

Report of the
Comptroller and Auditor General
of India

for the year ended March 2011

Union Government
(Indirect Taxes – Customs)
(Compliance Audit)
No. 31 of 2011-12

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Laid on the table of Lok Sabha and Rajya Sabha on

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PREFACE

This Report for the year ended March 2011 has been prepared for submission to the President of India under the Article 151 (1) of the Constitution of India.

Audit of Revenue Receipts – Indirect Taxes of the Union Government is conducted under section 16 of the Comptroller and Auditor General of India (Duties, Powers and Conditions of Service) Act, 1971.

This Report presents the results of audit of receipts of customs duties.

The observations included in this Report have been selected from the findings of the test check conducted during 2010-11, as well as those which came to notice in earlier years but were not included in the previous Reports.

EXECUTIVE SUMMARY

The Report has a total revenue implication of ₹ 107.76 crore covering 39 paragraphs. We had issued another 79 paragraphs involving money value of ₹ 22.85 crore on which rectificatory action was taken by the department/Ministry in the form of issuing show cause notices, adjudicating of show cause notices and recovery of ₹ 12.36 crore. A few significant findings included in this Report are mentioned in the following paragraphs.

Chapter I: Customs receipts

- Duty foregone under various export promotion schemes during the year 2010-11 was ₹ 70,877 crore which was approximately 52 per cent of the total receipts of customs duty.

{Paragraph 1.5}

- In the last five audit reports (including current year's report), we had included 690 audit paragraphs involving ₹ 484.92 crore. Of these, the Government had accepted audit observations in 618 audit paragraphs involving ₹ 335.05 crore and had recovered ₹ 79.59 crore.

{Paragraph 1.8}

Chapter II: Duty exemption/Remission schemes

- Revenue of ₹ 72.74 crore was due from exporters/importers who had availed of the benefits of the duty exemption schemes but had not fulfilled the prescribed obligations/conditions.

{Paragraphs 2.1 to 2.5}

Chapter III: Incorrect assessment of customs duties

- We detected incorrect assessment of customs duty totalling ₹ 28.25 crore. These arose mainly due to non realisation of cost recovery charges, excess refund of additional duty of customs, non levy of anti dumping duty and incorrect assessment of high sea sale etc.

{Paragraphs 3.1 to 3.10}

Chapter IV: Incorrect application of General exemption notifications

- Duty of ₹ 4.53 crore was short levied due to incorrect application of exemption notifications.

{Paragraphs 4.1 to 4.4}

Chapter V: Mis-classification of goods

- Duty of ₹ 2.25 crore was short levied due to misclassification of goods.

{Paragraphs 5.1 to 5.5}

Glossary of terms and abbreviations

Expanded form	Abbreviated form
Advance release order	ARO
Anti Dumping Duty	ADD
Basic customs duty	BCD
Bill of entry	BE
Customs tariff heading	CTH
Central Board of Excise and Custom	CBEC
Central Excise tariff heading	CETH
Central Sales Tax	CST
Cost Insurance Freight	c.i.f.
Commissionerate of custom	Commissionerate
Countervailing duty	CVD
Crude palm oil	CPO
Director General of Foreign Trade	DGFT
Duty Entitlement Pass Book	DEPB
Domestic tariff area	DTA
Duty Exemption Entitlement Certificate	DEEC
Duty Free Entitlement Credit Certificate	DFECC
Duty Free Replenishment Certificate	DFRC
Export obligation	EO
Export Oriented Unit	EOU
Export Performance	EP
Export Promotion Capital Goods	EPCG
Export Processing Zone	EPZ
Free on Board	FOB
Foreign Trade Policy	FTP
Hand Book of Procedures	HBP
High speed diesel	HSD
Harmonised system of nomenclature	HSN
High sea sale	HSS
Inland Container Depot	ICD
Joint Director General of Foreign Trade	JDGFT
Letter of permission	LOP
Marine gas oil	MGO
Regional licensing authority	RLA
Rupees	₹
Show cause notice	SCN
Terminal excise duty	TED
The Ministry of Finance	the Ministry
Vishesh Krishi upaj yojana	VKUY



CHAPTER I CUSTOMS RECEIPTS

1.1 Results of audit

This Report contains 39 audit paragraphs, featured individually or grouped together, with revenue implication of ₹ 107.76 crore.

We had issued another 79 paragraphs for the audit conducted up to March 2011 (Annexure-I). The department/Ministry has already taken rectificatory action involving money value of ₹ 22.85 crore in these 79 paragraphs in the form of issuing of show cause notices, adjudicating of show cause notices and reported recovery of ₹ 12.36 crore. We have also recommended in paragraphs 2.1.2, 2.1.9 and 3.1 that the Government should issue requisite clarifications/amendments in view of ambiguity in provision and risk of revenue loss in the issues flagged by audit.

1.2 Budget estimates, revised budget estimates and actual receipts

The budget estimates, revised budget estimates and actual receipts of customs duties, during the years 2006-07 to 2010-11, are exhibited in the following table and graph:-

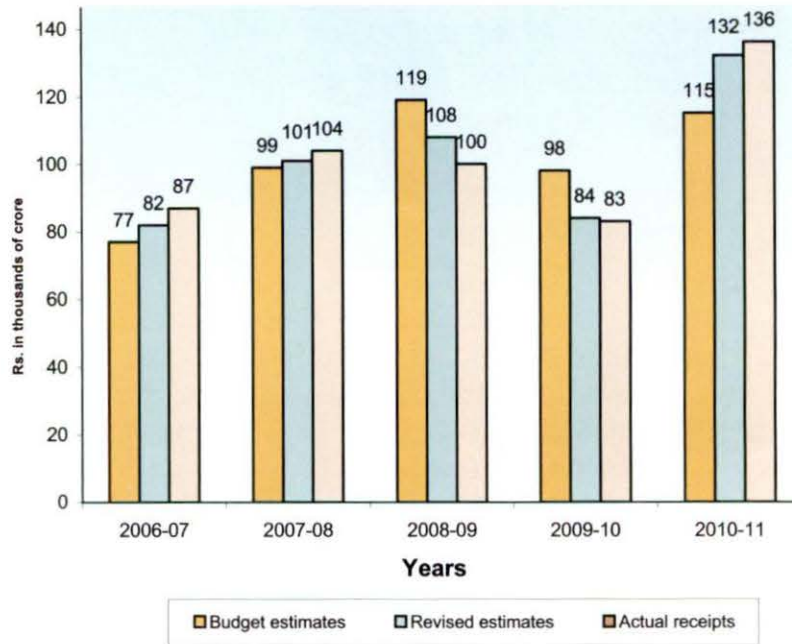
Table no. 1

(Amount in crore of ₹)

Year	Budget estimates	Revised budget estimates	Actual receipts*	Difference between actual receipts and budget estimates	Percentage variation
2006-07	77,066	81,800	86,327	9,261	12.02
2007-08	98,770	1,00,766	1,04,119	5,349	5.42
2008-09	1,18,930	1,08,000	99,879	(-)19,051	(-)16.02
2009-10	98,000	84,477	83,324	(-)14,676	(-)14.98
2010-11	1,15,000	1,31,800	1,35,813	(+)20,813	(+)18.10

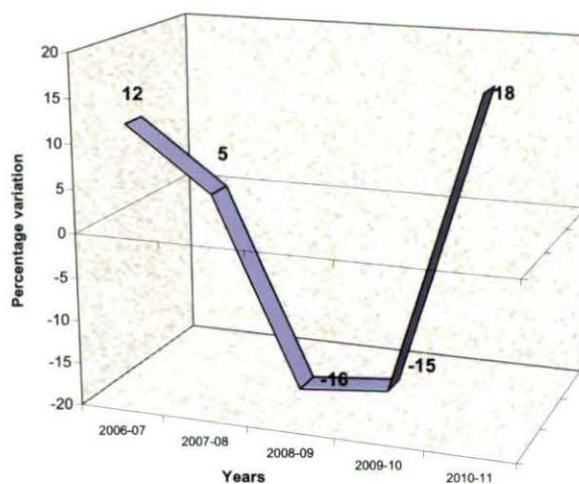
* Figures as per Finance Accounts

Graph 1: Customs Receipts – Budget, Revised and Actual



The actual receipts which showed downward trend than both the Budget & revised estimates during 2008-09 to 2009-10, moved upwards by 18.10 per cent during 2010-11 because of considerable increase in import duties collected on Petroleum oils. The percentage variation of actual receipts over the budget estimates during the years 2006-07 to 2010-11 are depicted in the following graph:-

Graph 2: Percentage variation of actual receipts over budget estimates



1.3 Trend of receipts

A comparison of total year-wise imports with the corresponding net import duties collected during 2006-07 to 2010-11 has been shown in the following table:-

Table no. 2

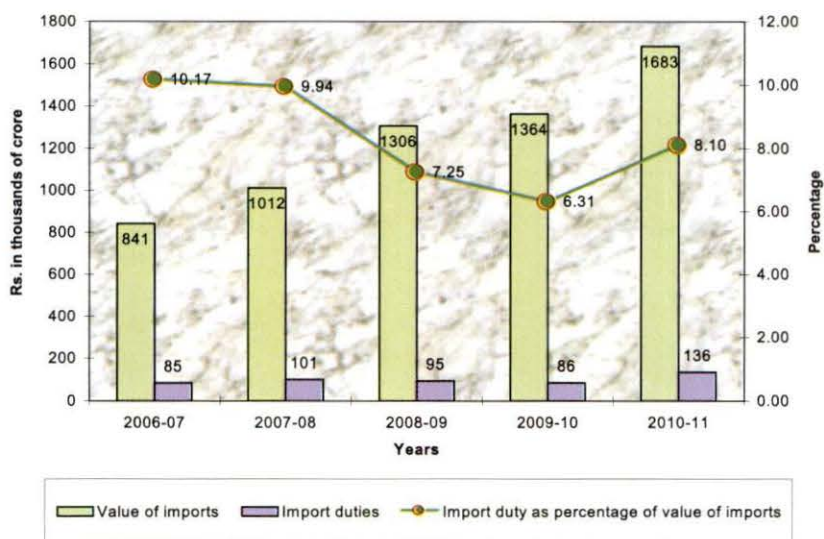
(Amount in crore of ₹)			
Year	Value of Imports [#]	Import duties [*]	Import duty as percentage of value of imports
2006-07	8,40,506	85,440	10.17
2007-08	10,12,312	1,00,635	9.94
2008-09	13,05,503	94,583	7.25
2009-10	13,63,736	86,070	6.31
2010-11	16,83,467	1,36,365	8.10

Source - *Directorate of Data Management, New Delhi

Export Import Data Bank, Ministry of Commerce, New Delhi.

While the value of imports has recorded a growth of 100 per cent over the last five years, the corresponding import duties had increased by 60 per cent.

Graph 3: Import duty as percentage of value of imports



1.4 Commodities yielding major import duties

Commodities which yielded major import duties during the year 2010-11 alongwith corresponding figures for the year 2009-10 are mentioned in the table and graph overleaf:-

Table no. 3

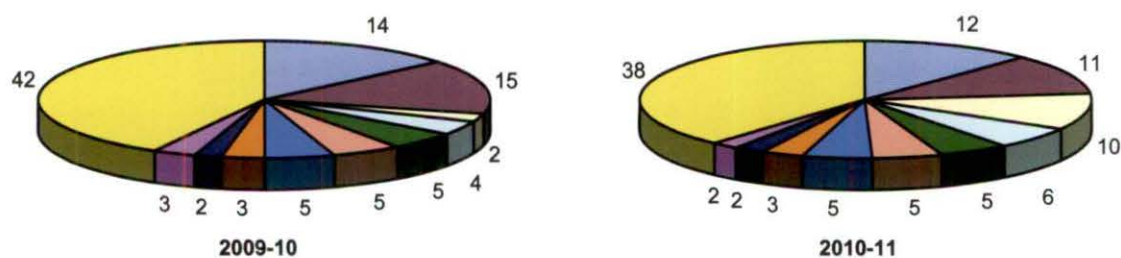
(Amount in crore of ₹)

Sl. No.	Budget Head No.	Commodities	Import duties realised		Percentage variation in 2010-11 over 2009-10	Percentage share in total import duties collected	
			2009-10	2010-11		2009-10	2010-11
1.	41	Machinery excluding machine tools and their parts and accessories, ball or roller bearing	12294	16883	37	14	12
2.	44	Electrical machinery	12867	14801	15	15	11
3.	7	Petroleum oils and oils obtained from bituminous minerals, crude	1752	13370	663	02	10
4.	8	Petroleum oils and oils obtained from bituminous minerals other than crude	3378	8736	159	04	06
5.	11	Organic chemicals	4156	6775	63	05	05
6.	18	Plastic and articles thereof	4448	6760	52	05	05
7.	46	Motor vehicles and parts thereof	4122	6509	58	05	05
8.	9	Other mineral fuel, oils, waxes and bituminous substances	2625	4177	59	03	03
9.	29	Iron & Non-alloy steel	1982	3307	67	02	02
10.	48	Optical, photographic, cinematographic, Measuring Medical and Surgical instruments	2490	3124	25	03	02
11.		All other articles not covered under commodities group of Budget head at Sl.No. 1 to 10	35956	51924	40	42	38

Source- Directorate of Data Management, New Delhi

The above table indicates that by and large there was overall increase in the collection of import duties on major commodities. Commodities 'Petroleum oils and oils obtained from bituminous minerals and crude' had shown a major increase (663 per cent) of revenue (compared to previous year), while the customs revenue from Petroleum oils and oils obtained from bituminous minerals other than crude had increased by 159 per cent during the year 2010-11.

Graph 4 : Percentage share of import duties collected on major commodities imported during 2009-10 and 2010-11



- Machinery excluding machine tools
- Electrical machinery
- Petroleum oils and crude
- Petroleum oils and oils obtained from bituminous minerals other than crude
- Organic chemicals
- Plastic and articles thereof
- Motor vehicles and parts thereof
- Other mineral fuel, oils, waxes
- Iron & Non alloy steel
- Optical photographic, cinematographic, Measuring Medical and Surgical instruments
- All other articles not covered under above commodities

1.5 Duty foregone

Export promotion schemes

The break-up of customs duty foregone on various export promotion schemes viz., advance licence, DEPB, EPCG, EPZ, EOUs and refund of duty under drawback and other schemes, for the period from 2007-08 to 2010-11, is shown in the following table and graph:-

Table no. 4

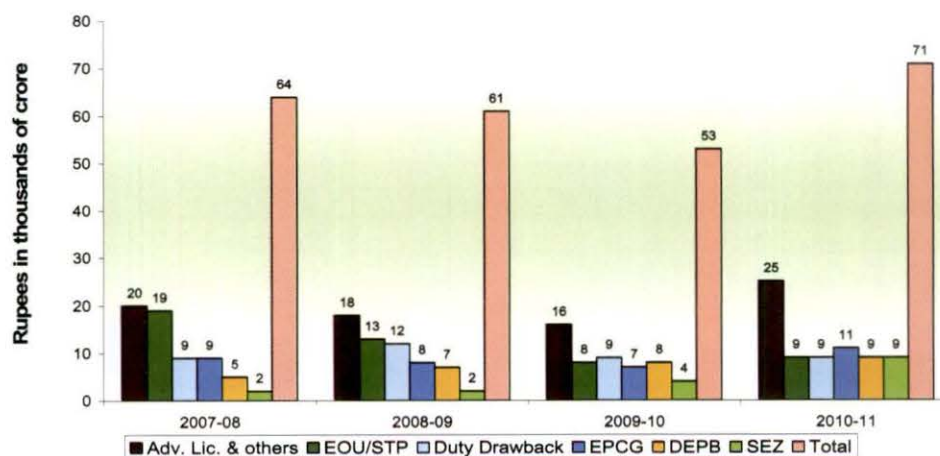
(Amount in crore of ₹)

Duty foregone									
Year	Customs duty collected	Advance licence & others*	EOU/STP	Duty drawback	EPCG	DEPB	SEZ	Total (of col. 3 to 8)	Duty foregone as a percentage of customs receipts (Col.9 over percentage of Col.2)
1	2	3	4	5	6	7	8	9	10
2007-08	1,04,119	20,481	18,759	9,015	8,933	4,986	1,848	64,022	62
2008-09	99,879	18,403	13,401	12,116	7,833	7,092	2,329	61,174	61
2009-10	83,324	16,264	8,076	9,219	7,020	8,008	4,019	52,606	63
2010-11	1,35,813	25,423	8,580	8,859	10,621	8,736	8,668	70,887	52

*Includes DFRC/DFECC/TPS/VKUY/SFIS/DFIA/FMS/Focus product schemes

Source – Directorate of Data Management, New Delhi

Graph 5: Comparison of duty foregone under various Export promotion schemes



1.6 Cost of collection of custom duties

The total expenditure incurred on the collection of customs duty as a percentage of customs receipt during the year 2010-11 alongwith corresponding figures for the year 2009-10 are mentioned in the table overleaf:-

Table no. 5

(Amount in crore of ₹)		
Cost of collection	2009-10*	2010-11*
Expenditure on revenue cum import/export and trade control functions	304.38	292.89
Expenditure on preventive and other functions	1217.85	1420.71
Transfer to Reserve Fund, Deposit Account and other expenditure	9.83	4.76
Total	1532.06	1718.36
Customs receipt	83324	135813
Cost of collection as percentage of customs receipts	1.84	1.27

* Figures as per Finance Accounts

1.7 Arrears of customs duties

The amount of customs duty assessed up to 31 March 2011 which was still to be realised as on 31 December 2011, was ₹ 9,852.29 crore.

Customs revenue of ₹ 10074.03 crore demanded up to March 2011, was not realised by the department at the end of the financial year 2010-11. Of this, ₹ 1,466.92 crore was undisputed. However, even this amount had not been recovered for a period of over five years. There is a need to strengthen the recovery mechanism of the department. The information is abstracted in the following table:-

Table no. 6

(Amount in crore of ₹)								
Sl. No.	Name of the zone	Amount under dispute			Amount not under dispute			Grand Total
		Over five years but less than ten years	Over ten years	Total	Over five years but less than ten years	Over ten years	Total	
1	2	3	4	5	6	7	8	9
1.	Ahmedabad	48.12	26.60	74.72	84.99	172.84	257.83	332.55
2.	Bangalore	4.49	12.10	16.59	0.00	0.00	0.00	16.59
3.	Chennai – Cus	128.31	23.00	151.31	176.47	25.09	201.56	352.87
4.	Chennai - Prev.	0.22	0.63	0.85	0.03	0.07	0.10	0.95
5.	Delhi – Prev.	18.68	0.02	18.70	109.35	16.54	125.89	144.59
6.	Kolkata	4505.94	3147.67	7653.61	332.00	218.71	550.71	8204.32
7.	Mumbai – 1	275.35	59.60	334.95	108.59	33.37	141.96	476.91
8.	Mumbai – 2	3.12	9.26	12.38	0.87	1.00	1.87	14.25
9.	Mumbai – 3	179.43	37.51	216.94	42.45	93.22	135.67	352.61
10.	Patna	0.06	0.00	0.06	2.72	0.00	2.72	2.78
11.	Pune	51.4	21.44	72.84	17.76	1.66	19.42	92.26
12.	Shillong	0.00	0.00	0.00	0.50	0.00	0.50	0.50
13.	Visakhapatnam	48.32	5.84	54.16	23.01	5.68	28.69	82.85
	Total	5263.44	3343.67	8607.11	898.74	568.18	1466.92	10074.03

Source – Central Board of Excise & Customs, New Delhi

1.8 Impact/follow-up of Audit Reports

Revenue impact

In the last five audit reports (including current year's report), we had included 690 audit paragraphs involving ₹ 484.92 crore. Of these, the Government had accepted audit observations in 618 audit paragraphs involving ₹ 335.05 crore and had recovered ₹ 79.59 crore. The details are shown in the following table:

Table no. 7

(Amount in crore of ₹)

Year of Audit Report	Paragraphs included		Paragraphs accepted						Recoveries effected					
			Pre printing		Post printing		Total		Pre printing		Post printing		Total	
	No.	Amt	No.	Amt	No.	Amt	No.	Amt	No.	Amt	No.	Amt	No.	Amt
2006-07	133	121.99	94	105.18	25	8.15	119	113.33	57	7.32	25	2.31	82	9.63
2007-08	182	96.50	137	37.83	27	5.51	164	43.34	80	9.85	22	4.08	102	13.93
2008-09	133	56.20	101	33.75	23	10.89	124	44.64	68	16.54	18	3.30	86	19.84
2009-10	124	79.62	102	32.71	7	2.35	109	35.06	63	18.01	3	0.37	66	18.38
2010-11	118	130.61	102	98.68	Not applicable		102	98.68	56	17.81	Not applicable		56	17.81
Total	690	484.92	536	308.15	82	26.90	618	335.05	324	69.53	68	10.06	392	79.59

1.9 Status of action taken notes

Public Accounts Committee in their ninth report (eleventh Lok Sabha) had desired that remedial/corrective action taken notes (ATNs) on all the paragraphs in the reports of the Comptroller and Auditor General, duly vetted by audit, be furnished to them within a period of four months from the date of laying of the audit report in Parliament.

The action taken notes on three paragraphs included in the Audit Report pertaining to the year 2008-09 and 2009-10 had not been received for over 19 months and 8 months respectively.

CHAPTER II

DUTY EXEMPTION/REMISSION SCHEMES

The Government may exempt wholly or part of customs duties for import of inputs and capital goods under an export promotion scheme through a notification. Importers of such exempted goods undertake to fulfil certain export obligations (EO) as well as comply with specified conditions, failing which the full rate of duty becomes leviable. A few illustrative cases where duty exemptions were availed of without fulfilling EOs/conditions are discussed in the following paragraphs. The total revenue implication in these cases is ₹ 72.74 crore. These observations were communicated to the Ministry through 12 draft audit paragraphs.

2.1 Export oriented units (EOUs)/Export processing zones (EPZs)/Special economic zones (SEZs) scheme

2.1.1 Export proceeds realisation

Under paragraph 6.12 (d) of the FTP 2004-09, the export proceeds have to be realised within 12 months of exports. The guidelines for monitoring the performance of Export oriented units (EOU)/Software technology park (STP) issued vide Appendix 14-I-G of the HBP, Vol. I, 2004-09, prescribes that it is the responsibility of the Development Commissioner (DC) to monitor realisation of foreign exchange/remittance of EOUs in coordination with RBI.

We observed a few instances where the Development Commissioners did not initiate any action on certain EOUs that were not realising the export proceeds as per the quarterly/annual performance reports within the period prescribed. The details of the cases are tabulated below:-

S. No.	Name of EOU	Period of exports	Foreign exchange remaining unrealised	Duty attributable to unrealised export proceeds	Reply of the department
1.	M/s Suzlon Energy Ltd., Daman Commissionerate	May 2007 to October 2008	₹ 292.58 crore	₹ 3,519.73 lakh	Department reported (June 2011) that ₹ 292.58 crore had since been realised.
2	M/s Computer skill Ltd., Gandhi Nagar, Commissionerate-III, Ahmedabad	July 2006 to September 2006	US\$ 6,38,089	₹108.88 lakh	Department forwarded (April 2011) the reply of RBI stating that action is being taken to expedite the realisation of pending exports proceeds.
3.	M/s Comstar Automotive Technologies (P) Limited, M.M. Nagar, Chennai, MEPZ	December 2005 to November 2008	₹ 221.22 lakh	₹ 21.44 lakh.	The Deputy Commissioner, MEPZ in their reply (March 2010) stated that SCN has been issued to the unit. Further, progress was awaited.
	Total			₹ 3,650.05 lakh	

The balance export proceeds remained unrealised as of now (January 2012).

We reported (November 2011) the matter to the Ministry; its response had not been received (January 2012).

2.1.2 Non levy of additional duty of customs on DTA clearances

According to the proviso to serial no.2 of the notification no.23/2003-CE dated 31 March 2003 as amended, it is stipulated that while calculating the aggregate of the customs duties, additional duty of customs leviable under sub section 5 of section (3) of the Customs Tariff Act shall be included, if the goods cleared into Domestic Tariff Area (DTA) are exempt from payment of Sales Tax (ST) or Value Added Tax (VAT). Further, in terms of notification no.19/2006-cus dated 1 March 2006, an additional duty of customs shall be levied at the rate of four per cent ad valorem on all the imported goods. Thus, in the case of finished goods cleared in DTA which are exempt from payment of ST or VAT, the special additional duty of customs at the rate of four per cent becomes leviable.



M/s Micro Ink Ltd., (100% EOU) under Central Excise Commissionerate, Vapi, engaged in manufacture and export of goods falling under chapters 28, 32, 34 and 38 of the Customs Tariff had made DTA clearances between 1 March 2006 and 31 March 2009 to its sister units. The DTA clearances made to sister units were treated as 'stock transfer' and cleared under notification no. 23/2003-CE without payment of excise duty equivalent to the four per cent additional duty of customs on the plea that goods cleared in DTA are not exempt from payment of ST/VAT. This resulted in non levy of additional duty of customs amounting to ₹ 19.90 crore.

When we pointed this out (January 2010), the department did not accept the audit observation and stated (February 2010) that sales tax was not paid for clearances to its sister units as it was stock transfer/branch transfer. The department further stated that the goods transferred to sister units were used for their own production and final products are cleared on payment of appropriate taxes. The reply of the department is not acceptable as:

1. The notification no. 23/2003-CE does not provide any specific exemption to 'stock transfer'. It provides exemption only to 'DTA clearances', that too where the goods suffered ST/VAT.
2. Board circular no. 38/2003-cus dated 6 May 2003 had clarified that 'stock transferred' by an EOU to DTA are covered under DTA sale.
3. 'Stock transfer' is covered under the meaning of 'sale' as defined in section 2 (h) of the Central Excise Act, 1944.

However, the department subsequently adjudicated (December 2010) the demand for ₹ 33.14 crore for period upto 30 June 2010.

When we reported (July 2011) the matter; the Ministry stated (January 2012) that the unit had filed an appeal with High Court of Gujarat against CESTAT order of April 2011 directing it to deposit ₹ 11 crore. Mean while, the High Court of Gujarat had passed an interim order (July 2011) directing that the

appeal before CESTAT should not be dismissed by the Appellate authority on the ground of non deposit of statutory amount. Further progress was awaited.

Recommendation

Department may introduce suitable mechanism in the notification itself to levy special additional duty on firm on clearances of goods on stock transfer basis to their related firms if sales tax/VAT is not paid at the time of clearance of goods from customs bonded warehouse.

Incorrect reimbursement of Central sales tax (CST)

As per paragraph 6.11 (c) of the FTP 2004-09, EOUs are entitled to full reimbursement of Central Sales Tax (CST) on purchases made from DTA for production of goods. In terms of clause 2 (a) of Appendix 14-I-I of the Hand Book of Procedures (HBP) Volume-1, admissibility of the reimbursement is subject to the condition that the supplies from DTA must be utilised by the EOU for production of goods meant for export and/or utilised for export products. However, provision of Appendix 14-I-1 was amended in the FTP 2009-14, w.e.f August 2009, removing the compulsion of goods for export and allowing reimbursement of CST to EOUs on supplies from DTA provided these were utilised by the EOUs for production of goods/services.

2.1.3 M/s Sanghi Spinners India Ltd and 20 other EOUs under the Development Commissioner, VSEZ, Visakhapatnam were granted reimbursement of CST amounting to ₹ 21.20 crore on raw materials/consumables procured and utilised by the assessee in production between 2003-04 and 2008-09. However, these units also sold goods valued for ₹ 1503.59 crore in DTA during this period before August 2009, (i.e. date of effect of amendment in the FTP), in addition to physical exports of ₹ 12162.32 crore. Reimbursement of CST on the goods sold back in DTA instead of restricting it to export production resulted in excess reimbursement of CST of ₹ 2.86 crore.

When we pointed this out (November 2010), the VSEZ authorities stated (March 2011) that EOUs were entitled to full reimbursement of CST paid by them as per paragraph 2 of Appendix 14-1-1. The department further stated that there was no restriction for reimbursement of CST in proportion to the value of inputs used in export production.

The reply of the department is not acceptable. The position cited by the department had become applicable only from August 2009 i.e. after the amendment in FTP 2009-14. Prior to that, CST reimbursement was available only for exported goods.

We reported (July 2011) the matter to the Ministry; its response had not been received (January 2012).

2.1.4 We observed that reimbursement of CST was permitted to five EOUs by DC, Madras EPZ on raw materials/consumables procured and utilised in the entire production which included finished goods sold in the DTA during the period April 2006 to March 2009. The reimbursement of CST on the inputs utilised for products sold in DTA was irregular. The excess

reimbursement of CST amounting to ₹ 28.99 lakh was recoverable as detailed below.

Name of the EOU	Excess CST reimbursed (₹ in lakh)
Lucas TVS	1.36
ICIL	3.08
Whirlpool	0.67
Cooper Bussmann	0.02
Comstar Automotive Technologies Pvt Ltd	23.86
Total	28.99

We pointed this out to the department in October/November 2009 and March 2010, their reply had not been received (January 2012).

We reported (November 2011) the matter to the Ministry; its response had not been received (January 2012).

2.1.5 Short levy of excise duty on DTA clearances

As per serial no. 3 of the table annexed to notification no. 23/2003-CE dated 31 March 2003 read with condition 3 (i), if the goods cleared by a 100 per cent EOU in DTA are manufactured wholly from the raw materials manufactured in India, it will be liable to pay duty equal to excise duty leviable under section 3 of the Central Excise Act, 1944 and in case the unit uses the imported raw materials, excise duty equal to aggregate of duties of customs is payable as provided at serial no. 2 of the notification *ibid*. Further, in notification no. 23/2003-CE an explanation-II was inserted from 6 September 2004 vide notification no.46/2004-CE which provided that in case the EOU procures the goods from any other EOU/STP/EHTP the same will be treated as 'imported goods'. In addition to the above 'procurement of goods under benefits of deemed exports under paragraph 8.3 (a) and (b)', were also included vide notification no. 29/2007-CE dated 6 July 2007.

Audit noticed that M/s Phthalo Colours (I) Ltd., Unit-I (EOU), under the jurisdiction of Central Excise Commissionerate, Daman, during 2006-08 cleared its finished goods (Copper Phthalo Cyanine Blue & others) in DTA on payment of Central Excise duty under serial no.3 of notification no. 23/2003. It was however, observed that the raw materials (Phthalic Anhydride, Copper Cathode, Ammonium Molybdate) were procured indigenously either from other EOU (M/s I.G. Petrochemicals) or against advance authorisation of M/s Sterlite Industries & M/s Inwac Metals & Chemicals. Since, the procurement of goods from an EOU or against an advance authorisation are treated as 'imported goods', the unit was required to pay excise duty under serial no. 2 of aforesaid notification no. 23/2003. This has resulted in short levy of excise duty of ₹ 1.88 crore.

When we pointed this out (November 2010), the department partially accepting the observations stated (December 2010) that the unit was required to pay duty of ₹ 70.94 lakh only w.e.f. 6 July 2007 onwards, as the amendment to explanation II of the notification no. 23/2003 was made by notification no. 29/2007-CE effective from 6 July 2007.

Reply of the department is not acceptable because the provisions for treatment of the goods procured from an EOU to be treated as 'imported goods' was

originally inserted in the notification no.23/2003-CE vide notification no. 46/2004-CE dated 6 September 2004 which was further amended vide notification no. 29/2007-CE dated 6 September 2007 which merely included the provisions for treatment of goods received from DTA under benefits of deemed exports as 'imported goods' under the provisions of FTP.

When we reported (November 2011) the matter; the Ministry stated (January 2012) that SCN cum demand notice for ₹ 1.88 crore has been issued to the unit. Further progress was awaited.

Ineligible DTA sales

As per paragraph 6.8 (a) of Foreign Trade Policy (FTP) 2004-09, an EOU may sell goods in the DTA, upto 50 per cent of the value of its exports at concessional rate of duties subject to fulfilment of positive Net Foreign Exchange Earning (NFE). Within this entitlement, an EOU may sell in the DTA, its products similar to goods which are exported from the unit. DTA sale beyond this entitlement is permissible only on payment of full duties. Notification no. 23/2003-CE dated 31 March 2003 specifies the extent of duty concessions available on such DTA sales. Further as per paragraph 6.15 (a) (ii) unutilised imported/indigenously procured goods may be disposed off in the DTA by EOUs with the approval of customs authorities on payment of applicable duties.

2.1.6 M/s Renshell Exports Pvt. Ltd., was granted (November 1998) a letter of permission (LOP) by Development Commissioner (DC), Falta Special Economic Zone (FSEZ) for manufacture and export of 'Aleuritic Acid and seedlac'. The unit made DTA sales of 'Golden seedlac' (₹ 980.64 lakh), Seedlac (₹ 451.23 lakh), '3 percent Seedlac' (₹ 96.53 lakh) during the year 2006-07, 2007-08 and 2008-09 respectively.

Audit scrutiny revealed that the unit had exported 'Aleuritic acid' only during these periods. Accordingly, it was not entitled to DTA sales of 'Golden Seedlac' and 'Seedlac' at concessional rate of duty. This had resulted in short levy of ₹ 58.58 lakh on concessional DTA sales.

When we pointed this out (October 2010), the DC of Central Excise, Asansol-II Division while admitting the observation reported (June 2011) that a protective demand notice for ₹ 41.15 lakh pertaining to DTA sales made during the year 2006-07 and 2008-09 has been issued. As regards DTA sales made during 2007-08, the DC stated that demand notice is being issued. Further progress had not been furnished (January 2012).

2.1.7 As per paragraph 6.6 (e) of the Handbook of Procedures (HBP) -Vol.-I, one of the conditions for import of duty-free inputs by an EOU is that the consumption of inputs shall be based on the Standard Input Output Norms (SION), provided that:

(a) where no SION have been notified, generation of waste, scrap and remnants upto 2 percent of input quantity shall be allowed, and

(b) where additional items other than those given in SION are required as inputs or where generation of waste, scrap and remnants is beyond 2 percent of input quantity, use of such inputs shall be allowed by the jurisdictional Development Commissioner (DC) within a period of three months from the date of and based on self-declared norms, with the Unit undertaking to adjust

self-declared/ad-hoc norms in accordance with norms as finally/fixed by Norms Committee in the Director General of Foreign Trade (DGFT).

Further, as per notification no. 52/2003-cus dated 31 March 2003, as amended, failure to adhere to these provisions would attract levy of duty on such inputs and interest thereon till the date of payment of duty.

M/s Renshell Exports Pvt. Ltd., during the year 2008-09, made duty free imports of 'Sticklac' valuing ₹ 1.23 crore and processed it to produce '3 per cent Seedlac', which was partly consumed for production of 'Aleuritic Acid' and partly sold in the DTA. The wastage generated during production of '3 per cent Seedlac' from 'Sticklac' was 25 per cent and during production of 'Aleuritic Acid' from '3 per cent Seedlac' was 88 per cent.

However, neither is any SION notified for the manufacture of 'Seedlac' (for which the input 'Sticklac' was imported), nor is 'Sticklac' included as an input for manufacture of 'Aleuritic Acid' as per SION serial no. A1248. Besides, the wastage generated was in excess of the prescribed limit of 2 per cent. Therefore, for import of the input 'Sticklac', the EOU was required to get ad-hoc norms fixed from the jurisdictional DC. But the Unit neither declared any norms, nor applied for fixation of norms by executing undertaking as required under the provisions of the HBP. Therefore, grant of duty exemption on import of 'Sticklac' was irregular, for which customs duty and interest amounting to ₹ 8.68 lakh was recoverable from the unit as per the aforesaid customs notification.

When we pointed this out (October 2010), the DC of Central Excise, Asansol-II Division while admitting the objection reported (June 2011) that a demand notice was being processed for issue to the unit. Further progress had not been furnished (January 2012).

We reported (November 2011) the matter to the Ministry; its response had not been received (January 2012).

Short levy of duty on DTA sale

2.1.8 M/s Magnum Forge & Machine Works Ltd., under Pune III Commissionerate, was issued LOP for manufacture of 'various types of alloy steel forging, valves/component for Oilfield Exploration Equipment'. The unit had cleared waste/scrap in DTA worth ₹ 2.18 crore during the period 2005-06 to 2007-08 and paid Central excise duty at the rate of 16 per cent and education cess at the rate of 2 per cent at the time of clearance in DTA under notification no. 23/2003 dated 31 March 2003 (serial no. 3) as if, the goods are produced or manufactured wholly from the raw material produced or manufactured in India. Scrutiny of Annual progress reports (APR) revealed that unit was utilizing imported raw material as well as indigenous materials for manufacturing the finished goods. Therefore, scrap cleared in DTA also contained scrap generated from imported raw material used during the manufacturing process of finished goods. Hence, clearance of scrap in DTA was to be assessed under serial no.2 instead of serial no. 3 of notification no. 23/2003 and on which custom duties of ₹ 9.69 lakh are leviable.

When we pointed this out (January 2010), the department stated (March 2011) that the unit for sale of scrap had paid duty which was on the higher side against aggregate of Customs and Central excise duty.

Reply of the department is not acceptable because the unit had used both imported as well as indigenous input material for manufacture of finished goods and scrap generated during manufacture which was sold in DTA on payment of excise duty instead of aggregate duties of customs as provided in serial no. 2 of notification no. 23/2003-CE.

We reported (November 2011) the matter to the Ministry; its response had not been received (January 2012).

Anti-dumping duty not collected on DTA sale

Under section 30 of the SEZ Act, 2005, an SEZ unit shall clear its products into DTA after paying the applicable duties of customs including anti-dumping duty under the Customs Tariff Act, 1975 where applicable, as leviable on such goods when imported. Components of Compact Fluorescent Tubes (CFT) and Compact Fluorescent Lamps (CFL) of Chinese origin, when imported and cleared as such by an SEZ unit to DTA, are liable to anti-dumping duty in terms of notification no. 126/2008-cus dated 21 November 2008.



2.1.9 We observed that M/s Gupta Infotech, a unit in Falta SEZ, cleared to DTA 2,34,350 pieces of CFL made out of CFT of Chinese origin valued at ₹ 26.13 lakh between 21 November 2008 and March 2009. However, the goods were cleared without levy of applicable anti-dumping duty amounting to ₹18.08 lakh.

When we pointed this out (March 2010), the department stated (September 2010) that though SEZ is considered to be foreign territory for the purpose of revenue, the sale of goods by SEZ unit to DTA unit is not considered as export.

The department reply is not acceptable in view of the provisions of sub section 2A of section 9A of the Customs Tariff Act, 1975 read with section 30 of the SEZ Act, which provides that articles imported by a 100% EOU are not exempted from levy of anti dumping duty, if these were used in the manufacture of any goods that are cleared into the DTA. In such clearances anti dumping duty is to be levied on that portion of the article so cleared or so used as was leviable when it was imported into India.

We reported (November 2011) the matter to the Ministry; its response had not been received (January 2012).

Recommendation

Department may introduce a specific provision for levy of anti dumping duty for such clearances by SEZ units as it was existing in case of EOUs.

2.2 Advance licence scheme

Delay in taking penal action

Under the Advance authorisation scheme, an importer is allowed duty free import of inputs, which are utilized in manufacturing products for export. The advance authorisation holder has to undertake an export obligation either in value or in quantity terms, as specified in the advance authorisation. The export obligation is required to be fulfilled within 24 months from the date of issue of licence. This was enhanced to 36 months in February 2009.



As per paragraph 4.24 of HBP (Vol.-I), 2004-2009, authorisation holder shall, within two months from the date of expiry of Export Obligation (EO) period, submit to concerned Regional licensing authority (RLA) requisite evidence for discharge of EO. In case he fails to complete EO or fails to submit relevant information/documents, RLA shall take action by refusing further authorisations, enforce condition of authorisation and undertaking and also initiate penal action as per law.

We found some instances where the advance authorisation holders had failed to fulfil the export obligation. Although the department was aware of the shortfalls in meeting the EO, it had not taken penal action. The cases are narrated below:

2.2.1 The test check of records of 11 DEEC licences in the RLA, New Delhi in December 2009 revealed that the authorisation holders had not submitted evidence of fulfillment of EO long after expiry of the prescribed period.

The defaulter orders were issued only in six cases pertaining to M/s BSMC Power Systems Pvt. Ltd. However none of these cases were finally adjudicated. In three out of the remaining five cases, though the SCN had been issued, the department had not taken any further action. In the remaining two cases which pertained to M/s Elin Electronics Ltd, even the SCN had not been issued though export obligation period had expired in July 2005.

After we pointed this out (December 2009), the RLA, New Delhi informed that in six cases of M/s BSMC Power Systems Pvt. Ltd where defaulter orders had been issued, adjudication was completed in March 2010 and sent for recovery.

In the three cases where SCN had been issued, in one case (M/s Teletube Electronics Ltd.), the licensee had submitted export documents in 2009. In another case (M/s Schnieder Electric India Ltd.) the licensee was declared a defaulter (May 2010) and given seven days time to submit documents. In the remaining one case (M/s Aksh Opti Fibres), no reply was received.

In two cases (M/s Elin Electronics Ltd) where SCN had not been issued, the department informed that after the SCN was issued in March 2010, the licensee surrendered the unutilised authorisations.

It was evident that there was undue delay in taking action where the authorisation holders had not fulfilled export obligation.

When we reported the matter to the Ministry, the DGFT, New Delhi accepting the facts stated (January 2012) that the process of monitoring in respect of M/s Schneider Electric India (Pvt.) Ltd., and M/s Aksh Opti Fibress was yet not complete. Further progress was awaited (January 2012).

2.2.2 According to Customs notifications issued from time to time, the importer at the time of clearance of imported material is required to execute a bond/BG with the Customs department to pay on demand an amount equal to duty leviable. The HBP (Vol.-I) 2004-09, also provides that in case of bonafide default in fulfillment of EO, the authorisation holder shall pay to Customs department, customs duty on unutilised value of imported material along with interest.

Audit scrutiny revealed that in 37 advance authorisations issued for CIF value of ₹ 23.66 crore and registered at custom houses located in Delhi, the authorisation holders were required to fulfil EO of ₹ 38.72 crore, as prescribed in the licences. The authorisation holders executed bonds for ₹ 11.32 crore, equivalent to duty foregone amount. Against these authorisations, inputs for CIF value of ₹ 17.28 crore were imported which involved duty forgone amount of ₹ 7.25 crore. In all these cases EO period had expired. As per provisions of the above rules, the customs authorities in these cases were required to initiate enforcement of bonds to recover duties. However, no such action was taken.

After we pointed this out, the department stated (May 2010) that SCN had been issued in 28 cases. It also informed that in most cases export related documents would have been submitted to DGFT and that Export Promotion Monitoring Cell was created in November 2009 to monitor this aspect.

This indicates that there is a requirement for better coordination between the Customs department and the RLA so that timely action could be taken.

We reported (November 2011) the matter to the Ministry; its response had not been received (January 2012).

2.3 Duty entitlement pass book (DEPB) scheme

The objective of 'Duty entitlement pass book scheme' (DEPB) is to neutralise incidence of customs duty on import content of export product. Neutralisation is provided by way of grant of duty credit against export product. This credit could be utilised for payment of customs duty on imported goods except capital goods. As per paragraph 4.3.1 of FTP (2004-09), DEPB credits may be utilised for payment of customs duty for imports made under EPCG scheme also, with effect from 1 January 2009.

M/s National Aluminium Company Ltd., imported (August and September, 2008) three consignments of goods of assessable value ₹ 44.40 crore under EPCG scheme. The department cleared the capital goods on payment of duty partly by cash (₹ 6.66 lakh) and balance from DEPB credits (₹ 2.22 crore). Since these clearances were made prior to 1 January 2009, utilisation of DEPB credits for imports under EPCG scheme was not permissible. Accordingly, ₹ 2.22 crore was recoverable with applicable interest.

When we pointed this out (October 2009), the department while accepting the audit observation stated (August 2010) that clarification has been sought from the importer regarding goods imported. Further progress had not been furnished (January 2012).

We reported (November 2011) the matter to the Ministry; its response had not been received (January 2012).

2.4 Export promotion capital goods (EPCG) scheme

Non fulfillment of Export Obligation

Paragraph 6.2 of EXIM policy 1997-02, allows import of capital goods at concessional rate of customs duty subject to export obligation equal to 5 times c.i.f. value of capital goods to be fulfilled within a period of eight years from the date of issue of licence. Paragraph 6.11 of HBP Vol-I, 1997-02 stipulates that the export obligation is required to be fulfilled blockwise and if export obligation of any particular block of year is not fulfilled in terms of prescribed proportions, the licence holder shall, within three months from the block years, pay duties of Customs on the unfulfilled portion of the export obligation along with the interest.



M/s Tata Elxi Ltd., Bangalore was issued (January 2003) a EPCG licence by RLA, Bangalore with c.i.f. value of ₹ 3.01 crore for export of goods valued at ₹ 15.03 crore. Against import (January/February 2003) of capital goods worth ₹ 55.64 lakh, the licensee failed to fulfil block wise EO, till the expiry of seven years from the date of issue of licence. Accordingly, it was liable to pay customs duty foregone on imports amounting to ₹ 22.15 lakh alongwith interest.

This was pointed out to the department in November 2010; their reply had not been received. However, audit subsequently noticed that the RLA twice directed (November 2010, January 2011) the licensee to regularise the non-fulfillment of export obligation and subsequently issued SCN in June 2011.

When we reported (November 2011) the matter; the DGFT, Department of Ministry of Commerce and Industry stated (January 2012) that the licensee had fulfilled Export Obligation to the extent of 71 per cent (₹ 2.14 crore) and has been advised to submit Foreign Inward Remittance Certificate (FIRC) copy and also complete documentation formalities. The DGFT further stated that development in the case would be intimated.

2.5 Focus product scheme (FPS)

Irregular grant of duty credit

As per paragraph 3.10.2 of Foreign Trade Policy (FTP) 2004-2009, relating to the Focus Product Scheme (FPS), export of notified products (as listed in Appendix 37 D of HBP Vol.-I) were eligible for Duty Credit Scrip equivalent to 1.25 per cent of FOB value of exports for each licensing year, commencing from 1 April 2006. Supplies from Domestic Tariff Area (DTA) units to SEZ

units for which payments were received in free foreign exchange, were also made eligible with effect from April 2006, vide DGFT notification no. 64 (RE-2007)/2004-2009 dated 24 December 2007. Further, as per serial no. 1 under the Category 'C-Handicraft Items' of Appendix 37D, 'Carpets and other textile floor coverings, knotted (hand knotted category only)' falling under ITC (HS) 5701, and as per serial no.2, 'Carpets and other textile floor coverings, woven (hand woven category only)' falling under ITC (HS) 5702, were among the goods eligible for benefit under the Scheme.



In January 2008, the Office of the Zonal Jt. DGFT, Kolkata issued five FPS Duty credit scrips each to the DTA units M/s Roto India Enterprises and M/s Exotica International, valuing ₹ 54.43 lakh and ₹ 49.95 lakh respectively, for supplies of knotted and woven Carpets and Floor Coverings to three units in Falta SEZ. However, out of 16 Export bills under which the supplies were made by M/s Roto India Enterprises, in eleven Export bills of 'woven' Carpets/Floor Coverings, involving FPS duty credit amounting to ₹ 35.51 lakh, neither the invoices nor the Export bills or the Final assessment sheet issued by the SEZ Customs authority, showed that the goods were of 'hand woven category'. Similarly, out of nine Export bills presented by M/s Exotica International, for five Export Bills of 'woven' Carpets/Floor Coverings, involving FPS Duty Credit amounting to ₹ 30.99 lakh, none of the documents produced indicated that the goods were of the 'hand woven category'. Thus, there was irregular grant of FPS duty credit amounting to ₹ 66.50 lakh on supply of 'woven' Carpets/Floor Coverings which were ineligible for such benefit.

When we pointed this out (November 2011), the DGFT, Department of Ministry of Commerce and Industry, New Delhi stated (January 2012) that all the eleven Export bills of M/s Roto India Enterprises objected to were classified under the ITC (HS) classification 57023110 as 'woven' carpets/floor coverings and were passed by the customs authority as 'woven' products only. It was further argued that the said ITC (HS) classification was exclusively for 'Hand Woven' products only.

The Ministry's reply is not acceptable because the ITC (HS) classification and corresponding Customs Tariff Heading 5702 3110 covers 'woven' products, both 'hand-woven' and otherwise, and the Carpets/Floor Coverings in question were indeed assessed correctly by Customs under the said heading as 'woven' only, and not specifically as 'hand-woven'. It was the Licencing authority that had erred in assuming that the heading under which the said goods had been assessed by Customs was exclusively for 'hand woven' products.

CHAPTER III INCORRECT ASSESSMENT OF CUSTOMS DUTIES

We found a few cases of incorrect assessment of customs duties during test check, having an implication of ₹ 28.25 crore. They are described in the following paragraphs. These observations were communicated to the Ministry through 16 draft audit paragraphs.

3.1 Unintended benefit due to existence of dual rates of customs duty

'Palm fatty acid distillate (PFAD)' and 'Palm kernel acid distillate (PKAD)' both falling under Customs tariff heading (CTH) 38231900 attract Basic customs duty (BCD) at the rate of 15 per cent (under serial no. 139) and 20 per cent (serial no.491) of the notification no. 21/2002-cus dated 1 March 2002.



M/s Godrej Industries Ltd., and five others imported (September/November 2010) 125 consignments of 'Palm fatty acid distillate and palm kernel acid distillate' through Customs House, Dahej, Ahmedabad Commissionerate and Customs House, Kandla, Commissionerate. The imported goods were cleared for home consumption between May 2008 and October 2010 by paying lower rate of duty by taking the advantage of dual rates in the tariff for the same commodities which resulted in unintended benefits to the importers amounting to ₹ 20.24 crore.

When we pointed this out (November 2011), the Ministry stated (December 2011) that when there are two different rates of duty available under exemption notification the importer is entitled to lower rate of duty. The Ministry further stated that this fact was judicially held by the Supreme Court (M/s Share Medical Care vs Union of India).

The fact remains that existence of dual customs duty rates for a product in the same notification is resulting in unintended benefits to the importers.

Recommendation

The Government may review the existence of dual rates in the same notification for the same goods and notify single rate of customs duty on PFAD and PKAD. This would pave the way for realisation of correct duty to the exchequer.

3.2 Cost recovery charges not realised

According to Central Board of Excise and Custom's (Board) circular F.No.11018/9/91-Ad.IV dated 1 April 1991 read with circular nos. 128/1995 and 52/1997, the custodian would bear the cost of customs staff posted at Inland Container Depot (ICD)/Container Freight Station (CFS). Custodians are required to pay at a uniform rate of 1.85 times of monthly average cost of

the post plus, DA, HRA, CCA etc. in respect of customs staff posted at ICD/CFS. Advance deposit is required to be made for staff for three months. Further, after implementation of recommendations of sixth pay commission, pay scales and other allowances of central government employees have been revised. Accordingly, differential establishment charges on the revised emoluments are required to be collected.

Test check of records of following three Customs Commissionerates between June 2009 and August 2010 revealed that there was total short recovery of establishment charges amounting to ₹ 392.71 lakh from 19 custodians as shown below:

Sl. No.	Customs Commissionerate	Custom House (CH)/No. of custodians	Period of short recovery	Short recovery (₹ in lakh)	Remarks
1	Ahmedabad	Customs House Surat (4 custodians)	January, 2006 to June 2009	77.92	Arrears of pay on account of implementation of sixth pay commission was not recovered
2	Kandla	Customs House MP & SEZ, Mundra (14 custodians)	October, 2008 to March 2010	303.36	Arrears of pay on account of implementation of sixth pay commission was not recovered
3	Jamnagar	Customs House Pipavav (1 custodian)	January, 2010 to December 2010	11.43	Differential recovery on account of increase in DA rate w.e.f. 1.1.2010 was not effected and grade pay of DC was taken as ₹ 400 instead of ₹ 6600
			Total	392.71	

When we pointed this out (June/November 2009, August/October 2010 & February 2011), the Customs Commissionerate, Ahmedabad recovered ₹ 77.92 lakh and Customs Commissionerate, Jamnagar effected recovery of ₹ 11.43 lakh. Further, Kandla Commissionerate reported (July 2010) recovery of ₹ 2.98 crore out of ₹ 3.04 crore. Recovery particulars of the balance amount (₹ 0.06 crore) from Kandla, Customs Commissionerate had not been received (January 2012).

We reported (September 2011) the matter to the Ministry; its response had not been received (January 2012).

3.3 Excess refund of additional duty of customs

In terms of paragraph 2 (d) of customs notification no. 102/2007 dated 14 September 2007 as amended, goods imported into India for subsequent sale are exempted from whole of the additional duty of customs provided the importer on sale of the said goods pays appropriate sales tax or value added

tax in addition to all duties including the said additional duty of customs at the time of importation of the goods. A claim for refund of the additional duty of customs paid could be made before the expiry of one year from the date of payment of duty. Further, Central Board of Excise & Customs (Board) in their circular no.6/2008 dated 28 April 2008 prescribed the procedures to be adopted for refund of additional duty of customs paid under notification 102/2007-cus. The procedure provides that the unsold stocks would not be eligible for the refund of such additional customs duty.

M/s Leaf Trading Company, Chennai, engaged in the trading of mobile phones, had filed a claim (April 2010) for refund of additional duty of customs amounting to ₹ 1.71 crore in respect of imports made under 46 Bills of entry (BEs) during the period April 2009 to February 2010. Refund of additional duty of customs of ₹ 1.70 crore was granted (June 2010) after disallowing a claim of ₹ 0.60 lakh in respect of one BE pertaining to Chennai (Sea), Commissionerate.

Audit noticed from the Certificates furnished by the Chartered Accountant and Assistant Commissioner (Commercial Taxes) that out of the 45 BEs where refund was granted, in 13 cases refund of ₹ 60.73 lakh was granted on the goods which were sold on the date of imports, in nine cases refund of ₹ 36.67 lakh was granted on the goods which were sold prior to the date of imports/payment of TR6 Challan/Out of Charge, in one case refund of ₹ 2.59 lakh was granted where no sale had taken place and in 16 cases refund of ₹ 41.14 lakh was granted where Sales Tax/Value Added Tax was not paid at the time of claim of refund. It was apparent that the goods sold prior to the date of import/payment of duty against the invoices were not the goods actually imported against the respective BEs and the importer was not eligible for refund of additional duty of customs. It was further observed from the certificate given by the Assistant Commissioner of Commercial Tax confirming the payment of VAT for the sales made by the importer during the period from April 2009 to February 2010 that as against the total VAT payable of ₹ 133.13 lakh, an amount of ₹ 43.23 lakh remained 'unpaid' till the date of filing of the claim. Thus, the condition stipulated in paragraph 2 (d) of the aforesaid notification dated 14 September 2007 had not been fulfilled. Further, the department in the earlier occasions had disallowed the claim in respect of sales made on the date of import/payment of duty. Hence, claim of ₹ 1.41 crore being ineligible should have been disallowed. The omission to disallow the ineligible claims resulted in excess refund of additional duty of customs of ₹ 1.41 crore.

When we pointed this out (August 2010), the department issued a demand notice in September 2010. The department further stated (July 2011) that the sales invoices were raised either a day or two before filing of BE only after the goods were confirmed for dispatch by the supplier in order to tide over the financial difficulty and that the claimant had furnished the bank account to prove that the VAT amount was paid.

The reply of the department was not acceptable because the notification provides for exemption from additional duty of customs only for subsequent sales and not for sales made prior to importation and that the VAT was unpaid on the date of submission of refund claim.

We reported (November 2011) the matter to the Ministry; its response had not been received (January 2012).

3.4 Non levy of anti dumping duty

As per section 9A of the Customs Tariff Act, 1975, where any article is exported from any country to India at less than its normal value, then upon the import of such article into India, the Central Government may, by a notification, impose an anti dumping duty. Accordingly, anti dumping duty was imposed from time to time on goods like 'Polytetra fluoroethylene (PTFE), Sodium saccharine, Glass fibre, Melamine, Colour picture tubes, Homopolymer of vinyl chloride and Injection moulding machine' etc. when these were imported from specified countries like China, Malaysia, Taiwan etc.



Audit scrutiny revealed that 13 consignments of such goods imported from these specified countries were cleared without levying of the applicable anti dumping duty of ₹ 1.12 crore.

When we reported (July/November 2011) the matter, the Ministry/Department accepted the short levy of ₹ 67 lakh in five consignments and reported recovery of ₹ 3.97 lakh. In respect of two consignments imported through JNCH Commissionerate, Mumbai (BE Nos. 752256 and 756819) the Ministry stated that the items imported (Glass Fibre chopped stands and Glass Wool) were exempt from levy of ADD.

The reply of the Ministry is not acceptable because the items imported were articles of Glass fibre and classified by the department under CTH 7019 hence leviable to ADD. Reply in respect of remaining consignments had not been received (January 2012).

3.5 Non levy on finalisation of provisional anti dumping duty

As per section 9A of the customs tariff act, 1975 read with Rule 20 (2) (a) of Customs tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination for Injury) Rules, 1995 (ADD Rules), where provisional duty has been levied and the designated authority has recorded a final finding of injury, ADD may be levied from the date of imposition of provisional duty.



Provisional anti dumping duty was levied under notification no. 90/2008-Cus dated 24 July 2008 on colour television picture tubes falling under Customs tariff heading (CTH) 854011 originating in, or exported from Malaysia, Thailand, Peoples Republic (PR) of China and PR of Korea, if the landed cost at which the items were imported was less than the rates prescribed in the notification. Subsequently, based on final findings by the designated authority, definitive anti dumping duty on such imports was

imposed vide notification no. 50/2009 dated 15 May 2009, with retrospective effect from the date of imposition of the provisional ADD i.e 24 July 2008.

M/s Videocon Industries Ltd., Aurangabad had imported (September to October 2008) from Malaysia and China 14 consignments of 'colour picture tubes' through Inland Container Depot, Walunj, Aurangabad. However, provisional anti dumping duty on these imports was not levied by the department under provisional notification no. 90/2008 because the landed cost was stated to be more than the rates prescribed in the notification. We found that on imposition of final anti dumping duty under notification no.50/2009 dated 15 May 2009, leviable from the date of imposition of the provisional anti dumping duty i.e. 24 July 2008, the landed cost of the aforementioned imports became less than the rates prescribed in the final notification. Accordingly, these imports were leviable to anti dumping duty amounting to ₹ 67.80 lakh. This amount was required to be recovered from the importer.

When we pointed this out (February 2010), the department stated (April 2010) that in one case importer had paid the ADD at the time of clearance and in remaining 13 cases objection was not acceptable. It stated that as per Rule 21 (1) of ADD Rules, 1995, if the anti dumping duty imposed by the Central Government on the basis of final finding of the investigation conducted by the designated authority was higher than the provisional duty already imposed and collected, the differential duty should not be collected from the importer.

The reply of the department is not acceptable. In the 13 consignments under reference, provisional anti dumping duty was neither levied nor collected; accordingly Rule 21 is not applicable and ADD has to be levied and collected at rates specified in the final notification of May 2009.

The department subsequently reported (November 2010) issue of protective demand notice (May 2010) in 20 cases including six cases pointed out by audit. Further progress had not been intimated (January 2012).

We reported (November 2011) the matter to the Ministry; its response had not been received (January 2012).

3.6 Non imposition of penalty

According to Section 116 of Customs Act, 1962, if any goods loaded in a conveyance for importation into India are not unloaded at the place of



destination or if the quantity unloaded is short of the quantity to be unloaded at that destination, the person-in-charge of the conveyance shall be liable to a penalty not exceeding twice the amount of duty that would have been chargeable on the goods not unloaded or the deficient goods as the case may be

had such goods been imported.

Further, circular no. 96/2002-cus dated 27 December 2002, prescribes that in case of all bulk liquid cargo imports which are not discharged through regular pipelines and are cleared directly on payment of duty, the assessment shall be done as per the ship's ullage survey report. However, for the purpose of fixing liability under section 116 of the Customs Act, 1962, the liability would be

evaluated by comparing the ship's ullage quantity at the port of discharge with the ship's load port ullage quantity or the bill of lading quantity if the former is not made available by the Master/Agent.

M/s Reliance Industries was permitted (16 August 2007) to clear 2000 MT of Motor spirit valued at ₹ 6.16 crore through Customs House, Cochin on payment of provisional duty of ₹ 4.68 crore. The assessment was finalised subsequently based on the ullage report. Since the quantity of Motor spirit discharged was 1939.241 MT only as per the ullage report, the department refunded ₹ 10.11 lakh towards excess differential duty collected on undischarged quantity of the imported goods at the time of provisional assessment.

Audit noticed that the department had not recovered short landing penalty chargeable under the provisions of section 116 of the Customs Act, 1962 from the Master/Agent in charge of the vessel evaluating the liability by comparing the ship's ullage quantity at the port of discharge with the ship's load port ullage quantity or the bill of lading quantity. The penalty to be recovered on short landed quantity of 60.759 MT (2000 MT – 1939.241 MT) (by comparing the ullage quantity with the bill of lading quantity), worked out ₹ 28.67 lakh i.e. twice the amount of duty leviable on such quantity.

When we pointed this out (April/May 2010), the department stated (November 2011) that the short landed quantity was only 22.869 MT after considering the 37.890 metric tones which was short received on board the vessel at the load port itself. It added that the balance short landed quantity of 22.869 MT was only 0.20 percent of the total loaded quantity which was within the ocean tolerance limit of one percent cited in Ministry's communication in F.No. 55/33/66-Cus IV dated 3 February 1967 reproduced as standing order No. 31/67 dated 13 March 1967 by Customs House, Cochin. The department further stated that short landed quantity of 22.869 MT was alternatively worked out at 1.14 percent of the bill of lading quantity for Cochin port. The department also added that vide standing order No.31/1967, the Board has decided that in borderline cases where losses are between 1 percent and 1.3 percent, the department should adopt a liberal approach, accordingly there was no short landing which warrants action under section 116 of the Customs Act, 1962.

The department's stand and the suggested methodologies for arriving at the shortfall in landed quantity based on total loaded quantity/bill of lading quantity are not acceptable because;

➤ The data pertaining to ullage survey reports/shortfall in discharge at earlier ports of discharge has not been made available to Audit.

➤ Bill of lading quantity vide circular No. 96/2002 cus dated 27 December 2002 could be relied on only if the ullage survey report at the port of loading has not been made available by the Master/Agent of the ship which was not so in the instant case. Further, the liberal approach mooted in standing order dated 13 March 1967 would be possible (in respect of liquid cargo from black sea ports brought by Soviet vessels) only after a consideration of all relevant factors including documentary evidence

produced. This necessarily would imply the need for a speaking order which was absent in this case.

We reported (November 2011) the matter to the Ministry; its response had not been received (January 2012).

3.7 Incorrect assessment of notified commodities on the basis of Maximum retail price (MRP)

The Government of India vide notification no.2/2006-Central Excise (NT) dated 1 March 2006 has notified a list of commodities for assessment on the basis of their maximum retail price (MRP). The countervailing duty (CVD)



on these items is to be assessed on the basis of their retail sale price (RSP) after allowing prescribed abatement from the RSP/MRP. The rate of abatement on parts, components and assemblies of automobiles was 40 per cent, 33.5 per cent and 31.5 per cent during the period January to April 2006, May 2006 to February 2008 and from March 2008 respectively {(notification 2/2006-CE-NT dated 1 March 2006, notification 11/2006-CE (NT) dated 29 May 2006 and notification no.14/2008-CE (NT) dated 1 March 2008}.

M/s Osram India Pvt. Ltd., and 17 others imported (March 2007 to October 2008), 144 consignments of automobile parts through New Customs House, New Delhi and ICD, Patparganj. The department cleared these consignments after incorrectly allowing abatement at the rate of 40/38 per cent and 33 per cent instead of applicable rate of 33.5 per cent and 31.5 per cent respectively during the relevant period of imports. This resulted in short levy of duty of ₹ 17.48 lakh.

When we pointed this out (March 2008 to February 2009), the department reported (November 2009/December 2009) recovery of ₹ 11.25 lakh and interest of ₹ 0.57 lakh in 126 cases. The recovery in respect of remaining cases was awaited (January 2012).

We reported (September 2011) the matter to the Ministry; its response had not been received (January 2012).

3.8 Incorrect assessment of High sea sale

As per Rule 3 (1) of Customs Valuation Rules 2007, the value of imported goods shall be the transaction value. The CBEC in its Public notice no. 145/2002 dated 3 December 2002 clarified that in case the 'actual high sea sale contract price' is known and the same is more than 'c.i.f. value plus two per cent of high sea sales charges', then the actual sale contract value paid has to be considered for the purpose of duty assessment. The assessable value would also include commission charges or other expenses incurred by the importer besides landing charges of one per cent.

M/s JSL Ltd., and 11 other importers purchased (July 2009 to June 2010) 14 consignments of various goods on high sea sale basis from various importers.

Audit scrutiny revealed that duties on these imports were assessed on invoice value declared by the importers and duty was paid accordingly. Even though, in all these consignments 'the high sea sale contract price' was more than 'the CIF value plus two per cent high sea sale value'. Thus, non adoption of 'contract values' for the purpose of assessments resulted in short levy of duty of ₹ 16.79 lakh.

When we pointed this out (October 2009 to June 2010), the department reported (March 2010 to February 2011) recovery of ₹ 9.33 lakh alongwith interest of ₹ 0.20 lakh in respect of 11 consignments. Recovery in respect of remaining three consignments was awaited (January 2012).

We reported (July 2011) the matter to the Ministry; its response had not been received (January 2012).

3.9 Interest paid on Terminal excise duty (TED) refunds

As per paragraph 8.3 (c) of the Foreign Trade Policy (FTP) 2004-09, deemed exports shall be eligible for refund of Terminal excise duty (TED) in respect of manufacture and supply of goods qualifying as deemed exports subject to the terms and conditions prescribed in the Handbook of procedure Vol.-I. Further, as per paragraph 8.5.1, simple interest at the rate of 6 per cent per annum will be payable on delay in refund of TED under deemed exports scheme in respect of reimbursement/refunds that have become due on or after 1 April 2007 but which have not been settled within 30 days of its final approval for payment by the Regional authority of Director General of Foreign Trade (DGFT) organisation.

Test check of TED payment records in the office of the Joint DGFT, Ludhiana, revealed that in 154 cases the claims for refunds were not settled within prescribed time limit resulting in payment of interest amounting to ₹ 15 lakh.

When we pointed this out (July 2011), the DGFT, Department of Ministry of Commerce and Industry, New Delhi stated (January 2012) that payment of interest was made as per the policy and claims could not be settled because of delay in allocation of funds from the Ministry of Finance, New Delhi.

The reply confirmed that the interest of ₹ 15 lakh had to be paid due to delays which had arisen because of lack of coordination between the two Ministries.

3.10 Short levy due to undervaluation

On the basis of intelligence regarding gross undervaluation and mis-declaration of description and specifications of various types of Aluminum wire being imported through Kolkata Port, gathered by the Dock Intelligence



Unit (DIU) under the Commissionerate of Customs (Preventive), West Bengal and reported in November 2008, directions were issued in December 2008 by the Commissioner of Customs (Port), Kolkata through the Special Investigation Branch (SIB) that all future consignments of such

products imported from China were to be thoroughly examined during shed examination and their valuation aspect was to be checked from National Import Database (NIDB) and the bench-mark prices given by the DIU, which were US \$ 4.5/Kg and US \$ 6.0/Kg for "Aluminum braiding wire and copper plated aluminum wire", respectively.

M/s Ucomax Kraft and Industries and M/s Hissaria Brothers imported (July 2009 to September 2009) six consignments of 'Aluminium Braiding Wire' and 'Copper coated aluminium (CCA) wire' from China through Kolkata Port, at declared prices which were much lower than the benchmark values for these products given by the DIU and ordered to be adopted by the Commissioner of Customs (Port). However, the department assessed these consignments at the values much lower than the DIU benchmark values, resulting in undervaluation and consequent short-levy of customs duty amounting to ₹ 9.43 lakh.

When we pointed this out (May 2010), the Commissionerate of Customs (Port), Kolkata authorities in their reply (May 2010) stated that one consignment has been duly assessed after enhancing the value to \$ 4.5/Kg, while remaining consignments pertain to Haldia Port. The reply is not acceptable because, the item imported in the said consignment was CCA wire which should have been assessed at the value of \$ 6.00/Kg. Meanwhile, the Assistant Commissionerate of Customs, Mini Custom House, Haldia in their reply (June 2011) in respect of remaining five consignments informed that a Show Cause-cum-Demand Notice for ₹ 4.65 lakh had been issued in respect of three consignments pertaining to Haldia port. However, it was re-confirmed from the EDI system that remaining two BEs (BE No. 490747 and 493785) out of five consignments also relate to Haldia unit. This was communicated to them in August 2011. Further progress had not been intimated (January 2012).

We reported (November 2011) the matter to the Ministry; its response had not been received (January 2012).

CHAPTER IV INCORRECT APPLICATION OF GENERAL EXEMPTION NOTIFICATIONS

The Government under section 25 (1) of the Customs Act, 1962 is empowered to exempt either absolutely or subject to such conditions as may be specified in the notification, goods of any specified description from the whole or any part of duty of customs leviable thereon. Some illustrative cases of non-levy/short levy of duties aggregating ₹ 4.53 crore due to incorrect grant of exemptions are discussed in the following paragraphs. These observations were communicated to the Ministry through six draft audit paragraphs.

4.1 LCD Panel

'LCD Panel' parts of Liquid crystal display (LCD) TV are classifiable under customs tariff heading (CTH) 85299090, attracting Basic Customs Duty (BCD) at the rate of 10 per cent ad valorem. Further, in terms of notification no. 21/2002-cus dated 1 March 2002 (serial no. 319A), as amended vide notification no. 77/2009-cus dated 7 July 2009, LCD panel, classified under CTH 8529, attracts concessional rate of duty of 5 per cent subject to submission of certificate issued by the concerned Excise Authority under Customs (Import of Goods at Concessional rate of duty for manufacture of excisable goods (IGCR) Rules 1996.



M/s L.G.Electronics had imported (July to August 2009) 40 consignments of 'LCD Panel' size 18.5 to 47 inches through JNCH Commissionerate, Mumbai. The department classified these goods under CTH 90138010 as 'Liquid crystal devices not constituting articles provided for more specifically in other headings' and granted exemption under customs notification no. 24/2005 (serial no. 29) dated 1 March 2005. However, the imported goods being parts for manufacture of LCD TV merited classification under CTH 85299090 and leviable to BCD at the rate of 10 per cent, under aforesaid notification as the importer had not fulfilled the prescribed condition of IGCR Rules 1996. The misclassification and incorrect grant of exemption resulted in non levy of duty of ₹ 2.76 crore.

When we pointed this out (October/December 2009), the department reported (June 2010/June 2011) recovery of ₹ 94.41 lakh alongwith interest of ₹ 8 lakh in 21 consignments.

While in respect of another 18 consignments, the department reported (May 2010) that LCD Panels were correctly classified under CTH 90138010 in view of judicial pronouncement in the case of M/s Videocon Industries Ltd. vs CCE, Aurangabad (2009-TIOL-653-CESTAT-Mum-Tribunal), wherein it was held that LCD Panels having multi use in Television and computer monitor are correctly classifiable under CTH 90138010.

The department's reply is not acceptable because the amended notification no. 77/2009 dated 7 July 2009 had brought that 'LCD Panels' for manufacture

of LCD TVs classified under CTH 8529 attract 5 per cent effective rate of duty. Therefore, it implies that the intention of legislation was to classify the LCD Panels under chapter heading 8529 and not under CTH 90138010. The period covered under aforesaid Videocon Industries Ltd., case was August 2006 to April 2008 i.e. prior to amendment of notification. In the instant case the bill of entries specifically mentioned that imported goods were meant for Television.

However, on being issued protective demand notice by the department for differential duty of ₹ 2.58 crore for the period 20 July 2009 to 28 August 2009 (51 consignments, including 18 consignment pointed by audit), the importer had paid ₹ 1.34 crore in March 2010 under protest.

We reported (November 2011) the matter to the Ministry; its response had not been received (January 2012).

4.2 LED display panel

'LED display panel' is classifiable under CTH 94056090 as 'other illuminated signs, illuminated name-plates and the like' and leviable to BCD at the rate of 10 per cent. Also as per Harmonised system of nomenclature (HSN) notes under chapter heading 9405 'illuminated signs, illuminated name plates and the like' covers advertising signs and the like articles such as advertising plates of any material.



M/s Technology Frontiers (I) Pvt Ltd., had imported (August 2010) through Chennai (Sea), Commissionerate two consignments of 'LED display panel' supplied by M/s Shenzhen Mary Photo Electricity Co Ltd., China. The goods were incorrectly classified under CTH 85312000 as 'Indicator panel' and exempted from BCD under notification no. 24/2005-cus dated 1 March 2005 (serial no. 19).

Audit noticed that the imported goods were 'LED panel' for display and merited classification under CTH 94056090 leviable to BCD at the rate of 10 per cent instead of under CTH 8531 as 'Indicator Panel'. The incorrect grant of exemption had resulted in short levy of duty of ₹ 83.50 lakh.

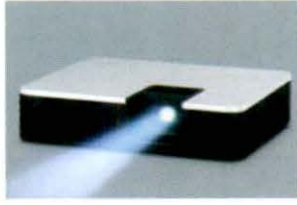
When we pointed this out (October 2010), the department while accepting the observation stated (May 2011) that demand notice has been issued to the importer.

We reported (September 2011) the matter to the Ministry; its response had not been received (January 2012).

4.3 Projectors

'Projectors' that are solely or principally used in an automatic data processing system are classifiable under CTH 85286100 and exempted from levy of BCD under notification no. 24/2005-cus dated 1 March 2005 (serial no.17). Whereas other projectors are classifiable under CTH 85286900 and assessable to BCD at the rate of 10 per cent.

M/s Redington India, Ltd., M/s Kupidisaatham Narayanaswami Educational Trust and M/s Sharp Business (System) India Ltd., had imported (March to June 2010) five consignments of 'BenQ Projectors', 'Viewsonic Projectors' and 'DLP Projectors' of various models supplied by M/s BENQ Asia Pacific Corporation, M/s Viewsonic International Corporation and M/s Sharp Corporation respectively through Chennai (Sea), Commissionerate and Chennai (Air) Customs Commissionerate. The goods were classified under CTH 85286100 and exempted from BCD under aforesaid notification.



Audit noticed from the products catalogue that the imported models were having RS-232 input, S.Video input and Composite Video input provision and hence could be used with an automatic processing system as well as with Television and Videos. Further, the aspect ratio of the imported goods was 16:9. Accordingly, the imported goods merited classification under CTH 85286900 and assessable to BCD at the rate of 10 per cent in terms of the Board's circular no. 33/2007-cus dated 10 September 2007, wherein it was clarified that the aspect ratio for TV was generally 16:9. Further, similar imports through Chennai Sea and Air Commissionerate during March 2010 were classified under CTH 85286900 and levied BCD at the rate of 10 per cent. Thus, extending the benefit of aforesaid exemption notification had resulted in short levy of duty of ₹ 68.47 lakh.

When we pointed this out in August-November 2010/November 2011, the Ministry/department reported (March/November 2011) recovery of ₹ 29.75 lakh along with interest from M/s Sharp Business System Pvt. Ltd., and issue of less charge notice to M/s Redington India Ltd. Reply in respect of remaining one importer has not been received (January 2012).

4.4 High Speed Diesel (HSD) Oil

'High Speed Diesel (HSD) Oil' classifiable under the CTH 27101930 intended for sale without a brand name will attract concessional CVD at ₹ 2.60 per litre under notification no 4/2006-CE dated 1 March 2006 {serial no. 19 (i)} and High Speed Oil other than those specified at serial no. 19 (i) is liable for concessional CVD at ₹ 3.75 per litre under serial no. 19 (ii) of the same notification.



M/s Van Oord Dredging and M/s Marine Contractors BV India Project, Mumbai imported (March 2010 to May 2010) two consignments of 'Diesel Oil (Marine Gas Oil)' through Cuddalore Port under Trichy Commissionerate. The goods were classified under the CTH 27101930 and levied concessional CVD at the rate of ₹ 3.75 as per serial no.19 (ii) of the notification no. 4/2006-CE dated 1 March 2006.

Audit noticed that since the imported item was not intended for sale, rather it was used on board the vessel as consumables, accordingly ineligible for concessional CVD. It was required to be levied on 'merit rate' at 16 per cent

CVD plus ₹ 5 per litre in addition to other duties. Thus incorrect grant of exemption resulted in short levy of duty to the extent of ₹ 25.05 lakh.

When we pointed this out (November 2011), the Ministry stated (December 2011) that HSD and MGO are same and both are classifiable under Customs tariff heading 27101930 and HSD is used as MGO as per international practice. The Ministry further stated that Diesel Oil found on board was not imported as such and would be charged to customs duty when the vessels were converted from foreign run vessel to Coastal run vessel.

The reply of the Ministry was not acceptable because the imported goods 'Marine Gas Oil' was different from the High Speed Diesel Oil as per the specifications, even though it was classified under CTH 27101930. It was judicially held in the case of M/s Jain Engineering vs Collector of Customs, Bombay reported in 1987 (32) ELT.3 (S.C.) read with Board's circular no.60/195 dated 6 June 1995, that in determination of the appropriate classification for extending the benefit of a notification, the description of the goods shall be the consideration for accommodation in an 'Entry' related to such description in a notification and not the tariff heading shown against it. Hence, the extension of benefit under the aforesaid notification was not applicable to Marine Gas Oil, since it was available only for HSD.

CHAPTER V MIS-CLASSIFICATION OF GOODS

A few cases of incorrect classification of goods resulting in short-levy/non-levy of customs duties of ₹ 2.25 crore noticed in test check are discussed in the following paragraphs. These observations were communicated to the Ministry through five draft audit paragraphs.

5.1 Low Noise Block (LNB) converter

As per Note 2 (b) section XVI of Customs Tariff Act, parts fit suitable for use solely or principally with a particular kind of machine or with a number of machines of same heading are to be classified with the machine of that kind or in heading 8409, 8431, 8448, 8466, 8503, 8522, 8529 or 8538 as appropriate. Accordingly, parts suitable for use with television reception apparatus are classifiable under heading 8529 and is leviable to Basic Customs Duty (BCD) at the rate of 10 per cent.

Low Noise Block (LNB) converter is specially designed for use with its parabolic reflector and other component of the Digital Satellite System (DSS)



for receiving television transmission relayed by satellite. The LNB is mounted at the focal point of the parabolic reflector, receives the signal in GHz from the satellites and after converting sends the signal in MHz over standard coaxial cable for distribution of television signals in private residences.

As the LNB is a part solely or principally used with the transmission and reception apparatus for television of CTH 8525/8528, it merits classification under CTH 85291019.

M/s Bharati Telemedia Ltd., and M/s Sun Direct TV Pvt. Ltd., had imported (October 2009 to July 2010) from China and Hongkong 32 consignments of 'Low Noise Block Converters' and 'Low Noise Boosters' for a value of ₹ 20.60 crore through Chennai (Sea), Commissionerate. The goods were incorrectly classified under CTH 85437069/ 85437099 as 'Electrical machines and apparatus having individual functions not specified or included elsewhere in chapter 85 of Customs tariff Act' and assessed to BCD at 7.5 per cent.

It was noticed from the supplier's website that the imported goods were actually parts suitable for use with DSS and merit classification under CTH 85291019 and assessable to BCD at 10 per cent instead of 7.5 per cent levied. Thus, incorrect classification had resulted in short levy of duty of ₹ 89.40 lakh.

When we pointed this out (March/June/August/October 2010), the department stated (January 2011) that LNB was the device on front of the satellite dish that receives the very low level microwave signal from the satellite, amplifies

it, changes the signals to a lower frequency band and sends them down the cable to the indoor receiver and thus, they are frequency amplifiers which merit classification under CTH 85437069.

The reply of the department explaining functioning of the LNB converter, further substantiates the audit contention because the imported item i.e LNB converter being reception apparatus for television transmission relayed by satellites is appropriately covered under CTH 8529. Its classification under CTH 8529 was also held internationally (United States International Trade Commission Rulings and Harmonised Tariff Schedule dated 28 October 2003).

This was communicated to the department in June 2011, their response has not been received (November 2011). However, it was noticed that the department had issued show cause notices to M/s Bharati Telemedia Ltd., and M/s Sun Direct TV Pvt Ltd for ₹ 35.90 lakh and ₹ 11.23 lakh respectively.

We reported (November 2011) the matter to the Ministry; its response had not been received (January 2012).

5.2 Machinery for the mechanical handling of materials, goods etc

As per Harmonised system of nomenclature (HSN) note, chapter heading 8428



covers wide range of machinery for the mechanical handling of materials, goods etc e.g, lifts, escalators and conveyors, even if these machines are specified for a particular industry. Further, 'Conveyors of bucket and screw type' are classifiable under CTH 84283200 and 84283900 respectively.

M/s Mulpuri Foods & Feeds Pvt Ltd., and two others had imported (October 2010 to January 2011) 12 consignments of 'Animal Feed machinery Screw Conveyor, Feedmill equipment and materials/inter systems-Drag Conveyors and accessories, Feedmill equipment and materials/inter systems-Bucket elevators & accessories' through Chennai (Sea), Commissionerate. The goods were classified under CTH 84361000/84369900 as 'Machinery for preparing animal feeding stuffs/poultry keeping machinery' and assessed to CVD at 'nil' rate.

Audit noticed that the imported goods merited classification under CTH 84283900/84283200 in terms of HSN and leviable to CVD at the rate of 10 per cent under notification no. 2/2008-CE dated 1 March 2008 (serial no. 62). The incorrect classification had resulted in short levy of duty of ₹ 74.33 lakh.

When we reported (September 2011) the matter, the Ministry admitted the observation and stated (November 2011) that the less charge notice had been issued and proceedings initiated to recover duty short levied. The Ministry further stated that action is being initiated to put Risk Management System

(RMS) alert to prevent recurrence of such cases. Further progress was awaited (January 2012).

5.3 Monitors and projectors



'Monitors and projectors, not incorporating television reception apparatus; reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus' are classifiable under CTH 8528. Reception apparatus for television – LCD TV - others are classifiable under CTH 852872.

M/s Sharp Business (System) India Ltd., had imported (September 2010 to January 2011) 13 consignments of various models of 'Sharp Brand LCD Monitors' through Chennai Sea, Commissionerate. The imported goods were classified under CTH 85285100 as Monitors of a kind solely or principally used in automotives data processing system of CTH 8471 and assessed to BCD at 'nil' rate under notification no. 24/2005-cus dated 1 March 2005 (serial no. 17).

Audit noticed from the products catalogue that the imported goods were HD TVs having technical features like S-Video port, aspect ratio of 16:9, display pitch greater than 0.41 mm, frequency range less than 6 Mhz etc. which allows them to receive television signals or other video signals. Accordingly, the imported items were classifiable under CTH 852872 'other colour television sets' in terms of the Board Circular no. 33/2007- cus dated 10 September 2007 and leviable to BCD at the rate of 10 per cent. The incorrect classification had resulted in short levy of duty of ₹ 37.53 lakh.

When we pointed this out (February 2011), the department reiterated (September 2011) that these monitors were correctly classified under CTH 85285100 as these were without built in TV tuners and could not be used as TV. These monitors were principally used in Automatic data processing machines (ADPM) for digital signals and display applications designed to meet diverse needs of various organisations. The department further stated that capability of these monitors in receiving TV or Video signals by itself could not detract them from their principal usage/classification.

The department reply is not acceptable because specification obtained from website of the company (Sharp-Model PN-E601 & E521) indicate that these were not merely monitors for ADPM but high definition TVs, accordingly they merit classification under CTH 852872.

We reported (November 2011) the matter to the Ministry; its response had not been received (January 2012).

5.4 Perfumery Products

In terms of Note 1 (a) to chapter 44 of the Customs Tariff Act, 1975, wood, in chips, in shavings, crushed, ground or powdered, of a kind used primarily in perfumery, inter-alia, is excluded from the purview of chapter 44 of the Customs Tariff Act, 1975 and is classifiable under chapter heading 1211 of the said Tariff Act.



M/s Jac Exim Pvt. Ltd. and nine others had imported (January, February and April 2010) 24 consignments of 'Saw Dust' through Chennai, (Sea), Commissionerate. The department classified the goods as 'Saw dust' and 'wood waste' under CTH 44013000 and levied BCD at the rate of 5 per cent. However, the imported saw dust was primarily meant for use in perfumery and therefore merited classification under CTH 12119039 as per the aforesaid chapter note and assessable to BCD at the rate of 15 per cent. The incorrect classification of goods resulted in short levy of duty of ₹ 13.98 lakh.

When we pointed this out (June 2010), the department accepted the observation and reported (February 2011) that demand notice has been issued. Further progress had not been furnished (January 2012).

We reported (September 2011) the matter to the Ministry; its response had not been received (January 2012).

5.5 Sugar

'Other sugars, including chemically pure lactose, maltose, glucose and fructose, in solid form' are classifiable under CTH 1702.

M/s Anshul Agencies had imported (November 2010) three consignments of 'Tablettose 80 (Lactose Monohydrate), Granulac 200 (Lactose Monohydrate), Cellactose 80, Flowlac 100, Granulac 140, Sachelac 80, Spherolac 100' supplied by M/s Molkerei Meggle through Chennai (Sea), Commissionerate. The imported goods were incorrectly classified under CTH 29400000 as 'sugars other than lactose' and assessed to BCD at the rate of 7.5 per cent under notification no. 21/2002-cus dated 1 March 2002 (serial no. 553).




It was noticed from the website of the supplier company that the imported goods were actually lactose products which merit classification under CTH 17021910 and assessable to BCD at the rate of 25 per cent under aforesaid notification (serial no. 39). The incorrect classification resulted in short levy of duty of ₹ 9.54 lakh.

When we reported (September 2011) the matter, the Ministry admitted the observation and stated (November 2011) that the less charge notice had been

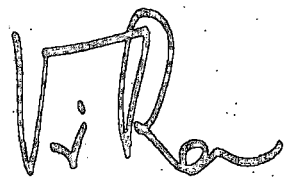
issued and proceedings initiated to recover duty short levied. The Ministry further stated that action is being initiated to put Risk Management System (RMS) alert to prevent recurrence of such cases. Further progress was awaited (January 2012).

New Delhi
Dated : 26 March 2012


(SANDHYA SHUKLA)
Principal Director (Customs)

Countersigned

New Delhi
Dated : 26 March 2012


(VINOD RAI)
Comptroller and Auditor General of India

Annexure - I
(Reference: Paragraph 1.1)

(Amounts in lakh of ₹)

Sl No.	Draft Audit Paragraph	Field office name	Brief subject	Amount objected	Amount Accepted	Amount recovered	Name of the Commissionerate/DGFT/DC
1	B1	Karnataka	Non fulfillment of export obligation (EO)	21.22	21.22	18.80	JDGFT, Bangalore
2	B2	Delhi	Short levy of duty due to incorrect grant of notification benefit	18.76	18.76	20.29	Delhi, ICD Tughlakabad
3	B3	Delhi	Short levy of duty due to incorrect calculation of assessable value	9.40	9.40	9.79	Delhi , ICD Tughlakabad, ICD Patparganj
4	B4	Delhi	Short levy of duty due to incorrect grant of notification benefit	8.78	8.78	8.60	ICD Tughlakabad, New Delhi
5	B5	Delhi	Short levy of duty due to mis-classification	9.83	9.83	8.83	Delhi, ICD Tughlakabad
6	B6	Delhi	Short levy of duty due to mis-classification	9.54	9.54	9.89	Delhi, ICD Tughlakabad, New Custom House
7	B7	Delhi	Short levy of duty due to mis-classification	7.56	7.56	8.31	Delhi, ICD Tughlakabad and ICD Patparganj
8	B8	Delhi	Short levy of duty due to undervaluation of assessable value	11.20	11.20	11.70	Delhi, ICD Patparganj
9	B9	AP	Non levy of clean energy cess on import and removal of cooking coal	23.88	23.88	25.29	Visakhapatnam
10	B10	Delhi	Short levy of duty due to incorrect grant of notification benefit	9.76	9.76	8.10	ICD, Tughlakabad
11	B11	TN	Incorrect classification of goods resulted in non levy of CVD	10.72	10.72	11.39	Chennai (Sea)
12	B12	Gujarat	Non levy of anti dumping duty	14.41	14.41	15.48	Gujarat Adani Port (GAPL), Mundra Customs Commissionerate, Kandla

13	B13	TN	Short levy of duty due to misclassification	22.23	22.23		Chennai (Sea)
14	B14	TN	Incorrect classification resulted in short levy of duty	9.20	9.20	9.85	Chennai (Sea)
15	B15	TN	Non levy of anti dumping duty	8.08	8.08		Chennai (Sea)
16	B16	TN	Short levy of duty due to incorrect grant of exemption	10.87	10.87	10.30	Chennai (Sea)
17	B17	AP	Non fulfillment of EO by STP unit	21.80	21.80	21.80	Hyderabad III
18	B18	AP	Short levy of duty due to misclassification of rotors and air conditioning equipment	12.39	12.39		ICD (Imports), Sanathnagar, Hyderabad
19	B19	TN	Incorrect exemption of additional duty	12.77	12.77	13.15	Chennai (Sea)
20	B20	TN	Short levy of duty due to misclassification	12.09	12.09	13.09	Chennai (Sea)
21	B21	TN	Short levy of duty due to misclassification	20.14	20.14	21.02	Chennai (Sea)
22	B22	TN	Non levy of anti dumping duty	93.00	93.00	113.90	Chennai (Sea)
23	B23	TN	Short levy of duty due to misclassification and incorrect availing of notification benefit	8.53	8.53	8.42	Chennai (Sea)
24	B24	TN	Non levy of anti dumping duty	14.34	14.34	41.48	Chennai (Sea)
25	B25	Delhi	Under valuation due to incorrect computation of assessable value	9.44	9.44	8.99	NCH, ICD, Tughlakabad & ICD, Patparganj
26	B26	Mumbai	Non levy of anti dumping duty	58.53	58.53	67.77	JNCH, Mumbai
27	B27	Mumbai	Non payment of duty on destroyed plant and machinery	142.00	142.00	142.00	DC/SEZ Mumbai

28	B28	TN	Short levy of duty due to misclassification and incorrect grant of notification benefit	9.67	9.67	9.67	Chennai (Sea)
29	B29	Gujarat	Non levy of special additional duty of customs	8.66	8.66		CE, Commissionerate, Ahmedabad-II
30	B30	Gujarat	Non/short levy of customs duties due to misclassification of goods	20.42	20.42	21.09	ACC, Ahmedabad
31	B31	Delhi	Short levy of duty due to incorrect computation of assessable value	8.57	8.57	7.20	ICD, Tughlakabad & Patparganj
32	B32	Karnataka	Incorrect classification leading to short levy of duty	7.56	7.56	3.23	ACC, Bangalore
33	B33	TN	Short levy of duty due to incorrect grant of notification benefit	229.00	229.00	241.74	Chennai (Sea)
34	B34	Maharashtra	Excess grant of duty drawback	6.14	6.14		CX, Division II, Nagpur
35	B35	TN	Short collection of duty due to misclassification	13.77	13.77	17.72	Chennai (Sea)
36	B36	TN	Short levy of duty due to misclassification	9.33	9.33	10.00	Chennai (Sea)
37	B37	TN	Incorrect debit of anti dumping duty against Focus product scheme and DEPB scrip	16.85	16.85	17.49	ICD/CFS, Tuticorin
38	B38	TN	Short levy of duty due to incorrect availing of notification benefit	8.67	8.67	9.43	Chennai (Sea)
39	B39	TN	Non levy of special additional duty due to incorrect grant of notification benefit	22.15	22.15		Tuticorin (Sea)
40	B40	TN	Excess refund of special additional duty	31.51	31.51		Chennai (Sea)
41	B41	Kerala	Non achievement of positive NFE	11.83	11.83		Central Excise, Commissionerate, Kozhikode

42	B42	Kerala	Non achievement of EO	15.06	15.06	15.06	Central Excise Commissionerate, Ernakulam
43	B43	Mumbai	Non levy of anti dumping duty	7.94	7.94	8.74	JNCH, Mumbai
44	B44	Mumbai	Non levy of anti dumping duty	29.87	29.87		JNCH, Mumbai
45	B45	TN	Excess grant of refund	32.77	32.77		Chennai (Sea)
46	B46	Mumbai	Non levy of anti dumping duty	16.94	16.94		JNCH, Mumbai
47	B47	Mumbai	Non levy of anti dumping duty	8.15	8.15	8.60	JNCH, Mumbai
48	B48	Delhi	Inadmissible payment of duty drawback	8.35	8.35	10.44	ACC, New Delhi
49	B49	Delhi	Non levy of anti dumping duty on colour picture tubes and compact fluorescent lamps	8.66	8.66	9.23	ICD, Tughlakabad, New Delhi
50	B50	Delhi	Excess grant of duty credit scrip under SFIS scheme	57.09	57.09	57.09	JDGFT, New Delhi
51	B51	Delhi	Irregular issuance of licence due to non-eligibility of licensee being 100% EOU	15.44	15.44		JDGFT, New Delhi
52	B52	Punjab	Non recovery of establishment charges	18.77	18.77	20.26	Rajasansi International Airport, Amritsar
53	B53	Kolkata	Short levy due to incorrect classification	42.56	42.56		Customs (Port), Kolkata
54	B54	Delhi	Short/non levy of anti dumping duty	11.60	11.60	11.71	ICD, Tughlakabad
55	B55	Kolkata	Short realisation of cost recovery charges	27.05	27.05		Kolkata (Port)
56	B56	Kolkata	Short levy due to incorrect grant of exemption	24.88	24.88		Kolkata (Port/Airport), Ko
57	B57	Delhi	Short levy of duty due to misclassification	9.99	9.99	7.99	NCH, New Delhi, ICD Tughlakabad and ICD Patparganj, New Delhi

58	B58	Kolkata	Short levy due to incorrect classification	7.77	7.77	7.70	Kolkata (Port),
59	B59	Kolkata	Irregular payment of drawback	14.20	14.20		Kolkata (Airport)
60	B60	Kolkata	Short levy on goods re-imported under EPCG scheme	16.02	16.02		CE, Cus and Service tax, Bhubaneswar
61	B61	Kolkata	Irregular duty concession on DTA sale	89.02	89.02		CE, Kolkata V
62	B62	Mumbai	Non-fulfillment of EO	44.43	44.43	22.33	ZJDGFT Mumbai
63	B63	Mumbai	Incorrect grant of exemption	16.17	16.17		ACC, Mumbai
64	B64	Mumbai	Short levy of duty on DTA sale	42.37	42.37		CE, Pune Division
65	B65	Mumbai	Non levy of anti dumping duty	59.66	59.66		JNCH, Mumbai
66	B66	Kolkata	Excess levy due to incorrect assessment	23.74	23.74		Commissionerate of Customs (Preventive), NER Shillong
67	B67	Kolkata	Non-realisation of duty and interest payable on failure to fulfil EO	9.58	9.58	9.58	JNCH, Mumbai
68	B68	Kolkata	Short levy due to irregular debonding	9.19	9.19		DC, FSEZ
69	B69	Mumbai	Non levy of anti dumping duty	43.88	43.88		JNCH, Mumbai
70	B70	TN	Incorrect extension of exemption benefit	126.76	126.76	13.37	Chennai (Sea/Air)
71	B71	Gujarat & Kolkata	Clearance of goods to Domestic Tariff Areas in excess of authorised limit	117.35	117.35		CE, Vadodara-1 & Customs (Port), Kolkata
72	B72	Kerala	Non receipt of re-warehousing certificate	27.60	27.60		CX, Ernakulam
73	B73	MP & Kerala	Non-fulfillment of EO	14.33	14.33	14.33	JDGFT, Bhopal & Ernakulam
74	B74	Kerala	Non-fulfillment of EO	49.09	49.09		Central Excise, Ernakulam
75	B75	TN	Non fulfillment of EO	38.38	38.38	40.43	RLA Madurai
76	B76	AP	Non fulfillment of EO	101.50	101.50		JDGFT Hyderabad
77	B77	AP	Non fulfillment of EO	51.82	51.82		JDGFT Hyderabad

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78	B78	Gujarat	Non levy of special additional duty of customs	13.36	13.36	13.36	GAPL Mundra Under Kandla Commissionerate
79	B79	TN	Short levy of duty due to misclassification	18.92	18.92		Chennai (Sea)
			Total	2284.86	2284.86	1236.03	