZ) cleared 168 MT of Phenol (October 2016) in DTA without payment of ADD. Audit further noticed that the Phenol cleared in DTA was imported from USA which attracts anti-dumping duty. Therefore ADD was required to be levied in terms

¹⁸ No. 23/2017-Cus. (ADD) dated 16 May 2017

¹⁹ Notification No. 10/2016-Cus. (ADD) dated 29 March 2016).

²⁰ Notification No. 43/2014-Cus (ADD) dated 30 September 2014

of aforesaid notification on DTA clearances. This resulted in non-levy of anti-dumping duty to the tune of ₹ 18.13 lakh.

On this being pointed out (June 2017), the department reported (June 2017) recovery of ₹ 18.13 Lakh.

(v) Others

(a) Graphite electrodes

Imports of Graphite Electrodes of all diameters falling under CTH 8545, originating in or exported from China PPR are leviable to ADD²¹ @ USD 922.03 Per MT.

In JNCH, Mumbai and Vishakhapatnam Commissionerate, four consignments of Graphite Electrodes imported from China PR were cleared without levying ADD of ₹ 66.07 lakh.

(b) Measuring tapes (Steel tapes)

Imports of 'Measuring tapes' classifiable under Customs tariff heading (CTH) 90178090, originating in, or exported from Malaysia is leviable to ADD²² at the prescribed rate of USD 2.60 per Kg

One consignment (18250 kgs) of "Measuring Tapes (Steel tapes)" classifiable under CTH '90178090-Other instruments' imported from Malaysia (September 2016) through Chennai Sea Customs was cleared without levying ADD of ₹ 32.15 lakh.

On this being pointed out (February 2017) the department stated (November 2017) that demand notice has been issued. Further progress is awaited (October 2019).

3.5.5 Non levy of ADD on account of contravention of product specific conditions

In some cases, anti-dumping duty on the imported commodity is levied due to a specific characteristic of a product like thickness, weight or chemical composition. During test check of transactions, audit noticed that the duty was not levied on imports of these commodities even though the product specific conditions were met.

(i) Float Glass :As per various ADD notifications ²³issued during the period 2014 to 2017, import of clear float glass of nominal thickness ranging from 2 mm to 12 mm and imported from UAE, Saudi Arabia, Iran, Pakistan and China are leviable to ADD at the prescribed rates. The notifications prescribe that nominal thickness

²¹ Notification No 04/2015-Customs(ADD) SI No. 14 dated 13 February 2015,

²² Notification No. 16/2016-ADD dated 02.05.2016

²³ Notification Nos (i) 48/2014 dated 11.12.2014 (ii) 47/2015 dated 8.9.15 and (iii) 19/2017 dated 12.5.17

should be measured as per Bureau of Indian Standard (BIS) 14900:2000. As per this BIS Standard, the nominal thickness is to be considered within tolerance level thickness ranging from ± 0.20 mm to ± 80 mm. Thus, float glass of thickness 1.80 mm to 2.20 mm will be considered as of thickness 2mm.

In three Commissionerates²⁴ audit noticed imports of 42 consignments of clear float glass of thickness varying between 1.80mm to 12.80 mm and imported from specified countries which were cleared without levying ADD on the premise that nominal thickness of the glass was different from prescribed thickness of 2 mm, to 12 mm. This resulted in non levy of ADD amounting to ₹ 2.83 crore.

In two Commissionerates JNCH, Mumbai and Noida the department has not levied ADD on four consignments of Clear float glass of thickness 4 mm to 12 mm imported from Saudi Arabia and Iran respectively amounting to ₹ 20.83 lakh in contravention to the prescribed notifications (ADD notification no.48/2014-ADD and 19/2017-ADD).

This was brought to the notice of the department in June 2018; their reply is awaited (May2019).

(ii) Jute Sacks : Antidumping duty was leviable on import of Jute Products namely, Jute yarn/twine, Hessian fabric, and Jute sacking bags, in all forms and specifications, originating in, or exported from Bangladesh²⁵. In Petrapole Land Customs Station, department allowed clearance, without levy of ADD, of 416 consignments of 12766.7 MT of Jute fabrics for making sacks/bags for assessable value of ₹ 83.54 crore between January and June 2017 which were classified as “Sacking Fabrics” under CTH 53101012 and were imported from Bangladesh, without levying anti dumping duty amounting to ₹ 29.79 crore.

On this being pointed out, department did not agree with the audit contention on the ground that “jute sacking cloth” is not specifically mentioned in the notification of January 2017 quoted above. In their further reply (February 2018) the Department had forwarded test reports, in support of their contention and stated that reports revealed the goods imported were hessian cloth and not Jute product.

The department’s replies are not acceptable as in Indian trade parlance “Hessian” is used synonymously with Jute and as per the findings of Designated investigating authority, the intention of Indian Industry as well as investigating authority was to include all the major Jute products which were in product chain viz yarn, fabrics and bags of Jute that are being imported from Bangladesh in large quantity. Moreover, the ADD notification specifies CTH code only up to 4 digits implying that all items falling under the specified heading i.e. 5307, 5310,

²⁴ Chennai Sea, Tuticorin and, Kochi Customs

²⁵ Notification No. 01/2017-Customs (ADD) dated 5th January, 2017

5607 or 6305 are covered in definition “all forms and specification”. Accordingly, the imported commodity “Sacking Fabrics” by virtue of being classified under CTH 53101012 by the assessing officer will be leviable to ADD.

(iii) Flexible slab stock of Polyol is a polyether which forms polyurethane foams on reaction with catalysts and additives, which are then used in packaging, pillows, mattresses, transport seating. Import of flexible slab stock of polyol of molecular weight of 3000 to 4000 originating from European Union, Australia and Singapore is leviable to ADD²⁶ at the rate varying between USD 67.79 MT to 154.94/MT.

Thirty four consignments of Flexible slab stock of Polyol of molecular weight of 300 to 4000 under the description of Arcol Polyol 5613 and Voranol EP 1900 Polyol imported from Singapore and Spain were cleared without levy of ADD by two Commissionerates²⁷ even though, the department had levied ADD on the similar items with same grade and nomenclature in other import consignments. This resulted in short levy of ₹ 53.54 lakh.

This was brought to the notice of department in July 2008; their reply is awaited (October 2019).

(iv) Homo polymer of vinyl chloride is used in flooring, packaging sheets, bottles etc. Homo polymer of Vinyl Chloride Monomer (Suspension grade), classifiable under CTH3904, when originating and exported from European Union, Mexico and Taiwan is leviable to ADD²⁸, at the rate varying between USD 39.65/ MT to 189.99/MT.

In two Commissionerates ²⁹two consignments of PVC Resin Norvinyl Grade (Suspension grade) Lacovyl PVC Axiall CT-1110 Mass PVC Resin {synonyms for Homo polymer of Vinyl Chloride Monomer (Suspension grade)} were cleared without levy of ADD although the department had levied ADD on the similar item with same grade and nomenclature in other import consignments. The literature from the website of the producer revealed that all these grades are polyvinyl chloride homo polymer produced by suspension process. This resulted in non levy of ADD of ₹ 13.19 lakh.

This was brought to the notice of department in July 2018; their reply is awaited (October 2019).

(v) Ascorbic Acid : Import of Vitamin C , and commonly used synonyms of Vitamin C like Ascorbic Acid, L-Xylo ascorbic Acid, 3-Oxo-L gulofuranol actone

²⁶ notification No.9/2015-Cus (ADD) dated 7 April 2015}.

²⁷ JNCH and Mundra

²⁸ Notification No.26/2014-Cus (ADD) and 27/2014-Cus (ADD) dated 13 June 2014

²⁹ JNCH and Tuticorin Sea.

(Enol form), L-3-Keto threohexuronic Acid Lactone etc., as described under entry number” 867 of **MERCK INDEX**³⁰ classifiable under CTH 29362700 originating and exported from China is leviable to ADD³¹ @ USD 3.74 per Kg.

Five consignments of Sodium Ascorbate a ‘synonym of Vitamin C’ imported from China through Sea Customs Chennai, were cleared without levying ADD of ₹ 3.31 crore.

On this being pointed out, the department contested that Sodium Ascorbate could not be construed as a synonym of Vitamin C, because as per the Merck Index these were classified as two distinct compounds.

Reply of the department is not tenable because the notification clearly states that the ADD is applicable to all synonyms of Vitamin C including the most commonly used synonyms of Vitamin C as described under entry number 867 of Merck Index, meaning thereby, that ADD is leviable on import of all forms of Vitamin C. Moreover, sodium ascorbate is one of the mineral salts of ascorbic acid (Vitamin C).

Similar non levy on Sodium Ascorbate imports was pointed out in the Audit Report No. 8 of 2015 (Para No. 4.9), wherein Ministry had admitted the audit observation and issued demand notices.

In addition to the sample check, an analysis of ICES data the year 2016-17³² revealed non-levy of ADD amounting to ₹ 13.18 crore on import of several commodities like plastic injection moulding machines, cold rolled seamless pipes, glass fibre, float glass, rubber chemicals, carbon black and others. These commodities were imported through ICD, Whitefield-Bangalore, Noida Commissionerate, Kolkata (Sea), Kolkata (Air), Custom House (Pipav)-Gujarat, and Custom House, Hazira-Gujarat (**Annexure 6**). This was pointed to the Customs Commissionerates in December 2018 and January 2019, their response is awaited (October 2019).

3.5.6 Incorrect computation of ADD

- (i) Plastic processing or injection moulding machines imported under CTH 8477 1000 from People’s Republic of China/Taiwan attract ADD³³, at 29 per cent of the “Landed Value³⁴”. Landed value’ means Assessable value plus Basic customs duty.

³⁰ *The Merck Index* is an encyclopaedia of chemicals, drugs and biological published online by the Royal Society of Chemistry.

³¹ Notification No.38/2015-Cus (ADD) dated 6 August 2015.

³² ICES data relating to ADD was available only for 2016-17 at the time of audit

³³ Notification no. 057/2015-ADD dated 4 December 2015 and 9/2016-Customs (ADD) dated 15 March 2016,

³⁴ “landed value” means the assessable value as determined under the Customs Act, 1962 and includes all duties of customs except duties levied under sections 3,3A,8B,9 and 9A of the said Act.

In two Commisionerates³⁵ , in 37 consignments the department incorrectly computed the ADD at the assessable value instead of landed value. This resulted in short levy of ADD of ₹ 15.24 lakh. Of 37 consignments, in 31 consignments imported through ICD, Tughlakabad ADD was calculated by the system and the clearance was also facilitated through the system.

This was brought to the notice of the department in January/August 2018; their reply is awaited (October 2019).

- (ii) Imports of “Purified Terephthalic Acid” classifiable under CTH ‘29173600’ originating in and exported from Thailand and Korea RP is leviable to ADD³⁶ at the rate of USD 45.43 per MT (PMT) when the producer and exporter combination is Indorama Petrochem or TPT Petro Chem Public Ltd. and at the rate of USD 62.55 PMT in any other combination of producer and exporter.

Twenty one consignments of “Purified Terephthalic Acid” imported through JNCH were cleared levying ADD at the rate of USD 45.43 PMT instead of USD 62.55 PMT as the producer and exporter were other than mentioned aforesaid. This resulted in short levy of ADD amounting to ₹ 1.55 crore.

This was brought to the notice of department in June/November 2017; their reply is awaited (October 2019).

3.5.7 Incorrect resorting to provisional assessments

As per para 3.1 of Chapter 7 of Customs Manual provisional assessments must be finalized expeditiously, well within six months.

- (i) Under Proviso to Section 15 of the Customs Act, 1962, the date for determination of rate of duty and tariff valuation of imported goods is the date of entry inward of the vessel, even if the bill of entry has been filed before the date of entry inwards of the vessel.

An importer imported (July 2016) through JNCH, Mumbai two consignments of Purified Terephthalic Acid from China. Two advance bills of entry were filed on 4 July 2016 while the date of entry inward of the vessel was 5 July 2016. Import of Purified Terephthalic acid classifiable under CTH 29173500 is leviable to ADD³⁷ from 5 July 2016 at prescribed rate of USD 97.60 per MT, if the country of origin and export is China PR.

³⁵ ICD, Tughlakabad and Chennai Sea Commisionerate

³⁶ Notification No. 23/2015-Cus. (ADD) dated 27 May 2015.

³⁷ Notification No.28/2016-Cus (ADD),Sl. No.2 dated 5 July 2016).

Both the consignments were provisionally assessed and cleared without levy of ADD and with departmental comments “till further clarification of applicability of ADD”.

Despite clear provisions in Section 15 of Customs Act, 1962 to consider the date of entry inward of the vessel (i.e. 5 July 2016) as the date of presentation of the BE, these consignments were provisionally assessed without levying applicable ADD. As the date of entry inward of the vessel was 5 July 2016 and notification No.28/2016 was issued with effect from 5 July 2016, ADD was required to have been levied. This resulted in postponement of ADD of ₹ 1.34 crore in provisional assessments. Moreover, audit noticed that the provisional assessments have not been finalised despite expiry of more than six months (October 2018).

On this being pointed out, the department stated that the matter has been taken up with the importer for payment of ADD. Further progress is awaited (October 2019). (**Annexure 7, SI No. 1**).

- (ii) Import of Vinyl Chloride Monomer (Suspension Grade) classifiable under CTH 3904 attract ADD³⁸ at the prescribed rate, if the country of origin and export is Indonesia. Two consignments of “PVC Resin Grade FJ-65R” imported (September 2016) through JNCH (BsE No.6571736 and 6622177 dated 1 and 6 September 2016 respectively) by M/s Kriti Industries India Ltd. were provisionally assessed pending test reports and were cleared without levy of ADD of ₹ 48.15 lakh. These assessments were pending finalisation despite expiry of more than 6 months.

Audit also noticed that similar imports by other importers through JNCH, Mumbai were subjected to ADD during the relevant period.

Reasons for non finalisation of the provisional assessments within stipulated period of six months and status of the test report was enquired from department in July 2018; their reply is awaited (October 2019) (**Annexure 7, SI No.2**).

3.6 Conclusion

The conclusions in this chapter were based on limited audits carried out in the field. However, the gamut of issues brought out even in this limited audit point to systemic deficiencies that need to be addressed by the department. The test check revealed several instances of escapement of levy and instances of non-compliance with the conditions of the anti-dumping which resulted in non/short levy of anti-dumping duty amounting to ₹ 86.69 crore. The department

³⁸ notification No.27/2014-Cus (ADD) dated 13 June 2014, SI No.29

accepted observation amounting to ₹ 53 crore and reported recovery of ₹ 1.20 crore. Due to the obvious limitation of test check methodology, cases mentioned in this chapter are illustrative. Department is advised to carry out a review of similar imports which attract ADD to ensure compliance to the conditions of ADD notifications.

Department of Revenue may review the assessment process being followed in all cases where audit's test check has pointed out lacunae in the assessment procedures resulting in short or non-levy. Further, Audit has brought forth systemic deficiencies in the Customs EDI system wherein the declaration of producer/manufacturer's name which is an essential condition in imposition of the levy, has not been made mandatory. This deficiency may be addressed.

CHAPTER IV

Non- Compliance to Provisions of Customs Act, Customs Tariff Act and Tariff Notifications

4.1 Goods imported in a vessel/aircraft into India attract customs duty and unless these are not meant for customs clearance at the port/airport of arrival and are intended for transit to another customs station or to any place outside India, detailed customs clearance formalities of the landed goods have to be followed by the importers. The importer is required to file a bill of entry (BE) giving details of the cargo, imported tariff classification and applicable duty, and other required information. Under self-assessment, bill of entry can be filed electronically through ICEGATE³⁹ into the Indian Customs Electronic Data Interchange (EDI) system referred ICES⁴⁰. In the non-EDI system the bill of entry is filed manually by the importer along with a prescribed set of documents.

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

4.3 Bills of Entry filed electronically into ICES through a Customs House Service Centre or web based ICEGATE are transmitted by ICES to the Risk Management System (RMS)⁴¹. The RMS processes the data through a series of automated steps and results in an electronic assessment. This assessment

³⁹ ICEGATE stands for the Indian Customs Electronic Commerce/Electronic Data interchange (EC/EDI) Gateway. ICEGATE is a web based portal through which the department offers a host of services, including electronic filing of the Bill of Entry (import goods declaration), Shipping Bills (export goods declaration), e-payment, on-line registration for IPR, Document Tracking status at Customs EDI, online verification of DEPB/DES/EPCG licences, IE code status, PAN based CHA data and links to various other important websites/information pertaining to the Customs business

⁴⁰ The Indian Customs EDI System (ICES) has two aspects: (i) Internal Automation of the Custom House for a comprehensive, paperless, fully automated customs clearance system (ii) Online, real-time electronic interface with the trade, transport, Banks and regulatory agencies concerned with customs clearance of import and export cargo through ICEGATE.

⁴¹ Risk Management System is an IT driven system with the primary objective to strike an optimal balance between facilitation and enforcement and to promote a culture of self-compliance in customs clearances. It uses econometrical modelling to identify the relevant criteria for assessing the risk associated with trade transactions and applies criteria in a systematic manner to determine the level of risk for each transaction and assigns the levels of customs intervention according to the level of risk and available resources.

determines whether the Bill of Entry will be taken-up for action, i.e. manual appraisal by assessing officer or examination of goods, or both, or be cleared after payment of duty and Out of Charge directly, without any assessment and examination. Where necessary, RMS will provide instructions for Appraising Officer, Examining Officer or the Out-of-Charge Officer. The system of clearances of imports through RMS based ICES and/ or assessment by Customs authorities should ensure that the condition prescribed in the applicable notifications are fully met before exemptions could be granted.

4.4 Fully automated procedures of ICEGATE have facilitated comprehensive and paperless customs procedures. The pan-India transaction data generated at different Customs Commissionerate is available in electronic format in a centralised database maintained at the Directorate of Systems (DG/Systems) under CBIC. This provides a good opportunity to the Audit for hundred per cent review of data, instead of test check transactions in a few locations, and provides a high level of assurance to the Government and the Parliament on correctness of application of tax law across all Customs Commissionerates. The availability of complete data also minimizes the requirement of physical visits of Audit to the Customs premises for test check of transactions.

Data requisitioned by audit for import and export transactions in 67 Commissionerates for the year 2017-18 was received with much delay from CBIC, and that too with many gaps and deficiencies. The deficiencies were brought to the notice of the CBIC in February 2019, for which the response is still awaited.

In the absence of full data, the conclusions in this chapter on compliance audit were based on limited audits carried out in the field by physically visiting the 38 Commissionerates. Audit has, to the extent possible and based on the findings in test check, quantified total number of transactions at risk, based on the pan-India data that had been provided by the department. The range of audit findings noticed even in the test check point to systemic deficiencies that need to be addressed by the department.

4.5 Audit Sample: During 2017-18, a total of 46.04 lakh BE and 74.68 lakh Shipping Bill (SB) were generated, out of which Audit selected a sample of 4.04 lakh BE (8.77 per cent) and 1.62 lakh SB (2.17 per cent). Significant audit observations with revenue implication of ₹ 10 lakh or more noticed during test check of import/export documents in the Customs Commissionerates are included in this chapter.

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

- IV. Incorrect application of General exemption notifications
- V. Misclassification of imports
- VI. Incorrect levy of applicable levies and other charges

4.7 Incorrect application of General exemption notifications

Government, under section 25 (1) of the Customs Act, 1962 is empowered to exempt either fully or subject to such conditions as may be stipulated in the notification, goods of any specified description, from the whole or any part of duty of customs leviable thereon.

Compliance audit of 14 Commissionerates conducted during April to March 2018, brought out 10 cases of incorrect grant of exemptions, on transactions assessed either through RMS or manually by customs authorities, each involving revenue implication of ₹ 10 lakh or more, having total revenue implication of ₹ 5.33 crore. Individual cases of incorrect grant of exemption of values less than ₹ 10 lakh have been reported to the local Commissionerates through field inspection reports. Five cases are discussed in the following paragraphs and remaining five cases involving revenue of ₹ 1.62 crore which have been accepted by the department and recoveries made/recovery proceedings initiated are mentioned in **Annexure 8**.

4.7.1 Short levy of Basic customs duty (BCD) on import of “Ink cartridges for use in printers for computers” due to lack of clarity in the notifications

The Basic customs duty (BCD) on “Ink cartridges for use in printers for computers” classifiable under Customs tariff heading (CTH) 84439951/84439952 was reduced to five per cent vide notification no.50/2017-cus dated 30 June 2017. On the same day, notification no.56/2017-cus dated 30 June 2017 was issued which increased BCD on goods falling under CTH 84439951/84439952 i.e. Ink cartridges with and without print head assembly to 10 per cent with effect from 1 July 2017. However, the notification did not refer notification issued earlier (i.e. 50/2017-cus) and hence lacked clarity as to which notification shall prevail for assessment of imports.

Audit carried out test check of bills of entry (BsE) in respect of import of Ink cartridges under CTH 84439951/84439952 made through Nhava Sheva JNCH, Mumbai Zone II and Air Cargo Complex (ACC), Mumbai Zone III vis-à-vis application of the above-mentioned notifications no.56/2017-cus and no.50/2017-cus dated 30 June 2017 to assess whether exemptions had been applied correctly.

Audit scrutiny revealed that during the period July 2017 to February 2018, a total of 1113 BsE were filed pertaining to import of Ink cartridges through

Nhava Sheva JNCH and ACC Custom houses. In 1112 BEs there was no mention that the item imported was to be used in printers for computers. Out of total 1112, 943 BsE (85 per cent) were provisionally assessed while 169 BsE were finally assessed.

In 169 BsE finally assessed, BCD was levied at the rate of 10 per cent in 122 BsE while in remaining 47 BsE duty was levied at five per cent instead of 10 per cent resulting in short levy of duty of ₹ 1.85 crore. Thus, due to lack of clarity in the notifications as to which notification would prevail for levy of duty on import of Ink cartridges for use other than computer printers resulted in short levy of duty of ₹ 1.85 crore.

The outcome of another 943 BsE which were provisionally assessed at the time of audit is awaited (October 2019).

The audit observation was communicated to the respective Commissionerates in September 2017/January 2018/February 2018. In reply, JNCH Commissionerate initially stated (November 2017) that as per notification no.50/2017-cus (serial no.230), the duty on the imported items has been correctly levied at the rate of five per cent. Subsequently the Commissionerate stated (November 2018) that a SCN for ₹ 23.49 lakh in respect of two consignments has been issued to an importer. Further progress is awaited (October 2019).

The Commissionerate Air Cargo Complex (ACC), Mumbai stated (February 2018) that a less charge demand memo for ₹ 51.67 lakh has been issued to the importer.

The fact that department had provisionally assessed majority of BsE(983), and had levied duty at the rate of 10 per cent in the case of 122 cases and at five per in other 47 cases, indicated that there was no clarity on the rate of duty applicable on ink cartridges after issue of notification no.56/2017-cus and department was adopting inconsistent approach in assessment of such imports.

Ministry of Finance, Department of Revenue, while issuing notification no.56/2017 dated 30 June 2017 ought to have made reference to earlier notification no.50/2017-cus issued on the same day, clarifying the applicable rate on ink cartridges imported under both notifications as they covered commodities under the same Customs tariff heading.

Apart from the cases test checked in audit, analysis of data on imports during 2017-18 revealed that 1202 similar Ink cartridges imported through Mumbai (Air), Mumbai-Nhava Sheva, Kolkata (Air & Sea), Bangalore (Air), Delhi (Air), ICD, Tughlakabad, Chennai (Air & Sea)and Katupalli, Tamil Nadu during 2017-18 were allowed benefit of exemption notification 50/2017-cus. Based on

the audit observation involving detailed examination of approximately 50 per cent of total BsE involved in these imports, the correctness of application of notifications in all other cases need to be examined by the Board.

The DAP was issued to the Ministry in October 2018, their response is awaited (October 2019).

4.7.2 Short levy of Basic customs duty (BCD) due to incorrect exemption granted for import of research equipment meant for Public funded research centres

Public Funded research institutions or a university or an Indian Institute of Technology or Indian Institute of Science, Bangalore or a Regional Engineering College, and Regional Cancer Centre other than a hospital are allowed import of research equipment at concessional rate of BCD subject to the conditions specified, (notification no.51/1996-cus dated 23 July 1996). Further, as per explanation provided in the notification “Hospital” includes an Institution, Centre, Trust, Society, Association, Laboratory, Clinic or Maternity Home which renders medical, surgical or diagnostic treatment. The exemption to the Regional Cancer Centre is available which is registered with the Government of India, in the Department of Scientific and Industrial Research and the importer produces a certificate to this effect from an officer not below the rank of a Deputy Secretary in the concerned Department.

A cancer hospital at Patna run by a non-profit trust imported (June/July 2016) three consignments of Linear Accelerator and its parts used for radiotherapy valued at ₹ 7 crore through Commissionerate of Customs, Kolkata Port. The imported goods were cleared at concessional rate of BCD of 5 per cent under aforesaid notification, instead of applicable rate of 7.5 per cent.

Audit scrutiny revealed that the exemption under the aforesaid notification was incorrectly granted since the assessee was not registered as Regional Cancer Institute with the Government of India, in the Department of Scientific and Industrial Research. Hence it did not meet the criteria laid down in the aforesaid notification. Incorrect grant of notification benefit resulted in short levy of duty of ₹ 96.65 lakh.

On this being pointed out (July 2017), the Commissioner of Customs (Port), Kolkata authorities issued (December 2017) a demand notice to the importer.

Analysis of import data during 2017-18 revealed that Measuring instruments, laptop, medical equipment, video camera, operating table light, Gas chromatograph etc. were imported by four hospitals through Bombay (Air), Nhava Sheva, Kolkata (Air) and Cochin (Air) during 2017-18 and were allowed benefit of exemption notification 51/1996. Board needs to examine these

imports to ensure that no revenue has been lost by granting undue benefit of duty concessions on these imports.

The DAP was issued to the Ministry in June 2018, their response is awaited (October 2019).

4.7.3 Short levy of Basic customs duty (BCD) due to irregular concession on import of “Vegetable fats and oils” for industrial use cleared through RMS

As per the notification no.12/2012-cus (serial no.58), import of ‘Vegetable oil’ (other than refined and edible grade) classifiable under Customs tariff heading (CTH) 1509/1515 is not eligible for concessional rate of basic customs duty (BCD).

Audit findings on incorrect application of notification benefits to imports of vegetable oil meant for industrial use were reported in Audit Report No.1 of 2017 (paragraph no.6.2) which were accepted by the Ministry.

A test check of similar imports during 2017-18 revealed that M/s A and 10 other importers had imported (April 2015 to March 2017) 30 consignments of ‘Different vegetable fats and oils’ for industrial use through ACC, Mumbai. The imported goods were classified as ‘raw material for cosmetic use/industrial use’.

The department incorrectly allowed the benefit of aforesaid notification and cleared the goods after levying BCD at concessional rates of 7.5 percent/15 percent/20 percent instead of applicable 100 percent. The misclassification of imported goods under edible grade and incorrect avilment of exemption led to short levy of duty amounting to ₹ 39.84 lakh.

Audit noticed that these imports were subject to RMS based clearance, which indicated that the notification conditions were not correctly incorporated in the system, even though a similar finding reported in the earlier Audit Report had been accepted by the Ministry with an assurance to take corrective measures.

On this being pointed out (August to October 2017), the department stated (October/December 2017) that less charge cum demand notices have been issued to all the importers and reported (April 2018) recovery of ₹ 1.79 lakh from one importer. Apart from the cases test checked in audit, analysis of data on imports during 2017-18 revealed that 21 similar imports imported through Bangalore (Air), Delhi(Air), Mumbai (Nhava Sheva) and Mumbai (Air) for Cosmetic/industrial purposes were allowed benefit of exemption notification. Board may examine these imports and take corrective action.

The DAP was issued to the Ministry in October 2018, their response is awaited (October 2019).

4.7.4 Short levy of Basic customs duty (BCD) on prawn feed imports cleared through RMS

In terms of serial no.107 of notification no.12/2012-cus dated 17 March 2012 prawn feed, shrimp larvae feed and fish feed in “pellet form” classifiable under Customs tariff heading (CTH) 230990 are leviable to BCD at the rate of 5 percent.

M/s B India Ltd. and one another, imported (April 2016 to March 2017) four consignments of “Prawn/Shrimp feed” valued ₹ 1.13 crore through Air Customs, Chennai which were classified under CTH 23099031 as ‘Prawn and shrimps feed’ and cleared through RMS to concessional BCD at 5 percent in terms of aforesaid notification.

Audit noticed that the imported goods were not in “pellet form” and hence the exemption extended was not in order and BCD was leviable at the rate of 30 percent. The incorrect extension of notification benefit had resulted in short levy of duty ₹ 29.15 lakh.

On this being pointed out (June 2017/June 2018), the Ministry/department reported (August/December 2018) issue of SCN to M/s B India Ltd and recovery of ₹ 14.20 lakh from another importer.

Since the imports were subject to RMS based clearance it is evident that the RMS was unable to apply the notification conditions indicating that the business rule mapping in RMS was insufficient.

Apart from the cases test checked in audit, analysis of data on imports during 2017-18 revealed that 122 similar imports imported through Nhava Sheva, Chennai(Air & Sea),Hyderabad and Hyderabad (Air) were allowed benefit of exemption notification. Board needs to examine these imports and take corrective action.

4.7.5 Short levy of IGST due to application of incorrect rate on import of Speaker/Headphones

Parts of speakers, headphones, earphones or amplifier etc. are classifiable under Customs tariff heading (CTH) 85189000 and attract IGST at the rate of 28 percent vide serial no.148 of Schedule IV of notification 1 Integrated Tax (Rate) dated 1 July 2017.

M/s C Ltd. and two others imported (July to September 2017) seven consignments of parts of speakers, headphones etc through ICD, Tughlakabad. The imported goods were correctly classified under CTH 85189000 –as parts

but IGST was incorrectly levied at the rate of 18 percent (vide serial no.380 of Schedule III of notification 1 Integrated Tax (Rate) dated 1 July 2017) instead of applicable rate of 28 percent. Thus, incorrect application of IGST rate resulted in short levy of duty of ₹ 20.28 lakh.

On this being pointed out (October 2018), Department of Revenue (DoR), Ministry of Finance reported (June 2019) recovery of ₹ 20.28 lakh along with interest of ₹ 3.16 lakh from the importers.

4.8 Misclassification of Goods

Classification of items imported is governed under the provisions of Customs Tariff Act, 1971 and various notifications issued from time to time. Levy of applicable duties is dependent on classification applied to the imported items.

During test check of records, Audit noticed 21 cases of short levy/non-levy of Customs duties due to misclassification of imported goods each involving revenue implication of ₹ 10 lakh or more, having total revenue implication of ₹ 9.66 crore. Individual cases of misclassification of imports with money value less than ₹ 10 lakh have been reported to the local Commissionerates through field inspection reports.

Out of 21 cases of misclassification mentioned in the Chapter, the department has accepted 18 cases involving ₹ 4.84 crore and recoveries of ₹ 1.74 crore are made in seven cases (**Annexure 9**). The other three cases are discussed in this chapter.

4.8.1 Seeds of herbaceous plant principally cultivated for flowers misclassified as “Other seeds”

According to Customs tariff, seeds of herbaceous plants cultivated principally for their flowers are classifiable under CTH 12093000 and leviable to basic customs duty (BCD) at the rate of 15 per cent (serial no.41 of the notification no.12/2012-cus dated 17 March 2012).

Cases of misclassification of seeds of herbaceous plants were reported in the last year Audit Report (Para No. 6.3 of AR No. 1 of 2017). Ministry had accepted the audit observation and assured (May 2017) that all field formations are being sensitized

During test check of BsE audit noticed that thirty two consignments of ‘Flower seeds of various herbaceous plants (Marigold, Tagetes etc.) for sowing’ imported (January 2016 to September 2017) by six importers through Air Cargo Complex (ACC), Mumbai were mis-classified as other vegetable seeds/ other seeds under CTH 12099190/12099990 and duty was assessed at concessional rate of 5 per cent (serial no.42 of notification no.12/2012-cus dated 17 March 2012).

As the imported items were seeds of herbaceous plants for sowing, cultivated principally for flower purpose, these should have been appropriately classified under CTH 12093000 and assessed to BCD at the rate of 15 per cent. The misclassification resulted in short levy of duty of ₹ 2.28 crore.

On this being pointed out (August 2017), the department stated (October 2017) that less charge memo has been issued to four importers. The DAP was issued to the Ministry in June 2018, their response is awaited (October 2019).

Analysis of imports data revealed that 89 similar imports were made through Bombay Air cargo during 2017-18 and were classified under CTH 1209 and exempted from or levied BCD at the rate of 5 per cent. Board may examine these imports and take corrective action.

4.8.2 Short levy of duty due to misclassification of 'Seaweed Extract Powder'

In terms of Rule 3 (a) of 'Rules for the interpretation of the schedule to Customs tariff Act, 1975' while adopting the classification of items for tariff purposes, the heading which provides the most specific description shall be preferred to the headings providing a more general description.

Accordingly, 'Plant growth regulators' which are applied to alter the growth process of a plant so as to accelerate or retard growth, enhance yield, improve quality or facilitate harvesting etc. are to be classified under CTH 38089340. There are currently five recognized groups of 'Plant growth regulators' also called plant hormones: auxins, gibberellins, cytokinins, abscisic acid (ABA) and ethylene.

Seaweed and seaweed derived products such as 'Seaweed extract powder' derived from vegetable seaweed contains sufficient amount of oceanic bio-active matter and used as bio stimulants in crop production due to presence of multiple growth regulators such cytokinin, auxins, gibberline etc. as well as presence of macro nutrients which are necessary for plant growth and development. Seaweed extract powder is used as plant growth promoter for all kinds of plants and therefore, in terms of aforesaid interpretation rules is classifiable under CTH 38089340 and attracts basic customs duty (BCD) at the rate of 10 per cent, additional duties of customs equivalent to excise duty at 12.5 per cent.

Eighteen consignments of 'Soluble seaweed extract powder' were imported (January 2016 to March 2017) by seven importers from United States, Norway and Canada through JNCH, Mumbai. The goods were incorrectly classified under CTH 31010099 as 'animal and vegetable fertilizers' produced by the mixing or chemical treatment of animal or vegetable products and assessed to BCD at the rate of 7.5 per cent and additional duties of customs at nil rate

instead of levying BCD and CVD at 10 per cent and 12.5 per cent respectively. The misclassification resulted in short levy of duty of ₹ 1.76 crore.

Analysis of imports data revealed that 48 similar imports made through JNCH, Mumbai during 2017-18 were classified under CTH 3101/3808 and levied BCD at the rate less than 10 per cent.

Since the BsE test checked by audit had been facilitated through RMS without detecting misclassification, it is indicated that RMS rules are not sufficient to distinguish the classification criteria for CTH 3101 and 3808. Board may examine these imports and take corrective action.

On this being pointed out (April 2017), the department stated (May/September 2017/October 2018) that show cause notices have been issued to five importers. Reply in respect of other importers is awaited (October 2019).

4.8.3 Brush cutters, reapers and parts thereof misclassified as mechanical appliances for dispersing or spraying liquids/Harvesting or threshing machinery

As per Harmonised System of Nomenclature (HSN) note under CTH 8433, portable machines for trimming lawns, grass and brush cutters having self-contained internal combustion engine mounted on a light metal frame and equipped with cutting devices, have been excluded for classification under CTH 8433 and are classifiable under CTH 84672900 and their parts are classifiable under CTH 84679900. The subject goods are leviable to additional duty of customs at the rate of 12.5 per cent.

Misclassification of grass and brush cutters was pointed out in the previous year Audit Report (Para No. 6.4 of AR No. 8 of 2015), which had been admitted by the Ministry.

Twenty two consignments of brush cutters, grass/weed cutters of various models and parts thereof were imported by nine importers through Chennai, Sea Commissionerate. The imported goods were incorrectly classified under different headings like 8424/8432/8433 of the Customs tariff as Agriculture/Horticulture/Harvesting machinery and their parts instead of under CTH 8467 and cleared at nil rate of additional duty of customs. The misclassification resulted in short levy of duty of ₹ 77.85 lakh.

Audit noticed that most of the BsE for these imports were subject to RMS based assessment.

On this being pointed out (November 2017), the department reported (October 2018) recovery of ₹758 in one case. Reply in respect of remaining importers is awaited (October 2019). Analysis of imports data revealed that 33 similar imports

made through Mumbai (Air & Sea), Chennai (Sea), Dadri and Kolkata (Sea) ports during 2017-18 were misclassified under CTH 8479, 8409, 8433 and exempted from duty. Board may examine these imports and take corrective action.

4.9 Short/non recoveries of applicable levies and other charges

Test check of records (November 2016 to March 2018) revealed 16 cases each involving revenue implication of ₹ 10 lakh or more where imports were incorrectly assessed. The total revenue implication was ₹ 73.10 crore. Out of 16 cases, the department has accepted 12 cases involving ₹ 37.67 crore and recoveries are made/recovery proceedings initiated (**Annexure 10**). The other four cases are discussed in the succeeding paragraphs.

4.9.1 Imports of motor spirit cleared without levying additional duty of customs

“Alkylate”, also known as “green petrol” is 99 per cent cleaner than regular petrol and is used to run boat engines, motorbikes, go-karts, mopeds etc. It is classifiable under Customs tariff heading (CTH) 27101219 as “other motor spirits” of the Customs tariff and leviable to additional duty of customs at the rate of ₹ 6 per litre in terms of notification no.6/2015-cus dated 1 March 2015.

An importer imported (January 2017) two consignments of “Alkylate” valued at ₹ 111.86 crore through Sea Customs, Chennai. The goods were correctly classified under CTH 27101219 – “other motors spirits” but additional duty of customs at ₹ 6 per litre, applicable to petrol were not levied. The non-levy of additional duty of customs resulted in short levy of duty of ₹ 17.60 crore.

On this being pointed out (July 2017), the department stated (October/November 2017) that demand notice has been issued to the importer and adjudication proceedings were in progress.

Analysis of ICES data revealed that two similar imports made through Bombay (Air), Nhava Sheva during 2017-18 were incorrectly assessed under CTH 27101960/27102000. Board may examine these imports and take corrective action.

The draft audit paragraph was issued to the Ministry in June 2018, their response is awaited (October 2019).

4.9.2 Short insurance taken by the custodian of Inland Container Depot (ICD)

Regulation 5 (1) (iii) of Handling of Cargo in Customs Area Regulations, 2009 (HCCAR) provides that Customs Cargo Service Providers (CCSPs) shall provide, to the satisfaction of the Commissioner of Customs, insurance for an amount equal to the average value of goods likely to be stored in the customs area based

on projected capacity and for an amount as the Commissioner of Customs may specify having regard to the goods which are already been insured by the importers or exporters.

The Central Board of Indirect Taxes & Customs (CBIC) has clarified, vide its circular no.32/2013-cus dated 16 August 2013, that the amount of insurance to be provided by CCSPs should be equal to the average value of goods likely to be stored in the customs area for a period of 30 days (based on the projected capacity) and for an amount the Commissioner of Customs may specify having regard to the goods already been insured by the importers or exporters. Further, the CBIC vide its circular no.42/2016-cus dated 31 August 2016 amended the amount of insurance to be provided equal to the average value of goods likely to be stored in the Customs area for a period of 10 days.

Audit scrutiny of cargo handled revealed that during the year 2016-17 ICD, Agra, handled import cargo to the value of ₹ 39.58 crore and export cargo amounting to ₹ 1311 crore. The custodian has taken the insurance of ₹ 20 crore⁴² in relation to cargo & containers including loss/damage to accessories and towards air cargo consignments for 2017-18. However, as per aforesaid CBEC circulars M/s CONCOR, the custodian, was required to take insurance for 2017-18 for ₹ 36.99 crore⁴³ (on the average value of good for 10 days) based on the value of handled import and export cargo for the period 2016-17. Hence, the amount of insurance taken by the custodian was short by ₹ 16.99 crore⁴⁴ for the year 2017.18.

On this being pointed out (February/March 2018), the Commssionerate accepted (October 2018) that the Custodian had taken short insurance for covering liabilities to the Customs and the Custodian at ICD, Agra have been asked to take insurance Policy as per Board circular No. 42/2016-cus dated 31 August 2016.

The draft audit paragraph was issued to the Ministry in October 2018, their response is awaited (October 2019).

4.9.3 Short levy of basic customs duty on Mobile/smart phones imports

Telephones for cellular networks or for other wireless networks classified under CTH 85171210/85171290 are leviable to basic customs duty (BCD) at the rate of 15 percent notification no.91/2017-cus dated 14 December 2017.

M/s D India Private Limited and M/s E Limited imported (December 2017) three consignments of mobile/smart phones through Air Cargo Complex (ACC),

⁴² In relation to cargo & containers including towards loss/damage to accessories: ₹ 15 crore + towards air cargo consignment: ₹ 5 crore (total ₹ 20 crore)

⁴³ $(39.58+1310.65) \times 10 / 365 = ₹ 36.99$ crore

⁴⁴ ₹ 36.99 crore - ₹ 20 crore = ₹ 16.99 crore

Mumbai Zone III. The goods were classified under CTH 85171210/85171290 but cleared levying BCD at the rate of 10 percent instead applicable rate of 15 percent. This resulted in short levy of BCD to tune of ₹ 58.76 lakh. Audit noticed that BEs for all these imports was facilitated through RMS. Short levy of duty despite correct classification of imported items indicated that the system was not updated with the enhanced applicable rate of duty.

On this being pointed out (January/March 2018) the department reported (April 2018) that differential duty of ₹ 47.24 lakh and interest of ₹ 1.90 lakh has been recovered from M/s D India Private Limited. While in respect of imports made by M/s E Limited, the department stated that goods were already assessed with 15 percent BCD, hence no differential duty is required to be paid by the importer. The department reply is not acceptable because on subsequent re-verification from the records, audit noticed that the bills of entry in respect of M/s E Limited were assessed with 10 percent BCD.

Analysis of ICES data revealed that in 17 similar imports made through Mumbai (Air), Bangalore (Air) and Delhi (Air) during 2017-18, BCD was levied at 10 per cent instead of applicable rate of 15 per cent. Board may examine these imports and take corrective action.

The DAP was issued to the Ministry in June 2018, their response is awaited (October 2019).

4.9.4 Non levy of CVD on import of the parts of an equipment/component meant for wind operated electricity generators

Casting for wind-operated electricity generators whether or not machined falling under CTH 84834000, 85030010 and 85030090, when originating in or exported from the Peoples Republic of China are leviable to prescribed rate of CVD under customs notification no.1/2016 (CVD) dated 19 January 2016.

M/s F India Industrial Private Limited and two others imported (June 2016 to February 2017) from China 10 consignments of casting parts of wind-operated electricity generators through Air Cargo Complex (ACC), Mumbai. The department classified the imported goods under CTH 84834000, 85030010 and 85030090, but cleared these goods without levying prescribed CVD. This resulted in non levy of duty of ₹ 25.46 lakh. Audit noticed that BEs for all these imports was facilitated through system.

On this being pointed out (August/November 2017), the department reported (November 2017) that less charge demand memos have been issued to all importers.

Analysis of ICES data revealed that in 120 similar imports made through Chennai (Sea) and Krishnapatnam Port during 2017-18 CVD was not levied. Board may examine these imports and take corrective action.

The draft audit paragraph was issued to the Ministry in August 2018, their response is awaited (October 2019).

4.10 Other Irregularities

Incorrect sanction of brand rate of drawback for exports

Fixation of brand rate of drawback is inter alia subject to satisfaction of Rule 8 (2) of drawback rules which stipulates that the free on Board (FOB) value of export goods should be more than Cost Insurance freight (CIF) of imported inputs which are declared to have been utilized for the manufacture of the export goods meaning thereby that there was value addition to the imported inputs.

4.10.1 M/s G in Kerala had filed application (September 2016) for fixation of brand rate of Drawback under Rule 7 (1) of the Customs, Central Excise and Service Tax drawback rules 1995 in respect of the 2700 Kgs valued at ₹ 45.20 lakh for “Paprika Oleoresins” classified under CTH 33019029 exported in August 2016. The 2700 Kgs of the export product was produced by blending with indigenous 595.60 Kgs of Paprika Oleoresin valued at ₹ 1.40 lakh purchased locally with 2104.40 Kgs of refined Paprika Oleoresin manufactured out of imported 2146.60 Kgs of Crude oleoresin valued at ₹ 38.59 lakh.

The department sanctioned (April 2017) drawback of ₹ 16.01 lakh to the exporter. Since the party had applied under Rule 7 of Drawback Rule 1995 for brand rate fixation only against import duty paid on inputs, it is only that portion of the FOB value of export goods proportionate to the quantity of imported goods utilized in manufacturing the export goods that can be considered for determining the value addition.

While determining value addition for the fixation of brand rate drawback, the purchase cost of indigenous oleoresin (₹ 1.40 lakh) was directly deducted from the FOB value (in rupees), instead of proportionate FOB value of indigenous oleoresin (₹ 9.97 lakh⁴⁵). The balance figure was considered for determining value addition which showed a positive value addition which is incorrect.

Audit scrutiny revealed that the value addition was negative when FOB value of 2104.40 kgs of exported product Paprika Oleoresin was compared with the CIF value of imported raw material 2146.40 Kgs. The proportionate FOB

⁴⁵ (FOB value of the 2700 kg of export product ₹ 45.20 lakh) x 595.60 kg (indigenous input) / 2700 (Total qty exported) = ₹ 9.97 lakh.

value of 2104.40 Kgs of exported product was ₹ 35.23⁴⁶ lakh against c.i.f. value of imported raw material ₹ 38.59 lakh⁴⁷ indicating negative⁴⁸ value addition. Accordingly, brand rate drawback of ₹ 16.01 lakh sanctioned to the exporter was irregular.

On this being pointed out (April/May 2017), the department intimated (July 2017) the stand taken by the firm which stated that indigenous Paprika Oleoresin (595.60 Kg) used for blending the export product has not undergone any process and as there was no value addition therefore its procurement cost (₹ 1.40 lakh) has been deducted from the total FOB value (₹ 45.20 lakh) to calculate value addition for imported raw material used (2104.40 Kg) in the exported product.

The reply is not tenable because the term 'manufacture' has been defined in Rule 2 (e) of drawback Rules, 1995 as including all processing of or any other operations carried out in the goods. Blending for standardization is invariably considered as a process qualifying the definition of manufacture hence proportionate FOB value of indigenous Paprika Oleoresin (₹ 9.97 lakh) used for blending should be deducted from fob value of the export product instead of its procurement cost (₹ 1.40 lakh).

Moreover, the proportionate FOB value of 2104.40 Kg export product (Paprika Oleoresin) was ₹ 35.23 lakh only as against ₹ 43.40 lakh considered by the department.

In response to audit rejoinder issued (March 2018), the department reported (May 2018) that the disbursement of brand rate drawback has been withheld and a show cause notice was issued (April 2018) to the exporter.

The Ministry in their response (January 2019) not accepting the audit observation stated that Brand Rate fixation is subject to satisfaction of Rule 8 (2) of Drawback Rules 1995 read with the Board circular No. 14/2003-cus dated 6 March 2003, which stipulates that the FOB value of export goods should be more than the CIF value of the imported inputs declared to have been utilized. They further stated that apportioning of FOB value in proportion to quantity of imported and indigenous inputs will not be appropriate as this will disregard the value addition happening due to blending activity.

Ministry's reply cannot be accepted since audit is not disputing the applicability of Rule 8 (2) and Board's circular, but objecting to the manner of calculation of FOB value of 2104.40 Kg of export product (Paprika Oleoresin). The Ministry

⁴⁶ FOB value of 2700 kgs of Paprika Oleoresins ₹ 45.20 lakh, Proportionate value of 2104.4kgs= $(45.20 \times 2104.40)/2700 = ₹35.23$ lakh.

⁴⁷ CIF value of 2146.40 kgs (2104.4 kgs + 42 kgs of wastage generated) of Paprika Oleoresins=₹ 38.59lakh

⁴⁸ Value addition = {(FOB-CIF value) / CIF value} *100 i.e. {₹35.23 –₹ 38.59/ 38.59}*100 = (-) 8.7 %

has already accepted that value addition happened due to blending of the indigenous inputs. Thus, FOB value of indigenous inputs (595.60 kg) should have been apportioned in the same quantity to arrive at the FOB value of the imported inputs used which resulted in negative value addition.

4.10.2 Over-assessment of customs duty on imported goods

Central Board of Indirect Taxes and Customs (Board) in terms of section 14 (2) of the Customs Act 1962, has fixed tariff values for betel nut vide notification no.36/2001-cus (NT) dated 3 August 2001, which are revised from time to time through amending notifications. Thus, items for which tariff values are fixed, are to be assessed with reference to such tariff value only.

Audit scrutiny of manually assessed Bills of entry filed at Zokhaw Thar Land Customs Stations (LCS) under Aizwal Customs Division of Preventive Commissionerate of Customs, NER, Shillong, revealed that in 214 cases of import of Betel nuts during December 2013 to November 2015, the department over assessed the applicable customs duty due to incorrect calculation of the Assessable value (AV) adding insurance and landing charges to the tariff value, instead of treating the tariff value itself as the AV. This resulted in excess levy of customs duty amounting to ₹ 16.76 lakh.

On this being pointed out (September 2016), the Commissionerate authorities stated (September/November 2016) that since invoice value of all the objected BsE were more than tariff value, same were taken while arriving at the AV by including insurance and landing charges as done usually in assessing the customs duty on imported goods and that there was no claim for refund of excess duty recovered in terms of section 27 of Customs Act, 1962.

The Commissionerate's reply was not tenable because customs duty was to be levied with reference to tariff value of the imported goods fixed by the Government and the assessing officer should have done due diligence to assess such imports.

The Board subsequently accepted (March 2019) the audit observation in case of the Preventive Commissionerate of Customs NER Shillong.

Data analysis of ICES revealed that in 31 similar imports made through Nhava Sheva and Chennai (Sea) during 2017-18 tariff value was not applied. Board may examine these imports and take corrective action.

4.11 Conclusion

This Chapter highlights cases of non-compliance to the extant notifications, applicable customs tariff, duties and levies, noticed by Audit in the assessments done of the imports, through a test check of sample of 3107 BsE and other

supporting documents. The revenue of ₹ 88.42 crore was at risk either due to non/short levy of duty due to incorrect application of exemption notifications, misclassification of imported items or incorrect levy of duty, taxes and fees.

The Ministry/department has accepted 41 cases and has effected recovery of ₹ 6.57 crore at the time of finalisation of this report. Ministry's/Department's response was awaited in 8 cases out of a total of 49 cases reported in this Chapter at the time of finalisation of the Report.

Though the Ministry has taken corrective action to recover duty in many cases, it may be pointed out that these are only a few illustrative cases. There is every likelihood that such errors of omission and commission, whether in RMS based assessments or manual assessments, may exist in many more cases. Audit has, wherever applicable, attempted to quantify potential risk to revenue by ascertaining the total universe of similar transactions by using the import data. The department is required to review all the transactions which may be at risk of loss of revenue, including the ones that have been quantified by audit based on analysis of CBIC data.

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

The process of mapping and updating of risk parameters in the RMS may need to be reviewed.

CHAPTER V

Non- Compliance to Provisions of Various Export Promotion Schemes of Foreign Trade Policy

5.1 The Foreign Trade Policy of India (FTP) provides a framework for increasing exports of goods and services with a focus on improving trade facilitation and ease of doing business. The FTP 2015-2020 has been notified by the Central Government in exercise of powers conferred under Section 5 of the Foreign Trade (Development & Regulation), (FTDR) Act 1992, as amended. Directorate General of Foreign Trade (DGFT), under Ministry of Commerce and Industry is responsible for formulating the FTP which is implemented jointly by the DGFT and Department of Revenue.

The Export Promotion Schemes under FTP can be categorised as:

- (i) **Export from India Schemes:** These aim to provide rewards to exporters to offset infrastructural inefficiencies and associated costs involved and to provide exporters a level playing fields. The two main schemes under this category are Merchandise Exports from India Scheme (MEIS) and Service Exports from India (SEIS)
- (ii) **Duty Exemption and Remission Schemes:** These enable duty free imports or imports at concessional rates, of capital goods and other inputs for export production or duty remission to provide relief of taxes and duties suffered by the exporters in course of producing exported goods. Advance Authorisation, Duty Free Import Authorisation and Duty Drawback are important schemes under this category. The Export Promotion Capital Goods (EPCG) scheme facilitates import of capital goods under zero/ concessional rates for producing export goods and services at competitive prices.

The DGFT issues scrips to exporters under various export promotion schemes and monitors their corresponding obligations through a network of 38 regional license offices (RLAs). All 38 RLAs are computerised and connected to the DGFT Central server. To regulate imports under scrips issued by DGFT, Customs notifications are issued by CBIC and these scrips have to be registered by the exporter concerned in the Customs house under the Commissionerates. Import of inputs and capital goods under export promotion schemes are exempt, wholly or partly from Customs duties. Importers of such exempted goods undertake to fulfil prescribed export obligations (EO) as well as to comply with specified conditions, failing which the duty exempted becomes recoverable by the Customs department under the Customs Act 1962. In addition to action by

the Customs department, the licensee is liable to penal action by DGFT under FTDR Act 1992, for not fulfilling the conditions of the licence issued.

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

5.2 Persistent Irregularity regarding non-fulfilment of export obligation

Audit observations noticed during field audit are flagged through Inspection Reports (IRs) to the auditee units for their response within stipulated period of four weeks.

Over the years, audit has noticed recurring cases of **non-fulfilment of prescribed export obligations** by license holders of export promotion schemes like Advance Authorization and other schemes. As an one time exercise, all such cases noticed in compliance audit during 2000 to 2017 pertaining to 22⁴⁹ RLAs and five Commissionerates, where no action had been reported by the department, were consolidated and it was noticed that in 1043 paras, involving approx 3000 license cases issued under Advance authorisation and EPCG schemes, there was non-fulfilment of prescribed export obligation, involving revenue implication of ₹ **4205 crore** availed as exemptions and other tax benefits by the license holders.

However, neither the RLAs nor Customs Commissionerates had reported to Audit any recovery action initiated by them against the license holders for recovery of duty saved amounting to ₹ **4205 crore**, nor has the status of these cases over the entire currency of the audit period been reported to Audit.

This was pointed out to the Ministry of Commerce and Industry (October 2018) and Department of Revenue (October 2018).

Ministry of Finance, DoR accepting non-fulfilment of export obligations reported (May 2019) action in most of cases by issuing of SCNs/ demand letters/confirming of duty demand and initiation of recovery action. In some cases DoR reported that Customs did not have details about the registration of authorization and have called licence details from DGFT. However, the DoR not accepting audit comments about pursuing the defaulter cases reported that

⁴⁹ RLAs: Vadodara, Ahmedabad, Rajkot, Bengaluru, Panipat, Amritsar, Chennai, Trichy, Coimbatore, Puducherry, Madurai, Hyderabad, Vishakhapatnam, Cuttack, Kolkata, Varanasi, Moradabad, Dehradun, Kanpur, Mumbai, Surat and Pune. Commissionerates: Sikka, ICD Bengaluru, ACC Bengaluru, Chennai Sea and Customs (P) Nautanvas

instructions/circulars have been issued (January 2011/ October 2016) to field formations for monitoring of performance.

The fact remains that despite issue of instructions, Customs field formations have not initiated the recovery action after expiry of three months from EO period as prescribed in the import notifications for which the license holders have furnished Bond/Security/Surety to the Custom authorities.

Ministry of Commerce and Industries, accepted non fulfilment of EO in 219 cases and stated that show cause/demand notices have been issued. In another 215 cases, Ministry stated that Export Obligation Discharge Certificates (EODC) were already issued to the importers on fulfilment of EO. However, details of EODCs were not provided to audit for verification. Ministry stated that 148 cases were under examination. In remaining cases, Ministry's reply is awaited (October 2019).

5.3 Deficiencies in fulfilment of export obligation under Export Promotion Capital Goods (EPCG) scheme

In order to encourage exports in the manufacturing sector, the Foreign Trade Policy, under the Export Promotion Capital Goods (EPCG) scheme, allows import of capital goods at zero or concessional rates of duty. In turn, the scheme imposes an export obligation (EO) on the exporters/manufactures availing this scheme, to export goods manufactured out of imported capital goods, to the extent of six/eight times⁵⁰ of import duties saved on capital goods imports. The export obligation is to be fulfilled over a period of six/eight years⁵¹ from the date of issue of authorisation. Concessions allowed on duties on such imports constitute revenue foregone, which would have otherwise accrued to the Government. In the event of default in fulfilment of EO, the licence holder is to pay back duties in proportion to the unfulfilled amount of EO along with specified interest.

DGFT issues conditional licences to be registered with specific Customs port along with execution of bond and bank guarantee as prescribed. DGFT and Customs departments are responsible for implementation and monitoring of the Scheme. The total revenue foregone on export promotion schemes by way of concessional duties and incentives during FY 2017-18 was ₹ 41,477 crore. The EPCG scheme, together with three other major export promotion schemes accounted for 91 per cent (₹ 38,010 crore) of total revenue foregone. The issue of non-fulfilment of EOs along with several systemic deficiencies by EPCG scheme licence holders were pointed out in an earlier performance audit

⁵⁰ Export obligation is six times in case of imports at zero duty and eight times of duty saved in case of concessional 3% duty

⁵¹ For zero duty and 3 % concessional rate , respectively

reported in 2011 (AR No. 22 of 2011). The CAG had recommended, inter alia, strengthening of monitoring coordination and monitoring mechanisms of the departments concerned, namely, the DGFT and Customs, which was accepted by the Government. Deficiencies in the implementation of EPCG scheme have been regularly noticed during transactions audit of the EPCG licenses, which has already been pointed out to the ministry as reported under para 5.2 of this report.

Audit carried out a review of EPCG licenses due for redemption during 2017-18 based on a sample of files selected from three RLAs⁵², an issue which has been recurrently commented upon in the audit reports. The findings of the EPCG licences review are reported in the long paragraph below.

5.3.1 During 2008-09, 19931 EPCG licences were issued with CIF value of ₹17,037 crore and obligation to export products worth ₹1,38,440 crore. RLAs Mumbai, Goa and Pune accounted for 22 per cent of licences issued during 2008-09.

Accordingly, sample of licences issued by following three RLAs under Western Zone was examined:-

- (i) Additional DGFT, Mumbai,
- (ii) Joint DGFT, Pune and
- (iii) Deputy DGFT, Goa

Audit selected a sample of 688 licences issued during 2008-09 which were due for redemption as on 31 March 2017. A few licences issued in the earlier period but still pending for redemption were also selected. Out of 688 licence cases requested by audit, 626 case files were made available for audit as shown in the table below:

Table No. 5.1

Sl. No.	RLA	FY	Licences issued	Duty credit (Cr. ₹)	No. selected	No. furnished and audited	Duty credit (Cr. ₹)
1	Addl. DGFT, Mumbai	2008-09	3042	5205	444	404	2224
2.	Jt.DGFT, Pune	2008-09	857	542	176	157	348
3.	Dy.DGFT, Goa	2005-06 to 2008-09	567	160	68	65	72
			4466	5907	688	626	2644

⁵² Additional DGFT, Mumbai, Joint DGFT, Pune and Deputy DGFT, Goa

Audit findings

5.3.2 Inaction by the department to recover duty benefits availed despite non-fulfillment of export obligation by licence holders

As per para 5.2 of FTP, import of capital goods at 3 percent rate of duty was allowed subject to achievement of EO equivalent to eight times of duty saved on import of capital goods to be achieved block wise in eight years from date of issue of licence. The licence holder is required to fulfill EO upto 50 per cent in the block of 1 to 6 years and balance 50 per cent in the block of 7 to 8 years. It is compulsory on the part of licence holder to submit to RLA concerned by 30th April of every year, a progress report on block-wise fulfillment of EO. On completion of EO period of eight years the licensee is required to submit evidence regarding completion of prescribed EO for redemption of the licence. The importer within 30 days from the expiry of each block from the date of issue of licence produces evidence to Customs authorities showing the extent of EO fulfilled.

Further, authorization holder shall produce, within six months from date of completion of import, to the concerned RLA, a certificate from the jurisdictional Customs authority or an independent Chartered Engineer, at the option of the authorisation holder, confirming installation of capital goods.

The importer executes a bond/surety/security to Customs authority binding himself to fulfill conditions of the licence which includes installing the imported capital goods and fulfillment of prescribed EO. If the export obligation or conditions of the licence are not fulfilled, the importer shall within three months from the expiry of the said block pay duties together with interest.

Audit noticed from the examination of the licence files that the department had not issued demand notices in 173 cases even though EO period had expired. Further, the department had not issued SCNs where importers did not respond to demand notices in 60 cases in contravention to the prescribed procedure. A few cases are illustrated below:

- i. **EPCG for export of wind turbine generator** : RLA, Mumbai had issued two EPCG licences to an importer during the FYs 2007-08 and 2008-09 with duty saved amount of ₹ 47.45 lakh and ₹ 1.26 crore respectively. The EO period has ended in March and May 2016 and three months' time to file statement of exports has also ended. On examination of licence files it was noticed that the licence holder had imported capital goods at concessional rate of duty to manufacture export goods i.e wind turbine generator and related equipment. However, there was no evidence available in the files regarding compliance by the importer to any conditions of the licence, viz, submission of installation certificates within six months from date of completion of imports, annual report on EO fulfilment, block wise achievement of EO etc.

Audit did not find any evidence that the department had initiated penal any action or co-ordinated with Customs department for reporting non-fulfilment of prescribed EO.

Further verification in EDI system of RLA, Mumbai revealed that the department had issued another 28 licences to the importer during the period April 2008/February 2009 involving duty saved amount of ₹ 6.12 crore. In all these licences the importer had not submitted installation certificates and other performance documents, despite which no action from the department was observed to have been initiated in DGFT EDI system.

On this being pointed out (February 2018), the RLA issued (April 2018) notices to the licence holder. Response from DGFT, New Delhi is awaited (October 2019).

Department of Revenue (DoR), CBIC reported (July 2019) that in 14 cases SCN/demands have been confirmed and in remaining 16 cases Customs did not have registration details of authorisations, which have been sought from DGFT.

- ii. **EPCG for import capital goods for export of Smart cards and accessories** : RLA, Pune had issued one EPCG authorisations to an importer during FY 2008-09 with duty saved amount of ₹ 1.10 crore to exports goods e.g. smart cards and accessories worth ₹ 8.86 crore within a period of eight years. Examination of the records revealed that although the importer had not complied with the conditions of licence i.e. furnishing installation certificate, furnishing block wise achievement of EO, Annual performance reports and the department has not taken penal action on the defaulter nor had informed the Customs department.

From the DGFT EDI system it has been noticed that another 7 licences were issued by RLA, Pune during FYs 2006-07 to 2008-09 involving duty saving of ₹ 6.99 crore. Scrutiny of the records revealed that in these cases also the importer had not complied with the conditions of licence i.e. furnishing installation certificate, furnishing block wise achievement of EO, Annual performance reports and the department has not taken action on the defaulter.

On this being pointed out (July 2017), the RLA intimated (July 2017) issue of demand cum SCN.

- iii. **Export Obligation not met through retail counter sales:** RLA, Mumbai had issued fourteen licences to an importer during the period 2007-08 and 2008-09 involving duty concessions of ₹ 10.73 crore with export obligation of ₹ 85.80 crore. Test check revealed that the license holder had imported

goods like fixtures, glazed tiles, HDMI splitters, cables etc., at concessional rate of duties and EO was proposed to be met by retail counter sales in foreign currency. However during the entire period of eight years the importer did not comply with any of the conditions of licences. No action was taken by the department, though the EO period expired in all fourteen licences (2016-17).

On this being pointed out, the RLA had issued demand notice on 16 March 2018, to which importer stated that they are in the process of filing a representation to the EPCG Committee, New Delhi, to get reduction in export obligation .

It is obvious that importer did not comply with the conditions during the entire period of eight years, and only on receipt of notice which was issued after audit intervention, had tried to approach EPCG committee for relief in EO.

- iv. **Export Obligation not met for hotel and tourism services** : A license holder engaged in running a five star hotel had been issued eight licences during FY 2008-09 by RLA, Pune with duty saved amount of ₹ 4.08 crore. The statement of year wise EO fulfilment revealed only 20 per cent to 35 per cent of export obligation has been fulfilled in eight licences. The RLA had not initiated any action for non-fulfilment of block wise EO, though the period of all licences expired by March 2017 and no extension was sought before expiry of EO period. The proportionate duty recoverable was ₹ 2.59 crore.
- v. **Import of Mercedes Benz under EPCG**: A hotel and tourism service provider was issued a licence (January 2007) by RLA, Goa to import Mercedes Benz car for its hotel industry. However the basic condition that vehicle was to be registered as Tourist vehicle was not met so far. The SCN was issued after a delay of seven years but could not be served to the licence holder as the hotel had closed by that time. The department had not explored other ways or coordinated with Customs department to find out the licence holder and to recover the concessional duty of ₹ 24.53 lakh extended to the licensee.
- vi. **Export obligation of a jewellery unit met through ineligible exports from EOU** : In fourteen licences issued by RLA, Mumbai to a jewellery unit with duty saved amount of ₹ 1.98 crore, the importer had furnished export performance in 12 licences, to which department issued deficiency letters between October 2012 and March 2016 as the licensee had included ineligible exports i.e. exports from EOU units in export performance.

However, licensee did not respond to the deficiency letters of the RLA, but the department had not taken any further action by issuing SCNs.

In the test checked cases, Audit noticed that RLAs had either failed to issue cautionary letters or to initiate any other pre-emptive action to recover duty when the conditions of the licence were not met as prescribed in para 5.17 of HBP vol.1. Audit did not find evidence that RLAs had any mechanism to keep track of receipt of installation certifications, year wise export performance reports, and follow-up mechanism to track block wise default in meeting the EO. DGFT EDI system was also not enabled to get licence wise performance from the Customs department on regular basis or any alert about non-achievement of block wise EO. DGFT authorities still depend on manual submission of evidence to redeem licences under the Scheme.

On this being pointed out (July 2017 to March 2018), concerned RLAs reported (July/April 2018) issue of demand notices or SCNs in 165 cases involving duty of ₹ 219.73 crore. Reply from DGFT is awaited (October 2019)

5.3.3 Redemption of authorization by considering ineligible foreign exchange earnings

Vide paragraph 5.3 & 5.5 of the FTP, EPCG scheme is also extended to service providers like hotel and Restaurant (including catering) industry where EO is to be fulfilled by foreign exchange earnings out of hotel and restaurant services rendered to foreign visitors. As per paragraph 9.5.3 (ii) of FTP, 'Service provider' includes a person providing supply of a service from India to service consumer of any other country in India. Foreign exchange earned out of authorized services⁵³ shall only be counted towards EO. Forex earned out of mere currency exchange services are not be counted towards EO.

RLA, Pune had allowed redemption of fourteen EPCG licences issued to two license holders who were engaged in hotel and restaurant industry in Pune. The EO was met from foreign exchange earned out of international card payments of foreign visitors and partly through forex earned in cash of ₹ 2.51 crore for unspecified services, not supported with service bills. Counting amount of ₹ 2.51 crore towards EO fulfillment was not in order.

On this being pointed out (August 2017), RLA, Pune stated (January 2018) that the license holders had submitted additional Foreign Inward Remittance Certificates (FIRCs) for ₹ 2.51 crore and regularized the redemptions.

RLA, Pune while regularizing the redemption on receipt of additional FIRC failed to impose any penalty for incorrect fulfillment of EO in the earlier instance.

⁵³ Hotel and restaurant services

The fact remains that the licence was incorrectly redeemed, and it was only after Audit pointed out the irregularity the FIRC's were called for by the department indicating that that no due diligence was made even at the time of redemption of licence.

5.3.4 Redemption of licenses on the basis of incorrect consideration of average exports

Export Obligation under EPCG scheme is required to be fulfilled by export of goods manufactured/services rendered by the applicant. There are two types of export obligation. Average export obligation (AEO) in which export obligation is over and above, the average level of exports achieved by the authorization holder in the preceding three licensing years for the same and similar products within the overall export obligation period. Such average would be the arithmetic mean of export performance in the last three years for the same and similar products. Specific export obligation is 8 times the duty saved amount in which the Authorization holder shall also fulfil a minimum of 50 per cent export obligation in each block of years-the first block being of 6 years and the second block is of 2 years.

In terms of paragraph 5.5 of FTP 2009-14 specific EO fixed for a licence under the scheme shall be over and above the average level of exports achieved in the preceding three years for the same and similar products. The licence holder has to achieve specific EO separately, while maintaining average level of exports in each year during which specific EO was achieved.

Policy Interpretation Committee of DGFT vide their meeting No.5/AM12 dated 9 September 2011 had reiterated that Average export obligation (AEO) shall be fixed by taking into account the average of same and similar exports of last three years. If the unit is in existence for less than three years, the AEO shall be the average of exports of years during which unit existed.

Following cases were noticed in which the RA had incorrectly considered average exports and had redeemed the licences:

- (i) RLA, Mumbai had redeemed the licence issued to an importer accepting the achievement of specific EO and AEO maintained during FYs 2010-11 and 2011-12. Verification of list of shipping bills furnished for specific EO and AEO indicates that 19 shipping bills involving FOB value of ₹ 15.13 crore were double counted for both EO and AEO. This resulted in shortfall in the net specific EO by ₹ 13.68 crore, and incorrect redemption of licence without checking the double use of shipping bills.

On this being pointed out (May 2017) the department stated (March 2018) that the exporter had deleted 19 shipping bills from list of AEO, and still AEO maintained was more than required AEO of ₹ 1126.41

crore (F.No.03/97/021/00940/AM09 dated 6 March 2018, Additional Director General of Foreign Trade, Mumbai).

The reply is not acceptable because the department has addressed the issues only after audit pointed the irregularity. Further, reasons for inclusion of these 19 shipping bills twice despite provisions to the contrary were not addressed.

- (ii) RLA, Mumbai issued (July 2008) EPCG licence to an importer in textile industry and imposed the AEO considering the unit existed for three years. However, verification by audit revealed that unit was in existence for two years FY 2006-07 and 2007-08, AEO shall be the average of two years instead of three years, resulting in short fixation of AEO by ₹ 15.63 lakh. The licence was redeemed on 1 November 2016 on the basis of incorrect AEO.

On this being pointed out the RLA re-fixed the AEO at ₹ 46.87 lakh which the firm had maintained.

The fact remains that issue of licences and fixation of EO requires comprehensive scrutiny by RA to avoid such instances.

5.3.5 Incorrect fixation of export obligation

EPCG licences are issued subject to achievement of EO equivalent to eight times of duty saved in eight years. However in case of Small Scale Industry (SSI) units, the EO is fixed at lower rate, equivalent to six times of duty saved on capital goods imported, provided the CIF value of such imported does not exceed ₹ 50 lakh and total investment in Plant & Machinery after such imports does not exceed SSI limit. If the CIF value of import exceeds ₹ 50 lakh, EO was to be fixed at 8 times instead of 6 times of duty saved.

RLA, Pune had issued authorisation dated 12 May 2008 to an importer with duty saved amount of ₹ 69.01 lakh and EO of ₹ 4.14 crore (6 times of duty saved) to be achieved in eight years. Since the import sought through authorization was in excess of the limit of ₹ 50 lakh, the benefit of SSI unit ie 6 times of duty saved should not have been extended to the importer. This resulted in short fixation of EO by two times amounting to ₹ 1.38 crore.

On this being pointed out, RLA intimated issue of a demand cum SCN (September 2017). Further progress is awaited (October 2019). DoR stated that that the paragraphs pertain to DGFT.

Overall audit's test check revealed that duty benefits of ₹ 306 crore had been availed by the licence holders without meeting the conditions of EPCG. Issues like non fulfillment of export obligation, irregular issue of EPCG licences, delayed action being taken on defaulters, incorrect fixation of export obligation and irregular redemption of authorizations continued to plague the scheme in large number of cases.

Ministry of Finance, DoR accepted non-fulfilment of export obligations and reported (May 2019) that action in 206 cases has been taken by way of issuing of SCNs/ demand letters/confirming of duty demand and initiation of recovery action. In 40 cases, DoR reported that Customs did not have details about the registration of authorization and have called licence details from DGFT. DGFT's response was awaited (October 2019).

Ministry's response reaffirmed the audit's observation regarding non-fulfilment of export obligation pursuant to benefits availed under the EPCG scheme is a persistent problem thus nullifying the impact of duty benefits allowed for export promotion to the extent that export obligations remain unfulfilled. Further, Ministry's response regarding cases where details of registration of authorization were not available with them indicated weak monitoring and information exchange mechanisms between the Customs and DGFT authorities, as each EPCG license authorised by the DGFT is to be registered with Customs authorities before imports could be effected under these licenses.

DoR not accepting audit comments about weak information exchange mechanism to pursue the defaulter cases reported that Customs EDI system is sharing Shipping bill data with DGFT on regular basis for exports made under EPCG scheme. In so far monitoring and co-ordination by CBIC field formations with DGFT were concerned, instructions/circulars had been issued (January 2011/ April 2015/October 2016/May 2017) to field formations for setting up of institutional mechanism for exchange of information with RLAs and holding a quarterly meeting to pursue EO fulfilment status where period has expired.

Ministry's response did not support the ground reality which showed that despite issue of instructions and setting up of institutional mechanism for pursuing EO fulfilment cases, Customs field formations had not suo moto initiated the recovery action after expiry of three months from EO period as prescribed. Action for recoveries was initiated only in cases test checked when pointed by Audit.

5.4 Non-compliance to provisions of Other Export Promotion Schemes

During test check of records pertaining to transactions between (July 2014 to February 2017), Audit noticed irregularities regarding short levy of duty on Domestic Tariff Area (DTA) clearances, non-achievement of minimum value addition, non-recovery of drawback where exports proceeds have not been realized, Non/short imposition of late cut, grant of excess credit and grant of duty credit on time barred claims.

Total revenue implication involved in these 39 cases was ₹ 40.51 crore where duty exemptions were availed of without fulfilling Foreign Trade Policy (FTP)

or Hand Book of Procedures (HBP) provisions. Out of these, seven cases are discussed in the following paragraphs and 32 cases involving revenue ₹ 19.04 crore which have been accepted by the department and recoveries made/ recovery proceedings initiated are mentioned in **Annexure 11**.

Export Oriented Units (EOUs)

5.4.1 Clearance of restricted goods in DTA

As per paragraph 6.8 (h) of Foreign Trade policy (FTP) 2009-14, Export Oriented Unit (EOU) may sell products in domestic tariff area (DTA) which are freely importable⁵⁴ under FTP, under intimation to the Development Commissioner and against payment of full duties, provided they have achieved positive NFE. No DTA sale is permissible in case of pepper and pepper products and marble. Further, as per DGFT notification no.38-RE/2013 dated 26 August 2013, 'Granite' (ITCH Code 68029300) are freely importable if the c.i.f.⁵⁵value per square meter is USD 80 and above.

An EOU under Kutch Commissionerate (Central Excise and CGST) had cleared 12949 square meter of 'Granite slab and tiles' valuing ₹ 7.59 crore in DTA during 2014-15 and 2015-16. Audit scrutiny revealed that granite slabs cleared in DTA were having value of USD 39.96 and USD 34.14 per sqm for the year 2014-15 and 2015-16 respectively, which was lower than USD 80 per square meter prescribed by aforesaid DGFT notification, hence they did not qualify as freely importable products. This resulted in irregular clearance of 12949 square meter of restricted goods granite slab and tiles valuing ₹ 7.59 crore in DTA Area.

On this being pointed out, Ministry of Finance, Department of Revenue reported (January 2019) that a show cause notice issued in January 2019 is under adjudication. Further progress is awaited (October 2019).

Incentive and Reward Schemes (IEIS)

5.4.2 Lack of provision to recover benefits given under on re-import of exported goods

In terms of notification no.94/1996-cus dated 16 December 1996, duty free re-import of export goods is permissible subject to following conditions:

- i. If the goods were exported under claim of drawback of customs and excise duties levied by the Union, the amount of drawback of customs and excise duties are repaid.

⁵⁴ Items are freely importable when no 'Authorisation' or permission is required for being imported into the country or exported out.

⁵⁵ CIF- Cost, Insurance and freight

ii. If the exported goods were under the claim of rebate of excise duty or under bond without payment of excise duty, the amount of excise duty is paid.

iii. If the exported goods were under Duty exemption pass book (DEPB) scheme, the amount of excise duty leviable on importation plus the amount of drawback allowed at the time of export subject to condition that the importer produce the DEPB scrip before the proper officer for debit of the amount equal to the amount of DEPB credit permitted on the exported goods which is being imported.

In the case of shipping bills for goods exported under duty drawback scheme, in addition to drawback paid by customs department, the Director General of Foreign Trade (DGFT) grants duty credit scrips under incentive and reward schemes under chapter 3 of the FTP, which are utilized for paying customs duty on import of goods. If goods exported under drawback scheme are re-imported under notification no.94-1996-cus dated 16 December 1996, there is provision in the notification for recovery of drawback involved in the re-imported goods. But there is no provision in the notification for recovery of duty credit granted by DGFT under incentive and reward schemes.

Audit scrutiny of the bills of entry for goods re-imported under notification no.94-1996-cus dated 16 December 1996 through Chennai Sea Customs, Chennai Air Customs, Tuticorin Sea Customs and ICD St. Johns, Tuticorin for the period 2012 to March 2013 revealed that wherever goods exported under duty drawback scheme were re-imported, only the duty drawback paid to the exporter had been recovered. Duty credit granted under reward and incentive schemes under chapter 3 of the FTP was not recovered. Cross verification of shipping bills of re-imported goods with the DGFT EDI data in test checked cases revealed that in 376 cases of re-import, RLA, Chennai had granted duty credit benefits of ₹ 1.25 crore under chapter 3 of FTP, which could not be recovered in the absence of provision in aforesaid notification.

The matter was communicated to the concerned customs Commissioners in June 2017. Tuticorin Customs, Commissionerate, while accepting that there was no provision to recover the duty credit under reward and incentive scheme under chapter 3 of FTP, however, reported recovery of such credit availed along with interest in respect of two importers which amounted to ₹ 0.73 lakh (March 2018). Chennai Air Customs in their reply had stated (March 2018) that demand notices have been issued to the firms. Reply in respect of other Commissionerates is awaited (October 2019).

5.4.3 Incorrect grant of benefit to ineligible exporter

According to paragraph 3.14.5 of FTP. 2009-14, inserted vide notification no.3 (RE-2013)/2009-14 dated 18 April 2013, Incremental exports incentivisation schemes (IEIS) on annual basis was introduced with the objective to incentivize incremental exports. Under the scheme, an IEC holder was entitled for a duty credit scrip at the rate of two per cent of the incremental growth in terms of FOB value of exports (achieved by the IEC holder) during the current year (say 2013-14) compared to the exports made in previous year (say 2012-13). Exports which are subject to minimum export price or export duty are ineligible for grant of IEIS benefits (vide notification no.43 (RE-2013)/2009-14 dated 25 September 2013).

Additional Director General of Foreign Trade (ADGFT), Kolkata issued (January 2015) a duty credit scrip for ₹ 36.37 lakh to an importer under IEIS for incremental growth in the financial year 2013-2014 (57 SBs) vis a vis financial year 2012-13 (5 SBs). However, scrutiny of five shipping bills pertaining to year 2012-13 revealed that all the bills pertained to export of de-oiled rice bran to Bangladesh and in all cases export duty was paid. This rendered the exporter with no eligible exports in 2012-13 and consequently ineligible for grant of benefit under IEIS for the year 2013-14. Thus, the duty credit granted in this case amounting to ₹ 36.37 lakh was incorrect/ineligible.

This was pointed out to the Ministry in September 2018, their reply is awaited (October 2019).

Served from India Scheme (SFIS)

5.4.4 Grant of excess credit due to non-deduction of tax involved

According to paragraph 3.12.2 and 3.12.4 of FTP 2009-14, Indian service providers of services listed in Appendix 41 of Handbook of Procedure (HBP) Vol-I (2009-14) would be eligible for SFIS scrip on net foreign exchange earned. Paragraph 3.6.1 of HBP, Vol-I (2009-14) provides that foreign exchange remittances other than those earned for rendering of services would not be counted for entitlement. Further, DGFT trade notice no.11/2015-20 dated 21 July 2016 has clarified that State/Central taxes payable to Governments collected by the services provider from the customer are not earnings of service provider and hence entitlement shall be regulated accordingly.

Audit scrutiny of SFIS scrips issued by JDGFT, Cochin and JDGFT, Thiruvananthapuram to service providers engaged in hotel and tourism related services revealed that, while sanctioning SFIS credit scrips, taxes included in the gross remuneration received for services, namely Service tax (12.36 per cent), Luxury tax (12.5 per cent) and VAT of food (14.5 per cent) collected by the

service provider were not deducted from the gross foreign exchange earnings. This resulted in grant of total excess credit of ₹ 60.80 lakh by both JDGFT offices at Cochin (four licencees) and Thiruvananthapuram (six licencees).

On this being pointed out, DFGT, New Delhi reported (August 2018/March 2019) recovery of ₹ 33.49 lakh including interest from service providers. The name of one service provider was put under Denied Entry List (DEL), while one service provider surrendered two scrips valued ₹ 9.93 lakh under protest and filed a writ petition in High Court of Kerala. Further progress is awaited (October 2019).

5.4.5 Other irregularities:

5.4.5.1 Incorrect discharge of obligation

Paragraph 5.7 of Foreign Trade Policy (FTP) 2009-14, stipulates that in case of direct imports, export obligation shall be reckoned with reference to actual duty saved amount, whereas in case of domestic sourcing of capital goods, export obligation shall be reckoned with reference to notional customs duties saved on Free on road (FOR)⁵⁶ value.

In 20 EPCG authorization issued to four importers where RLA, Ahmedabad issued export obligation discharge Certificate (EODC), audit observed that in 17 authorizations, applicants invalidated the authorization as direct imports though the capital goods were sourced indigenously. On scrutiny of the documents, it was noticed that RLA allowed discharge of their export obligation against licencees allowing domestic procurement after treating duty saved amount on account of central excise duty instead of notional customs duty as required under paragraph 5.7 of FTP *ibid*. This had resulted in short fulfilment of export obligation at ₹ 11.38 crore.

On this being pointed out DGFT, New Delhi stated (June 2018) that in one case revised papers submitted for re-fixation of EO are being examined. In remaining three cases the firms have been asked to show fulfilment of revised EO. In case of non-compliance, action under FTDR Act would be taken. Further progress is awaited (October 2019).

⁵⁶ FOR is Freight on road also known as Free on road. The cost incurred in transporting goods from the supplier to the client without any transportation charges to the purchaser/client.

5.4.5.2 Non/short imposition of late cut

Paragraph 3.6 (b) of Handbook of Procedures (HBP), 2009-14 stipulates that application for duty credit scrip shall be filled within 12 months from the end of relevant month/quarter/half year/year. Further, as per paragraph 9.3 of HBP, 2009-14, 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 per cent as applicable.

Out of 864 licences with total value of ₹ 46.11 crore of Focus Market Scheme (FMS), VKGUY, Served from India Scheme, Incremental Export Incentivisation Scheme and Focus Product Scheme issued by Joint Director of Foreign Trade, Jaipur during 2016-17, Audit test checked 107 licences with value of ₹ 6.71 crore and observed that in 23 applications (28 licencees) for duty credit scrips under aforesaid schemes were filed after the prescribed date of submission but the credit scrips were issued/granted without/short imposition of late cuts. Further, in five cases the credit scrips under FPS/FMS were issued/granted on the time barred shipping bills. This has resulted into non/short imposition of late cut amounting to ₹ 20.65 lakh on total duty credit scrips issued for ₹ 1.96 crore.

On this being pointed out, the DGFT admitting the observations reported (September 2018) recovery of ₹ 20.65 lakh from 26 licencees, issued SCN to M/s A Exports and placed M/s B Trading Company, under Denied Entity List (DEL). Further progress is awaited (October 2019).

5.4.5.3 Irregular grant of duty credit on time barred claims

As per paragraph 3.11.9 of Handbook of Procedure (HBP), 2009-14, application for obtaining duty credit scrip under chapter 3 of FTP shall be filed within a period of twelve months from the date of export or within six months from the date of realization or three months from the date of printing/release of shipping bill, whichever is later. Further, as per paragraph 9.3 of HBP 2009-14, any application, received after expiry of last date, the application may be considered after imposing a late cut at the rate of 2 per cent, 5 per cent and 10 per cent for application received after the expiry of last date but within six months, application received after six months date but not later than one year and application received after 12 months but not later than 2 year respectively.

Three exporters were issued (May to November 2014) duty credit scrips of ₹ 25.53 lakh under VKGUY, FPS and FMS schemes under chapter 3 of FTP by RLA Ahmedabad after imposition of late cut (10 per cent) though applications have been submitted after expiry of three years from the date of exports and two and half years from the date of realization prescribed under aforesaid

paragraph 3.11.9 read with 9.3 of HBP 2009-14. This resulted in irregular grant of duty credit of ₹ 25.53 lakh on time barred claims.

On this being pointed, DGFT, New Delhi while accepting the observation reported (November 2018/July 2019) that the firms paid duty plus interest amounting to ₹ 30.62 lakh.

5.5 Conclusion

Persistent non-fulfilment of export obligation, as pointed out by audit, clearly indicated that the system to ensure that benefits availed by the exporters matched with required export performance were closely monitored, was absent in the DGFT. Government may review all the cases of non-fulfilment of export obligation besides those pointed out in audit, and take steps to strengthen the monitoring mechanism both through their IT platforms and through plugging weaknesses in implementation of the prescribed rules and procedures.

The test audit of 37 Regional licensing authorities revealed instances of violations of prescribed rules and procedures framed to give effect to the provisions of the Foreign Trade Policy and Procedures regarding fulfilment of export obligations and awarding export incentives. The cases pointed out in above paragraphs are illustrative based on audit's test check and similar violation of rules and procedures and errors of omission and commission by the officers responsible for issue and discharge of licenses cannot be ruled out. Department is advised to review all cases of non-fulfilment of conditions EPCG and other schemes.

CHAPTER VI

Irregularities in Awarding Major Works by Santacruz Electronics Export Processing Zone (SEEPZ), Special Economic Zone (SEZ), Authority

6.1 It was observed from Financial Accounts of Santacruz Electronics Export Processing Zone (SEEPZ) Authority that during the year 2015-16 and 2016-17 substantial amount was booked under 'Advances on Capital Account' (₹ 637.08 lakh in 2015-16 and ₹ 3304.39 lakh in 2016-17) and under 'Capital works in progress' (₹ 3087.41 lakh in 2015-16 and ₹ 5197.56 lakh in 2016-17). Hence, during the regular compliance audit (January/February 2018) of the SEEPZ SEZ Authority (herein after referred as "the Authority") special focus was given to the transactions reported under these heads. Audit findings are discussed in the following paragraphs.

6.2 Irregularities in awarding of Major works of SEEPZ-Authority:-

Audit noticed following major issues:-

- (i) awarding of works to ineligible agency;
- (ii) Issue of work order without approval of Authority;
- (iii) Weak mechanisms for quality control;
- (iv) LOP/LOA issued to SEZ units without scrutinizing mandatory norms and other miscellaneous irregularities.

These issues are discussed in subsequent paragraphs.

6.2.1 Award of Major works of SEEPZ-SEZ Authority to ineligible agency (NFCD)

As per the Government of India office memorandum issued on 2 November 2010 read with rule 1 of General Financial Rules (GFR) 2017, provisions contained in GFR are deemed to be applicable to Central Autonomous Bodies except to the extent of the bye laws of an Autonomous Body for separate Financial Rules which have been approved by the Government. In the absence of any specific provision relating to awarding of works related to Major/Minor construction/repair works in the SEZ Rules 2009, provisions of GFR is applicable to the Authority.

As per sub rule 2 and 3 of Rule 133 of GFR, 2017 a Ministry or Department may, at its discretion, assign repair works estimated to cost above ₹ 30 lakh and original/minor works of any value to any Public Works Organization (PWO) such as Central Public Works Department, State Public Works Department, others Central Government organizations authorized to carry out civil or electrical works or to any Public Sector Undertakings (PSU) set up by the Central or State

Government or any other Central/State Government organisation/PSU which may be notified by Ministry of Urban Development (MoUD) after evaluating their financial strength and technical competence. For award of work under the sub rule 3, competition among PSUs/organizations shall be ensured.

Audit scrutiny revealed that SEZ Authority had awarded (February 2017) the works of structural repair and allied civil works and water proof treatment to National Co-operative Construction and Development Federation (NFCD) of India Ltd amounting to ₹ 74.85 crore. Advance payment of ₹ 56.14 crore had been made to the agency upto December 2017. Audit noticed that NFCD was only not on the list of agencies notified by MoUD, the selection of the agency was also done without any competitive bidding. It was seen that NFCD is an agency registered under Multi State Co-operatives Society Act 2002, Department of Agriculture and Co-operation, Ministry of Agriculture, Government of India.

On this being pointed out, Authority in their reply stated (February 2018) that the Authority was enacted under the provisions of SEZ Act, 2005 and Section 51 of the SEZ Act, 2005 has an overriding effect in respect of any other law or instruments etc. It further stated that it has power to incur expenditure above the threshold limit of ₹ 50 lakh and had decided to engage NFCD on deposit work basis to carry out maintenance and repairs work because earlier the repair and maintenance work of the building was with MIDC which delayed the execution.

Reply of the Authority is not acceptable because under Rule 7 of SEZ Rules the Authority is permitted to incur expenditure on minor and maintenance works upto ₹ 50 lakh only. As far as the procedure to be followed while incurring the expenditure for awarding works in excess of ₹ 30 lakh is concerned, the GFR provisions continue to be applicable to the Authority.

Since NFCD is an agency registered under Multi State Co-operatives Society Act it was not eligible being not on the list of agencies notified by MoUD for carrying out the maintenance works of government autonomous body. Moreover, no competitive process was followed to select the agency.

In further response received from the Ministry of Commerce and Industry, it was stated that the appointment of NFCD was under examination by the Ministry's Vigilance Section, as to whether GFR Rules have been followed or not. Further progress is awaited (October 2019).

6.2.2 Issue of work order without approval of Authority

Authority had approved an expenditure of ₹ 40.48 crore including five per cent contingency for structural repair and allied civil works of Standard Designed

Factories (SDF) buildings and Gems and Jewellery buildings. However, NFCD was issued work order in February 2017 for ₹ 44.58 crore. Thus, work order for an excess amount of ₹ 4 crore was issued without approval of the Authority. Further, an additional amount of ₹ 7.77 crore was sanctioned for structural repairs without approval of the Authority.

In reply the Authority stated (April 2018) that the proposal for additional amount of ₹ 7.77 crore was to be taken up in the agenda of the subsequent meeting of Authority for deliberation and discussion. However, the Authority was under reconstitution and the letter of approval was issued by the administration due to oversight.

Authority further stated that the approval had been withdrawn in April 2018 and would be taken up in the next Authority meeting for deliberations and that no additional payment/budget had been released to M/s. NFCD on this account.

Ministry replied (July 2019) that the Committee of Members of the Authority reconstituted to look into the matter held the view that the appointment of M/s NFCD was already under examination by Vigilance Section. It was further stated that the Institute of Technology (IIT), Mumbai which conducted a third party structural audit had in its report attributed the escalation in cost to the fact that the structural and non-structural repair works in the buildings had been carried out at the places which were appearing to be good at the time of initial audit and inspection and those were not considered in the initial estimates.

The irregularities in awarding of contract for major works indicated serious deficiencies in the financial management of the Authority for which responsibility needs to be fixed.

6.2.3. Weak mechanism for quality control

Disaster Management Advisor (DMA) of the Authority had inspected (November 2017) all the structural and waterproofing works of SDF and Gems and Jewellery buildings completed by NFCD's contractors. They submitted inspection report highlighting major structural discrepancies in all the buildings which included defective columns and beams and in completed work. Though the Authority had taken up the matter with NFCD several times to rectify the deficiencies, no action was taken by NFCD till the date of audit. Since no MoU was signed between the Authority and NFCD and no Bank Guarantee (BG)/Performance Guarantee (PG) was taken, Authority could not enforce action against NFCD.

In reply the Authority stated that the NFCD was in the process of compliance of the discrepancies as pointed out by DMA. With respect to MoU, the Authority stated that the draft MoU was under process of finalization.

Ministry further stated (July 2019) that to ensure the execution of the work was as per the given quality standards and technical specification a third party audit through Department of Civil Engineer, Indian (IIT), Mumbai was carried out. Fact remains quality control mechanism failure was evident from the IIT, Mumbai inspection report which stated that repairs were carried out even at the places which were appearing to be good, which resulted in escalation of costs.

6.2.4 LOP/LOA issued to SEZ units without scrutinizing mandatory norms

Rule 17 and 18 of SEZ Rules 2006 contains provisions regarding allotment of units in SEZ which provides for applying to the Development Commissioner for setting up of unit in SEZ inter alia with allotment of land/industrial sheds in the SEZ along with approval for water connection, Registration-cum Membership certificate (RCMC), proof of registration with Central Pollution Control Board, Power connection, Building approval plan, approval from inspectorate of factories, pollution control clearance and NOC from fire department beside Export projections and past performance, if the applicant is existing SEEPZ unit etc.

Audit noticed (February 2018) that the Authority had invited (May 2017) applications for allotment of units in building SDF VIII (New Tower) even before occupation certificate was issued by the MIDC. Approvals were accorded to 18 SEZ Units (12 fresh LOPs, six existing units were allowed Broad banding/additional space) in July 2017 by Unit Approval Committee (UAC)⁵⁷ although the requisite clearances like Occupation Certificate (OC), water and power connection, pollution control clearance, fire clearance and RCMC certificates had not been obtained. Allotment of units in the SDF VIII even before getting OC was irregular. Further, no business operation could be commenced by any SEZ Unit as there was no water and power connection and allotments were put under review because of non-submission of requisite approval certificates by the units.

Audit noticed that the subsequent UAC held in August 2017, decided to review all allotments already made by earlier UAC on the grounds of non-fulfilment of terms and conditions laid down in the Provisional letter of SEEPZ authority e.g.

⁵⁷ UAC is constituted under Rule 18 of SEZ Rules, SEEPZ Authority-DC, SEEPZ Composition of UAC- Development Commissioner (Chairman), Members- Nominee of the Zonal DGFT, Nominee of Joint Director of Industries and Nominees of Income Tax, Mumbai along with special invitees- Joint DC, SEEPZ, Deputy DC, SEEPZ and Specified officer, SEEPZ

acceptance of conditions by the allottee, making of payment within stipulated time and also cases of application for additional space because of capacity enhancement on the grounds that “there appears to be no-correlation between projected export and space allotted to the units with respect to their past performance, existing installed capacity and space utilized by them”.

Audit requested (February 2018) the Authority to furnish the outcome of examination/review of the LOA issued and whether any departmental proceedings/ enquiries were being conducted to fix the responsibility.

In their reply (March 2018), the Authority stated that after the approval of Ministry of Commerce (March 2018), allotments of Gems & Jewellery units in SDF-VIII (New tower) have been cancelled (May 2018). As per the directions of the UAC, the LOA dated 12 July 2017 and 14 July 2017 have also been cancelled (May 2018).

6.3. Conclusion

The audit findings included in the chapter indicated serious lapses and non-compliance to the GFR provisions. The instances of issue of excess work order without approval and cancellation of allotments of units due to lack of mandatory clearances from statutory authorities are serious lacunae in the working of the Authority and needs to be addressed at the highest level. The irregularities in awarding of contract for major works indicated serious deficiencies in the financial management of the Authority for which responsibility needs to be fixed.

Though the Ministry stated that departmental vigilance inquiry had been initiated, the outcome of the inquiry was not shared with audit.

New Delhi
Dated: 26th November, 2019


(M. HIMABINDU)
Principal Director (Customs)

Countersigned

New Delhi
Dated: 29th November, 2019


(RAJIV MEHRISHI)
Comptroller and Auditor General of India

ANNEXURE

Annexure 1**Duty evasion cases detected by DRI (Scheme-wise)****(Refer Paragraph 1.12.1)**

Sl.No	Scheme	FY 14	FY 15	FY 16	FY 17	FY 18
		No. of cases	No. of cases	No. of cases	No. of cases	No. of cases
		Duty (Cr. ₹)	Duty (Cr. ₹)	Duty (Cr. ₹)	Duty (Cr. ₹)	Duty (Cr. ₹)
1	Misuse of End-Use & Other Notification conditions.	38 1211.67	18 110.18	69 770.48	29 15.91	48 117.50
2	Misuse of EPCG	22 583.08	49 289.11	64 454.92	53 311.96	37 237.47
3	Undervaluation	140 432.71	85 285.64	92 254.37	154 184.89	346 1825.42
4	Mis-declaration	102 224.22	52 172.42	112 1187.61	167 309.09	163 184.72
5	Drawback	17 80.50		94 1150.46	58 99.70	146 40.22
6	Misuse of EOU/EPZ/ SEZ	3 6.90	6 37.50	18 9.54	6 37.34	3 1.05
7	Misuse of DEEC/ Advance licence	1 0	11 1077.15	12 15.21	55 265.21	79 293.54
8	Others	366 570.55	186 953.54	170 2780.73	145 198.08	118 364.74
Total		694 3112.72	407 2925.54	631 6623.32	667 1422.18	940 3064.65

Source: DRI Anti smuggling performance report (ASPR)

Annexure 2**Commodity wise imports****(Refer paragraph 3.2.2)****(₹ in lakh)**

Chapter description	HS Code	2015-16	2016-17	2017-18
Carbon black	280300	81269	80345.04	139987.99
Soda ash	283620	101707	102490.3	111756.51
Acetone	291411	55796	63054.93	74975.09
Vitamin A	293621	5647	7035	5239
Rubber chemicals	381230	103307	110323	NA
PVC Roll, Adhesive film, Paste	390410 390421 390422	936191	1061694	1144878
Plain Medium Density Fibre Board	441090,441112 to 441114, 441192 to 441194, 441210, 441231	83945	81205	109804
Nylon Filament yarn	540231, 540232, 540245, 540251, 540261, 540710, 540741, 540742, 540744	64158	63078	57082
Elastomeric filament yarn	540244, 540411	68750	69363.83	86241
Viscose Filament yarn	540310, 540331, 540332, 540810	36799	25692	46595
Ceramic tableware and kitchenware & Glazed/ Unglazed tiles in polished or unpolished finish	691110, 691200	25120	24605	24465.8
Sheet Glass	700319,700320,701932	5047	6057.43	6062.09
Other glass fibres and articles thereof	701990	27843	29880.04	32443.93
Float glass	700529, 700530	22234	33321	21447
Textured tempered glass	700711, 700719	31168	41141	57257
Cold rolled flat products of Stainless Steel	730431, 730441, 730451	20918	23500	31870
Seamless tubes and hollow profiles of Iron	730490	106372	88804	83861
Plastic processing machinery, Plastic processing machines or Injection moulding machines	847710	80527	829845	94147
Sewing machine needles	845230	10380	9226	9169
Cast aluminium alloy wheels	870870	100850	98204	124111
Total		1968028	2102002	2261390
		%age	Increase	15 %

Source: Export-Import Data, Department of Commerce

Annexure 3
Audit methodology and sample

(Refer paragraph 3.4.1)

Sl. No.	Office	Total Commissionerates	Nos. Selected Commissionerate	Names of Selected Commissionerate
1	AHMEDABAD	6	3	KANDLA MUNDRA JAIPUR
2	BENGALURU	4	2	ICD-BENGALURU ACC BENGALURU
3	CHANDIGARH	2	1	LUDHIANA
4	CHENNAI	13	3	CHENNAI SEA CUSTOMS TUTICORIN SEA CUSTOMS KOCHI SEA CUSTOMS
5	DELHI	10	2	ICD-TUGHLAKABAD ICD-PATPARGANJ
6	HYDERABAD	3	2	VISAKHAPATNAM HYDERABAD
7	KOLKATA	4	2	CC(PORT), KOLKATA CC(PREV), WB
8	LUCKNOW	4	1	NOIDA CUSTOMS
9	MUMBAI	21	2	JNCH NCH
		67	18	

Annexure-4

Levy of ADD even after lapse of validity of ADD notification

(Refer paragraph 3.5.2.1)

Sl. No.	Field Office Name	Office Para no.	Item Description	Amount Objected (₹ in lakh)	No. of BsE	Name of the Comms.	Notfn. No.
1	Ahmedabad	5.4.1	various products	67.72	57	Kandla , Mundra	
2	Mumbai	6.2	TDI	44.73	13	JNCH	25/2017- Cus(ADD) dated 05.06.2017
3	Kolkata	5.2	Porcelain tiles	4.37	2	Customs Port, Kolkata	12/2016- Cus(ADD) dated 29.03.2016
Total				116.82	72		

Annexure-5

Non Levy of Anti-Dumping Duty (ADD)

(Refer paragraph 3.5.3.1)

Field Office Name	Item Description	Amount objected (₹ in lakh)	Amount recovered (₹ in lakh)	No. of BsE	Name of the Commissionerate	Notfn. No.
Chennai	Injection moulding machine	12.30		3	Chennai sea customs	57/2015-Cus(ADD) dated 04.12.15 & 9/2016-Cus(ADD) dated 15.03.2016
Chennai	Injection moulding machine	104.33		6	Chennai sea customs	57/2015-Cus(ADD) dated 04.12.15 & 9/2016-Cus(ADD) dated 15.03.2016
Chennai	Injection moulding machine	17.28		6	Chennai sea customs	57/2015-Cus(ADD) dated 04.12.15 & 9/2016-Cus(ADD) dated 15.03.2016
Chennai	Injection moulding machine	6.19		1	Tuticorin sea customs	57/2015-Cus(ADD) dated 04.12.15 & 9/2016-Cus(ADD) dated 15.03.2016
Bengaluru	Injection moulding machine	19.88		1	ICD-Bangalore	9/2016-Cus(ADD) dated 15.03.2016
Delhi	Injection Moulding Machine	30.97		2	ICD-Patparganj	57/2015-ADD dated 4.12.2015
Mumbai	Injection Moulding Machine	81.64		2	JNCH	57/2015-Customs (ADD) dated 04.12.2015
Mumbai	Injection Moulding Machine	22.00		3	JNCH	09/2016-Customs (ADD) dated 15.03.2016
Chennai	Nylon filament yarn	131.70		21	Chennai sea customs	3/2012-Cus(ADD) dated 13.01.2012 & 04/2017-Cus(ADD) dated 19.01.2017
Delhi	Nylon filament yarn	0.93		2	ICD-Patparganj	03/2012-ADD dated 13.01.2012
Chennai	Mulberry raw silk	13.67		5	Chennai sea customs	1/2016-Cus(ADD) dated 28.01.2016
Delhi	Aluminium Foil	75.11	75.11	4	ICD-tughlakabad	23/2017-Cus(ADD) dated 16.05.2017
Mumbai	Aluminium Foil	37.02		4	JNCH	23/2017-Cus(ADD) dated 16.05.2017
Ahmedabad	2-Ethyl Hexanol	23.10	23.1	1	Kandla	10/2016-Cus(ADD) dated 29.03.2016
Ahmedabad	Phenol	18.13	18.13	2	DC, KSEZ	43/2014-Cus (ADD) dated 30.9.2014
Mumbai	Graphite electrode	36.35		3	JNCH	04/2015-Cus(ADD) dated 13.02.2015
Hyderabad	Graphite Electrode	29.72		1	Visakhapatnam	04/2015-Cus(ADD) dated 13.02.2015

Field Office Name	Item Description	Amount objected (₹ in lakh)	Amount recovered (₹ in lakh)	No. of BsE	Name of the Commissionerate	Notfn. No.
Chennai	Measuring tapes	32.15		1	Chennai sea customs	16/2016-Cus(ADD) dated 02.05.2016
Chennai	Clear float glass	76.79		23	Chennai sea customs & Tuticorin & Kochi	48/2014-Cus(ADD) dated 11.12.2014 & 30/2017-Cus(ADD) dated 16.06.2017
Chennai	Clear float glass	175.89		14	Kochi sea port	19/2017-Cus(ADD) dated 12.05.2017
Chennai	Clear float glass	30.74		5	Kochi sea port	47/2015-Cus(ADD) dated 08.09.2015
Lucknow	Clear float glass	6.63		2	Noida customs	19/2017-Cus(ADD) dated 12.05.2017
Mumbai	Clear float glass	14.20		2	JNCH	48/2014-Customs (ADD) dated 11.12.2014
Kolkata	Jute Fabric	2979.00		416	Customs (Prev), WB	01/2017-Cus(ADD) dated 05.01.2017
Ahmedabad	Flexible slabstock Polyol	0.72		1	Mundra	9/2015-Cus(ADD) dated 07.04.2015
Mumbai	Flexible Slabstock of Polyol	52.82		33	JNCH	09/2015-Customs (ADD) dated 07.04.2015
Chennai	Homopolymer of Vinyl Chloride Monomer	8.88		1	Tuticorin sea	27/2014-Cus(ADD) dated 13.06.2014
Mumbai	Homopolymer of vinyl chloride monomer	4.31		1	JNCH	26/2014-Customs (ADD) dated 13.06.2014
Chennai	Sodium Ascorbate	331.36		5	Chennai sea customs	38/2015-Cus(ADD) dated 06.08.2015
Chennai	Injection moulding machine	5.24		6	Chennai sea customs	57/2015-Customs (ADD) dated 04.12.2015
Delhi	Injection Moulding Machine	10.00		31	ICD-Tughlakabad	57/2015-ADD dated 4.12.2015
Mumbai	Purified terephthalic acid	154.64		21	JNCH	23/2015-Cus(ADD) dated 27.05.2015
Ahmedabad	Methylene Chloride	28.11		9	Kandla	21/2016-Cus(ADD) dated 31.05.2016
Chennai	Cable ties	5.23		1	Chennai sea customs	28/2013-Cus(ADD) dated 12.11.2013 & 47/2014-Cus(ADD) dated 09.12.2014
Ahmedabad	Plain medium density Fibre Board	0.80	0.80	1	Mundra	48/2015-Cus(ADD) dated 21.10.2015
Hyderabad	Rubber chemical MOR	2.22		1	Visakhapatnam	54/2017-ADD dated 17.11.2017
Kolkata	Glazed/Unglazed Porcelain tiles	1.51		5	Customs Port, Kolkata	29/2017-Cus(ADD) dated 14.06.2017

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Field Office Name	Item Description	Amount objected (₹ in lakh)	Amount recovered (₹ in lakh)	No. of BsE	Name of the Commissionerate	Notfn. No.
Chandigarh	Tempered glass	0.29		2	Ludhiana	38/2017- Cus(ADD) dated 18.08.2017
Bengaluru	Opal glass	2.93		3	ICD-Bangalore	103/2011-Cus(ADD) dated 23.11.2011 & 37/2017-Cus(ADD) dated 09.08.2017
Bengaluru	Wall tile	1.17		1	ICD-Bangalore	29/2017-Cus(ADD) dated 14.06.2017
Chennai	Ceramic ware	29.04		13	Chennai sea customs	27/2017-Cus(ADD) dated 12.06.2017 & 4/2018-Cus(ADD) dated 21.02.2018
Chennai	PVC resin	22.92		11	Chennai sea customs & Tuticorin	70/2010-Cus(ADD) dated 25.06.2010 & 27/2016-Cus(ADD) dated 23.06.2016
Chennai	Phosphoric acid	14.94		9	Chennai sea customs	33/2013-Cus(ADD) dated 31.12.2013, 45/2015-Cus(ADD) dated 24.08.2015 & 19/2012-Cus(ADD) dated 04.04.2012
Chennai	Dichloromethane (methylene chloride)	10.33		2	Chennai sea customs	21/2016-Cus(ADD) dated 31.05.2016
Chennai	Hydrogen peroxide	9.83		10	Chennai sea customs & Kochi sea port	28/2017-Cus(ADD) dated 14.06.2017
Chennai	Ceramic tiles	3.03		2	Tuticorin sea customs	29/2017-Cus(ADD) dated 14.06.2017
Chennai	Melamine	1.21		1	Chennai sea customs	48/2012-Cus(ADD) dated 08.10.2012
Chennai	Barium carbonate	0.73		1	Chennai sea customs	14/2016-Cus(ADD) dated 21.04.2016
Chennai	Potassium carbonate	0.50		4	Chennai sea customs	40/2015-Cus(ADD) dated 12.08.2015
Chennai	Vitamin E	0.71		1	Kochi customs	29/2015-Cus(ADD) dated 10.06.2015
Chennai	Fibre board MDF	2.07		3	Kochi customs	48/2015-Cus(ADD) dated 21.10.2015
Delhi	Ceramic tableware , kitchenware	16.72		1	ICD-Patparganj	27/2017 -ADD dated 12.06.2017
Delhi	Partially oriented yarn	8.47		2	ICD-Tughlakabad	22/2012-ADD dated 02.05.2012
Delhi	Cable Ties	1.44		1	ICD-Tughlakabad	47/2014-ADD dated 09.12.2014
Delhi	Plain medium Density MDF Fibre board	1.39		2	ICD-Tughlakabad	34/2016-ADD dated 14.07.2016
Delhi	Vitamin E	0.15		1	ICD-tughlakabad	29/2015-ADD dated 10.06.2015

Field Office Name	Item Description	Amount objected (₹ in lakh)	Amount recovered (₹ in lakh)	No. of BsE	Name of the Commissionerate	Notfn. No.
Kolkata	Porcelain tiles	1.15		1	Customs Port, Kolkata	12/2016-Cus(ADD) dated 5.01.2017
Ahmedabad	2-Ethyl Hexanol	18.10		5	Ahmedabad	10/2016-Cus(ADD) dated 29.03.2016
Ahmedabad	Normal Butanol or N-Butyl alcohol	1.10		1	Kandla	13/2016-Cus(ADD) dated 13.04.2016
Ahmedabad	Acetone	9.97		3	Kandla	13/2015-Cus(ADD) dated 16.04.2015
Mumbai	Electronic Calculator	80.32		3	JNCH	24/2015-Customs (ADD) dated 29.05.2015
Mumbai	Penaerythritol	74.59		12	JNCH	33/2012-Customs (ADD) dated 20.06.2012
Mumbai	TDI	46.60		12	JNCH	25/2017-Customs (ADD) dated 05.06.2017
Mumbai	Melamine	38.51		10	JNCH	48/2012-Customs (ADD) dated 08.10.2012 & 02/2016-Customs (ADD) dated 28.01.2016
Mumbai	Porcelain tiles	34.87		14	JNCH	12/2016-Customs (ADD) dated 29.03.2016 & 29/2017-Customs (ADD) dated 14.06.2017
Mumbai	AmoxycillinTrihydrate	34.31		3	JNCH	21/2017-Customs (ADD) dated 16.05.2017
Mumbai	Glass fibre	25.19		7	JNCH	48/2016-Customs (ADD) dated 01.09.2016
Mumbai	Grinding media ball	20.77		2	JNCH	36/2012-Customs (ADD) dated 16.07.2012
Mumbai	Sodium nitrite	26.30		1	JNCH	39/2016-Customs (ADD) dated 08.08.2016
Mumbai	Axle for trailers	21.52		9	JNCH	54/2016-Customs (ADD) dated 29.11.2016
Ahmedabad	Axle for trailers	11.40		2	Mundra	3/2015-Cus (ADD) dated 10.2.2015
Mumbai	Elastometric filament yarn	16.84		5	JNCH	15/2017-Customs (ADD) dated 03.05.2017
Mumbai	vitamin E	14.13		7	JNCH	29/2015-Customs (ADD) dated 10.06.2015

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Field Office Name	Item Description	Amount objected (₹ in lakh)	Amount recovered (₹ in lakh)	No. of BsE	Name of the Commissionerate	Notfn. No.
Mumbai	Disodium carbonate/soda ash	44.00		18	JNCH	34/2012-Customs (ADD) dated 03.07.2012
Mumbai	Hydrogen peroxide	10.53		7	JNCH	28/2017-Customs (ADD) dated 14.06.2017
Mumbai	TDQ/TMTD/MBTS	7.80		3	JNCH	98/2011-Customs (ADD) dated 20.10.2011
Mumbai	Cable ties	6.37		53	JNCH	47/2014-Customs (ADD) dated 09.12.2014
Mumbai	Methylene chloride	5.07		6	JNCH	24/2014-Customs (ADD) dated 21.05.2014
Mumbai	Flat base steel	4.67		11	JNCH	03/2013-Customs (ADD) dated 26.03.2013
Mumbai	TDI	3.44		1	JNCH	25/2017-Customs (ADD) dated 05.06.2017
Ahmedabad	Methylene Chloride	0.76		1	Kandla	24/2014-Customs (ADD) dated 21.05.2014
Kolkata	Jute Yarn/twine	36.32		14	Customs (Prev), WB	01/2017-Cus(ADD) dated 05.01.2017
Kolkata	Jute product	5.49		2	Customs (Prev), WB	01/2017-Cus(ADD) dated 05.01.2017
Mumbai	Styrene butadiene rubber	22.36		6	JNCH	43/2017-Cus(ADD) dated 30.08.2017
Mumbai	Nylon tyre cord fabric	17.41		1	JNCH	30/2015-Cus(ADD) dated 12.06.2015
Mumbai	Compact fluroscent lamp	12.2		7	JNCH	34/2015-Cus(ADD) dated 28.07.2015
Mumbai	synchronous digital hierachy equipment	46.04		11	JNCH	15/2016-Cus(ADD) dated 26.04.2016
Ahmedabad	TDI	2.54	2.54	1	Mundra	25/2017-Cus(ADD) dated 05.06.2017
Mumbai	Sheet Glass	41.46		19	JNCH	7/2015-Cus (Add) dated 13.3.2015
Chennai	Sheet Glass	229.34		69	Chennai (Sea)	7/2015-Cus (Add) dated 13.3.2015
Chennai	Sheet Glass	16.34		7	Tuticorin Sea	7/2015-Cus (Add) dated 13.3.2015
Ahmedabad	Clear Sheet Glass	662.72		155	Mundra	7/2015-Cus (Add) dated 13.3.2015
Total		6359.96	119.68	1205		

Annexure 6**Non levy of ADD on account of contravention of product specific conditions****{Refer paragraph 3.5.5 (v)}**

Field office Name	Item Description	Amt. Obj. (₹ lakh)	Amt. Rec. (₹ lakh)	No. of BsE	Name of the Comm.	Month of Audit objection
Ahmedabad	Para Nitro amiline	3.29		1	Custom House (Pipav)	January 2019
	Extra white painted glass	0.81		1	Custom House (Pipav)	January 2019
	Sand blasted glass	3.82		1	Custom House (Pipav)	January 2019
	Rubber chemicals	44.40		6	Custom House (Hazira)	January 2019
	Rubber chemicals	28.22		6	Custom House (Hazira)	January 2019
	Carbon black	1027.70		30	Custom House (Hazira)	January 2019
	Methylene chloride	78.54		1	Custom House (Hazira)	January 2019
Bengaluru	Plastic Injection, Moulding machine	17.53		1	ICD, Whitefield	December 2018
	Cold rolled seamless pipes	27.13		2	ICD, Whitefield	December 2018
Kolkata	Sodium Citrate	0.99		1	Kolkata (Sea)	December 2018
	Sewing machine	2.39		1	Kolkata (Air)	December 2018
	Nylentyre cord	0.05		2	Kolkata (Air)	January 2019
Lucknow	Plastic injection	74.62		4	Noida Custom Commss.	January 2019
	Plain medium density fibre board	1.54		1	Noida Custom Commss.	January 2019
Mumbai	Glass fibre rovings	7.18		1	JNCH NhavaSheva	January 2019
Total		1318.21		59		

Annexure 7**Incorrect resorting to provisional assessments****{Refer paragraph 3.5.7 (i), (ii)}**

Sl. No.	Field Office Name	Office Para no.	Item description	Amount objected (₹ in lakh)	No. of BsE	Name of the Commss.	Notfn No.
1	Mumbai	5.4.2	Purified Terephthalic Acid	134.43	2	JNCH	28/2016 -Cus(ADD) dated 05.07.2016
2	Mumbai	5.4.1	Polyvinyl Chloride Resin Grade FJ-65R	48.15	2	JNCH	27/2014-Cus(ADD) dated 13.06.2014
Total				182.58	6		

Annexure 8

Details of test checked cases of 'Incorrect Application of General Exemption Notifications' accepted and recovered by the department

(Refer Paragraph 4.7)

Sl. No.	Draft Audit Paragraph Brief subject	Importer's name	Amt. Objected (₹ in lakh)	Amt. Accepted (₹ in lakh)	Amt. Recovered (₹ In lakh)	Port Name
1	DAP 6 Short levy of duty due to incorrect notification benefit	M/s A & one another	63.31	63.31	73.64	ICD, Tughlakabad
2	DAP 10 Incorrect grant of exemption on import of raw materials for Wind Operated Electricity Generators (WOEG)	M/s B Ltd.	26.71	26.71		Chennai (Sea)
3	DAP 24 Short levy of duty due to incorrect grant of exemption	M/s C Pvt. Ltd.	30.02	30.02	-	ACC, Benagluru
4	DAP 29 Short levy of duty due to incorrect application of notification	M/s D Pvt. Ltd. & one another	10.160	10.16	10.16	ACC, Benagluru
5	DAP 67 Non levy of customs duty due to incorrect grant of exemption		32.26	32.26		Customs Preventive W.B.
		Total	162.46	162.46	83.80	

Annexure 9

Details of test checked cases of 'Misclassification of goods' accepted and recovered by the department

(Refer Paragraph 4.8)

Sl. No.	Draft Audit Paragraph Brief subject	Importer's name	Amt. Objected (₹ in lakh)	Amt. Accepted (₹ in lakh)	Amt. Recovered (₹ In lakh)	Port Name
1	DAP 17 Short levy of duty due to misclassification	M/s A Pvt. Ltd.	23.24	23.24	-	ACC, Mumbai
2	DAP 18 Short levy of duty due to misclassification	M/s B Pvt. Ltd. & one another	17.87	17.87	-	ACC, Mumbai
3	DAP 25 Short levy of duty due to incorrect grant of exemption	M/s C Pvt. Ltd.	11.67	11.67	-	ACC, Benagluru
4	DAP 26 Short levy of duty due to incorrect grant of exemption	M/s D Ltd.	19.13	19.13	-	ACC, Benagluru
5	DAP 39 Short levy of duty due to misclassification	M/s E Ltd. & one another	23.95	23.95	10.35	ICD (Import) Tughlakabad
6	DAP 41 Short levy of duty due to misclassification of goods	M/s F Pvt. Ltd. & five others	11.09	11.09	11.09	ACC, Bengaluru
7	DAP 46 Short levy of duty due to misclassification and subsequent incorrect grant of notification benefit	M/s G Pvt. Ltd.	21.15	21.15	-	ICD, Tughlakabad
8	DAP 68 Short payment of customs duty due to misclassification of goods	M/s H & four others	14.61	14.61	-	ACC, Hyderabad
9	DAP 69 Short levy of duty due to misclassification	M/s I Ltd.	29.04	29.04	30.53	ICD, Ballabgarh (ICD- Patparganj)
10	DAP 75 Non levy of CVD on import of casting for wind operated electricity generators due to misclassification	M/s J Ltd.	71.58	71.58	92.58	Chennai (Sea)
11	DAP 89 Short levy due to misclassification of Machinery for Animal Feed Plant	M/s K Pvt. Ltd.	15.31	15.31	17.22	Chennai (Sea)
12	DAP 92 Misclassification of cables as parts of telephone sets	M/s L Ltd. & three others	12.93	12.93	-	ACC, Mumbai
13	DAP 37 Misclassification of dried berries	M/s M & six others	57.09	4.84	4.84	ICD, Tughlakabad
14	DAP 38 Misclassification of Eucalyptus oil	M/s N. & one another	56.74	--	--	ICD, Tughlakabad

Sl. No.	Draft Audit Paragraph Brief subject	Importer's name	Amt. Objected (₹ in lakh)	Amt. Accepted (₹ in lakh)	Amt. Recovered (₹ In lakh)	Port Name
15	DAP 74 Misclassification of Palmester 3595/Palmester 3585	M/s O	42.68	--	--	Chennai (Sea)
16	DAP 94 Misclassification of squid lever powder	M/s P. & one another	22.83	22.83	7.84	Chennai (Sea)
17	DAP 23 Misclassification of Aluminium shelving for mushroom growing	M/s Q	21.02	21.02	--	ICD, Tughlakabad
18	DAP 88 Misclassification of Ethylene-propylene – non conjugated diene rubber	M/s R. & two others	12.11	--	--	ICD, Tughlakabad
Total			484.04	320.26	174.45	

Annexure 10

Details of test checked cases of 'Short/Non-recovery of applicable levies and other charges' accepted and recovered by the department

(Refer paragraph 4.9)

Sl. No.	Draft Audit Paragraph Brief subject	Importer's name	Amt. Objected (₹ in lakh)	Amt. Accepted (₹ in lakh)	Amt. Recovered (₹ In lakh)	Port Name
1	DAP 5 Excess levy of duty due to wrong availing of abatement on RSP	M/s A Pvt. Ltd. & others	13.94	13.94	00-	Customs (Port) West Bengal
2	DAP 9 Short levy of duty due to incorrect grant of IGST exemption	M/s B & C Pvt. Ltd.	11.55	11.55	11.55	Custom House, Kochi
3	DAP 11 Short levy of BCD and IGST due to incorrect adoption of IGST rate	M/s D Pvt. Ltd. & eight others	11.09	11.09	0.88	Chennai (Sea)
4	DAP 16 Short levy of BCD and IGST due to incorrect adoption of IGST rate	M/s E Pvt. Ltd. & others	12.59	12.59	7.28	Chennai (Sea)
5	DAP 34 Short levy of basic customs duties on CCTV camera	M/s F Pvt. Ltd.	131.00	131.00	171.00	JNCH, NhavaSheva, Mumbai Zone II

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Sl. No.	Draft Audit Paragraph Brief subject	Importer's name	Amt. Objected (₹ in lakh)	Amt. Accepted (₹ in lakh)	Amt. Recovered (₹ In lakh)	Port Name
6	DAP 54 Non levy of safeguard duty on import of Hot rolled flat Product of Non alloy and other alloy steel in coils	M/s G Pvt. Ltd	10.39	10.39	12.39	Office of the Deputy Commissioner of Customs House Mundra
7	DAP 58 Non recovery of drawback on failure to realize export proceeds	M/s H International & others	1869.00	1869.00	11.09	Customs (Preventive), West Bengal
8	DAP 59 Non initiation of action to recover duty drawback against the pending BRCs	M/s I & Others	1609.00	1609.00	-	ICD, Agra
9	DAP 63 Short levy of duty due to incorrect application of rate of CVD on HSD	M/s J Ltd. & seven others	14.05	14.05	11.08	Customs (Preventive), West Bengal
10	DAP 70 Short levy of duty due to incorrect adoption of High Seas Sales price	M/s K & others	10.05	10.05	9.14	ICD, Tughlakabad ICD, Patarganj
11	DAP 73 Short levy of basic customs duties on video recording or reproducing	M/s L Pvt. Ltd.	37.64	37.64	38.01	JNCH, NhavaSheva, Mumbai Zone II
12	DAP 85 Short levy of basic custom duty and integrated tax due to incorrect adoption of tariff rate	M/s M Pvt. Ltd. & three others	36.78	36.78	38.18	Chennai (Sea) Customs
Total			3767.08	3767.08	310.60	

Annexure 11**Details of test checked cases of 'Irregularities in Duty Exemption/Remission Schemes' accepted and recovered by the department****(Refer paragraph 5.4)**

Sl. No.	Draft Audit Paragraph Brief subject	Importer's name	Amount. Objected (₹ in lakh)	Amount Accepted (₹ in lakh)	Amount Recovered (₹ In lakh)	Port Name
1	DAP 1 Short levy of duty due to incorrect grant of exemption	M/s A International	26.42	26.42	35.73	DC, Cochin SEZ, Kakinada, Cochin
2	DAP 2 Mis-declaration of NFE leading to grant of excess duty credit entitlement under SFIS	M/s B Ltd.	137.00	137.00	137.00	Kolkata (port)
3	DAP 3 Excess payment of deemed duty drawback	M/s C Ltd.	13.66	13.66	18.40	JDGFT, Cochin
4	DAP 4 Non fulfillment of export obligation under EPCG scheme	M/s D Ltd.	11.43	11.43		ADGFT, Kolkata
5	DAP 7 Irregular benefit granted under IEIS	M/s E Ltd.	11.50	11.50		JDGFT, Jaipur
6	DAP 12 Irregular issuance of licence/duty credit scrip to entity list in DEL	M/s F Industries	19.51	19.51		JDGFT, Jaipur
7	DAP 13 Incorrect grant of drawback on export goods manufactured/ exported by EOU	M/s G	25.17	25.17	28.13	Dy. Commissioner, ICD Khodiyar
8	DAP 14 Non fulfillment of export obligation	M/s H Pvt. Ltd. & one another	86.49	86.49		JDGFT, Chennai
9	DAP 15 Excess grant of credit scrips under VKGUY scheme	M/s I Ltd. & others	50.03	50.03	32.54	DGFT, Ahmedabad
10	DAP 28 Incorrect grant of scrips under Service Export from India Scheme (SEIS) and Served from India Scheme (SFIS) to exporters without valid IEC	M/s K Pvt. Ltd. & two others	66.84	66.84	8.01	DGFT, Cochin
11	DAP 32 Excess grant of incentive under VKGUY scheme	M/s L Pvt. Ltd.	66.75	66.75	66.75	JNCH, Mumbai
12	DAP 33 Non payment of amount of duty foregone in respect of non-excisable goods cleared into DTA	M/s M Ltd.	40.00	40.00		Hyderabad IV

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Sl. No.	Draft Audit Paragraph Brief subject	Importer's name	Amount. Objected (₹ in lakh)	Amount Accepted (₹ in lakh)	Amount Recovered (₹ In lakh)	Port Name
13	DAP 42 Non fulfillment of export obligation against Advance Authorization licence	M/s N Pvt. Ltd.	69.90	69.90		ICD, Bengaluru
14	DAP 43 Non fulfillment of export obligation in respect of EPCG licence	M/s O Industries	21.87	21.87		ICD, Bengaluru
15	DAP 44 Non fulfillment of export obligation against Advance Authorization licence	M/s P Ltd.	132.00	132.00		ICD, Bengaluru
16	DAP 47 Non fulfillment of export obligation against advance authorization licence issued for import of duty free inputs	M/s Q Pvt. Ltd.	37.75	37.75		ADGFT, Bengaluru
17	DAP 48 Incorrect grant of reward under Service exports from India scheme (SEIS)	M/s R Ltd.	98.13	98.13	98.13	JDGFT, Chennai
18	DAP 49 Non levy of duty for non achievement of positive net foreign exchange (NFE)	M/s SPvt. Ltd.	19.19	19.19	19.19	ACC, Bengaluru
19	DAP 51 Non fulfillment of export obligation	M/s T Ltd. & one another	426.00	426.00		JDGFT, Coimbatore
20	DAP 52 Payment of customs duty on clearance of imported unutilized goods in DTA by utilising CENVAT Credit	M/s U Ltd.	113.00	113.00	113.00	Vadodara II (New)
21	DAP 55 Excess grant of SFIS credit due to non deduction of foreign currency expenses from the earnings	M/s V Pvt. Ltd.	21.80	21.80	33.06	JDGFT, Chennai
22	DAP 57 Short levy of duty on DTA clearances	M/s W Ltd.	23.48	23.48		Assistant Commissioner AR V, Division XI, Panoli
23	DAP 62 Incorrect grant of duty credit under SFIS due to incorrect computation of foreign exchange outgo on imports	M/s X Ltd.	35.48	35.48		ADGFT, Kolkata

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Sl. No.	Draft Audit Paragraph Brief subject	Importer's name	Amount. Objected (₹ in lakh)	Amount Accepted (₹ in lakh)	Amount Recovered (₹ In lakh)	Port Name
24	DAP 65 Excess payment of duty free credit entitlement under VKGUY	M/s Y Ltd.	26.39	26.39		ADGFT, Hyderabad
25	DAP 71 Irregular refund of terminal excise duty	M/s Z Ltd.	16.84	16.84		JDGFT, Cuttack
26	DAP 72 Non fulfillment of export obligation in respect of EPCG licence	M/s AA Pvt. Ltd. & others	108.00	108.00	262.00	RLA, Bengaluru
27	DAP 76 Incorrect grant of reward under IEIS	M/s BB International	24.90	24.90	30.44	JDGFT, Coimbatore
28	DAP 78 Excess grant of exemption of customs duty under Status holder incentive scheme	M/s CC Ltd.	22.56	22.56		Assistant Commissioner, ICD, Khodiyar
29	DAP 81 Non-fulfillment of export obligation under EPCG scheme and failure of the department to take regularization action	M/s DD Ltd. & one another	25.93	25.93		DDGFT, Dehradun
30	DAP 84 Non-fulfillment of export obligation	M/s EE Pvt. Ltd. & one another	51.27	70.60	1.80	JDGFT, Pondicherry
31	DAP 87 Short levy of duty due to excess clearance of product in DTA	M/s FF Pvt. Ltd.	36.83	36.83		Pune III, IV (Bhima Koregaon DV) & Range IV (Sanaswadi)
32	DAP 90 Non payment of customs duty on rejected goods (imported) cleared in DTA	M/s GG Pvt. Ltd.	19.24	19.24	31.78	Assistant Commissioner CGST & CE, DV VII, Nabsari, Surat
Total			1885.36	1904.19	915.96	