

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

**for the year ended March 2002**

**Union Government  
(Indirect Taxes - Customs)  
No.10 of 2003**

.....  
.....  
.....

.....

.....

.....

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

.....

**22 APR 2003**

## CONTENTS

	Chapter	Page
Preface		iii
Overview		v
Analysis of Receipts	1	1
Review on 'Non disposal/delay in disposal of seized, confiscated and detained goods'	2	6
Review on 'End use exemption notifications issued under Section 25(1) of Customs Act, 1962'	3	19
Short levy due to incorrect classification	4	28
Short levy due to incorrect grant of exemption	5	32
Short levy due to undervaluation	6	37
Non levy/short levy of additional duty	7	40
Non levy of Special additional duty of customs	8	43
Duty Exemption Scheme	9	46
Other topics of interest	10	55

SECRET

SECRET

[Faint, illegible text, possibly bleed-through from the reverse side of the page]

SECRET



## **PREFACE**

This Report for the year ended 31 March 2002 has been prepared for submission to the President under Article 151 of the Constitution based on the audit of Customs Receipts of the Union of India in terms of Section 16 of the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971.

The cases mentioned in the Report are among those which came to notice in the course of audit during 2001-2002 as well as those which came to notice in earlier years but could not be reported earlier.

.



.

## OVERVIEW

This report contains two reviews and 213 paragraphs involving non levy/short levy of customs duty of Rs.4423.86 crore. Some of the important audit findings included in the Report are highlighted below:

### I. General

- Despite the actual collections falling short of the budget estimates year after year, the Government continued to make optimistic projections during presentation of the Annual Budget. The budget estimate 2001-02 was pitched at Rs.54,822 crore, an increase of 10 per cent over revised estimates 2000-01 and 13 per cent over actuals 1999-2000. Such optimism was not in consonance with the progressively declining rate of import duties. The actual realisation fell short of budget estimates by Rs.14,726 crore or 27 per cent.

*{Paragraph 1.1}*

- The amount of duty forgone under the various export promotion schemes during the year was Rs.24,799 crore which was 62 per cent of the total customs receipts.

*{Paragraph 1.4.1 (a)}*

### II. Review on Non disposal/delay in disposal of seized, confiscated and detained goods.

- Seized and confiscated goods worth Rs.1000 crore were pending disposal in 26 Commissionerates as on 31 March 2001. These consisted of Rs.621 crore worth of goods seized but not confiscated, Rs.164 crore worth of goods confiscated but procedural formalities not completed and Rs.215 crore worth of goods ripe for disposal but not disposed of. The department could dispose of only 32 per cent of the goods seized over the period 1998-1999 to 2000-2001.

*{Paragraph 2.4.1}*

- Aging analysis of 17990 items worth Rs.420.68 crore revealed that goods worth Rs.4.53 crore were pending disposal for more than 20 years, Rs.59.21 crore for 10 to 20 years, Rs.30.59 crore for 5 to 10 years and Rs.326.35 crore for one to five years.

*{Paragraph 2.4.2}*

- Delay in disposal/non disposal of seized goods led to loss of revenue of Rs.29.62 crore and blockage of revenue of Rs.773.95 crore

*{Paragraph 2.5 & 2.6}*

- Arms and ammunitions were sold to MPs/VIPs at extremely low prices, unrelated to their prevalent market price in India.

*{Paragraph 2.7}*



- Non disposal/delayed disposal was attributable to delays at various stages in the functioning of the department.

*{Paragraph 2.8}*

- Non disposal and delayed disposal of uncleared warehoused goods led to blockage of revenue of Rs.99.66 crore and loss of revenue of Rs.12.83 crore in 15 cases.

*{Paragraph 2.10}*

### **III. Review on End use exemption notifications issued under Section 25 (1) of Customs Act, 1962.**

- Of the 76,990 bonds executed, in lieu of end use exemptions of customs duty, in 33 Commissionerates between 1998-99 and 2000-01, 29,016 bonds involving duty of Rs.2183.95 crore were pending cancellation as on 31 March 2001. Of these, almost half, involving duty of Rs.1229.32 crore, were pending cancellation for more than two years.

*{Paragraph 3.4}*

- Sample check revealed that four out of five uncanceled bonds related to goods imported for manufacture of excisable products. Non cancellation was due mainly to non submission of end use certificates, failure to export finished goods and improper coordination between Customs and Central Excise departments.

*{Paragraph 3.5}*

- Absence of appropriate monitoring provision in the notifications handicapped the department in ensuring utilization of the imported goods involving duty Rs.2087.91 crore for the intended purpose.

*{Paragraph 3.6}*

- Short receipt of inputs for intended purpose and excess consumption of raw material in violation of SION involved duty amounting to Rs.84.90 crore.

*{Paragraph 3.8 & 3.9}*

### **IV. Irregularities in assessments**

- Contrary to the classification determined by Commissioner (Imports), Mumbai after following the due process of adjudication, sleep pads, down comforter and pillows were classified as Mechano therapy appliances, instead of articles of bedding and similar furnishings stuffed with any material. This was done as per the clarification of CBEC. The said clarification violated both the conditions stipulated under Section 151 A of the Customs Act, 1962 because not only did it cause assessment of the subsequent imports by the said firm in a particular manner, it would also interfere in the appeal against the order of the Commissioner (Imports) Mumbai.

*{Paragraph 4.1}*



- In 18 other cases dutiable imported goods were incorrectly classified and assessed to duty at lesser rates leading to short levy of Rs.2.17 crore.

*{Paragraph 4.2 to 4.4}*

- Extending the benefit of exemption notifications to dutiable goods not covered by them resulted in short collection of duty of Rs.8.09 crore in 23 cases.

*{Paragraph 5.1 to 5.3}*

- Short levy on account of undervaluation of assessable goods in 8 cases amounted to Rs.14.03 crore.

*{Paragraph 6.1 to 6.3}*

- Additional duty leviable under Section 3 of the Tariff Act amounting to Rs.1.31 crore was not levied/short levied in 8 cases.

*{Paragraph 7.1 to 7.4}*

- Special Additional duty leviable under section 3A of Tariff Act amounting to Rs.1.21 crore was not levied/short levied in 7 cases.

*{Paragraph 8.1 to 8.3}*

#### **V. Recoveries from defaulting export houses**

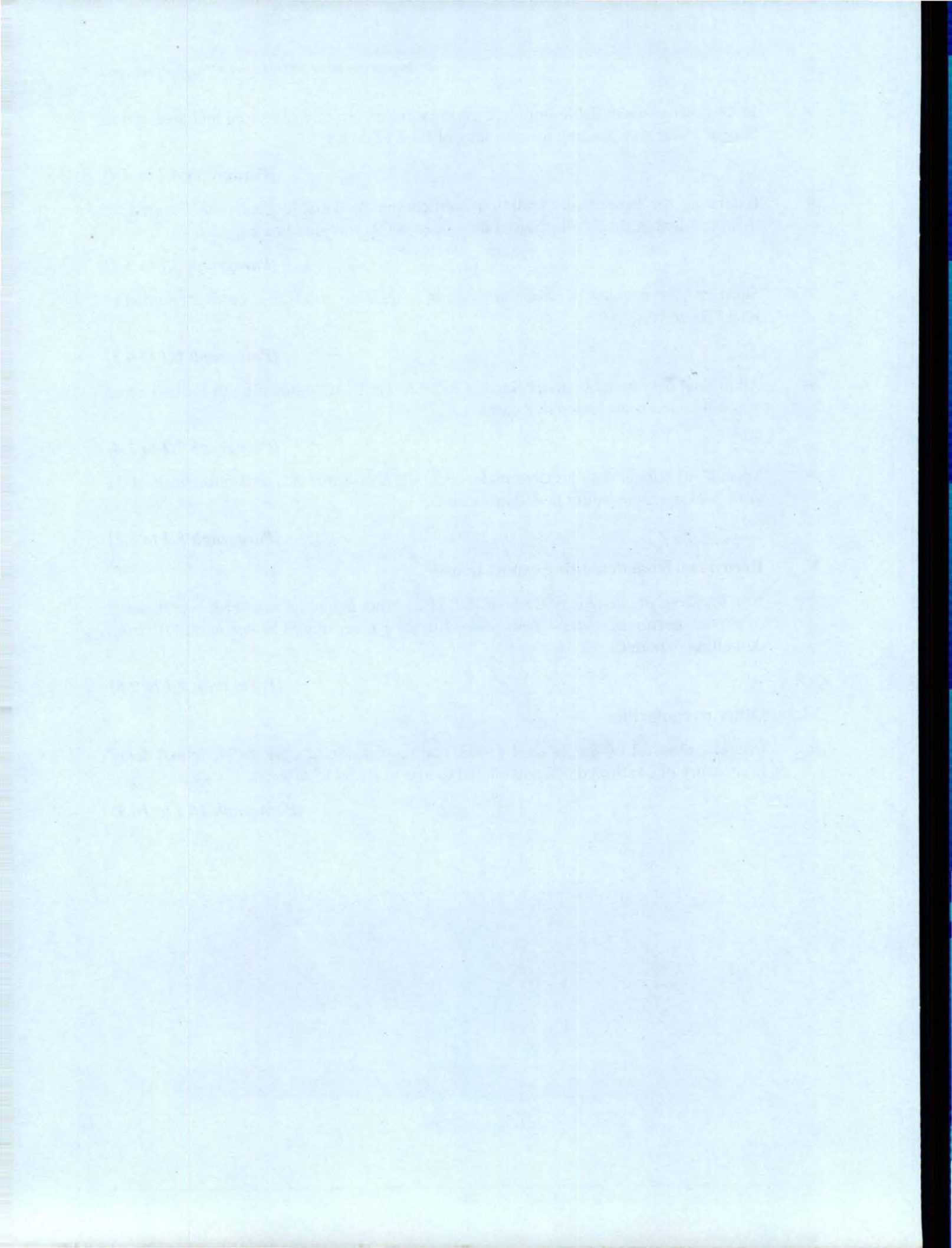
- Non levy/loss of customs revenue of Rs.131.21 crore due to failure to recover benefits of export incentives under schemes like Advance Licensing Schemes and EOU from defaulting exporters.

*{Paragraph 9.1 to 9.6}*

#### **VI. Other irregularities**

- Irregular removal of warehoused goods, non realisation of customs share and delay in recovery of confirmed demand etc led to loss of Rs.59.89 crore in 35 cases.

*{Paragraph 10.1 to 10.9}*



## CHAPTER 1 : ANALYSIS OF RECEIPTS

### 1.1 Budget estimates, revised budget estimates and actual receipts

The budget estimates, revised budget estimates and actual receipts of Customs duties during the year 1997-98 to 2001-02 are exhibited in the table below:-

(Rupees in crore)					
Year	Budget estimates	Revised budget estimates	Actual receipts	Difference between actual receipts and budget estimates	Percentage variation
1997-98	52550	41000	40193	(-)12357	(-)24
1998-99	48148	42648	41278	(-)6870	(-)14
1999-2000	50369	47800	48334	(-)2035	(-)4
2000-01	53576	49781	47615	(-)5957	(-)11
2001-02	54822	43170	40096	(-)14726	(-)27

Despite the actual collections falling short of the budget estimates year after year, the Government continued to make optimistic projections during presentation of the Annual Budget. The budget estimate 2001-02 was pitched at Rs.54,822 crore, an increase of 10 per cent over revised estimates 2000-01 and 13 per cent over actuals 1999-2000. Such optimism was not in consonance with the progressively declining rate of import duties. The actual realisation fell short of budget estimates by Rs.14,726 crore or 27 per cent.

### 1.2 Trend of Receipts

A comparison of total year-wise imports with the corresponding net customs duties collected during 1997-98 to 2001-2002 has been shown in the table below :

**VALUE OF IMPORTS AND IMPORT DUTY COLLECTED  
1996-98 TO 2001-2002 (YEAR-WISE)**

(Rupees in crore)			
Year	Value of Imports	Import duties	Import duty as percentage of value of imports
1997-98	154176	41480	26.90
1998-99	176099	42110	23.91
1999-2000	204583	49517	24.20
2000-2001	228307	46569	20.40
2001-2002	243645	39406	16.17



### 1.3 Commoditywise details of Customs Receipts

Major commodity wise value of imports and exports and the gross duty realised therefrom during the financial year 2001-2002 and the previous year 2000-2001 are given below:

#### a) Imports

(Rupees in crore)

Sl. No.	Commodities	Value of imports*		Import duties**		Percentage share in total import duties collection	
		2000-01	2001-02	2000-01	2001-02	2000-01	2001-02
1.	Food and live animals chiefly for food	6907.15	11526.14	2699	4580	5.80	11.62
2.	Mineral, fuels and related materials	9358.96	11638.89	4105	2598	8.81	6.59
3.	Crude materials inedible except fuel	71496.52	66769.86	7794	4818	16.74	12.22
4.	Chemicals and related product	13564.92	16460.13	3864	3619	8.30	9.19
5.	Manufactured goods	18102.44	20445.67	3755	3456	8.06	8.78
6.	Machinery and transport equipment	18772.10	20809.14	11436	10400	24.56	26.39
7.	Professional instruments etc.	4014.91	4947.63	2911	2650	6.25	6.72
8.	Others	86089.64	91047.38	10005	7285	21.48	18.49
	<b>Total</b>	<b>228306.64</b>	<b>243644.84</b>	<b>46569</b>	<b>39406</b>		

#### b) Exports

(Rupees in crore)

Sl. No.	Commodities	Value of exports**		Export duty and cess*	
		2000-01	2001-02	2000-01	2001-02
1.	Food items	18915.99	20458.41	10	08
2.	Beverages and tobacco	1590.80	1439.33	11	08
3.	Crude materials inedible except fuel (including mica)	41.60	55.22	01	02
6.	Others	180808.06	185792.60	104	117
	<b>Total of exports and re-exports</b>	<b>201356.45</b>	<b>207745.56</b>	<b>126</b>	<b>135</b>

Source - \*Ministry of Finance, New Delhi.

\*\*Directorate of Statistics and Intelligence, New Delhi.

### 1.4 Duty forgone

#### 1.4.1 Under export promotion schemes

(a) The break-up of the duty forgone in respect of export promotion schemes viz., Advance Licence, DEPB, EPCG, EPZ, EOUs, refund of duty under the drawback and other schemes for the period from 1998-99 to 2001-2002 are shown in the table below:

#### CUSTOMS DUTY FORGONE UNDER EXPORT PROMOTION SCHEMES AND DUTY DRAWBACK SCHEME

(Rupees in crore)

Year	Advance licence	DEPB	EPCG	EPZ	EOU	Duty Drawback	Others	Total
1998-1999	3615	2631	1343	974	2178	4081	670	15492
1999-2000	3804	4063	1299	1096	2938	4257	709	18166
2000-2001	4880	4631	1513	1223	3537	4189	732	20705
2001-2002	6953	5661	2008	2064	4219	2957	937	24799



(b) The total duty forgone under various export promotion schemes for the period 1998-99 to 2001-2002 as a percentage of customs receipts is shown in the table below:

#### CUSTOMS DUTY FORGONE

(Rupees in crore)

Year	Customs duty collected	Total duty forgone under export promotion schemes	Duty forgone as a percentage of customs receipts
1998-99	41278	15492	38
1999-2000	48334	18166	38
2000-2001	47615	20705	43
2001-2002	40096	24799	62

Duty forgone under export promotion schemes has gone up from 38 per cent of customs duty receipts in 1998-99 to 62 per cent of customs receipts in 2001-2002.

#### 1.4.2 Other duty forgone

Duty forgone under Section 25 (1) and (2) of the Customs Act, 1962 {other than in respect of export promotion schemes vide para 1.4.1 (b)} during 1998-99 to 2001-2002 are shown in the table below:

(Rupees in crore)

Year	No. of notifications issued under 25(1)	No. of total notifications issued under 25(2)	Total No. of notifications issued	Duty forgone under 25(1)	Duty forgone under 25(2)	Duty forgone
1998-1999	57	NA	NA	4185	NA	NA
1999-2000	66	NA	NA	4156	NA	NA
2000-2001	60	NA	NA	6733	NA	NA
2001-2002	39	NA	NA	2477	NA	NA

Section 25(1) General exemption  
Section 25(2) Adhoc exemption

#### 1.5 Cost of collection of Customs Receipts

The expenditure incurred on collection of customs duty during the year 2001-2002 along with the figures for the previous year are given below:

(Rupees in crore)

Cost of collection	2000-2001	2001-02
Revenue cum import export and trade control functions	111.08	106.79
Preventive and other functions	463.95	498.94
Total	575.03	605.73
Cost of collection as percentage of Customs receipts	1.21	1.51

### 1.6 Searches and Seizures

The details of searches conducted and seizures effected by the Customs officers as given by Ministry are indicated below:

#### SEARCHES AND SEIZURES

Sl. No.	Description	2000-2001	2001-02
1.	Number of searches	2169	2090
2.	Value of goods seized (Rupees in crore)	205.00	714.00
3.	Number of seizure cases adjudicated	18613	12111

These figures relate to 21 Custom Houses/Commissionerates

### 1.7 Arrears of Customs Duty for recovery

The amount of customs duty assessed upto 31 March 2002 which was still to be realised as on 30 June 2002 was Rs.2999.30 crore in 28 Custom Houses.

### 1.8 Demands of duty barred by limitation

Demands raised by the department up to 31 March 2002 which were pending realisation as on 30 June 2002 and where recovery was barred by limitation amounted to Rs.23.08 crore in 16 Custom Houses and Commissionerates.

### 1.9 Duty written off

Customs duties written off, penalties waived and exgratia payments made during the year 2000-2001 and the preceding two years are given below:

(Rupees in lakh)	
Year	Amount
2001-2002	14.38
2000-2001	60.67
1999-2000	77.10

### 1.10 Number of pending audit objections

The number of audit objections raised upto 31 March 2002 and pending settlement as on 30 September 2002 in the various Custom Houses and combined Commissionerates of Central Excise and Customs are given overleaf:

## OUTSTANDING OBJECTIONS AND AMOUNT INVOLVED

(Rupees in crore)			
Sl. No.	Commissionerate	Number	Amount
1.	Ahmedabad (Prev.)	46	103.25
2.	Kandla	63	61.27
3.	Cochin	93	52.41
4.	Mumbai(Air)	351	9.30
5.	Kolkata	395	354.06
6.	Mumbai(Sea)	458	52.25
7.	Karnataka	502	154.79
8.	Chennai (Air)	666	5.41
9.	Delhi	1264	36.14
10.	Chennai (Sea)	1531	191.19
11.	Hyderabad	3332	909.17
12.	Others	2191	3084.89
	Total	10892	5014.13

## 1.11 Categories of outstanding audit objections

(Rupees in crore)			
Sl. No.	Categories of objections	No. of objections	Amount
1.	Short levy due to misclassification	1412	64.50
2.	Short levy due to incorrect grant of exemption	925	160.76
3.	Non levy of import duties	983	165.04
4.	Short levy due to undervaluation	468	185.91
5.	Irregularities in grant of drawback	688	10.42
6.	Irregularities in grant of refunds	68	2.96
7.	Irregularities in levy and collection of export duty	08	527.87
8.	Other irregularities	6340	3896.67
	Total	10892	5014.13

## 1.12 Contents of the report

The Report includes two reviews on 'Non disposal/delay in disposal of seized, confiscated and detained goods' and 'End use exemption notifications issued under Section 25(1) of Customs Act, 1962' highlighting leakage of revenue to the tune of Rs.4191.02 crore. Besides there are 213 paragraphs (including 72 cases of Total Under Assessment) featured individually or grouped together, arising from important findings from test check in audit pointing out leakage of revenue aggregating Rs.231.17 crore. Of this the Department/Ministry of Finance had till January 2003 accepted audit observations in 138 paragraphs involving Rs.71.97 crore and reported recovery of Rs.9.64 crore.

## CHAPTER 2: NON DISPOSAL /DELAY IN DISPOSAL OF SEIZED, CONFISCATED AND DETAINED GOODS

### Highlights

- Seized and confiscated goods worth Rs.1000 crore were pending disposal in 26 Commissionerates as on 31 March 2001. These consisted of Rs.621 crore worth of goods seized but not confiscated, Rs.164 crore worth of goods confiscated but procedural formalities not completed and Rs.215 crore worth of goods ripe for disposal but not disposed of. The department could dispose of only 32 per cent of the goods seized over the period 1998-1999 to 2000-2001.

*(Paragraph 2.4.1)*

- Aging analysis of 17990 items worth Rs.420.68 crore revealed that, goods worth Rs.4.53 crore were pending disposal for more than 20 years, Rs.59.21 crore for 10 to 20 years, Rs.30.59 crore for 5 to 10 years and Rs.326.35 crore for one to five years.

*(Paragraph 2.4.2)*

- Delay in disposal/non disposal of seized goods led to loss of revenue of Rs.29.62 crore and blockage of revenue of Rs.773.95 crore

*(Paragraph 2.5 & 2.6)*

- Arms and ammunitions were sold to MPs/VIPs at extremely low prices, unrelated to their market price.

*(Paragraph 2.7)*

- Main causes of non disposal/delayed disposal are :

- Inordinate delay in dispatch of goods and files to the disposal units.
- Delay in adjudication in respect of show cause notices issued for seized goods ranging from 1 to 32 years.
- Non receipt of disposal orders by the disposal units for 1 to 24 years.
- Failure to obtain Court's orders to dispose of goods worth Rs.343.54 crore locked up in 3149 cases pending before the courts.
- Delayed fixation of prices or unrealistic prices of goods.

*(Paragraph 2.8)*

- Non disposal and delayed disposal of uncleared warehoused goods led to blockage of revenue of Rs.99.66 crore and loss of revenue of Rs.12.83 crore in 15 cases.

*(Paragraph 2.10)*

## 2.2 Introduction

The Customs Act 1962 empowers designated customs authorities to seize and confiscate goods improperly imported into or exported out of India or attempted to be so imported or exported. Such goods, along with those seized by other intelligence/investigating authorities, are to be disposed of and the sale proceeds credited to the Government account. Likewise all imported warehoused goods which are uncleared or unclaimed are detained to be disposed of and the proceeds to be used towards recovery of duty, penalty, interest, warehouse charges etc.

An amendment was made in Section 110 of the Customs Act in 1985 to enable early disposal of perishable, and hazardous goods. Government of India has categorised different goods depending on their shelf life, prescribing maximum retention period for each. Goods prone to rapid decay or requiring special arrangements for their preservation and storage/requiring high costs of maintenance are required to be disposed of immediately after seizure. Goods having a short shelf life involving risk and heavy expenses for storage/maintenance should not be retained for more than six months. Similarly unclaimed and abandoned goods liable to rapid depreciation in value may be disposed of immediately after adjudication. All other goods are to be disposed of after completing all formalities.

## 2.3 Scope of Audit

Records of 26 Commissionerates in eight states viz. Delhi, Maharashtra, West Bengal, Tamil Nadu, Karnataka, Gujarat, Andhra Pradesh and Kerala pertaining to disposal of confiscated and detained goods were reviewed in audit to:

- a) evaluate the efficiency of the system in ensuring timely disposal and realization of reasonable value,
- b) assess the loss of revenue/blockage of revenue due to non disposal or delayed disposal, and
- c) identify weaknesses in the system leading to delays.

Audit findings, in two parts, are contained in the succeeding paragraphs.

## Part-I Seized and confiscated goods

### 2.4 System Performance

2.4.1 Our efforts to obtain reliable and reconciled figures of total value of seizure, confiscation and disposal from the records maintained by the Commissionerates did not fructify. Several discrepancies emerged in the figures of opening balance, seizure, confiscation, disposal and closing balances. What did emerge, however, was that only a fraction of the seized goods were being disposed of in time.



As per data furnished by the department, the value of undisposed goods in 26 Commissionerates as on 31 March 2001 would be approximately Rs.1000 crore. These consisted of Rs.621 crore worth of goods seized but not confiscated, Rs.164 crore worth of goods confiscated but procedural formalities for disposal of which was not yet completed and Rs.215 crore worth goods ripe for disposal but not disposed of. Over the period 1998-99 to 2000-01, the department was able to dispose of less than 33 per cent of the goods seized during this period.

The Commissionerates with high holdings are Delhi Rs.315.66 crore, Mumbai (Preventive) Rs.103.61 crore, West Bengal (Preventive) Rs.79.59 crore, Chennai Rs.90.63 crore, Ahmedabad 93.96 crore, Airport Mumbai Rs.79.61 crore and Cochin Rs.40.92 crore.

#### 2.4.2 Aging Analysis of undisposed goods

Aging analysis of 17990 items valuing Rs.420.68 crore, pending disposal for more than one year, revealed the following:

Years	No. of Cases	Amount (Rs. in Crore)
More than 20	2682	4.53
Between 10 & 20	6982	59.21
Between 5 & 10	4095	30.59
Between 1 & 5	4231	326.35
<b>Total</b>	<b>17990</b>	<b>420.68</b>

## 2.5 Loss/blockage of revenue due to non disposal of goods

The loss of revenue due to non disposal is illustrated under different categories of commodities.

#### 2.5.1 Perishable and Hazardous goods.

The instructions of the Ministry stipulate that goods of perishable nature, goods having short life and goods liable to rapid depreciation are to be disposed of immediately without waiting for the adjudication orders.

Test check of records in 17 Commissionerates revealed that goods of perishable and hazardous nature valued at Rs.180.08 crore were lying undisposed for periods ranging from one to thirty years.

Sr. No.	Item	Value (Rs in crore)	Earliest seizure
1.	Liquors	1.54	1976
2.	Photographic films cell and batteries	0.56	1985
3.	Patent & Proprietary Medicines	1.13	1980
4.	Dangerous Drugs/Psychotropic substance	159.16	1974
5.	Bulk Drugs and Chemicals	7.10	1991
6.	Other Perishable goods	10.59	1970
	<b>Total</b>	<b>180.08</b>	

### 2.5.2 Gold, Silver and precious stones

Government permitted retail sale of confiscated gold through Customs House Mumbai with effect from December 1994 and through the other major Customs Houses from March 1996. The Ministry issued another circular on 9 March 2001 directing sale of seized/confiscated gold by the department through the SBI. Similarly silver was allowed for retail sale from 1993. Diamonds, precious stones etc.were allowed to be disposed of in the market within the jurisdiction of the concerned Commissionerates from January 1984.

Test check of records in 20 Commissionerates of Customs/Central Excise revealed that less than 1/4<sup>th</sup> was actually disposed of. Balance gold valuing Rs.195.80 crore (Rs.269.02 crore at current price), silver valuing Rs.15.89 crore and diamonds/precious stones worth Rs.81.90 crore were awaiting disposal since 1954 onwards causing blockage of Government revenue of Rs.293.59 crore with notional loss of interest, calculated at the rate of 10 per cent per annum, amounting to Rs.104.80 crore.

A few cases are narrated as under:-

(a) In two disposal units of Kolkata, gold worth Rs.6.62 crore and Rs.3.13 crore was pending disposal since 1959 and 1985 respectively. In one of these units, 233.290 gms of gold seized in 1992 valued at Rs.0.99 lakh was found missing from the strong room when it was to be presented in the Court.

(b) In another case, 135.095 kgs of silver worth Rs.8.37 lakh seized in 1988- 89 and deposited in Alipore mint in 1992 was reported (September 2000) to be without any silver contents when tested by them.

(c) In two cases of Mumbai Airport, diamonds worth Rs.6.79 crore were pending disposal for want of valuation since 1996 and 1999. In two other cases diamonds worth Rs.4.90 crore were pending adjudication against the show cause notice issued in March /August 2001.

### 2.5.3 Currencies

Seized/confiscated currencies, Indian and foreign, are to be deposited with RBI or focal nationalised banks, as soon as possible after the seizure. Similarly confiscated traveller cheques/Bank drafts are to be sent to the RBI sufficiently ahead of the expiry of the validity period for crediting to Government account after observing the process prescribed for this purpose in the instructions issued by the Board in May 1964.

Test check of records of 14 Commissionerates revealed that Indian and foreign currencies worth Rs.20.44 crore seized since 1965 onwards was yet to be remitted. Rs.3.41 crore was remitted to RBI after a delay of 15 to 20 years. Foreign currency equivalent to 4 crore was lying undisposed at IGI Air port Delhi for a period of more than 15 years as it was not accepted by the Banks being too old and not in circulation. Similarly delayed remittance after the expiry of the validity period of travellers cheques in four Commissionerates (West Bengal Preventive, Delhi, Chennai & Trichy) resulted in loss of revenue of Rs.74.66 lakh.

#### 2.5.4 Vehicles/Vessels

Instructions of the Government issued in January 1965 require that serious efforts be made to finalise the confiscation proceedings of seized vehicles within one month . They also stress the need for proper upkeep/maintenance of vehicles before disposal by auction/tender. Power of incurring expenditure on maintenance of vehicles was also delegated to customs officials to avoid deterioration in the condition.

Test check of records of the disposal units in 11 Commissionerates revealed that 303 vehicles including cars, two wheelers, trucks and buses valued at Rs.10.54 crore were pending disposal for periods ranging from 6 months to 28 years. Of these, 220 vehicles valued at Rs.3.13 crore were awaiting disposal for more than three years. In addition, in New Custom House and Air Cargo Delhi, 124 vehicles seized between 1964 and 1998 were awaiting disposal as on 31 March 2001. Their seizure value was not available. The delay in disposal of vehicles also led to continuing expenditure on their upkeep and charges towards warehousing accommodation. For instance, storage of 47 vehicles at CWC Safdarjung cost the Department Rs.58.81 lakh upto March 2001.

#### 2.5.5 (a) Goods specified under Section 110 (1A)

Notification No.31/86-Cus. dated 5 February 1986 issued under Section 110(1A) specified electronic goods, cellular phones, ball bearings etc. as goods which are prone to rapid depreciation in value due to fast change in technology and design or introduction of new models. The notification directed that these should be disposed of immediately after seizure, after observing the procedure prescribed in Section 110 (1B).

Test check of records of 21 Commissionerates revealed that goods valued at Rs.209.20 crore as detailed below were awaiting disposal from 2 to 42 years contrary to the instructions issued in this regard resulting in loss/blockage of Government revenue.

Sl. No.	Goods	Value (Rs. in crore)	Pending since
1.	Electronic goods	79.50	1960-2001
2.	Watches	2.52	1969-2001
3.	Cellular Phones	0.49	1995-1997
4.	Ball bearings	33.39	1978-1999
5.	Zip fasteners	0.11	1989-1992
6.	Textiles	24.26	1969-2001
7.	Other goods	68.93	1969-2001
	Total	209.20	

A few cases are illustrated as under:

i) Computer software valued at Rs.8.60 crore was seized in November 1997 by Ahmedabad Customs. The show cause notice (SCN) issued in May 1998 to the importer was not adjudicated and the goods were lying undisposed till March 2002. Department stated (April 2002) that the directions of CBEC were awaited.



iii) During rummaging of a foreign vessel by the DRI and Ahmedabad Customs, 191 packets of ball-bearing valued at Rs.57.92 lakh were seized in December 1993 for imports without valid documents. The SCN issued in June 1994 was not adjudicated till February 2002, even after a lapse of more than 8 years. Auction bids invited in March 2001/April 2002 could not fetch the reserve price of Rs.31 lakh and Rs.25 lakh respectively. Delay in the disposal action led to depreciation of the value of the seized goods. The C.C. Ahmedabad stated (May 2002) that process of inviting sealed tenders was in progress.

#### 2.5.5 (b) Goods other than those specified in notification issued under Section 110 (1A)

Seized/confiscated goods which are not covered in the list of goods under Section 110 (1A) such as arms and ammunitions, silk yarn and food items like spices, betelnuts, poppy seeds etc are to be disposed of to the different agencies as per instructions in the disposal manual.

In 11 Commissionerates, goods valued Rs.60.10 crore were awaiting disposal in various units beyond the maximum period of retention prescribed in instruction dated 22 May, 1984 as given below:

Sl. No.	Goods	Value (Rs. in crore)	Pending since
1.	Silk yarn	1.61	1996-2000
2.	Betelnut	0.02	October 2000
3.	Spices	0.05	1997 onwards
4.	Poppy seeds	0.0009	September 1999
5.	Arms etc.	1.99 *	1966-1999
6.	Others goods	56.43	1979-1999
	Total	60.10	

\*Note:- In NCH New Delhi seizure value of 214 arms and 4048 rounds seized between 1994 - 1997 was not available.

A few cases are narrated below:-

(i) In Kandla Commissionerate, Chinese tussah silk valued at Rs.28.18 lakh was seized by the Special Intelligence and Investigation Branch (SIIB) in February 1999 for violation of the provisions of the Exim policy. The goods were confiscated in November 1999 and in the adjudication order the Commissioner observed that the goods were of perishable nature. Yet no disposal action has been initiated by the disposal branch even after 33 months of its seizure.

(ii) Marine paints valued at Rs.22.46 lakh were seized by the R and I Branch of Kandla Commissionerate in June 1999 for misdeclaration of value. The goods were absolutely confiscated vide adjudication order issued in June 2000 for quick disposal of goods in consultation with the National Consumer Cooperative Federation (NCCF). No reference to NCCF was however issued till the date of audit (November 2001) and the goods remained undisposed even after a lapse of 17 months since adjudication.

## 2.6 Loss due to delayed disposal of seized and confiscated goods

Major disposal units receive files with disposal orders for disposal of seized/confiscated goods. On receipt of these files, the disposal units are required to inspect the goods, get the

fair/reserve price fixed and initiate disposal action either by auction or tender as soon as possible.

In 12 Commissionerates vehicles, electronic goods, silk yarn, tyres and other miscellaneous bulk trade goods seized and confiscated between 1985 to 2001 were sold after inordinate delay of 1 to 18 years realising only Rs.13.02 crore (30.53 per cent) against seizure value of Rs.42.64 crore as detailed below:-

**Loss of revenue due to sale of bulk trade goods at lower prices**

(Rupees in lakh)

Sl. No.	Commissionerate	Seizure value/Fair price fixed	Value at which sold	Difference between seizure value/fair price and value realised on sale
1	2	3	4	5
1.	W.B.(Prev)	1150.34	385.73	764.61
2.	Bangalore	1103.44	227.32	876.12
3.	Mumbai (Prev)	206.36	63.89	142.47
4.	Mumbai (Gen)	150.92	46.19	104.73
5.	Cochin	140.09	47.09	102.00
6.	Chennai	98.72	77.28	21.44
7.	Kandla and Ahmedabad	93.69	26.12	67.57
8.	Hyderabad-II	21.33	7.74	13.59
9.	Vizag(Cus)	3.00	0.41	2.59
10.	Vizag (CCE)	21.30	00	21.30
11.	Delhi (Gen)	661.00	285.16	375.84
12.	A.C..C Delhi	605.00	134.67	470.33
	<b>Total</b>	<b>4264.19</b>	<b>1301.60</b>	<b>2962.59</b>

A few cases are narrated below:

(a) In Bangalore Commissionerate, one consignment of electronic goods valued at Rs.2.74 crore was seized on 19 November 1997. The adjudication order was passed in March 1999 but the goods were sent to the disposal unit only in November 2000. The goods were sold in an auction in March 2002 for Rs.16.08 lakh. The loss of Rs.2.58 crore was attributable to the 52 months delay in disposal.

(b) In Bangalore Commissionerate, printed circuit board (PCBs) valued at Rs.5.27 crore were seized in June 1999. SCN issued on 30 June 1999 was received undelivered. The Directorate of Valuation was approached only in March 2000 to assess the value. Meanwhile the goods were handed over to the disposal unit in January 2001 and disposed of in January 2002 after realising a sum of Rs.8177 only. The delay resulted in loss of revenue of Rs.5.27 crore.

(c) In Mumbai Commissionerate (Prev), 23 Vehicles including 14 Vehicles of foreign make involving seizure value of Rs.2.06 crore seized between 1992 to 1997 were sold for prices less than their seizure/book value resulting in loss of Rs.1.42 crore. The low prices were primarily due to the deteriorated conditions of the vehicles with the passage of time and poor maintenance.

(d) Scrutiny of records of the auctions held on 19 January and 23 March 2002 in the Commissionerate of Customs (Air Cargo) Delhi revealed that 21 imported vehicles were sold for Rs.1.35 crore against their seizure value/estimated market price of Rs.6.05 crore resulting in loss of revenue of Rs.4.70 crore. Some of the cases are detailed below as illustration.

(Rupees in lakh)					
Sl. No.	Description of Cars	Year of Mfg.	Month of seizure	Market Price*	Sold for
1.	BMW	1994	7/1994	25.00	7.30
2.	Honda Accord	1993	7/1994	25.00	4.00
3.	Toyota Corolla	1993	7/1994	25.00	3.11
4.	Mercedes Benz	1991	5/1993	40.00	8.61
5.	Mitubishi Pajero	1993	7/1994	30.00	11.66
6.	- do -	1993	7/1994	30.00	11.64
7.	- do -	1993	7/1994	30.00	11.78
8.	Toyota Land Cruiser (4WD)	1994	8/1996	35.00	9.52
9.	Toyota Land Cruiser (Prado)	1997	11/1997	35.00	20.36
10.	- do -	1997	6/1997	35.00	21.00

\*As assessed by the Department at the time of seizure.

(e) Three consignments of carbohydrated lime powder, Suramine powder landed in November 1989/June 1990 and M.S. Grill/fencing wire confiscated in November 1989 have occupied a space of 1200 M<sup>2</sup> in Cochin port trust for which the rent upto September 2001 worked out to Rs.1.05 crore. The goods are still awaiting disposal.

## 2.7 Sale of Arms and ammunitions at prices unrelated to market value

Arms and ammunitions are restricted items whose import is permitted against a licence only by renowned shooters or Rifle Clubs on the recommendations of the Department of Youth Affairs and Sports. Consequently imported arms such as revolvers and pistols enjoy a very high premium in the Indian market.

Scrutiny of records in Delhi commissionerate revealed that seized arms are sold mostly to MPs/VIPs and departmental officers for self protection. A new formula for determining prices of revolvers etc was adopted in May 1999 which resulted in manifold increase in their prices. The earlier prices had been fixed in 1993, a marginal increase over the previous prices. Audit scrutiny revealed that during the period 1995 to 1999, 186 revolvers and pistols of various makes were sold to MPs/VIPs for a total consideration of Rs.16.29 lakh which was only 17 per cent of the amount that would have been realized had the formula of 1999 been used.

The 1999 formula takes prices mostly from the Gun Digest of USA, which are discounted by 33 per cent and then duty of 150 per cent added. The 33 per cent discount was made on the consideration that the prices indicated in the Gun Digest etc would be inclusive of all taxes. Even the 1999 prices may be on the lower side since no consideration was given to the



prevalent market prices in India. The sale prices of some of the models presently being used by the Customs are: Llama (Rs.17650), Barratta (15650), S&W revolver (24750), Webley (59125), Erma (66625), Weather (31325), Colt USA (27475), Browning (23500), R.S. (34065), Arminus (38225), HR revolver (9820) and Parker rifle (84956).

## **2.8 Causes of non disposal/delayed disposal of goods**

### **2.8.1 Delay in dispatch of goods/files to disposal units**

Seized/confiscated goods are to be transferred physically alongwith disposal orders to the disposal units for initiating disposal action. passenger baggages detained at international airports and not cleared are to be confiscated and disposed of by Customs in terms of CBEC circular No.53/98-Cus. dated 29 July 1998. All seized/detained goods at the Airport are to be sent to Customs House/seizure shed within a fortnight and disposal action taken within six months as per instructions issued on 22 April 1998.

Review of files of disposal unit in 12 Commissionerates revealed inordinate delays ranging from 2 months to 314 months involving goods valuing Rs.39.79 crore. .

A few illustrative cases are narrated below:

(a) In Kandla Customs house, imported poppy seeds worth Rs.2.25 crore (322 MT) seized in December 1999 were confiscated after one year in December 2000. The goods have not yet been transferred from SIIB to the disposal branch.

(b) In the same Commissionerate, Polyester fabrics valued at Rs.94.25 lakh (30.659 kgs) were seized in January 2001 and confiscated in September 2001 as the name of importer was fictitious and goods were misdeclared. Non transfer of goods from Dock (Preventive) to disposal unit resulted in non disposal of goods.

In both the cases, matter was referred to C.C. Kandla (May 2002), reply is not received as of June 2002.

(c) Three Commissionerates (Jaipur, Amritsar and Gorakhpur) seized valuables i.e. 62.647 kg Gold and 381.18 kg Silver valued at Rs.2.58 crore between 1969 and 2000 and transferred the same to New Customs House, Delhi between November 2000 and March 2001 after a delay of one year to 30 years for disposal.

### **2.8.2 Delayed adjudication**

Goods seized, under claimed or unclaimed are deposited in different godowns/disposal units for custody and for initiation of disposal action after they are ripe for disposal following adjudication, appeals etc and finalisation of court proceedings, if any. Para 33 of the Adjudication Manual lays down that cases should be adjudicated within five days from the date fixed on the show cause notice for reply.

Test check of records in 19 Commissionerates revealed delay in adjudication ranging from one to 32 years in 4467 cases involving Rs.140.52 crore.

A few illustrative cases are given below:

(a) In C.F.S Kukatpally (Hyderabad II) SCN was issued in April 1998 to an importer who imported second hand machinery valued at Rs.21.64 crore with duty effect of Rs.11.16 crore. Adjudication has not been finalised so far (March 2002).

(b) In Kandla Customs three consignments of polypropylene and HDPE woven sacks worth Rs.4.93 crore being exported against an advance licence were seized by the DRI, Kandla in March 1996, for overvaluation of cost. SCNs issued to the importer in February 1997 were adjudicated in January/May 2001, after 47 months but the goods were not disposed of till November 2001. Inordinate delay in adjudication had thus resulted in loss of revenue amounting to Rs.4.93 crore.

### **2.8.3 Non receipt of disposal orders**

Goods which are seized/confiscated need to be transferred physically along with disposal orders in file to the disposal unit for initiating disposal action. Scrutiny of records in 11 Commissionerates revealed that in 3506 cases, goods valued at Rs.296.18 crore were awaiting disposal due to non receipt of disposal orders for one to 24 years.

### **2.8.4 Goods locked up in court cases**

Ministry's instructions dated 22 April 1988 provide that in respect of cases locked up in courts, action to obtain permission to dispose of the goods should be taken immediately after initiating prosecution proceedings.

In 15 Commissionerates, goods valued at Rs. 343.54 crore in 3149 cases have been locked up in court cases blocking Government revenue for one to 47 years. Adequate efforts had not been made to obtain permission to dispose of these goods.

### **2.8.5 Delay in fixation of price of goods**

In eight Commissionerates, goods worth Rs.8.26 crore in 308 cases were awaiting disposal due to delay in fixation of the price of these goods.

### **2.8.6 Unrealistic prices**

In five Commissionerates, 32 cases involving goods of Rs.10.57 crore were awaiting disposal due to fixation of unrealistic prices. For instance, in NCH Delhi, on two occasions the Joint Valuation Committee fixed the fair price of ball bearings having seizure value of Rs.178.94 lakh at Rs.37.60 lakh in 1999-2000 and Rs.65.67 lakh in 2000-2001. But the goods could not be disposed of as the bids received at Rs.24.60 lakh and 25.94 lakh respectively were well below the reserve price.

### **2.8.7 Failure to obtain stay orders**

One Toyota Lexus car valued at Rs.5.20 lakh was seized by DRI Bangalore on 3 December 1998. While the investigation was on, the case was adjudicated by the Additional



Commissioner (P) Mumbai in January 1999 and the car was released (June 1999) on payment of a redemption fine of Rs.1.50 lakh. Audit scrutiny revealed that the Additional Commissioner Bangalore had requested the DRI on 25 March 1999 to obtain a stay from Commissioner (Appeals) Mumbai. But no action was taken in this regard. This led to loss of duty of Rs.6.43 lakh as subsequent investigations by DRI revealed that the cost of the car was Rs.18.02 lakh as against the declared value of Rs.5.20 lakh.

## 2.9 Control weaknesses

### 2.9.1 Non accountal of goods

Instructions of the Ministry issued on 13 June 1961 provide for separate accountal of valuable and other than valuable seized/detained goods. Physical verification of seized/confiscated goods is required to be conducted every six months.

In the following five Commissionerates, goods worth Rs.40.77 crore seized between 1985 and 1999 were not accounted for in the books of disposal units.

Commissionerate	Goods	Value (Rs. in lakh)	Seized on
Kolkata (Air)	Canon Camera and lenses	0.34	November 98
Kolkata (Cus)	N.A.	2.28	Prior to 1998
W.B (Prev)		3.50	
Kandla	Plastic films	19.25	June 1999
	LDPE films	1.63	
	Parts of Missile and machinery	4000.00	
Delhi (Gen)	2000 Tola Gold	50.00	1985
	<b>Total</b>	<b>4077.00</b>	

On this being pointed out, the C.C. Kandla (Disposal) did not furnish any reason for non accountal of goods. However for disposal of parts of missile, the matter was referred to CBEC in March 2000 to take up the matter with Ministry of Defence. Reply from CBEC was awaited as of February 2002.

### 2.9.2 Loss due to theft

Due to non adoption of the security measures prescribed by the Government, following goods valued at Rs.1.22 crore were stolen/missing from the custody of following Commissionerates.

Sl. No.	Commissionerate	Description of goods stolen	Value (Rs. in lakh)
1.	Kandla	Disperse dyes 0.750 MT (Stolen) 0.125 MT (Short)	6.13
2.	New Customs House Mumbai	Diamonds	60.00
3.	Trichy	485 Diamonds	0.85
4.	Calcutta Petrapole	35 seized goods	19.96
		11 -do-	1.73
5.	Delhi (Gen)	Electronic goods, Watches & Amunition	28.18
		US\$ 12000	5.64
	<b>Total</b>		<b>122.49</b>

### **2.9.3 Physical verification of stock not conducted**

Audit scrutiny of 26 Commissionerates revealed that regular physical verification of stock had not been conducted during the period 1998-99 to 2000-01. No physical verification was conducted during past 10 years in C.C. (P), NSPT, ACC, Airport Mumbai, Pune, Goa and Delhi.

### **2.9.4 Non introduction of EDI system for the seized goods**

Even though EDI has been introduced in various stages in Customs for the imports and exports, no such measures have been contemplated in respect of seized goods warehoused. This has deprived the Department from improving controls possible with IT applications.

### **2.9.5 Improper Maintenance of Records**

The following deficiencies were observed in maintenance of records at godowns and disposal units:

- (a) All the columns in the godown register were not filled up and essential details like value of seized goods, disposal particulars, date of confiscation, date of disposal order were not recorded in the Master Register for all the cases.
- (b) Yearly closing and carry forward of outstanding items was not done.
- (c) The individual file in respect of each seizure/confiscation containing information such as date of seizure, date of adjudication, valuation, final disposal was not maintained.
- (d) Records relating to auction/tender for disposal of goods were not maintained to identify the participants.
- (e) The tender registers were not maintained.

In some units, documents supporting receipt of goods and disposal/release of goods were not maintained at all rendering difficult any meaningful verification.

## **Part-II Detained Goods**

### **2.10 Non disposal/delay in disposal of uncleared warehoused goods**

In terms of Section 72 (1) (b) of the Customs Act, where the warehoused goods have not been removed at the expiry of the permitted period under Section 61 *ibid*, the proper officer may demand from the owner of goods, duty, interest, rent and penalty etc. If the owner fails to pay the amount within a week, the goods are detained and sold in public auction after giving a notice to the owner.

Audit scrutiny of records of warehouses revealed that in seven cases in Chennai, Mumbai, NSPT, Pune, Visakhapatnam and Hyderabad, goods imported between 1987 and 1999 where bond period had expired long back were awaiting disposal causing blockage of Government revenue of Rs.99.66 crore involving duty of Rs.81.89 crore. Further, in eight cases in Kolkata, Mumbai and Bangalore Commissionerates, delayed disposal of detained goods led to loss of revenue of Rs.12.83 crore.

A few cases are narrated below:

(a) A manufacturer of Bangalore Commissionerate imported (1985-86) components and warehoused the goods for manufacture of motor cycles. The warehousing period expired during 1986-87 but the department did not initiate any action to recover the duty amount of Rs.3.14 crore. The Company was liquidated and wound up in August 1991. Further process of obtaining permission from the High Court for sale of the assets of the unit took about ten years (March 2001). Finally only Rs.25.80 lakh was realised in November 2001 and February 2002, against the duty amount of Rs.3.14 crore. This resulted in loss of Rs.2.88 crore.

(b) In the same Commissionerate, a 100 per cent EOU failed to fulfil its export obligation. On being approached by a financing company, Karnataka High Court directed the Customs department (1994) to confiscate and sell the machinery within six months. The department confirmed demand for Rs.4.23 crore but took no action to dispose of the goods. On further pursuance of the case in the High Court by the financing company, the disposal unit was directed (August 2000) to dispose of the plant and machinery. Consequently the goods were disposed of for Rs.6.85 lakh in February 2001 after a delay of seven years resulting in loss of revenue of Rs.4.16 crore.

## 2.11 Conclusion

Despite the large value of goods required to be disposed of, the department has not developed an efficient and cost effective mechanism for this task. The resultant delayed disposals and non disposal lead to loss and blockage of substantial revenue. There is an urgent need to address the causes identified in the preceding analysis to rectify the situation.



## CHAPTER 3 : END USE EXEMPTION NOTIFICATIONS ISSUED UNDER SECTION 25(1) OF CUSTOMS ACT, 1962

### 3.1 Highlights

- Of the 76990 bonds executed, in lieu of end use exemptions of customs duty, in 33 Commissionerates between 1998-99 and 2000-01, 29016 involving duty of Rs.2183.95 crore were pending cancellation as on 31 March 2001. Of these, almost half, involving duty of Rs.1229.32 crore, were pending cancellation for more than two years.

*(Paragraph 3.4)*

- Sample check revealed that four out of five uncancelled bonds related to goods imported for manufacture of excisable products. The non cancellation was due mainly to non submission of end use certificates, non re-exportation of finished goods and improper coordination between Customs and Central Excise departments.

*(Paragraph 3.5)*

- Absence of appropriate monitoring provision in the notifications handicapped the department in ensuring utilization of the imported goods involving duty Rs.2087.91 crore for the intended purpose.

*(Paragraph 3.6)*

- Violation of the conditions of exemption notifications and other rules resulted in incorrect grant of exemptions of Rs.22.89 crore.

*(Paragraph 3.7)*

- Short receipt of inputs for intended purpose and excess consumption of raw material in violation of Standard Input Output Norms led to unjustified duty exemption of Rs.84.90 crore.

*(Paragraph 3.8, 3.9)*

### 3.2 Introduction

Section 25(1) of Customs Act, 1962 empowers the Central Government to exempt, by notification, either absolutely or subject to specified conditions, goods of any specified description, from the whole or any part of duty of customs. In the case of notifications issued with end use conditions, bonds are to be furnished by the importers to pay the differential

duty in the event of non-fulfillment of the conditions or proof not being made available to Customs Authorities normally within six months from the date of import. Such period may be extended by the competent Customs officer. In case the import of goods at concessional rate of duty is for manufacture of excisable goods, the verification of end use devolves on the Central Excise authorities.

### 3.3 Scope of Audit

Records of 56 Commissionerates of Customs and Central Excise in eight states viz. Delhi, Maharashtra, West Bengal, Tamil Nadu, Karnataka, Gujarat, Andhra Pradesh and Kerala pertaining to end use exemptions for the period 1998-99 to 2000-01 were test checked in audit to:

- i) seek an assurance that importers generally comply with the requirements of the exemptions and analyse the pattern of digressions, if any;
- ii) evaluate the efficiency of the system in monitoring fulfillment of end use conditions; and
- iii) examine whether the department has complied with the provisions of the exemption notifications while extending the benefits.

### 3.4 Macro Analysis

During the three years between 1998-99 and 2000-01, Customs revenue of Rs.15,074 crore has been forgone under 183 exemption notifications issued under Section 25(1) of the Customs Act, 1962. The amount forgone was 11 per cent of the aggregate receipts during this period. Of the 76,990 bonds executed in 56 Customs and Central Excise Commissionerates during this period, the department cancelled only 47,974 bonds within the stipulated time. 29,016 bonds involving duty of Rs.2183.95 crore were not cancelled.

#### *Aging analysis*

The aging analysis of the bonds not cancelled till June 2002 is presented below:-

Year	(Rupees in crore)	
	Uncancelled bonds	Duty forgone
1998-1999	6110	629.45
1999-2000	7510	599.87
2000-2001	15396	954.63
Total	29016	2183.95

It may be seen that a total of 13620 (47 per cent) bonds involving duty of Rs.1229.32 crore pertain to import prior to 31 March 2000. The cancellation was, therefore, overdue by two years or more.

**Commissionerate wise pendency**

(Rupees in crore)

Sl. No.	Commissionerate	No. of bonds	Duty forgone
1.	Kolkata (Sea)	11467	627.06
2.	Chennai (Sea)	3501	596.70
3.	Ahmedabad (Cus.)	116	289.91
4.	Mumbai (Air)	2947	272.67
5.	Kolkata CE, I, II, III	204	107.28
6.	Mumbai, NSPT	6517	55.20
7.	Cochin	677	32.78
8.	Chennai CE III	913	32.46
9.	Chennai CE II	493	32.14
10.	Others	2181	137.75
	<b>Total</b>	<b>29016</b>	<b>2183.95</b>

**3.5 Micro Analysis**

Detailed scrutiny of 8496 uncanceled bonds in 15 Commissionerates of Customs/Central Excise, revealed the following breakup among the different categories of exemptions.

(Rupees in crore)

Nature of exemption	No. of Bonds	Duty involved
Goods for manufacture of excisable products/job work	7538	841.42
Charitable organizations	240	179.96
Durable containers	659	5.05
Goods re-imported for repairs, re-processing etc.	55	3.84
Goods for display in fair, exhibition	04	0.12
<b>Total</b>	<b>8496</b>	<b>1030.39</b>

It may be seen that almost 80 per cent of the bonds relate to goods imported for manufacture of excisable products. In the absence of end use certification the possibility of their diverted use cannot be ruled out. Another large category where end use certification was not available is imports by charitable organizations.

**3.5.1 Reasons for pendency**

- i) End use certificates not furnished by the importers; 4135 cases involving duty of Rs.787.93 crore.
- ii) Improper coordination and non transmission of documents between Customs and Central Excise offices; 1472 cases involving duty of Rs.136.69 crore.
- iii) Goods imported for manufacture of excisable goods were not utilised or the specified value addition not achieved or the re-export of finished goods did not materialize; 2200 cases involving duty of Rs.94.13 crore.

- iv) Non maintenance of proper accounts, non verification thereof and inadequate monitoring as required in the rules; 26 cases involving duty of Rs.6.47 crore.
- v) Re-export of durable containers/goods imported for display not intimated to the department; 663 cases involving duty of Rs.5.17 crore.

A few cases are narrated below for illustration:

**3.5.2** Two charitable organizations (M/s CARE and M/s ALIMCO) (Kolkata-Sea) imported Corn Soya Blend, Wheat and Vegetable Oils valued at Rs.429.73 crore involving duty of Rs.175.18 crore during April 1998 to March 2001 for free distribution. Proper certificates for distribution of goods were, however, not submitted by the organizations. Infact all the duty exempted goods were not received by the recipient organizations. Since the goods not received were definitely not used for the intended purpose, duty of Rs.1.53 crore was payable which was not levied by the department. This also resulted in notional loss of interest of Rs.98.03 lakh.

**3.5.3** Seven units (M/s Jagdamba Ispat Ltd and six others) (Kolkata-Sea) imported (1999-2001) 32 consignments of melting scrap availing the benefit of concessional rate of duty. However, end use certificates from Central Excise authority were not furnished by the importers within the stipulated period of six months. The duty involved was Rs.4.77 crore and the notional loss of interest is Rs.1.75 crore.

**3.5.4** In respect of 342 cases of 19 importers (M/s Hamiltan Electronics and 18 others) of Delhi CE, the importers did not furnish consumption certificates in 303 cases to the Central Excise authorities for onward transmission to AC Customs and the Customs department had not forwarded copies of bills of entry to the Central Excise department in 316 cases. The duty exemption involved was Rs.3.49 crore.

**3.5.5** An importer (M/s GE BE Ltd) under Bangalore Customs, imported goods worth Rs.50.68 lakh availing exemption of Rs.23.12 lakh under notification No.158/95-Cus. dated 14 November 1995. The goods were not re-exported after repair/re-processing etc within the prescribed period. As such the importer was liable to pay duty of Rs.23.12 lakh. There was also notional loss of interest of Rs.7.07 lakh.

**3.5.6** One unit (M/s Real Value Appliances) of Mumbai engaged in the manufacture of vaccumizers etc. stopped production in 1996-97 and was subsequently referred to Board of Industrial Financial Reconstruction (BIFR) in August 2000. The records of Nhava Sheva Customs showed outstanding bonds aggregating Rs.2.16 crore against the unit. As the importer had stopped commercial production, the goods imported duty free for jobbing and re-export remained unutilized. The duty concession of Rs.2.16 crore availed by the unit were recoverable with notional loss of interest of Rs.1.30 crore.

**3.5.7** In eight cases, (M/s Siris Ltd with seven others) (Hyderabad-II) bulk drug manufacturers imported goods for reprocessing between June 1998 and January 2001 under notification No.158/95-Cus. The goods were, however, not re-exported within the stipulated period of six months. The Department did not initiate action to enforce bonds involving duty

of Rs.98.59 lakh in any of the cases. In three out of eight cases, bank guarantees had not been renewed. The particulars of bank guarantees obtained in the remaining five cases were not on record.

**3.5.8** One unit, (M/s Arbindo Pharma) (Nhava Sheva Uran) imported (September 1999 to November 2000) Ampicillin Anhydrous bulk drugs worth Rs.1.51 crore and availed duty concession under notification No.158/95-Cus. to export the goods after reprocessing. The goods were not re-exported till date. The unit was, therefore, liable to pay duty of Rs.1.01 crore alongwith interest of Rs.24.25 lakh. The department had not initiated any action for enforcement of the bond.

### **3.6 Absence of mechanism to ensure the fulfillment of end use conditions**

Audit scrutiny revealed that certain end use exemption notifications do not specify any mechanism for watching the fulfillment of the end uses after importation. Scrutiny of records of eight Commissionerates revealed 13 cases in which the importers availed benefit of duty amounting to Rs.2087.91 crore, but since the relevant notifications did not contain post importation monitoring mechanism, the department could not ensure proper utilisation of imported goods for the intended purpose.

A few cases are narrated below:

**3.6.1** Three notifications (23/98-Cus. 20/99-Cus. and 16/2000-Cus. dated 1 March 2000) allowed duty free imports to contractors who had been awarded contracts for road construction by the Ministry of Surface Transport subject to the conditions that the imported goods shall not be disposed of for a period of five years and be used exclusively for the construction of roads. No post importation monitoring mechanism was, however, stipulated in the notifications. The department could not therefore ensure the end use in respect of 32 consignments of imports made by 14 contractors (M/s ITM-SCL Jt Venture with 13 others) (Chennai-Sea) during the period from April 1998 to March 2001. These involved duty of Rs.25.99 crore.

**3.6.2** A unit (M/s BEL; ACC Bangalore) has been importing goods duty free under several notifications viz 206/76 Cus, 177/90 Cus, 257/92 Cus, 128/93-Cus. etc. over a long period. These grant exemption only if the goods are used in the manufacture of equipments required for Defence Services. No post importation monitoring mechanism has been prescribed. Audit scrutiny of the annual accounts of the unit revealed that an amount of Rs.22.15 crore, towards the cost of imported raw materials, stores and components which had become obsolete and redundant, were written off for the period 1994-95 to 1999-2000. Since these goods had not been used for the purpose intended i.e for the manufacture of defence equipments, the unit was liable to pay duty amounting to Rs.31.03 crore.

**3.6.3** As per notification No.23/98-Cus. dated 2 June 1998, as amended from time to time, specified goods like kerosene oil for ultimate sale through the public distribution system are exempted from the whole of customs duty. Similarly, concessional rate of duty is leviable on urea when imported for use as manure. The notification, however, did not prescribe the issue

of an end use certificate or a monitoring mechanism to ensure utilisation of the imported goods for the intended purpose. For instance, a public sector oil company (M/s IOC Ltd; Vizag CH) imported 22,72,646 Mts. of kerosene between April 1998 and March 2001 and availed exemption under the notification *ibid*. It was not possible to ascertain from the records whether the entire quantity imported has been ultimately sold through the public distribution system. Duty involved was Rs.806.36 crore. Similarly, a fertilizer plant (M/s Coromandal Fertilizers Ltd) in Visakhapatnam imported 1,43,011 mts. of urea under the above notification for use as manure. In the absence of any monitoring condition, it could not be established that the entire quantity was used as manure. Duty involved was Rs.29.81 crore.

### **3.7 Incorrect grant of exemptions**

As per Customs (Import of Goods at concessional rate of duties for manufacture of Excisable Goods) Rules 1996, a manufacturer intending to avail the benefit of an exemption notification shall obtain registration from the jurisdictional Assistant Commissioner of Central Excise. The registration shall contain particulars about the name and address of the manufacturer, the excisable goods produced in his factory and the imported goods used in the manufacture of such goods. The A.C. shall issue a certificate to the manufacturer indicating the above particulars. Duty concession is not admissible for imports not used in the specified final products.

Audit scrutiny of records of 18 Commissionerates of Customs and Central Excise revealed that 27 manufacturers have either not used the imported goods for the specific registered finished product or sold the goods to other units or violated other conditions of the exemption notifications concerned. This resulted in incorrect grant of exemption to the tune of Rs.22.89 crore with notional loss of interest of Rs.7.55 crore. A few cases are narrated below:-

**3.7.1** Three units (M/s Shogini Technoarts with two others; Pune CE) imported copper clad laminates for the manufacture of Printed Circuit Boards under notification No.13/97-Cus. dated 1 March 1997 at concessional rate of duty. Scrap worth Rs.14.94 crore was generated in the form of end pieces which was sold on payment of excise duty. Since the scrap generated was not used by the manufacturer for the specified finished goods, the unit was required to pay differential duty of Rs.10.02 crore. Failure to collect the duty resulted in notional loss of interest of Rs.2.41 crore.

**3.7.2** A unit (M/s WIPRO Ltd; Bangalore CE) imported 'Steel Pipes' for the manufacture of Hydraulic Cylinders at concessional rate of duty, under notification No.20/99-Cus. Audit scrutiny revealed that the unit had sold such goods for Rs.2.11 crore to its sister concern in a neighbouring state after collecting Central Excise duty and adding a margin of 15 per cent as profit. Since the imported goods were not used for the intended purpose, duty amounting to Rs.28.04 lakh was recoverable.

**3.7.3** Notification No.32/97-Cus. provides exemption from basic customs duty and additional duty for goods imported for the execution of an export order for jobbing. In terms of para 3.28 of EXIM policy, jobbing means processing or working upon raw materials or semi finished goods supplied to a job worker so as to complete a part or whole of the process

resulting in the manufacture or finishing of an article. 59 consignments of injection moulding moulds, cutting dies, server, remote management console, keyboard etc. were imported by four importers (M/s Vellore Shoe Fabrics with three others; Chennai Air) without payment of duty under the above notification during the period from May 1998 to November 2000. These were required for the manufacture of cover, shoe uppers and development of software. The items imported were capital goods and there was no supply of raw material. As no processing of raw material or semi finished goods is involved, this can not be treated as a job work. The exemptions granted to such capital goods were not in order. Duty involved in these cases worked out to Rs.33.17 lakh.

### **3.8 Non payment of duty on shortage of inputs not used for the intended purpose**

In terms of circular No.46/96-Cus. dated 30 August 1996, an importer registered with the Central Excise department is required to inform the Range Superintendent of the receipt of the imported goods in Annexure V. In case of short receipt of goods in the factory vis a vis the quantity assessed/cleared under the Bill of Entry, duty becomes payable on the short quantity.

Audit scrutiny of records in 10 Commissionerates revealed 15 cases in which either shortages were noticed on receipt of the goods in the factory or the goods were diverted for other purposes. Since the goods were not used for the purpose for which exemptions were granted, the manufacturers were liable to pay duty amounting to Rs.9.44 crore. There is also notional loss of interest of Rs.0.61 crore. For instance, two fertilizer manufacturing companies (M/s Hind Lever Chemicals and M/s Paradeep Phosphates; Bhubaneshwar, Kolkata-Sea) imported between 1998 and 2001 phosphoric acid at concessional rate of duty. Audit scrutiny revealed that the quantity of goods received at the factory fell short of the quantity assessed by the department by 659.89 tonnes. Concession on the short received quantity was Rs.79 lakh and the notional loss of interest is Rs.57.94 lakh.

### **3.9 Non payment of duty on excess consumption of raw material in violation of 'SION'**

Rule 9 of Customs (IGCRDMEG) Rules 1996 provides for quarterly verification of accounts by the Central Excise authorities to ensure that consumption of raw material vis a vis finished product was with reference to the Standard Input Output Norms (SION) and to prevent misuse of concessions availed by the importers.

Audit scrutiny of records in seven Commissionerates revealed 10 cases in which violation of SION resulted in excess consumption of raw material against the finished product involving duty concession of Rs.75.46 crore. The notional loss of interest is Rs.37.10 crore.

A few cases are narrated below :

**3.9.1** M/s Teamasia Lakhi (Hyderabad-I) imported, among other things, undiffused/diffused silicon wafers (chips) for use in the manufacture of semi-conductor devices viz. transistors and diodes under notification No.25/99-Cus. dated 28 February 1999. As per SION published



in the EXIM Policy 1997-2002, the ratio of input-output for the said product is 1200:1000. A scrutiny of the audited Balance Sheet for the years 1999-2000 and 2000-2001 revealed consumption of raw materials in excess of SION to the extent of 36.33 million chips involving duty of Rs.22.88 lakh.

**3.9.2** A firm (M/s. Uniroyal Marine Exports; Kozhikode) imported (April 2000) 94.545 mts of California whole squid without payment of duty and exported the resultant product squid ring. The SION ratio was 3330 kgs.: 1000 kgs. Consumption of raw material in excess of SION led to excess benefit of Rs.2.52 lakh and notional loss of interest of Rs.1.16 lakh.

**3.9.3** A manufacturer (M/s Texmaco; Kolkata CE-III) imported (1998-1999) Stainless Steel/Mild Steel articles availing of the benefit under notification No.32/97-Cus. dated 1 April 1997 for fabrication of Hydraulic Steel Structure for a Hydro Generation Unit at Nepal. After completion of the export of finished products, excess materials worth Rs. 1.30 crore remained in the importer's premises. The importer neither re-exported the excess goods nor paid the duty though the statutory time limit had expired. This resulted in irregular avilment of exemption amounting to Rs.81.74 lakh and loss of notional interest of Rs.63.60 lakh.

### **3.10 Loss of revenue due to absence of provisions for levy of interest in the notification**

The end use based exemption notifications issued under Section 25 (1) of Customs Act, 1962, the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996, or the Customs Act, 1962 do not provide for levy of interest on differential duty, payable on non fulfillment of conditions governing import of the goods.

In 28 cases of Chennai, Cochin and Delhi Commissionerates, a sum of Rs.3.30 crore was paid by the importers for non fulfillment of end use conditions but no interest could be demanded in the absence of any provisions in the notifications, leading to loss of revenue of Rs.89.20 lakh.

### **3.11 Irregular availing of double benefits**

In terms of Ministry of Finance circular No.26/2002-Cus. dated 16 May 2002, DEPB benefits can not be availed in respect of re-export of goods imported earlier duty free under notification No.32/97-Cus. for execution of an export order for jobbing. Likewise, rule 3 (ii) of Customs and Central Excise duties drawback rules 1995 provide that no drawback shall be allowed if the said goods are produced using imported or indigenous material in respect of which duties have not been paid.

In eight cases of Chennai (Sea) Kolkata (Sea) and Bangalore CE, the importers were allowed DEPB Credit/ Drawback on exports made against the goods imported for job work without payment of duty. Irregular/excess benefit availed amounting to Rs.44.11 lakh was thus recoverable along with interest. For instance, an importer (M/s. Sunili Leathern Pvt. Ltd.; Kolkata Customs) imported accessories of leather goods for job work without paying any duty. On export of the finished goods, the unit was allowed drawback at the rate of 10 per cent. This included 4 per cent for Customs and 6 per cent for Central Excise on the value of



indigenous raw materials plus job charge. This resulted in excess allowance of drawback of Rs.15.99 lakh alongwith notional loss of interest of Rs.11.51 lakh.

### 3.12 Delay in monitoring fulfillment of end use conditions

Audit scrutiny revealed that the action for recovery of duty benefits required to be taken by the Central Excise department immediately on expiry of six months was delayed by 13 to 59 months. This resulted in undue advantage to five manufacturers of Pune and Andheri Commissionerates involving duty amounting to Rs.4.55 crore and causing loss of interest of Rs.0.80 crore to the Government.

### 3.13 Conclusion

In the context of the large sacrifice of customs revenue due to end use exemptions and the high incidence of bonds remaining uncanceled due to failure of the importers to fulfil the prescribed conditions, there is an urgent need for the Department to strengthen its controls and take effective action against defaulting importers.

## CHAPTER 4 : SHORT LEVY DUE TO INCORRECT CLASSIFICATION

Some illustrative cases of short levy of customs duty arising from incorrect classification of goods are briefly narrated below:

### 4.1 Bedding, mattresses etc.

Articles of bedding and similar furnishings stuffed with any material merit classification under Customs Tariff heading 94.04.

Mention was made in para 4.1 of Report No.10 of 2002 (Indirect Taxes – Customs) that four consignments of sleep pad, down comforter and pillows imported by M/s. Frontier Trading, Thane during October 1999 to August 2000 through Sea Customs Commissionerate, Mumbai were declared as Magnetic acupressure treatment instruments and classified under Customs heading 9019.10 (Mechano therapy appliances), even though the invoices clearly indicated that these were items of bedding, meriting classification under Chapter 94. Subsequent to the matter being brought to the notice of the Department, 20 less charge Notes for imports made between March 2000 and July 2000 aggregating Rs.16.03 crore were issued to the importer on 31 October 2000. Demands in respect of 32 consignments imported between June 1997 and February 2002 involving duty effect of Rs.17.92 crore were hit by limitation. After scrutiny of relevant catalogues, manuals, internet information, certificates from the Ministry of Health, seized documents etc and after giving an opportunity to the importer, the Commissioner (Imports) Mumbai came to the conclusion (August 2001) that the said goods merited classification under CTH 9404.29. He accordingly confirmed demand for Rs.22.49 crore for imports made between March 2000 and October 2000.

Audit scrutiny revealed that 17 consignments of the goods imported by M/s. Frontier Trading, Thane for the period October 2000 to December 2001 were again classified as mechano therapy appliances resulting in short levy of duty of Rs.11.40 crore. On this being pointed out (April 2001 to March 2002), the department, justified (November 2001) the classification under Customs Tariff Heading 9019.10 on the basis of a clarification issued by the Ministry vide Circular No.56/2001 dated 25 October 2001 that magnetic quilts, pillows etc. be treated as massage apparatus under 9019.10.

A scrutiny of the clarification revealed that it was made in response to 'classification of the said articles by a Custom House'. Section 151 A of the Customs Act 1962 stipulates that the Board may, if it considers it necessary or expedient so to do for the purpose of uniformity in the classification of goods or with respect to the levy of duty thereon, issue such orders, instructions and directions to officers of customs as it may deem fit and such officers of customs and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the Board. Provided that no such orders, instructions or directions shall be issued:

- (a) so as to require any such officer of customs to make a particular assessment or to dispose of a particular case in a particular manner; or
- (b) so as to interfere with the discretion of the Commissioner of Customs (Appeals) in the exercise of his appellate functions.

It is quite clear that in the instant case the clarification violated both the conditions because not only did it cause assessment of the subsequent imports by the said firm in a particular manner, it would also interfere in the appeal against the order of the Commissioner (Imports) Mumbai.

Reply of the Ministry has not been received (January 2003).

#### 4.2 Motorcycle parts

Motorcycle parts merit classification under Customs Tariff heading 87.14.

19 consignments of 'parts of motorcycle' imported (January - October 2001) by M/s Hero Honda Motors Ltd. and two others through Delhi Custom Commissionerate were classified under Customs headings 8483.40/8504.90/ 8484.10/8484.90 treating them as independent goods even though the imported goods were parts of motorcycles. The incorrect classification resulted in short levy of duty of Rs.1.01 crore.

On this being pointed out during September 2001 to May 2002, the department while accepting that the items imported are Electric Parts of Motorcycles in respect of one consignment stated (April 2002) that being rectifier parts they were classified under heading 8504.90.

The reply is not tenable. The goods imported being motorcycle parts they merit classification under heading 87.14. Reply of the department in 18 other consignments has not been received (January 2003).

#### 4.3 Electrical/electronic machinery and equipment

a)(i) 'Wave guides' are classifiable under chapter sub heading 8544.20 of the Customs Tariff Act.

Five consignments of 'wave guides' imported by M/s Srinivas Cellcomm Ltd, Chennai between October 1999 to March 2000 through Custom House Chennai were classified under heading 8529.90 of Customs Tariff, treating them as parts suitable for use solely or principally with the apparatus for transmission. 'Wave guides' perform the same function as co-axial cables by facilitating the transmission of electromagnetic waves hence meriting classification under heading 8544.20. The incorrect classification resulted in short levy of duty amounting to Rs.21.57 lakh.

On this being pointed out (between April to August 2000), the department recovered (March 2001) the entire amount.

ii) 'RF High Power Amplifiers' used in Telecommunication are classifiable under Chapter sub-heading 8543.89 of Customs Tariff.

Two consignments of 'RF Power Amplifiers' imported (January/July 2000) by M/s. ITI Ltd., Bangalore through Air Cargo Complex, Bangalore were incorrectly classified under Chapter sub-heading 8525.20 resulting in short levy of duty of Rs.19.59 lakh.

On this being pointed out (May 2000/March 2001), the Department recovered short levy (September 2001/January 2002).

iii) Electric machines and apparatus having individual functions are classifiable under chapter sub heading 85.43 of Customs Tariff Act.

M/s Fibicon India Ltd., Gurgaon imported (July 2001) Crystal Oscillators worth Rs.61.17 lakh, through Delhi Customs. The goods were assessed and cleared under Customs Tariff heading 8541.50 treating them as 'Semi conductor devices'. The misclassification resulted in short levy of duty amounting to Rs.14.76 lakh.

On this being pointed out between October 2001 and January 2002, the department justified (December 2001/May 2002) the assessment stating that the goods imported are voltage controlled Crystal oscillators, a semi conductor device. The reply of the department is not tenable as a semi conductor 'device' is a solid crystalline material whose electrical conductivity is intermediate between that of a metal and an insulator. An oscillator on the other hand is an electronic circuit that converts energy from a direct current source into a periodically varying electrical output.

Reply of the Ministry has not been received (January 2003).

(b) *Parts of washing machines*

In terms of First schedule of Customs Tariff Act 1975, imported parts of washing machine, are classifiable under CTH 8450.90.

'Gear case assembly/Shaft Assembly' (parts of washing machines) were imported by two manufacturers of washing machines viz. L.G. Electronics and Onida Savak Limited, Noida, between March to August 2001. These were incorrectly classified under Customs Tariff heading 8483.40/8483.60 treating them as gear box/machines. The imported items were devices/parts exclusively to be used in washing machines and therefore correctly classifiable under heading 8450.90. The incorrect classification resulted in short levy of duty of Rs.18.18 lakh.

On this being pointed out (between July to December 2001), the department justified (January 2002) the classification of 'Gear case assembly' under CTH 8483.40 as 'gear box'. The reply of the Department is not tenable as the imported items were parts of washing machines solely to be used with that machine and could not be reckoned as gear boxes as generally perceived.



**4.4 Other cases**

11 other cases of incorrect classification of goods imported by 11 importers involving short levy of duty of Rs.41.55 lakh was reported to the Ministry. Out of these the department admitted two cases involving Rs.8.23 lakh and reported recovery of Rs.22.02 lakh as per details below:

(Rupees in lakh)

Sl. No.	Details of product	Name of the importers M/s.	Heading where classifiable	Heading where classified	Amount short levied	Amount admitted	Amount recovered
1.	Vanadium pentoxide	Fertilizers & Chemicals Travancore Ltd.	2825.30	3815.19	8.09	No	--
2.	Fastening tape	BDR Product (I) Ltd.	9607.19	5806.32	7.13	No	--
3.	Madhuramicin ammonium	AHP Manufacturing BV, Chennai	29.00	23.00	6.36	6.36	20.15
4.	Fin evaporators	Subros Ltd.	8415.90	7608.10	4.73	--	--
5.	Evaporator & condenser tubes	Subros Ltd.	8415.90	7608.20	3.57	No	--
6.	Badian seeds	Sheetal Medical Products (P) Ltd.	0909.10	1211.90	3.12	--	--
7.	Glass fibre filter paper	Raymond Synthetics Ltd.	70.19	8421.99	2.43	--	--
8.	Fresh apples	DJ Exports, N. Delhi	0808.10	0808.20	1.87	1.87	1.87
9.	Truck & tempo tyres	M.B.O. Overseas, N. Del	4011.90	4011.20	1.63	--	--
10.	Clutch set - air conditioning machine	Sanden Vikas (I) Ltd.	84.00	8505.90	1.53	No	--
11.	Automatic greasing/oiling machines	Praja Mechanicals Ltd.	8479.89	84.13	1.09	No	--
	Total				41.55	8.23	22.02

## CHAPTER 5 : SHORT LEVY DUE TO INCORRECT GRANT OF EXEMPTION

Short levy of duties aggregating Rs.8.09 crore in 23 cases on account of incorrect grant of exemptions were pointed out to the Ministry. Some illustrative cases are narrated below:

### 5.1 Incorrect application of exemption notification

(a) In terms of notification No.111/95-Cus. dated 5 June 1995 goods imported under Export Promotion Capital Goods (EPCG) scheme are subjected to concessional rate of duty if covered under a valid licence which is to be produced at the time of clearance. Further as per Public Notice No.19/99 dated 10 February 1999 issued by the Mumbai Commissionerate, the licence shall not be acceptable unless it is valid at the time of clearance from the warehouse.

A 'lathe machine' from a warehouse under Custom House (Sea) Kolkata was cleared on 9 November 2000 at concessional rate of duty under the EPCG scheme, against a licence which was valid only up to 31 December 1999. The incorrect grant of exemption on an invalid licence resulted in short levy of duty of Rs.2.06 crore.

On this being pointed out in August 2001, the department did not admit the objection (October 2002) and stated that as per para 4.15 (C) of the Hand Book of Procedure of the Exim Policy 1997-2002, the licence need only be valid on the date of shipment/despatch of the goods from the supplying country which was 23 November 1999. However, a show cause notice has been issued (October 2001) to safeguard Government revenue. The stand of the Kolkata Commissionerate is contrary to the Public Notice of Mumbai Commissionerate *ibid*.

This was pointed out to the Ministry in July 2002. Reply of the Ministry has not been received (January 2003).

(b) In terms of Customs notification 17/2001 dated 1 March 2001, (Sl.No.86) DL-2 Aminobutanol, Diethyl Malonate, Triethyl Ortho formate, Auto Butyrolactone, Thymidine and Artemisinin are exempted from payment of customs duty when imported into India.

Eight consignments of Beta-Thymidine (3550 kgs) imported between April 2000 and October 2001 by M/s. Dr. Reddy's Lab, Ltd., Hyderabad and four others through Air Cargo Complex, Chennai were assessed allowing the benefit of the notification dated 1 March 2001, even though only Thymidine instead of "Beta-Thymidine" is covered under the notification. The incorrect grant of exemption resulted in short levy of duty amounting to Rs.1.65 crore.

Further audit scrutiny revealed that on other consignments of "Beta Thymidine" imported during June to August 2001 through Air Cargo Complex, Chennai basic customs duty was levied.

This was pointed out to the department between October 2001 to March 2002. Reply has not been received (January 2003).

(c) Goods required for plants or projects other than fertilizer and power projects and falling under heading No.98.01, are eligible for concessional rate of duty under notification

No.90/94-Cus. dated 1 March 1994. The heading 98.01 covers all items of machinery as well as all components or raw materials for manufacture of machinery and their components required for initial setting up of a unit.

Based on the recommendation of the Ministry of Chemical and Fertilizers, M/s Gujarat Alkalis & Chemicals Ltd., paid concessional duty on two consignments of 560.397 MT of amyl alcohol imported through Sea Commissionerate, Mumbai between April and May 1995 under the notification *ibid*.

As per the certificate of the importer, amyl alcohol was used in the process of manufacture of phosphoric acid as an extraction agent. Therefore it cannot be treated as material required for initial setting up of unit. As such it was not eligible for the concessional rate duty. The irregular grant of duty concession resulted in short levy of duty of Rs.74.93 lakh.

On this being pointed out (August 2001), the department stated (December 2001) that the case has been adjudicated and the importer has been directed to pay Rs.74.93 lakh. Recovery particulars are awaited (January 2003).

(d) In terms of a decision taken in the Tariff Conference, held on 2 and 3 November 2000 at Goa, only ink cartridges which contain print head assembly and an ink spray nozzle merit classification as parts of machine under heading 8471 making them eligible for concessional rate of duty of 5 per cent under serial No.230 of the notification No.16/2000-Cus. dated 1 March 2000. All other types of ink cartridges, even if used in computers are to be assessed at duty rate of 25 per cent under serial No.233 of the notification dated 1 March 2000.

24 consignments of Ink Cartridges imported (July 2001) by M/s. Hewlett Packard India Ltd., New Delhi through Custom House, New Delhi were incorrectly assessed at concessional rate of duty under notification 17/2001-Cus. dated 1 March 2001 even though they were without the print head assembly and ink spray nozzle. The incorrect grant of exemption benefit under notification dated 1 March 2001 resulted in short levy of duty of Rs.52.27 lakh.

On this being pointed out (December 2001 to January 2002), the department stated (March 2002) that ink cartridges had correctly been classified under CTH 8473.30 as they are fitted/used in computer printers of different models of HP and controlled electronically by using an automatic data processing machine. The department further stated that ink contained in these ink cartridges cannot be taken out and emptied anywhere for its use. The reply of the department is not tenable as these ink cartridges are without print head assembly and ink spray nozzle and thereby not eligible for the benefit of concessional duty as per the decision taken at Tariff Conference.

This was pointed out to the Ministry in July 2002. Reply has not been received (January 2003).

(e) In terms of notification No.20/99-Cus. (Sl.No.231) dated 28 February 1999 and 16/2000 (Sl. No.261) dated 1 March 2000, Information Technology (IT) software which are capable of either being manipulated or providing interactivity to a user by means of an automatic data processing machine are exempted from Customs duty when imported into India. Ministry of Finance vide circular No.7/98-Cus. dated 10 February 1998 clarified that software for telecom, medical or other applications are not eligible for this exemption.



Software imported by M/s. Bharati Cellular Ltd., New Delhi and another firm between October 1999 and November 2000 through Custom House, New Delhi for use in the Telecom Industry were assessed under the notification dated 28 February 1999 and 1 March 2000 even though exemption to telecom software is not admissible. This incorrect grant of exemption resulted in short levy of duty of Rs.45.32 lakh.

This was pointed out to the department between March 2000 to May 2000. Reply has not been received (January 2003).

(f) In terms of Ministry of Commerce Public Notice No.6 (RE-2000)/1997-2000 dated 7 April 2000 read with Customs notification No.34/97 dated 7 April 1997, credits under Duty Entitlement Pass Book Scheme may be utilised for payment of customs duty on any item except capital goods. Further, Customs notification No.18/2000 dated 1 March 2002, exempts goods from levy of special additional duty (SAD) imported under Customs notification No.34/97 dated 7 April 1997.

10 consignments of capital goods imported between May and August 2000 by eight importers through Air Customs, Chennai were cleared utilising DEPB scrips issued on or after 7 April 2000, for payment of duty. Irregular utilisation of DEPB scrip for clearance of capital goods and incorrect grant of SAD exemption resulted in short levy of duty of Rs.43.32 lakh.

On this being pointed out (November 2000 to February 2001), the Ministry reported (October 2002) recovery of Rs.27.33 lakh in seven cases and issued demand notices for Rs.14.80 lakh in two cases. Further progress is awaited.

(g) In terms of Central Excise notification No.3/2001 dated 1 March 2001 'made up textile articles made out of handloom fabrics' classifiable under Central Excise Tariff Act chapter 63 are exempted from levy of CVD.

40 consignments of old preutilated and fumigated woollen/hosiery rags imported by M/s. Mayur Woolen Ind. and others through Delhi Commissionerate were cleared without levy of CVD extending the benefit of notification No.3/2001 (Sl.No.171) even though goods imported were made out of woollen/hosiery articles. This resulted in non-levy of CVD amounting to Rs.34.16 lakh.

This was pointed out to the department in February/May 2002. Reply has not been received (January 2003).

(h) In terms of notification 25/99-Cus. dated 28 February 1999 (Sr. No.52 of the table), amended by notification No.20/2000-Cus. dated 1 March 2000, plain plastic films of thickness 12 microns or below attract Customs Duty at a concessional rate of 5 per cent when used in the manufacture of electronic capacitor grade metalized dielectric plastic films. Further, Public Notice issued under Ministry of Finance (D.R.) Circular No.66/2000 dated 11 August 2000 clarified that both BOPP and Hazy films do not qualify for duty concessions/exemptions enjoyed by plain films under the said notification because they are different in physical properties and market identification.

Eight consignments of BOPP plain Polypropylene imported by M/s. Electronic Components Ltd. through Sea Commissionerate, Mumbai were however cleared (March to August 2000)



at concessional rate of duty applicable to plain films. This resulted in short levy of duty of Rs.33.48 lakh.

This was pointed out to the department in January 2002. Reply has not been received (January 2003).

(i) Customs notification No.30/97 dated 1 April 1997 issued under para 7.4 of the Exim Policy 1997-2002 exempts customs and additional duties whereas Customs notification No.31/97 dated 1 April 1997 issued under para 7.3 (Advance licences) and para 7.5 (Advance Intermediated Licences) of the Exim Policy 1997-2002 exempts customs duty only.

Notification No.30/97 instead of 31/97 endorsed in eight quantity based Advance Intermediate Licences issued to M/s. Coats Viyella India Ltd. and M/s. DCW Ltd., Sahapuram between May and June 1997 by licensing authority, Madurai under para 7.5 of Exim Policy 1997-2002 led to irregular exemption of additional duties of Rs.19.06 lakh.

On this being pointed out (October 2000/February 2001), the Commissioner of Customs, Trichy reported (August 2001) recovery of Rs.13.46 lakh in respect of five licences. However, the Commissioner of Customs, Chennai stated (January 2002) that assessments were made on the basis of notification number indicated by the licensing authority in the licence. The reply is not acceptable as the licences were issued under para 7.5 of Exim Policy and all imports are to be assessed under notification No.31/97.

This was pointed out to the Ministry in May 2002. Reply has not been received (January 2003).

## **5.2 Incorrect exemption due to misclassification**

(a) 'Surgical Operating Zoom Microscope with CCTV Camera' (medical equipment), when imported is exempted from customs duty in terms of notification No.16/2000-Cus. dated 1 March 2000.

M/s. Quality Care India Ltd., Hyderabad imported goods described as 'parts and accessories' of microscope through Air Cargo Complex, Hyderabad classifying them under Customs Tariff heading 9011.90. The department, however, classified the goods as 'Surgical Operating Zoom Microscope with CCTV Camera' under 9018.90 and assessed them to 'Nil' rate of duty under the notification No.16/2000-Cus. dated 1 March 2000. As the goods imported were in the nature of 'parts and accessories' its classification under heading 9018.90 as medical equipment was incorrect and resulted in non-levy of duty of Rs.12.09 lakh.

On this being pointed out (January 2002), the department contended that the goods as per the purchase order of the importer, were 'Surgical Operating Zoom Microscope with CCTV Camera' and were supplied in knocked down condition. Hence, they were 'medical equipment' and eligible for exemption under the notification. The reply of the department is not tenable as the goods imported were 'parts' of microscope under heading 9011.90 and without CCTV and thus cannot be treated as surgical operating zoom microscope with CCTV medical equipment.

This was pointed out to the Ministry in August 2002. Reply has not been received (January 2003).

(b) Prepared or preserved potatoes were classifiable under sub-heading 2005.20 whereas waffles and wafers made of flour of vegetable origin other than potato were classifiable under sub-heading 1905.30.

20 consignments of 'potato crackers' imported through Customs Commissionerate (Preventive) West Bengal between November 1997 and July 1999 by M/s. Debam International (P) Ltd., Kolkata were assessed under sub-heading 1905.30 and granted benefit of notification No.15/97-Cus. dated 1 March 1997 even though the goods, on chemical examination, were found to contain predominantly potato starch. This resulted in short levy of duty of Rs.11.53 lakh.

On this being pointed out (September 2000), the department stated (December 2000) in respect of 16 consignments that wheat flour was the predominant material as potato starch/powder being a costly item was mixed in small quantities. The reply of the department is not tenable in view of the Chemical Test Report.

This was pointed out to the Ministry in July 2002. Reply has not been received (January 2003).

### 5.3 Other cases

In 12 other cases, objections were issued to the Ministry on incorrect grant of exemption involving short levy of Rs.1.12 crore. The department admitted the objection in six cases involving Rs.45.54 lakh and reported recovery of Rs.26.43 lakh in three cases as per table below:

(Rupees in lakh)					
Sl. No.	Product on which exemption granted	Name of the importers M/s.	Amount short levied	Amount admitted	Amount recovered
1.	Transmission equipments, cable etc.	Huges Escorts Communication Ltd.	16.31	16.31	16.31
2.	Tape player/tape reproducer	Jet Airways (I) Ltd.	14.98	1.83	1.83
3.	RBD palmolien	Essel Mining & Industries Ltd. & another	14.18	--	--
4.	Methyl prednisolone sodium succinate	Strides Arcolab Ltd.	14.08	--	--
5.	Networking security systems	Novell Software Development Ltd.	9.10	9.10	--
6.	Draw frame RSD-30	Sri Matha Spinning Mills (P) Ltd.	8.29	8.29	8.29
7.	Industrial sewing machine	Harichand Anand & Co.	7.46	No	--
8.	Medical equipments	Wipro Ltd.	7.00	4.87	--
9.	Woollen/acrylic rags	J.R. Spinning Mills (P) Ltd.	5.83	No	--
10.	Gynaecology examination table/ obstetric bed/chair	Loknaya Hospital	5.40	--	--
11.	Spares for tricon TMR PLC systems	Haldia Petrochemicals Ltd.	5.14	5.14	--
12.	BOPP films	I.E.E. Engineering Enterprises	4.28	--	--
	<b>Total</b>		<b>112.05</b>	<b>45.54</b>	<b>26.43</b>

## CHAPTER 6 : SHORT LEVY DUE TO UNDERVALUATION

### 6.1 Incorrect adoption of assessable value

As per Section 14 of the Customs Act 1962, duty of customs is chargeable on any goods by reference to their value. The value of such goods shall be deemed to be the price at which such or like goods are ordinarily sold, or offered for sale, for delivery at the time and place of importation or exportation in the course of international trade where price is the sole consideration for the sale or offer for sale. Rule 10 A of Customs Valuation Rules 1988 prescribes that when the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence. If, after receiving such further information, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the value of such imported goods cannot be determined under the provisions of sub rule (1) of rule 4.

Audit scrutiny revealed that in 110 consignments of various chemicals (Citric Acid, Sodium Cyanide, Epoxy Resin etc) imported by M/s Adani Exports Ltd., Ahmedabad and others through Sea Commissionerate, Mumbai during January 2001 to January 2002 from Taiwan, Singapore, Indonesia, China, Korea, Thailand, Belgium, Malaysia, Germany and France etc., the invoice value was only 15 to 55 per cent of the prices indicated in the Chemical Market Reporter' (CMR) for the corresponding period. As such the proper officer should have called for further information under rule 10 A of the Customs Valuation Rules 1998. Failure to do so resulted in short levy of duty of Rs.9.71 crore.

On this being pointed out (between July 2001 to March 2002), the department stated (January to April 2002) that the prices quoted in the CMR could not take precedence over the transaction value, which reflected the negotiated prices and that specific provisions of Customs Valuation Rules formed the statutory basis for assessment.

Reply of the department is not tenable because the CMR records average prices at which transactions took place at a given point of time. Discounts ranging from 45 to 85 per cent appear unrealistic. Further, the Valuation rules cast a responsibility on the importer to satisfy the authorities that the declared transaction price entered into was in the normal course of international trade and was not hit by any one of the conditions as set out under sub rule (2) of rule 4.

Reply of the Ministry has not been received (January 2003).

### 6.2 Non-levy of additional duty on the basis of Maximum Retail Sale Price

In terms of amendment made in Section 3 of Customs Tariff Act in 2001, value of packaged commodities imported into India for the purposes of levy of additional duty, would be computed on the basis of their maximum retail price (MRP) in India. The provision is applicable to goods where it is the requirement either of the Standards of Weights and



Measures Act 1976 or any other law to declare the retail sale price on the package (before clearance for home consumption) and the like goods manufactured in India are notified under Section 4A of the Central Excise Tariff Act 1944.

In such cases, the value of the goods would be the MRP (declared on the package) minus the abatement notified for like domestic goods under Section 4A.

(a) 15 consignments of "Shampoo 7.5 ML", consisting of 9,43,05,408 pieces for assessable value of Rs.8.70 crore falling under the Central Excise Tariff heading 3305.99, imported by M/s. Proctor and Gamble, Home Products Ltd., Mumbai between June 2001 and March 2002, were cleared through Custom House (Sea) Chennai.

Failure to determine assessable value based on MRP in terms of amendments in Section 3 resulted in short levy of Rs.2.99 crore.

This was pointed out to the department between November 2001 and April 2002. Reply has not been received (January 2003).

(b) On Nine consignments of 17,50,000 Rolls of Konica Color Negative Film Centuria/VX-DX 135-36 EX (ISO 100) valued at Rs.5.04 crore falling under Customs Tariff heading 3702.90, imported by M/s. Computer Graphics Ltd., Chennai against the DEPB licences, through Custom House (Sea), Chennai, additional duty of Customs was paid on the MRP of Rs.65/- per roll, as declared by the importer in the bill of entry. However, the MRP printed on the packages of the Konica Color Negative Film Centuria / VX-DX 135-36 Ex (ISO 200) was Rs.90/- and Rs.80/- per roll respectively. Incorrect assessment of goods at the lower MRP resulted in short levy of duty of Rs.26.64 lakh.

This was pointed out to the department in November 2001/June 2002. Reply has not been received (January 2003).

(c) One consignment of 135000 'AGFA COLOR PRO:200:135-36' colour films, valued at Rs.34.98 lakh falling under Central Excise tariff heading 3702.90 was imported by M/s. Mahatta Camera Corporation, New Delhi against DEPB licence, through Custom House (Sea), Chennai. Failure to determine value based on MRP resulted in short levy of additional duty of Customs of Rs.4.67 lakh.

This was pointed out in November 2001/June 2002. Reply of the department has not been received (January 2003).

### **6.3 Incorrect fixation of Tariff value**

As per sub Section 2 of Section 14 of Customs Act, 1962, if the Central Government is satisfied that it is necessary or expedient to do so, it may by notification in official Gazette, fix the tariff value of any class of import or export goods having regard to the trend of value of such or like goods. Invoking the provisions of the above Section, the tariff value for RBD Palmolein was fixed at US\$ 372 per metric tonne from 3 August to 8 October 2001. It was reduced to US\$ 307 during the period from 9 October 2001 to 6 December 2001 and



increased to US\$ 349 from 7 December 2001. Also the tariff value of crude Palmolein was fixed at US\$ 357 during the period from 28 August 2001 to 8 October 2001. This was reduced to US\$ 298 from 9 October to 8 December 2001 and was again increased to US\$ 334 from 7 December 2001.

Audit scrutiny revealed that in respect of nine consignments of RBD Palmolein and Crude Palmolein imported by M/s. Ruchi Soya Industries Ltd., Indore and two others through Custom House, Chennai during the period from November 2001 to March 2002, the invoice value per metric tonne was higher than the tariff value on which the goods were assessed. The fixation of tariff value lower than the prevalent market price resulted in under valuation of the consignments and consequential loss of revenue of Rs.1.02 crore.

On this being pointed out (May to July 2002), the department stated (July 2002) that the goods were assessed to duty correctly with reference to tariff value fixed under sub section 2 of Section 14 of the Customs Act, 1962. There is a need to amend the provisions of sub section 2 of Section 14 of Customs Act, 1962 to provide for assessment at the tariff value or invoice value whichever is higher to tighten tax administration and protect revenue.

## CHAPTER 7 : NON LEVY/SHORT LEVY OF ADDITIONAL DUTY

As per Section 3 of the Customs Tariff Act, 1975, any article which is imported into India shall also be liable to an 'Additional duty' equal to the Central Excise duty for the time being leviable on a like article produced in India.

Short levy of additional duties amounting to Rs.130.66 lakh were reported to the Ministry in eight cases, as narrated below:

### 7.1 Non levy of additional duty due to incorrect grant of exemption

In terms of notification No.82/92-CE dated 27 August 1992 (as amended) read with notification No.80/95-Cus. dated 31 March 1995, clearance of goods for Advance Release Orders (AROs) against duty free import licences issued on or after 1 April 1995 is exempted from only that portion of duty of excise leviable thereon under Section 3 of the Central Excise Act 1994 as is equal to the duty of customs leviable on like goods produced or manufactured outside, if imported into India.

M/s. Inox Air Products, Rajkot, a 100 per cent EOU under Rajkot Commissionerate cleared 1,15,412 disposable gas cylinders worth Rs.2.47 crore between August 1995 to January 1996 under AROs for six advance licenses issued between June and November 1995 (i.e. after 1 April 1995) under notification No.82/92-CE without payment of customs and additional duty even though additional duty was not exempted. This resulted in non levy of additional duty of Rs.37.02 lakh.

On this being pointed out (July 2000/April 2002) the department stated (May 2002) that though the audit objection is sustainable, it would be against the intention of the Government to exempt the goods sourced from 100 per cent EOU against ARO as notified under 28/2001-CE dated 16 May 2001.

The contention of the department is not tenable as the audit view was sustained by the department order in original (September 2001) for Rs.1.80 crore with regard to clearances made by the firm during the period December 1999 to November 2000 and recovery of the entire amount. Further the firm voluntarily paid additional duty and SAD amounting to Rs.48.90 lakh for clearances during the period December 2000 to February 2001.

### 7.2 Non levy of additional duty on DTA clearance

Central Board of Excise and Customs, Ministry of Finance Circular No.554/50/2000-CX dated 19 October 2000 clarifies that with effect from 1 March 2000 Additional Excise duty (AED) under Textile Article Act 1978 (Textile & Textile Articles) would also be leviable on yarns manufactured by a 100 per cent EOU from indigenous raw materials and cleared into DTA, in addition to the basic duties under Central Excise Act.

M/s. Om Shanti Satins Ltd., Hyderabad a 100 per cent EOU was allowed clearance of Cotton Grey Fabrics and Waste valuing Rs.12.69 crore during March 2000 to April 2001 without levy of AED in addition to basic Excise Duty. This resulted in non-levy of AED of Rs.15.23 lakh.

On this being pointed out (June/July 2001), the department contended (July 2001) that under notification No.55/91-CE dated 25 July 1991, EOU are specifically exempted from payment of additional duty of excise (T&TA).

The reply of the department is not tenable as CBEC circular dated 19 October 2000 prescribes recovery of AED with effect from 1 March 2000 taking cognizance also of Excise notification dated 25 July 1991.

Reply of the Ministry has not been received (January 2003).

### 7.3 Non levy of additional duty due to misclassification

(a) Waste and scrap of zinc (Zinc Dross) are classifiable under chapter 79 of the Central Excise Tariff Act. It was judicially held by CEGAT in M/s. Khalidas Sheet Metal Industries (P) Ltd. Vs. Commissioner of Customs, Madras (1997 (94) ELT 165) that goods obtained by electrolytic process and not in the processing of metal ores are classifiable as scrap under Chapter 79 of the Customs/Central Excise Tariff Act.

Scrutiny of records of a Container Freight Station, Ludhiana under Amritsar Commissionerate revealed that 'Zinc Dross' imported during April 1998 to February 2000 were classified under chapter 79 of Customs Tariff Act for the purpose of customs duty and under chapter 26 of Central Excise Tariff Act for the purpose of levying additional duty. This resulted in short levy of Rs.46.69 lakh.

On this being pointed out (December 1999 and December 2000), the department stated (November 2000) that zinc dross of all grades had been classified under chapter 26 on the basis of HSN note under chapter heading 79.02, which excludes zinc waste and scrap. The reply of the department is not tenable in view of the judicial pronouncement *ibid*.

Reply of the Ministry has not been received (January 2003).

(b) 'Lac, Gums, Resins and other vegetable saps and extracts' imported are chargeable to additional duty at nil rates under Central Excise Tariff heading 1301.90 if they are manufactured without the aid of power. The goods are assessable under CET 1301.10 and chargeable to additional duty at the rate of 16 per cent if manufactured with the aid of power.

27 consignments of goods valued at Rs.95.78 lakh imported between February 2000 to July 2001 by M/s. Bhavna Impex, Mumbai and 15 others were assessed under Central Excise Tariff heading 1301.90 and cleared without levy of additional duty even though nothing was on record to show that the imported goods were processed/manufactured without the aid of power. As such the goods were liable for additional duty of 16 per cent under CET Heading 1301.10. This resulted in non levy of duty of Rs.20.58 lakh.

This was reported to the department between December 2000 to October 2001. Reply has not been received (January 2003).

**7.4 Other cases**

In three other cases, incorrect computation of value and incorrect classification resulted in short levy of additional duty of Rs.11.14 lakh of which two cases involving Rs.8.33 lakh were admitted and recovery of Rs.2.80 lakh was reported in one case by the department, as per details below:

(Rupees in lakh)

Sl. No.	Details of product	Irregularity	Name of the importer/exporter M/s.	Amount short levied	Amount admitted	Amount recovered
1.	Citric acid monohydrate/High power graphite electrode	Incorrect computation	Philips (I) Ltd., & 3 others	5.53	5.53	--
2.	Date syrup	Misclassification	Mohan Enterprises, Trichy	2.81	--	--
3.	Marker pen ink	Misclassification	G.M. Pens International, Chennai	2.80	2.80	2.80
	Total			11.14	8.33	2.80



## CHAPTER 8 : NON LEVY OF SPECIAL ADDITIONAL DUTY OF CUSTOMS

As per Section 3A of the Customs Tariff Act, 1975, inserted with effect from 2 June 1998, any article which is imported into India shall be subject to a special additional duty of customs (SAD), which shall be levied at a rate specified by the Government having regard to sales tax and other local levies.

### 8.1 Misuse of Exemption Orders

#### *Imports for sale as such*

(a) In terms of notification No.34/98-Cus. dated 13 June 1998, goods imported for 'sale as such' are exempt from payment of SAD if the importer makes a specific declaration at the time of clearance that sale of such goods will not be effected from a place located in an area where no tax is chargeable on sale or purchase of these goods.

In case of imported edible oils except coconut oil, Rule 49 (13) of the prevention of Food Adulteration Rules, 1955 (PFA Rules) requires that the oils when imported in crude, raw or in unrefined form should be subjected to the process of refining before sale for human consumption. Further, as per Ministry of Finance (DR) Circular No.29/99-Cus. dated 25 May 1999, all imported edible commodities are subjected to testing by Port Health Offices (PHO) before marketing and consumption in the country.

M/s. B. Arun Kumar Trading Pvt. Ltd., New Delhi warehoused a total quantity of 3892.743 MT of Rapeseed Oil of assessable value of Rs.11.68 crore, between August 1998 and January 2000, which was cleared from time to time through 11 ex-Bond Bills of Entry during the period 25 August 1998 and 14 January 2000 availing exemption of SAD for 'sale as such' in terms of the notification *ibid*.

Audit scrutiny revealed that the department released 500 MT on 25 August 1998 before receipt of PHO's certificate dated 24 August 1998 although the department had information (10 August 1998) that it was adulterated and misdeclared as edible oil. The department allowed clearance of the remaining quantity of adulterated oil of 3350.743 MT by extending the exemption of SAD on an undertaking that the oil would be sold after refining. The importer, however, sold unrefined Rapeseed Oil (264.870 MT) to M/s. Vinayak Oils and Fats (P) Ltd for refining purpose without payment of any sales tax. The benefit of exemption of SAD amounting to Rs.54.34 lakh extended to the importer was incorrect and recoverable.

On this being pointed out (February 2001), the department stated (November 2001) that the importer was requested to pay the duty.

Reply of the Ministry has not been received (January 2003).

(b) RBD Palmolein was imported in 'bulk' (March to November, 1999) by M/s. Ruchi Infrastructure Ltd., Cochin through Custom House, Cochin and permitted to be cleared without payment of SAD on the ground that the goods were meant only for sale "as such". The goods were thereafter transferred by the importer to their sister concern after obtaining declarations in Form No.25D of Sales Tax Act for further sales in domestic market in consumer packs with its brand name. As per Section 13A of Sales Tax Act, Form No.25D was required to be furnished only if the item of goods was not liable to Sales Tax by reason of its further sales in consumer packs with its brand name and trademark. As the RBD Palmolein imported in bulk was sold in consumer packs and sales tax payment was made after packing, such sale could not be considered as sale 'as such'. SAD of Rs.34.04 lakh was therefore leviable.

On this being pointed out (June and July 2001), the department did not admit the objection and stated (June 2002) that the exemption was extended to RBD Palmolein imported in bulk, after obtaining the declaration that the imported goods were for sale purpose only. Department's reply is not tenable as: (i) RBD Palmolein imported in bulk was transferred by the importer to their sister concern for packing in consumer packets and sales tax payment was made only after packing. This cannot be construed as a sale 'as such'. In any case, Exim Policy defines 'repacking' as a 'manufacturing' process, and (ii) sales tax exemption availed after obtaining Declaration in Form No.25D indicated that the imported oil was to be sold after repackaging in consumer packs under a brand name.

Reply of the Ministry has not been received (January 2003).

## **8.2 Irregular grant of concession**

Custom notification No.19/2001 dated 1 March 2001 (Sr. No.42 of the table annexed) granted exemption from levy of SAD to goods that are exempt from the whole of duty of Customs and whole of additional duty of Customs.

One consignment of engine parts for helicopter valued Rs.4.01 crore imported by M/s. Pawan Hans Helicopter Ltd., through Air Customs Commissionerate Mumbai in August 2001 was allowed exemption from SAD in terms of Customs notification dated 1 March 2001 even though it was charged Customs duty. This resulted in grant of inadmissible duty exemption of Rs.16.55 lakh.

On this being pointed out (October 2001), the department admitted (November 2001) the objection and recovered the short levied amount Rs.16.55 lakh and interest of Rs.1.20 lakh.

## **8.3 Other cases**

In four other cases, objections were issued to the Ministry on incorrect grant of SAD involving short levy of Rs.15.81 lakh. The department admitted the objection in the all cases and reported recovery of Rs.6.73 lakh in two cases as per table overleaf:



(Rupees in lakh)

Sl. No.	Product on which exemption granted	Name of the importers M/s.	Amount short levied	Amount admitted	Amount recovered
1.	Track shoes	Bharat Earth Movers Ltd., Kollar	5.67	5.67	5.67
2.	Non edible grade crude palm oil	Hindustan Lever Ltd., Mumbai	5.62	5.62	--
3.	Finished leather	Royal Leather Works, Kolkata	3.46	3.46	--
4.	Watch cases, strap etc.	Time Master Electronics Pvt. Ltd., Goa & another	1.06	1.06	1.06
	Total		15.81	15.81	6.73

## CHAPTER 9 : DUTY EXEMPTION SCHEME

### 9.1 EPCG Scheme

In terms of para 197 of Import Export Policy 1990-93 (Vol.I), read with notification No.169/90-Cus. dated 3 May 1990 and para 38 of the Exim Policy 1992-97 read with Customs notification No.160/92 dated 20 April 1992, an EPCG licensee is permitted to import 'capital goods' at concessional rate of customs duty subject to fulfillment of prescribed export obligation within the stipulated period. In the event of failure to fulfil the export obligation, the licensee is liable to pay amount of customs duty saved plus interest thereon.

(a) Seven EPCG licences were issued to M/s. GSL Ltd., Sangli and others by licensing authority, Mumbai and Bangalore between April 1994 and August 1996 for import of capital goods valuing Rs.6.59 crore at concessional rate of duty against the prescribed export obligation of Rs.27.47 crore. Against the import of goods worth Rs.6.89 crore, the licensees failed to export any goods till the period of export obligation was over. As the units failed to fulfil export obligation, they are liable to pay duty forgone amounting to Rs.1.31 crore plus interest of Rs.2.19 crore (upto March 2002).

On this being pointed out (September 1999 to March 2001), the department reported (February 2002) recovery of Rs.10.87 lakh in one case and stated that for the other cases, recovery proceedings had been initiated.

(b) Two EPCG licences were issued to M/s. Ballarpur Industries Ltd., Delhi and Essar Agrotech Ltd., Mumbai by the licensing authorities at New Delhi and Mumbai in December 1991 and March 1996 respectively for import of capital goods valuing Rs.10.78 crore at concessional rate of duty against prescribed export obligation of Rs.83.29 crore. Against the import of goods worth Rs.9.94 crore, the licensees exported goods worth Rs.46.31 crore. As the licensees could not achieve the export obligation till the period of export obligation was over, they are liable to pay duty forgone amounting to Rs.4.73 crore plus interest of Rs.10.94 crore (upto March 2002).

On this being pointed out (August 1999 to July 2001), the department reported that recovery proceedings had been initiated.

(c) An EPCG licence was issued to M/s. Pearl Valley Silks Ltd., Bangalore (August 1997) to import second hand machinery valuing Rs.8.39 crore at concessional rate of duty against prescribed export obligation of Rs.33.58 crore for five years from the date of issue of the licence. Against the import of goods valued Rs.5.61 crore (October 1997) the licensee failed to export any goods upto February 2000. Duty forgone on the imported goods was Rs.1.32 crore.

As the unit failed to achieve the prescribed export obligation for the second and third year, proportionate duty for the unfulfilled portion of export obligation amounting to Rs.39.61 lakh



alongwith interest of Rs.35.68 lakh upto March 2002 was recoverable in terms of notification No.110/95-Cus. dated 5 June 1995.

On this being pointed out (February 2001), the Ministry stated that a demand for duty of Rs.1.38 crore plus interest and penalty of Rs.10 lakh had been confirmed. Department recovered (December 2001) the duty by enforcing the Bank Guarantee valued Rs.99.62 lakh leaving a balance of Rs.37.52 lakh and fine of Rs.10 lakh.

Further progress is awaited (January 2003).

(d) In terms of condition No.6 of Customs notification No.110/95 dated 5 June 1995, a certificate from the Jurisdictional Assistant Commissioner of Central Excise is to be produced confirming the installation and use of capital goods in importer's factory or premises, within six months from the date of completion of imports.

An EPCG licence was issued (December 1995) by the Director General of Foreign Trade (DGFT), New Delhi to M/s NRS Textiles Mills Limited, Coimbatore for import of textile machinery valuing Rs.4.28 crore at concessional rate of customs duty against the prescribed export obligation of Rs.33.60 crore. Against the import (May 1996) of machinery worth Rs.4.24 crore, the licensee failed to export any goods within the export obligation period. The duty forgone on the imported goods alongwith interest upto February 2002 was Rs.2.52 crore. As the units failed to fulfil export obligation the department enforced (November 1999 to April 2000) the bank guarantee and realised Rs.48.40 lakh and issued SCN for the balance amount (July 2000) which was returned undelivered as the licensee could not be traced.

Had the department taken timely action to obtain installation certificate from the jurisdictional Central Excise authorities and monitor production/exports, the veracity of the existence of the unit would have been verified. The failure of the department to do so resulted in loss of revenue of Rs.2.03 crore.

This was pointed out in December 2001. Reply from the department is awaited (January 2003).

## 9.2 EPZ Scheme

(a) In terms of para 98 of Exim policy read with para 178 of the Handbook of Procedures Vol.I, 1992-97, a 100% EOU is required to execute a legal undertaking with the Development Commissioner in the prescribed form given in Appendix XXXI to Handbook of Procedures, Vol.I, 1992-97. In the event of failure to fulfil the export obligation, the unit is liable to pay:

- i) the amount of customs duty that would be leviable at the relevant time on the items of plant, machinery, equipment, raw materials, components and consumables, imported duty free by the unit,
- ii) excise duty leviable on the indigenous goods, purchased duty free by the unit,
- iii) interest at 24 per cent on the duty of customs and excise forgone from the date of import/supply to the date of payment of duty and
- iv) the liquidated damages as determined by the Development Commissioner.



In addition, as per Section 11(2) of the Foreign Trade (Development and Regulation) Act, 1992, penalty is also leviable.

M/s. Naras Aviation Private limited, Chennai, an EOU located in Madras Export Processing Zone, Chennai was granted permission (October 1991) for manufacture and export of 360 numbers of Brantley helicopters with a condition to achieve value addition of 42.4 per cent. The unit achieved value addition of (-) 1180 per cent. Furthermore, the FOB value of exports realised was Rs.0.35 crore against the prescribed FOB of Rs.3.40 crore resulting in a shortfall of Rs.3.05 crore. The unit is therefore liable to pay customs duty and central excise duty of Rs.7.45 crore alongwith interest of Rs.13.62 crore (upto March 2002) on the goods imported and procured indigenously.

On this being pointed out (August/September 2001), the department stated (August/November 2001) that SCN issued under Section 14 of Foreign Trade (Development and Regulation) Act, 1962 had since been adjudicated and penalty of Rs.5 lakh been imposed (March 2002). However no reply was furnished in respect of recovery of the duty and interest upto March 2002.

(b) As per Ministry of Commerce circular letter dated 14 October 1993, units may be permitted to export against repayment of State Credit to the Russian Federation subject to the requirement of currency balancing so that hard currency outgo on imports of raw material etc., for such export would at least be made up by equivalent export to General Currency Area (GCA). Further, the Ministry of Commerce in July 1995, instructed that currency balancing was to be achieved over a period of one year from the date of export, failing which the unit would be liable to pay applicable duties on the imported inputs used in the manufacture of goods exported.

M/s. Elque Polyester Ltd., Kolkata under Falta Export Processing Zones (FEPZ) was allowed to import duty free raw material for manufacture of PET packaging resin subject to the condition that the entire production would be exported to GCA. The unit started exporting from February 1997. Audit scrutiny revealed that major part of the export was made to the Russian Federation for which currency balancing was not achieved within the stipulated period.

On this being pointed out (June 1999), demand for Rs.7.20 crore was raised in August 2000 and confirmed in Novmber 2000. CEGAT has ordered denovo adjudication. Further development is awaited (January 2003).

### **9.3 DEPB Scheme**

#### **(a) *Availing of excess credit***

DGFT policy circular No.19 (RE-2000/2001) dated 20 July 2000 clarifies that DEPB benefits for export of galvanised CRGP/GL Coils/MS galvanised sheets/strips/wide coils shall be granted as per the entry at serial No.363 of the list. Further it clarified that remedial action should be initiated in cases where DEPB benefit was granted against the entry No.91 for prior exports.



44 consignments of 'Galvanised steel sheet/coils' exported by M/s. Lloyd steel & one other during 1997-98 to 1999-2000 were granted DEPB credits against the entry at serial No.91 instead of entry at serial No.363 resulting in excess credit of Rs.3.81 crore

This was pointed out to the department during July 2001 to March 2002. Reply has not been received (January 2003).

**(b) Credit unrelated to actual incidence of duty**

A DEPB credit at the rate of 5 per cent is admissible for export of fish and fish products.

M/s. Svimsan Exports and Imports (P) Ltd. and two others were allowed DEPB credit of Rs.90.23 lakh during the period September 2000 to March 2001 for export of processed and preserved and frozen Headon/Headless Shrimps of species Black Tiger, White shrimps. The average FOB value for the above products as per shipping bills was Rs.577.70 per Kg. The DEPB rate being 5 per cent, credit per kilogram works out to Rs.28.90 per kg. However, as per Standard Input Output Norms, the cost of preservatives and packing material used for the export of the above mentioned product worked out only to Rs.8.50 per Kg. Even if the entire cost of preservatives and packing material is taken as imported and full amount taken as incidence of import duty, the exporters derived an extra benefit of Rs.20.40 per kilogram (Rs.28.90-Rs.8.50) by way of DEPB credit. Extra benefit on the export of 3,12,432 kilograms by the three exporters worked out to Rs.63.73 lakh.

On this being pointed out (November 2001), the licensing authority replied (February 2002) that DEPB credit was allowed as per DEPB rate list and existing policy provisions.

The fact remains that incorrect fixation of DEPB rate on the basis of deemed import content rather than actual incidence based on industry norms resulted in unintended excess allowance of credit in respect of exports which had relatively little actual import content defeating the spirit of the policy provisions.

## **9.4 Advance licensing scheme**

**(a) Non fulfillment of export obligation**

In terms of para 7.28 of Handbook of procedures 1997-2002 Vol.I, if the export obligation is not fulfilled both in terms of quantity and value, the licence holder of a Quantity Based Advance Licence (QBAL) shall, for regularisation, pay :

- i) to the custom authority, custom duty on the unutilised imported material along with interest at the rate of 24 per cent per annum thereon;
- ii) to the licensing authority a sum which is equivalent to the CIF value of unutilised material imported and a sum equivalent to the short fall in export obligation

Two quantity based advance licences were issued to M/s. Jindal Iron & Steel Co. Ltd., Mumbai and Hylcyon Labs Pvt. Ltd., Mumbai in June and July 1997 by the licensing

authority Mumbai for duty free import of goods valued at Rs.10.01 crore against prescribed export obligation of Rs.13.36 crore. Against the import of goods worth Rs.10.01 crore, the licensee could export goods worth Rs.5.25 crore in one case. In the other case, the licensee could not make any exports. This resulted in shortfall of Rs.8.10 crore in export obligation. The licensees were liable to pay; (i) Rs.2 crore towards customs duty on unutilised material and interest of Rs.2.16 crore thereon. (ii) Rs.4.88 crore on the sum equivalent to the unutilised imports and Rs.8.10 crore equivalent to the shortfall in the export obligation.

This was pointed out to the department in January and August 2001. Reply has not been received (January 2003).

**(b) Incorrect validation of licence**

In terms of para 4.6 of the Exim Policy 1997-2002, every licence shall be valid for the period of validity specified in the licence. Further, para 7.27 (ii) of Handbook of Procedures Vol.I stipulates that upon endorsement of transferability, issue of duplicate licence, enhancement of CIF value or amendments including, revalidation shall be not allowed.

An advance licence was issued on 22 January 1998 to M/s. Bhilai Steel Plant, Bhilai by Jt. DGFT, Bhopal for duty free imports of goods valued at Rs.11.43 crore against obligation to export 18000 MT 'Non alloy M.S. slabs' valued at Rs.15.21 crore. The licence was valid upto 21 July 1999. On completion of export obligation, the licence was endorsed for transferability (19 August 1999) after its expiry (July 1999) and subsequently revalidated (22 December 1999) upto January 2000 in contravention to the codal provisions. Incorrect revalidation allowed licensee to import goods valuing Rs.4 crore without payment of customs duty of Rs.49.86 lakh.

On this being pointed out (January 2001), the department contended (June 2001) that revalidation was only a technical requirement and in no way affected the period allowed for imports by endorsement of transferability. The reply of the department is not tenable as endorsement of licence for transferability after its expiry contravenes the provisions of para 7.27 (ii) of Handbook of procedures Vol.I (1997-2002).

**(c) Excess imports by inflating the unit price of inputs**

In terms of para 109(D) and 110 of Handbook of Procedures 1992-97, an applicant exporter, for a Value Based Advance Licence (VABAL) was required to declare in the application form (Appendix XVII of HBP), the quantity of each item required to be imported and its CIF value based on the prevailing international price. Corrective action was required to be taken by the concerned Customs/Licensing authority in terms of Ministry of Finance circular No.23/96 dated 19 February 1996 in such cases where the importer failed to justify variation in prices of actual imports greater than 20 per cent of the amount filed in the application.

Four value based advance licences were issued to M/s. Indian Rayon and Industries Ltd., Gujarat between May to October 1995 by the licensing authority Rajkot for duty free import of goods worth Rs.5.56 crore against export of goods worth Rs.27.79 crore. Unit price of one MT of input as declared in these applications worked out between Rs.61808 and Rs.75045



per MT. As against this the licensee imported 1292.476 MT of the input valued at Rs.5.72 crore at a unit price between Rs.40892 and Rs.48388 per MT. The unit prices of inputs, as declared in the application were 29 per cent to 84 per cent higher than the actual unit price of import leading to excess import of 461.56 MT valued at Rs.1.98 crore. The custom duty of Rs.0.50 crore on excess imports and interest of Rs.0.86 crore upto March 2002 was therefore recoverable.

This was pointed out to the department in December 2001. Reply has not been received (January 2003).

### **9.5 Irregular DTA sales**

(a) Sale in "Domestic Tariff Area" (DTA) is permissible by a 100% EOU if the value addition achieved is not less than the minimum value addition specified for the item in the Export-Import Policy.

i) M/s Futura Polymers Ltd., Chennai, a 100% EOU, in Madras Export Processing Zone (MEPZ) was engaged in manufacture and export of polyester chips (high pressure moulding grade) PET preforms for bottles.

The unit achieved value addition ranging between (-) 269.70 per cent and 11.87 per cent during the relevant periods April 1994 to June 1994, July 1994 to March 1996 against the prescribed minimum value addition of 20 per cent. The unit effected DTA sales for value of Rs.51.79 crore on payment of concessional customs duty during the relevant periods. As the unit could not achieve the prescribed value addition, DTA sales were irregular. Therefore, the unit was liable to pay differential customs duty of Rs.19.47 crore and interest of Rs.23 crore upto March 2002.

This was pointed out to the department (August 2000/May 2002). Reply has not been received (January 2003).

ii) M/s. Muthoot APT Ceramics Ltd., a 100% EOU in Cochin Export Processing Zone (CEPZ) was engaged in manufacture and export of vitreous ceramics sanitary wares. During the period 1998-2001, the unit achieved negative Net Foreign Exchange Earning as Percentage of Exports (NFEP) {(-1140.98 per cent (1998-1999), -309.30 per cent (1999-2000) and -104.31 per cent (2000-01)} against the prescribed minimum NFEP of 20 per cent. The unit had effected DTA sales for a value of Rs.1.52 crore on payment of concessional duty of Rs.47.95 lakh. As the unit failed to achieve the prescribed minimum NFEP, the DTA sales were irregular. Therefore the unit is liable to pay differential duty of Rs.47.95 lakh and interest of Rs.37.11 lakh upto March 2002.

On this being pointed out (September 2001), the Ministry intimated that a demand notice for Rs.43.35 lakh issued in November 2001 had been confirmed.

(b) In terms of para 9.9 of EXIM Policy, 1997-2002 read with Appendix 42 of Hand Book of Procedures Vol.I of EXIM Policy 1997-2002, an EOU/EPZ unit is allowed to sell goods in DTA upto 50 per cent of the FOB value of exports subject to the payment of

applicable duties. Further as per notification No.20/98-CE dated 18 July 1998 (as amended dated 1 March 2000) grey fabrics produced and manufactured in a 100 per cent EOU or EPZ, wholly from indigenous raw materials are allowed to be sold in India at concessional rate of basic excise duty.

M/s. Om Shanti Satins Ltd., Hyderabad, a 100% EOU in Vishakhapatam Export Processing Zone (VEPZ), cleared the finished product 'cotton grey fabrics' valued at Rs.20.05 crore during the period December 1998 to March 2001 in DTA on payment of concessional duty of Rs.1.36 crore under notification *ibid*. Audit scrutiny revealed that during the period December 1998 to March 2001 the unit procured the raw materials (Yarn) valued Rs.2.06 crore from other 100% EOUs (M/s. Ginni Filaments Ltd., Sanghi Spinners India Ltd., Cimco spinners, Arvind Cot Spin & Soma Textiles and Industries Ltd.). Since there was no evidence to prove that the raw material procured from other EOUs are indigenous, availing of duty concession under the notification dated 18 July 1998 was not correct. The incorrect application of notification resulted in short levy of duty amounting to Rs.4.72 crore.

On this being pointed out (June/July 2001), the department stated (July 2001) that the unit procured material from 100 per cent EOUs located in India and the goods cleared by such units are manufactured in India.

The reply of the department is not tenable. Ministry of Finance Circular No.442/8/99-CX dated 4 March 1999 clarifies that the unit should be able to satisfy the jurisdictional Central Excise authorities beyond doubt that inputs used in the manufacture of goods to be sold in DTA are manufactured out of indigenous raw materials only, by way of maintenance of records, physical scrutiny/verification and the manufacturing process etc, which was not so in the instant case. Further processing of raw materials from another 100% EOU cannot be equated with indigenous procurement of raw materials for extending the benefit of notification No.20/98-CE dated 18 July 1998.

This was pointed out to the Ministry in August 2002. Reply has not been received (January 2003).

(c) In terms of para 9.9 (b) of the Exim Policy 1997-2002, 25 per cent of the production in value terms may be sold in the DTA.

M/s. Futura Polymers Ltd., Chennai, a 100% EOU under Madras Export Processing Zone (MEPZ) Chennai was permitted to sell Polyester Chips (HPMG) and PET Preforms in DTA against the production and export performance during the period 1 April 1997 to 31 December 1997. Against the proportionate entitlement for nine months (April 1997 to December 1997) of Rs.2.21 crore, the unit effected DTA sales of Rs.8.09 crore during the period from 1 April 1999 to 31 October 1999 at concessional rate of duty resulting in excess sale of DTA of Rs.5.88 crore. The differential duty of Rs.2.30 crore on the excess DTA sales besides interest of Rs.1.34 crore was recoverable.

This was pointed out to the department (August 2000). Reply has not been received (January 2003).

(d) As per para 9.9 (b) of EXIM policy 1997-2002 read with para I (g) of the Appendix 42 of Hand Book of Procedures 1997-2002, advance permission on DTA sale is admissible to a 100% EOU, in respect of trial production in cases of capacity expansion/product diversification. In such cases the unit would be entitled to advance DTA sales at concessional rate of duty linked to the expanded capacity created by establishment of new production streams or through product diversification.

M/s Samrat Spinners Ltd., Sabhaspally an existing DTA unit under Visakhapatnam Export Processing Zone (VEPZ) on conversion into 100% EOU (February 2000) subject to investment towards upgradation/replacement of machinery for the manufacture of 'VSF spun yarn and synthetic blended yarn' was allowed (May 2000 and January 2001) advance DTA sale of its finished products for an ex-factory value of Rs.8 crore. Against this, the unit cleared goods valued Rs.5.74 crore between June 2000 and April 2001, on payment of concessional rate of duty under notification No.8/97-CE dated 1 March 1997.

Audit scrutiny revealed that the unit did not go for any capacity expansion/production diversification or technology upgradation. The grant of permission for advance DTA sale was therefore not in conformity with the provisions of the EXIM Policy and consequently benefit of the concessional rate of duty was not admissible. The unit was therefore liable to pay differential duty of Rs.2.01 crore.

On this being pointed out (June/July 2001), Deputy Commissioner, Hyderabad issued three show cause notices demanding duty of Rs.2.40 crore. Further progress is awaited (January 2003).

(e) The Central Board of Excise and Customs in its circular No.7/2001-Cus. dated 6 February 2002 revised the method of calculating the excise duty payable on the clearances by EOUs in DTA effective from 16 September 1999.

M/s Century Denim a 100% EOU in Indore Commissionerate cleared goods in DTA on payment of duty under notification No.8/97-CE dated 1 March 1997. The department denied applicability of the said notification and issued (February to November 2000) five SCN for differential duty Rs.4.61 crore for the period September 1999 to June 2000 without taking any cognizance of the Board circular *ibid* resulting in short demand of Rs.65.95 lakh.

On this being pointed out (June 2001) the department issued corrigendum to all show cause notices. Further progress is awaited (January 2003).

(f) M/s. Praj Agro Vision Ltd., Pune, and another EOU engaged in the cultivation of cut roses, cleared goods in DTA far in excess (25 per cent to 455 per cent) of the limits during the year 1997-98 to 2000-2001 without paying any duty.

Full customs duty of Rs.58.54 lakh on the DTA sales in excess of the limits prescribed (50 per cent of FOB value) and concessional duty (50 per cent of customs duty) of Rs.16.30 lakh on DTA sale within the limits was recoverable.

On this being pointed out, the department admitted (November 2002) the short levy in one case. Further progress is awaited.

### 9.6 Other cases

In 18 other cases of non fulfillment of export obligation/value addition, irregular DTA sales, excess DEPB credits etc. involving short levy of Rs.2.44 crore including interest of Rs.0.80 crore were pointed out as detailed below. Mistakes in nine cases were accepted by the department.

(Rupees in lakh)

Sl. No.	Irregularity	Name of the importers/ exporters (M/s.)	Commissionerate	Amount objected	Interest	Whether accepted
1.	Excess grant of 'SIL'	Super Syncotax Ltd., Gulabpura, Rajasthan	Jaipur	26.59	--	No
2.	Excess DEPB credits	Tata SSL Ltd.	Mumbai	21.51	--	No
3.	Non fulfillment of EO by EOU	Shree Varana Agricultural Goods Processing Co-op. Society Ltd., Kolhapur	Mumbai	15.66	--	Yes
4.	Non fulfillment of EO against EPCG licences	Sri Murli Mohan Boiled & Raw Rice Mill, Godavari & 2 others	Visakhapatnam	14.00	12.00	Reply awaited
5.	Excess DEPB credits	Jai Corporation Ltd.	Mumbai	10.31	--	No
6.	Non fulfillment of EO against EPCG licences	Rajyalakshmit Lab Ltd., Hyderabad & another	Hyderabad	10.22	15.22	Yes
7.	Irregular DTA sales	Tata Tetley Ltd.	Cochin	8.65	--	Yes
8.	Irregular clubbing of QBAL	TTK Prestige Ltd., Bangalore	Bangalore	7.71	12.05	No
9.	Excess DEPB credits	Lakshmi Overseas Hosieries, Tirupur	Coimbatore	7.07	--	Reply awaited
10.	Non fulfillment of EO against EPCG licences	East West Bio Tech, Mumbai	Mumbai	6.90	11.86	Yes
11.	Excess import against VABAL	Ashima Syntex Ltd., Ahmedabad	Ahmedabad	6.85	--	Yes
12.	Excess import against VABAL	Devatha Silk House, Bangalore	Bangalore	5.61	8.73	Yes
13.	Excess import against VABAL	Ruchi Strips & Alloys Ltd., Indore	Indore	5.85	7.60	No
14.	Non fulfillment of EO against EPCG licences	Texplast Industries Ltd., Mumbai	Mumbai	4.97	7.55	Yes
15.	Non fulfillment of EO by EOU	Sesa Goa Ltd., Goa	Mumbai	4.35	--	No
16.	Irregular export by DEPB licencees	Sarup Tanneries Ltd., Jalandhar	Ludhiana	4.37	4.04	Yes
17.	Unauthorised export of CG under DEPB	Kerala Chemicals & Proteins Ltd., Kochi	Kochi	1.68	--	No
18.	Non fulfillment of EO against EPCG licences	Sun Knitwear, (P) Ltd., Bangalore	Bangalore	1.64	1.38	Yes
	<b>Total</b>			<b>163.94</b>	<b>80.43</b>	



## CHAPTER 10 : OTHER TOPICS OF INTEREST

### 10.1 Non/irregular removal of warehoused goods

In terms of Section 72 (1) (b) of Customs Act, 1962, where any warehoused goods have not been removed from a warehouse at the expiry of the period for which goods were permitted to be warehoused under Section 61, the full amount of duty chargeable on such goods together with all penalties, rent, interest and other charges becomes payable. If the owner fails to pay the amount so demanded, the warehoused goods can be detained and sold by the proper officer. It has been judicially held by the Supreme Court in the case of *M/s Kesoram Rayon Vs. Collector of Customs, Kolkata* {1996(86) ELT 464 (SC)} that "Where the goods have been allowed to be cleared after expiry of the warehousing period, the removal of such goods should be treated as 'Improper removal' and the rate of customs duty payable should be at the rate applicable on the date on which the permitted warehousing period came to an end".

(a) M/s Indian Oil Corporations Ltd., was permitted by Kolkata (Sea) Commissionerate to warehouse imported High Speed Diesel and Superior Kerosene Oil during November 1998 to August 1999. For 22 consignments the warehousing period had expired yet the importer neither cleared the goods nor applied for any extension. The department failed to initiate action under Section 72 *ibid*, which resulted in non recovery of customs duty of Rs.6.43 crore and interest of Rs.3.63 crore (March 2002).

On this being pointed out (October 2000), the department stated (February 2001) that a demand notice was issued to the importer. Further progress is awaited (January 2003).

(b) Three consignments of capital goods imported through Rajkot Commissionerate by M/s. Essar Oil Ltd., Jamnagar, warehoused between May to June 1999, remained uncleared after the expiry of the warehousing period. The duty recoverable under Section 72 (i) (b) in these cases amounted to Rs.5.83 crore. The interest due on the amount was Rs.3.11 crore (upto March 2002).

On this being pointed out (November 2001), the department issued show cause notices in December 2001 and April 2002. Order-in-Original confirming (March 2002) duty of Rs.5.83 crore (after adjustment of part payment of Rs. 20 lakh) and interest of Rs.2.45 crore upto November 2001 in respect of the former has been issued. The importer had preferred appeal against the Order. The other SCN has been adjudicated vide Order in Original of August 2002. Further progress is awaited (January 2003).

### 10.2 Short levy due to incorrect computation

(a) In terms of notification No.36/2001-Cus. dated 31 March 2001, effective from 1 April 2001, concessional rate of basic customs duty in respect of 'Naphtha' was enhanced from 5 to 10 per cent *ad valorem*.

Four consignments of 'Naphtha' valuing Rs.103.78 crore imported by M/s. Haldia Petrochemicals Ltd., Kolkata through Kolkata (Sea) Commissionerate between April and July 2001 were incorrectly assessed at the old rate. This resulted in short levy of duty of Rs.6.02 crore.

On this being pointed out (August and September 2001), the department raised (November 2001) demand for Rs.3.99 crore against three consignments. Further developments are awaited (January 2003).

**(b) Short levy of duty due to adoption of incorrect rate**

i) In terms of Customs notification No.130/2000 dated 16 October 2000, w.e.f. 17 October 2000, goods other than upholstery fabrics falling under chapter heading No.5407.69 would attract basic customs duty at the rate of 30 per cent or Rs.36 per square meter, whichever is higher. Further as per Section 15 of the Customs Act, 1962, if a bill of entry has been presented before the date of entry inwards of the vessel or the arrival of the aircraft by which the goods are imported, the bill of entry shall be deemed to have been presented on the date of such entry inwards or arrival, as the case may be.

M/s. Surya International New Delhi imported through Kolkata (Sea) Commissionerate, 53760 square meters of '100% Polyester Heavy Mink Piece Dyed' valued at Rs.15.73 lakh and presented the bill of entry on 13 October 2000 before inward entry of the vessel (M.V. Saturn). Inward entry to the vessel was granted on 22 October 2000 at Haldia Dock. The department incorrectly assessed the goods at rates prevailing on 13 October 2000, resulting in short levy of duty of Rs.17.68 lakh.

On this being pointed out (August 2001) the department stated (November 2001) that the Importer had since deposited Rs.2 lakh and given an undertaking for payment of the remaining amount. Further progress is awaited (January 2003).

ii) In terms of notification No.130/2000-Cus. dated 16 October 2000, Woven fabrics falling under heading No.5407.52 are liable for basic customs duty of 30 per cent or at the rate of Rs.23 per sq.m., whichever is higher.

A consignment of 53309 sq.m. of Polyester textile fabrics valued at Rs.6.86 lakh imported (October 2000) by M/s. Hoorulyn Apparels (India) Pvt. Ltd., Calicut was cleared through Kerala Commissionerate levying basic duty of 30 per cent of assessable value instead of Rs.23 per sq.m. The incorrect application of rate resulted in levy of customs duty of Rs.11.88 lakh.

On this being pointed out (May 2001) the department reported recovery of Rs.3 lakh (March 2002). Further progress is awaited (January 2003).

### 10.3 Non-realisation of Customs share/establishment charges

(a) As per provisions of the Ministry of Finance, Department of Revenue, Central Board of Excise and Customs circular No.11/98 dated 11 February 1998, the gross sale proceeds realized from the auction of uncleared/unclaimed goods sold in terms of Section 48 of the Customs Act, 1962 shall be shared between the custodians and the customs on 50: 50 basis. The custodian shall bear all the expenses relating to valuation, auction/sale, storage, warehousing etc. out of their share of the sale proceeds.

A scrutiny of the records of Delhi Commissionerate revealed that during 1997-2001, the Airport Authority of India (the Custodian) realized an amount of Rs.11.67 crore out of the auction of such goods and as such the Customs share of Rs.5.83 crore was to be remitted. As against this, only Rs.2.84 crore was remitted to the Customs Department, leaving Rs.2.99 crore unremitted.

This was brought to the notice of the Ministry in July 2002. Reply has not been received (January 2003).

(b) In terms of sub-section 2 of Section 150 of Customs Act 1962, where any goods, not being confiscated goods, are sold under any provisions of the above Act by public auction or by tender, the proceeds of any such sale shall be applied, inter-alia, to payment of duty on the goods sold. However, as per the provisions of the Ministry of Finance, Department of Revenue, Central Board of Excise and Customs circular No.11/98 dated 11 February 1998, in respect of Air Cargo Complexes, the gross sale proceeds realised from the auction of uncleared/unclaimed goods sold in terms of Section 48 of the Customs Act, 1962 shall be shared between the Custodians and Customs on 50:50 basis.

A scrutiny of the records of Chennai (Sea & Air) revealed that during 1996-2002, the Commissionerate Port Trust, Chennai and Airport authority of India realized an amount of Rs.9.46 crore and Rs.5.20 crore respectively out of the auction of such goods. As such the customs share of Rs.3.55 crore and Rs.2.60 crore respectively was to be remitted by the Custodian of such goods. Against this, only Rs.2.59 crore and Rs.1.11 crore was remitted to the Customs Department, leaving Rs.0.96 crore and Rs.1.49 crore respectively unremitted.

This was brought to the notice of the Ministry in October 2002. Reply has not been received (January 2003).

(c) In terms of the provisions of the Ministry of Finance, Department of Revenue, letter No.F.No-A 11018/9/91-Ad IV dated 1 April 1991 establishment charges for the Customs staff posted on cost recovery basis should be recovered in advance from the private warehouses at the uniform rate of 1.85 times the monthly average cost of the post plus DA, CCA, HRA etc.

Audit scrutiny revealed that a sum of Rs.31.60 lakh was outstanding against the Continental Warehousing Corporation Ltd., towards cost recovery charges for the years 2001 and 2002 in

respect of the Customs staff posted at ICD Garhi Harsaru, Gurgaon under Delhi Commissionerate.

This was brought to the notice of the Ministry in August 2002. Reply has not been received (January 2003).

#### **10.4 Loss of revenue due to failure in observance of departmental procedures**

In terms of Section 18 of the Customs Act 1962, the proper officer may subject any imported goods to any test and provisionally assess the same on production of a security/bond covering the deficiency between the duty leviable on the goods and the duty provisionally assessed thereon. If the goods fail the test, the differential amount shall be adjusted by enforcing the bond. Further, on woven fabrics containing 85 per cent or more by weight of non-textured polyester filaments falling under sub-heading number 5407.61 of the Customs Tariff, basic customs duty is leviable at the rate of 25 per cent ad valorem and on others at the rate of 35 per cent ad valorem.

Nine consignments of woven fabrics claimed to contain more than 85 per cent by weight of non-textured polyester filaments imported by M/s. HRG Trading Pvt. Ltd., and eight others during October and November 2000 through Kolkata (Sea) Commissionerate were assessed provisionally with lower rate of duty under sub-heading 5407.61 on execution of test bonds. Chemical test reports revealed that the percentage of non-textured woven polyester filament content of the imported goods were far below the required level of 85 per cent. However the department did not enforce the bond to recover the differential duty. This resulted in short levy of duty of Rs.77.70 lakh.

On this being pointed out (August 2001), the department issued (October 2001) demand notices. Further developments are awaited (January 2003).

#### **10.5 Delay in recovery of confirmed demands**

(a) In terms of Section 128 A of the Customs Act, 1962 (existed up to 12 May 2002) the Commissioner (Appeals) may refer the case appealed to him, back to the adjudicating authority with such directions as he may think fit for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary. On such reference, de novo adjudication has to be done by the adjudicating authority.

In respect of one consignment of 'Laser press facsimile equipment' imported (May 1984) by M/s. Kasthuri and Sons through Custom House (Sea), Chennai a demand for Rs.38.07 lakh was confirmed (March 1985) due to reclassification of the equipment under heading No.85.13. On an appeal filed by the importer, the Collector of Customs (Appeals) referred (June 1985) back the case to the adjudication authority for de novo adjudication. In the meanwhile, the importer obtained a stay (August 1985) from High Court, Chennai. The case



was finally dismissed by the High Court in January 1998 on the grounds that there was no merit in the writ petition. The department did not take any action to get the stay vacated for over 12 years despite the fact that the case lacked merits. With the dismissal of the writ petition, the issue was pending with the department for de novo consideration.

Without proceeding with the de novo adjudication, the department demanded (October 1998) arrears of duty of Rs.38.07 lakh with interest at 20 per cent from December 1995. Aggrieved by the action of the department, the importer again filed a writ petition and obtained a stay order (November 1998) from the High Court, Chennai which has not been disposed of. The action of the department in demanding the duty without de novo adjudication resulted in the importer seeking legal remedy again. Thus a demand confirmed in March 1985 is still (August 2002) pending realisation. Government revenues to the extent of Rs.90.99 lakh including interest of Rs.52.92 lakh (upto March 2002) is locked up.

This was brought to the notice of the Ministry in October 2002. Reply has not been received (January 2003).

(b) In terms of Section 28 AA of the Customs Act 1962, where a person chargeable with duty determined under sub section (2) of Section 28 fails to pay duty within three months from the date of such determination, he shall pay, in addition to the duty, interest on such duty from the date immediately after the expiry of the said period of three months till the payment of such duty.

i) Two consignments of crude oil imported by M/s. Mangalore Refineries & Petrochemicals Ltd., (MRPL), Mangalore through Customs House, Mangalore were assessed provisionally by the Department. On finalisation, demands for Rs.34.01 lakh and Rs.4.79 crore were confirmed in February and June 1999 respectively. The duty due was recovered after delay of 27 to 174 days by way of adjustment against the refund claims due to the importer on different dates. However, interest of Rs.14.36 lakh due was not recovered.

On this being pointed out (September 2000), the department reported (October 2001) recovery of Rs.14.36 lakh by way of adjustment against the further refunds due.

ii) Audit scrutiny of the documents of four Commissionerates (Kandla, Bangalore, Jaipur and Chennai) revealed that the demands for Rs.14.92 crore confirmed during August 1990 to September 2001 are pending realisation. The interest of Rs.13.15 crore (upto March 2002) on the confirmed demands is also recoverable.

On this being pointed out during November 2000 to July 2002, the department in respect of unit under Bangalore Commissionerate stated (January 2002) that the unit had been auctioned by the Karnataka State Financial Corporation and the customs authority, Bangalore had issued detention notice (August 2001) for recovery of the amount. The department further stated (June 2002) in respect of unit under Kandla Commissionerate that the High Court, Kolkata had been appointed official liquidator and a claim had been lodged with it for recovery of the customs dues.

Further progress is awaited (January 2003).

### **10.6 Non levy of anti dumping duty**

In terms of Customs notification Nos.76/2000 dated 23 May 2000, 93/2000 dated 23 June 2000, 109/2000 dated 18 August 2000, 125/2000 dated 29 September 2000, 141/2000 dated 15 November 2000, 147/2000 dated 19 December 2000, 157/2000 dated 27 December 2000 and 31/2001 dated 28 March 2001 specified goods imported into India from European Union, China, U.K., Japan and Indonesia attract anti dumping duty as prescribed therein.

17 different consignments of these goods imported by M/s. PCL Oil and Solvents Ltd., Daman and 8 others through Kandla, Chennai (Sea) and Kolkata (Sea) Commissionerates were cleared without levying anti dumping duty prescribed in the notification. When the short collection of duty of Rs.66.47 lakh was pointed out, the department admitted mistakes in all cases and reported recovery of Rs.49.69 lakh in six cases.

Recovery particulars in remaining cases are awaited (January 2003).

### **10.7 Non-realisation of penalties**

In terms of Section 112 of the Customs Act, 1962, any person who imports goods which are liable to confiscation under Section 111 of the said Act, shall be liable to a penalty in the case of goods in respect of which any prohibition is in force under this Act or any law for the time being in force.

Scrutiny of records of five Custom Commissionerate, {Jaipur, Ahmedabad, Chennai (Sea & Air) and Patna} revealed that penalties amounting to Rs.20.06 crore imposed in 914 cases and adjudicated during the years 1992 to 2002 remained unrealised.

On this being pointed out (between January 2001 and August 2002), the department stated (December 2001, May, July and August 2002), that in 50 cases Rs.0.31 crore was realised and certificate action in 117 cases involving Rs.1.14 crore had been initiated. Further progress is awaited (January 2003).

### **10.8 Non-levy of special customs duty**

In terms of Customs notification No.72/97 dated 16 September 1997, special customs duty is leviable on goods imported.

One consignment of 'Low ash metallurgical coke', (Valued Rs.3.63 crore) imported (February 1999) by M/s. Southern Iron and Steel Company Ltd., Coimbatore through Custom House, Chennai was cleared without levy of special customs duty. This resulted in short levy of Rs.18.85 lakh.

On this being pointed out (August 1999), the department recovered (February/March 2002) the entire amount.

### 10.9 Other cases

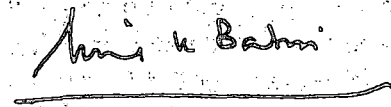
In 13 cases, Audit pointed out irregularities involving Rs.79.45 lakh as detailed below. The department accepted objection in eight cases involving duty effect of Rs.51.07 lakh and reported recovery of Rs.31.52 lakh in six of these cases.

(Rupees in lakh)

Sl. No.	Subject	Importer/exporter M/s.	Amount objected	Amount admitted	Amount recovered
1.	Excess payment of drawback	Best International, Tirupur	17.74	17.74	17.74
2.	Irregular re-export of goods liable for confiscation	Lotus Gums & Chemicals (P) Ltd., Thane	12.10	--	--
3.	Application of incorrect rate	Jayant Industries, Ahmedabad	7.25	7.25	--
4.	Non levy of interest	Lakshmi Machine Works Ltd., & another	6.90	6.90	0.29
5.	Non inclusion of transportation charges in assessable value	American Power Conversion (P) Ltd., & others	6.63	6.63	6.86
6.	Irregular clearance of confiscated gold	P.P. Musa	5.92	5.92	--
7.	Non/short levy of cess on imported rubber	Ruffila International Ltd., Palakkad & 3 others	5.56	0.32	0.32
8.	Short levy on re-imported goods	Oriental Leather Industries, Kolkata & 2 others	4.98	No	--
9.	Excess payment of drawback	Sri All India Exports, Karur	4.42	4.42	4.42
10.	Incorrect exchange rate	Jain Udyog, Kolkata	2.19	No	--
11.	Non levy of interest on refund of drawback	Kitex Garments Ltd., Cochin	2.14	No	--
12.	Irregular payment of drawback	Jayanthi International, Kolkata & others	1.89	1.89	1.89
13.	Non levy of safeguard duty	Multiwyn Foams (P) Ltd.	1.73	No	--
	<b>Total</b>		<b>79.45</b>	<b>51.07</b>	<b>31.52</b>

**10.10 Miscellaneous**


351 other cases involving duty of Rs.1.66 crore were also pointed out. The department has accepted all the objections and reported recovery of the amount.



New Delhi  
Date: 25 February 2003

(S.K. BAHRI)  
Principal Director (Indirect Taxes)

Countersigned



New Delhi  
Date: 25 February 2003

(VIJAYENDRA N. KAUL)  
Comptroller and Auditor General of India