Report of the Comptroller and Auditor General of India

for the year ended March 2005

Union Government

Indirect Taxes – Customs, Central Excise & Service Tax

(Performance Audit)

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PREFACE

This report for the year ended 31 March 2005 has been prepared for submission to the President under Article 151 of the Constitution.

The report presents the observations noticed in test audit of Indirect Taxes (Customs, Central Excise and Service Tax) of the Union Government. Section 1 of the report covers reviews relating to "customs", section 2 covers "central excise" and section 3 covers "service tax".

The cases mentioned in the report are among those which came to notice in the course of audit during the year 2004-05 and early part of the year 2005-06, as well as those which came to notice in earlier years but were not reported.

OVERVIEW

This report is presented in three sections : -

Section 1	**Chapters I and II**	**Customs**
Section 2	**Chapters III and IV**	**Central Excise**
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Some of the significant findings are highlighted below :-

SECTION 1 - CUSTOMS

This section contains two reviews. Some of the significant findings included in this section are indicated below:-

1. Provisional assessment

- **Assessable value involved in provisionally assessed cases in 25 commissionerates represented 31 percent of entire assessments. Number of provisional assessments as well as their bond value increased year after year and finalization of provisional assessment cases did not keep pace with fresh receipts leading to more than doubling of cases from 2001 to 2004.**

(Paragraphs 1.4.1 and 1.4.2)

- **Age analysis of 44,169 cases with bond value of Rs.83,924 crore as on 31 December 2004 revealed pendency of 77 percent for more than a year and 23 percent for more than three years.**

(Paragraph 1.4.3)

- **Non obtaining of security deposit from importers in violation of Customs (Provisional Assessment) Regulations, 1963 in 569 non valuation cases amounted to Rs.1,521.24 crore. Non recovery of extra duty deposit of Rs.28.18 crore in 754 cases involving valuation dispute was also noticed.**

(Paragraphs 1.5.6 and 1.6.1)

- **Non compliance of Customs Valuation Rules, 1988 in 525 cases resulted in non/short levy of duty amounting to Rs.395.12 crore.**

(Paragraph 1.6.2)

- **Despite submission of relevant documents for finalization of provisional assessment, 79 cases involving bond value of Rs.10.95 crore remained un-finalized for six months to six and a half years.**

(Paragraph 1.7.3)

- **Improper maintenance of records and lack of internal control mechanism causing incorrect reporting of pendency by commissionerates to Board, as well as inconsistency in data of assessment group and special valuation branch/special intelligence and investigation branch (SVB/SIIB) along with ineffective electronic data interchange (EDI) system was in evidence.**

(Paragraphs 1.8.1 and 1.8.3)

2. Advance licensing scheme/duty exemption entitlement certificate (DEEC)

- **Data furnished by 18 regional licensing authority (RLAs) revealed that free on board (FOB) value of exports actually realized was only 27 percent of that prescribed for 90,807 licences. It did not tally with that furnished by director general of foreign trade (DGFT).**

(Paragraphs 2.4.1 and 2.4.2)

- **In 146 advance licences issued by 16 RLAs duty of Rs.67.85 crore and interest of Rs.26.10 crore was recoverable. Of this 57 percent was recoverable from 13 licencees alone. In 76 cases of RLA Chennai and Kolkata, customs failed to initiate action against defaulter importers to recover customs duty of Rs.7.99 crore, interest of Rs.6.30 crore on duty free imports of goods worth Rs.21.34 crore.**

(Paragraphs 2.5.1 and 2.5.2)

- **Non monitoring of 185 cases of non submission of documents evidencing fulfilment of EO on expiry of EO period by RLAs/customs resulted in duty foregone amounting to Rs.187.82 crore besides interest of Rs.56.02 crore.**

(Paragraph 2.6)

- **Import of material in excess of adhoc norms/standard input output norms (SION) fixed by special advance licensing committee (SALC) in 33 cases and imports made despite rejected applications in seven cases entailed recovery of duty amounting to Rs.3.52 crore besides interest of Rs.1.67 crore.**

(Paragraphs 2.7.1 and 2.7.2)

- **Non monitoring of 1739 bonds for Rs.2,537.50 crore and non renewal of bank guarantee (BGs) in 566 cases for Rs.33.52 crore executed in nine custom houses and one RLA led to non discharge/enforcement of bonds/BGs on expiry of their EO/validity period.**

(Paragraphs 2.9.1 and 2.9.3)

- **Non realization of foreign exchange of Rs.19.43 crore in 12 cases entailed recovery of customs duty amounting to Rs.7.68 crore besides interest of Rs.1.94 crore on unutilized inputs of Rs.13.74 crore.**

(Paragraph 2.10)

- **Other irregularities like incorrect fulfilment of EO, availment of double benefit, imports of inputs beyond validity period of licence as well as before issue licence, incorrect clubbing of licences and excess imports due to non observance of licence conditions involved incorrect grant of exemption of duty amounting to Rs.15.08 crore besides interest of Rs.6.93 crore.**

(Paragraph 2.14)

- **Lack of coordination between customs and RLA non monitoring/submission of documents in RLAs was in evidence in 194 cases of import/export involving customs duty of Rs.122.42 crore along with interest of Rs.49.11 crore besides penalty of Rs.50.59 crore.**

(Paragraphs 2.15 and 2.15.2)

SECTION 2 - CENTRAL EXCISE

This section contains two reviews. Some of the significant findings included in this section are indicated below: -

1. Excise duty on inorganic and organic chemicals

- **Absence of specific provision in new section 4 relating to payment of excise duty on maximum price fixed under the law led to revenue being foregone to the extent of Rs.16 crore in one unit.**

(Paragraph 3.6)

- **Absence of specific sub-heading in Chapter 28 led to loss of Rs.35.53 crore in four units alone.**

(Paragraph 3.7)

- **Irregular availment of Cenvat credit resulted in revenue loss of Rs.98.72 crore.**

(Paragraph 3.11)

- **Non-adjudication of demands resulted in blockage of revenue of Rs.76 crore.**

(Paragraph 3.14.5)

2. Delay in finalisation of demands

- **Inspite of incorporation of time limit in the statute with effect from 11 May 2001, 15251 cases involving central excise duty of Rs.8625.87 crore were pending adjudication as on 31 March 2004. Increase was 13 per cent in terms of number and 51 per cent in terms of amount as compared to position on 31 March 2001.**

(Paragraph 4.5.1)

- **Cases reported to be pending beyond one year were 38 per cent in terms of number and 48 per cent in terms of amount.**

(Paragraph 4.5.2)

- **In six test checked cases alone, an amount of Rs.153.01 crore was pending adjudication for want of administrative action.**

(Paragraph 4.6.1)

- **Cases numbering 829 involving central excise duty of Rs.1687.83 crore were pending adjudication for want of clarifications by the Board.**

(Paragraph 4.6.5)

- **Due to ineffective internal controls, 31 cases with duty effect of Rs.6.61 crore were lost sight of while transferring cases on revision of monetary limit for adjudication and 200 cases involving duty of Rs.145.48 crore not reflected in the monthly technical report of ten divisions alone.**

(Paragraphs 4.7.2 and 4.7.3)

SECTION 3 – SERVICE TAX

This section contains a review on service tax on manpower recruitment agency's services and security agency's services. Significant findings of audit included in this section are mentioned below: -

- **Measures taken by the department to bring unregistered service providers into tax net proved ineffective and inadequate. Audit identified 2492 unregistered service providers in 45 commissionerates with estimated loss of revenue of Rs.40.96 crore.**

(Paragraph 5.7)

- **Service tax of Rs.2.69 crore was not paid by academic institutions providing manpower recruitment agency services. Penalty and interest amounting to Rs.4.09 crore was also leviable.**

(Paragraph 5.8)

- **In 51 commissionerates of central excise around 25 per cent of returns due were not submitted by manpower recruitment and security agencies, while 11 and 20 per cent respectively were received late.**

(Paragraph 5.10.1)

- **Service tax of Rs.10.04 crore was evaded by 141 assessees in 20 commissionerates during the period when they did not file returns. Penalty and interest amounting to Rs.14.04 crore was also leviable.**

(Paragraph 5.10.2)

- **Short payment of Rs.43.44 crore inclusive of interest and penalty on account of suppression of taxable value by 289 assessees in 39 commissionerates was noticed.**

(Paragraph 5.11.7)

- **Penalty leviable under section 78 amounting to Rs.6.97 crore from two service providers, who had not paid service tax/suppressed the value of services not demanded.**

(Paragraph 5.12)

SECTION 1 - CUSTOMS

(a) there was compliance to rules, regulations and procedure framed under Customs Act 1962, Customs (Provisional Duty Assessment) Regulations, 1963 and Appraising Manual.

(b) provisional assessments had been finalised without undue delay and without causing loss of revenue to exchequer and

(c) internal controls and monitoring mechanism were in place to ensure check on misuse of the facility.

1.4 Trend analysis

1.4.1 Total assessment vis a vis provisional assessment of 25 commissionerates as on 31 March 2004

(Amount in crore of rupees)

Year	Total No. of bills of entry presented & assessed		Bills of entry assessed provisionally		
	No.	Assessable Value	No.	Assessable Value	Bond Value
2001-02	926164	180024	31592	61365	23802
2002-03	1314035	267422	44638	75690	31948
2003-04	1359076	278959	49913	88555	38752
Total	**3599275**	**726405**	**126143**	**225610**	**94502**

1. *In most of the cases bonds were for assessable value instead of differential duty.*
2. *Ahmedabad, Jamnagar, Kolkata (port) and Kandla – Data furnished by commissionerates was incomplete and mismatched. Data provided by units/computed by audit was adopted.*
3. *CC (I&G Delhi) – Data compiled by audit on basis of information supplied by groups/EDI branch.*
4. *Chennai (sea) - Bond value is only for B/E through EDI system since manual figures were not available.*
5. *Data of NCH Mumbai not furnished by department.*

Above table reveals that though in terms of number, cases assessed provisionally were 3.5 percent of total assessment made, assessable value involved therein was around 31 percent of entire assessments. In Jamnagar, Mangalore and Visakhapatnam, however percentage of provisionally assessed cases was as high as 74, 60 and 38, while value involved therein was 97, 85 and 56 percent (approx) respectively. Ministry admitted the position with reference to Kolkata custom house and stated (November 2005) that in most ports like Jamnagar, Mangalore and Vishakhapatnam, bulk cargo of coal, fertilisers and oil are imported on provisional assessment for want of draft survey report, test report etc.

1.4.2 Cases provisionally assessed vis a vis finalised in 24 commissionerates as on 31 March 2004.

(Amount in crore of rupees)

Year	Cases provisionally assessed		Cases finalised	
	No.	Bond value	No.	Bond Value
Cases as on 1 April 2001	14782	50388	-	-
2001-02	18375	24269	18242	11099
2002-03	27019	32125	17024	5297
2003-04	30005	38250	16866	23830
Total	**90181**	**145032**	**52132**	**40226**
*Closing balance	47035	86088		

**According to data compiled from figures furnished by department, pendency should be 38,049 whereas this is reported as 47,035 and bond value therefore comes to Rs1,04,806 crore against Rs.86,088 crore reported. Data of NCH and ACC Mumbai not furnished by department.*

Aforesaid table reveals increasing number of provisionally assessed cases as well as their bond value in the three year span. Also number of finalised cases had been decreasing in those years. Closing balance of 47,035 cases as on 31 March 2004 against opening balance of 14,782 cases revealed that pace of finalisation was slow resulting in more than doubling of pendency during the period of three years with corresponding increase in bond value by Rs.35,700 crore. Moreover, data of 15 out of 24 commissionerates was mismatched and arithmetically inaccurate resulting in un-reconciled status of 8,986 cases reported as pending and under reporting of Rs.18,718 crore bond value. Ministry admitted (November 2005) slow pace of finalisation in Kolkata custom house.

1.4.3 Age-analysis of pendency in 23 commissionerates as on 31 December 2004

(Amount in crore of rupees)

Pendency	No of cases	Bond value
Over 5 years	2939	3123
Over 4 year and below 5 year	2821	13197
Over 3 year and below 4 year	4706	19049
Over 2 year and below 3 year	9175	13493
Over 1 year and below 2 year	14423	22560
Below 1 year	10105	12502
Total	**44169**	**83924**

Data of NCH, ACC Mumbai and Visakhapatnam not furnished by the department. Kolkata (port) data computed by audit.

Analysis of pendency reveals finalisation of only 2,866 cases (47,035 - 44,169) during nine months period. Seventy seven percent were pending for more than one year and 23 percent were pending for more than three years. Ministry stated (November 2005) that special drive had been launched to finalise assessment in import and general (I and G) commissionerate New Delhi to improve clearance. Bangalore's slow pace of finalisation/age wise pendency was admitted.

Major audit findings are contained in the succeeding paragraphs.

1.5 Inconsistencies in execution of bonds/bank guarantee (BG)

1.5.1 Improper execution of provisional duty (PD) bonds

Para 3 (x) of Chapter-I of Appraising Manual, Vol.II. provided that importer or exporter, claiming provisional assessment, was required to execute bond for difference between duty that might be finally assessed and provisional duty. Further, para 3 (A)(2) of Chapter-2, Part-VI of the manual ibid stipulated that amount of bond not be inflated unnecessarily.

Scrutiny of records in 20 commissionerates revealed that PD bonds were taken largely for full assessable value instead of for possible differential duty, while in some other cases bonds executed were for full duty amount payable for imported goods. In Ahmedabad, Jamnagar and Kandla in 11,410 cases of bond value of Rs.27,525 crore, bonds were obtained for an amount equivalent to duty assessed or for assessable value.

In air cargo complex (ACC) Bangalore, 29 bonds had been registered as "dummy bonds" for amounts ranging from Rs.1 to Rs.3.7 lakh and in Delhi I and G, inland container depot and

Tughlakabad (ICD and TKD) commissionerates, bonds for token amount of Rs.1/Rs.10 in four cases had no link with differential duty. Reasons for executing such type of bond, which were not provided in the rules, were not on record.

Ministry stated (November 2005) that dummy bonds were executed to satisfy the requirement of EDI system which had since been cancelled and PD bonds were taken for full assessable value to adequately safeguard revenue in absence of any other quantifiable and viable method prescribed under law and further stated that instructions of Board were being reiterated. Reply however did not contain options of new quantifiable and viable methods to be adopted during provisional assessments. Reply is not tenable as practice followed is violative of provisions of Appraising Manual and Customs (Provisional Duty Assessment) Regulation 1963.

1.5.2 Non revalidation of PD bonds/BG

According to rule 2 of Customs (Provisional Duty Assessment) Regulation 1963, importer is to execute provisional duty bonds binding himself to pay deficiencies of duty, if any, between provisionally assessed duty and finally assessed duty amount. PD bonds/BGs executed were valid only for the period mentioned therein unless renewed within validity period.

Following was the data furnished by 19 commissionerates for bond and BG obtained in provisional assessment cases upto March 2004.

(Amount in crore of rupees)

Year	No of cases	Bond value	No. of cases	BG value
2001-02	15389	21842	1327	41
2002-03	15455	27469	1602	49
2003-04	16988	30509	2323	40
Total	**47832**	**79820**	**5252**	**130**

Data of NCH, ACC Mumbai, Chennai (sea and air), Tuticorin, Trichy and Coimbatore not furnished by department. Kolkata (Port) data computed by audit.

Audit scrutiny revealed that 2,522 bonds and 331 BGs executed by importers in 14 commissionerates for Rs.74,120.96 crore and Rs.20.49 crore respectively had already expired between January 1997 and March 2005 and were not renewed. Non initiation of action to revalidate bonds and renew BGs defeated their purpose of safeguarding differential duty. Bond value not safeguarded represented 93 percent of total bond value obtained in these 19 commissionerates.

Ministry admitted the facts for Kolkata (port) and stated that BGs were being strictly monitored. At present BGs are being accepted with self renewal clauses.

Illustrative cases are narrated below:-

M/s. Indian Oil Corporation (IOC Jamnagar) executed 467 continuity bonds for Rs.26, 838.33 crore between August 2002 and August 2003 for import of crude oil during 1998-1999 and 2003-2004. M/s. Reliance Industry Ltd. executed continuity bonds worth Rs.5,450 crore between August 2000 and April 2003 for import made during August 2000 to March 2004. As per Para 15 (2) of Chapter-I, Appraising Manual Vol.-II, continuity bonds were valid for calendar year in which they were executed but those with specified validity

period were not revalidated on their expiry. Department stated (August 2004) that crude oil was removed under bond to refineries where it was fully accounted for and on receipt of re-warehousing certificate, liability of customs department was over. Reply is not acceptable as these bonds are executed under section 67 of Customs Act whereas provisional assessment bonds are executed under section 18 ibid. Ministry stated (November 2005) that cases have been examined and corrective action is being taken to revalidate continuity bonds wherever assessments are still provisional.

An importer, M/s. 3D Networks Pvt. Ltd. Bangalore executed bond on 27 January 2003 for Rs.50 lakh but bond ledger was credited for Rs.78.63 lakh. Neither was any action taken to finalise assessment nor was bond revalidated. Case involved valuation dispute but no action was taken to get extra duty deposit (EDD) revised from one percent to five percent which worked out to Rs.3.15 lakh of assessable value, as importer failed to furnish reply to questionnaire of department in terms of Central Board of Excise and Customs (Board) circular No.11/2001. Ministry stated (November 2005) that the second bond paper for Rs.50 lakh could not be readily located and an additional bond of Rs.50 lakh had been taken for clearances already made to safeguard revenue.

In ACC Bangalore, M/s. Philips (India) Ltd. executed bond for Rs.2.31 lakh, which expired on 22 April 2003. Neither was assessment finalised nor was bond revalidated. Twenty eight other bonds were not entered in the register by bond cell and expired during January 2003 to December 2004 after validity period of 12 months. Ministry stated that the case had since been finalised and details of 28 bonds not entered earlier in manual ledger have been corrected now.

In five cases, (I and G, ICD and air cargo export, New Delhi) BGs for Rs.34.74 lakh expired between April 2002 to November 2004 and in 18 cases involving differential duty of Rs.16.69 lakh no BGs or security deposit was taken to safeguard revenue. As such revenue of Rs.51.43 lakh was at risk.

In case of M/s. National Lamination Industries Mumbai (Chennai sea) CEGAT had ordered importer to furnish further BG of Rs.30 lakh as pre-condition for hearing appeals. Instead, existing BG of Rs.25 lakh was revalidated by importer on 29 July 2004. Ministry stated (November 2005) that non compliance of the order was brought to notice of CESTAT Mumbai on 19 January 2005 and further progress was being monitored.

1.5.3 Deficiency in execution of bonds

Para 15 (3) of Chapter I of Appraising Manual Vol.II provided that continuity bonds were to be covered by surety of a scheduled bank.

In New Delhi (ICD and I&G) commissionerates, 287 continuity bonds were executed without any surety available on record. Further, in 44 cases (Hyderabad-II) involving assessable value of Rs.5.27 crore, PD bonds were obtained for nil amount or without mentioning PD bond value, which served no purpose as they would not be legally enforceable.

Ministry admitted (November 2005) deficiency pertaining to ACC New Delhi stating that instructions were issued by commisssioner for execution of proper bonds with full value and adequate surety as per section 18 of Customs Act.

1.5.4 Irregular execution of bonds

An importer M/s. Carrier Refrigeration Pvt. Ltd., (ACC Bangalore) executed provisional duty bond for Rs.35 lakh on 11 February 2003, which expired on 10 February 2004. Thereafter, importer was asked (September 2004) to get it re-validated and submit documents for finalisation of provisional assessment. Importer filed revised bond for Rs.35 lakh on 10 February 2004 using stamp paper purchased from State Bank of Mysore on 23 February 2004, which was accepted by department on 16 November 2004 after delay of nine months. It is not clear how importer was able to file revised bond on an earlier date on stamp paper, sold at a later date. Ministry admitted (November 2005) retrospective execution of bond and stated that the case was pending at Chennai SVB and would be finalised on receipt of its orders.

1.5.5 Irregular cancellation of bonds

In ICD Bangalore, 68 bonds/BG of M/s. Kid Kemp Bangalore for Rs.1.25 crore/Rs.20.57 lakh were cancelled without final assessment of goods.

1.5.6 Security deposit not obtained from importers

Rule 2 of Customs (Provisional Assessment) Regulations, 1963 provides for deposit of such sum not exceeding 20 percent of provisional duty.

Test check revealed that in 19 cases of new custom house (NCH) Mangalore while provisional duty of Rs.201.53 crore was collected during 2002-03, security deposit of Rs.40.31 crore had not been obtained from importers. In another 550 cases of ACC, ICD Bangalore and NCH Mangalore, security deposit of Rs.1,480.93 crore at the rate of 20 percent of provisional duty was also payable by importers in non SVB cases. Ministry stated (November 2005) that security of 20 percent was not a prescribed amount, only the maximum limit. In absence of lower limit financial implications are based on amount quoted in Rule ibid.

1.6.1 Non/short levy of EDD

With a view to elicit early response from importers in cases of valuation disputes, Board's circular No.11/2001-Cus dated 23 February 2001 provided for EDD at one percent of assessable value while referring of case to SVB. If they did not furnish complete reply to questionnaire issued by custom house within 30 days of receipt thereof, EDD was to be increased to five percent till date of receipt of reply by department. In such cases provisional assessment was to be finalised within four months from date of reply. If no decision was taken within that time, EDD could be discontinued and concerned deputy commissioner/assistant commissioner (DC/AC) be held responsible for inexplicable delay in finalisation.

Scrutiny revealed that in 754 cases non-responding to questionnaire of SVB entailed recovery of Rs.28.18 crore in ACC Bangalore and Kochi. In ACC Bangalore, acceptance of bond in two cases in lieu of cash deposit of one percent EDD was not in consonance with provisions. In NCH Mumbai, 297 bonds referred to SVB were pending as on 31 March 2004 for more than a year. The cases were liable to five percent EDD for delay of more than 30 days due to non responding to questionnaire by importers in terms of Board's circular ibid. Ministry stated (November 2005) that in Mumbai of 297 cases, 174 were completed provisionally with

five percent EDD and rest assessed with one percent as endorsed by SVB. In 729 cases of ACC Bangalore enhanced EDD could not be recovered as no instructions for enhancing EDD from one percent to five percent were received from SVB. This is indicative of lack of coordination between assessment group and SVB in cases where valuation disputes are not decided within specified time.

1.6.2 Non/short levy due to under valuation

Rule 10-A of Customs Valuation Rules 1988 provided for rejection of declared value when there was sufficient reason to doubt value declared. It also required department to call for correspondence and other details from importer relating to imports. The other option open to department was to make reference to SVB to investigate the matter.

Scrutiny of records revealed 525 cases in seven commissionerates wherein assessments were made at lower assessable value due to non compliance of aforesaid provisions which resulted in non/short levy of duty amounting to Rs.395.12 crore.

Illustrative cases are narrated below:-

In ACC (Mumbai), mobile telephone/software imported by M/s. Reliance Infocom Ltd., with four others were being assessed provisionally since 2001. In 447 bills of entry of M/s. Reliance Infocom Ltd. relating to such imports, the department had finally assessed the bills of entry and recovered duty of Rs.86.80 crore after correctly clubbing the value of software alongwith hardware value for determining assessable value and applicable duty.

However, 503 bills of entry pertaining to five importers including M/s. Reliance Infocom Ltd. of similar imports with an assessable value of Rs.674.30 crore were further assessed provisionally and were referred to SIIB for investigation, though these cases should have also been finalised after clubbing the value of hardware and software. The decision of the department to refer these cases to SIIB in spite of precedence in 447 bills of entry on the same issue involving the same importer was not appropriate and has led to undue delay in finalisation of the assessments and consequent non realisation of differential duty of Rs.383.14 crore.

On being pointed out in audit, the Ministry stated (November 2005) without providing any reasons that the analogy of M/s. Reliance Infocom cases can not be applied in these cases and the assessments would be finalised after completion of investigation. Reply of the Ministry is neither clear nor convincing and accordingly is not acceptable in audit.

Directorate of Revenue Intelligence, Chennai directed commissioner of customs Chennai (sea) in December 2002 that goods of M/s. Pushpa Silks be examined in the presence of directorate of revenue on account of under valuation of imported silk fabrics.

Goods worth Rs.27.42 crore were assessed provisionally on 27 December 2001. Based on request of directorate of intelligence, they were detained for investigation. Importer filed writ petition in the High Court in March 2003 and requested for their release. Department filed counter affidavit stating that importer had mentioned only generic description viz. grammage, quantity and contracted price and not indicated commercial variety which was the crucial factor for deciding price of the fabric imported and further stated that contract price quoted by the firm was 40 percent less than contemporaneous price. On direction of High Court the goods were examined (11 March 2003) and it was found that the imported fabrics contained high value variety like crepe, georgette and satin. Goods were released on 25 April 2003 after provisional assessment.

Though test reports confirming that the consignments contained high value fabrics were received in October 2003, no action was taken by department to finalise the assessment as on date. Resultantly, there was blockage of government revenue to the tune of Rs.10.47 crore, besides unauthorised financial accommodation extended to importer. On this being pointed out (July 2004), Ministry stated (November 2005) that legal opinion had been sought for finalising assessment.

1.6.3 Irregular provisional assessments

Para 3 (VII) of Chapter-I of Appraising Manual Vol-II provided that in cases where misdeclaration was suspected and goods were available for examination, investigation must be completed and penal action, if necessary taken. Para 12 ibid provided that where goods are short landed, entire quantity of goods as originally declared in provisional duty bill of entry is to be finally assessed without making any deduction for short landed goods. Duty should be adjusted on entire consignment and refund on short landed goods subsequently granted in due course on fulfilment of conditions for such refunds. Provisional assessment procedure should not be resorted to and the goods should not be allowed clearance.

Scrutiny of records in eight commissionerates revealed that 107 bills of entry were either not eligible for provisional assessment or despite requisite clarifications available with department, cases were wrongly assessed provisionally postponing recovery of duty amounting to Rs.5.40 crore for period ranging from one to eight years apart from notional loss of interest of Rs.1.12 crore in four cases.

Illustrative cases are as under:-

M/s. Industrial Training Institute (ITI) Ltd. Bangalore had imported fixed wireless telephones (FWT) worth Rs.10.24 crore through Chennai (air) during July to September 2004. Importer classified goods under customs tariff heading (CTH) 85252017 and claimed concessional rate

CHAPTER I: PROVISIONAL ASSESSMENT

1.1 Highlights

- **Assessable value involved in provisionally assessed cases in 25 commissionerates represented 31 percent of entire assessments. Number of provisional assessments as well as their bond value increased year after year and finalisation of provisional assessment cases did not keep pace with fresh receipts leading to more than doubling of cases from 2001 to 2004.**

(Paragraphs 1.4.1 and 1.4.2)

- **Age analysis of 44,169 cases with bond value of Rs.83,924 crore as on 31 December 2004 revealed pendency of 77 percent for more than a year and 23 percent for more than three years.**

(Paragraph 1 4 3)

- **Non obtaining of security deposit from importers in violation of Customs (Provisional Assessment) Regulations, 1963 in 569 non valuation cases amounted to Rs.1,521.24 crore. Non recovery of extra duty deposit of Rs.28.18 crore in 754 cases involving valuation dispute was also noticed.**

(Paragraphs 1.5.6 and 1.6.1)

- **Non compliance of Customs Valuation Rules, 1988 in 525 cases resulted in**

else corresponding scrap generated was to be charged duty as applicable for mother material contained in it according to section 65(2)(b) ibid.

Department issued demand letters during the period from November 2004 to May 2005 for differential duty of Rs.1.85 crore for finalisation of 18 provisional assessments cases relating to period from 1996 to 2001. Of this, demand of Rs.59.11 lakh in five cases was confirmed on 11 April 2005 along with demands relating to two other cases. However, no amount was remitted by the assessee till date. Delay in issuing demand letters resulted in blockage of revenue to the tune of Rs.1.85 crore apart from notional loss of interest of Rs.79.46 lakh. On this being pointed out, Ministry stated (November 2005) that subsequent demand letters were issued and confirmed in 21 cases (including seven cases reported above) for Rs.2.36 crore apart from interest of Rs.5.09 lakh issued in July and September 2005. Realisation was awaited.

Health department of Andhra Pradesh, imported four consignments of medical equipment between November 2001 and November 2003 (ICD Hyderabad II) under adhoc exemption order No.24 dated 1 July 2003. Scrutiny revealed that the said order covered only three of the above consignments and one (November 2003) pertaining to syringes involving assessable value of Rs.2.31 crore was not supported by any exemption order. The said bill of entry was, therefore, assessed provisionally for want of duty exemption certificate on obtaining PD bond for Rs.2.31 crore. Duty foregone in the case was Rs.93.46 lakh. Non furnishing of exemption certificate led to blockage of revenue to the extent of Rs.93.46 lakh apart from loss of interest of Rs.19.21 lakh. Ministry while confirming fact reported (November 2005) that demand of Rs.93.46 lakh had been confirmed.

Loss of revenue due to non realisation of penalty for short landed goods

According to section 116 of Customs Act, 1962, if any goods loaded in a conveyance for importation into India are not unloaded at their place of destination in India, or if quantity unloaded is short of quantity to be unloaded at the destination, and failure to unload or deficiency is not accounted for to satisfaction of AC/DC of customs, person-in-charge of conveyance shall be liable to penalty not exceeding twice the duty that would have been chargeable on goods not unloaded or deficient goods, as the case may be, had such goods been imported. Further, according to para 7 of Board's circular No.96/2002-Cus. dated 27 December 2002, liability of master/agent would continue to be fixed by comparing ship's ullage quantity at the port of discharge with ship's load port ullage quantity or bill of lading quantity if the former was not made available by the master/agent.

Scrutiny of records relating to import of crude petroleum oil by M/s. IOC (Kolkata port) revealed that all such imports were provisionally assessed and importer paid customs duty as applicable on shore tank receipt quantity. However, from import manifest clearance register (IMCR) from October 2003 to April 2004, it was seen that in 19 cases landed quantity as per the vessel's ullage survey report at the port of discharge was less to the extent of 4767.925 MTS than import general manifest (IGM) quantity i.e. quantity to be unloaded in India even after allowing for one percent evaporation loss.

Since short landed quantities fell outside purview of provisional assessment, explanations should have been called for from the shippers/importers and penalties upto Rs.1.09 crore levied immediately thereafter in cases where satisfactory explanations were not received.

section 18 of the Act read with [illegible]
bond with appropriate security.

Procedures to be adopted for provisional assessments are detailed in Customs (Provisional [illegible] 1963. Accordingly, the proper officer is to estimate duty

However, neither had any explanation been called for nor were any penalties imposed. On this being pointed out (June 2005), Ministry stated (November 2005) that finalisation was under progress.

1.6.4 Lack of monitoring of re-export cases

As per rule 5(1) of Customs Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods (IGCRDMEG) Rules 1996, DC/AC customs at the port of importation shall allow benefit of exemption notification to importer on basis of application countersigned by DC/AC of central excise having jurisdiction over the manufacturer's factory and as per sub rule 5(2), the former shall forward copy of bill of entry containing particulars of import, amount of duty paid and other relevant particulars to central excise counterpart. However, goods imported are to be re-exported in terms of notification under which it had been imported duty free.

Scrutiny of records in six commissionerates revealed that in 51 cases goods imported under aforesaid rules or under other relevant notifications subject to re-export within the stipulated period, had not in fact been re-exported. Thus, lack of monitoring of re-export cases resulted in blockage of revenue due to non enforcement of bonds of Rs.3.30 crore. Of these, duty involved in 22 cases amounted to Rs.25 lakh.

Illustrative cases are as under:-

In 29 cases, (Kolkata port) re-export bonds valid for six months executed during September 2000 to March 2004, expired but no re-export had been made. In 20 cases, no demand for customs duty/refund of drawback had been made. In nine cases, demand notices had been issued in June and July 2004, but no realisation had been made till May 2005. Ministry stated (November 2005) that 21 cases would be finalised shortly by enforcing export bonds. In nine cases recovery was in progress.

1.7 Delay in finalisation of provisional assessment

Para 3 of Customs (Provisional Duty Assessment) Regulations 1963 provides that where provisional assessment was allowed pending production of any document or furnishing of information by importer, terms of bond shall be that such document shall be produced or such information be furnished within one month or within such extended period as the proper officer may allow. No time limit has been prescribed for finalising assessments in section 18 of Customs Act, 1962. However, according to Board's instructions issued on 23 April 1973 and 9 January 1978, provisional assessments were to be finalised expeditiously well within six months from the date of provisional assessments. During the course of review, it was observed that there was abnormal delay in finalisation of provisional assessments.

Data covering 20 commissionerates as shown in the table below revealed that out of 57,604 cases involving bond value of Rs.77,039 crore, only 11,489 cases involving bond value of Rs.14,768 crore (20/19 percent) were finalised within period of six months while 12,057 cases with bond value of Rs.8,815 crore (21/11 percent) were delayed beyond six months but stood finalised by December 2004.

(Amount in crore of rupees)

Year (No. of Commissionerates in brackets)	Cases registered		Cases finalised within six months		Cases finalised after six months but before 31 December 2004		Cases pending for finalisation as on 31 December 2004	
	No.	Bond Value	No.	Bond Value	No.	Bond Value	No.	Bond Value
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
2001-02 (17)	16589	20325	3999	5688	4269	1282	5407	6955
2002-03 (18)	17274	26550	4045	5039	4162	3748	7075	10684
2003-04 (20)	23741	30164	3445	4041	3626	3785	15780	16979
Total	**57604**	**77039**	**11489**	**14768**	**12057**	**8815**	**28262**	**34618**

Data of 12 commissionerates, does not tally with pendency shown as on 31 December 2004 due to discrepant figures of commissionerates.

1.7.1 Audit conducted detailed scrutiny of reasons for pendency in 17 commissionerates and found that 28,355 cases involving bond value of Rs.42,891.61* crore were pending and awaiting final assessment from one to 12 years as on 31 March 2004. Non-adherence to the aforesaid time limit to finalise the assessments led to blockage of approximate duty amount of Rs.1,683.52 crore as detailed below.

(Amount in crore of rupees)

Sr. No.	Reasons of delay	No. of Cases/bonds	Bond/Assessable value	Duty involved	Delay in years
1.	Pendency for want of ullage report/original documents/ DEEC.	21986	31117.01	*1558.66	One to 12 years
2.	Pendency for want of chemical test reports.	348	294.72	*14.71	One to 4 years
2 (a)	Pendency despite receipt of chemical test reports.	1277	297.90	*14.92	One to 4 years
3.	Pendency for want of correct valuation.	1498	1299.08	*72.17	One to 10 years
3 (a)	Pendency despite availability of instructions/clarifications.	1024	42.99	*2.24	One to 10 years
4.	Other pendencies due to litigation, non adjudication of SCNs and cases transferred to call book	2222	9839.91	20.82	Six months to 12 years
	Total	**28355**	**42891.61**	**1683.52**	

**Since bond value does not represent differential duty, duty has been calculated at minimum tariff rate of five percent of bond/assessable value where the same was not available on record.*

Pendency for want of ullage reports/original documents/DEEC etc.

In response to contents of table, Ministry reported (November 2005) that 5914 bonds for Chennai (sea) had been cancelled, 42 of Trichy finalised and action for finalisation taken for the rest.

An illustrative case is narrated below.

An importer M/s. SAIL, Bhilai (Kolkata port) imported two consignments of 'parts of gyratory crusher' in August 1996. Goods were assessed provisionally as complete machines by accepting PD bond for assessable value of Rs.60.92 lakh and Rs.3.74 crore respectively in

* Pendency of Rs.34,618 crore as on 31 December 2004 has been compiled on the basis of data provided by the department whereas actual audit scrutiny revealed pendency of Rs.42,891.61 crore in 28,355 cases.

December 1992. Bonds stipulated that importer was required to submit valid import licence and other documents as evidence of completion of full shipment within 12 months. However, the two cases, involving bond value of Rs.4.35 crore, remained un-finalised (March 2005) i.e. for more than eight years for want of requisite documents. In reply, Ministry stated (November 2005) that importer had been asked to submit details of shipments.

Pendency for want of chemical test reports

In case of chemical test report (ICD Coimbatore), import of vitrified tiles by two importers were misdeclared as ceremic tiles. Samples were sent for chemical test (May 2004) and test report received (June 2004). Assessments were finalised (March 2005) after being pointed out by audit (January 2005). Department reported recovery of duty/interest Rs.5.02 lakh in Chennai (sea). Ministry stated in response to audit findings depicted in table (November 2005) that 142 cases (17 in Chennai sea, 91 in ICD TKD, 28 in Ahmedabad, five in NCH Mumbai and one in Hyderabad-II) had been cancelled/finalised.

Pendency for want of correct valuation/non referred to SVB

In nine commissionerates, 1,498 cases involving bond value of Rs.1,299.08 crore were pending for want of valuation reports/price verification from SVB/SIIB or DRI etc. Of these 271 cases (West Bengal preventive) of betel nut imports (February 2002 to March 2004) and 95 cases of Hyderabad-II (August 1998 to March 2004) had not been referred to SIIB/SVB for investigation at all.

These cases involved blockage of duty amounting to Rs.72.17 crore (approx) for a period ranging one to ten years. Ministry stated (November 2005) that 117 cases (one in Kolkata port, 33 in ICD TKD and 83 in Jamnagar) had since been finalised. For M/s. Abstract Frames and Supplies Pvt. Ltd. (Kolkata port) case, Ministry stated that matter was proposed to be finalised ex-parte due to non response of importer. In Hyderabad-II, position was under verification.

Illustrative case :-

Twelve cases of imports (Trichy) of PAS Noodles by M/s. Hindustan Lever Ltd. during September 2002 to January 2003 referred to SVB Mumbai were pending for want of valuation reports. Repeated transmission of cases of the same importer and their continued pendency for long durations coupled with non/ineffective follow up action to obtain valuation reports and finalise assessments was indicative of providing undue financial accommodation to the importers. Ministry stated (November 2005) that the cases would be finalised on receipt of order from SVB Mumbai.

Non finalisation despite Board's guidelines

In 1024 cases involving bond value of Rs.42.99 crore pertaining to marbles and bearings, cases had not been finalised despite clarification of Board leading to blockage of duty amounting to Rs.2.24 crore (approx) for one to ten years in three commissionerates.

Illustrative case:-

One such case of departmental laxity involving assessment of bearings revealed that Kolkata (port) regularly sought advice and guidance from Mumbai commissionerate on assessment of bearings, in particular, for matters relating to valuation.

In September 1997, Mumbai commissionerate informed Board that it had formulated a set of principles to make final assessment of various brands of bearings in consultation with valuation directorate and local bearing manufacturers. The principles/guidelines were sent to various customs commissionerates including Kolkata (port). In January 1998, Mumbai commissionerate forwarded to the Board a set of detailed proposals for finalisation of provisional assessments of bearings done since September 1994. The proposals in turn were forwarded to all commissionerates in March 1998.

However, it was seen from monthly technical reports (MTRs) on "major items of pendencies" that, as on March 2004, total of 975 PD bonds involving Rs.39.07 crore, pertaining to provisional assessment of bearings, were pending. Of the above, 761 PD bonds (80 percent), were pending for more than three years. Moreover, disposal figures for February and March 2004 revealed that while 11 PD bonds involving Rs.1.31 crore against provisional assessments of bearings were added, there were no disposals. In spite of existence of clear guidelines and instructions for finalisation and disposal of bearing imports assessed provisionally from September 1994 onwards, the department had not taken steps for finalisation of such cases.

In November 2005, Ministry stated that eight cases involving Rs.1.46 crore pertaining to review period had been finalised in July 2005.

Non adjudication of SCNs

Section 28 of Customs Act, 1962 provides for recovery of duty not levied, short levied or erroneously refunded. Normally a period of 15 days is given to the importer to respond to the SCN and adjudication is required to be completed within one year according to the provisions of section 28 (2A) ibid.

Scrutiny of records in four commissionerates revealed that though SCNs were issued in 78 cases between November 2000 and January 2005, they had not been finalised. Delay ranging from six months to four years led to non realisation of duty amounting to Rs.20.82 crore apart from extending undue financial accommodation to the importers. Ministry stated (November 2005) that four cases in Jamnagar and two in Hyderabad-II had since been finalised.

Pendency of cases in call book registers

Scrutiny of records in three commissionerates revealed that 1764 cases involving bond value of Rs.7793.72 crore were pending in call book registers for a period ranging from one to 12 years.

No follow up action to review on monthly basis or to submit quarterly report to competent authority to watch progress of disposal of cases kept in call book was taken by the department according to circular No.53/90-Cx. issued in September 1990 read with circular No.385/18/98-Cx. dated 30 March 1998.

1.7.2 Delay in finalisation of provisional assessment under project imports.

The scheme "project imports" was introduced in 1965 for importing items of machinery, equipment, raw materials etc., required for setting up or for substantial expansion of project at uniform rate of duty subject to certain procedural requirements to be complied with by importers. Object of the scheme was to simplify procedures with a view to facilitate quicker customs clearance of goods imported for initial setting up or substantial expansion of project. The scheme was governed by Project Imports Regulations 1986 issued under section 157 of Customs Act 1962.

Rule 7 of Regulations ibid stipulated that importer has to furnish documents such as statement of goods imported, value and quantity required by the proper officer for finalisation of contract within three months of date of clearance of the last import for finalisation of assessment failing which, project concession already granted would be denied and the goods be re-assessed on merit rate of duty with resultant short collection of duty being realised.

Scrutiny of records in four commissionerates revealed that in four cases of Chennai (sea) importers did not submit requisite documents though the last import took place between 14 January 1988 and June 2003. Of these in one case, department confirmed demand of Rs.1.48 crore in 2004 but the importer was not traceable. In two other cases documents were submitted in March 2004 and January 2005 after delay of ten and 28 months respectively, but assessments were still awaiting finalisation. In nine cases of Kolkata (Port), project imports were completed more than three years ago, but no steps were taken to finalise the cases. In Kandla, one case was finalised but the firm went to BIFR since February 2005. In a case of Kochi, where last import was made in September 1999 the case was finalised in July 2003 leading to loss of notional interest of Rs.6.70 lakh and undue financial accommodation to the importer for more than 37 months.

Total duty involved in 25 cases was Rs.70.15 crore awaiting realisation on finalisation of provisional assessments apart from notional interest of Rs.6.70 lakh in one case. Ministry stated (November 2005) that in two cases of Chennai (sea) M/s. BHEL and Alstom Power Boilers Ltd. have since been finalised for closure and referred to IAD for concurrence.

Two indicative cases are narrated below:-

M/s. Bharath Earth Movers Ltd., Chennai registered a contract for import of 'rear dumpers'* under project imports. Imports were made for Rs.78.51 crore between June 2002 and June 2003 and were assessed provisionally under section 18(1) of Customs Act 1962, at concessional rate of duty after obtaining bond for Rs.97.23 crore. The last consignment was cleared on 18 March 2003. Even after expiry of one and half years, the importer had not furnished the required documents. Department too did not initiate action to enforce the bond and recover differential duty with interest amounting to Rs.27.98 crore. On this being pointed out (March 2005), Ministry stated that adjudication proceedings were under way.

M/s. Soumag Electronics Ltd. registered a contract with department, on 20 January 1989 to import "computerised PCB in circuit test, validator for the manufacture of microprocessor based ticketing machines including access control systems". Two imported consignments, were provisionally assessed under section 18(1) of Customs Act 1962 at concessional rate of duty after obtaining PD bond. The last consignment was imported on 24 October 1989 but documents in proof of total import had not been submitted. Department, after a lapse of twelve and half years, had issued SCN on 30 June 2004 to which no reply was received. Subsequently demand for Rs.1.48 crore being differential duty was confirmed vide order-in-original to which again there was no response from the importer. Due to failure of department to issue SCN in time (January 1990), by enforcing bond and BG, there was loss of revenue of Rs.4.80 crore, (including interest). Importer was reported to be non traceable and, therefore, chance of recovery of Government revenue was remote. Ministry stated (November 2005) that recovery action had been initiated under section 142 (1) (c) (ii) of Customs Act.

* Rear Dumpers is an excavation machine.

1.7.3 Non/delayed finalisation of provisional assessment despite submission of documents

Board's instructions issued in April 1973 and 1978 provided for expeditious finalisation of provisional assessment cases well within six months from date of provisional assessment including the time taken in investigation, obtaining test reports and other requisite documents.

During course of review, it was noticed that 79 cases involving bond value of Rs.10.95 crore remained unfinalised for period of six months to six and a half years in four commissionerates despite submission of relevant documents/clarifications/ certificates etc.

Ministry stated (November 2005) that seven cases (three cases of Kolkata port, four ACC New Delhi) had since been finalised while in one case of ICD TKD demand has been raised.

Illustrative cases are narrated below:-

M/s. SREI International Finance Ltd. (Kolkata port) imported MRI scanner in four consignments for which PD bond was submitted for Rs.3.33 crore with surety for like amount, valid upto May 1998. Goods were provisionally assessed duty free under notification No.11/97-Cus dated 1 March 1997. After clearance of the last part-shipment in November 1997, importer furnished necessary documents in January 1998 for finalisation of assessment and cancellation of PD bond. However, assessment was not finalised inspite of passage of more than six and a half years since submission of documents by the importer. Meanwhile, the surety furnished became invalid, jeopardising chances of recovery. Ministry stated (November 2005) that the case had since been finalised.

Despite decision (May 2003) of chief commissioner I and G Delhi for closure of 33 PD bonds for Rs.1.55 crore, the cases remained unfinalised. Similarly commissioner (ICD) ordered (January 2005) finalisation of 15 cases with bond value of Rs.98.36 lakh of rags and worn clothing which have not been finalised. Another 22 continuity bonds worth Rs.4 crore, (I&G New Delhi) despite orders of SVB dated 28 January 2003 accepting the transaction value declared in the invoice have neither been finalised nor was any entry made in PD bond register. Ministry stated (November 2005) that except 33 PD bonds of I and G Delhi where details were awaited, remaining 41 cases of ICD TKD, I and G and ACC New Delhi had been finalised.

1.7.4 Non/delayed realisation of differential duty

Section 28 of Customs Act, 1962 provided for recovery of duty not levied, short levied or erroneously refunded. Normally period of 15 days is given to importer to respond to SCN. If confirmed demand is not paid within three months and no stay has been obtained recovery proceedings are initiated.

Scrutiny of records in six commissionerates revealed that despite submission of test reports or other relevant documents/certificates, final assessments were made belatedly and despite issue of demand notices for Rs.34.89 crore in 575 cases, department could realise only Rs.1.20 crore in four cases.

Delayed finalisation/non realisation of duty resulted in notional loss of interest amounting to Rs.4.55 crore beside financial accommodation to importers.

Few other cases are narrated below:-

M/s. Sudharsan Pine Products Pvt. Ltd., Bangalore (Chennai Sea), imported 64 consignments of "oleo pine resin" during 2002-2003 and claimed assessment at 'nil' rate of additional duty (CVD) under CETH 130190 (Others). Due to dispute between department and importer

regarding classification of imported goods under CETH, the goods were allowed to be cleared at 'nil' rate of CVD, under provisional assessment in view of commissioner's orders.

Since conditions regarding country of origin stipulated under the CETH 130190 were not satisfied, DC customs duty entitlement pass book (DEPB) ordered on 30 April 2003 finalisation of all provisional assessments after classifying imported goods under CETH 130110 by levying CVD at the rate of 16 percent. Differential duty worked out to Rs.72.36 lakh. Importer had filed appeal before commissioner of customs (appeals), wherein order of lower authority was upheld. Thus, delay in recovery of differential duty resulted in postponement of government revenue to the tune of Rs.72.36 lakh for more than two years. On this being pointed out (February 2005), Ministry stated (November 2005) that importer had been addressed (31 August 2005) to pay the amount as no stay was granted by CESTAT.

To prevent refined palm oil being passed off as crude palm oil (CPO) by importers to avail concessional import duty at the rate of 65 percent BCD, twin criteria for acid value of two percent or more and total carotene (as beta carotene) in the range of 500-2500 mg/kg were introduced vide notification No.120/2003-Cus dated 1 August 2003. Samples of imported CPO which failed to meet above specifications were to be classified as others-palm oil and assessed to duty at the higher rate of 70 percent BCD.

Examination of records of 345 such imports made (by Kolkata port) revealed that, in all cases, imported goods failed to meet aforesaid criteria as per test reports. Hence, they were liable to be charged at higher tariff value and higher rate of basic customs duty. Differential duty thus realisable amounted to Rs.24.82 crore.

Although test reports were received within six months from dates of provisional assessment in most of the cases, department delayed issue of demand notices for differential duty upto one year and five months from the date of test reports.

This resulted in blockage of government revenue and notional loss of interest amounting to Rs.2.51 crore, calculated at 15 percent per annum and allowing for 15 days grace period from the date of receipt of test reports. On this being pointed out, Ministry stated (November 2005) that an amount of Rs.25 crore had since been realised from five importers even before finalisation of assessment.

In 45 cases, imports of tiles (CFS Mulund) were assessed provisionally without levy of anti dumping duty. Demand notices for Rs.4.43 crore in respect of these imports were issued during September and December 2003 but department had not taken any action to recover duty. On this being pointed out (June 2005), Ministry stated (November 2005) that 11 cases had since been closed, remaining 34 were under adjudication process.

In 17 cases of M/s. IOCL (Visakhapatnam), provisional assessment was made during March 1995 to November 1999 for want of original documents/ullage survey report, etc obtaining PD bonds for Rs.191.85 crore. Though these were received between May 1997 and January 2000, cases were finalised only in May 2005. Department noticed short collection of Rs.2.23 crore in 15 cases on finalisation of provisional assessments but did not even intimate short levy to the importer on finalisation.

Delay in finalisation resulted in blockage of revenue/financial accommodation to the extent of Rs.2.23 crore for periods ranging from 58 to 97 months and consequential notional loss of interest of Rs.1.97 crore from the date of receipt of original documents. On this being pointed out (May 2005), Ministry accepted that delay in finalisation of provisional

assessment was for reasons beyond control of customs house on account of various instructions from Board and various judgements and further stated that short collection was immediately brought to notice of importers in March 2005 as such there was no real loss of interest. Reply is not tenable since delay caused delayed realisation of duty and consequent notional loss of interest.

1.8 Improper maintenance of records and lack of internal control mechanism

Para 14 of Appraising Manual Vol.II, provided that each provisional assessment made was to be entered in a provisional duty register (Form-321 CBR). Full particulars relating to such cases from registration to their finalisation i.e. name of importer, description of goods, bill of entry number, value, reasons for provisional assessment, duty payable, particulars of bonds and their validity period were to be recorded. Column 16 and 22 of the format were specifically meant for duty amount on provisional/final assessment. The register also provided for recording of date of receipt of documents, test results etc. On finalisation of the cases, particulars regarding refund/collection of differential duty were to be recorded and the bonds closed.

Scrutiny of records in 21 commissionerates revealed that in most of the groups, PD registers were not being maintained in prescribed format and wherever maintained, most of the columns were kept blank, important details remained unrecorded and these were not being submitted to AC nor were forwarded at monthly intervals to internal audit department (IAD) who had to bring such cases to his notice requiring further investigation. Monitoring mechanism and internal control seemed very ineffective in tracking outcome of provisionally assessed cases, revalidation of bonds etc. ACC Trivandram intimated (May 2005) that they started maintenance of register after it was pointed out in audit. Ministry accepted (November 2005) non maintenance of records in some commissionerates, stating that such information could be retrieved from EDI system. The reply is not tenable as information even in EDI system was not complete.

Bond and BG Cell

Consequent on recommendation of PAC in their 92nd report (eighth Lok Sabha) on lack of monitoring of bonds and bank guarantees executed by importers, Board issued instructions in July 1991 requiring custom houses to have (i) common bond cell for accepting and discharging bonds so that a particular set of officers could work with uniformity and disputes arising out of legal/technical points could be taken care of, (ii) conditions of bonds were to be enforced immediately after expiry of prescribed time limit, (iii) custom house agents should also be made responsible for not complying with conditions of bond, (iv) since computerisation had been introduced in custom houses, this work could also be computerised to make discharging of bond liabilities effective, (v) original bond be kept under safe custody in cash department.

Consequently a centralised bond and BG cell was ordered for creation in Kolkata custom house with effect from 5 August 2001. In ACC and JNCH Mumbai, bond and BG cell was formed, whereas from other commissionerates details regarding the cell were not forthcoming.

Since no such process of centralised monitoring mechanism seemed to be in place, following instances of lapses were noticed in audit, which were indicative of system failure.

(i) In West Bengal (preventive), due to non-maintenance of BG register prior to April 2004, details of 11 unfinalised BGs, could not be ascertained. Ministry accepted non establishment of centralised BG cell.

(ii) In 597 cases (I and G, ICD Delhi) involving bond value of Rs.362.70 crore, reasons for provisional assessment were not recorded; as such, further action taken could not be ascertained.

(iii) Out of 223 cases (I and G Delhi) of continuity bonds details of only first bills of entry were recorded in 66 cases, in remaining 157 cases, no details of imports were on record. Similar was the position in ICD New Delhi in respect of 64 cases. Only first import was on record in 59 cases leaving subsequent imports unrecorded while no details of imports were on record in five cases.

(iv) In all three commissionerates of Delhi, list of cases where importers failed to produce required documents/information were not being maintained as stipulated in para 11 of Chapter-I of Appraising Manual Vol.II.

(v) In Hyderabad-II commissionerate, scrutiny of bills of entry revealed that 34 cases of provisional assessments were not recorded in the register at all.

Ministry admitted (November 2005) the objection and stated that steps had been taken to enter cases in PD bond register.

Incorrect reporting of pendency of PD bonds

Performance of commissionerates relating to disposal of work during a month was being compiled in the form of MTR and sent every month to chief commissioner of customs for onward transmission to Director General of Inspection, CBEC.

Audit scrutiny of records and MTRs in eight commissionerates for the period 2001 to 2004 revealed 5,680 cases in which commissionerates had either over reported or under reported number of bonds as well as bond value of pending cases of provisional assessments. Three field formations in Hyderabad-II commissionerate had reported to audit 174 cases outstanding against 74 cases shown in their MTRs furnished to commissionerate. The department (Hyderabad-II) while admitting the fact stated that the figures furnished to audit were reconciled now.

Incorrect reporting is indicative of lack of monitoring and internal control mechanism in the department.

A few illustrative cases are narrated below:-

Scrutiny of file relating to clearance of crude oil imports by M/s. IOC, (Kolkata port), revealed that PD bonds for Rs.57,579 crore were submitted by a public sector undertaking during the period from 1994 to 2004 (upto 31 March 2004).

Provisional assessments of crude oil imports against above bonds amounting to Rs.57,579 crore (2,100 bills of entry) were actually as per audit scrutiny pending finalisation (March 2005) whereas bond amount of Rs.13,565.04 crore only, was reported by commissionerate to the Board through its MTRs. Thus there was under reporting of pendency to the extent of Rs.44,013.96 crore. Ministry accepted the error in compilation of MTR and stated the same was being reconciled.

MTR of Kochi for the month of March 2004 showed pendency of 54 PD bonds under section 18(a) of Customs Act, whereas statement of bonds and project contract register showed pendency of 636 cases, implying under reporting to the extent of 582 cases.

1.8.1 Difference in pendency between data of assessment group and SVB/SIIB

SVB specialises in investigation of transactions involving special relationship and certain special features having bearing on value of imported goods. Suspected cases of under valuation due to relationship between seller and buyer are referred to it for investigation and determination of assessable value.

Board's circular No.11/2001-Cus dated 23 February 2001, provided that investigation by SVB should be completed within four months from date of reply of importer to questionnaire issued by them.

Scrutiny of records in five commissionerates revealed that of pendency of 1202 cases involving bond value of Rs.602.72 crore in assessment groups, 68 cases involving bond value of Rs.181.58 crore were pending in SVB Chennai and Delhi. In Chennai (sea) 80 cases were pending in assessment group for want of report from SIIB. On cross verification of records in SIIB section, only 17 cases were noticed by audit pending investigation. Lack of coordination and reconciliation between assessment group and SVB/SIIB led to discrepancy in cases reported through MTRs.

On this being pointed out (April 2005), SIIB Chennai replied that files pertaining to release of goods after provisional assessment were not monitored separately. There was therefore no proper mechanism to monitor and pursue cases after registration in SVB till receipt of their verdict.

Ministry admitted (November 2005) discrepancy in the reported figures.

1.8.2 Functioning of SVB not in conformity with Board's guidelines

Board in their circular dated 23 February 2001 laid down clear guidelines for referral of valuation dispute cases involving provisional assessment to SVB located in four major custom houses. The instructions therein even incorporated provision of fixing responsibility on concerned DC/AC for inexplicable delay in finalisation of investigations beyond four months from date of reply to the relevant questionnaire by the importer.

SVB Kolkata unit's monthly pendency report for March 2004 revealed that 57 cases were pending with them, of which, 48 were pending for more than a year. Though number of cases were pending from 1989-1990 in the unit's register, except SVB file number and importer's name, no other particulars were available therein. This indicated that Board's guidelines were not being followed by department.

1.8.3 Deficiency in EDI System

During course of review, following deficiencies were noticed in EDI System for processing provisional assessment cases.

ACC Bangalore - EDI system allowed loading of EDD at the rate of one percent of FOB/invoice value instead of assessable value. If FOB value was not available, system allowed one percent loading of duty payable. This is in violation of circular dated January 1998-Cus and November 2001-Cus, which provide for one percent/five percent EDD of assessable value in cases of under valuation and 20 percent in other cases as per Customs

Regulations 1963. Though this problem was identified by department in June 2002, it had not been rectified (May 2005).

Kolkata (port) – Though department stated (June 2005) that system for monitoring provisional assessments and related bonds/BGs existed in EDI system, verification of 11 cases revealed that BGs expired between June 2002 and December 2004 but the same were shown as pending in EDI system as well as in manual records.

I and G New Delhi – Master screen of bills of entry showed that assessments were final even for cases where assessments were provisional. There was no provision in the system to distinguish provisional duty bonds in categories like testing, SVB, valuation, market enquiry etc. It was observed that a single IEC code shown as belonging to two importers M/s. AVL Biomedical Pvt. Ltd. and M/s. Roche Diagnostics was accepted by the system. Such acceptance defeated the very purpose of identification. In another case, M/s. Ray Ban sun optics (India) Ltd. executed PD continuity bond of Rs.2 crore but the same was not debited in EDI. Department accepted that it occurred inadvertently due to oversight and stated that PD bond was debited manually. No evidence of provisional assessment and manual debit was produced. However, in Delhi, Chennai (sea and air), NCH, JNCH and ACC Mumbai, it was observed that reasons for provisional assessment, date of finalisation, reasons for non finalisation, revalidation of bond/BG, details of duty paid at the time of provisional assessment and rate of duty levied on finalisation were not available in EDI. There was no provision for showing balance after debit of current imports against PD continuity bond as per para 15 (6) of Chapter-I Appraising Manual Vol.II. Final assessments are made manually and not through EDI system, as such EDI data on pending provisional assessment was not complete.

Ministry admitted (November 2005) audit observation and stated the matter has been taken up with DG (System) for proper modification of module in EDI.

1.9 Absence of provisions to levy interest

Section 18 of Customs Act 1962, does not provide for levy of interest on differential duty to be collected after finalisation of provisional assessment. Absence of such provision in the Customs Act has resulted in deferring duty on delayed final assessment without any interest liability.

Test check revealed notional loss of interest of Rs.4.45 crore in only two commissionerates of Tuticorin and Trichy for delayed final assessment besides unauthorised financial accommodation to importers in 61 cases due to postponement of realisation of differential duty of Rs.25.78 crore for one month to 24 months. The implication of revenue loss on finalisation of 28,262 cases pending as on 31 December 2004 involving bond value of Rs.34,618 crore would be much more and would increase with corresponding delay in finalisation of these cases.

Ministry stated (November 2005) that necessary steps have been taken to draft suitable amendment in section 18 ibid.

1.10 Audit impact

The review contains audit comments involving financial implication of Rs.554.71 crore arising out of non compliance of provisions of Act, Rules and instructions etc. apart from

audit observations of procedural/lacunae/shortcomings in rules and regulations besides notional loss of interest of Rs.10.19 crore. At audit's behest, demand of Rs.29.11 crore was confirmed in five cases (one each in Hyderabad, Cochin, Coimbatore, Chennai (sea) and Kolkata), of which Rs.25.05 crore was recovered by Kolkata and Coimbatore commissionerates.

1.11 Conclusion

The review has revealed abnormal delay in finalisation of provisional assessment and consequent blockage of revenue. Provisional assessment was being resorted to even when final assessment was possible. Various irregularities pointed out in earlier audit report still continued. Lack of monitoring and ineffective internal control mechanism further contributed to postponement of substantial revenue.

In the absence of any statutory time limit for finalisation of cases or provision for levy of interest on delayed payment of differential duty, there was no onus on either the department or importers to finalise expeditiously.

1.12 Recommendations

Audit, therefore, recommends:

- **introduction of statutory specific time limit for finalisation of provisional assessment cases.**
- **the large scale practice of obtaining PD bonds for total assessable value instead of for differential duty should receive specific attention of the Ministry/Board.**
- **pendency at SVB or for chemical reports seems very high. There should be time bound programme for finalisation of these, as well as time bound clearance of present cases held up despite decisions being available.**
- **Ministry may strengthen its internal control and monitoring mechanism and use EDI effectively to track provisional assessments to the final stage.**

Review was issued to Ministry/Board in September 2005. Board were in broad agreement with conclusions and recommendations of the review and stated (November 2005) that the recommendations had been noted and suitable guidelines were being formulated for implementation at the field formations.

CHAPTER II: ADVANCE LICENSING SCHEME/DUTY EXEMPTION ENTITLEMENT CERTIFICATE (DEEC)

2.1 Highlights

- **Data furnished by 18 regional licensing authority (RLAs) revealed that free on board (FOB) value of exports actually realised was only 27 percent of that prescribed for 90,807 licences. It did not tally with that furnished by director general of foreign trade (DGFT).**

(Paragraphs 2.4.1 and 2.4.2)

- **In 146 advance licences issued by 16 RLAs duty of Rs.67.85 crore and interest of Rs.26.10 crore was recoverable. Of this 57 percent was recoverable from 13 licencees alone.**

(Paragraph 2.5.1)

- **In 76 cases of RLA Chennai and Kolkata, customs failed to initiate action against defaulter importers to recover customs duty of Rs.7.99 crore, interest of Rs.6.30 crore on duty free imports of goods worth Rs.21.34 crore.**

(Paragraph 2.5.2)

- **Non monitoring of 185 cases of non submission of documents evidencing fulfilment of EO on expiry of EO period by RLAs/customs resulted in duty foregone amounting to Rs.187.82 crore besides interest of Rs.56.02 crore.**

(Paragraph 2.6)

- **Import of material in excess of adhoc norms/standard input output norms (SION) fixed by special advance licensing committee (SALC) in 33 cases and imports made despite rejected applications in seven cases entailed recovery of duty amounting to Rs.3.52 crore besides interest of Rs.1.67 crore.**

(Paragraphs 2.7.1 and 2.7.2)

- **Extension of EO period by seven RLAs in 18 cases without imposition of composition fee and non recovery of duty and interest in cases of extension beyond validity period entailed recovery of Rs.4.21 crore.**

(Paragraphs 2.8.1 and 2.8.2)

- **Non monitoring of 1739 bonds for Rs.2,537.50 crore and non renewal of bank guarantee (BGs) in 566 cases for Rs.33.52 crore executed in nine custom houses and one RLA led to non discharge/enforcement of bonds/BGs on expiry of their EO/validity period.**

(Paragraphs 2.9.1 and 2.9.3)

- **Non realisation of foreign exchange of Rs.19.43 crore in 12 cases entailed recovery of customs duty amounting to Rs.7.68 crore besides interest of Rs.1.94 crore on unutilised inputs of Rs.13.74 crore.**

(Paragraph 2.10)

- **Other irregularities like incorrect fulfilment of EO, availment of double benefit, imports of inputs beyond validity period of licence as well as before issue licence, incorrect clubbing of licences and excess imports due to non observance of licence conditions involved incorrect grant of exemption of duty amounting to Rs.15.08 crore besides interest of Rs.6.93 crore.**

(Paragraph 2.14)

- **Lack of coordination between customs and RLA non monitoring/submission of documents in RLAs was in evidence in 194 cases of import/export involving customs duty of Rs.122.42 crore along with interest of Rs.49.11 crore besides penalty of Rs.50.59 crore.**

(Paragraphs 2.15 and 2.15.2)

2.2 Introduction

The objective of advance licensing scheme (DEEC) introduced in 1976 is to provide registered exporters with basic inputs at international prices without payment of customs duty in India. Customs notifications No.30/97, 31/97, 36/97, 48/99, 50/2000 and 51/2000 envisage duty free imports of raw materials, intermediates, components, consumables, parts, computer software, accessories, mandatory spares (not exceeding five/ten percent with effect from 25 May 1998 of cost insurance freight (CIF) value of duty free licence). Advance licences are issued on basis of inputs and export items given under SION and also on basis of adhoc norms or self declared norms subject to approval of advance licensing committee (ALC) constituted by DGFT which also has representatives of department of revenue. Scheme is administered by Ministry of Commerce/DGFT while exemption from levy of customs duty on imported inputs is allowed by Ministry of Finance/department of customs. Advance licences are granted under relevant Exim Policy.

2.3 Objectives of audit

Review on advance licensing scheme was featured in Audit Report No.4 of 1996. PAC in their 24th report (11th Lok Sabha) had adversely commented on major deficiencies in monitoring of EO and lack of internal check. In the light of shortcomings and misuse observed, Ministry of Commerce made major changes in new Exim Policy 1997-2002 to plug loopholes.

Audit evaluated working of advance licence scheme within the framework of law and Exim Policy 1997-02, covered by customs notifications issued during 1 April 1997 to 31 March 2002 (as amended). Test check of 10,008 licences involving CIF value of Rs.24,915 crore out of 90,807 licences issued for CIF value of Rs.84,701.51 crore was undertaken in 18 offices of JDGFT and concerned custom houses with a view to seek assurance that:-

(i) main objectives of the scheme viz. fulfilment of EO, timely realisation of foreign exchange was achieved,

(ii) bonds/bank guarantee (BG)/legal undertaking (LUT) were obtained and wherever required enforced by licensing/customs authorities,

(iii) pre/post importation conditions laid down in customs notifications were duly fulfilled and

(iv) proper internal controls like periodical monitoring and coordination between licensing and customs authorities were in place.

2.4.1 Macro data furnished by 18 RLAs located in eight States.

(Amount in crore of rupees)

Year	No of DEEC licences issued	CIF value of licences prescribed	CIF value of actual imports	Amount of duty foregone on imports	FOB value of exports prescribed	FOB value of exports actually realised
1997-1998	16247	6593.44	4918.02	1802.70	13322.40	6267.24
1998-1999	16983	10895.45	5424.76	1856.68	19014.19	7042.11
1999-2000	18534	13497.20	4366.79	1549.47	20649.82	8776.08
2000-2001	19082	20596.19	4605.43	1875.49	55384.55	8385.32
2001-2002	19961	35634.72	4751.56	1922.24	58079.48	15221.67
Total	**90807**	**87217.00**	**24066.56**	**9006.58**	**166450.44**	**45692.42**

Details of CIF value of actual imports, duty foregone on imports has not been furnished by JDGFT Chennai, Pondicherry, Kolkata, Bangalore, Ahmedabad, Vadodara, Surat, Rajkot, Hyderabad and Visakhapatnam. and FOB value actually realised by Pondicherry, Kolkata, Mumbai, and Pune not available.

Above figures, reveal that FOB value of exports actually realised was only about 27 percent of that prescribed.

2.4.2 Macro data furnished by DGFT office

(Amount in crore of rupees)

Year	No of DEEC licences issued	CIF value of licences prescribed	CIF value of actual imports	*Amount of duty foregone on imports	FOB value of exports prescribed	FOB value of exports actually realised
1997-1998	19330	9712.30		3878.00	20071.58	
1998-1999	16682	9272.11		4135.09	16408.48	
1999-2000	17593	12002.30		4429.45	19992.01	
2000-2001	17026	23462.98		5611.88	39274.61	
2001-2002	19921	33009.46		7890.25	45353.04	
Total	**90552**	**87459.15**		**25944.67**	**141099.72**	

**Duty foregone furnished by Ministry of Finance, drawback directorate without commissionerate wise details as such it does not pertain to 18 RLAs covered in table.*

Information in table (para 2.4.1) has been furnished by RLAs whereas information in table (para 2.4.2) has been furnished by DGFT and Ministry of Finance. Comparison revealed that:

- the information does not tally. Licences issued as per RLAs were 90807 whereas according to DGFT, number of licences issued during five years period were 90552. Similarly CIF value and FOB prescribed there against do not tally. CIF value as furnished by RLAs is less by Rs.242.15 crore while FOB value prescribed was more by Rs.25350.72 crore.

- Para 7.25 of HBP Vol.I (as on 31 March 2001) provides for submission of bank certificate of exports and realisation by licence holder in appendix 25 or 14-B as the case may be while para 7.26 ibid provides for submission of DEEC both for imports and exports for redemption of licences. After redemption of licences, discharge certificate is to be sent to customs authorities. Yet, DGFT has expressed their inability to provide data of actual realisation of FOB value and imports made against the licences issued during the five years period not only for all licences issued but even for those licences which were redeemed.

Audit findings are contained in the succeeding paragraphs.

2.5 Non/shortfall in fulfilment of EO

According to para 7.14 of Exim Policy 1997-02, period of fulfilment of EO under duty free licence commences from date of issue of licence. EO shall be fulfilled within a period of 18 months except in case of supplies under special imprest licence/advance licence to project/turnkey projects. In case of bona fide default in fulfilment of EO according to para 7.28 of HBP Vol I, licence holder is required to pay to:-

(i)(a) customs authority, customs duty on unutilised value of imported material along with interest at 15 per cent per annum;

(b) licensing authority, an amount equivalent to three per cent of CIF value of unutilised imported material as per public notice dated 17 September 2001. However, these provisions shall not apply if unutilised imported material was freely importable.

(ii) if EO is fulfilled, in terms of quantity, but not value, no penalty shall be imposed provided licence holder has achieved minimum prescribed value addition/positive value addition. However, if value addition falls below prescribed/positive level, licence holder is required to deposit equivalent amount so that 100 times the deposited amount and FOB value realised in Indian rupees together account for positive value addition over CIF value.

(iii) if EO is not fulfilled both in terms of quantity and value, licence holder shall for regularisation pay according to (i) and (ii) above

2.5.1 Non fulfilment of EO

Test check revealed that 146 advance licences were issued by 16 RLAs with EO of Rs.309.77 crore. Though licencees imported raw materials for CIF value of Rs.134.19 crore, no exports were made (May 2005) and entire imported material remained unutilised. Hence the licencees were liable to pay customs duty amounting to Rs.67.85 crore along with interest of Rs.26.10 crore to customs authorities. They were also liable to surrender special import licence (SIL) equivalent to five times CIF value of imported goods for licences issued upto 16 September 2001 and thereafter three per cent CIF value of unutilised raw materials as per public notice 37 of 17 September 2001 to licensing authority which worked out to Rs.291.43 crore apart from penalty of Rs.1.35 crore on shortfall in fulfilment of EO. In reply, RLA Ahmedabad, Mumbai and Kolkata accepted (September/October 2005) objections in 12 cases and initiated action for recovery of Rs.10.57 crore.

Audit noticed that just 13 licencees (in six RLAs) comprised 57 percent of total recoverable amount on account of duty and interest payable to customs department and penalty to DGFT as given in the following table: -

(Amount in lakh of rupees)

Sr. No.	Licencees	Licence No.	Date	Duty	Interest	Penalty
1.	Modipon Fibres Co.	510039962	13.7.01	144.96	64.47	3.13
2.	Gujarat Guardian Ltd	500692	26.2.98	171.49	137.19	4.89
3.	-do-	501226	27.8.98	174.82	113.63	2.89
4.	-do-	510056227	28.03.02	138.98	31.27	3.05
5.	-do-	510050401	8.01.02	136.84	39.34	3.01
6.	-do-	510032197	15.02.01	192.25	72.09	3.17
7	Ranbaxy Labs Ltd.	501316	22.9.98	173.33	160.33	3.13
8.	-do-	501394	15.10.98	148.20	109.30	2.74
9	-do-	501855	19.2.99	170.05	136.04	2.25
10.	Satnam Overseas Ltd.	510049227	19.12.01	110.31	30.34	21.84
11.	-do-	510053521	19.2.02	115.97	22.76	11.48
12.	Dishman Pharmaceutical	810013577	8.10.01	154.27	-	2.45
13.	BPL Ltd.	710008405	14.5.01	132.00	70.95	2.81
14.	Nobel Merchandise (I) Ltd.	310002643	29.7.99	165.12	134.16	2.21
15.	Alam Tannery	210026490	13.9.01	156.72	55.35	2.47
16.	Jord Engg. (I) Ltd.	137947	21.12.99	496.12	-	11.67
17.	Bharat Electronic Ltd.	710000317	6.8.99	104.38	-	-
18.	Indian Designs	710008341	9.5.01	178.79	-	-
19.	VWF Industries Ltd.	710009028	26.6.01	180.00	-	-
20.	NSP Electronics	710009005	22.6.01	950.00	-	
	Total			**4194.60**	**1177.22**	**83.19**

In 25 cases of RLA Bangalore, CIF value of actual imports and other details were not available.

Apart from these, some others are narrated below:-

M/s. Tamilnadu Steel Tubes Ltd. Chennai, was issued advance licence (November 1999) by JDGFT Chennai and allowed to import raw material for CIF value of Rs.2.15 crore with EO of Rs.3.48 crore for export of steel tubes. Licence holder imported raw material worth Rs.1.38 crore but did not export end products till February 2005. Hence, duty and interest amounting to Rs.91.87 lakh and Rs.79.24 lakh respectively were recoverable for non-fulfilment of EO. Besides, penalty of Rs.1.38 lakh was also recoverable.

M/s. Epicenzymes Pharmaceutical and Industries Chemicals Ltd. (Mumbai) was issued advance licence for duty free import of various goods with CIF value of Rs.1.42 crore, with EO of Rs.2.30 crore. Though, licencee imported goods worth Rs.77.38 lakh, no exports were made. Hence they were liable to pay customs duty of Rs.47.14 lakh along with interest of Rs.27.11 lakh apart from penalty of Rs.0.77 lakh on unutilised imported material.

M/s. Mahendra Petrochemicals Pvt. Ltd., Ahmedabad was issued advance licence (October 2000) for duty free import of goods valued at Rs.84.83 lakh with EO of Rs.1.13 crore. Though licencee imported raw material of CIF value of Rs.60.63 lakh in February/March 2000 and used the same in manufacturing activities, finished goods were not exported and were sold in local market. For selling finished goods in local market, licencee had not sought permission as required under para 4.14 of Exim Policy. Hence unutilised imported material was liable to duty amounting to Rs.29.45 lakh along with interest of Rs.22.09 lakh apart from penalty of Rs.0.61 lakh. On this being pointed out (May 2005), RLA Ahmedabad accepted (September 2005) the objection.

2.5.2 Non recovery of customs duty and interest in cases adjudicated by JDGFT for non submission of documents

Review of cases adjudicated by two RLAs Chennai and Kolkata revealed that in 76 licences issued (April 1997 to February 2002) with Chennai and Kolkata as port of registration, licence holders failed to fulfil EO after importing raw materials for CIF value of Rs.21.34 crore. Consequently, RLAs adjudicated the cases and levied penalty for failure to do so. Customs duty of Rs.7.99 crore and interest Rs.6.30 crore involved in these cases has not so far been recovered (November 2005) by the respective custom houses. Although RLA Kolkata communicated to customs the fact of issue of defaulter order and orders in adjudication, customs did not initiate action against defaulter importers to produce evidence in discharge of EO as per condition (vi) of notification No.30/97-Cus. In Chennai, action taken by customs was still awaited (November 2005).

2.5.3 Shortfall in fulfilment of EO

Audit scrutiny revealed that 152 licences were issued by 16 RLAs with prescribed EO of Rs.537.25 crore. Though licencees imported inputs worth Rs.268.86 crore and fulfilled EO to the extent of Rs.399.12 crore, EO fulfilled was short either quantitatively or proportionate value wise by Rs.155.57 crore. Of these, in 52 cases, value addition achieved was negative ranging from 0.35 percent to 91.32 percent, while in other cases quantitative shortfall was noticed. This resulted in non utilisation of duty free imported goods worth Rs.72.06 crore and licencees were liable to duty amounting to Rs.27.09 crore along with interest of Rs.16.72 crore apart from penalty of Rs.22.40 lakh on unutilised goods. On this being pointed out (September 2003 to April 2004) RLA Mumbai and Kolkata adjudicated 14 cases raising demand of Rs.4.50 crore, of these a sum of Rs.43.97 lakh has since been recovered in six cases. RLA Hyderabad reported recovery of Rs.16.84 lakh in one case. Reply in remaining cases was awaited (November 2005).

A few cases are narrated below:-

M/s. S.P. Garments (Chennai) was issued advance licence (March 2000) and allowed to import raw materials worth Rs.1.01 crore with EO of Rs.1.22 crore. Though licencee imported raw materials for Rs.67.96 lakh, EO achieved was only partial leading to shortfall of Rs.48.03 lakh. Therefore, licence holder was liable to pay customs duty of Rs.36.10 lakh and interest of Rs.25.33 lakh on excess imported quantity worth Rs.38.37 lakh, which had not been recovered even after lapse of 27 months from date of expiry of EO period (September 2002).

M/s. Hussnain International (Delhi) was issued advance licence (February 2000) with EO of Rs.1.41 crore. Though licencee made actual imports of input worth Rs.1.17 crore, export of finished product of Rs.78.18 lakh resulted in negative value addition of 33 percent with shortfall in EO to the extent of Rs.62.32 lakh. Hence they were liable to pay duty amounting to Rs.68.06 lakh along with interest of Rs.39.13 lakh apart from penalty of Rs.0.39 lakh on unutilised imported goods of Rs.1.07 crore.

M/s. Zenith Ltd. was issued advance licence (May 2001) by JDGFT Mumbai for duty free import of raw material worth Rs.4.56 crore with EO of Rs.4.96 crore. Licencee had imported goods valued at Rs.4.13 crore and made exports worth Rs.75.44 lakh resulting in shortfall in achievement of EO to the extent of Rs.4.20 crore (negative value addition of 81.74 percent). As such they were liable to pay customs duty of Rs.1.91 crore along with interest of

Rs.69.31 lakh apart from penalty of Rs.3.38 lakh on unutilised value of imported goods of Rs.3.67 crore.

M/s. Sterlite Industries India Ltd. was issued advance licence (August 2000) by JDGFT Mumbai for duty free imports of various goods worth Rs.47.54 crore against export of 'single mode optical fibre' (300000 kms) for Rs.56.59 crore. Audit scrutiny revealed that licensee had imported 2191.70 kg of silica substrate tubes, 16086.72 kg of silica sleeving tubes, and 1164 kg silica inlet tubes to export 107100.70 km of single mode optical fibre. According to SION norms, for above exports licencee was entitled to import 1249.87 kg of silica substrate tube, 10100.67 kg of silica sleeving tubes and 415.51 kg of silica inlet tubes. There was shortfall in achievement in terms of quantity as per SION. Excess imports of above items entailed recovery of Rs.1.81 crore as duty and Rs.1.04 crore as interest on unutilised value of Rs.6.63 crore.

M/s. Usha Beltron Pvt. Ltd. was issued advance licence (December 1999) by JDGFT Kolkata for CIF value of Rs.17.22 crore against EO of Rs.25.87 crore. Licencee fulfilled 92.45 percent of EO during validity of the licence. ZJDGFT, Kolkata discharged the licencee from EO after recovery of duty of Rs.22.90 lakh including interest of Rs.8.84 lakh for excess import of two items (waste scrap and LAM coke). Scrutiny of documents, however, revealed that there were excess imports in respect of the remaining nine other items also. Short recovery of duty and interest on such excess import worked out to Rs.20.34 lakh. On this being pointed out, JDGFT, Kolkata reported (September 2005) recovery of the full amount.

M/s. GKW Ltd. Kolkata was issued advance licence (September 1998) for duty free import of goods valued at Rs.1.07 crore against EO of Rs.1.50 crore. Licencee imported goods worth Rs.78.88 lakh against which export was only Rs.97.99 lakh resulting in quantity wise shortfall in fulfilment of EO. As such the licencee was liable to pay customs duty of Rs.14.79 lakh along with interest of Rs.12.02 lakh.

M/s. Aurobindo Pharma, Hyderabad was issued advance licence (March 2002) for CIF value of Rs.40.16 crore with EO of Rs.48.50 crore. Even after expiry of two extensions, licencee could export 20824.60Kg. of indinavir sulphate against EO of 25000 Kg. Total unutilised value of raw materials imported was Rs.1.94 crore for which liability of customs duty was Rs.1.01 crore and interest Rs.9.03 lakh.

2.5.4 Non- fulfillment of EO due to short shipment

M/s. Uttam Steel Ltd. (RLA Mumbai) was issued advance licence (May 1999) for export of 200 MT C.R. galvanised sheets for FOB value of Rs.43.56 lakh against CIF value of Rs.32.26 lakh. It was noticed that against total shipment of 100 bundles involving two MT each (200 MT), 30 bundles were short shipped. Adoption of total export quantity as 199 MT was not in order as product bundles exported were of the same size as specified in purchase order. Taking into account average weight of two MT of each bundle, quantity short shipped worked out to 60 MT. Due to short shipment there was shortfall in fulfilment of EO, therefore, licencee was liable to pay customs duty of Rs.7.78 lakh and interest of Rs.6.22 lakh as well as penalty of Rs.0.26 lakh as three percent of unutilised CIF value in terms of para 7.28 of HBP Vol.I. Reply on this being pointed out in December 2004 was awaited (November 2005).

2.5.5 Shortfall in EO due to de logging

M/s. Zuari Industries Ltd., Chennai was issued advance licence (RLA Chennai) in July 2000 for import of "components of furniture" for CIF value of Rs.19.81 lakh with EO of 89.100 cubic meter of furniture for FOB value of Rs.31.70 lakh. Licencee exported entire quantity. However, 72.01 cubic meter was rejected and returned to licence holder. The re-import was de-logged from the advance licence. Excess import arising as result of de-logging of the licence remained to be regularised by payment of duty of Rs.7.58 lakh and interest of Rs.4.83 lakh.

2.6 Delay in monitoring cases of non-submission of documents by concerned RLA/Customs

According to para 7.24 of HPB Vol.I. (1997-2002) licensing authority shall maintain proper records for monitoring achievements of EO and other particulars within specific period for completion of EO. Every licencee has to submit requisite evidence in discharge of EO within a period of two months. In case of failure to complete EO or failure to submit information regarding export, licensing authority should initiate action. However, in respect of shipments where 180 days period for realisation of foreign exchange has not become due, licensing authority shall not initiate action for non submission of bank certificate of exports and realisation, provided, other documents substantiating fulfilment of EO have been furnished. In such cases, licensing authority should take action such as, refuse further licences, enforce conditions of the licence and undertaking and also initiate action as per law.

During review of 185 licences, it was noticed that though EO period had expired, licencees did not submit evidence for fulfilment of EO. On the other hand, RLAs too failed to initiate action against licence holders to call for details of import and export for adjudication. CIF value of import and FOB value of export prescribed in the licences were Rs.339.92 crore and Rs.491.54 crore respectively, on which duty foregone amounted to Rs.187.82 crore besides interest of Rs.56.02 crore on CIF value of prescribed/actual imports. RLA Hyderabad reported (October 2005) recovery of Rs.18.27 lakh in one case.

2.7 Excess imports due to violation of standard input output norms (SION)

According to para 7.8 of HBP Vol.I. (1997-2002), licensing authority issues advance licences with actual user condition to manufacturer exporter or merchant exporter where the SION are not fixed, based on self declaration and undertaking by the applicant for final adjustment as per adhoc norm/SION fixed by the SALC. Applicant gives undertaking that he shall abide by the norms fixed by SALC and accordingly pay duty together with interest on unutilised inputs. In such cases, where the norms are not finalised by ALC within six months, norms as applied for shall be treated as final. If application for fixation of norms is rejected on account of non-furnishing of required documents/information, the licence holder shall be liable to pay duty, interest and penalty.

2.7.1 Import of material in excess of adhoc norms

Audit observed that in 33 applications for fixation of adhoc norms, though SALC had admitted applications, it reduced the norms declared by licencees. They had imported entire quantity as per the self declared norms. Since SALC had reduced the quantity, they had to

pay customs duty amounting to Rs.2.87 crore along with interest of Rs.1.37 crore on excess imported raw material worth Rs.4.22 crore as per undertaking furnished by them. However, the licencees had not paid duty and RLAs had not adjudicated the cases and informed the customs authorities to recover duty on such excess imports. In reply, RLA Mumbai reported (September 2005) recovery of Rs.5.38 lakh including interest in one case.

2.7.2 Non recovery of duty on rejected applications for fixation of norms

In respect of seven licences issued by two RLAs, adhoc norms submitted by licencees were rejected by SALC for want of information and existence of nexus between imported and export goods. Duty and interest recoverable on actual imported inputs worked out to Rs.65.04 lakh and Rs.29.86 lakh respectively.

Though SALC had initiated action on applications for fixation of adhoc norms within the prescribed period, licencees imported raw materials in full and did not come forward to pay duty and interest on imports made against licences, which had been rejected by SALC. Imports were made without norms approved by SALC and RLAs failed to adjudicate the cases according to provisions and declarations obtained from the licencees for final adjustment of actual imports as per approved norms.

2.8 Non realisation of penalty for non fulfilment of EO

According to para 7.28 (ii) of HBP Vol.I, if EO is fulfilled in terms of quantity, but there is shortfall in terms of value, no penalty shall be imposed if there is positive value addition. If value addition falls below positive level, licence holder is required to deposit an equivalent amount so that 100 times deposited amount and FOB value realised in Indian rupee together account for positive value addition over CIF value.

In respect of 10 licences issued by JDGFT Coimbatore, the licencees had not made any export after import of raw material for permitted CIF value of Rs.25.18 crore. For non-fulfilment of EO, the licencee had paid the customs duty with interest to the customs authorities; however, the penalty amount of Rs.29.97 lakh demanded by the licensing authority was awaiting recovery for two to five years from the expiry of EO period

In respect of 11 licences issued by JDGFT Hyderabad, Mumbai and Ernakulam, EO had been partly fulfilled and licencees paid duty and interest on unutilised raw materials worth Rs.169.83 crore to customs authorities but penalty amount of Rs.20.76 lakh payable to RLAs for shortfall in fulfilment of EO was not paid.

Total penalty unrealised by RLAs amounted to Rs.50.73 lakh in aforesaid 21 cases, while in reply, NCH Mumbai stated that a SCN for recovery of duty and interest of Rs.72.77 lakh has been issued in May 2005 in one case.

2.8.1 Non realisation of composition fee

According to para 7.22 of HBP Vol.I (1997-2002), RLAs shall grant extension of EO period for six months from date of expiry of licence on receipt of composition fee of one percent on unfulfilled FOB value of EO corresponding to CIF value of imports made, and further extension of six months shall be granted on receipt of composition fee of five percent.

Audit scrutiny revealed that in 18 licences issued by seven RLAs, licencees had not paid composition fee in full. Extension of EO period allowed by licensing authorities without

collecting composition fee was not in order and led to non recovery of fee amounting to Rs.1.39 crore in these cases.

Of these 18 licencees, five were liable to pay Rs.1.09 crore representing around 78 percent of total recoverable amount.

2.8.2 Exports made beyond valid EO period

M/s. Tractor and Farm Equipment and two others were issued five advance licences by RLA Chennai (May 1997 to March 2001). As exports in these cases were made beyond valid EO period, they were not eligible for consideration against EO as no composition fee was paid and no extension was allowed. Thus, for excess imports made consequent to shortfall in fulfilment of EO, payment of duty and interest was necessary. Customs duty and interest to be recovered in above five cases worked out to Rs.1.70 crore and Rs.1.12 crore respectively.

2.9 Non-enforcement of bonds/BG

According to customs notifications issued from time to time, the importer at the time of clearance of imported material is required to execute a bond/BG with customs department to pay on demand an amount equal to duty leviable but for exemption, on imported material in respect of which conditions specified therein have not been complied with. One of the conditions for grant of exemption is that the licence holder should submit export obligation discharge certificate (EODC) issued by RLAs to customs department within 30 days of expiry period allowed for fulfilment of EO or within the extended period granted.

2.9.1 Non discharge/enforcement of bond by customs

Audit scrutiny revealed that in 1739 cases of imports made through eight customs commissionerates, on advance licences issued by six RLAs, bond for value equivalent to duty foregone amounting to Rs.2537.50 crore were executed with customs authorities. In all these cases EO period expired; however, in cases where EO had not been fulfilled, enforcement of bonds was to be initiated to recover duties from defaulting licencees. The cases have been kept alive for want of EODC from licensing authorities. As huge amount of Government revenue is involved, custom houses should have reviewed the cases expeditiously in order to enforce bonds in cases of default to recover the duty.

Board's circular No.24/96-Cus. dated 19 April 1996 provided that monitoring of EO remain the primary responsibility of licensing authority (DGFT) and in addition to submission of DEEC book by licence holders to customs, EODC from licensing authority be insisted upon for discharge of bonds. Thus both departments failed to adequately discharge their control functions. In reply, customs department (ACC Mumbai) intimated (August 2005) that in seven cases bonds were cancelled while in 54 cases SCNs were issued to the parties.

2.9.2 Execution of insufficient bond

It was observed that in 22 cases of imports made through Delhi and ICD Bangalore commissionerate insufficient bonds were accepted by customs authorities to the tune of Rs.125.56 crore. In case of necessity, government revenue to that extent would not be legally enforceable and would remain unprotected.

2.9.3 Non renewal of BG executed with customs/JDGFT

In 552 cases BGs executed with seven customs houses were not renewed after validity period, though licencees had not fulfilled EO and EODC had not been issued by RLAs. It

was the duty of customs houses to enforce BGs before their maturity period wherever licencees had not come forward to renew them. In these cases government revenue equivalent to duty of Rs.33.37 crore had not been safeguarded.

Apart from this 14 BGs executed with JDGFT, Chennai for Rs.15 lakh towards excise duty foregone for obtaining advance release order were also not renewed. Total BGs not renewed thus, worked out to Rs.33.52 crore. In reply, NCH Mumbai intimated (July 2005) that in three cases BGs for Rs.12.31 lakh were encashed while in four cases licences were redeemed on fulfilment of EO.

2.9.4 Non/insufficient execution of BGs with customs

According to Board's circular No.45/96-Cus. dated 28 August 1996, importers of different categories were required to execute BGs as prescribed for them.

(a)	Super star/star trading houses/export houses/PSUs	-	Nil
(b)	Manufacturers/exporters other than at (a) above	-	25 percent
(c)	Others	-	100 of duty saved

Audit scrutiny revealed that 12 cases in four custom houses wherein BGs executed were Rs.2.69 crore against requisite amount of Rs.6.16 crore, involved shortfall in amount of BGs to the extent of Rs.3.47 crore.

Of these in Cochin custom house, BG of M/s. Zam Zam Exports Trissur, of Rs.0.80 lakh expired on 11 April 2001. In another case of M/s. General Spices Trissur, BG was for 25 percent against requirement of 100 percent. All the so called exporters were represented by one and the same person who was absconding, as such BGs were deficient to the extent of Rs.1.13 crore resulting in loss of interest of Rs.61.69 lakh.

2.9.5 Furnishing of fake BG

M/s. Kozy Silk Ltd. (Bangalore) executed BG with customs department for Rs.7.31 lakh valid upto 25 February 1999 as security for duty forgone in respect of imports made under licence issued in August 1995. While seeking extension (January 2002) of BG for non fulfilment of EO, it was found to be fake. No penal action except to address letters to licencee in January 2002/2003 and March 2004 (which were returned undelivered) for payment of duty of Rs.7.31 lakh was taken by department.

2.10 Non realisation of foreign exchange

According to para 7.25 of HBP Vol. I read with para 11.3 of Policy, licence holder is required to submit bank realisation certificate within six months of shipment showing receipt of foreign exchange from concerned bank as evidence in fulfilment of EO.

Audit scrutiny revealed that against 12 licences issued by four RLAs, foreign exchange had not been realised in full. RLAs had also not adjudicated the cases to obtain requisite documents in support of having fulfilled EO and evidence for realisation of foreign exchange. Total CIF value of inputs made in proportion to unrealised foreign exchange worked out Rs.13.74 crore on which the duty recoverable was Rs.7.68 crore with interest of Rs.1.94 crore.

2.11 Non recovery of penalty

According to para 4.20 of Exim Policy read with section 11(2) of Foreign Trade (Development and Regulation) Act, 1992, penalty is leviable for violation of any of the conditions of licence or failure to fulfil EO. Where any person makes or abets or attempts to make any export or import in contravention of any provision of this Act or any rules or orders made thereunder or export and import policy, he shall be liable to penalty not exceeding one thousand rupees or five times value of goods in respect of which any contravention is made or attempted to be made, whichever is more.

A penalty imposed under this Act, may, if it is not paid, be recovered as an arrear of land revenue and importer-exporter code number of the person concerned, may on failure to pay the penalty by him, be suspended by the adjudicating authority till the penalty is paid.

Audit scrutiny revealed that ten RLAs had imposed penalty in 573 cases for a total amount of Rs.478.52 crore. However, recovery was meagre in 33 cases for only Rs.15.54 lakh, which represented even less than one percent. Balance amount of Rs.478.37 crore was pending for recovery for period ranging from six months to 19 years in 543 cases.

Of these, penalty of Rs.409 crore (i.e. 85 percent) was recoverable in 286 cases by three RLAs i.e. Delhi, Mumbai and Ahmedabad alone for non-fulfilment of EO.

2.12 Incorrect reckoning of EO by including exports made prior to date of application for advance licence.

According to para 7.18 of Exim Policy 1997-2002, exports/supplies made from date of receipt of an application for duty free licence alone could be counted towards discharge of EO. In case of application for advance intermediate licence, only such supplies shall be covered towards discharge of EO, which are made after the issuance of the invalidation letter to ultimate exporter.

In 22 advancee licences issued by RLA Coimbatore and three licences issued by RLA Chennai under deemed export category, licencees had supplied/exported their products before date of submission of application to obtain the advance licence. Supplies made prior to the date of application had been reckoned for fulfilment of EO, which was contrary to the provisions of Exim Policy. Total CIF value of raw materials used in the export/supplies made prior to the date of application was Rs.16.49 crore and duty recoverable thereon was Rs.9.06 crore beside interest of Rs.5.61 crore.

2.13 Non realisation of duty and interest in cases adjudicated by custom houses

According to para 7.2 and 7.4 of Exim Policy 1997-2002, DEEC licences are issued with actual user condition. Customs notifications Nos.30/97 and 51/2000 issued under the aforesaid policy provisions imposed a condition viz. exempted materials were not to be disposed of or utilised in any manner except for utilisation in discharge of EO. Section 28 AA of Customs Act, provides time limit of three months for payment of demand of duty determined under section 28 (2) from date of determination failing which importer is liable to pay duty along with interest.

Review of confirmed demands pending realisation in respect of DEEC scheme at Chennai, Bangalore and Delhi custom houses revealed that 102 advance licences were issued for import of raw materials under aforesaid notifications with actual user condition, but material was diverted to local market in violation of conditions of notifications. Customs house/directorate of revenue intelligence took action on misuse of licence, by licence holders and confirmed demand (between December 1997 to January 2005) of duty of Rs.113.17 crore, fine and penalty of Rs.29.56 crore and Rs.90.88 crore respectively. Licence holders paid a sum of Rs.16.58 crore by cash/enforcement of BGs but balance of Rs.217.02 crore was pending realisation against these licences.

Of these, demand in five cases ranged for more than Rs.5 crore to Rs.27 crore.

A case is illustrated below.

M/s. Manba Enterprises, a partnership firm, was issued seven advance licences by RLA, Pondicherry and 11 advance licences by RLA, Chennai. Licence holder registered them with Chennai (sea) custom house and imported "non magnetic SS sheet/coil of AISI 304 grade" for total value of Rs.23.09 crore under above notification. They had stated in licence applications that place of manufacture was located in three different places at Kumbakonam, Chennai and New Delhi. Investigation made by DRI subsequently proved that declaration was incorrect and no manufacturing unit existed in those places. Consequent on non fulfilment of EO and violation of conditions of notification, demand for customs duty of Rs.15.42 crore was confirmed by customs department (February/March 2004) along with fine of Rs.6 crore and penalty of Rs.15.42 crore.

The amount was still pending realisation (May 2005). Reason for non realisation were not on record.

2.14 Other irregularities

Irregularities like incorrect fulfilment of EO, availment of double benefit, imports of inputs beyond validity period of licence as well as before issue of licence, incorrect clubbing of licences and excess imports due to non observance of licence conditions etc. involved incorrect grant of exemption of duty amounting to Rs.15.08 crore besides interest of Rs.6.93 crore as given below:

(Amount in lakh of rupees)

Sr. No.	Irregularity	Number of importers/ licences involved	RLA	Duty recoverable	Interest recoverable	Whether accepted
1.	Incorrect fulfillment of EO	1/3	Chennai	30.78	12.91	No reply
2.	Availment of double benefit	7/10	Coimbatore and Chennai	95.91	61.96	-do-
3.	Import of inputs beyond the validity of licences	13/17	New Delhi and Mumbai	952.00	385.00	SCN was issued in one case for Rs.21.59 lakh.
4.	Incorrect allowance of imports before issue of licence	7/7	New Delhi	126.09	61.84	No reply

5.	Excess imports than licence	1/1	New Delhi	210.00	126.00	No reply
6.	Incorrect reckoning of exports made by third party	1/2	Coimbatore	11.25	6.38	-do-
7.	Incorrect clubbing of licences	2/7	Madurai and Coimbatore	14.27	6.59	-do-
8.	Irregular grant of advance licences	1/2	Mumbai	42.39	18.02	-do-
9.	Lack of follow up action	1/5	Bangalore	2.80	-	No reply (SIL Rs.48.19 lakh)
		13/38	Ahmedabad & Vadodara	-	-	CIF value of Rs.58.44 crore. RLA Ahmedabad accepted objection in 11 cases.
10.	Issue of advance licence on misdeclaration	1/1	Bangalore	-	-	Non utilisation of imported inputs worth Rs.1.87 crore in export product.
11.	Non utilisation of raw material in export product	1/1	Kolkata	12.24	8.01	Rs.0.88 lakh payable to RLA.
12.	Issue of fresh licences where EO was not met for previous licences	1/11	Bangalore	-	-	No reply
13.	Avoidance of payment of duty	1/1	Bangalore	-	-	No reply
14.	Excess import due to non observance of licence conditions	1/2	Madurai	10.04	6.32	-do-
	Total	**39/108**		**1507.77**	**693.03**	**21.59**

In reply, NCH Mumbai stated that a SCN has been issued (May 2005) demanding duty and interest of Rs.21.59 lakh in one case.

2.15 Non Monitoring of EO

Para 7.24 of HBP Vol.I (1997-2002) provides that licensing authority shall maintain proper records to monitor achievement of EO and other particulars within specific period. Licence holder is required to submit requisite evidence in discharge of EO within two months from expiry of period prescribed to meet EO. In case of failure to complete EO or to submit relevant information/records, licensing authority should take action such as refusing further licence, enforce conditions of licence and initiate penal action with recovery of duty/interest.

It was observed in audit that in RLA Chennai, no import/export documents were furnished by the licence holders in 54 cases in which EO period expired between September 2000 and September 2003. In 14 licences issued by RLA Pondicherry, the importer did not furnish the

import/export details. In respect of 12 licences issued by RLA Ahmedabad, documents were not produced by licencees towards fulfilment of EO even after 12 to 17 months after EO period. In absence of any import/export details having been furnished by the licencees in 80 cases, customs duty of Rs.36.78 crore and interest of Rs.6.14 crore remained un-recovered besides penalty of Rs.49.17 crore in 12 cases. In reply RLA Pondichery reported recovery of Rs.9.28 lakh in two cases.

2.15.1 Non issuance of refusal order/initiation of penal action

According to para 7.24 and 7.25 of HBP Vol. I, licensing authority with whom the advance licence holder executes legal undertaking (LUT) shall maintain proper record in master registers. Licence holder is required to submit requisite evidence in discharge of EO within two months from date of expiry of period of obligation. In case, licence holder fails to complete EO or fails to submit the relevant information/documents, licensing authority shall refuse issuance of further licences, enforce conditions of licences and LUT and shall take penal action.

Scrutiny of records (JDGFT Mumbai) revealed that in respect of 39 licences pertaining to 1999-2000 and 2001-2002, involving FOB value of Rs.49.16 crore, licence holder failed to submit any information/details, and licensing authority had not taken any action, such as issue of refusal order, forfeiture order and initiation of penal action etc. as prescribed above.

It was also noticed that in 17 cases involving FOB value of Rs.40.19 lakh, licensing authority had only refused the issuance of further licence. Further action such as enforcement of condition of licence and initiation of penal action was pending.

2.15.2 Lack of co-ordination between licensing and customs authority

As per para 7.24 read with para 7.28 of HBP Vol.I 1997-02 where licence holder fails to complete EO or fails to submit relevant information/documents, licensing authority shall take action by refusing further licences, enforcing the conditions of the licence and LUT and shall also initiate penal action as per law. In case of default in fulfilment of EO, licences shall be regularised in the manner stated in para 7.28 of HBP Vol.I. Customs department was responsible for keeping on record, LUT, bond and bank guarantee and raising of demand in cases where imported goods were not utilised for intended purpose.

Implementation of the scheme required co-ordinated functioning of the two authorities i.e. DGFT and Customs. However, licensing authorities responsible for monitoring EO did not have any mechanism to know import/export details till documents were submitted by users of the scheme. Licensing authority did not call for information relating to imports/exports from customs department. Since fulfilment of EO is directly linked to imports made, it was necessary for licensing authority to have such details on record. Customs authorities, on the other hand, cleared goods imported/exported but did not devise any system to ascertain actual fulfilment of EO although non fulfilment of EO renders importer liable for payment of duties as per customs notifications. Customs department does not ascertain details of EO from licensing authority, in order to ensure that BGs are revalidated and demands for unutilised imports are raised. There was also no formalised system of exchange of information regarding defaulting exporter between the two authorities.

In 90 licences issued by JDGFT Mumbai (1998-2002), licence holders had not furnished documents/information towards discharge of EO, even after validity period of licences.

However, no action was initiated, as per above cited provisions, by licensing authority for issuance of refusal order etc.

Data collected by audit from Customs/EDI department, revealed that though the licencees had imported goods worth Rs.128.21 crore, export details were not available. Therefore customs duty of Rs.76.79 crore along with interest of Rs.36.75 crore (upto December 2004), plus Rs.1.28 crore as an amount equivalent to one percent of the CIF value of unutilised import material was recoverable. Files made available by licensing authority did not contain any details about import made though in these cases imports in fact were made as seen from database of Customs department. Neither Customs department nor the licensing authority had taken any action to demand and recover these dues. (November 2005.)

In other 24 cases of JDGFT Mumbai, though imports were made for CIF value of Rs.14.02 crore, no export details were available on record and no action was taken to recover duty of Rs.8.85 crore and interest of Rs.6.22 crore.

Non-existence of proper mechanism for co-ordination between DGFT and customs authorities in case of default, resulted in government revenue to the extent of Rs.130.03 crore remaining not demanded and collected from licence holders. In reply, NCH Mumbai reported (July 2005) recovery of Rs.21.82 lakh in two cases.

2.15.3 Computerisation/EDI system

Non-availability of licence wise details of import/export

Indian Customs EDI System (ICES) envisages acceptance of customs documents and exchange of information electronically in centralised/structured formats, integrating customs with other agencies such as Reserve Bank of India, DGFT, custodian of imports and exports goods and regulatory agencies involved in international trade. Within the customs house, documents would move from desk of customs officer to another in electronic form.

Main objective of ICES was to respond more quickly to the needs of trade and to provide quick and correct information on imports/exports statistics to director general of commercial intelligence and statistics.

Information with regard to imports and exports made against advance licences were called for from RLA, Mumbai, who could not furnish them. No reports were stated to have been generated to indicate (i) number of licences where imports were made with corresponding fulfilment of EO (ii) whether BGs were valid in respect of cases where EO was not fulfilled (iii) number of cases where BGs were enforced (iv) cases where EODC were received from the JDGFT, Mumbai (v) the cases where licensing authority had imposed fiscal penalty for non/short fulfilment of EO (vi) the details of unutilised imported material.

Similarly, the JDGFT had also designed/developed module for issue of licences. However, no details of exports were available in database. Although licensing authority was responsible for monitoring exports, relevant database did not have vital details of exports in respect of each licence. The system was not integrated with customs. There was no mechanism for exchange of information for monitoring conditions of licence.

Despite module/application software having been developed by both departments, there was dependence upon manual check/verification for monitoring EO and recovery of duty on unutilised imports.

Maintenance of records by licensing authority

Licensing authority with whom LUT is executed by advance licence holder under para 7.15 of HBP Vol.I, 1997-2002, is to maintain proper record in master register, containing information about licence holder viz licence number, date of receipt of application, CIF and FOB value prescribed (in rupees and US$), date of expiry of licence, revalidation etc.

Scrutiny of records of JDGFT, Vadodara revealed that columns of master register were not filled in and register not updated, entries in columns were either not made or partially made, reference to enforcement cum adjudication (ECA) files were also not recorded. Follow up action taken was not mentioned in master register. As a result, timely action against defaulting licence holder could not be initiated. In RLA Delhi and Kolkata too essential information such as actual imports/exports, submission/non submission of documents extension/revalidation granted, amendment in CIF/FOB value, initiation of penal action were not found recorded in master registers. ECA section of RLA Kolkata did not maintain separate register showing date wise receipt of files for enforcement/adjudication against defaulter exporters. Category of licence, CIF value and subsequent follow up action were also not recorded.

RLA Vadodara replied that master register would be updated and intimated.

2.16 Audit impact

Review contains audit comments involving financial implication of Rs.1,371.46 crore arising from non compliance of provisions of Exim Policy, notifications, act, rules and instructions etc. apart from audit observations in discharge of bonds/BGs and other procedural irregularities. At audit's behest, demand of Rs.17.27 crore was confirmed in 40 cases, of which Rs.1.16 crore was recovered.

2.17 Conclusion

Review has revealed lack of well-coordinated and concerted action by RLAs and customs authorities providing opportunity to defaulting importers to misuse provisions of Exim Policy and customs notifications. There was evidence of non/short fulfilment of EO, insufficient coverage of BG and violations of pre/post importation conditions. Shortcomings in monitoring and follow up led to continued weaknesses and lacunae in implementing advance licensing scheme as pointed out in earlier Audit Report relating to Exim Policy 1992-97, which continued unabated in the next five years of Exim Policy period.

2.18 Recommendations

Since introduction of DEEC in 1976, PAC in their 230th Report (Seventh Lok Sabha), 65th Report (Eighth Lok Sabha) and 24th Report (11th Lok Sabha) had repeatedly emphasised the need to plug various loopholes and deficiencies in its working to ensure that the scheme fully served its purpose. To this end audit recommends that:-

- **monitoring of EO be done as prescribed in exim policy and customs notifications through proper internal control mechanism and enforcement of bonds/BGs on expiry of EO period without delay.**

- **Ministry adequately address disparities between SION norms and export product to prevent possibility of substitution of imported material and its diversion in domestic market.**
- **maintenance of registers and updation of complete and self-contained information with reference to licences issued, imports/exports made, execution of bonds/BGs and redemption thereof etc be made incumbent upon designated authorities.**
- **the two ministries concerned set up proper coordination mechanism to allow exchange of information and proper follow up of penal action prescribed for them.**

The review was issued to the Ministry of Finance and Ministry of Commerce in October 2005. At exit conference (November 2005) Board stated that reply would follow after detailed examination of issues involved by both Ministries.

SECTION 2 - CENTRAL EXCISE

CHAPTER III : REVIEW ON EXCISE DUTY ON INORGANIC AND ORGANIC CHEMICALS

3.1 Highlights

- **Absence of specific provision in new section 4 relating to payment of excise duty on maximum price fixed under the law led to revenue being foregone to the extent of Rs.16 crore in one unit.**

(Paragraph 3.6)

- **Absence of specific sub-heading in Chapter 28 led to loss of Rs.35.53 crore in four units alone.**

(Paragraph 3.7)

- **Undervaluation of goods consumed captively resulted in revenue loss of Rs.1.43 crore.**

(Paragraph 3.10.2)

- **Irregular availment of Cenvat credit resulted in revenue loss of Rs.98.72 crore.**

(Paragraph 3.11)

- **Non-payment of service tax on various services rendered by manufacturers of inorganic and organic chemicals resulted in revenue loss of Rs.3.33 crore.**

(Paragraph 3.13)

- **Non-adjudication of demands resulted in blockage of revenue of Rs.76 crore.**

(Paragraph 3.14.5)

3.2 Introduction

Inorganic chemicals refer to those of mineral origin while organic chemicals mean chemicals of carbon compounds excluding metal carbonates and oxides and sulphides of carbon. Inorganic and organic chemicals are classified under Chapter 28 and 29 of Schedule to Central Excise Tariff Act, (CETA) 1985. The two chapters together contributed Rs.2952.36 crore amounting to 3.08 per cent of central excise collections during 2003-04.

3.3 Audit objectives

Records of selected manufacturing units and departmental offices were scrutinised in audit to examine,

- at macro level, adequacy of provisions of the Act, Rules, and instructions issued by the Ministry of Finance/Central Board of Excise and Customs (Board) in maximizing revenue collection and
- at micro level, to seek assurance that

- valuation of goods was done in accordance with provisions of section 4 of the Act and Central Excise Valuation Rules (as amended from time to time);

- credit of duty paid on inputs/capital goods under Modvat/Cenvat was taken correctly;
- service tax on services provided/received by manufacturers was paid correctly; and
- internal controls were effective to safeguard revenue interest.

3.4 Audit coverage

Inorganic and organic chemicals falling under Chapters 28 and 29 of CETA, 1985, were covered in the review. For this purpose, records of 115 manufacturing units as well as related range offices in 53 out of 93 commissionerates of central excise for the period 2001-02 to 2004-05 (upto 30 September 2004) were test checked.

3.5 Results of audit

Revenue trend of central excise collected was as under: -

3.5.1 Inorganic chemicals (Chapter 28) and organic chemicals (Chapter29) in 53 commissionerates

(Amount in crore of ru

Commodity and Chapter	Year	No of units	Duty paid through PLA	Duty paid through Modvat	Total duty paid	Percentage of Modvat to PLA	All commodi percentage Modvat to P
Inorganic chemicals (chapter 28)	2001-02	1074	775.94	510.01	1285.95	65.70	65.70
	2002-03	1091	815.13	470.40	1285.53	57.71	64.60
	2003-04	1139	926.60	557.57	1484.17	60.17	73.65
	2004-05 (upto September 2004)	1201	419.78	355.61	775.39		
Organic chemicals (chapter 29)	2001-02	1595	954.12	1848.66	2802.78	193.75	65.70
	2002-03	1688	1024.33	2122.46	3146.79	207.20	64.60
	2003-04	1787	1192.07	2597.96	3790.03	217.94	73.65
	2004-05 (upto September 2004)	1860	604.82	1557.93	2162.75		

The above table indicates that percentage of Modvat/Cenvat availed to duty paid by cash in respect of organic chemicals (Chapter 29) had been consistently and significantly higher than the all India figures for all commodities.

Macro evaluation

3.6 Inadequate provisions in new section 4 of Central Excise Act

Erstwhile section 4 (a) (ii) of Central Excise Act, 1944, provided that where goods were sold by assessee in course of wholesale trade for delivery at the time and place of removal at a price fixed under any law for the time being in force or at a price, being the maximum, fixed under any such law, the maximum price as the case may be, so fixed shall in relation to the goods so sold be deemed to be the normal price thereof. While introducing the concept of

transaction value in new section 4 with effect from 1 July 2000, the above provision was not made.

M/s. J. K. Pharma Chemicals Ltd., Cuddalore in Pondicherry commissionerate of central excise manufacturing bulk drugs (penicillin-G) falling under Chapter 29 adopted purchase order value as assessable value, instead of price fixed under drug price control order (DPCO). Show cause notice (SCN) issued by the department was adjudicated in favour of assessee. The Board, however, filed an appeal with CEGAT. Accordingly, SCNs were issued again upto the period June 2000. For July 2000 onwards, no SCN was issued on the plea that there was no such provision in the new section 4 of Central Excise Act, 1944. In another case the department, however, had issued SCN to M/s. Orchid Chemicals, Alathur in Chennai III commissionerate covering the period after July, 2000. There were, thus, different practices prevailing in the matter of application of rules and regulations.

In absence of specific provisions akin to those under erstwhile section 4 (a) (ii), government had to forgo revenue to the extent of Rs.16 crore for January 2001 to June 2004 in one unit alone.

3.7 Absence of specific sub-heading led to misclassification and loss of revenue

Chapter heading 28.35 of CETA, 1985, covers phosphates of elements attracting 16 per cent duty and Chapter heading 23.02 covers animal feeds and supplements attracting nil rate of duty.

M/s. Pioneer Miyagi Company Ltd., M/s. Raymon Patel Gelatine Pvt. Ltd., M/s. Kerala Chemicals and Proteins Ltd. and M/s. Bamni Proteins Ltd. in Pondicherry, Vadodara I, Cochin and Nagpur commissionerates respectively were engaged in manufacture of di-calcium phosphate from animal bones. Assessees had classified the product under Chapter heading 23.02 as animal feed supplement attracting nil rate of duty.

The Board, in order dated 3 March 1997 issued under section 37B of Central Excise Act, 1944, classified di-calcium phosphate under Chapter heading 28.35. This decision was taken based on chief chemist's opinion that there was specific mention of di-calcium phosphate under sub-heading 2835.25 of Harmonized System of Nomenclature (HSN) and CETA was aligned to those. The assessees appealed against Board's order and Board's decision was quashed by High Court of Madras and Gujarat and Nagpur Bench of Mumbai High Court. Special leave petitions and civil appeal filed by the department in Supreme Court on this issue were also dismissed by apex court. The Board vide their order dated 15 November 2002 consequently withdrew their earlier order issued under section 37B.

Since di-calcium phosphate was classifiable under Chapter 28 as per note (c)(4)(1) below heading 28.35 of HSN, the Board should have taken action to insert specific sub-heading under heading 28.35. Inaction to do so resulted in loss of revenue to the extent of Rs.35.53 crore (till March 2005) in these four units alone.

3.8 Revenue foregone due to non-coverage of products under section 4-A

Section 4A of Central Excise Act, 1944, provides that any goods, in relation to which it is required, under provisions of Standards of Weights and Measures Act, 1976 (60 of 1976) or Rules made thereunder or under any other law for the time being in force, to declare on the

package thereof retail sale price of such goods, may be charged to duty with reference to retail sale price less such amount of abatement, if any, from such retail sale price as Central government may allow by notification in the official gazette.

M/s. Nirmala Dye Chemicals, Vapi in Daman commissionerate engaged in manufacture of sodium hypochlorite (brand name ALA fabric bleach) falling under Chapter 2828.90, cleared goods in packages of 500ml, 200ml, 45ml and 25ml. Since they were covered under provisions of Standards of Weights and Measures Act/Rules, the assessee displayed retail sale price on each package. Test check revealed that assessable value on which duty was being paid by assessee under section 4 was significantly lower than assessable value notionally arrived at under maximum retail price (MRP) after allowing 40 percent abatement on it.

Government have not notified the goods under section 4A of Central Excise Act, 1944, till date. Non-coverage of this product under MRP resulted in revenue being foregone to the extent of Rs.93.16 lakh during the period from April 2001 to March 2003. Assessee started paying duty under section 4A (under protest) from April 2003 onwards on the basis of SCN issued by the department.

In another case, M/s. Industrial Solvents and Chemicals Pvt. Ltd., Ankleshwar under Surat II commissionerate cleared ethyl solvent (I.P.) in bottles of 500 ml. The goods were cleared under section 4 of the Act. Non-coverage of goods under section 4A for purpose of levy of duty on the basis of MRP resulted in foregoing revenue to the extent of Rs.4.39 lakh for April 2001 to September 2004.

3.9 Board's circular contradictory to provisions in the Act

Section Note 2 to section VI of CETA, 1985, stipulates that goods put up in sets consisting of two or more separate constituents, some or all of which fall in this section and are intended to be mixed together to get a product of section VI or VII, are to be classified in the heading appropriate to that product provided the constituents are: -

- having regard to manner in which they are put up, clearly identifiable as being intended to be used together without first being repacked,
- presented together; and
- identifiable whether by nature or by relative proportions in which they are complementary to one another.

Contrary to section Note, the Board, clarified through circular dated 4 January 1989 and 8 March 1989 that polyols and iso cyanates, even though presented together, were to be assessed individually on merit.

M/s. Manali Petro Chemicals Ltd., of Chennai I commissionerate manufactured polyol (Chapter 29), thio cyanates (Chapter 28) and other chemicals falling under these chapters. In addition to producing thio cyanates, they also imported the same and sold them as part of trading activity. Scrutiny revealed that purchase orders placed by certain customers were for both polyols and thio cyanates (manufactured as well as imported). Polyols and thio cyanates on mixing produced polyurethane. Hence these chemicals were complementary to each other

and when presented together, were to be assessed as polyurethane as per the section Note ibid. No duty was paid for polyurethane. This resulted in revenue foregone of Rs.38.49 lakh.

Micro Analysis

3.10 Valuation

Section 4 of Central Excise Act, 1944, was replaced by new section 4 with effect from 1 July 2000 bringing in the concept of 'transaction value' for levy of duty. New valuation rules were also introduced vide Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 with effect from the same date.

Test check of records of selected manufacturers of inorganic and organic chemicals revealed the following irregularities: -

3.10.1 Exclusion of retained sales tax from transaction value

Section 4 (3) (d) of Central Excise Act, stipulates that transaction value of goods chargeable to central excise duty would not include the amount of duty of excise, sales tax and other taxes, if any, actually paid or actually payable on such goods.

Board in their circular dated 30 June 2003 clarified that the words 'actually payable' meant that if tax deferred at the time of transaction was subsequently held as not payable, deduction from assessable value was not admissible. CEGAT in the case of M/s. Andhra Oxygen Pvt. Ltd. vs. CCE (Trib-Kol) {2003 ELT (156) 239} held that sales tax collected from buyers and not paid to the sales tax department when it was exempted under Sales Tax Act shall be considered as additional consideration flowing to assessees.

M/s. Colour Chem Ltd. in Raigad commissionerate in accordance with State government notification dated 16 November 2002, opted for payment of net present value of deferred sales tax payment which was deemed to have been paid. Assessee had accumulated Rs.8.58 crore representing sales tax collected from buyers during 2003-04. By paying Rs.2.54 crore during the financial year 2003-04, they retained Rs.6.04 crore under this scheme.

This resulted in non-payment of duty to the extent of Rs.83.41 lakh on residual amount so collected from the buyers. On this being pointed out (June 2005), the Ministry admitted (November 2005) the objection.

3.10.2 Undervaluation of goods consumed

Rule 8 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, (Valuation Rules, 2000) stipulates that where excisable goods are not sold by the assessee but are used for consumption by him or on his behalf in manufacture of other articles, assessable value shall be 115 per cent (110 per cent with effect from 5 August 2003) of the cost of production of such goods.

M/s. Wockhardt Ltd., Ankleshwar, M/s. Lupin Ltd., Mandideep in Surat II and Bhopal commissionerates respectively, engaged in manufacture of bulk drugs cleared their products to sister units for captive use in manufacture of other articles. Test check of their records revealed that goods were valued at lower rate based on transaction value instead of cost construction method i.e. 115 per cent/110 per cent of cost of production. This resulted in short payment of duty of Rs.69.31 lakh for the period from April 2001 to January 2004. On

this being pointed out (June 2005), the Ministry stated (November 2005) that SCN for Rs.36.20 lakh is being issued in respect of M/s. Wockhardt Ltd.

M/s. Nicholas Piramal India Ltd., Ennore in Chennai I commissionerate also engaged in manufacture of various bulk drugs cleared 'verapamil tech' under the heading 'raw material consumed' to their branch factory situated in Andhra Pradesh at cost price of Rs.2750 per kg. Balance sheet, however, showed that the product was valued at Rs.4556 per kg. Short payment of duty to the tune of Rs.48 lakh resulted due to this variation. On this being pointed out (June 2005), the Ministry stated (November 2005) that the value furnished in the balance sheet was that of the finished product (Verapamil tech) produced at the assessee's branch factory. Reply of the Ministry is not tenable as the goods were cleared as raw material to the branch factory.

Similarly there were five other cases of short payment of duty noticed due to non adoption of cost construction method resulting in loss of revenue of Rs.25.90 lakh.

3.10.3 Non-payment of duty on additional considerations

According to section 4(1) (a) of Central Excise Act, 1944, value of excisable goods for purposes of charging duty of excise in case where (i) the goods are sold by the assessee, for delivery at the time and place of removal, (ii) assessee and buyer of the goods are not related and (iii) price is the sole consideration for the sale, shall be the transaction value. As per rule 6 of Central Excise (Valuation) Rules, 2000, where excisable goods are sold in the circumstances specified in clause (a) of sub section (1) of section 4 of the Act except the circumstance where price is not the sole consideration for sale, value of such goods shall be deemed to be aggregate of such transaction value together with the amount of money value of any additional consideration flowing directly or indirectly from the buyer to the assessee.

M/s. Inox Air Products Ltd. in Belapur commissionerate supplied nitrogen gas through pipeline to M/s. Nocil and M/s. Lubrizol India Pvt. Ltd. Price agreement between the parties provided for discount, which was built into the price depending on agreed quantity of purchase. On it not being purchased, in-built discount was being denied and the said amount was realised from the buyers in the guise of compensation. The amount recovered as compensation in connection with the sale of nitrogen gas was, thus an additional consideration on which excise duty was payable. Short payment of duty amounted to Rs.24.54 lakh for the period from July 2000 to September 2004. On this being pointed out (June 2005), the Ministry stated (November 2005) that nature of this transaction could not be presumed as a discount. Reply of the Ministry is not tenable as after introduction of transaction value any amount recovered in connection with the sale was includible in the assessable value.

3.10.4 Discrepancy in closing stock of gypsum

Rule 10 of the Central Excise Rules 2002, provides that assessee maintain daily stock account of goods produced, cleared, with opening balance etc, in legible manner.

M/s. SPIC Ltd., Tuticorin in Tirunelveli commissionerate were engaged in manufacture of sulphuric and phosphoric acid. The assessee also manufactured phospho gypsum (gypsum) as by-product. It was noticed that stock as per balance sheet was lesser by 12,60,482 MT than that shown in central excise records. This resulted in short payment of duty of Rs.1.51 crore on stock having been cleared as per commercial records. On this being pointed out (June 2005), the Ministry stated (November 2005) that detailed investigation was being conducted.

3.10.5 Short levy of duty on goods sold through depot

In terms of rule 7 of Central Excise (Valuation) Rules, 2000, where excisable goods are not sold by the assessee at the time and place of removal but are transferred to depot, premises of the consignment agent or any other place or premises from where they are to be sold, the value shall be the normal transaction value i.e. the value at which the greatest aggregate quantity of such goods were sold from the depots.

M/s. Sunbel Alloys Ltd. in Belapur commissionerate engaged in packing of goods belonging to M/s. Emerck Ltd. transferred the final product to depot of the latter. It was seen that in some cases, goods were cleared to the depot at a price lower than the normal transaction value which resulted in short payment of duty of Rs.27.74 lakh approximately during the period from January 2003 to August 2004. On this being pointed out (June 2005), the Ministry stated (November 2005) that provisions of rule 11 would be applicable to job worker. The reply is not tenable as the assessee was not job worker and manufacture was not on principal-to-principal basis. They paid duty on normal transaction value and not on cost construction method. The assessee was, therefore, covered under rule 7 and not rule 11.

3.10.6 Undervaluation of goods cleared on job work basis

Erstwhile section 4 of Central Excise Act, 1944 read with erstwhile rule 6 of Central Excise (Valuation) Rules, 1975 provides that assessable value of goods which are sold in the course of wholesale trade or in respect of which the value of comparable goods is not available, should be determined on the basis of cost of production plus the profit that could have been earned on their sale.

M/s. Apte Amalgamation in Belapur commissionerate manufactured goods under Chapter 29 on job work basis on behalf of M/s. Glaxo Ltd. Goods so manufactured and cleared were undervalued to the extent of Rs.68.88 lakh during November 1999 to March 2000. This resulted in short payment of duty of Rs.11.02 lakh. On this being pointed out (June 2005), the Ministry stated (November 2005) that SCN had already been issued in June 2000 and demand confirmed in June 2004.

3.10.7 Other cases

Test check of records revealed that in 18 other cases there was undervaluation resulting in non-payment of duty to the extent of Rs.52.80 lakh.

3.11 Cenvat credit

Under Modvat/Cenvat scheme, credit is allowed for duty paid on 'specified inputs' and 'specified capital goods' used in manufacture of finished goods. Credit can be utilised towards payment of duty on finished goods subject to fulfilment of certain conditions. A few cases of incorrect availment of Modvat/Cenvat credit, noticed in test audit are elucidated in the following paragraphs: -

3.11.1 Inadmissible Cenvat credit on 'lump sum turn key projects'

Supreme Court in the case of M/s. Triveni Engineering and Industrials Ltd. vs. Commissioner of Central Excise {2000 (120) ELT 273 (SC)} held that turn key projects like steel, cement and power plants involving supply of large number of machinery, pipes, tubes etc for their assembly/installation/creation/ integration on civil structures would not be considered as

excisable goods for imposition of central excise duty. The Board in their circular dated 15 January 2002 also clarified the same.

M/s. Kochi Refineries Ltd., Ambalamugal in Cochin commissionerate got 'diesel hydro de sulphurisation' (DHDS) project executed by contractor M/s. Larsen and Toubro on 'lump sum turn key' (LSTK) basis at a cost of Rs.852 crore. The plant was commissioned in March, 2000.

For its execution, the contractor brought various machinery and components to the site under cover of invoices issued in their favour. Modvat/Cenvat credit amounting to Rs.40.53 crore on such items was availed and utilised by the refinery. Such credit availed on the inputs of the project and utilised by the assessee was inadmissible in view of the judgement.

M/s. Chennai Petroleum Corporation Ltd. in Chennai I commissionerate installed separate plant for desulpherising excess content of sulphur for purification of manufactured petroleum products during 2000-01. A contractor on lumpsum turn-key basis executed the project. They were not eligible for Cenvat credit of Rs.30.46 crore availed on installation of desulphurisation plant. On this being pointed out (June 2005), the Ministry stated (November 2005) that since desulphurisation plant was installed for purification of petroleum products, Cenvat credit on capital goods was allowable. Reply of the Ministry is not tenable as the desulphurisation plant, being turn key project, was not 'goods' as per Board's circular and apex court decision.

Other cases of irregular availment of Modvat/Cenvat credit on turn-key projects noticed are given below in the table: -

(Amount in lakh of rupees)

Sl. No.	Commiss-ionerate	Name of assessee	Turn key project	Amount of Cenvat credit	Remarks
1.	Chennai II	M/s. Hi-Tech Carbon Ltd., Gummidipoondi	Turbo generating set	56.00	SCN for Rs.55.27 lakh issued
2.	Trichy	M/s. Chemplast Senmar Ltd.	Captive Power Plant	269.00	
3.	Mumbai II	M/s. HPCL Ltd.	Reactor for DHDS Plant	176.00	SCN for Rs.88.08 lakh issued
			Total	**501.00**	

3.11.2 Incorrect availment of Cenvat credit on unspecified capital goods

Rule 2 of Cenvat Credit Rules, 2002 stipulates that Cenvat credit on capital goods is admissible only on specified goods used in the factory.

M/s. Sterlite Industries Ltd., Tuticorin and M/s. TANFAC Industries Ltd., Cuddalore in Tirunelveli and Pondicherry commissionerates respectively availed of Cenvat credit of Rs.2.34 crore on unspecified capital goods during the period from March 2004 to June 2004. On this being pointed out (June 2005), the Ministry stated (November 2005), that a SCN for Rs.2.16 crore has been issued to M/s. Sterlite Industries Ltd.

During September 2003 and March 2004, M/s. Dhrangadhra Chemical Works Ltd., Dhrangadhra in Bhavnagar commissionerate and M/s. Phillips Carbon Black Ltd., Palej in Vadodara II commissionerate availed of Cenvat credit of Rs.39.52 lakh on channels, beams, mixed structures etc. which were unspecified goods and, therefore inadmissible. On this

being pointed out (June 2005), the Ministry intimated (November 2005) that a sum Rs.21.10 lakh has been recovered in respect of M/s. Phillips Carbon Black Ltd.

There were 12 other cases of irregular availment of Cenvat credit on ineligible capital goods involving Rs.41.35 lakh.

3.11.3 Excess availment of Cenvat credit on capital goods

Rule 4 (2) of Cenvat Credit Rules, 2002 provides that Cenvat credit in respect of capital goods received in a factory at any point of time in a given financial year shall be taken only for an amount not exceeding 50 percent in the same financial year. Balance amount may be availed in any financial year subsequent to the financial year in which the capital goods were received in the factory of manufacturer provided the goods are in possession and use of the manufacturer of final products in such subsequent financial years.

M/s. United Phosphorus Ltd., Jhagadia in Surat II commissionerate availed 100 percent Cenvat credit of Rs.24.39 lakh in September, 2001 on capital goods received in the factory. Assessee again availed Cenvat credit of Rs.24.39 lakh on the same goods in April, 2002. This resulted in excess availment of Cenvat credit to the extent of Rs.24.39 lakh. On this being pointed out (June 2005), the Ministry intimated (November 2005), that a sum of Rs.24.39 lakh alongwith interest of Rs.8.22 lakh has been paid by the assessee.

There were nine other cases of irregular availment of Modvat/Cenvat credit on capital goods involving duty of Rs.25.44 lakh.

3.11.4 Irregular availment of Cenvat credit on capital goods

Erstwhile rules 57AD and 57AC of Central Excise Rules, 1944 and rules 3, 4 and 6 of Cenvat Credit Rules, 2002 provide that no Cenvat credit on capital goods which are used in the manufacture of exempted goods will be availed.

M/s. Rama Phosphates Ltd. had two manufacturing units at Indore. Scrutiny of records of one unit manufacturing sulphuric acid and fertilizer revealed that an advance licence from Jt. DGFT, Mumbai for use in extraction of oil and export of the products thereof from the other unit at Indore was obtained by the registered office at Mumbai. On this basis capital goods viz. steam turbine (heading 84.06) with accessories and spares were imported from Japan vide bill of entry dated 30 June 2000. Capital goods so imported were installed in June 2001 in the fertilizer plant for export, which was exempted from duty. Assessee took Cenvat credit of additional duty amounting to Rs.29.16 lakh and utilised it in fertilizer plant for clearance of sulphuric acid during the period from August 2001 to May 2002.

Since import of steam turbine was allowed only for the purpose of manufacture of exempted goods at the oil extraction plant, installation of capital goods at fertilizer plant and availment of Cenvat credit of Rs.29.16 lakh was irregular.

3.11.5 Irregular availment of Cenvat credit on duty paid on non-excisable goods

Board vide circular No.02/91-CX.3 dated 4 January 1991 clarified that an assessee had no option to pay duty on his own volition, in case the goods were fully exempted from payment of duty. Further, if he paid any amount in the name of excise duty, which was not leviable by law, the amount so paid would be in the nature of deposit with the Government. Since such payments were not in the nature of duty, question of granting any credit thereon did not arise. Supreme Court in the case of CCE vs. Tata Iron & Steel Co.{2004 (165) ELT, 386} affirmed

its earlier decision of M/s. Indian Aluminium Company Ltd., {1995 (77) ELT 268 (SC)} that zinc dross was non-excisable and no duty was required to be paid thereon.

M/s. Nav Bharat Metallic Oxide Industries Pvt. Ltd., in Daman commissionerate availed Cenvat credit of Rs.8.65 crore on zinc dross procured from the supplier/manufacturer during April 2001 and September 2004, although it was exempted from duty and the manufacturer had paid duty on his own volition.

This resulted in irregular availment of Cenvat credit to the extent of Rs.8.65 crore.

3.11.6 Input used in manufacture of exempted final product

Rule 6 of Cenvat Credit Rules, 2004 provides that where a manufacturer avails Cenvat credit in respect of inputs and manufactures final products, which are chargeable to duty as well as exempted goods, then he shall maintain separate accounts of such inputs. If the exempted final products are other than those specified in sub rule 3 (a) and no separate accounts are maintained, he shall pay an amount equal to eight percent (ten percent with effect from 10 September 2004) of the sale price charged by the manufacturer of such final products.

M/s. Hindustan Zinc Ltd., Debari, Udaipur in Jaipur 1 commissionerate did not pay Rs.66.51 lakh as duty on sale price of exempted final product in which common inputs were used in manufacture of exempted and dutiable product, for which separate accounts were not maintained. On this being pointed out (June 2005), the Ministry admitted the objection and stated that SCNs for Rs.1.28 crore has been issued.

M/s. Gujarat Alkalies and Chemicals Ltd., Dahej (Bharuch) in Vadodara II commissionerate generated electricity by using naphtha and part of the electricity so generated was sold to Gujarat Electricity Board. As assessee did not keep separate account of inputs used in generation of electricity so sold, he was required to pay Rs.19.37 lakh as duty on sale price of the exempted final product. On this being pointed out (June 2005), the Ministry intimated that an amount of Rs.8.17 lakh has been reversed and that SCN demanding interest on the said amount has been issued. Reply of the Ministry is not tenable as Cenvat Credit Rules do not provide for proportionate reversal of credit after opting of the facility of non-maintenance of separate inventory of common inputs to be used in both dutiable and non-dutiable output goods.

Dr. Reddy's Laboratories Unit I in Hyderabad commissionerate cleared exempted product for the period from September 2003 to July 2004 in respect of which no separate accounts of inputs were maintained. The assessee was required to pay Rs.34.49 lakh as duty on sale price of the exempted final product. On this being pointed out (June 2005), the Ministry stated (November 2005) that SCN for differential amount has been issued.

There were ten other cases of non reversal of Cenvat credit to the extent of Rs.33.52 lakh on clearance of exempted goods.

3.11.7 Incorrect availing of credit on inputs not involving purchase and sale

Rule 7(4) of Cenvat Credit Rules, 2001, prescribes that manufacturer of final products shall maintain proper records for receipt, disposal, consumption and inventory of inputs and capital goods in which relevant information regarding value, duty paid, person from whom the inputs or capital goods have been purchased is recorded. Ministry vide circular dated 3 April 2001 also clarified that basic responsibility lay upon the manufacturer to prove that inputs or capital goods were purchased and used by him for the intended purpose. This rule was

amended prospectively with effect from 1 March 2003 substituting the word 'purchased' by the word 'procured'.

During test check of central excise records of M/s. United Phosphorous Ltd., Vapi in Vapi commissionerate and M/s. Sun Pharma Ltd., in Ankleshwar in Surat II Commisionerate, it was noticed that, between April 2001 and February 2003, assessees received inputs from their sister units on stock transfer basis and took Cenvat credit of Rs.2.46 crore thereon. Invoices indicated that goods transferred were not on sale and valuation of such inputs by the supplier units was made under Valuation Rules, 2000. Sales tax was not paid on such goods as the transaction was not a sale. Since assessees did not purchase the inputs, availment of Cenvat credit of Rs.2.46 crore upto the period 28 February 2003 was not in order. On this being pointed out (February 2005), the department stated that Cenvat credit was admissible on stock transfer of such inputs as per section 2(h) of Central Excise Act, 1944. The reply is not tenable as 'stock transfer' was not covered under the definition of sale and purchase given under section 2(h) of the Act.

3.11.8 Irregular availment of Cenvat credit on inputs sent to job workers

Rule 4 (5) (a) of Cenvat Credit Rules, 2001 stipulates that a manufacturer can avail Cenvat credit on inputs or partially processed inputs sent to job workers for further processing, repair, reconditioning etc. provided such goods are received back for use in manufacture of final products.

M/s. Demosha Chemicals Ltd., Valsad in Daman commissionerate supplied naphtha and zinc hydroxide to three job workers for manufacture of zinc oxide and availed Cenvat credit on naphtha during April 2001 and March 2004. Since, the input i.e. naphtha was supplied for generation of steam, which was not received back from job workers, availment of Cenvat credit on naphtha to the extent of Rs.67.68 lakh was irregular.

Similarly, M/s. Unimark Remedies Ltd., Bavla falling under Ahmedabad II commissionerate and engaged in the manufacture of goods falling under Chapter 29 supplied light diesel oil (LDO)/furnace oil to job workers for generation of steam between April 2001 and March 2002, and availed Cenvat credit irregularly to the tune of Rs.4.79 lakh.

Since the inputs i.e. L.D.O./furnace oil were used outside the factory of production and steam generated by them was not received back by the manufacturer, availment of Cenvat credit to the extent of Rs.4.79 lakh was irregular.

3.11.9 Inputs cleared as such to sister units

Erstwhile rule 57 AB (4) of Central Excise Rules, 1944 and rule 3 (4) of Cenvat Credit Rules, 2001 and 2002, (as it existed till 28 February 2003) provided that when input or capital goods on which Cenvat credit has been taken are removed as such from factory, duty would be payable on value determined under section 4 of Central Excise Act, 1944. If removal of inputs is in the nature of transfer to sister unit, value of goods would be 115 percent (110 per cent from 5 August 2003) of cost of production in terms of rule 8 and proviso to rule 9 read with rule 11 of Valuation Rules, 2000. When such inputs have not been produced or manufactured but received from outside by the assessee, duty was required to be paid at 115/110 percent of the total landed cost.

M/s. Ranbaxy Laboratories Ltd., Dewas, M/s. IPCA Laboratories Ltd., Ratlam in Indore commissionerate and M/s. Lupin Ltd., Mandideep, in Bhopal commissionerate were engaged in manufacture of chemicals, bulk drugs and P&P medicaments. They cleared inputs as such

to their sister units after payment of duty by adopting 'transaction value' instead of 115/110 per cent of landed cost of inputs which resulted in short levy of duty to the extent of Rs.2.06 crore for the period from April 2001 to February 2003.

M/s. Transpek Silox India Ltd., Vadodara and M/s. Metrochem Industries Ltd., Padra in Vadodara I commissionerate, M/s. Lupin Ltd., Ankleshwar in Surat II commissionerate, M/s. United Phosphorus Ltd., Vapi in Vapi commissionerate and M/s. Nirma Ltd., Bhavnagar in Bhavnagar commissionerate cleared inputs as such to their other units under the same management, for further use in manufacture of excisable goods between July 2000 and February 2003. The assessees discharged duty liability equivalent to credit taken which was contrary to provisions of extant rules. Non-adoption of the value equivalent to 115 percent of the total landed cost of inputs for assessment resulted in short payment of duty of Rs.1.23 crore in these units.

Short payment of duty amounting to Rs.34.34 lakh due to non-adoption of value equivalent to 115 percent of landed cost was noticed in ten other cases.

3.11.10 Non reversal of credit on capital goods/inputs, spares and components written off/lost in transit/destroyed/found short

In terms of erstwhile rule 57 AB of Central Excise Rules, 1944 (as it stood prior to 1 July 2001) and rule 3 of Cenvat Credit Rules, 2002, manufacturer or producer of final product shall be allowed to take credit of specified duty paid on inputs or capital goods received in the factory for use in or in relation to manufacture of final products. No credit is allowed if inputs are not used in the manufacturing process and hence credit is not available on inputs lost in transit, destroyed in fire or found short on physical verification. Board vide circular dated 16 July 2002 clarified that if inputs, spare parts and components etc. were fully written off, credit availed would be paid back.

M/s. Kerala Minerals and Metals Ltd., Chavara in Trivandrum commissionerate had written off Rs.2.01 crore towards value of obsolete and unused silica pipes and of slow/non-moving items during 2001-02 and 2002-03 respectively. The assessee had already availed Cenvat credit of Rs.35.89 lakh on written off items which was not reversed as required in terms of Board's circular ibid.

M/s. Schenectady Herdillia Ltd. and M/s. Deepak Fertilizers and Petrochemicals Corporation in Belapur commissionerate engaged in manufacture of chemicals under Chapter 29 of CETA 1985 had written off inputs, components and spare parts, amounting to Rs.1.06 crore which became obsolete and incapable of being used within the factory during the period from April 2002 to March 2004. They did not reverse credit of Rs.17.03 lakh on the material written off. On this being pointed out (September 2004), the department intimated recovery of Rs.5.81 lakh and interest of Rs.1.07 lakh in one case. In the other case the department stated (April 2005), that a SCN for Rs.8.65 lakh had been issued.

Non-reversal of credit to the extent of Rs.35.31 lakh was also noticed in audit in seven other cases.

3.11.11 Other cases

Twenty six other cases involving irregular availment of Cenvat credit to the extent of Rs.81.29 lakh were also noticed in audit.

3.12 Exemptions

3.12.1 Irregular availment of SSI exemption

In terms of notification dated 1 March 2003, a manufacturer cannot avail of small scale exemption on specified goods bearing brand name or trade name of another person, whether registered or not. Further, under section 11 AC of Central Excise Act, 1944, in the event of mis-statement/suppression of facts or contravention of any provisions of the Act or Rules, penalty equivalent to duty is leviable.

M/s. Deepak Nitrite Ltd., Nandesari in Vadodara I commissionerate cleared input viz. para nitro chloro benzene, caustic soda and ammonia valued at Rs.4.78 crore to three job workers located in Maharashtra on payment of duty, for further manufacture of para nitro aniline and sodium salt of para nitro phenol. Clearances were in the nature of 'stock transfer' and no sales tax was paid. Under the agreement, job workers were to take credit of duty paid by the assessee and were liable to furnish details of stock of finished, semi-finished goods. After processing the goods, they were to despatch the finished branded goods direct to customers of assessee at the price and conditions agreed upon by them, for which no prior permission of jurisdictional commissioner was obtained as required under rule 4(6) of Cenvat Credit Rules, 2002. Job workers were reimbursed conversion charges and duty required to be paid at the rate of 16 per cent on clearances of finished goods.

It was noticed from invoices issued by job workers that two of them viz. M/s. Saurabh Organics Pvt. Ltd. and M/s. Muktesh Chemicals availed SSI benefits on branded goods and cleared the final products of the assessee by paying duty at the rate of 9.6 per cent of assessable value against 16 per cent advalorem payable by the principal manufacturer.

Modus operandi adopted by assessee in clearing goods to job workers on payment of duty and further clearance of the finished goods at concessional rate resulted in short levy of duty of Rs.24.89 lakh (Rs.19.95 lakh on availment of SSI benefit and Rs.4.94 lakh for non levy of duty on emerged by-product) for the period from April 2002 to September 2004. On this being pointed out (February 2005), the department stated (April 2005) that the goods were sold and not cleared from job work. Reply of the department is not tenable as clearance was in the nature of stock transfer and no sales tax was paid.

3.12.2 Non payment of duty on intermediate products used in manufacture of exempted final products

According to notification dated 16 March 1995, intermediate goods used in manufacture of dutiable final products are exempted from payment of duty. This exemption, however is not available if intermediate products are used in the manufacture of exempted final products.

M/s. SPIC Ltd., Tuticorin and M/s. FACT Ltd., Udyogamandal in Tirunelveli and Cochin commissionerates respectively, were engaged in the manufacture of sulphuric acid and fertilizers. Scrutiny revealed that assessees used sulphuric acid captively for manufacture of phosphoric acid, which was further used for manufacturing fertilizers. As phosphoric acid used in manufacture of fertilizer is exempted from duty under notification dated 1 March 2002, benefit of exemption to sulphuric acid so consumed was not available. This resulted in non-payment of duty of Rs.6.11 crore for the period from April 2001 to September 2004. On this being pointed out, the Ministry while not accepting the objection stated that a SCN for Rs.2.32 crore has been issued to M/s. FACT Ltd.

M/s. National Oxygen Ltd., Pondicherry, in Pondicherry commissionerate produced liquid oxygen and used it in production of gaseous oxygen (medicinal grade). As the latter attracted nil rate of duty, exemption from duty to liquid oxygen was not admissible. This resulted in non-payment of duty to the extent of Rs.11.01 lakh for March 2002 to March 2004. On this being pointed out (June 2005), the Ministry intimated (November 2005) that a SCN for Rs.59.70 lakh has been issued.

3.12.3 Irregular availment of exemption

Notification dated 1 March 2002, stipulates that 'angiography contrast agents' be charged at concessional rate of four per cent advalorem as against tariff rate of 16 per cent. According to product literature on radio opaque agents, their indications and uses, Iopamidal 99.2 per cent is not recognised as a contrast agent and as such not eligible for concessional rate of duty.

M/s. Divis Laboratories Ltd., Lingojigudem, Nalgonda District in Hyderabad III commissionerate engaged in manufacture of bulk drugs cleared Iopamidal 99.2 per cent to customers at concessional rate of duty of four per cent, which was not admissible. This resulted in short payment of duty of Rs.13.44 lakh and interest thereon for the period from July 2002 to October 2002. On this being pointed out (June 2005), the Ministry intimated (November 2005) the recovery Rs.13.44 lakh alongwith interest of Rs.3.89 lakh.

Notification dated 1 March 1997 provided that specified excisable goods supplied to specified public funded research institutions would be exempt from whole of the duty of excise subject to certain conditions. M/s. Navin Fluorine, Surat in Surat I commissionerate, cleared anhydrous hydro fluorine acid and chloro fluoro methane under Chapters 28 and 29 valued at Rs.51.53 lakh from April 2001 to February 2004 to various scientific research organisations such as Bhabha Atomic Research Centre and Vikram Sarabhai Space Centre without payment of duty. Under the said notification, only components/parts of scientific, technical instruments/apparatus had been exempted. Since chemicals cannot be treated as components/parts of any scientific, technical instruments/apparatus, their clearance without payment of duty was irregular.

This resulted in non-payment of duty of Rs.8.24 lakh for the period from April 2001 to February 2004. On this being pointed out (June 2005), the Ministry confirmed the recovery of the amount.

3.13 Service Tax

Scrutiny revealed that some manufacturers had provided services to clients/ received services, on which service tax was payable. Some illustrative cases of non-payment of service tax are given below: -

3.13.1 Consulting Engineer's services

Service tax on service rendered by consulting engineer was levied with effect from 7 July 1997. Clause (13) to section 65 of Finance Act, 1994 defines consulting engineer as 'any professionally qualified engineer or an engineering firm, who either directly or indirectly, renders any advice, consultancy or technical assistance in any manner to a client in one or more disciplines of engineering'.

M/s. Kopran Ltd., in Raigad commissionerate recovered an amount of Rs.5.00 crore from M/s. Cadilla Health Care Ltd. towards technical fees for services rendered between April 2001 and March 2002. Service tax on this account amounting to Rs.25.00 lakh was, however, neither paid by M/s. Kopran Ltd. nor demanded by department. On this being pointed out (June 2005), the Ministry admitted the objection and stated (November 2005) that SCN for Rs.46.02 lakh as also penalty and interest has been issued.

Exemption from service tax on services rendered to foreign agency for which payment were received in convertible foreign exchange was withdrawn from March 2003. M/s. Divis Laboratories Ltd., Lingojigudem, Nalgonda District in Hyderabad III commissionerate provided consultancy and technical know-how to foreign organisation during 2003-04, raised invoices and received payment in dollars, the conversion value of which in Indian currency worked out to Rs.2.75 crore. Service tax amounting to Rs.20.29 lakh was, therefore payable by assessee at five per cent upto 13 May 2003 and eight per cent from 14 May 2003 to 31 March 2004, besides interest which was not done. On this being pointed out (June 2005), the Ministry stated (November 2005) that SCN for Rs.20.09 lakh has been issued.

Two other cases of non-payment of service tax on consultant engineers services are given as per the following table: -

(Amount in lakh of rupees)

Sl. No.	**Commiss-ionerate**	**Name of the assessee**	**Period**	**Amount on which service tax not paid**	**Amount of service tax not paid**	**Remarks**
1.	Bangalore I	M/S. Kumar Organic Products Ltd. Bangalore	2000-01 to 2003-04	73.69	6.93	SCN for Rs.6.93 lakh as also penalty and interest has been issued
2.	Hyderabad I	M/s. Hetero Drugs Ltd., Bonthapalli	-do-	11.69	0.63	Action has been initiated to recover the amount
				Total	**7.56**	

3.13.2 Service tax on services rendered by foreign consultants

Rule 2(I) of (IV) of Service Tax Rules, 1994, as amended provides that a person receiving taxable service would have to pay service tax, if the service provider was non-resident or was outside India and did not have any office in India.

Scrutiny of records of M/s. Deepak Fertilizers and Petrochemical Corporation Ltd. in Belapur commissionerate revealed that they availed services of foreign consultants viz. M/s. Aker Kvaerner Inc. USA, Grand Paroisse, SA, France and W.R. Grace during 2003-04 and paid an amount of Rs.5.41 crore. Service tax amounting to Rs.43.31 lakh was, however, not paid by the assessees in respect of payment made to non-resident service providers, besides interest.

Eighteen other cases of non-payment of service tax amounting to Rs.1.03 crore on services rendered by foreign consultants were noticed in audit.

3.13.3 Non-recovery of service tax on freight charges

According to notification dated 5 November 1997 which came into effect from 16 November 1997, recipients of services of goods transport operators are liable to pay service tax at the rate of five per cent of freight charges paid to goods transport operators. Supreme Court held in the case of Laghu Udyog Bharati {1999 (112) ELT 365} that recipients of services cannot be made liable to pay service tax and the rules made in this regard were ultra vires Finance Act, 1994. In order to validate recovery of service tax from recipients, Finance Act, 1994 was amended with retrospective effect vide Sections 116 and 117 of the Finance Act, 2000. Therefore, recipients of service of transport operators became liable to pay service tax from 16 November 1997 to 1 June 1998.

M/s. Chemplast Sanmar Ltd. in Salem I commissionerate of Central Excise, engaged in manufacture of inorganic/organic chemicals incurred expenditure of Rs.12.20 crore on account of freight and handling charges in respect of four units located at Mettur Dam, Krishnagiri, Panruti and Vedaranyam during the years 1997-98 and 1998-99. Assessee had not paid service tax on freight charges. In the absence of exact details, audit asked (April 2001) the department to work out and collect service tax leviable for the period from 16 November 1997 to 1 June 1998. On this being pointed out (April 2001), the Ministry while admitting the objection in principle stated (October 2005) that demand for Rs.60.98 lakh with equivalent penalty had been confirmed.

3.13.4 Other cases of non-payment of service tax

Scrutiny of records of manufacturers of organic and inorganic chemicals revealed that service tax payable on various services provided by them amounting to Rs.11.56 lakh was not paid besides interest.

3.14 Internal Controls

Under rule 6 of Central Excise Rules, 2002, the assessee is required to follow self-assessment procedure. Departmental officers are, inter-alia, responsible for strengthening all assessments made for verification of correctness; issuing SCN in the event of non-payment, short payment or erroneous refund; adjudicating SCN within prescribed time limit, and enforcing recovery in case of confirmed demands.

Some illustrative cases of ineffective internal control mechanism noticed during the course of review are narrated below: -

3.14.1 Inaction by department on defaults in payment of duty

Rule 8 of Central Excise Rules 2002 prescribes that duty on goods removed from factory or warehouse during a month shall be paid by fifth day of the following month and in case of goods removed during the month of March, duty shall be paid by 31st day of March. If the assessee fails to pay the dues on due dates, he is liable to pay interest at specified rate. In accordance with Chapter 3 (Part V) of Manual of supplementary instructions, after completion of one month, amount of duty outstanding and interest payable thereon was required to be treated as recoverable arrears of revenue and all permissible action under the law was required to be taken. For this purpose, range superintendent was required to maintain separate register to ensure proper monitoring.

In course of scrutiny of range record, it was revealed that M/s. MTZ Industries Ltd. in Raigad commissionerate had defaulted in payment of duty on due dates on 16 occasions between July 2003 and November 2004. In respect of defaults made during months of April 2004, May 2004, June 2004 and October 2004 amounting to Rs.32.23 lakh, assessee had not paid duty till date of audit (January 2005). No action was, however taken by the department for recovery of duty and interest. On this being pointed out (June 2005), the Ministry admitted the objection (November 2005) and stated that SCN for Rs.32.76 lakh as also penalty and interest has been issued.

3.14.2 Continued stay

Note 10 to Chapter 29, of the CETA, 1985, was introduced in March 1997 under which in relation to products of the Chapter, labeling, relabelling of containers, and repacking from bulk packs to retail packs or adoption of any other treatment to render the product marketable to the consumer, amounted to manufacture.

Association of camphor manufacturers producing camphor from duty-paid camphor powder in the form of tablets, obtained stay from High Court of Madras on behalf of their members in 1997 against introduction of the Chapter Note. Department, however, did not pursue vacation of stay even after eight years. Duty to be realised in respect of one of the members viz. M/s. Suresh Industries alone worked out to Rs.44.85 lakh for the period from 2001-02 to 2003-04.

3.14.3 Interest on delayed payment not recovered

According to section 11 AA of Central Excise Act 1944, where a person chargeable with duty determined under Sub-section (2) of section 11A, fails to pay such duty within three months from date of determination, he shall pay, in addition to duty, interest on such duty from date immediately after expiry of the said period of three months till the date of payment of such duty.

M/s. Asian Paints (I) Ltd., Cuddalore in Pondicherry commissionerate, manufacturing chemicals for paint industry, cleared their products to their sister concern/unit for the period from April 1994 to June 2000 by adopting value lower than the prices adopted for other customers. Department demanded differential duty of Rs.2.2 crore. Assistant Commissioner confirmed demand of duty along with penalty. Though assessee paid entire duty element, interest of Rs.64.22 lakh on delayed payment of duty was not paid. Department did not issue demand notice for recovery of interest. On this being pointed out (June 2005), the Ministry stated (November 2005) that SCN for Rs.64.36 lakh has been issued.

In 12 other cases, there was failure of the department to demand interest due from assessees on account of delayed payment of duty amounting to Rs.11.66 lakh.

3.14.4 Proof of export not watched

Under rule 19 of Central Excise Rules, 2002, excisable goods could be exported without payment of duty. However, proof of export was to be submitted to the department within six months from date of clearance of goods. In course of scrutiny of monthly return submitted by assessee, the range superintendent was required to watch submission of proof of export. In event of failure of the assessee to do so, the department was required to initiate action for recovery of duty alongwith interest.

In course of scrutiny of range records it was revealed that M/s. Vani Chemicals and Intermediates, Jeedimetla in Hyderabad-IV commissionerate exported goods to other countries under bond during July 2003 to February 2004. They did not produce proof of export in respect of these consignments, even after expiry of six months nor did the department demand duty of Rs.5.43 lakh involved in nine cases in the course of scrutiny of monthly returns. On this being pointed out (June 2005), the Ministry stated (November 2005) that authenticity of the proof of export is under verification.

3.14.5 Cases pending adjudication

According to provisions of section 11A of Central Excise Act, 1944, where SCNs had been issued, central excise officer was required to adjudicate cases within six months in normal cases and within one year, in cases of non-levy/short levy due to fraud, collusions etc., where it was possible to do so.

Test check revealed that in 17 commissionerates of central excise, adjudication of 121 SCNs issued to manufacturers of organic and inorganic chemicals involving revenue of Rs.76.00 crore were pending. Ninety five per cent of the cases constituting 87 per cent of the total revenue involved were more than a year old. Around 31 per cent of cases involving 34 per cent of the value of pendency were pending adjudication for more than five years.

Despite the amendment brought in section 11A of the Act, fixing time limit for adjudication of demand notices, albeit, with qualification 'where it was possible to do so', pace of finalisation was very slow. Such pendency was indication of the need to monitor disposal of adjudication cases more effectively.

3.14.6 Scrutiny of assessment returns

According to Part VI (Scrutiny of Assessment) of Chapter 3 of CBEC's Excise Manual of Supplementary Instructions, the superintendent was to scrutinise all returns filed by assessees. In addition Assistant Commissioner/Deputy Commissioner and Joint Commissioner/Additional Commissioner shall have to scrutinise returns of assessees paying duty through PLA between Rs. one crore and Rs. five crore and Rs. five crore or more respectively every six months.

In course of test check, it was observed that instructions of the Board with regard to scrutiny of returns were not being fully complied with. In eleven commissionerates only three returns were scrutinised by Indore, Surat II and Thiruvananthapuram from 28 units paying duty of more than Rs. one crore through PLA during 2001-04.

3.14.7 Ineffective internal audit

It was noticed that internal audit had conducted audit of 35 units where statutory audit had also been carried out but had failed to detect the irregularities brought out in the review.

3.15 Audit impact

The review contains audit comments involving financial implication of Rs.168.19 crore arising out of non compliance to Act/Rules/notifications. The review also contains audit observations bringing out lacunae/shortcomings in the relevant Act/Rules/notifications with financial implication of Rs.76 crore.

Department issued SCNs amounting to Rs.14.33 crore and recovered an amount of Rs.1.58 crore.

3.16 Conclusion

Review has revealed inadequacy in provisions and instructions of Ministry/Board in some cases leading to loss/revenue foregone. Instances of incorrect valuation and irregular availment of Modvat/Cenvat credit were also noticed. Internal controls through monitoring of payments by assessees, raising demands for recovery of interest on delayed payments, action for early vacation of stay orders, scrutiny of assessment returns and timely adjudication seemed weak.

The above observations were communicated in June 2005. The Board stated (November 2005) that observations of audit had been taken note of.

CHAPTER : IV REVIEW ON DELAY IN FINALISATION OF DEMANDS

4.1 Highlights

- **Inspite of incorporation of time limit in the statute with effect from 11 May 2001, 15251 cases involving central excise duty of Rs.8625.87 crore were pending adjudication as on 31 March 2004. Increase was 13 per cent in terms of number and 51 per cent in terms of amount as compared to position on 31 March 2001.**

(Paragraph 4.5.1)

- **Cases reported to be pending beyond one year were 38 per cent in terms of number and 48 per cent in terms of amount.**

(Paragraph 4.5.2)

- **In six test checked cases alone, an amount of Rs.153.01 crore was pending adjudication for want of administrative action.**

(Paragraph 4.6.1)

- **There was general tendency for adjudicating officers to finalise low revenue cases at the expense of keeping high value ones pending. This was true even for de novo cases.**

(Paragraphs 4.6.2 and 4.6.3)

- **Cases numbering 829 involving central excise duty of Rs.1687.83 crore were pending adjudication for want of clarifications by the Board.**

(Paragraph 4.6.5)

- **Seventy six per cent of adjudicating officers did not meet target of 100 cases fixed per annum.**

(Paragraph 4.7.1)

- **Due to ineffective internal controls, 31 cases with duty effect of Rs.6.61 crore were lost sight of while transferring cases on revision of monetary limit for adjudication and 200 cases involving duty of Rs.145.48 crore not reflected in the monthly technical report of ten divisions alone.**

(Paragraphs 4.7.2 and 4.7.3)

4.2 Introduction

Section 11A of Central Excise Act, 1944, provides that when any duty of excise has not been levied or has been short-levied or short-paid or erroneously refunded, central excise officer may, within one year from the relevant date, serve notice on the person chargeable with duty which has not been levied or paid or which has been short-levied or short-paid or erroneously refunded, requiring him to show cause why he should not pay the amount specified in the notice. Period of one year stands extended to five years where duty has been short-paid due to fraud, collusion, wilful mis-statement or suppression of facts with the intention to evade

duty. Central excise officer shall, after considering the representation, if any, made by the person on whom show cause notice (SCN) has been served, determine amount of duty due from such person and thereupon such person shall pay the amounts so determined. SCN is the main instrument through which department ensures that excise duty is correctly paid as per provisions of the Act, Rules and orders issued by it. The number of SCNs issued during the years 2001-02, 2002-03 and 2003-04 in 79 commissionerates were 41,496, 30,332 and 41,484 involving an amount of Rs.13599.62 crore, Rs.15094.04 crore and Rs.17613.65 crore respectively.

Pace of adjudication of cases was reviewed by audit in review on 'delay in finalisation and collection of demands' in Audit Report 1997-98 wherein it was recommended that reasonable statutory time limit for finalisation of SCNs be fixed for safeguarding interest of revenue. Thereafter, sub-section 11A(2A) was inserted vide Finance Act, 2001, with effect from 11 May 2001, which stated that 'the central excise officer, in case any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, by reason of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the Rules made thereunder with intent to evade payment of duty, **where it is possible to do so**, shall determine the amount of such duty, within a period of one year from the date of service of the notice. In any other cases, where it is possible to do so shall determine the amount of duty of excise within a period of six months from the date of service of the notice on the person'. Fixation of time limit has thus been qualified by the clause 'where it is possible to do so'.

4.3 Audit objectives

Review of pending adjudication cases was undertaken to assess: -

- the impact of the new provisions relating to time limit on pace of clearance of pending cases;
- measures taken by the department to speed up adjudication; and
- efficacy of the monitoring and control mechanism devised by department for adhering to the time limit.

4.4 Audit coverage

Records of 154 divisions/adjudication branches in 79 out of 92 commissionerates were test checked. Period covered under audit was from 2001-02 to 2003-04. The findings are contained in succeeding paragraphs.

4.5 Macro Analysis

4.5.1 The overall position of demand cases pending adjudication in respect of 79 commissionerates is given below in the table: -

(Amount in crore of rupees)

	As on 31 March 2001	**As on 31 March 2002**	**As on 31 March 2003**	**As on 31 March 2004**
No. of demand cases pending adjudication	13491	21520	18584	15251
Total amount of excise duty involved in all pending cases	5707.56	7448.26	11371.45	8625.87

Figures furnished by commissionerates

- Inspite of incorporation of time limit in the statute with effect from 11 May 2001, pendency rose during 2001-02 both in terms of number and amount and in 2002-03 in terms of excise duty involved.
- Even after fixation of time limit, pendency as on 31 March 2004 was higher by 13 per cent in terms of number and 51 per cent in terms of duty involved compared to position as on 31 March 2001 after taking into consideration fresh additions and disposal of cases during this period.
- Audit scrutiny revealed that average disposal was approximately 54 cases per annum per adjudicating officer during the year 2002-03 against target of 75 cases and was 72 cases per annum during 2003-04 against revised target of 100 per annum per adjudicating officer fixed by the Board in May 2003.

4.5.2 Time limit prescribed for finalising adjudication not adhered to

The extent to which the time limit in the statute with the rider 'where it is possible to do so' was adhered to by adjudicating officers in disposal of cases was evaluated in audit by analysis of age-wise pendency.

Break-up of demand cases raised upto 31 March 2004 but pending adjudication as on 30 September 2004 (after taking into account clearance between 1 April 2004 and 30 September 2004) furnished by 79 commissionerates is given in the table below: -

(Amount in crore of rupees)

Age-wise pendency	**Number**	**Amount**
Cases upto one year old	4118	2516.20
Cases more than one year but upto two years old	1457	1344.99
Cases more than two years but upto five years old	794	865.20
Cases more than five years old	305	125.93
Total	**6674**	**4852.32**

Figures furnished by commissionerates

- The reported age-wise pendency was 38 per cent in terms of number and 48 per cent in terms of amount for cases pending adjudication beyond one year. These did not seem accurate since audit scrutiny had revealed that several cases transferred from one adjudicating officer to another consequent upon revision of monetary powers in October 2003 were reflected as fresh cases in MTR. Of total cases pending finalisation on 30 September 2004, 16 per cent involving 20 per cent of duty were pending for more than two years.
- In Delhi II commissionerate demand notice for Rs.65 lakh having been issued to M/s. Eskay Electronics India (Pvt.) Ltd. on 29 June 1988 was pending adjudication for more than 17 years.

4.6 Micro analysis

Number of cases pending adjudication beyond one year being high, an attempt was made by audit to ascertain the disposal pattern of cases by adjudicating officers during 2003-04. Position emerging from information furnished by 147 divisions/adjudication branches of the commissionerates is given in the following table: -

Cases required to be adjudicated within	Total clearances (No.)	Cases cleared out of the pendency as on 31 March 2003		Cases cleared out of the additions during 2003-04	
		No.	Percentage	No.	Percentage
Six months	14714	4745	32	9969	68
One year	6126	2539	41	3587	66

- Disposal of cases pending adjudication as on 31 March 2003 was only to the extent of 32 per cent in respect of cases required to be finalised within six months and 41 per cent in respect of those required to be adjudicated within one year.
- From disposal rate of old cases, it was thus evident that adjudicating officers tended to clear fresh cases at a faster rate than old cases, thereby allowing old cases to linger.

4.6.1 Adjudication kept pending for want of administrative action

Some of the cases involving high amount and pending adjudication for more than two years were reviewed in audit to ascertain reasons for delays in the context of the clause 'where is it possible to do so'. It was noticed that these were pending largely because of administrative delays. In most of them, it should have been possible to finalise adjudication, had the delays been addressed promptly by the department.

A few illustrative cases are given below: -

M/s. TISCO Ltd. in Jamshedpur commissionerate was served SCNs for Rs.45.91 crore and Rs.11.99 crore in August 1998 and May 2000 on grounds of evasion of duty by suppression of facts and undervaluation of product for captive consumption respectively. Section 33(A)(2) in Central Excise Act, inserted with effect from 13 May 2004, stipulates that the adjudicating officer shall not grant adjournment more than thrice to a party during adjudication proceedings. It was, however, noticed that in the former case, personal hearing was deferred four times before 13 May 2004 and thrice after 13 May 2004. In the latter case, personal hearing was deferred eight times before 13 May 2004 and thrice after 13 May 2004 all at the request of the assessee. Demands had not been adjudicated till the date of audit (May 2005). This inordinate delay of more than six and four years respectively in adjudication resulted in non-recovery of Rs.57.90 crore and financial accommodation to the assessee.

M/s. Rajam Industries Pvt. Ltd. and others in Chennai IV commissionerate were issued five SCNs between May 2001 and June 2003 for Rs.29.02 crore at the instance of director general of central excise intelligence after seizure of goods. All the above cases involving revenue of Rs.29.02 crore were assigned to commissioner of central excise, Chennai IV as common adjudicating authority by the Board only in September 2003. One show cause-cum-demand notice, for Rs.0.25 lakh was, however, yet to be served to the assessee. Thus substantial revenue was held up on account of administrative delay of small value case. This was pointed out to the department in May 2005, reply was not received till November 2005.

M/s. Bhandradri Minerals in Hyderabad IV commissionerate was issued 10 SCNs demanding duty of Rs.18.22 crore on account of mis-classification of 'calcinated lime' during the period between August 1999 and September 2003. On reasons for delay being enquired upon, commissionerate in their reply (August 2005) stated that clarifications had been sought from the Board but did not intimate letter and date.

M/s. Satayanarayana Plastics Industry having six units within common premises in Hyderabad IV commissionerate were issued four SCNs between 2 May 2002 and 6 January 2004 demanding duty of Rs.12.35 crore in connection with evasion of central excise duty by suppression of actual production and clandestine clearances. Personal hearing was conducted on 8 September 2004 after a period of two years from date of issue of SCN. During personal hearing, the assessee requested for copies of documents (handed over to IT department) for making effective representation. No action was taken by the department for supply of required documents to assessee. Instead, they were asked to approach IT department and were informed that personal hearing would be held again after perusal of records. Inaction of the department resulted in these cases lying pending for one year four months and three years.

M/s. IGPL in Belapur commissionerate was served with six SCNs during the period November 1999 to October 2002 demanding duty of Rs.26.45 crore on account of incorrect valuation of steam and waste water. Despite personal hearing being held on 4 March 2003, 24 July 2003 and 3 December 2004, adjudication orders were still to be issued.

Audit in para 8.4 of Audit Report for the year ending 31 March 2000 had pointed out incorrect grant of exemption to small scale sector by manufacturers of plywood in Cochin II commissionerate from April 1996 to June 1997. Director general (anti evasion) conducted searches on 23 September 1997, and SCN for Rs.7.68 crore was issued on 2 August 1999 by the then Madras commissionerate. The case was assigned to commissioner central excise, Calicut by the Board for purpose of adjudication on 29 August 2003 i.e. after a lapse of more than four years. The case files were, however, received in Calicut commissionerate only in July 2004 i.e. after a further lapse of nine months. The case was yet to be adjudicated till date of audit (May 2005).

M/s. Mohit Engineering in Delhi II commissionerate was issued SCN in May 1992 for Rs.1.39 crore on grounds of wilful mis-statement, suppression of facts, fraud with the intention to evade duty in contravention of central excise rules for availing concessional rate of duty, after director general (anti evasion) had found incriminating documents during searches on 9 July 1991. Scrutiny of the concerned files/records revealed that no action was taken till 9 June 2004 when department addressed the director general for documents relied upon. A copy of personal hearing notice placed in file revealed that notice was issued to assessee without mentioning date and time of appearance. Date of issue of notice too was not indicated in the office copy. Case has been delayed for more than 13 years because of inaction by the department.

4.6.2 Pace of finalisation of high revenue cases was slow

Revenue-wise pattern of disposal of cases during 2003-04 in 127 divisions/adjudication cells of commissionerates was reviewed in audit and the following emerged: -

(Amount in crore of ru

Cases involving revenue	**Opening balance as on 1 April 2003**		**Additions (2003-04)**		**Clearances**		**Percentage of clearances**		**Closing bala as on 31 Ma 2004**	
	No.	**Amt.**	**No.**	**Amt.**	**No.**	**Amt.**	**No.**	**Amt.**	**No.**	**A**
Upto Rs.5 lakh	6116	155.53	11347	363.28	12141	414.74	70	80	5322	10
More than Rs.5 lakh but not more than Rs.10 lakh	1246	93.24	1651	123.06	1869	140.18	65	65	1028	7
More than Rs.10 lakh but not more than Rs.20 lakh	1083	135.15	1595	220.43	1676	231.18	63	65	1002	12
Above Rs.20 lakh	3023	5362.34	4258	6584.92	4571	5332.91	63	45	2710	661

- It was noticed that percentage of clearances both in terms of number and amount varied from 63 per cent to 80 per cent in respect of cases involving revenue upto Rs.20 lakh each.
- Percentage of clearances of cases involving revenue of more than Rs.20 lakh in terms of number was similar whereas percentage in terms of revenue involved was much lower at 45.
- This wide gap was indicative of the general tendency of adjudicating officers to deal with low revenue cases at the cost of keeping high revenue ones pending As a result, pendency of high revenue cases (above Rs.20 lakh) has risen by almost 23 per cent and was in fact the only category where additions had outstripped clearance.

4.6.3 De novo adjudication cases kept pending beyond time limit

Adjudication of cases remanded by appellate authorities for de novo adjudication are also required to be entered into the records as new cases and finalised within prescribed time limit as in the case of any SCN as per amended section 11A(2) of the Act. Position of pendency of de novo cases in 154 divisions/adjudication cells is given below in the table: -

(Amount in crore of rupees)

Number of cases pending including additions upto 31 March 2004		**Clearances (from 2001-02 to 30 September 2004)**		**Cases pending as on 30 September 2004**		**Cases pending for more than one year**	
Number	**Amount**	**Number**	**Amount**	**Number**	**Amount**	**Number**	**Amount**
1744	836.66	1223	495.01	521	341.65	301	317.52

- The percentage of cases pending de novo adjudication for more than one year as on 30 September 2004 was 17 in terms of number and 38 in terms of amount.
- While clearance in terms of numbers was to the extent of 70 per cent, clearances in terms of amount were only 59 per cent. This is indicative of cases involving high revenue being largely kept pending.
- In Visakhapatnam II, Ghaziabad and Nagpur commissionerates only 10, 46 and 49 per cent of total pendency (number-wise) was cleared respectively.

Concerned at the delay in adjudication of remanded back cases, Member (Legal and Judicial), CBEC in demi-official letter dated 11 August 2004 instructed chief commissioners to pay adequate attention to these cases and submit report on fortnightly basis.

Scrutiny of records of commissionerates, however, revealed that no such fortnightly report was being submitted. Lack of proper attention and monitoring at Board's level resulted in remanded back cases involving high revenue remaining un-adjudicated for long.

Some illustrative cases are given below: -

Demand of Rs.16.58 crore was confirmed by commissioner, Mumbai against M/s. Viacom Electronic Pvt. Ltd. in Vadodara II commissionerate in October 2001. On an appeal, CEGAT, Mumbai remanded back the case to jurisdictional commissioner, central excise in March 2003 who did not initiate any action to adjudicate the de novo case as original case records and files had not been received from the commissioner, Mumbai till date of audit (April 2005). Administrative delays in transferring required records had resulted in non-finalisation of the case and blockage of government revenue.

CEGAT, Chennai in final orders dated 26 August 2002, remanded the case in respect assessee M/s. PMP Steels Ltd., Amani Kondalampathy, Salem to commissioner, centr excise, Coimbatore with directions that (i) commissioner re-adjudicate the matter within s months from the date of order; and (ii) the appellant/assessee file reply within three mont from date of receipt of orders. CEGAT's orders were against confirmation of duty of Rs.4. crore by the commissioner, Coimbatore vide his order dated 31 December 2001. The ca was transferred to Salem commissionerate on bifurcation of Coimbatore commissionerat Personal hearing was postponed seven times at the request of the assessee, and was ultimate held on 31 July 2003 by commissioner, central excise, Coimbatore. No orders wer however, passed by commissioner-in-charge after personal hearing. Fresh personal heari fixed from time to time was postponed five times on the request of the assessee. CEGA Chennai's orders to adjudicate within six months were thus violated even after a lapse three years and two months (November 2005).

4.6.4 Delay in issue of adjudication orders after personal hearing

The Board vide circular dated 26 July 1980 had issued instructions that in all such cas where personal hearing had been conducted it was necessary to communicate the decisi immediately or within reasonable time of five days. Where for certain reason, above tin limit could not be adhered to in a particular case, order should be issued within 15 days or most one month from the date of conclusion of personal hearing. Above instructions of t Board were reiterated vide their circular dated 5 August 2003. It was further directed th chief commissioners and commissioners should devise suitable mechanism to ensure th Board's instructions are adhered to in letter and spirit and any failure to adhere to t prescribed time limit should be viewed seriously.

Position of issue of adjudication orders after personal hearing on the basis of informati furnished by 219 adjudicating officers in 79 commissionerates is given in the table below: -

(Amount in crore of ru

Period	Total number of cases adjudicated	Within five days		After 5 days but upto 15 days		After 15 days but upto 30 days		After one mo	
		No.	Percentage	No.	Percentage	No.	Percentage	No.	Percer
2003-04	11541	904	8	3345	29	2992	26	4300	37

- In 37 per cent of the cases, adjudication orders were issued after one month from date conclusion of personal hearing with delays ranging from a month to more than a year.
- In four divisions of Thane I, Aurangabad, Delhi III and Delhi IV commissionerates, adjudication orders were issued after one month.
- No effective mechanism was devised by chief commissionerates. Resultantly, in 63 p cent of the cases, adjudication orders were issued after 15 days.

Chief commissioner, Vadodara vide letter dated 26 August 2003 directed commissioners submit monthly report in the prescribed proforma in respect of such delays. Test chec however, revealed that no such report was being furnished to chief commissioner.

Some illustrative cases are given below: -

M/s. BPCL and M/s. HPCL in Tirunelveli commissionerates were issued SCNs in Novemb 2002 involving amount of Rs.2.30 crore and Rs.1.64 crore respectively. Though perso hearing was concluded in March 2003, orders were passed only in September 2004. The

was thus administrative delay of over a year in issue of orders. This was pointed out to the department in December 2004, the reply was not received till November 2005.

M/s. Sterlite Industries (India) Ltd. in Tirunelveli commissionerate was issued seven SCNs from March 2002 to January 2004 involving an amount of Rs.17.95 lakh. Personal hearing was concluded in one case in December 2003 and in six other cases in July 2004. No adjudication orders were, however, passed till November 2005.

4.6.5 Cases kept in call book were not adjudicated for want of clarifications by the Board

As per administrative instructions dated 14 December 1995, demand cases pending adjudication can be transferred and kept in the call book, on specific instructions of the Board. These cases could be adjudicated only after necessary clarifications were issued by it.

Pursuant to PAC's recommendations, Board in their circular dated 28 May 2003 instructed all chief commissioners to monitor progress of disposal of call book cases specifically to see whether : -

- call book cases had been received by commissioners of central excise ;
- whether any appreciable progress was noticed; and
- whether there were any avoidable delays.

In course of review of demand cases in 79 divisions/adjudication cells, it was revealed that a large number of cases kept in the call book on specific instructions of the Board were pending finalisation for want of clarifications from the Board as per the details given in the table below: -

(Amount in crore of rupees)

Cases more than five years old		**Cases more than three years old but less than 5 years old**		**Cases less than three years old but more than one year old**		**Total**	
Number	**Amount**	**Number**	**Amount**	**Number**	**Amount**	**Number**	**Amount**
84	85.42	234	194.99	511	1407.42	829	1687.83

- In Delhi II commissionerate, seven cases involving revenue of Rs.29.33 crore were pending in call book for more than five years.
- In Hyderabad II commissionerate a case involving Rs.32.02 crore was pending in call book for more than five years.

Board was responsible for overall monitoring of expeditious disposal of pending cases within prescribed time limit. It should, therefore, have reviewed the position and issued clarifications from time to time to finalise cases pending at its own instance in a fixed time frame. Inaction in the matter resulted in postponement of adjudication for a long period to the detriment of revenue.

A few cases are illustrated below: -

Board vide circular dated 28 August 2003 decided to further examine the matter relating to recovery of eight per cent of the price of exempted goods, when common inputs are used for both dutiable and exempted goods. Twenty five cases in seven divisions on this account were, therefore, transferred to call book in compliance with its instructions. Even after a lapse of more than two years, Board has not yet decided the matter. This has resulted in non-finalisation of adjudication cases involving revenue of Rs.286.12 crore.

SCN issued to M/s. Toyota Kirloskar Motors in Bangalore III commissionerate involving duty of Rs.2.68 crore was transferred to call book as per instructions of the Board dated 12 June 2002 as it wanted to examine the issue of availment of exemption under notification No.2/2001, dated 27 January 2001 for Gujarat relief work. The Board have not yet taken a decision even though more than two years have lapsed since the orders withholding finalisation proceedings were issued.

4.6.6 Cases remanded back by appellate authority after 11 May 2001 in violation of amendment

In accordance with section 35A of Central Excise Act, 1994, as amended with effect from 11 May 2001, commissioner of central excise (appeals), shall after making such further enquiry as may be necessary, pass such order as he thinks fit and proper confirming, modifying or annulling the decision or orders appealed against. Power to remand back a case was thus done away with by amendment of section 35A with effect from 11 May 2001.

In course of review of 154 divisions/adjudication cell of commissionerates it was revealed that cases continued to be remanded back by the commissioner (appeals) even after amendment in section 35A with effect from 11 May 2001. The details are given in the table below: -

(Amount in crore of rupees)

Cases remanded back after 11 May 2001		**Cases not reflected in the MTR**	
Number	**Amount**	**Number**	**Amount**
981	466.27	177	115.19

- The fact that commissioner (appeals) continued to remand back cases even after amendment of 11 May 2001 indicated that Act was being violated.
- It was also observed that 18 per cent of cases in terms of number involving 25 per cent of the amount so remanded back were not reflected by the concerned divisions in MTR, thereby mis-reporting position of pendency at the adjudication stage.
- Surprisingly, no corrective action was taken by the Board even though receipt of cases remanded back after 11 May 2001 continued to be reflected in MTR of the concerned divisions/adjudication branch of commissionerates.

4.7 Internal controls

Audit evaluated efficacy of the department in monitoring performance of adjudication officers on a limited scale in selected divisions. The findings are given below: -

4.7.1 Targets fixed for adjudicating officers not achieved

Board vide their circular dated 5 May 2003 revised the target of adjudication for each adjudicating authority from 75 cases to 100 cases per annum. In their action taken note to the PAC, the Ministry assured that revised targets if adhered to, would very considerably wipe out existing pendency within a year.

Position with regard to achievement of the target in respect of 254 adjudication officers in test checked divisions/adjudication cells is given in the following table: -

No. of adjudicating officers	No. of cases pending finalisation including additions from 5 May 2003 to 4 May 2004	No. of cases finalised between 5 May 2003 to 4 May 2004	Closing balance as on 5 May 2004	No. of adjudicating officers not meeting the target
254	27363	18555	8808	195

- Seventy six per cent of the adjudicating officers did not meet the target of 100 cases per annum.
- Disposal rate on an average was approximately 70 cases per adjudicating officer against the target of 100 cases. This was even lower than the earlier target of 75 per adjudication officer per annum.

To ascertain extent of improvement in the clearance of cases audit also compared and analysed data relating to 'pre' and 'post' period of revised targets in respect of 254 adjudication officers.

The position is given in the table below: -

From 1 April 2002 to 31 March 2003			From 5 May 2003 to 4 May 2004		
Total cases	Clearances	Percentage	Total cases	Clearances	Percentage
21295	11492	54	28247	18978	67

- There was only marginal improvement of 13 per cent in clearance of cases after the revision of target from 5 May 2003 to 4 May 2004 as compared to the clearances during the period from 1 April 2002 to 31 March 2003.
- Having fixed the targets the Board did not constantly monitor performance of adjudicating officers to ensure that the assurances given to the PAC were fulfilled.

MTRs received from field formations containing details were required to be scrutinised at commissioner level before being compiled by director general (inspection) and put up to the Board. Surprisingly, this important aspect of the rate of disposal of cases by adjudicating officers was not monitored by them.

For want of effective monitoring and control by the Board the target of 100 per adjudication officer remained elusive and existing pendency could not be reduced to the extent envisaged.

4.7.2 Cases transferred due to revision of monetary limit for adjudication not reflected/shown as fresh cases in MTR

For purpose of expeditious settlement of adjudication cases, the Board vide circular dated 1 October 2003, revised the monetary limit for adjudication of demand cases. Consequent upon such revision relevant files and records of the cases were required to be transferred to respective adjudicating authorities by 20 October 2003 and recast figures were required to be reflected in the MTR of October 2003, which was to be submitted in November 2003 in terms of para 11 of the Board's order ibid.

Test check of records of 87 divisions revealed that some of the cases transferred by originating divisions were not reflected in the MTR of the receiving adjudication authorities. It was also revealed that considerable number of cases received on account of transfer were shown as fresh cases in the MTR of the receiving adjudication officer. The details are given in the following table: -

(Amount in crore of rupees)

Cases transferred		Cases not shown in MTR		Cases shown as fresh in MTR	
Number	**Amount**	**Number**	**Amount**	**Number**	**Amount**
3031	960.95	31	6.61	2338	814.37

- Pendency exhibited in MTR was, therefore, not reflective of actual pendency in such cases lying unattended.
- Also, depiction of 2338 transferred cases involving amount of Rs.814.37 crore as fresh cases in MTR resulted in distortion of the correct picture of cases pending finalisation beyond the statutory time limit. There was every possibility of these cases being vulnerable to further delays on account of there being no link to earlier pendency. Such a high percentage as 77 covering around 85 per cent of value revealed a system failure.
- Process of transfer of cases continued from October 2003 till well beyond May 2004 as against the instruction of the Board for it to be completed by 20 October 2003. Because of continued transfer of case files from one adjudicating officer to another for a longer period than anticipated, there was considerable delay in commencing process of adjudication. The chief commissioner, central excise Bhubaneshwar also acknowledged this fact in communication to the Board citing such transfer to joint commissioners as one of the reasons for pendency.

Such lapses in process of transfer of case files were not adequately addressed by commissioners and director general (inspection) even at the stage of scrutiny and compilation of MTRs. Board should have taken extra care to ensure that all relevant cases files were transferred properly and recast figures correctly reflected in the MTR.

Thus due to lack of proper monitoring over process of transfer of cases, the revision of monetary limit for adjudication caused avoidable delay rather than expediting settlement of cases.

An illustrative case is given below: -

The Board, while revising the monetary limit for adjudication vide circular ibid clarified that in case different SCNs had been issued on the same issue answerable to different adjudicating authorities, all SCNs would be adjudicated by adjudicating authority competent to decide the case involving highest amount of duty. Assistant commissioner, central excise division II, Faridabad in Delhi III commissionerate issued three SCNs on the same issue to M/s. Food and Health Care Specialities, Faridabad on 19 October 2001, 11 January 2002 and 17 July 2002 involving Rs.18.56 lakh, Rs.5.13 crore and Rs.4.03 crore respectively. While cases involving Rs.5.13 crore and Rs.4.03 crore were transferred to the commissioner, Faridabad, case involving Rs.18.56 lakh was transferred to the additional commissioner, Faridabad. As the issue involved was common in all three cases, SCN dated 19 October 2001, on which no further action has been taken by additional commissioner, was also required to be transferred to commissioner. Resultantly, all the cases were pending for adjudication as on November 2005.

4.7.3 Cases pending adjudication mis-reported

On PAC expressing serious concern over discrepancies in data relating to pending cases, the Board vide letter dated 23 May 2003 issued instructions for taking utmost care in compiling data while sending MTRs.

Test check of records of divisions, however, revealed that despite such instructions there were differences in the figures reflected in divisions with those in MTRs as on 31 March 2004 as per the details given in the table below: -

(Amount in crore of rupees)

No. of divisions	Pendency as per division/commissionerate records as on 31 March 2004		Pendency as shown in MTR as on 31 March 2004	
	Number	Amount	Number	Amount
10	1095	670.13	895	524.65

- There was thus incorrect/un-reconciled data of pendency to the extent of 200 number of cases involving amount of Rs.145.48 crore from commissionerates and then to the Board in 10 divisions.
- This had also resulted in presentation of incorrect picture of the actual pendencies to the Board.

4.8 Orders of the Board for analysis of pending adjudication cases not complied with

The Board vide letter dated 23 May 2003 instructed commissioners and chief commissioners to analyse reasons for pendency particularly where the pendencies were unduly high and disposals were not prompt.

It was noticed that pendency was high in Vadodara, Ranchi, Mumbai II and Chandigarh chief commissionerates. Chief commissioner Vadodara wrote to commissioners on 10 September 2003 and 12 February 2004 emphasising the need for clearance of cases more than one year old. However, no corrective/remedial measures for early disposal of these pendencies were suggested by chief commissioners.

Chief commissioner Mumbai II intimated audit that commissioners had been directed to carry out proper planning in order to liquidate pendencies in time bound manner, without specifying whether analysis of pending cases was done at his level and whether any corrective remedial measures were suggested. There was no response from chief commissioners Ranchi and Chandigarh.

Chief commissioner central excise, Coimbatore zone, had chalked out an action plan for 2003-04 wherein commissioners were advised to complete the adjudication of all cases pending as on 1 April 2003 by 31 December 2003. Audit, however, found out that there was no improvement in liquidation of adjudication cases. Chief commissioners, central excise Nagpur and Chennai (September 2004) did not analyse pendency but simply forwarded the Board's circular to subordinate offices with instructions to reduce the number of pending cases. No specific instructions suggesting corrective/remedial measures were found issued.

From information furnished by commissionerates under chief commissioner, Vadodara and Mumbai II, it was noticed that the Board had graded the commissionerates as 'outstanding', 'good', 'satisfactory 'and 'poor' during the year 2002-03 based on performance of each commissionerate in response to Board's direction. It was noticed that while Mumbai II commissionerate showing clearances of 48 per cent cases during 2002-03 was awarded 'outstanding', the Mumbai I commissionerate showing clearance of 71 per cent of the cases

was given 'good' grading. The basis on which the grading was awarded was, however, n made available to audit by commissionerates.

4.9 Non-maintenance of unconfirmed demand registers

The Board issued instruction on 28 July 1980 that a register of show cause-cum-dema notices for unconfirmed demands should be maintained in the prescribed proforma to ke watch over their speedy finalisation.

It was noticed that in Chennai I, Tirunelveli, Jaipur I and Jaipur II commissionerates r monthly closing showing opening balance, receipt, clearance during the month and closi balance at the end of the month were arrived at showing break-up for the actual pending cas at the end of each month. De novo demand cases and cases received on transfer from oth adjudicating officers were also not included in SCN register. In Madurai II division 15 cas involving an amount of Rs.3.88 crore were not exhibited in unconfirmed register. Jamshedpur division I of Jamshedpur commissionerate only 29 cases were found to b entered in the register against the transfer of 70 cases from Jamshedpur III division.

In the absence of complete details in SCN registers and due to improper maintenance records, correctness of pendency reflected in the MTR vis-à-vis actual demand cases pendi in the SCN register was in doubt.

4.10 Lack of co-ordination between Board and field offices/within the wings the department

In the course of review, it was noticed that some cases were pending adjudication due to la of proper co-ordination between Board and field offices as also within the various wings the department in furnishing necessary clarifications/documents to each other. A few cas are illustrated below in the table: -

(Amount in crore of ru

Commissionerate	Name of the assessee	Date of issue of SCN	Amount involved	Reasons for pendenc
Delhi I	M/s. Kuber Tobacco	31 July 2000	11.99	Documents from evasion wing awaited
Delhi I	M/s. Hindustan Machine	June 1991	4.17	Documents from DG awaited
Goa	M/s. Konkan Draffin (Pvt.) Ltd.	28 May 2003	2.42	Documents from DG Bangalore awaited
Ahmedabad I	M/s. Maradia Steel Ltd.	July 1998 to April 2000	1.22	Clarification from Board awaited
Chennai I	M/s. Chennai Petroleum Corporation Ltd.	July 2003	0.90	Refund claim was pend with Customs departme

4.11 Conclusion

With almost half the amount involved in demand cases lying un-adjudicated we beyond one year and the provision of qualified time limit not deterring adjudicati officers from allowing older cases to linger, the purpose of fixing time limit was not ful served. Adjudication officers were prone to postponing finalisation of demands b

taking recourse to 'where it is possible to do so'. Various measures initiated by the Government to speed up finalisation of demand cases did not meet with full success largely due to lack of consistent monitoring and insufficient internal controls.

4.12 Recommendations

Government may consider laying down guidelines specifying circumstances under which it was not possible to finalise demand within the statutory period and make it incumbent upon each adjudication authority to justify each such case to the Board.

Board may also fix appropriate time limit for issuing clarifications on the cases kept in the call book at its behest.

In view of large scale transfer of cases due to revision of monetary powers, there is an urgent need for recasting of MTRs by all the commissionerates to reflect correct picture of age-wise pendency.

In addition to fixing a numerical target for disposal of cases, Board may stipulate financial target as well to take care of the tendency of adjudicating low value cases.

Time bound programme of concerted efforts to bring down older pendencies to manageable levels.

The above observations were pointed out to Ministry in October 2005. Member (Central Excise) at 'exit conference' stated (November 2005) that corrective steps would be taken after detailed examination of audit observations wherever necessary.

SECTION 3 - SERVICE TAX

CHAPTER V : REVIEW ON SERVICE TAX ON MANPOWER RECRUITMENT AGENCY'S SERVICES AND SECURITY AGENCY'S SERVICES

5.1 Highlights

- **Measures taken by the department to bring unregistered service providers into tax net proved ineffective and inadequate. Audit identified 2492 unregistered service providers in 45 commissionerates with estimated loss of revenue of Rs.40.96 crore.**

(Paragraph 5.7)

- **Service tax of Rs.2.69 crore was not paid by academic institutions providing manpower recruitment agency services. Penalty and interest amounting to Rs.4.09 crore was also leviable.**

(Paragraph 5.8)

- **In 51 commissionerates of central excise around 25 per cent of returns due were not submitted by manpower recruitment and security agencies, while 11 and 20 per cent respectively were received late.**

(Paragraph 5.10.1)

- **Service tax of Rs.10.04 crore was evaded by 141 assessees in 20 commissionerates during the period when they did not file returns. Penalty and interest amounting to Rs.14.04 crore was also leviable.**

(Paragraph 5.10.2)

- **Short payment of Rs.43.44 crore inclusive of interest and penalty on account of suppression of taxable value by 289 assessees in 39 commissionerates was noticed.**

(Paragraph 5.11.7)

- **Penalty leviable under section 78 amounting to Rs.6.97 crore from two service providers, who had not paid service tax/suppressed the value of services not demanded.**

(Paragraph 5.12)

5.2 Introduction

Service tax on 'manpower recruitment agency' was levied with effect from 7 July 1997. Section 65(68) of Finance Act, 1994, defines manpower recruitment agency as 'any commercial concern engaged in providing any service, directly or indirectly, in any manner for recruitment of manpower to a client'.

Service tax on 'security agency' services was levied from 16 October 1998. Section 65(94) of Finance Act, 1994, defines security agency as 'any commercial concern engaged in the business of rendering services relating to security of property, whether movable or immovable or of any person, in any manner and includes services of investigation, detection or verification of any fact or activity of personnel or other nature or otherwise, including services of providing security personnel'.

Section 69 of the Act ibid read with rule 4 of Service Tax Rules, 1994, provides that every person liable to pay service tax shall make an application for registration to the concerned central excise officer in form ST-1 within a period of 30 days of service tax becoming leviable.

5.3 Audit objectives

Manpower agency was recognised as an evasion prone service by the Board in September 2003. Preliminary checks by audit had revealed that department's measures to widen assessee base did not seem adequate. Review was, therefore, conducted in audit to seek assurance that: -

- the monitoring mechanism devised to ensure that potential assessees providing above two services had been brought under the purview of service tax was adequate;
- tax administration was efficient and effective in ensuring compliance to legislations and rules; and
- internal controls were in place.

5.4 Scope of audit

Records of 54 out of 93 central excise commissionerates covering 24 States were test checked. Period covered under audit was from 1999-2000 to 2003-04. The findings are contained in the succeeding paragraphs.

5.5 Trend of revenue

Revenue from manpower recruitment agencies (Rs.25.90 crore) constituted 0.43 per cent while revenue from security agencies (Rs.80.28 crore) constituted 1.34 per cent of total revenue on services amounting to Rs.5792.43 crore in 54 commissionerates during the year 2003-04.

The table below indicates trend of revenue in respect of test checked commissionerates.

5.5.1 Manpower recruitment agency

(Amount in crore of rupe

No. of commissionerates	1999-2000		2000-01		2001-02		2002-03		2003-04	
	No. of assessees	Amt.	No. of assessees	Amt.	No. of assessees	Amt.	No. of assessees	Amt.	No. of assessees	Am
54	1945	5.49	2325	9.14	2859	9.69	4134	13.12	5725	25.9

(Amount in crore of rupees)

Percentage growth (+) or (-) over previous year								
No. of commissionerates	**2000-01**		**2001-02**		**2002-03**		**2003-04**	
	No.	**Amt.**	**No.**	**Amt.**	**No.**	**Amt.**	**No.**	**Amt.**
54	20	66	23	6	45	35	38	97

- Percentage growth in number of assessees came down in 2003-04 after having consistently risen in previous years. Interestingly though, there was a spurt in revenue in the same year indicating more intensive collection rather than expansion of assessee base.
- In Delhi IV commissionerate, there was decline of 58 per cent of revenue during 2002-03 over the year 2001-02 while the number of assessees increased by 13 per cent. On the other hand, number of assessees had increased significantly by 88 per cent in the year 2003-04, while increase in revenue was only 12 per cent in the same commissionerate.
- In Kanpur commissionerate, however, there was decline of 43 per cent of revenue during 2003-04 over the year 2002-03, though service providers increased by 19 per cent during this period.

5.5.2 Security agency

(Amount in crore of rupees)

No. of commissionerates	**1999-2000**		**2000-01**		**2001-02**		**2002-03**		**2003-04**	
	No. of assesses	**Amt.**	**No. of assessees**	**Amt.**	**No. of assessees**	**Amt.**	**No. of assessees**	**Amt.**	**No. of assessees**	**Amt.**
54	1197	20.21	1620	28.88	2043	36.53	3055	47.63	4263	80.28

(Amount in crore of rupees)

Percentage growth (+) or (-) over previous year								
No. of commissionerates	**2000-01**		**2001-02**		**2002-03**		**2003-04**	
	No.	**Amt.**	**No.**	**Amt.**	**No.**	**Amt.**	**No.**	**Amt.**
54	35	43	26	26	50	30	40	69

- In Patna commissionerate, there was increase of 36 per cent in number of service providers, but revenue declined sharply by 46 per cent during 2003-04 over the year 2002-03.
- In Ahmedabad commissionerate, against increase of 62 per cent in the assessee base, revenue rose by 40 per cent only during the year 2003-04 compared to 2002-03.

5.6 Inadequate efforts by department in bringing unregistered service providers into tax net

5.6.1 Surveys

Prevention of tax evasion and widening of tax base are two important functions of tax administration for optimum tax realisation. With increasing reliance on voluntary compliance by tax payers at large, it becomes increasingly important for department to put in place an effective mechanism for collecting information from various sources in order to bring unscrupulous assessees into tax net.

Board issued instructions to all commissionerates on 5 November 1999 to undertake survey and intelligence gathering to identify tax evaders with a view to improve the working of their service tax cells. As part of action plan drawn by director general service tax (DGST) and circulated to chief commissioners on 26 May 2003, the department was to collect intelligence, conduct surveys and to identify unregistered service providers and get them registered. Further instructions to field formations to carry out extensive surveys, collect intelligence and conduct searches on selective basis in respect of identified evasion prone services of which manpower recruitment was one were given in September 2003. Position of surveys undertaken by some commissionerates during 2003-04 and its impact on revenue is as follows: -

(Amount in crore of rupees

No. of commissionerates	**No. of surveys**	**No. of persons issued registration**			**Total additional revenue realised for all services***
		For all services	**Manpower recruitment agencies**	**Security agencies**	
35	2382	10194	168	110	3.42

* *Breakup for manpower and security agencies not available.*
Figures furnished by commissionerates.

- Audit noted that no target of minimum surveys was fixed for any commissionerate.
- Some commissionerates like Pune I did not maintain any record of surveys.
- In Pondicherry commissionerate, 55 surveys were carried out but not a single unregistered service provider was identified for registration.
- In nine commissionerates, prominent among them being Delhi I, Hyderabad II and Chandigarh, no survey was carried out.

5.6.2 Search and seizure

Amendment in section 82 of Finance Act, 1994, with effect from 16 August 2002, vests powers with commissioner of central excise to search premises and seize documents, where necessary. DGST vide communication of 27 June 2003 instructed commissioners to exercise this power in an effective and meaningful manner. From information furnished by 49

commissionerates, it was revealed that only 16 had conducted search and seizure, that too, on a very limited scale. The position is given in the table below: -

(Amount in crore of rupees)

No. of commissionerates	Period	No. of searches	No. of seizure	Manpower recruitment agency		Security agency	
				No. of SCN	Service tax involved	No. of SCN	Service tax involved
49	2002-03	16	3	4	0.07	11	1.95
49	2003-04	42	10	8	1.26	22	3.69

Figures furnished by commissionerates.

- Delhi III commissionerate carried out nine searches during 2003-04 without any impact on revenue.

- In 33 commissionerates, including Mumbai I, Delhi I, Delhi II and Chennai II where large base of manpower recruitment and security agencies could be reasonably expected to be in operation, no search and seizures were conducted.

5.7 Escapement from tax net due to non-registration

Effort was made by audit on a limited scale to gauge the extent of evasion of tax by active though unregistered service providers in the backdrop of inadequate and ineffective measures taken by department to widen assessee base. For this purpose information from various sources such as yellow pages, newspapers, websites, income tax returns and other secondary records etc. was collected. Preliminary findings by audit revealed that, prima facie, 2492 service providers (manpower recruitment agency 1330 and security agency 1162) in 45 commissionerates had not registered themselves with central excise department. In order to firm up findings of audit, income tax records and other secondary records such as those of registrar of companies, employees provident fund commissioner, industrial units and various institutes of 73 manpower recruitment and 322 security agencies were verified. Service tax evaded by them was to the extent of Rs.7.99 crore, besides interest of Rs.2.93 crore and penalty of Rs.7.99 crore upto 2003-04 as per the table given below: -

5.7.1 Manpower recruitment agency

(Amount in crore of rupees)

Nature of record	No. of commissionerates	No. of service providers	Gross value of service provided	Amount of service tax not paid	Interest payable	Penalty
Income tax returns	17	50	28.87	1.55	0.65	1.55
Secondary records	12	23	11.60	0.58	0.25	0.58

5.7.2 Security agency

(Amount in crore of rupee

Nature of record	No. of commissionerates	No. of service providers	Gross value of service provided	Amount of service tax not paid	Interest payable	Penalt
Income tax returns	21	96	63.72	3.78	1.58	3.78
Secondary records	31	226	31.96	2.08	0.45	2.08

Some illustrative cases are given below: -

Scrutiny of income tax returns and annual accounts filed with registrar of companies revealed that M/s. Safeguard Manpower Services Pvt. Ltd. in Hyderabad II commissionerate had realised Rs.7.04 crore from their client on account of manpower recruitment services during 1999-2000 to 2002-03. They, however, did not register themselves with the department and evaded service tax to the tune of Rs.35.21 lakh. The agency was also liable to pay interest of Rs.12.62 lakh, besides penalty of Rs.35.21 lakh. On this being pointed out (August 2005), the Ministry stated (November 2005) that the service provider was not conducting business from the address given in the income tax returns and that efforts were being made to locate his whereabouts.

Income tax returns of M/s. Multisystem Security and Services Pvt. Ltd. in Delhi II commissionerate revealed that they earned gross amount of Rs.5.81 crore on account of security agency's services during 2001 and 2002-03, but did not get themselves registered, nor did they pay service tax. This resulted in evasion of service tax to the extent of Rs.29.00 lakh, besides interest of Rs.10.92 lakh and penalty of Rs.29.00 lakh leviable thereon. On this being pointed out (August 2005), the Ministry intimated (November 2005) that legal action is being taken for recovery of service tax.

Similarly, scrutiny of income tax returns of M/s. Rajan Enterprises, Faridabad and M/s. Security Guard Corporation in Delhi IV commissionerate revealed that Rs.3.58 crore for recruitment of manpower for the period 2002-03 to 2003-04 and Rs.4.08 crore for security agency services during 1999-2000 and 2001-02 had been realised. The agencies had not registered with the department and thus evaded service tax to the tune of Rs.24.49 lakh, besides interest of Rs.6.31 lakh and penalty of Rs.24.49 lakh leviable thereon (first case) and Rs.20.38 lakh, besides interest of Rs.13.65 lakh and penalty of Rs.20.38 lakh for the latter. On this being pointed out (August 2005), the Ministry intimated (November 2005) that action is being pursued by the department.

5.7.3 Estimation of service tax loss in respect of unregistered service providers

In the absence of any predetermined mechanism to estimate quantum of service tax escaping, audit attempted to use parameter of average revenue yield from registered assessees. On a conservative estimate service tax to the extent of Rs.21.95 crore was evaded by unregistered service providers during the year 2003-04 alone, besides penalty of Rs.10 lakh as per the following table: -

Manpower recruitment agency

(Amount in crore of rupees)

No. of commiss-ionerates	Year	No. of unregistered service providers	No. of registered service providers	Total revenue	Revenue yield per service provider	Revenue loss	Penalty
30	2003-04	1257 (1330-73)	4778	22.60	0.0047	5.91	0.06

Security agency

(Amount in crore of rupees)

No. of Commiss-ionerates	Year	No. of unregistered service providers	No. of registered service providers	Total revenue	Revenue yield per service provider	Revenue loss	Penalty
45	2003-04	840 (1162-322)	3610	69.08	0.0191	16.04	0.04

- If the projections were to be made on what audit had actually worked out as average yield on test checked cases the figure of estimated revenue loss could be much higher.

5.8 Service tax not paid by academic institutions

DGST clarified in a compilation titled 'service tax through questionnaire' that academic institutions performing tasks of commercial concern assisting in manpower recruitment fell within the scope of definition of term manpower recruitment agency and were liable to pay service tax.

Scrutiny of six large academic institutions such as Indian Institute of Technology, management institutes, etc. revealed that they were performing such tasks by arranging campus interviews and had not got themselves registered. Service tax was also not paid by them. They had realised an amount of Rs.50.23 crore in relation to manpower recruitment during 1997-2004 on which service tax to the tune of Rs.2.69 crore was payable, besides interest of Rs.1.40 crore and penalty of Rs.2.69 crore.

5.9 Internal control at apex level

The post of DGST was created in December 1997 mainly to strengthen monitoring of collection and assessment of service tax; study staff requirement; suggest measures to increase revenue collection and to inspect service tax cells in commissionerates.

Review of functioning of DGST revealed that their recommendation for immediate creation of six independent service tax commissionerates in the budget proposals for the year 1999-2000 were implemented only in September 2004. One of the functions of DGST was to study and create database and update the same from time to time. DG had instructed commissionerates on 26 May 2003 for creation of complete and upto date database in respect of potential service tax assessees. No database was, however, found created either by cells in

commissionerates or at DGST. There was also requirement of fortnightly report on creation of database from division to commissioner and then to chief commissioner which was not being followed by commissionerates. Though DGST had been regularly issuing circulars to all commissioners regarding 'modus operandi' for taking remedial action since January 2003, no feedback was received from zones/commissionerates in the absence of any prescribed return.

5.10 Control mechanism in commissionerates

5.10.1 Ineffective monitoring of returns from registered service providers

According to section 70 of Finance Act, 1994, read with rule 7(i) of Service Tax Rules, 1994, every person liable to pay service tax is required to assess the tax himself and furnish half yearly return in Form ST-3 by 25th of the month following the half year. Failure to furnish return in time attracts penalty subject to maximum of Rs.1000 under section 77 (or maximum of Rs.2000 after 16 July 2001).

Out of 54 commissionerates test checked in audit, information on submission of returns was furnished by only 51 in respect of manpower recruitment agency and 49 commissionerates in respect of security agency.

Position of submission of returns by registered service providers during the period from 1999-2000 to 2003-04 is as follows: -

Manpower recruitment agency

(Amount in lakh of rupee

No. of commissi-onerates	No. of assessee registered	No. of returns due	No. of returns received	Returns received by due date	Returns received late	No. of returns not received	Penalty levied	Penalty not levied
51	11005	24682	18608	16609	1999	6074	0.80	54.04

Figures furnished by commissionerates.

Security agency

(Amount in lakh of rupee

No. of Commissi-onerates	No. of assessee registered	No. of returns due	No. of returns received	Returns received by due date	Returns received late	No. of returns not received	Penalty levied	Penalty not levied
49	8067	17031	12907	10285	2627	4119	2.54	33.90

Figures furnished by commissionerates.

- Penalty leviable on defaulters to the extent of Rs.87.94 lakh was not levied.
- Twenty five per cent of the returns due were not submitted by the two agencies.
- Eleven per cent and 20 per cent of the returns were received late in respect of manpower recruitment and security agencies respectively.

- In Lucknow and Ludhiana commissionerates, 81 and 76 per cent respectively of returns due from security agencies were not received.

- In Ludhiana and Coimbatore commissionerates, 90 and 88 per cent respectively of returns due from manpower recruitment agencies had not been received.

- In Guntur commissionerate, no return was filed by the agencies at all.

5.10.2 Service tax evaded during period when returns were not filed

For want of proper watch by department over submission of returns and non-imposition of penalty in cases of default, the number of service providers not filing them was significantly high. Independent verification of income tax returns and secondary records of some defaulters by audit revealed that 141 assessees (52 of manpower recruitment and 89 of security agencies) in 20 commissionerates had provided services attracting tax during periods when they had not filed returns, but had not paid it. Department did not take any action for non submission of returns by these defaulters, nor did they verify whether the defaulters were actively engaged in providing services during period of default. This resulted in evasion of service tax to the extent of Rs.10.04 crore, besides interest of Rs.4.00 crore in addition to penalty of Rs.10.04 crore during 1998-99 and 2003-04.

Some illustrative cases are given below: -

M/s. Purva Sainik Kalyan Nigam Ltd., a security service agency in Lucknow commissionerate, got itself registered with the department in June 2003 and filed returns due from April 2003 onwards. Independent verification of income tax returns, however, revealed that they had been providing services as security agency for the period from 2000-01 to 2002-03 without registration. This resulted in evasion of service tax to the tune of Rs.6.39 crore, besides interest of Rs.2.80 crore and penalty of Rs.6.39 crore. On this being pointed out (August 2005) the Ministry stated (November 2005) that investigations are being made to ascertain the suppressed value.

Verification of income tax returns submitted by Ms. Crux Management in Hyderabad II commissionerate revealed that assessee rendered manpower recruitment services during the period 1999-2000 to 2002-03 for which no service tax returns were filed. Non-payment of service tax by the agency was to the extent of Rs.38.78 lakh besides interest of Rs.11.11 lakh and penalty of Rs.38.78 lakh. On this being pointed out (August 2005), the Ministry intimated (November 2005) that the records are being verified.

5.11 Procedure devised to check under assessment ineffective

Prior to 16 July 2001, on filing of quarterly return (Form ST-3) by assessee, central excise officer was required to pass an order in writing assessing taxable value of service and determining service tax payable under section 71 ibid. From 16 July 2001 onwards, scheme of self-assessment procedure was introduced under which every person liable for service tax himself assessed tax and furnished to the superintendent of central excise a half yearly return

in form ST-3. For purpose of verification, department was empowered to call for any accounts, documents or other evidence from the assessee, as deemed necessary.

Information on assessment/verification was furnished by 43 commissionerates in respect of manpower recruitment agency and 45 commissionerates in respect of security agency.

Position of assessments/verification finalised by the department for the period from 1998-99 to 2003-04 test checked in audit revealed the following: -

5.11.1 Prior to 16 July 2001

Manpower recruitment agency

(Amount in lakh of rupees)

No. of commiss-ionerates	No. of returns received	Assessed	Pending assessment	Further information/ documents called for	Additional demands raised	
				No.	No.	Amount with interest and penalty
43	9767	9079	688	207	1	0.21

Security agency

(Amount in lakh of rupees)

No. of commiss-ionerates	No. of returns received	Assessed	Pending assessment	Further information/ documents called for	Additional demands raised		Recovery	
				No.	No.	Amount with interest and penalty	No. of demands	Amount
45	4269	4014	255	34	24	128.27	20	11.23

- Around seven per cent of returns relating to manpower recruitment agencies and six per cent relating to security agencies were still to be assessed.
- Mumbai I commissionerate had called for further information/documents in 219 cases (205 manpower recruitment and 14 security agencies) but no additional demand was raised.
- In Surat I and Lucknow commissionerates none of the returns received prior to 16 July 2001 in respect of security agencies was assessed.
- In Kanpur commissionerate such non-assessment was as high as 79 per cent in respect of both manpower recruitment agencies and security agencies.
- A meagre nine per cent of demands raised in respect of security agencies were recovered.

5.11.2 After 16 July 2001

Manpower recruitment agency

(Amount in lakh of rupees)

No. of commiss-ionerates	No. of returns received	Verified	Pending verification	Further information/ documents called for	Additional demands raised	
				No.	No.	Amount with interest and penalty
49	14308	13124	1184	103	4	0.74

Security agency

(Amount in lakh of rupees)

No. of commiss-ionerates	No. of returns received	Verified	Pending verification	Further information/ documents called for	Additional demands raised		Recovery	
				No.	No.	Amount with interest and penalty	No. of demands	Amount
44	8969	7551	1418	16	19	30.03	7	1.46

- After self assessment procedure with effect from 16 July 2001, eight per cent and 16 per cent of returns of manpower recruitment agencies and security agencies respectively were yet to be verified with regard to correctness of the amount paid during the period August 2001 to March 2004.

- Recovery of paltry sum of Rs.1.46 lakh was made in security agencies.

- Mumbai I commissionerate had called for further information/documents in 98 cases in respect of manpower recruitment agencies, but no additional demands were raised.

5.11.3 Inadequate information in return (ST-3) for assessment

Proforma of ST-3 return did not require assessee to give details of value of taxable service charged, value of taxable service realised, amount of service tax payable alongwith details of payment made to government credit and amount of interest, if any payable. Vital information such as date of commencement of service, period during which no service was rendered, etc. was not required to be furnished. Return was not accompanied by any other documents like balance sheet and profit and loss account from which value of taxable service declared in the form could be cross checked and correlated. The department was only verifying correctness of the amount self assessed by service provider on the basis of scant information contained in ST-3. Whether or not service tax credit on inputs service had been availed was not evident in ST-3. Neither could the tax on input service as having been paid by assessee be ascertained.

5.11.4 Correctness of service tax assessed by assessee not verified

Under section 71 of Finance Act, 1994, superintendent of central excise was required to verify correctness of the tax assessed by assessee on the basis of information contained in ST-3 returns. Member (Service Tax) in his communication dated 8 August 2003 addressed to all chief commissioners stressed the need for intelligent scrutiny of half yearly returns. Some of ST-3 returns duly verified by department were scrutinised in audit. Cases of short payment of service tax on the basis of information contained in ST-3 returns which had escaped notice of department came to light indicating that verification was slack and deficient. Some cases noticed by audit are illustrated below: -

Rate of service tax was revised upward from five per cent to eight per cent with effect from 14 May 2003. However, in 23 cases, assessee continued to calculate service tax at lower rate. This resulted in short payment of service tax to the tune of Rs.31.18 lakh.

Fifty two other cases of non-payment of service tax/interest to the extent of Rs.44.23 lakh for various reasons such as interest on delayed payment, service tax not paid on gross amount, incorrect assessment of service tax etc were noticed by audit.

Scrutiny of returns filed by M/s. Tops Detectives and security agencies in Mumbai V commissionerate revealed that value of service tax realised was not shown separately. Department verified the returns without basic information. If value of service realised was the same as billed, short-payment of service tax worked out to Rs.45.47 lakh for the period from April 1999 to March 2002.

5.11.5 Provision for best judgment assessment not used adequately

In case of failure of assessee to file return under section 70 or non-compliance of provision of section 71, assistant commissioner was empowered to make assessment of the value of taxable service to the best of his judgment under section 72. From information furnished by commissionerates test checked in audit, it was revealed that no assessment under section 72 was made in so far as manpower recruitment and security agencies were concerned except Madurai commissionerate. Powers thus were almost not made use of. Section 72 has, however, been withdrawn with effect from 10 September 2004.

5.11.6 Provision for verification of tax withdrawn

While DGST in their performance report for 2003-04 had recommended statutory changes in the Act for prosecution of frequent offenders/tax evaders, even elementary checks in the form of verification of correctness of the tax (assessed by assessee himself) on the basis of his return has been dispensed with by withdrawal of section 71 from September 2004. With this department can no longer call for any accounts, documents or other evidence from assessee for the purpose of checking correctness of the amount. No alternative procedures for checking and verification of amount self assessed by assessees have been put in place.

5.11.7 Taxable values suppressed by the assessee

Attempt was made by audit to ascertain extent of correctness of tax paid by 289 assessees (43 manpower recruitment and 246 security agencies) by cross verification of their income tax returns and other secondary records. Check revealed deliberate attempt to suppress value of services and consequently evade service tax to the extent of Rs.18.40 crore during the years 1998-99 to 2003-04, besides interest of Rs.6.64 crore and penalty of Rs.18.40 crore being payable. Service tax so evaded by suppression of value represented 17 per cent of total revenue earned from these two services in 54 commissionerates during 2003-04.

Some illustrative cases are given below: -

Scrutiny of income tax returns of M/s. Om Sai Professional Detective and Security Services in Guntur commissionerate revealed that the agency had shown income of Rs.39.57 crore towards services rendered to their client. But in ST-3 returns gross income was shown as Rs.7.82 crore. This resulted in undervaluation of taxable revenue on services to the extent of Rs.31.75 crore with consequential short payment of service tax to the tune of Rs.1.98 crore, besides interest of Rs.65.33 lakh and penalty of Rs.1.98 crore during the period from 1999-2000 to 2002-03. On this being pointed out (August 2005), the Ministry stated (November 2005) that demand notice was being issued.

Comparison of income tax returns of M/s. Hindustan Investigation and Security Service in Delhi IV commissionerate with ST-3 return showed that assessee had undervalued services to the extent of Rs.23.26 crore. This resulted in short payment of Rs.1.28 crore, besides interest of Rs.54.03 lakh and penalty of Rs.1.28 crore. On this being pointed out (August 2005), the Ministry stated (November 2005) that the matter was being investigated.

5.12 Penalty for non-payment/suppression of value not demanded

According to section 78 where any service tax has not been levied or paid or short paid by reasons of fraud or collusion or wilful misstatement or suppression of facts or intention to evade payment of service tax, penalty not less than, but not exceeding twice the amount of service tax due is leviable.

SCN demanding Rs.6.83 crore of service tax on suppressed value was issued to M/s. Ma Foi Management Consultant in Chennai II commissionerate. However, minimum penalty of Rs.6.83 crore was not demanded.

M/s. BHEL Complex Co-operative Labour Contract Society rendering security service got itself registered in October 2004 and paid service tax amounting to Rs.13.68 lakh in Trichy commissionerate for the earlier period from 16 October 1998 to 24 October 2004, on this being pointed out by internal audit. Interest of Rs.3.15 lakh and penalty of Rs.13.68 lakh was, however, not levied.

On this being pointed out (August 2005), the Ministry Stated (November 2005) that the appropriate interest has since been recovered and that the penalty has been waived by the adjudicating authority.

5.13 Delay in adjudication

In 28 commissionerates of central excise, adjudication of 343 SCNs issued to manpower recruitment and security agencies involving revenue of Rs.7.19 crore was pending as on 30 September 2004, of which, 85 SCNs involving revenue of Rs.1.32 crore were pending for more than two years.

Provisions of section 73 of Finance Act, 1994, relating to issue of SCN and recovery of service tax short levied were purportedly substituted on lines of section 11A of Central Excise Act by Finance Act, 2004 with effect from 10 September 2004. However the crucial provisions of section 11A which prescribe time limit for finalisation of adjudication process were not incorporated in section 73. The adjudication officer is thus not required to finalise a demand case within a prescribed time frame which could lead to delays in finalisation of cases and recovery of service tax.

5.14 Service tax code number based on permanent account number (PAN) not allotted

Board in their letter dated 27 August 2001 issued instructions for allotment of service tax code numbers based on PAN allotted by income tax department to all service providers. Board in circular dated 21 February 2002 issued further instruction for allotment of PAN based service tax code numbers.

Position of allotment of PAN based service tax code number as on 30 September 2004 in 46 commissionerates where information was made available is given in the table below: -

Manpower recruitment agency

No. of commissionerates	No. of service providers	No. of service tax providers not allotted STCNs	Percentage
46	5538	2998	54

Security agency

No. of commissionerates	No. of service providers	No. of service tax providers not allotted STCNs	Percentage
46	3900	2614	67

- Work of allotment of service tax code numbers which could be crucial from the point of view of cross verification of value of services from the income tax returns was yet to be completed even after lapse of more than three years.
- Information received from Delhi I, Delhi II, Pune III, Calicut and Shillong commissionerates, showed that no service provider in the two services was allotted service tax code numbers.

5.15 Audit impact

The review contains audit comments involving financial implication of Rs.123.46 crore arising out of non-compliance to Act/Rules/Notifications etc. It also contains audit observations arising out of procedural shortcomings with financial implication of Rs.9.53 crore. The department issued SCNs amounting to Rs.4.68 crore and recovered an amount of Rs.34.92 lakh.

5.16 Conclusion

Growth of revenue is directly linked with the growth of assessee base. Efforts made by the department to bring into net unregistered service providers and augment revenue being considered inadequate, attempt made by audit on a limited scale has disclosed the existence of a large number of unregistered service providers. Returns are main tools through which department was required to watch and ensure that service tax was paid by registered service providers regularly and without interruption. Lack of monitoring and follow-up resulted in large scale evasion of service tax during the period when returns were not filed by them. There was also general propensity of the assessees to pay less tax than was due from them, largely due to the ineffective control mechanism and notion of 'voluntary compliance'.

5.17 Recommendations

Audit recommends that ST-3 form include details of date of commencement of service, period during which service was not rendered and such like vital information to prevent escapement of tax. Time limit for adjudication of service tax cases should be introduced on the lines of section 11A of Central Excise Act to speed up finalisation. A separate Act for service tax, which had already been drafted and sent to the Ministry by Directorate of Service Tax way back in February 2001 should be enacted expeditiously for smooth and effective administration of service tax. An alternative procedure for checking and verification of tax due as assessed by assessee is recommended in view of withdrawal of section 71 and 72 of the Act.

The above observations were pointed out to Ministry in August 2005. They were largely in agreement with the need to tone up administration. The Board stated (November 2005) that audit observations and recommendations have been taken note of and corrective steps where necessary would be taken after detailed examination.

Jayanti Prasad

New Delhi
Dated : 22 March 2006

(JAYANTI PRASAD)
Principal Director (Indirect Taxes)

Countersigned

New Delhi
Dated : 30 March 2006

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

Glossary of Terms and Abbreviations used in the Report

Advance Licensing Committee	Referred as	ALC
Air Cargo Complex	-do-	ACC
Bank Guarantee	-do-	BG
Basic Customs Duty	-do-	BCD
Bharat Heavy Electrical Limited	-do-	BHEL
Bharat Petroleum Corporation Limited	-do-	BPCL
Bill of Entry	-do-	BE
Board of Industrial Financial Reconstruction	-do-	BIFR
Central Board of Excise and Customs	-do-	Board or CBEC
Central Excise Gold Appellate Tribunal	-do-	CEGAT
Central Excise Sales Tax Appellate Tribunal	-do-	CESTAT
Central Excise Tariff Act	-do-	CETA
Central Excise Tariff Heading	-do-	CETH
Cold Rolled	-do-	CR
Commissioner of Customs Import and General	-do-	CC I&G
Container Freight Station	-do-	CFS
Cost Insurance Freight	-do-	CIF
Countervailing Duty/Additional Duty	-do-	CVD/
Crude Palm Oil	-do-	CPO
Customs Tariff Heading	-do-	CTH
Deputy Commissioner/Assistant Commissioner	-do-	DC/AC
Director General	-do-	DG
Director General of Foreign Trade	-do-	DGFT
Director General Service Tax	-do-	DGST
Director of Revenue Intelligence	-do-	DRI
Duty Entitlement Pass Book	-do-	DEPB
Duty Exemption Entitlement Certificate	-do-	DEEC
Electronic Data Interchange	-do-	EDI
Employee Provident Fund	-do-	EPF
Enforcement cum Adjudication	-do-	ECA
Export Obligation	-do-	EO
Export Obligation Discharge Certificate	-do-	EODC
Extra Duty Deposit	-do-	EDD

Fixed Wireless Telephone	-do-	FWT
Free on Board Value	-do-	FOB Value
Hand Book of Procedure	-do-	HBP
Harmonised System of Nomenclature	-do-	HSN
Hindustan Petroleum Corporation Limited	-do-	HPCl
Import General Manifest	-do-	IGM
Import Manifest Clearance Register	-do-	IMCR
Indian Customs Electronic Data Interchange System	-do-	ICES
Indian Oil Corporation Limited	-do-	IOCL
Industrial Training Institute	-do-	ITI
Inland Container Depot	-do-	ICD
Internal Audit Department	-do-	IAD
Jawaharlal Nehru Custom House	-do-	JNCH
Joint Director General of Foreign Trade	-do-	JDGFT
Legal Undertaking	-do-	LUT
Light Diesel Oil	-do-	LDO
Maximum Retail Price	-do-	MRP
Metric Ton	-do-	MT
Monthly Technical report	-do-	MTR
New Custom House	-do-	NCH
Permanent Account Number	-do-	PAN
Personal Ledger Account	-do-	PLA
Printed Circuit Board	-do-	PCB
Provisional Duty Bond	-do-	PD Bond
Public Accounts Committee	-do-	PAC
Regional Licensing Authority	-do-	RLA
Service Tax-3	-do-	ST-3
Show Cause Notice	-do-	SCN
Special Advance Licensing Committee	-do-	SALC
Special Import Licence	-do-	SIL
Special Valuation Branch/Special Intelligence and Investigation branch	-do-	SVB/SIIB
Standard Input Output Norms	-do-	SION
Tughlakabad	-do-	TKD