Report of the Comptroller and Auditor General of India

for the year ended March 1998

Union Government
(Indirect Taxes - Customs)

No.10 of 1999

CONTENTS

PREFATORY REMARKS

This Report for the year ended 31 March 1998 has been prepared for submission to the President under Article 151 of the Constitution based on the audit of Customs Receipts of the Union of India in terms of Section 16 of the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971.

The cases mentioned in the Report are among those which came to notice in the course of audit during 1997-98 and early part of 1998-99 as well as those which came to notice in earlier years but could not be reported earlier.

OVERVIEW

This report contains two reviews and 174 paragraphs involving non levy/short levy of customs duty of Rs.5093.13 crore. Some of the important audit findings included in the Report are highlighted below:

I. General

Net receipts of Rs.40,193 crore collected from customs duties during the year 1997-98 fell short of the Budget Estimates by 24 per cent and collections from other customs receipts exceeded Budget Estimates by 40 per cent, indicating weakness in the budgetary forecasting of the Government.

(Paragraph1.1)

A total of Rs.11,798 crore was foregone during the year on account of export promotion schemes including duty drawback. The prevalent monitoring mechanism in the Custom Houses and in the office of the Director General of Foreign Trade, however, does not enable them to ensure that the full amount of foreign exchange due against the export value declared on the shipping bills were actually realised. In fact an amount of Rs.11,262.43 crore was outstanding for realisation for more than six months on this account.

(Paragraph 1.4)

II. Review on 'VALUE BASED ADVANCE LICENSING SCHEME'

A review of VABAL licences issued by the three main regional licensing offices at Calcutta, Delhi and Mumbai alongwith the associated records maintained in the Custom Houses in these places was undertaken in audit during the period July 1997 to May 1998 to ascertain the extent of misuse of the scheme and to determine the contributing factors for such misuse.

Out of the 10,758 licences allowing duty free imports of Rs.5380 crore examined in audit, irregularities were noticed in 2487 cases (23 per cent) involving a revenue effect of Rs.3532.20 crore. In all these cases mainly relating to non-fulfilment of export obligation and mis-declaration of value of import and export goods leading to excess import of duty free materials, penal action for wilful mis-statement or suppression of facts needs to be taken by recovery of duty with interest and levy of penalty as provided in the Exim policy and Customs Act. The misuse was made possible by flaws in the scheme, its tardy implementation, absence of an effective monitoring mechanism, deficiencies in records maintenance and diffused management and control mechanisms of the licensing authorities and the customs department. The major findings are:

- While the value of an import licence was to be decided on the IO norms, no quantity restrictions were imposed on the import licence. Failure of the licencing authorities to verify the reasonableness of prices of imports furnished in the applications enabled 1301

licencees to import inputs far in excess of the quantities required for discharging export obligation. The duty recoverable (alongwith interest) on the excess imports made in these cases amounted to Rs.353.54 crore.

(Paragraph 2.5, 2.6, 2.7.1)

- Absence of quantity specification for export obligation in the licence coupled with non verification of prices of exports stated in the application enabled 52 licencees to import quantities much in excess of those required for discharging export obligation value. This was done by showing large quantities in the application and realising the export obligation at much lower quantities and higher prices. An amount of Rs.171.99 crore was recoverable from the licencees.

(Paragraph 2.5, 2.6, 2.7.2)

- Absence of mechanism in the Ministry to assess the actual accretion of foreign exchange through the scheme during the period from April 1995 to March 1998. Any assessment of the gains from the scheme are, therefore, presumptive. Non verification of the genuineness of Bank Certificate of Export Realisation (BCER) submitted by the exporters with the licensing authorities also enabled 2 exporters to submit fake/fraudulent certificates in 25 licences involving foreign exchange of Rs.73.55 crore. Besides initiation of criminal proceedings, Rs.7.14 crore towards duty and interest and Rs.80.29 crore towards regularisation of shortfall were recoverable by the licensing authorities in these cases.

(Paragraph 2.8)

- Although the Policy prescribed rejection of incomplete applications, in 242 cases licences were issued on incomplete applications where even the quantity of inputs or export products were not indicated. This enabled excess duty free imports valued Rs.144.69 crore involving loss of revenue of Rs.303.50 crore.

(Paragraph 2.9.1)

- Issue of licences with scant regard to the prescribed norms enabled 371 licencees to import material/sensitive items in excess involving duty of Rs.318.61 crore including interest.

(Paragraph 2.9.2)

- Contrary to the provisions of the EXIM Policy 1997-2002, the Government extended the export obligation period indiscriminately under public notice of September 1997.

(Paragraph 2.9.3)

- Duality of control in monitoring resulted in non enforcement of recovery from the defaulters. 467 licencees failed to fulfil the prescribed export obligation. The loss of duty alongwith interest recoverable from them was Rs.600.63 crore. Further a sum of Rs.1690.95 crore was recoverable by the licensing authorities. In 278 of these cases though imports of Rs.288.71 crore were made, no exports were recorded. 135 of these

licences were repeatedly issued to only three exporters indicating clear lapse in monitoring of export obligation by the licensing authorities.

(Paragraph 2.10)

- Basic records pertaining to the scheme were not properly maintained in either the licensing or the Customs departments resulting in ineffective control and inadequate monitoring .

(Paragraph 2.11)

- Revenue loss of Rs.6.75 crore was noticed in the licences issued to two other exporters.

(Paragraph 2.12)

III. Delay in Finalisation and Collection of Demands

Test check of 20 per cent of the records relating to finalisation and Collection of demands for the period from 1995-96 to 1997-98 was conducted in the 16 major Custom Houses/ Commissionerates to evaluate the effectiveness of the systems and practices adopted and to identify the factors that led to delays at various stages and the consequential financial impact. The major findings are :

- 4745 show cause notices involving Rs.588.36 crore were pending for confirmation in 16 commissionerates resulting in indirect financial accommodation to the importers and loss to Government for the delay in recovery by way of interest of Rs.235.33 crore. Further, in 3138 cases involving duty of Rs.492.57 crore, show cause notices issued were confirmed after substantial delay resulting in loss of interest of Rs.151.97 crore.

(Paragraph 3.3)

- 13661 cases of confirmed demands involving Rs.411.29 crore were pending realisation as on 31 March 1998. The loss to Government by way of interest in these cases was Rs.122.57 crore.

(Paragraph 3.4)

- Absence of provision in the Act to levy interest on delayed payment of penalty resulted in loss of revenue of Rs.49.33 crore on the amount of Rs.116.53 crore outstanding in 11347 cases.

(Paragraph 3.8)

- In 543 cases involving revenue of Rs.9.31 crore demands became time barred due to inaction by the department.

(Paragraph 3.9)

- Absence of control mechanisms in three Customs houses resulted in failure to detect omission/abandonment of 887 demand cases involving revenue of Rs.614.33 crore. Basic

records prescribed for monitoring and ensuring recovery of demands were either not being maintained/or not maintained as prescribed.

(Paragraph 3.10)

IV Non recovery of inadmissible duty draw back

- Although an enabling provision had been made in the Customs Act as early as 1991 to recover duty drawback where foreign exchange receipts failed to materialize, the Government has failed to draft a suitable mechanism to identify cases of default and effect recoveries till date. An amount of Rs.14,346 crore has been paid as drawback since April 1991 till March 1998.

(Paragraph 9.1)

V Irregularities in assessments

- Incorrect adoption/computation of assessable value resulted in undervaluation of goods liable for customs duty and short collection of Rs.45 lakh in 10 cases.

(Paragraph 4.1 to 4.2)

- In 22 cases dutiable imported goods were incorrectly classified and assessed to duty at lesser rates leading to short levy of Rs.2.03 crore.

(Paragraph 5.1 to 5.7)

- Extending the benefit of exemption notifications to dutiable goods not covered by them resulted in short collection of duty of Rs.5.25 crore in 19 cases.

(Paragraph 6.1 to 6.5)

- Additional duty leviable under Section 3 of the Tariff Act amounting to Rs.2.14 crore was not levied/short levied in 45 cases.

(Paragraph 7.1 to 7.4)

- Non levy/loss of customs revenue arising from operation of certain duty exemption schemes like Advance Licensing Schemes, EPCG, EOU, EPZ etc. amounted to Rs.227.67 crore.

(Paragraph 8.1 to 8.4)

- Other irregularities like, loss of revenue on the goods cleared from warehouse, delay in clearance of goods from warehouses, loss of revenue on transit goods to Nepal, non disposal of confiscated goods, irregular payment of drawback refund etc. led to loss of Rs.139.69 crore in 51 cases.

(Paragraph 9.2 to 9.14)

CHAPTER 1 : ANALYSIS OF RECEIPTS

1.1 Customs Receipts

Receipts from customs duties during the years 1996-97 and 1997-98, alongwith the budget estimates and the revised estimates for 1997-98 are presented in the table below:

(Rupees in crore)

Net Customs Receipts from	Actual Receipts 1996-97	Budget estimates 1997-98	Revised estimates 1997-98	Actual Receipts 1997-98
Imports*	42110	52013	40581	39441
Exports	23	3	2	66
Cess on exports	142	163	127	198
Sale proceeds of confiscated goods	235	70	55	83
Other receipts	341	301	235	405
Net receipts	42851	52550	41000	40193

(N.B. The figures shown have been arrived at after deducting refunds and drawback paid)
*Including Special Customs duty.
Source : Principal CCA, CBEC, New Delhi

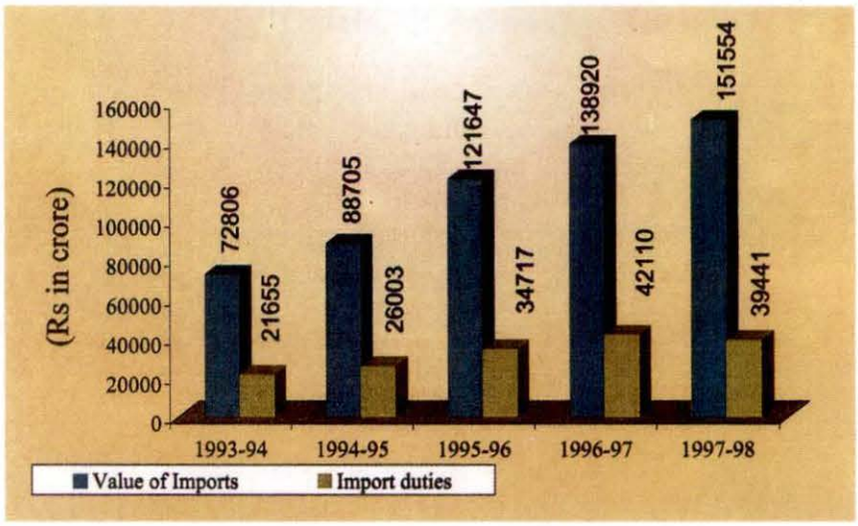
Collections from import duty fell short of the Budget Estimates by Rs.12,572 crore or 24 *per cent*. They fell short of even the Revised Estimates by Rs.1,140 crore. By contrast collections from the other customs receipts viz., export duty, cess etc. exceeded the Budget Estimates by 40 *per cent*. Surprisingly the estimates from these other receipts had been reduced under all the heads by 21 to 33 *per cent* at the Revised Estimate stage. Thus as compared to Revised Estimates, the actual receipts from the other heads were higher by 79 *per cent*. These are indicative of weaknesses in the budgetary forecasting methodology of the Government.

1.2 Trend of Receipts

A comparison of total year-wise imports with the corresponding net customs duties collected during 1993-94 to 1997-98 has been shown in the bar chart and the table overleaf :

VALUE OF IMPORTS AND IMPORT DUTY COLLECTED

1993-94 TO 1997-98 (YEAR-WISE)



(Rupees in crore)

Year	Value of Imports	Import duties	Import duty as percentage of value of imports
(1)	(2)	(3)	(4)
1993-94	72806	21655	29.74
1994-95	88705	26003	29.31
1995-96	121647	34717	28.54
1996-97	138920	42110	30.31
1997-98	151554	39441	26.02

The decline in the receipts from import duty as a percentage of value of imports shows a perceptible drop in 1997-98 due to an all round reduction in 'duty rates'.

1.3 Commodity Wise Details of Customs Receipts

Major commodity wise value of imports and exports and the gross duty realised therefrom during the financial year 1997-98 and the previous year 1996-97 are given overleaf in the table.

a) Imports

(Rupees in crore)

Sl. No.	Commodities	Value of imports		Import duties*		Percentage share in total import duties collection	
		96-97	97-98	96-97	97-98	96-97	97-98
1.	Food and live animals chiefly for food	1636	2708	1029	965	2.36	2.38
2.	Mineral, fuels and related materials	35629	30538	6901	5158	15.86	12.72
3.	Crude materials inedible except fuel	5684	5365	5724	4867	13.15	12.01
4.	Chemicals and related product	16395	18710	3610	3768	8.30	9.30
5.	Manufactured goods	23371	25701	3914	2709	9.00	6.68
6.	Machinery and transport equipment	19362	17888	8512	8410	19.56	20.75
7.	Professional scientific controlling instruments etc.	1962	2652	2523	2353	5.80	5.80
8.	Others	34881	54972	11300	12307	25.97	30.36
	Total	**138920	151554	43513	40537		

* Source - Directorate of Statistics and Intelligence, New Delhi.
** Figures updated by Ministry of Commerce.

b) Exports

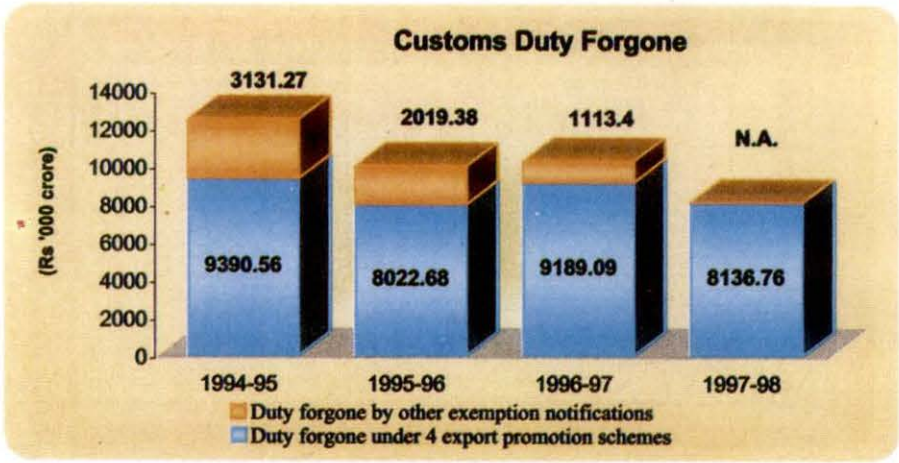
(Rupees in crore)

Sl. No.	Commodities	Value of exports		Export duty and cess	
		1996-97	1997-98	1996-97	1997-98
1.	Food items	19874	19247	15	08
2.	Beverages and tobacco	757	1059	08	14
3.	Crude materials inedible except fuels (including mica)	7017	6297	22	02
4.	Mineral, fuels, lubricant and related material	1710	1311	--	--
5.	Chemicals and related products	14564	16702	--	--
6.	Manufactured goods classified according to materials except pearls, precious, semi precious stones and carpets, hand made leather and leather manufactures including readymade garments and clothing accessories	29039	31008	--	--
7.	Engineering goods	14396	15584	--	--
8.	Miscellaneous manufactured articles including handicrafts, gems and jewellery	26087	28198	--	--
9.	Others	5373	6880	92	110
	Total of exports and re-exports	***118817**	**126286**	**137**	**134**

* Figures updated by Ministry of Commerce

1.4 Duty Forgone

a) The total duty forgone under various exemption notifications and its break-up between duty forgone in respect of four export promotion schemes (viz., Advance Licence, EPCG, EPZ and EOU) and all other notifications for the period 1994-95 to 1997-98 are shown in the bar chart and the table below :



(Rupees in crore)

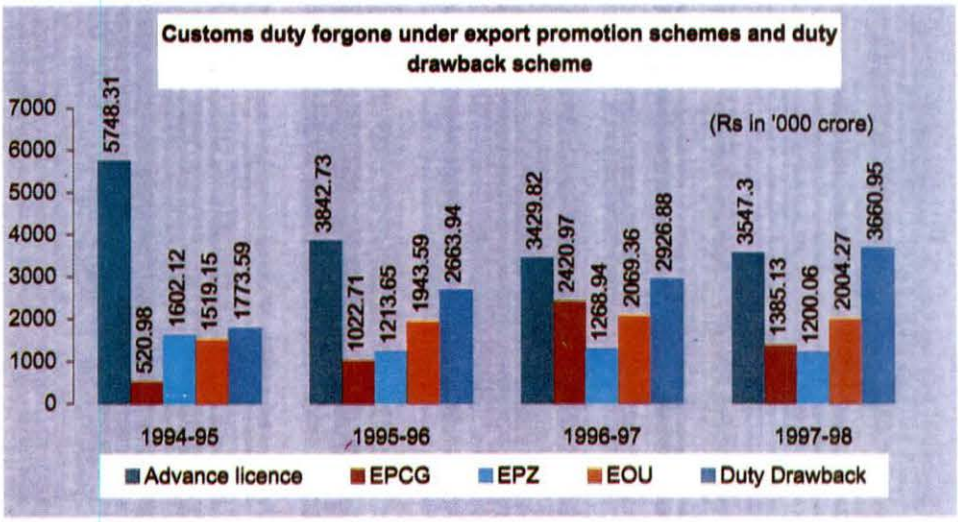
Year	Total duty forgone	Duty forgone under 4 export promotion schemes	Duty forgone by other exemption notifications	Percentage share of export promotion schemes in total duty foregone
1994-95	12521.83	*9390.56	3131.27	75
1995-96	10042.06	8022.68	2019.38	80
1996-97	10302.49	9189.09	1113.40	89
1997-98	N.A.	8136.76	N.A.	N.A.**

* Figures revised by Ministry of Finance.
** Not furnished by Ministry of Finance.

It will be seen that the share of the duty forgone under four export promotion schemes increased from 75 *per cent* in 1994-95 to 89 *per cent* during 1996-97.

b) The break-up of the duty forgone in respect of the four export promotion schemes viz., Advance Licence, EPCG, EPZ, EOUs and refund of

duty under the drawback scheme for the period from 1994-95 to 1997-98 are shown in the bar chart and the table below:



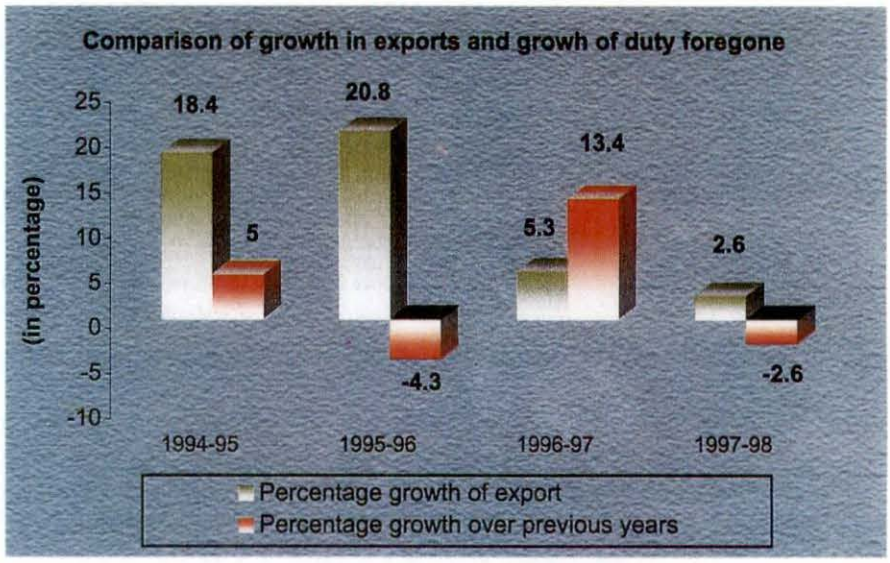
(Rupees in crore)

Year	Advance licence	EPCG	EPZ	EOU	Duty Drawback	Total
1994-95	[A] 5748.31	520.98	1602.12	1519.15	1773.59	11164.15
1995-96	3842.73	1022.71	1213.65	1943.59	2663.94	10686.62
1996-97	3429.82	2420.97	1268.94	2069.36	2926.88	12115.97
1997-98	3547.30	1385.13	1200.06	2004.27	3660.95	11797.71

[A] Figures revised by Ministry of Finance.

Duty exemption schemes have been regularly reviewed in audit and short comings including revenue loss were commented in the Audit Reports for earlier years. An appraisal on 'Value Based Advance Licensing Scheme' is included in Chapter 2 of this Report.

c) Rate of percentage of growth of exports vis-a-vis duty forgone in various export promotion schemes including duty drawback scheme for the year 1994-95 to 1997-98 are shown in the graph and table overleaf :



Year	Export in $ Mn	Percentage growth over previous years	Duty forgone in EPS including drawback (Rs.in crore)	Percentage growth over previous years
1994-95	26330	18.4	11164	5.0
1995-96	31797	20.8	10687	-4.3
1996-97	33470	5.3	12116	13.4
1997-98	33980	2.6	11798	-2.6

d) The basic objective of forgoing duty on imports made under the export promotion schemes, was to enhance foreign exchange earnings and thereby reduce the deficit in the Balance of Trade. Audit enquiries and scrutiny of records revealed that duty exemptions were allowed at the time of import based on a commitment of export obligation and drawback is allowed on the basis of shipping documents of export. The prevalent monitoring mechanism in the Custom Houses and the offices of Director General of Foreign Trade did not, however, enable them to ensure that the full amount of foreign exchange due against the export value declared on the shipping bills presented by export houses were actually realised. **Infact as per RBI records as on 31 December 1997, an amount of Rs.11,262.43 crore was outstanding for realisation for more than six months on this account.** Scheme wise details are not known to the Government.

e) Duty forgone under section 25(1) and (2) of the Customs Act, 1962 {other than in respect of four export promotion schemes vide para 1.5(b)} during 1994-95 to 1997-98 are shown in the table below :

(Rupees in crore)

Year	No. of exemption issued under 25(I)	No. of total exemption issued under 25(2)	Total No. of exemption notifications issued	Duty forgone under 25(I)	Duty forgone under 25(2)	Duty forgone
1994-95	172	285	457	2797.90	333.37	3131.27
1995-96	55	258	313	1467.17	552.21	2019.38
1996-97	63	159	222	934.50	(A)178.90	1113.40
1997-98	N.A.*					

(A) This does not include the reports of three Commissionerates viz., CCE Kanpur, Trivandrum and Jargaon (West Bengal).

* Not furnished by Ministry of Finance.

1.5 Cost of Collection of Customs Receipts

The expenditure incurred on collection of Customs duty during the year 1997-98 alongwith the figures for the previous year are given below :

(Rupees in crore)

Head of Account	Cost of collection	1996-97	1997-98
2037-101	Revenue cum import export and trade control functions	72.85	91.34
2037-102	Preventive and other functions	263.19	340.09
	Total	336.04	431.42
	Cost of collection as percentage of Customs receipts	0.76	1.03

The percentage of cost of collection has increased to the extent of 35.53 *per cent* during 1997-98 with respect to previous year. This is mainly on account of decrease in duty collection and increase in expenditure on pay and allowances during 1997-98.

1.6 Searches and Seizures

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

Searches and seizures

Sl. No.	Description	1996-97	1997-98
1.	Number of searches	713	1207
2.	Value of goods seized (Rupees in crore)	24.53	92.03
3.	Number of seizure cases adjudicated	1792	1497

While the number of searches and the value of goods seized during 1997-98 has significantly increased, the number of seizure cases adjudicated has decreased.

1.7 Arrears of Customs Duty for Recovery

The amount of Customs duty assessed upto 31 March 1998 which was still to be realised as on 30 June 1998 was Rs.520.24 crore in 26 Custom Houses and Commissionerates. In the previous year the amount was Rs.231.56 crore. The increase on this account works out to 124.67 *per cent* with reference to previous year.

1.8 Demands of Duty Barred by Limitation

Demands raised by the department up to 31 March 1998 which were pending realisation as on 30 June 1998 and where recovery was barred by limitation amounted to Rs.4.67 crore in 26 Custom Houses and Commissionerates.

1.9 Duty Written Off

Customs duties written off, penalties waived and exgratia payments made during the year 1997-98 and the preceding two years are given below:

(Rupees in lakh)

Year	Amount
1997-98	21.13
1996-97	N.A.*
1995-96	20.67

* Not furnished by Ministry of Finance.

1.10 Number of Pending Audit Objections

The number of audit objections raised in audit upto 31 March 1998 and the number pending settlement as on 30 September 1998 in the various Custom Houses and combined Commissionerates of Customs are given below:

Outstanding objections and amount involved

(Rupees in crore)

Sl. No.	Name of Custom House or Commissionerate	Raised upto 1996-97		Raised in 1997-98		Total	
		Number	Amount	Number	Amount	Number	Amount
1.	Ahmedabad	31	11.66	--	--	31	11.66
2.	Ahmedabad (Prev.)	45	14.53	06	0.61	51	15.14
3.	Bhubuneshwar	21	38.84	10	41.71	31	80.55
4.	Calcutta	896	134.96	97	120.51	993	255.47
5.	Chennai	1277	49.40	716	1.87	1993	51.27
6.	Cochin	64	10.19	28	4.66	92	14.85
7.	Delhi	370	5.53	232	13.60	602	19.13
8.	Hyderabad	168	10.05	76	16.56	244	26.61
9.	Kandla	29	17.48	09	1.45	38	18.93
10.	Karnataka	479	15.06	370	28.35	849	43.41
11.	Mumbai (Air)	140	12.09	02	0.02	142	12.11
12.	Mumbai (Sea)	188	65.33	15	44.88	203	110.21
13.	Patna	33	24.39	09	1.33	42	25.72
14.	Tiruchirapalli	78	13.33	40	--	118	13.33
15.	West Bengal (Prev.)	147	22.16	08	0.61	155	22.77
16.	Others	463	60.26	77	1.95	540	62.21
	Total	4429	505.26	1695	278.11	6124	783.37

The number of objections pending as well as amount thereof has increased to the extent of 52.88 *per cent* and 11.92 *per cent* respectively with reference to previous year objection.

1.11 Categories of Outstanding Audit Objections

(Rupees in crore)

Sl. No.	Categories of objections	No. of objections	Amount
1.	Short levy due to misclassification	1403	47.77
2.	Short levy due to incorrect grant of exemption	1050	50.18
3.	Non levy of import duties	595	14.39
4.	Short levy due to undervaluation	186	18.17
5.	Irregularities in grant of drawback	549	2.01
6.	Irregularities in grant of refunds	56	17.97
7.	Irregularities in levy and collection of export duty	89	13.50
8.	Other irregularities	2196	619.38
	Total	6124	783.37

1.12 Contents of the Report

The Report includes 174 paragraphs and two reviews on 'VABAL' and 'Delay in finalisation of outstanding demands' having a total revenue effect of Rs.5093.13 crore.

As of January 1999, the Ministry/Department have replied to 70 paragraphs out of 197 paragraphs referred to them. The Ministry/Department has accepted objections of Rs.310.29 crore and reported recovery of Rs.4.41 crore.

CHAPTER 2 : VALUE BASED ADVANCE LICENSING SCHEME

2.1 Introduction

Value Based Advance Licensing (VABAL) scheme was introduced in the Exim Policy 1992-97. The scheme permitted duty free import of raw materials components, intermediates and consumables required for the manufacture of export products. The conditions governing the scheme were laid down in the Exim Policy 1992-97, the Handbook of Procedures Vol.I issued by the Ministry of Commerce and the Customs notification issued under the Customs Act, 1962 by the Ministry of Finance.

Under a Value based Advance Licence (VABAL), any of the inputs except those specified as 'Sensitive' in the licence could be imported within the total CIF value without any quantity restrictions. In case of sensitive items, both the quantity and value restrictions were to be adhered to. The licences were to be issued only in cases where the Input-Output norms had been fixed by Ministry of Commerce.

The office of the Director General of Foreign Trade (DGFT) and its Regional offices, under the Ministry of Commerce, were the nodal coordinating agencies authorised to issue these licences and the Duty Exemption Entitlement Certificates (DEEC) Books. The licence and the DEEC book were required to be registered with the appropriate Customs authorities of ports through which the imports/exports were intended to be made. After complying with the prescribed procedures, the imports/exports could also be made through ports other than the port of Registration.

The licences could be obtained either on post or pre-export basis. The licences could be transferred after the discharge of export obligation enabling import of duty free inputs by the party to whom the licence was transferred. Before clearing the imported materials the licencee was required to furnish a bond/Letter of Undertaking (LUT) to the licensing authority binding himself to comply with the conditions of the exemption notifications issued by the Customs department and the provisions of the Exim Policy. In the event of failure of the licencee to comply with these conditions, the bond/LUT could be enforced for recovery of the Customs duty. From 1 April 1995, bonds/LUTs were required to be executed separately with the Customs department and the licensing authorities.

The Policy provided for fulfilment of export obligation by the licencees within a period of twelve months. The Regional licensing authorities could, however, give extension of one year.

2.2 Scope of Audit

Sample review of the DEEC Scheme in audit in the past revealed misuse which was incorporated in earlier Audit Reports. In his deposition before the Public Accounts Committee (PAC), the Secretary, Ministry of Commerce, acknowledged (February 1997) that the extent of misuse of the VABAL Scheme had been quite high.

In order to ascertain the extent of misuse and to determine the contributing factors viz., system inadequacies and system failure, a sample review of VABAL licences issued by the three main regional licensing offices at Calcutta, Delhi and Mumbai during 1992 to 1996 alongwith the associated records maintained in the Custom Houses in these places was undertaken in audit (July 1997 to May 1998).

2.3 Data Base

According to the information furnished by the regional licensing authorities, 28101 VABALs were issued at Calcutta, Delhi and Mumbai with a CIF value of Rs.10,221 crore and a corresponding FOB value of Rs.25,626 crore as shown below.

(Rupees in crore)

	No.of licences	CIF value	FOB value
Calcutta	5762	2833	7104
Delhi	8119	2401	5076
Mumbai	14220	4987	13446
Total	28101	10221	25626

Although extensive efforts were made to obtain the files relating to all the 28,101 licences stated to have been issued, the offices of the DGFT/Jt. DGFTs could furnish files relating to only 21,219 (76 *per cent*) licences for audit scrutiny. Compilation and analysis of all these 21,219 licences was done in audit based on which these licences could be categorised as detailed overleaf:

(Rupees in crore)

CIF value of licence		Calcutta	Delhi	Mumbai	Total
Upto Rs.25 lakh	No.	3175	3517	9562	16254
	CIF	218	375	720	1313
	FOB	1571	1027	3826	6424
Rs.25 to Rs.50 lakh	No.	454	750	1049	2253
	CIF	163	267	360	790
	FOB	639	705	1156	2500
Rs.50 lakh to Rs.1 crore	No.	471	364	558	1393
	CIF	358	258	388	1004
	FOB	940	672	1003	2615
Above Rs.1 crore	No.	560	250	509	1319
	CIF	1788	1599	1735	5122
	FOB	3418	2732	3356	9506
Total	No.	4660	4881	11678	21219
	CIF	2527	2499	3203	8229
	FOB	6568	5136	9341	21045

The above table shows that while the highest number of licences were issued in Mumbai, followed by Delhi and Calcutta, the average CIF value of a licence was the least (Rs.27 lakh) in Mumbai and highest (Rs.54 lakh) in Calcutta. Only 13 *per cent* licences were issued with a CIF value of more than Rs.50 lakh but they had accounted for 74 *per cent* of the total CIF value of all the licences.

Scrutiny of the 21,219 licence files made available to audit further disclosed that 4076 of these licences were either not operated or were cancelled. Of the balance 17,143 operational licences, imports were effected through ports other than the ports of Registration in respect of 8752. As details of the import in these cases were not available with the licensing authorities, audit could verify only 2367 of these cases (27 *per cent*) after linking the relevant import details from the concerned ports. Thus, in all 10,758 or 63 *per cent* licences (including 8391 non transferred cases) with a CIF of Rs.5380 crore could only be checked in audit as shown overleaf :

(Rupees in crore)

		Calcutta		Delhi		Mumbai		Total	
		No.	CIF	No.	CIF	No.	CIF	No.	CIF
i)	No. of licences issued	5762	2833	8119	2401	14220	4987	28101	10221
ii)	No. of licences furnished to audit	4660	2527	4881	2499	11678	3203	21219	8229
iii)	No. of non operational/ cancelled licence out of (ii) above	666	376	1489	768	1921	601	4076	1745
iv)	No. of operational licences out (ii) above	3994	2151	3392	1732	9757	2602	17143	6485
v) (a)	No. of transferred licences out of (iv) above	2433	850	2679	544	3640	553	8752	1947
(b)	No. of operational licences other than transfer cases	1561	1301	713	1188	6117	2049	8391	4538
vi)	No. of transferred licence cases linked with import details referred (v) above	1734	649	321	92	312	101	2367	842
vii)	Total number of licences audited (iv-v (a) + vi)	3295	1950	1034	1280	6429	2150	10758	5380

Out of 21,219 licences, 3424 (16 *per cent*) licences were issued to only 31 major exporters (Annexure I) with corresponding CIF value of Rs.2068.99 crore (25 *per cent*) in the three centres as shown below :

(Rupees in crore)

	No.of licencees	**No. of licences issued**	**CIF VALUE**
Calcutta	13	1609	1700.88
Delhi	10	817	217.91
Mumbai	8	998	150.20
Total	31	3424	2068.99

2.4 Summary of findings

Audit review confirmed widespread misuse of VABAL by exporters including some major exporters. Out of 10,758 licences allowing duty free imports of Rs.5380 crore examined in audit, irregularities were noticed in 2487 (23 *per cent*) cases involving a revenue effect of Rs.3532.20 crore (66 *per cent*). Names of exporters whose cases have been incorporated for illustrative purposes are shown at Annexure-II of this report.

The recurrent modus operandi was non-fulfilment of export obligation and mis-declaration of value of imports and exports leading to duty free imports of materials in excess of the quantities required for discharging export obligation. In all these cases, penal action for wilful mis-statement or suppression of facts have to be taken by recovery of duty with interest and levy of penalty as provided in the Rules.

Audit analysis revealed that the misuse was facilitated not only by flaws in the formulation of the scheme but also its tardy implementation and the inadequate and diffused monitoring mechanism.

- **While the value of an import licence was to be decided on the IO norms, no quantity restrictions were imposed on the import licence. Failure of the licencing authorities to verify the reasonableness of prices of imports furnished in the applications enabled 1301 licencees to import inputs far in excess of the quantities required for discharging export obligation. The duty recoverable (alongwith interest) on the excess imports made in these cases amounted to Rs.353.54 crore.**

[Paragraph 2.5, 2.6, 2.7.1]

- **Absence of quantity specification for export obligation in the licence coupled with non verification of prices of exports stated in the application enabled 52 licencees to import quantities much in excess of those required for discharging export obligation value. This was done by showing large quantities in the application and realising the export obligation at much lower quantities and higher prices. An amount of Rs.171.99 crore was recoverable from the licencees.**

[Paragraph 2.5, 2.6, 2.7.2]

- **No mechanism was available with the Ministry to assess the actual accretion of foreign exchange through the scheme during the period from April 1995 to March 1998. Any assessment of the gains from the scheme are, therefore, presumptive. Non verification of the genuineness of Bank Certificate of Exports and Realisation (BCER) submitted by the exporters with the licensing authorities also enabled 2 exporters to submit fake/fraudulent certificates in 25 licences involving foreign exchange of Rs.73.55 crore. Besides initiation of criminal proceedings, Rs.7.14 crore towards duty and interest and Rs.80.29 crore towards regularisation of shortfall were recoverable by the licensing authorities in these cases.**

[Paragraph 2.8]

- **Although the Policy prescribed rejection of incomplete applications, in 242 cases licences were issued on incomplete applications where even the quantity of inputs or export products were not indicated. This enabled excess duty free imports valued Rs.144.69 crore involving loss of revenue of Rs.303.50 crore.**

[Paragraph 2.9.1]

- Issue of licences with scant regard to the prescribed norms enabled 371 licencees to import material/sensitive items in excess involving duty of Rs.318.61 crore including interest.

[Paragraph 2.9.2]

- Contrary to the provisions of the EXIM Policy 1997-2002, the Government extended the export obligation period indiscriminately under public notice of September 1997.

[Paragraph 2.9.3]

- Duality of control in monitoring resulted in non enforcement of recovery from the defaulters. 467 licencees failed to fulfil the prescribed export obligation. The loss of duty alongwith interest recoverable from them was Rs.600.63 crore. Further a sum of Rs.1690.95 crore was recoverable by the licensing authorities. In 278 of these cases though import of Rs.288.71 crore were made, no exports were recorded. 135 of these licences were repeatedly issued to only three exporters indicating clear lapse in monitoring of export obligation by the licensing authorities.

[Paragraph 2.10]

- Basic records pertaining to the scheme were not properly maintained in either the licensing or the Customs departments resulting in ineffective control and inadequate monitoring .

[Paragraph 2.11]

- Revenue loss of Rs.6.75 crore was noticed in the licences issued to two other exporters.

[Paragraph 2.12]

2.5 A flawed scheme enabling misuse

VABALs were to be issued only in respect of export products for which standard IO norms had been specified by the Ministry and published in the Handbook of Procedures Vol.II of the Policy. The value of duty free imports was to be determined by applying these norms to the quantity and value of the individual inputs and the quantity of the products proposed to be exported as stated in the application of the licencee. The application of the exporter was to be supported by copies of export orders and certificate of turnover and past export performance by Chartered Accountant.

Audit analysis of the scheme details and its implementation revealed that unscrupulous export houses were able to misuse the duty exemptions of the scheme because of the following reasons.:

i) Contrary to the terms and conditions of a standard licence as incorporated in Exim Policies notified by the Government from time to time that quantity, description and value of the import as well as export goods would be stated in the licence, the VABAL did not contain such details. Only the total value of import was stated giving flexibility to the licencees to import quantities at his discretion. This enabled some unscrupulous exporters to inflate the prices of imports indicated in their applications far beyond the prevalent levels. The imports required to discharge the export obligations could subsequently be made at the much lower realistic level and the balance value utilised towards import of item for sale in the domestic area.

ii) In the initial notification of the Policy (1 April 1992) export obligations were to be fixed only in value terms with no quantity stipulation. This enabled unscrupulous exporters to project high export quantities to facilitate larger import value by using extremely low per unit export prices. This was done because they knew that the quantities of export indicated in the application would not be mentioned as an obligation on the licence. They could subsequently realise the export obligation value with much smaller quantities at higher prices. This loophole in the policy was blocked in the next year w.e.f. 1 April 1993 making export obligations mandatory in both quantity and value terms. By this time, however, a large number of exporters obtained licences for duty free imports far in excess of the quantities required to discharge their value obligation of exports.

iii) Audit analysis of the applications made, the licences issued, imports and exports made revealed that the licence authorities had not carried out even a cursory scrutiny of the information furnished by the exporters in their applications either at the time of granting the licences or at the time of its redemption. Considering that the grant of each licence would result in significant sacrifice of Government revenues, the licensing authority should have ensured that value of imports were within reasonable limits. This required a simple check that the prices of imports or the prices of exports stated in the applications were not too far removed from those prevalent. The latter information is readily available with other agencies such as Customs Valuation Cell, DGCIS Calcutta, PLATTS Singapore, Reuter Data Base and Petrochemical Data Services (Polymer Price Monitor). The far reaching impact of Information Technology including Internet has made such verification easy. The information sought in the applications, in fact made it possible that such checks could be exercised. Yet no such checks were actually exercised.

It is apparent that financial interests of the Government were not adequately protected in the formulation of the policy and its implementation.

In their response, the Government admitted to the possibility of misuse of the scheme in the absence of quantity terms for export obligation. They attributed this to the inability of DGFT to verify the prices of imports and exports stated in the application as they were not equipped to do so. They attempted to justify the flexibility of the scheme in the context of the `critical balance of payment situation' by "freeing the exporters from the inconvenience of having to necessarily establish the nexus between imports and exports to the last grammage,". The Government response also stated that the scheme served the purpose by boosting exports and as soon as the situation improved, necessary corrections were applied in March 1995 and the scheme itself abolished from 31 March 1997.

The reply of the Government is untenable because:

i) The excess quantities imported as detailed in the succeeding paragraphs show variations ranging from 20 per cent to 52417 per cent which cannot by any principle of measurement be taken as 'last grammage'.

ii) The Government had in a submission before the PAC (February 1997) conceded that they were not in a position to establish the net foreign exchange earnings specifically attributable to any of the Export Promotion Schemes.

It is, therefore, not clear how the Government had concluded that the obvious loopholes of the scheme contributed towards boosting exports in the context of a major devaluation of Indian currency and widespread economic reforms and if so whether the net contribution towards foreign exchange earnings outweighed the loss of Government revenues due to duty free imports. The logic of the justification does not stand scrutiny.

2.6 Extent of misuse

Scrutiny of records at Calcutta, Delhi and Mumbai revealed that in respect of 1353 licences (13 *per cent* of licences test checked in audit), materials valuing Rs.340.85 crore were imported duty free involving loss of revenue of Rs.525.53 crore in excess of the quantities required as per I/O norms for discharging the export obligation undertaken in the application for VABAL. 31 *per cent* of these excess imports were made by 13 licencees and involved duty of Rs.99.60 crore. This was done by furnishing incorrect declarations of value, quantity etc., in the application. The details in respect of each of these licences has been furnished to the concerned Commissioner/licensing authorities by audit.

Centre wise analysis :

(Rupees in crore)

	Number	Value of excess imports	Duty forgone	Interest
Calcutta	203	133.35	133.40	101.20
Delhi	101	67.77	64.44	33.26
Mumbai	1049	139.73	114.67	78.56
Total	1353	340.85	312.51	213.02

In their response, *the Ministry of Commerce agreed for penal action as provided in the FT(DR) Act, 1992 against the firms who gained undue advantage by misusing the scheme. The Finance Ministry is silent on the action being taken for recovery of duties and interest on excess imports pointed out by audit suggesting that no action is intended.*

In terms of para 47 of the Exim policy 1992-97 and Customs notification 203/92-cus. dated 15 September 1992 'duty exemption was admissible only for raw material, components, intermediates, consumables parts etc. required for manufacture of export product' and any material imported in excess of the quantities required for discharging export obligation was chargeable to duty. In all these cases the excess quantity of imports were effected by either mis statement of facts or falsification of information at the time of application. The licencees had declared at the time of filing the application that (i) all the statements made in the application were true and correct (ii) they understood that Government may impose any penalty or take any other action having regard to the circumstances of the case, if it was found that any of the statements of facts declared therein were incorrect or false.

As per Section 28 of the Customs Act 1962, when any duty has not been paid by reason of collusion or any wilful misstatement or suppression of facts by the importer/exporter, the department could proceed to recover the charges not levied/short levied alongwith interest. Further as per Section 143(A) of the said Act, not withstanding anything contained in Section 28, the duty deferred on materials imported under an advance license when not adjusted by exports within the period specified in the license was liable for recovery by the Asstt. Commissioner of Customs with simple interest from the date of clearance of the goods till the date of payment.

Thus, under the provisions of the Customs Act, the Customs authorities could take necessary action to recover the duty lost on the excess imports (Rs.312.51 crore) along with interest (Rs.213.02 crore).

The main items imported in excess through such misuse were polymers, chemicals, BOPP films, graphic art films, mulberry raw silk etc., which not only had a high duty incidence but also a ready domestic market where they could be sold at a premium. This is indicative that misuse of VABAL was a well initiated and planned operation.

Detailed modus operandi in respect of some high value cases is presented in the subsequent paragraphs.

2.7.1 Excess imports by inflating the unit price of inputs

1301 licencees were able to obtain licences of CIF value not justified by the intended exports. This was done by declaring abnormally higher unit price (value) of the input in their applications. Subsequently they imported quantities much larger than those justified by the I/O norms for discharging the export obligation. In terms of the provisions cited in para 2.6 above, duty of Rs.208.90 crore is recoverable on account of these excess imports. In addition, interest of Rs.144.55 crore till March 1999 is also recoverable. Custom House wise details are as under :

(Rupees in crore)

	No. of cases	Percentage variation in price as per application and actual import	Value of excess imports	Duty forgone	Interest
Calcutta	177	23 to 41,428	90.65	80.66	58.51
Delhi	95	28 to 15,141	17.41	15.47	9.05
Mumbai	1029	20 to 52,417	137.86	112.86	76.99
Total	1301		245.92	208.99	144.55

Some of the major cases are highlighted below :

a) A VABAL was issued in April 1993 by Jt. DGFT, Calcutta to an exporter for duty free import of high density polyethylene (HDPE) for Rs.4.93 crore against export of HDPE woven bags for Rs.8.89 crore. The unit price of one MT of HDPE as declared in the application worked out to Rs.78,175 per MT, while the licencee actually imported 3505 MT of HDPE for Rs.4.97 crore at a unit price of only Rs.14,168 per MT. By mis-declaring the price in the application, excess quantity of 2875 MT valued at Rs.4.07 crore was imported duty free involving a duty of Rs.4.84 crore. Interest lost till March 1998 amounted to Rs.3.65 crore.

b) Another VABAL was issued in August 1993 by Jt. DGFT, Calcutta to an exporter for duty free import of HDPE for Rs.4.69 crore against export of strainer pipes for Rs.7.5 crore. The unit price of one MT of HDPE sought to be imported as per application, worked out to an astonishing figure of Rs.5,95,238 per MT. The licence was made transferable on achieving the prescribed FOB on 16 August 1994 and 3488.37 MT of HDPE for a total value of Rs.4.73 crore was imported against the said licence at a unit price of Rs.13567 per MT. By manipulating the price of inputs in the application, excess import of HDPE worth Rs.4.63 crore was made. The duty to be recovered on the excess imports allowed, worked out to Rs.5.35 crore and the interest lost on the duty till March 1998 was Rs.3.86 crore.

c) An exporting unit in Mumbai was granted three VABALs by Jt. DGFT, Mumbai for export of 'HDPE/LDPE insulating liners' and allowed to import 'HDPE /LDPE granules' duty free. Whereas the actual unit price at which these inputs were imported was between Rs.14 to Rs.17 per kilogram, the licencee in the application misdeclared these prices at Rs.4700 to Rs.5100 per kilogram. The duty foregone on excess value of import amounted to Rs.3.57 crore and the amount of interest recoverable till March was Rs.3.17 crore.

d) An exporter of steel at Mumbai was granted a VABAL by Jt. DGFT, Mumbai in September 1995 for exporting 'non alloy steel coils' and import of inputs viz 'ferro-manganese', 'refractories & consumables' and 'low silica lime stone'. The prices quoted for import of these inputs in the application were much higher than those actually paid by 63.88 *per cent*, 836 *per cent* and 1005.85 *per cent*, respectively. The total duty foregone on the excess import inclusive of interest amounted to Rs.6.74 crore.

e) Another unit in Delhi was issued three VABALs by Jt. DGFT, New Delhi in April 1993 for import of 13 MT of HDPE for a total CIF value of Rs.49 lakh at the declared unit price of Rs.312 to 493 per kilogram. The licencee actually imported 312 MT of the material at the unit rate of Rs.17 per kilogram. The recovery due on the excess 298 MT of material imported valuing Rs.47 lakh, worked out to Rs.1.05 crore (Duty of Rs.57 lakh plus interest of Rs.47 lakh).

2.7.2 Excess imports by declaring higher quantity of export products in the application

Another modus operandi adopted by the exporters was by declaring higher quantity of exports at the time of application and later showing realisation of obligation value through export of far lesser quantities but at higher prices. By inflating the quantities of the export products in the application, the licencees could obtain licences for duty free imports that would facilitate quantities of inputs much larger than actually required for the export products in terms of I/O norms. Though there was no mechanism in the Custom Houses to check the quantity of raw material actually used in the export, the over valuation of the export products could have been detected by them.

Further, the absence of any mechanism to monitor the inflow of foreign exchange on the higher export prices gave the exporters the added scope for misusing the scheme by declaring a higher value in the shipping documents. Excess importation of goods valued Rs.94.93 crore in 52 (26 in Calcutta, 20 in Mumbai and 6 in Delhi) cases were detected in audit with duty effect of Rs.103.52 crore on which interest lost till March 1998 was Rs.68.47 crore.

The more important of such cases are illustrated below :

a) An exporter in New Delhi was issued a VABAL by DGFT, New Delhi in December 1992 for a CIF value of Rs.14.27 crore to import inputs required

for manufacture and export of 68.90 lakh kilogram of 'Vinyl asbestos tiles'. The FOB value prescribed was Rs.19.98 crore. The licencee actually exported only 8.58 lakh kilogram of asbestos tiles and fulfilled the export obligation. Taking into account the quantity of tiles exported, CIF value of inputs required worked out to Rs.1.78 crore as against the CIF value of Rs.14.27 crore which was granted in the licence. As a result, the licencee was able to import inputs in excess valued at Rs.12.49 crore on which Customs duty of Rs.16.65 crore was leviable .

The fact that the exporter was able to fulfil the export obligation of Rs.19.98 crore by exporting 12 *per cent* of the quantity proposed in the application was indicative of mis-declaration of quantities/overvaluation of the export product. The licencee had already imported inputs for CIF value of Rs.9.09 crore till September 1995 after which the licence was made transferable. Further details of imports in respect of which there was no export obligation were, however, not available.

b) A sister concern of the aforesaid unit at New Delhi was issued a VABAL by Jt. DGFT, New Delhi in December 1992 for duty free import of materials valued at Rs.8.35 crore against fulfilment of export obligation of Rs.11.69 crore. The licencee had to export 13.50 lakh pairs of 'synthetic foot wears' to achieve this target. The licencee could fulfill the export obligation by exporting only 3.73 lakh pairs of foot wear. The fact that the exporter was able to fulfil the target set by exporting only 27 *per cent* of the quantity proposed in the application proves either inflation of the quantity of raw material required for manufacture of the product or over invoicing of the exports.

Based on the number of pairs of 'foot wears' actually exported, the licencee was entitled as per I/O norms to duty free import of materials valued at Rs.2.31 crore only. The licencee had imported duty free inputs worth Rs.9.90 crore against the CIF value of Rs.8.35 crore during February 1993 to September 1994. The excess duty free imports of Rs.7.59 crore involved Customs duty of Rs.9.32 crore. Loss of interest on the duty not collected, amounted to Rs.6.53 crore. However, no action was taken by the department to work out the actual eligibility of imports based on the quantities exported and the licence was also redeemed in June 1996.

c) Another exporter in New Delhi, was issued a VABAL by DGFT, New Delhi in November 1992 for duty free import of various inputs for CIF value of Rs.8.89 crore against fulfilment of export of 6691455 metres of 'PVC leather cloth' valuing Rs.12 crore. The licencee fulfilled the export obligation by exporting only 427716 meters of PVC leather cloth. The fact that the exporter was able to fulfil the export obligation by exporting 6 *per cent* of the quantity proposed in the application is again indicative of overvaluation of exports/mis-declaration of the quantity of inputs.

Taking into account the total quantity of PVC leather cloth exported, tne licencee was entitled as per I/O norms to duty free import of inputs worth only

Rs.0.57 crore. The licencee had imported duty free inputs worth Rs.10.42 crore between February 1993 to July 1995 against the CIF of Rs.8.89 crore. The excess imports of Rs.9.85 crore involved Customs duty of Rs.9.07 crore. Interest lost on this revenue till March 1998 was Rs.4.83 crore. The total amount of revenue loss involved thus worked out to Rs.13.90 crore.

d) The Joint Director General of Foreign Trade (Jt. DGFT), New Delhi issued a VABAL in June 1992 to an exporter in New Delhi with a CIF value of Rs.4.25 crore against export of 18 lakh pairs of 'PVC soles' for foot wears, each weighing 700 gram. The total FOB to be achieved was Rs.5.94 crore. It was noticed that the licencee had actually exported only 8,74,599 pair of PVC soles each having average weight of 383 grams and completed the export obligation in the period November 1992 to August 1993.

Keeping in view the number and weight of the PVC soles actually exported, the CIF value of inputs required as per I/O norms worked out to Rs.1.13 crore as against the CIF value of Rs.4.25 crore which was allowed. The licencee had imported inputs valuing Rs.5.09 crore and as such the excess duty free imports availed worked out to Rs.3.96 crore involving Customs duty of Rs.4.53 crore. Interest recoverable worked out to Rs.4.23 crore bringing total loss of revenue to Rs.8.76 crore.

e) A VABAL was issued in February 1993 by Jt. DGFT, Calcutta to an exporter for duty free import of 1240 MT of 'Polyester filament yarn' (PFY) for a CIF value of Rs.4.96 crore, on the basis of an application wherein it was declared that 1127 MT of 'Fabrics and hosiery' would be exported for FOB value of Rs.11.28 crore. The licencee actually exported only 43 MT of the export product with FOB value of Rs.11.64 crore and imported 1484 MT of PFY having CIF value of Rs.5.12 crore.

According to the I/O norms, import of only 47.48 MT of PFY could be allowed duty free against the achieved export quantity of 43 MT. By overstating the export quantity in the application, the licencee was able to avail of excess duty-free import of 1436.07 MT of PFY, a sensitive item. Overvaluation of exports could not also be ruled out in these cases. Customs duty amounting to Rs.8.98 crore was recoverable on the excess imports alongwith interest of Rs.6.78 crore in this case.

f) Another VABAL was issued in February 1993 by Jt. DGFT, Calcutta to a sister concern of the aforesaid exporter for duty free import of 1140 MT of 'Polyester texturised yarn' (PTY) for a CIF value of Rs.4.96 crore against export obligation of 912 MT of 'Velour knitted readymade garments' for an FOB value of Rs.17.36 crore. The licencee actually exported only 73.61 MT of the export product for FOB value of Rs.17.90 crore and imported 1241 MT of PTY for CIF value of Rs.4.93 crore.

According to I/O norms, export of 73.61 MT of the export product entitled the licencee to import only 92 MT of PFY duty free. By overstating the export quantity in the application, the licencee was able to avail excess duty-free

imports of 1149 MT, involving Customs duty of Rs.11.06 crore. Interest leviable upto 31 March 1998 on the duty not collected worked out to Rs.8.53 crore taking the total revenue loss to Rs.19.59 crore.

2.8 Absence of a mechanism to monitor the actual realisation of export proceeds/fraudulent discharge of export obligation

In the absence of a mechanism to monitor the actual realisation of export proceeds, the efficacy of the scheme could only be evaluated through the net foreign exchange earnings directly attributable to it. Prior to 1 April 1995, exporters were required to produce at the time of redemption/closure of the licences 'Bank Certificate of Exports and Realisation' (BCER) as a means to confirm the realisation of foreign exchange. However, submission of the BCERs was dispensed with effect from 1 April 1995 as a result of which no mechanism was available with the Ministry to assess the actual accretion of foreign exchange through the scheme. In the absence of BCERs and in view of the fact that there was considerable over invoicing/under invoicing in the exports made, the realisation of foreign exchange remained doubtful. Consequent to being pointed out in audit, the procedure for submission of BCERs was re-introduced by the Ministry with effect from 13 April 1998.

In terms of Para 127 of the Hand Book of Procedures, Vol.I, 1992-97, a VABAL could be transferred after fulfilment of export obligation, realisation of export proceeds and redemption of Bank Guarantee (BG)/Legal Undertakings (LUT). Para 126 of the Handbook of Procedures Vol.I, specified that BG/LUT could be redeemed on submission of BCER from the Bank, DEEC Book containing details of import and export duly certified by the Customs authority and a statement duly certified by a Chartered Accountant showing the details of actual imports and exports made.

The concerned Bank was also required to forward copies of BCERs to the Licensing authority. Permission for transfer of the licence was to be allowed by the 'Licensing authority' on the basis of documents submitted by the licencees. No cross checking to ensure the authenticity of the documents submitted by the licencee was undertaken by the licensing authority. The BCERs received directly from the bank were also not co-related to those submitted by the licencee. In fact, even the monitoring of receipt of BCERs from the Banks and linking them with the individual licencee records was not undertaken by the Licensing authority.

Test check by audit disclosed that 2 exporters had submitted tampered/fake Bank Certificate of Exports and Realisation in support of fulfilment of their export obligations in 25 licences issued to them and thereby avoided repatriation of foreign exchange of Rs.73.55 crore to the country. These certificates were accepted as genuine by the licensing authorities in the absence of any mechanism for cross verifying the genuineness of BCERs submitted in support of discharge of export obligation. The export obligations

not having been discharged in these cases, the licencees were required to pay a total sum of Rs.87.43 crore (duty of Rs.4.54 crore, interest of Rs.2.60 crore and sum payable to licensing authority of Rs.80.29 crore).

The details of these cases are as under :

a) 11 VABALs were issued by Jt. DGFT, Calcutta to a merchant trader dealing with export of 'tea' and 'toilet soaps' for a CIF value of Rs.4.84 crore and FOB value of Rs.62.44 crore. The exporters submitted 80 BCERs towards fulfilment of export obligation, indicating foreign exchange receipts of Rs.62.54 crore. Cross verification in audit of the said BCERs available in the licence files with the Banks' records revealed actual receipt of only Rs.15.02 crore. The BCERs submitted by the exporter for Rs.47.52 crore, prima-facie, were fake and appeared to have been tampered with. These were accepted by the Licensing authority without any verification.

Towards non-fulfillment of export obligation of Rs.47.52 crore in these cases the exporter was liable to pay duty of Rs.1.61 crore and interest of Rs.0.80 crore. In addition, Rs.3.88 crore being the equivalent of the unutilised value of import and Rs.47.42 crore towards shortfall in export obligation were also payable to the Licensing authority making the aggregate amount payable by the licencee to Rs.53.71 crore. The licencee was also liable to criminal proceedings.

b) In the case of further 12 VABALs issued to the same exporter with a prescribed FOB of Rs.32.59 crore, the licencee submitted documents in support of export for Rs.33.06 crore. Verification of the documents at the Custom House, revealed that the licencee had actually exported goods for Rs.7.66 crore only against the 12 licences. The Customs authority had endorsed the DEEC Book with the inflated and fake FOB value and quantity and based on this DEEC book, the licensing authority endorsed transferability in all these 12 cases.

The pro-rata duty loss on these 12 licences worked out to Rs.2.46 crore and interest loss to Rs.1.80 crore. In addition, the licencee was required to pay to the licensing authority Rs.2.86 crore towards unutilised CIF value of imports and Rs.24.93 crore towards shortfall in fulfilment of export obligation. The aggregate sum payable was Rs.32.06 crore. Besides, the licencee was liable to criminal proceedings.

c) An exporter at New Delhi in receipt of two VABALs submitted a number of BCERs in support of realisation of export proceeds and they were accepted by the licencing authorities and the licence was also allowed to be transferred. A cross verification of the BCERs with the original records of the Bank revealed that three BCERs indicating realisation of export proceeds worth Rs.73 lakh were not genuine and were apparently forged as the bank authorities also confirmed (April 1998) that the BCERs in question were not issued by them. For the unfulfilled export obligation, an amount of Rs.1.20

crore was recoverable including duty of Rs 0.47 crore, besides initiation of criminal proceedings for production of fraudulent BCERs.

Ministry admitted the facts and stated that the requirement of the BCERs for fulfilment of Export Obligation was reintroduced in the amended Exim Policy 1997-2002 as announced on 13 April 1998.

2.9 Tardy implementation/violation of laid down procedures under the scheme

2.9.1 Issue of licences on the basis of incomplete applications

a) Non declaration of the quantity of input in the application

As per the prescribed procedures, the CIF value of licence was to be arrived at, based on the quantity of the goods to be exported and the relevant 'input output norms'. However, the actual quantity of input required was often not mentioned in the application. In such cases, audit worked out the same by applying the 'standard input output' norms to the products exported. In 235 cases (110 in Calcutta and 125 in Delhi), the licencees obtained excess entitlement by not mentioning the actual quantity of inputs required. Had the departmental officials ensured that the actual quantity of input items required for export product was given in the application as prescribed I/O norms, the CIF value of the licences would have been far less than what was actually allowed.

The duty involved in such excess imports valuing Rs.134.86 crore was Rs.164.93 crore and interest leviable thereon till March 1998 was Rs.111 crore. Eight of the major exporters who filed incomplete applications and obtained 91 licences with higher CIF value accounted for excess imports valuing Rs.102.61 crore which involved a duty exemption of Rs.126.94 crore.

A few major cases are illustrated below :

i) A VABAL was issued by Jt.DGFT, Calcutta in June 1992 to an exporter for duty free import of 'polypropylene (PP)' on the basis of an application made in June 1992, even though the quantity of 'PP' sought to be imported was not declared in the application. By applying the input/output norms to the quantity of 380 MT of PP woven sacks exported and the CIF value of Rs.4.99 crore allowed in the licence, the unit price of PP as given in the licence worked out to Rs.1,25,357 per MT whereas the same as per actual import was only Rs.17,714 per MT This resulted in duty free importation of 2873 MT of 'PP' in excess of the actual requirement. Improper exemption from duty on the excess import was Rs.8.25 crore and the interest recoverable was Rs.8.93 crore.

iii) A VABAL was issued in February 1993 by Jt. DGFT, Calcutta having a CIF value of Rs.4.98 crore for duty free import of 'Woollen blended yarn' on the basis of an application made by an exporter in February 1993. The quantity of 'Woollen blended yarn' sought to be imported was not declared in the application. By applying the input/output norms to the quantity exported and the CIF value of the licence, the unit price of 'Woollen blended yarn' as per application worked out to Rs.11,55,639 per MT whereas the same as per actual import was only Rs.2,89,798 per MT. This resulted in excess duty free import of 130 MT of the goods valued Rs.3.77 crore. The duty remaining unrealised on the excess imports was Rs.4.62 crore and interest leviable was Rs.3.56 crore.

iiii) A VABAL was issued in March 1993 by Jt. DGFT, Calcutta to an exporter for duty free import of polypropylene (PP) granules on the basis of an application made in March 1993. The quantity of PP sought to be imported was not declared in the application . By applying the input/output norms to the quantity of 44 MT of PP woven sacks exported and taking the overall value of the licence, the unit price of PP declared by the licencee worked out to Rs.4,52,237 per MT whereas the same as per actual import was only Rs.15,962 per MT This resulted in duty free excess import of 1271 MT of PP valued at Rs.2.03 crore. The duty involved in the excess imports amounted to Rs.2.79 crore and interest recoverable thereon upto March 1998 amounted to Rs.2.49 crore.

iv) An exporter in New Delhi was issued during November 1992 to March 1993 three VABALs by Jt. DGFT, New Delhi for duty free import of 'PP/HDPE granules' for a CIF value of Rs.1.34 crore against export of 'Plastic hangers/clips'. The quantity of PP/HDPE granules sought to be imported was not declared in the applications. By applying the input/output norms to the quantity actually exported and taking the declared value of the export product in the application, the per MT price of 'PP/HDPE granules' worked out between Rs.1.79 lakh and Rs.3.55 lakh whereas the price as per actual import was found to be ranging from Rs.15,000 to Rs.64,000 per MT. This resulted in excess duty free import of Rs.1.20 crore. The duty recoverable on the excess imports and interest leviable till March 1998 was Rs.1.32 crore.

b) Non declaration of quantity of exports

Though the Policy prescribed specifically in para 109 of the Handbook that no licence should be issued when an application is incomplete, it was seen that the licences were issued even where the licencees had not declared the quantity of inputs or the export product in the application. This had resulted in import of quantities of inputs far in excess of the quantities required for the products exported as per the I/O norms. Excess importation in six such cases (four in Calcutta and two in Mumbai) led to loss of duty of Rs.13.39 crore and interest of Rs.11.78 crore.

Details of two of these cases are given below :

i) A VABAL was issued (November, 1992) by Jt. DGFT, Calcutta to an exporter at Calcutta, for duty-free import of 'HDPE' and 'LDPE' for a CIF value of Rs.4.99 crore against an application for export of 'HDPE woven sacks' for a FOB value of Rs.7.48 crore. In the application, neither the quantity to be exported nor the quantity of inputs required were declared. Based on the actual export of 402 MT of the export product and as per I/O norms, import of only 442 MT of the input item should have been allowed duty free. However, the licencee actually imported 3,617 MT of H.D.P.E. for a CIF value of Rs.5.53 crore involving dutv exemption of Rs.6.85 crore.

By not declaring the quantities of intended exports and inputs to be imported, the licencee was able to avail of excess duty-free imports of 3175 MT. The duty of Rs.6.02 crore with interest thereon upto 31 March 1998 of Rs.5.17 crore was recoverable from the exporter on such excess imports.

ii) An exporter was granted a VABAL by Jt. DGFT, Mumbai in January 1993 for export of 'Articles made of plastic'. The quantity of the resultant product to be exported as well as quantity of inputs sought to be imported were not mentioned in the application. Based on the IO Norms the licencee was eligible for duty free import of only 43 MT of 'Polypropylene' for the 41 MT of the resultant product exported by him. The licencee imported 823 MT of Polypropylene. Duty forgone on the excess import of 780 MT amounted to Rs.1.55 crore and interest recoverable thereon worked out to Rs.1.32 crore upto March 1998.

c) Non declaration of the relevant details of export products

By not declaring the relevant information relating to the export product also, the licencees could import material in excess of their requirement as was revealed in the following case.

A VABAL was issued (February, 1993) by Jt. DGFT, Calcutta to an exporter at Calcutta for a CIF value of Rs.0.92 crore for duty free import of 'Polypropylene'. The licencee had to export 9 lakh meters of 'PP film' for an FOB value of Rs.1.46 crore. The licencee actually exported 2.8 MT (8,62,500 Metres) of 'PP film' with a FOB value of Rs.1.53 crore and imported 542 MT of 'PP' having a CIF value of Rs.0.91 crore. As per I/O norms, the permissible quantity of 'PP' to be imported duty free for the export of 2.8 MT was only 3 MT but by not specifying the intended export quantity in 'kilograms', the licencee was able to import 539 MT of 'PP' in excess. The duty payable on the excess imports worked out to Rs.1.31 crore and interest leviable thereon upto March 1998, amounted to Rs.1.09 crore.

In their response, the Government admitted the issue of licences even though the applications were incomplete. However, they justified this on the grounds that the quantity of export products was not relevant prior to 1 April 1993 and

therefore non-furnishing of such information even though provided in the application form was not taken into account while issuing the licence.

The reply of the Government is not tenable. In the absence of information regarding quantities of exports and imports, the licensing authorities would not be able to ensure adherance to the Standard Input Output Norms, which were the only control mechanism available for this scheme. Subsequent check by audit has shown that in cases where these columns were left blank, the exporters misused the licence by importing, without paying any custom duties, quantities of inputs far more than required for exports. Statement of exaggerated export quantities in the application form would have exposed the applicant to charges of misstatement of facts and the contingent action under the Customs Act. Entertainment of such incomplete applications and issue of licenses were serious lapses on part of the licensing officials.

2.9.2 Issue of licences in violation of input-output and value addition norms

In terms of para 110 of the Handbook of Procedure Vol. I of the Exim Policy a VABAL was to be issued only for those export products for which I/O norm and value addition norms were published and specified in the Hand Book of Procedures Vol.II.

Issue of licences in violation of I/O and value addition norms were noticed in 371 cases involving duty of Rs.197.09 crore. Interest leviable at the rate of 20 *per cent* upto 31 March 1998 on this worked out to Rs.121.52 crore and the total revenue loss was Rs.318.61 crore. Details of these cases are given below:

a) Import of materials in excess of prescribed norms

The standard input-output norms were fixed to facilitate quantification of various inputs required for the manufacture of the resultant product to be exported and to determine the CIF value of licence to be granted. In 266 cases (235 at Mumbai, 22 at Calcutta and 9 at Delhi) it was noticed that input output norms were not observed by the Licensing authorities while granting licences resulting in imports in excess of prescribed norms valued at Rs.51.27 crore with corresponding loss of duty of Rs.62.62 crore and interest of Rs.36.25 crore due thereon. Six major licencees who were granted licences of higher value accounted for excess imports valued Rs.27.29 crore involving duty of Rs.32.41 crore.

In most of these cases, since the exports had preceded the imports, the licensing/Customs departments could have restricted the imports to the actual entitlement based on exports made and the prescribed I/O norms.

A few such cases are given below :

i) According to standard input-output norms, for manufacture and export of one kilogram of 'Fabrics and hosiery' made from '100 *per cent* Synthetic filament yarn', duty free import of 1.1 kilogram of filament yarn was to be allowed. Further, 'polyester filament yarn' being a sensitive item, its import was to be restricted to the actual quantity required for manufacture of the export product.

An exporter in New Delhi was issued a licence by Jt. DGFT, New Delhi in February 1993 for a CIF value of Rs 10.37 crore to import 2104 MT 'Polyster filament yarn' against export of 'Fabrics and hosiery' goods made from '100 *per cent* polyster filament yarn' for an FOB value of Rs.23.34 crore. It was observed from the shipping bills/DEEC book that the firm had completed the export obligation by exporting 25 MT of 'Fabrics and hosiery' goods and accordingly, was entitled for a duty free import of 27.5 MT only. Even though the information regarding the quantity actually exported was available with the licensing authority, the licence was made transferable without imposing any quantity restrictions for import .The import of 2076.50 MT of 'Polyster filament yarn' valuing Rs 10.24 crore allowed in excess of requirement resulted in loss of Customs duty of Rs 11.72 crore. The loss of interest could not be quantified for want of the actual date of import.

ii) As per I/O norms, for manufacture and export of '1 kilogram plastic bags' made from 'HDPE/LDPE/PP', duty free import of 1.05 kilogram of the relevant plastic material was allowable.

Another exporter at New Delhi, was issued a VABAL by Jt. DGFT, New Delhi in October 1992 for duty free import of 'HDPE/LDPE/PP' for a CIF value of Rs.4.23 crore for manufacture of plastic bags, on the basis of its application made in September 1992. The licencee exported 'Plastic bags' weighing 22 MT for Rs.6.77 crore during December 1993 and imported 3167 MT of 'HDPE/PP' for Rs.4.23 crore during January and February 1994. By applying the I/O norms to the quantity exported, the firm was entitled to import only 23.10 MT plastic material. The duty forgone on the excess import of 3144 MT material valuing Rs.4.20 crore amounted to Rs.5.53 crore. Interest on the duty forgone worked out to Rs.4.61 crore making the total loss of revenue to Rs.10.14 crore.

iii) As per 'Public notice' dated 25 September 1992, CIF value of packing material was to be restricted to 2.5 *per cent* of the FOB value of the licence. Non restriction of the quantity of 'LDPE (packing material)' in a licence issued to an exporter at Calcutta resulted in excess duty free imports and loss of duty of Rs.4.70 crore. Interest leviable on this amounted to Rs.3.80 crore.

iv) Three licences were granted to a unit at Mumbai for export of Frozen Marine Products and import of packing material. Based on the quantity actually exported, the quantity of packing material permissible for import was 41 MTs. However the licencee was granted a licence to import 658 MTs. Though the actual import particulars were not known, the excess import allowed involved a duty loss of Rs.1.25 crore.

b) Excess import of sensitive items

Restrictions had been imposed on import of same items by the Government to protect certain domestic industries. Twenty items mainly 'Petrochemicals' were declared as sensitive in September 1993 to prevent VABAL scheme being misused for dumping goods on the domestic market. According to this order, the import of such sensitive items was to be permitted only in accordance with the IO norms from the date of the issue of the order. The Ministry of Commerce clarified in March 1994 that in respect of licences issued prior to September 1993, import of such items could be made without any quantity restrictions and the quantity restrictions would be applicable only in respect of those licences where no imports/exports had taken place. Thus the restrictions imposed were made effective only selectively. Consequently, the objective of preventing the misuse of VABAL for dumping such goods on the domestic market was largely diluted.

In their response, the Government justified permitting imports of sensitive items mainly petrochemicals after September, 1993 in respect of partially operated licences on the grounds that such action would have been highly inequitable for such exporters. The reply of the Government is not convincing as the ill effects of dumping on domestic industry ought to have outweighed the financial interests of some exporters.

In 28 licences issued in Delhi, imports of sensitive items far in excess of the required quantities as given in I/O norms, were made without any value or quantity restrictions. Consequently, these licencees imported duty free sensitive items in excess having a CIF value of Rs.118.16 crore involving Customs duty of Rs.129.09 crore. This duty together with interest of Rs.82.30 crore was recoverable from these licencees.

A few such interesting cases are discussed below :

i) Ten licences were issued to four companies of an exporter during the period September 1992 to August 1993 for a CIF value of Rs.112.05 crore against fulfillment of export obligation having a FOB value of Rs.186.56 crore. As per I/O norms, sensitive items of inputs with CIF value of Rs.12.23 crore were permissible for import whereas actual import of the inputs made had a CIF value of Rs.79.74 crore. As a result excess import of inputs with CIF value of Rs.67.44 crore involving irregular duty exemption of Rs.71.96 crore had occurred. Interest of Rs.42.20 crore was also recoverable.

iii) Five licences were issued to a tyre manufacture at New Delhi during the period June to August 1993 with a CIF value of Rs.62.53 crore against export of 'Automobile tyres reinforced with nylon tyres' having an FOB value of Rs.93.79 crore. As per I/O norms, import of 2694 MT of 'Carbon black', 'Synthetic rubber', 'Nylon tyre cord wrap sheet' etc; could be made, considering the quantity of goods actually exported. The licencee however, actually imported 6448 MT of these inputs with CIF value of Rs.25.90 crore which resulted in excess import of 3755 MT of these inputs valuing Rs.14.79 crore. Accordingly, Customs duty of Rs.15.88 crore besides interest of Rs.10.86 crore was recoverable from the licencee.

iiii) Two licences were issued to an exporter at New Delhi in January and September 1993 with a CIF value of Rs.81.79 crore against export of 'Automobile tyres reinforced with nylon tyres cord wrap sheets' with an FOB value of Rs.122.68 crore. Considering the exports made, import of only 4294 MT 'Synthetic rubber' and 'Carbon black' could be made, but the licencee was allowed to import 10843 MT of these items with a CIF value of Rs.21.04 crore. This had resulted in duty of Rs.14.41 crore alongwith interest of Rs.10.71 crore having been forgone.

iv) An exporter at New Delhi was issued a licence in February 1993 having a CIF value of Rs.13.83 crore against export of 'Fabrics made from 100 *per cent* polyster filament yarn' for an FOB value of Rs.31.11 crore. The licencee fulfilled export obligation by exporting 316.7 MT of 'Fabrics' between August and October 1994. Though, as per norms, import of 'Polyster filament yarn' weighing 349 MT only was permissible, the licencee imported 'PF yarn' weighing 3366 MT. The excess duty free import of 3017 MT valuing Rs.13.34 crore had resulted in duty of Rs.15.28 crore alongwith interest of Rs.9.93 crore being forgone.

c) Import of items not specified in Standard Input Output Norms (SION)

In 23 licences (4 at Calcutta and 19 at Mumbai) duty free imports of items not listed in the I/O norms for the relevant export products, were allowed to the licencees. There was a loss of Rs.6.44 crore in these cases including interest.

d) Ambiguous specifications in I/O norms leading to excess imports

I/O norms specified the quantity of 'Copper ingot', a sensitive item, to be imported at 0.04 MT per 1000 MT for export of 'Non Alloy/Alloy/Stainless Steel Bars and Rods' during the period April 1992 to March 1997. However, during September 1993 to March 1994, the specific quantity limit of 0.04 MT was replaced by a clubbed quantity limit of 22.345 MT for a group of 8 items, and as such during this period a licencee could import 22,345 kilogram of Copper Ingot instead of 40 kilogram for 1000 MT of the above export product.

Similarly the limits of 1.7 MT and 0.6 MT for two more sensitive items viz. 'Ferro silicon' and 'Copper plate/mould' were replaced by clubbed limits of 22.343 MT and 33.044 MT respectively for export of 1000 MTs of the steel bars and rods facilitating excess duty free imports of these sensitive items during the same period.

In the case of 54 licences issued by Jt. DGFT, Calcutta to a Steel Manufacturing Unit, excess duty free import of sensitive items mentioned above resulted in loss of duty of Rs.1.74 crore and interest of Rs.0.97 crore. The fact that the clubbing was allowed during a specific period and all the licences involved pertained to a specific licencee shows undue favouritism to a particular exporter by the DGFT.

The Ministry stated that the broad banding of SION was a conscious decision keeping in view the specific needs of the Steel Industry. The reply is not convincing since such broad banding was against the concept of declaration of an item as sensitive by the Government.

2.9.3 Blanket extension in export obligation period

In terms of para 63 of Exim Policy 1992-97 and para 125 of Hand Book of Procedures, the export obligation imposed under a duty free licence had to be fulfilled within 12 months from the date of issue of the licence. The regional licensing authority could, however, grant one or more extensions/ revalidations for a period not exceeding one year from the date of expiry of the original licence on merits of each case. In exceptional cases, requests for further revalidation of licence could be considered by an Advance Licensing Committee (ALC). These requests for revalidation of licence were required to be made within 2 months of the expiry of licence.

Under the provisions of the new Exim Policy 1997-2002 introduced with effect from 1 April 1997, even the Advance Licensing Committee could not grant any extension in the export obligation period beyond 30 months. The PAC (1997-98) in their 24th Report had recommended to DGFT that cases of defaults should be firmly dealt with and stern action as per the provision of the law should be taken against the licence holders. Inspite of these recommendations, even in default cases identified and reported by audit/department earlier, instead of initiating penal actions, further extensions in export obligation period were granted by DGFT under Public Notice No.38 of 1 September 1997. As per notings available in the Ministry's file, nearly 1933 licences issued prior to 1 December 1994 were given further extensions in the export obligation period upto 31 December 1997 (the QBAL/VABAL split up were not available). As per the earlier policy, powers were vested with the ALC to grant extension without any time limit. After lapse of this Policy on 31 March 1997, the power to grant any extension beyond the 30 months period was not available. As such the DGFT had no power to regularise the licences issued prior to 1 March 1995 under the Public Notice No.38 referred to above. Further, the provisions under Para 4.11 of the Exim Policy quoted in

support of this power in the circular, did not infact confer any such power to the DGFT. Thus, the action of the DGFT in granting further extension of 30 months even in cases where export obligations were pending for several years could adversely affect the prospects for recovery of duties due.

2.10 Duality of control in monitoring the export performance

Para 128 of the Hand Book of Procedures 1992-97 Vol.I, provides that if the export obligation was not fulfilled within the validity of the licence, in terms of quantity or value or both, the licence holder was required to pay, (i) to the customs authority, Customs duty on the unutilised imported material alongwith interest at 24 *per cent per annum* thereon; and (ii) to the licensing authority, a sum in rupees which was equivalent to the CIF value of the unutilised imported materials; and a sum in rupees which was equivalent to the shortfall in FOB value of the export obligation. In addition, if the licencee violates any conditions of licence, penalty in terms of section 11(2) of Foreign Trade (Development & Regulation) Act, 1992 was also leviable.

According to instructions issued by the Ministry of Finance in June 1992, in the event of his failure to achieve the prescribed export obligation, it was the Customs authorities who had to recover the customs duties and interest by enforcement of the bond / LUT executed by the licencees. However, as the bonds/ LUTs were executed with the licensing authority (as monitoring of the scheme was to be done by them), no recovery of duty could be effected by the Customs department through this mode, even though the non/short achievement of export obligation would have come to the notice of customs department first.

The licensing authority who had to monitor the export obligation and enforce the recovery of the duty did not however have any mechanism to check their performance, as the import/export performance details were available only with the Customs department and the licencees, and not with them. The monitoring authority (Licensing authority) had to depend upon secondary information, as given to them, by the user of the scheme i.e., the licencees themselves which ab-initio was of doubtful reliability.

In view of these contradictions, revised instructions were issued by the Ministry of Finance in January 1994, stating that the Customs officials should refer all cases of non fulfilment of export obligation or non compliance of the provisions of the Customs notifications to the licensing authority for effecting recovery of the duty and interest. The licensing authorities had then to recover the customs dues and deposit tne duty recovered under the relevant Customs head of account. Actual examination revealed that in practice this procedure was being observed more in the breach than in practice and adequate action to enforce the LUT/bond for recovery of duties were neither taken by the Customs department under the Ministry of Finance nor by the licencing authorities under the Ministry of Commerce.

The duality of control and delegation of power to recover 'Customs duty forgone' to Ministry of Commerce, instead of the concerned Customs department of the Ministry of Finance, was thus an ill-considered decision. Moreover duties from Customs are the primary responsibility of the Department of Revenue under the Ministry of Finance as per the `Allocation of Business Rules 1961'. Thus the Ministry of Finance could not just abdicate the responsibility of recovery of duty to the licensing authorities under the Ministry of Commerce. The Customs Act vests sufficient powers in the customs authorities to recover inadmissible duty exemptions availed by importers without the security of bonds (as detailed in para 2.6).

Test check of the licences issued at the three centres revealed that 467 licencees (out of the 10,758 checked) did not fulfill the prescribed export obligation. Of these, 278 licencees had not made any exports against the licences awarded to them while they had actually imported duty free goods valuing Rs.292.49 crore. The shortfall in export obligation in these cases was Rs.659.06 crore and consequently Customs duty of Rs.185.57 crore alongwith interest of Rs.138.54 crore was recoverable from these licencees. For the remaining 189 licencees, export obligation was only partially achieved as exports of Rs.378.19 crore were made against the prescribed FOB of Rs.886.71 crore resulting in a shortfall of export obligation by Rs.508.52 crore. The pro-rata customs duty recoverable in these cases worked out to Rs.156.92 crore. Besides an interest of Rs.119.60 crore was also recoverable. In all these cases, action in terms of Para 128 of the Hand book to recover the amounts due was yet to be initiated.

The details of the amounts identified by audit as recoverable from the 467 licencees at the three centres are as under :

(Rupees in crore)

	No. of licence	CIF	FOB	Actual value of import	Proportionate FOB	FOB achieved	Shortfall in E.O.	Unutilised CIF	Duty forgone	Interest
Cases with nil exports										
Calcutta	187	266.25	457.97	215.20	--	--	457.94	215.20	120.36	88.06
Delhi	35	36.27	80.99	30.45	--	--	80.99	30.45	31.97	27.54
Mumbai	56	65.25	120.13	46.84	--	--	120.13	43.06	33.24	22.94
Total	**278**	**367.77**	**659.06**	**292.49**	--	--	**659.06**	**288.71**	**185.57**	**138.54**
Cases with partial exports										
Calcutta	28	75.74	111.44	75.16	110.59	73.91	36.68	21.14	20.80	17.20
Delhi	18	362.38	587.91	317.50	503.35	205.31	298.04	182.90	108.6	83.36
Mumbai	143	105.46	345.19	79.16	272.77	98.97	173.80	30.62	27.51	19.04
Total	**189**	**543.58**	**1044.54**	**471.82**	**886.71**	**378.19**	**508.52**	**234.66**	**156.92**	**119.60**
Grand Total	**467**	**911.35**	**1703.60**	**764.31**	**886.71**	**378.19**	**1167.58**	**523.37**	**342.49**	**258.14**

An analysis of 278 licences, through which imports of raw materials valuing Rs.292.49 crore with duty exemption of Rs.185.57 crore were allowed,

revealed that 135 of these licences were infact issued repetitively to only three licencees.

Licences being issued during the period May 1992 to August 1996 repetitively to the same licencees, was indicative of clear lapse on the part of the licensing authority in the monitoring of export obligation. It was quite apparent that no consideration was given to past performance of the exporters while issuing fresh licences, though this could have been done as the licencee was required to declare the export obligation outstanding against them while applying for a fresh licence.

Though Rs.2291.58 crore as above was recoverable from the defaulting licencees (467 cases), no recovery had been reported till date (June 1998). Besides, for non fulfilment/short fulfilment of export obligation the country had lost foreign exchange worth Rs.1167.58 crore.

A few such cases noticed in audit are highlighted below :

i) A licence was issued in October 1994 by Jt. DGFT, Calcutta to an exporter for duty free import of various goods valuing Rs.9.89 crore against fulfilment of export obligation of Rs.19.79 crore by October 1995. The licencee imported goods duty free valued at Rs.10 crore involving duty of Rs.11.56 crore between October and December 1994. No exports were, however, effected till November 1997. Non-fulfilment of export obligation attracted recovery of Rs.11.56 crore as duty and Rs.9.41 crore as interest. Further, an amount equivalent to the CIF value of the unutilised imported material and the unfulfilled FOB value of Rs.10 crore and Rs.19.79 crore respectively were also payable to the licensing authority.

ii) A licence was issued in June 1994 by Jt. DGFT, Calcutta to an exporter of Tyres for duty-free import of various goods valuing Rs.9.37 crore against export obligation of Rs.14.86 crore. The licencee imported goods duty-free valuing Rs.7.07 crore involving duty of Rs.6.87 crore. Though extension in export obligation period was granted till March 1997, no export was reported till July 1997. Non fulfilment of export obligation attracted recovery of Rs.6.87 crore as duty and interest of Rs.5.45 crore. Further, an amount of Rs.7.07 crore and Rs.14.86 crore respectively was also recoverable by the licensing authority, as the amount equivalent to the CIF value of imported material and the unfulfilled FOB value.

iii) Another Tyre manufacturer at Mumbai who was granted a licence in August 1994 by Jt. DGFT, Mumbai for exporting 'Automobile tyres and tubes', imported goods worth Rs.7.05 crore. No exports were made during the validity period of the licence and accordingly the licencee was required to pay Rs.17.64 crore to the licensing authority as CIF value of unutilised imported material and amount equivalent to the shortfall in export obligation. The amount of duty recoverable together with interest worked out to Rs.8.62 crore. The total revenue loss in this case was Rs.26.26 crore.

iv) An exporter at New Delhi was issued seven licences by Jt. DGFT, New Delhi in February 1993 for duty free import of various inputs valuing Rs.10.14 crore against export obligation of Rs.14.20 crore. The licencee imported duty free goods worth Rs.11.05 crore involving customs duty of Rs.14.04 crore during the period April 1993 to October 1994. No export was made as per records made available to audit. Non fulfilment of export obligation attracted recovery of customs duty of Rs.14.04 crore and interest of Rs.14.41 crore. Further, Rs.11.05 crore representing CIF value of unutilised material and Rs.14.20 crore for shortfall of export obligation was also payable to the licensing authority. Total amount recoverable from the licencee worked out to Rs.53.70 crore.

v) Another exporter at New Delhi. was issued three licences by Jt. DGFT, New Delhi, during May to July 1993 for duty free import of 'Polypropylene' valuing Rs.3.55 crore against export of 'PP woven sacks' for Rs.5.39 crore. The licencee imported duty free materials worth Rs.3.52 crore during July 1993 to September 1994 but no exports were reported till July 1998. Accordingly, duty of Rs.4.24 crore was recoverable alongwith interest of Rs.3.84 crore. Further, the value of the unutilised material valuing Rs.3.52 crore and the shortfall in export obligation for Rs.5.39 crore was also recoverable making the total amount recoverable from the licencee to Rs.16.99 crore.

2.11 Deficiencies in the maintenance and management of records

Monitoring of the scheme and of the performance of the exporters, required proper maintenance of records by the authorities to keep a close and continuous watch over the export performance of the licence holder and initiating timely and effective action in cases of default. In terms of the procedures prescribed, the licensing officers were required to maintain master register of licences, default register, register showing expiry of export obligation period etc. Similarly, the Customs authorities were required to maintain proper registers in relation to imports, exports, customs duty exempted etc.

Scrutiny of the records maintained in the office of the three Regional Licensing authorities and the respective Custom Houses at these places revealed the following deficiencies/irregularities :

Licensing Authorities

In respect of every licence issued, the licensing authorities were to maintain a file wherein all details of imports and exports and foreign exchange realised issued were to be noted. Although the licensing authorities stated that 28,101 licences were issued by them, the office of the DGFT/Jt. DGFTs could furnish to audit, files relating to only 21,219 (76 *per cent*) licences. This was

indicative of poor record management and it was not clear how export obligation could be monitored by the licensing officers in the absence of the relevant licence files.

i) The master registers maintained were not upto date and essential information for effective monitoring such as total number of VABALS issued, amendment in CIF/FOB value, fulfilment of export obligation, transfer/ cancellation of licences etc., were not indicated.

ii) All licences, whether value based or quantity based were entered in the same register and each file, as a result, had to be examined physically to ascertain its actual category.

iii) No database was created or statistics compiled, to assess the performance of the scheme or its effectiveness.

iv) Register to monitor the BG/LUT were not being properly maintained.

Custom Houses

i) Master Registers for imports and exports were not maintained properly and most of the columns provided for noting the Bills of entry/values/shipping bills/quantity of imports/exports contained no entries.

ii) At Mumbai, the Custom House could not confirm the actual number of 'DEEC Registers' available with them and even though separate folios were provided for each licence, entries for the same licence were being made in different registers by opening new folios for separate consignments. There was also no uniformity in the maintenance of records between the three offices at Mumbai.

iii) No separate registers were maintained for QBAL/VABAL, in the three Custom Houses at Mumbai. In Calcutta, while separate registers were maintained for VABAL since 1995, in one Custom House, export details were not noted in the Register.

iv) Import details were mostly not available in cases of Telegraphic Release Advice (TRA) issued to other Ports and no follow up records for the imports were being maintained.

Tardy implementation and poor maintenance and management of records was indicative of failure of internal checks and internal control.

2.12 Other interesting cases

2.12.1 Unrealistic exports

The weight of the product exported by some of the licencees when co-related with the quantity of the material imported showed unrealistic results, indicating that no physical examination of the products exported under the VABAL Scheme was being carried out by the Custom Houses and no checks on the consignments cleared for export were being exercised by them. This is supported by the fact that, the Ministry of Commerce issued instructions to the Custom Houses (April 1994) directing them not to detain the export goods for examination.

Two of the cases noticed in audit are given below :

i) A unit in New Delhi was issued during August 1994 to September 1994 12 VABALs for duty free import of 'Polyester fabric and Polyester sewing thread' for a total CIF value of Rs.2.09 crore against which export of one lakh Blouson with lining for an FOB value of Rs.4.29 crore was to be made to Russia. As per standard I/O norms, 'Polyester fabric and polyester thread' required for 'one blouson' was 6.36 sq.m and 250 metre respectively as worked out in audit. The firm exported 'one lakh blouson with lining' for a total FOB value of Rs.4.29 crore during the period November 1994 to March 1995 with a declared total weight of 6236.5 kilograms. On this basis, the average weight of each 'Blouson with lining' containing 6.36 sq.m. of 'Polyester fabric' and 250 metre of 'Polyester thread' worked out to only '63 grams' which was extremely unrealistic and casts doubts about the genuineness of the exports. Total customs duty foregone in these cases worked out to Rs.1.37 crore.

ii) Another exporter at New Delhi was also issued, during September 1994, five VABALs for duty free import of 'Polyester fabric and polyester sewing thread' for CIF value of Rs.1.12 crore required for manufacture and export of 40000 pieces of 'Ladies long coat' for FOB value of Rs.2.24 crore to Russia. As per standard I/O norms, 'Polyester fabric' required for each 'Ladies long coat' was worked out as 8.55 sq.m. The firm had exported 40000 ladies long coat having a total weight of 4255 kilograms for total FOB value of Rs.2.25 crore between December 1994 and February 1995. On this basis, average weight of each Coat (containing 8.55 sq.m. of polyester fabric) worked out to '106 grams'. Average weight of '106 grams for one coat made from 8.55 sq.m. of 'Polyester fabric' etc. would indicate that either less material was used or the items exported were not 'Ladies coats' and accordingly the genuineness of these exports was doubtful. Even though the information regarding the weight of goods exported was available on record, the matter was not investigated and all the licences were made transferable. Total customs duty foregone in these cases worked out to Rs.0.73 crore.

It was also noticed in audit that both these firms were functioning from the same address under the same proprietor.

2.12.2 Import of raw materials irrelevant to the export product

According to Para 47 of the Exim Policy, import of inputs required for direct use in the product to be exported was to permitted duty free. The Ministry of Commerce had further clarified (November 1994) that though in the I/O norms, the export products/inputs were given only in generic terms, licensing authorities should ensure that the resultant products and the inputs required for their manufacture conform to each other to prevent misuse of the scheme.

12 VABALs were issued to an electronic manufacturing unit by Jt. DGFT, New Delhi, during January 1993 with a CIF value of Rs.5.42 crore against export of 'Black and White TV' sets in CKD condition valuing Rs.6.89 crore. It was seen that the licencee imported colour picture tubes valuing Rs.5.74 crore, involving customs duty of Rs.3.14 crore.

In their response, the Government stated that such imports were permissible as the SION for the electronic sector had been broadbanded. Realising the incongruity, the broadbanding was discontinued with effect from 1 April 1997.

2.13 Recommendations

All duty exemption schemes are difficult to administer and hence subject to misuse. The Value Based Advance Licensing Scheme was no exception. Further, it is doubtful if such schemes achieve the intended objectives. It is also difficult to establish any co-relation between the duty and the revenue forgone and the consequent incremental increase in exports. Such schemes are also being viewed with suspicion by the European Union. At best, such schemes only address the short term problems pertaining to the export front. In the long run, exports can be sustained on a continuing basis only when the domestic economy is revived and subjected to international competition. Government should therefore, concentrate on such measures as would improve the climate for exports, such as improving the infrastructure, quality of export products, faster clearance of export consignments, making credit available at reasonable rates etc.

Further, in all the cases where the licencees resorted to malpractices by any suppression of facts, reason of collusion or wilful mis-statement of value and quantity of raw materials/finished products vigorous action for pursuance and recovery of the legitimate dues of Government may be taken as per the relevant provisions of the Customs Act. Penal action needs to be initiated against the unscrupulous licencees and the officials responsible for the lapses to prevent recurrence of such blatant misuse in future.

CHAPTER 3 : DELAY IN FINALISATION AND COLLECTION OF DEMANDS

3.1 Introduction

The Customs Act provides that duties of customs that have either not been levied/paid or have been short levied/short paid can be demanded by issue of a notice by an Assistant Commissioner. Ordinarily, a period of at least 15 days is given to the assessee to represent against such a demand notice failing which the demand can be confirmed ex parte. If the confirmed amount is not paid, and no stay has been obtained from an appellate authority, the recovery proceedings must be initiated. Procrastination by departmental officials or procedural inadequacies may result in delayed or non realisation of revenue thereby adversely affecting resource mobilisation efforts of the Government.

3.2 Scope of Audit

Test check of 20 *per cent* of the records relating to finalisation and Collection of demands for the period from 1995-96 to 1997-98 was conducted in the 16 major Custom Houses/Commissionerates to evaluate the effectiveness of the systems and practices adopted and to identify the factors that led to delays at various stage and the consequential financial impact.

The major findings are :

- **4745 show cause notices involving Rs.588.36 crore were pending for confirmation in 16 commissionerates resulting in indirect financial accommodation to the importers and loss to Government by way of interest of Rs.235.33 crore. Further, in 3138 cases involving duty of Rs.492.57 crore, show cause notices issued were confirmed after substantial delay resulting in loss of interest of Rs.151.97 crore.**

[Paragraph 3.3 a & b]

- **13661 cases of confirmed demands involving Rs.411.29 crore were pending realisation as on 31 March 1998. The loss to Governmment by way of interest in these cases was Rs.122.57 crore.**

[Paragraph 3.4]

- **Absence of provision in the Act to levy interest on delayed payment of penalty resulted in loss of revenue of Rs.49.33 crore on the amount of Rs.116.53 crore outstanding in 11347 cases.**

[Paragraph 3.8]

- **In 543 cases involving revenue of Rs.9.31 crore demands became time barred due to inaction by the department.**

[Paragraph 3.9]

- **Absence of control mechanisms in three Customs houses resulted in failure to detect omission/abandonment of 887 demand cases involving revenue of Rs.614.33 crore. Basic records prescribed for monitoring and ensuring recovery of demands were either not being maintained/or not maintained as prescribed.**

[Paragraph 3.10]

3.3 Non adjudication/confirmation of demands

Delay in the process of adjudication and confirmation of demands results in financial accommodation to assessees. Based on the recommendation of the Public Accounts Committee in their 84th Report (1981-82) 7th Lok Sabha, the Central Board of Excise and Customs directed (17th January 1983) that demand cases be decided within a maximum period of six months from the date of issue of show cause cum demand notices.

Audit scrutiny, however, revealed that as on 31 March 1998, 4745 cases involving customs duty of Rs.588.36 crore were pending for confirmation beyond six months (show cause notices issued upto 30 September 1997). Consequent loss by way of interest upto March 1998 was Rs.235.33 crore. Further in 3138 cases involving duty of Rs.492.57 crore the SCNs issued were confirmed by the department only after the prescribed period of six months. 1961 of these cases were decided after a period of two years. Delay in confirmation led to late recovery of duty and no interest was leviable for the period of such delay. This delay entailing loss of Rs.151.97 crore on account of interest is to be viewed in the wider context of the fact that a part of Government expenditure is met from borrowed funds with its consequent interest liability.

A few of the cases where the delay in adjudication not only resulted in substantial loss to the government but also extended undue financial accommodation to the assessees in terms of loss of interest are narrated below:

a) Demand cases not adjudicated

i) Three show cause cum demand notices for Rs.5.67 crore were issued in August 1995 to three assessees by the Commissioner of Customs (Preventive), Ahmedabad for imports made under various Value Based Advance Licenses issued to M/s Vishakhapatnam Steel Plant transferred by false declaration of exports. These show cause cum demand notices had not

been adjudicated till date. (June 1998). The cost of the delay exceeding two years and eight months is the loss of interest of Rs.2.11crore.

iii) A show cause notice for Rs.7.86 crores was issued (May 1993) to an assessee by the Chennai Commissionerate (Sea). This was in pursuance of an audit observation regarding incorrect extension of an exemption notification. Except for the issue of a reference to the review cell (May 1997), the department had not taken any action to adjudicate the demand resulting in loss of interest of Rs.4.06 crores.

iiii) A demand notice was issued by a division under Trichy Commissionerate for Rs.1.94 crore(June 1995). The incorrect exemption granted under a Customs notification on import of capital goods in the case was pointed out by Audit. The department failed to adjudicate the demand till September 1998 even though the importer had replied in June 1995 resulting in non realisation of revenue and loss of interest of Rs1.16 crore.

b) Delay in adjudication beyond the prescribed six months.

i) The Commissioner of Customs, Kandla issued three show cause cum demand notices to a unit of Kandla Free Trade Zone in May 1995 for non fulfilment of conditions given in an exemption notification.The SCNs were adjudicated and the demand for duty of Rs.211.23 crore with penalty of Rs.20 crore confirmed only in January 1998 after about 2 years and 8 months resulting in loss of interest Rs.83.05 crore.

ii) The Commissioner of Customs, Visakhapatnam issued a show cause notice in September, 1995 to a public Sector undertaking for evasion of customs duty by misdeclaration and suppression of facts. The case was finally adjudicated in April 1997 confirming customs duty of Rs.5.92 crore and imposing a penalty of Rs.5 crore. There was a delay of 418 days in adjudicating the case beyond the stipulated period resulting in loss of notional interest of Rs.1.36 crore upto July 1997. The duty and penalty imposed by the department was still pending realisation (May 1998).

iiii) Demand-cum-show cause notice was issued by Delhi Custom House in December 1994 to a defaulting jewellery exporter. The demand for Rs.5.80 crore was confirmed only in January 1997. The cost of the delay was interest of Rs.1.74 crore.

3.4 Delay in recovery of confirmed demand

Section 28 of the Customs Act requires the importer to pay the duty determined under sub Section 2 within 3 months of the date of such determination failing which the amount can be recovered by the Assistant Commissioner of Customs as per the provisions of Section 142 of the Customs

Act by options such as attachment and sale of goods belonging to such person, recovery from amounts due etc.

Audit scrutiny revealed that 13,661 cases involving a revenue of Rs.411.29 crore were outstanding for realisation for more than 6 months as on 31 March 1998 in 16 Commissionerates. Of these 12477 cases involving duty of Rs.223.24 crore were outstanding for more than two years. In terms of Section 28 AA of the Customs Act, interest at the rate of 20 *per cent* was also recoverable on the confirmed demands which remained outstanding for realisation beyond 3 months. Thus, the amount of interest recoverable and outstanding for realisation was Rs.122.57 crore.

Detailed test check revealed several lapses by Departmental officials. A few large value cases are highlighted below:

a) Four demands aggregating to Rs.1.43 crore were confirmed between July and September 1994 by the Assistant Commissioner of Customs, Bhuj against an importer of waste oil. Although the importer had filed an appeal with the Commissioner of Appeal, Ahmedabad, there was no stay order for recovery of duty. However, recovery action under section 142 of the Act was not initiated resulting in non recovery of revenue of Rs.1.43 crore and loss/non recovery of interest of Rs.97.36 lakh. A bank guarantee for Rs.17.42 lakh also lapsed in the meanwhile.

b) Scrutiny of the records in the Container Cell of Commissionerate of Customs, Calcutta (Preventive), revealed that in 50 cases, demand notices for Rs.5.84 crore issued to the importers were confirmed between April 1995 and September 1997, but no further action was taken to realise the pending demands. This resulted in non-recovery of Government revenue as well as interest of Rs.1.86 crore.

c) A Government department which imported 'Inter-connecting equipment', between March and August 1986 for Public Telephone exchange network project was served a demand notice in July 1992 for Rs.1.05 crore for non-submission of requisite documents. The demand was confirmed in March 1995 after a period of two and a half years. No further action was initiated by the department to recover the amount resulting in further loss of Rs.1.03 crore as interest from May 1993 to March 1998.

d) Three consignments of Polyester Yarn imported in May 1985 under DEEC Scheme were misutilised by an importer. The case was adjudicated by the Commissioner of Customs, Mumbai in April 1995 and Customs duty of Rs.1.21 crore and a personal penalty of Rs.1 crore were to be recovered from the importer. However no recovery was made till March 1998. Interest recoverable upto March 1998 was Rs.3.14 crore. The total amount recoverable from the importer as of March 1998 was Rs.5.35 crore.

e) A show cause notice was issued to an exporter in February 1996 for misdeclaration of export goods through Delhi Custom House. The case was

confirmed in August 1996 and a penalty of Rs.5.crore was imposed. The protracted correspondence enabled the importer to divert funds and assets. Consequently the department has not so far been able to effect any recovery which resulted in further loss of notional interest of Rs.2.83 crore till March,1998.

f) Four Charitable Trusts in Delhi were issued show cause notices in November 1994 alleging that second hand clothes imported in 1993 for free distribution were diverted for sale in the local market. The demands for Rs.1.25 crore were confirmed between January and September 1997. However, no recovery has been effected till date. The delay in confirmation and non recovery of duty resulted in loss of interest of Rs.1.21 crore.

3.5 Ineffective certificate action

On confirmation of demands by an adjudicating authority for duty not levied short levied or erroneously refunded, the assessees are required to pay the dues. In case the assessees fail to make the payment, certificate action as provided in Section 142 of the Customs Act for recovery of the dues have to be initiated. Test check in audit disclosed that the above procedure was not effective in any of the Commissionerates. In none of the cases referred to the District Collector taking recourse to this procedure, the recoveries were effected.

A few high value cases are illustrated below:

a) Vide an adjudication order passed in September 1987 in Bombay Custom House, customs duty of Rs.2.93 crore and personal penalty of Rupees one crore were to be recovered from an importer who had diverted goods imported duty free under DEEC Scheme for other purposes. Detention notice and thereafter Certificate action as required under Section 142 was initiated in August 1992 by the department. No recovery had however been effected until September 1998. Interest recoverable for delayed payment of duty for the period from 1 April 1986 to 31 March 1998 was Rs.7.04 crore. The total amount of Government dues recoverable from the importer as on 31 March 1998 worked out to Rs.10.08 crore.

b) Vide an adjudication orders passed by the Commissioner of Customs (28 June 1991 and 31 August 1994), duty of Rs.2.60 crore and personal penalty of Rs.1.25 crore were to be recovered from an importer for diverting goods imported duty free under the DEEC Scheme. After issue of Detention notices in June 1992 certificate action under Section 142(I)(c) was initiated in August 1995. However, no recovery was effected until September 1998. Interest recoverable for delay in payment of duty upto 31 March 1998 worked out to Rs.4.97 crore taking the total Government dues recoverable from the importer to Rs.8.82 crore.

c) Vide an adjudication order passed by the Commissioner of Customs Mumbai in February 1987, an importer was required to pay the Customs duty of Rs.1.74 crore and personal penalty of Rs.50 lakh for importing Synthetic fabrics by misdeclaration as Synthetic Waste. The Department initiated Certificate action as required under Section 142(I)(c) of the Customs Act 1962 in June 1992. However, no recovery had been effected until September 1998. Interest recoverable upto March 1998 worked out to Rs.4.52 crore taking the total amount recoverable to Rs.6.76 crore.

3.6 Failure in getting stay orders vacated

PAC in their 170th report (1983-84 Seventh Lok Sabha) had reiterated that there should be no let up in taking effective and timely steps in securing early vacation of stay orders and collection of revenue that have been blocked so far. Audit scrutiny, however, revealed absence of concerted efforts towards securing vacation orders. Out of the 13361 cases of outstanding demands pending for more than 6 months in the 16 Customs Houses, 300 involving Rs.196.89 crores were pending decisions in the Courts/CEGAT.

A few of the high value cases where the department failed to get the stay vacated resulting in loss of revenue are illustrated below :-

a) Consignments of 'Oil explorative equipments' imported by a multinational company (M/s Enron Oil and Gas, India) in 1995-96 assessed provisionally were finally assessed in April 1997 and demands for Rs.35 crore confirmed. On a petition filed against the said demand, High Court stayed the recovery in April 1997, pending issue of certain clarification from the Ministry/Board. The Board/Ministry is yet to issue the clarification leading to blockage of Rs.46 crores. Besides interest of Rs.5.25 crores was also recoverable till March 1998.

b) In 3 cases relating to Custom House Kandla, involving duty of Rs.2.64 crore, no action for vacating the stay orders pending in the High Courts at Delhi, Jammu and Kashmir and the Supreme Court since February. 1982, September 1984 and September.1984 respectively was taken. This resulted in blocking revenue of Rs.2.64 crore for nearly 15 years and loss of Rs.1.38 crore by way of interest. Bank guarantees for a total amount of Rs.1.43 crores available with the department had expired between 1989 to 1991.

c) In Hyderabad II Commissionerate duty of Rs.8.43 crore was confirmed in 17 cases during 1996-97 due to non-submission of certificates from DGHS as required under the customs notification of March 1988. The department failed to get the stay granted by the High Court vacated despite the Supreme Court decision [1997 (92)ELT-9(SC)] in the case of MIHIR textiles Ltd. Vs. C.C. Bombay that the benefit of exemption notifications can not be granted unless the conditions, even if, in the form of directions are complied with.

d) The exemption benefit under a notification to LAM Coke imported by 3 importers was disallowed by the adjudicating authority and a demand for Rs.2.93 crore was confirmed in February 1989. Though the demand was upheld by the Commissioner (Appeals), the importer filed further appeal to CEGAT, Madras. On their direction, the importer paid 30 *per cent* of the duty and the case was remanded to the Collector(Appeals), Madras for fresh order (January 1995). Balance amount of Rs.2.05 crore was yet to be realised. No concrete action had been taken by the department for transfer of case from Commissioner (Appeals) Chennai to the Commissioner (Appeals) Hyderabad due to change of territorial jurisdiction.

When this was brought to the notice of the department in May 1998, the department stated (June 1998) that the text of the orders dated 9 March 1995 of the CEGAT was received by the Custom House only on 17 December 1997 and efforts were already made to obtain expeditious disposal of the appeal.

e) An importer of 'waste and scrap of iron and steel' through Vishakapathnam Port, disputed the levy of auxiliary duty and preferred an appeal in March 1991 in the Madhya Pradesh High Court. The Court dismissed the case due to non-territorial jurisdiction and directed the respondents to get the goods released after payment of duty at the old rate after furnishing bank guarantee for the differential duty. A writ petition was then filed in Andhra Pradesh High Court in February, 1995 and the Court granted a stay. Since similar issues relating to the levy of auxiliary duty were already dismissed by the Andhra Pradesh High Court in favour of the department the stay could have been got vacated by the department. Inaction of the department resulted in blocking of revenue of Rs.1.44 crore and extending undue financial accommodation to the importer. The department stated (July 1998) that the case was being pursued.

3.7 Non levy of interest on delayed payment

Section 28AA of the Customs Act, 1962, introduced with effect from May 1995, provides that if a person chargeable with the duty fails to pay such duty within three months from the date of such determination, he shall pay in addition to the duty interest at such rate not below 10 *per cent* and not exceeding 30 *per cent per annum*, as for the time being fixed by the Board. The prevailing rate of interest is 20 *per cent per annum* vide notification 33/95-cus (NT), dated 26 May 1995.

In the event of non-payment of duty or part payment of duty, Government dues are available to the assessee for his own purposes which would not have been free of charges had the assessee borrowed the amount. Considering this aspect, the Supreme Court had also laid down in the case of Oswal Agro(ECRS(SC)1996) that in such cases interest at bank rate should be charged from the assessee in respect of the entire period during which the Government dues remained with him.

In 141 cases pertaining to 6 different commissionerates, while recovering the demands confirmed, interest recoverable under Section 28AA amounting toRs.1.81 crore were not claimed for delays in payments.

3.8 Non recovery of personal penalties

Section 112 of the Customs Act, 1962 provides for levy of personal penalties for improper importation of goods and also for certain specified offences. If the penalties imposed under these provisions are not paid by the person charged with the penalty, other measures for their realisation including certificate action as prescribed under Section 142 *ibid* are required to be taken by the proper officer.

Personal penalties levied in 11347 cases were pending in 12 Customs houses for realisation as on 30 September 1997 and involved an amount of Rs.116.53 crore.

Though in terms of provisions of section 28AA of the Customs Act, 1962, introduced with effect from 26 May 1995, interest at the rate of 20 *per cent per annum* had become leviable on delayed payment of confirmed demand of duty not levied, short levied or erroneously refunded, there was no provision in the Act for charging interest on delayed payment of penalty levied but not paid.

Absence of a provision in the Act to levy interest on delayed payment of penalty resulted in loss of Rs.49.33 crore.

3.9 Loss of revenue due to cases getting time barred

Section 28 of Customs Act, 1962 prescribe periods for raising demands in the case of customs duty not having been levied or short levied or erroneously refunded. If demands are not raised within such periods they become time-barred. The Board also directed (August 1988) that if cases were lost by the department and Government revenue suffered because of non-compliance with law, the concerned officials would be held responsible for such lapse and such cases would be dealt with seriously.

In 463 cases short levy of Rs.7.30 crore pointed out by Customs Receipt Audit to 4 different Customs houses (Calcutta, Delhi and Chennai & Trichy) were not recovered by the department as the demands were not issued within the prescribed time and the claims became time barred. In 4 Custom houses 67 other cases involving Rs.1.53 crore were found to have been lost due to the departments failure in issuing demands in time.

3.10 Non maintenance of records and abandonment of demand cases

CBEC instructions provide that a register of show cause cum demand notices issued is to be maintained in two-parts for unconfirmed and confirmed demands. The requisite details of each case of unconfirmed and confirmed demands is required to be updated from time to time in the register and watched regularly by the Assistant Commissioner concerned. Despite this the overall pendency of outstanding confirmed/unconfirmed demands called for by audit were not furnished by most of the Commissionerates/Board.

In Hyderabad II , Air Mumbai, and NSPT Mumbai Commissionerates the registers were not being maintained. In their absence the Statement of outstanding demands prepared monthly and sent periodically to the Ministry lacked credibility. This also prevented effective monitoring of recovery or safeguards against unjustified abandonment.

In Kandla, Ahmedabad, (Sea Customs) Mumbai, Delhi, Calcutta and Cochin (Air cargo Complex Trivandrum) Commissionerates the registers were not maintained in accordance with the directions issued by the Board. Details & implications of the procedural lapses are contained in succeeding paragraphs.

In Delhi Commissionerate, registers were being opened without carrying forward the balances of outstanding cases from the previous registers. The MTRs were being compiled with reference to the case files in hand and not with reference to the closing figures noted in the registers. Further the closing balance and opening balance for the confirmed demands/unconfirmed demands as given to audit by the Custom House did not tally. The department could also not reconcile these discrepancies. Out of 96 registers and 359 case files called for only 10 registers and 79 files were furnished to audit. As such, the action taken for recovery/settlement in respect of 288 cases involving demands of Rs.14.52 crore could not be verified.

In one appraising group of Commissionerate of Calcutta, 196 confirmed & unconfirmed demand cases involving revenue of Rs.32.95 crores were abandoned without proper authority. The reporting and accounting of demands outstanding from 1987 onwards were found to have been made by abandoning pending cases of both confirmed and unconfirmed demands. In the statements furnished to audit as on 31 March 1998 unconfirmed demands outstanding were reported as "Nil" and confirmed demands outstanding as 5 involving Rs.5.77 lakh. No records or files were available for pursuance of these cases for realisation and hence the chances of recovery in such cases were remote.

In the DEEC cell also under the same Commissionerate, though 65 confirmed demand cases were shown as outstanding prior to 1994-95 .period, these cases were not reported to audit as outstanding. In 78 cases of outstanding unconfirmed demands for the period November 1997 to June 1998 involving Rs. 108.87 crore, the records were reported as missing. In another Appraising

Group, files for disposal of cases were not available. 436 case files called for by audit were not produced to audit by the Commissionerate.

In Chennai the unconfirmed demands outstanding reported to the Board through MTR did not include 260 demands for Rs.457.99 crore relating to DEEC Scheme and other cases reported by Department of Revenue Intelligence indicating absence of proper monitoring mechanism of outstanding dues.

3.11 The irregularities contained in this Review were brought to the notice of Ministry of Finance in December 1998. Their reply is awaited.

CHAPTER 4 : SHORT LEVY DUE TO UNDERVALUATION

4.1 Incorrect adoption of assessable value

a) The maximum depreciation to be allowed for any second hand machinery, whether at the time of import or at the time of debonding from Free Trade Zones/100 *per cent* EOU was restricted to 70 *per cent* under Ministry of Finance letter dated 15 April 1987 and Board's order dated 19 December 1987 respectively.

Second hand capital goods (aged 1 to 46 years) valued at Rs.4.85 crore imported by a 100 *per cent* EOU in 1992 were allowed maximum depreciation at the time of debonding as per the Ministry of Finance orders dated 15 April 1987. As the maximum depreciation of 70 *per cent* would have been already allowed at the time of import for any machinery aged 7 years and above under Board's orders dated 19 December 1987, the depreciation again allowed on the entire second hand capital goods at the time of debonding was not in order. The excess depreciation of Rs.75.78 lakh allowed resulted in short levy of duty of Rs.20.42 lakh. The matter was pointed out to the department/Ministry (April 1998). Their reply is awaited (January 1999).

b) In terms of Section 65(2)(b) of the Customs Act, 1962, duty payable on clearance of any waste or refuse arising out of a manufacturing process or other operations from the warehouse for home consumption shall be on the value of the quantity of warehoused goods contained in so much of the waste or refuse as has arisen from the operations carried on in relation to goods cleared for home consumption.

In a bonded warehouse of a company, duty on clearance of steel scrap generated from the manufacturing operation was levied with reference to assessable value fixed with reference to the sale price minus duty elements instead of proportionate value of the imported mother material from which the waste was generated as per provisions in the Customs Act.

Audit pointed out the under assessment (September 1993) and consequent loss of duty of Rs.7.21 lakh. The department's reply that the price adopted was the price as contemplated in section 14 of the Customs Act, 1962 i.e. price offered for sale for delivery at the time and place of importation is not tenable in view of the specific provision under section 65(2)(b) quoted above.

Reply of the Ministry is awaited (January 1999).

c) Two consignments of dutiable goods imported through two major Custom Houses were assessed adopting values other than those given in the invoices resulting in short levy of duty of Rs.4.58 lakh.

On the incorrect adoption of value being pointed out (January/June 1997), the Ministry reported (August/September 1998) recovery of the short levied amounts in both the cases.

4.2 Incorrect computation of assessable value

a) The additional duty of customs leviable as per Section 3(2) of the Customs Tariff Act, 1975 shall be on the aggregate of the value of the imported article determined under Section 14 of the Act and any duty of customs chargeable on that article under Section 12 of the Act.

Eight consignments of different goods imported through a major Custom House between December 1996 and February 1997 were assessed to additional duty under the Additional duties of Excise (Goods of Special Importance) Act, 1957 based on the countervailing duty levied on the article and not on the value as determined under the charging Section of the Customs Tariff Act, 1975. The incorrect determination of value resulted in under assessment of additional duty of Rs.5.03 lakh.

On this being pointed out between July and November 1997 the department admitted (August 1997) under assessment in three consignments. Replies have not been received in respect of the other cases.

b) According to rule 9(2) of the Valuation Rules, 1988, the value of the imported goods for assessment shall be the value inclusive of (a) the cost of transport of the imported goods to the place of importation. (b) loading, unloading and handling charges associated with the delivery of the imported goods at the place of importation and (c) the cost of insurance.

Goods imported and cleared by different importers through two Custom Houses were assessed to duty exclusive of freight/Insurance charges resulting in undervaluation and consequent short levy of Rs.3.50 lakh. On being pointed out in audit (September 1996/February 1998), the Ministry reported recovery of Rs.1.09 lakh in one case. In respect of the remaining cases, the department contended that the value was adopted based on the declarations filed by the importers that the cost of goods included freight and insurance charges.

The reply is not tenable as the price of imported goods was to be based on the manufacturer's invoice which was available.

c) As per proviso to Section 14(1) of the Act, the rate of exchange for conversion of value expressed in foreign currency in respect of any imported goods is the rate in force on the date of presentation of the Bill of Entry. In two Air Custom Commissionerates, the assessable value of eleven consignments of dutiable goods, imported during May 1997 were arrived at by adopting incorrect rates of exchange resulting in short levy of duty of Rs.4.20 lakh.

On these being pointed out in audit (November 1997 to February 1998), the department/ministry admitted the mistake in nine cases. Reply in respect of the other two consignments is awaited (January 1999).

CHAPTER 5 : SHORT LEVY OF DUTY DUE TO INCORRECT CLASSIFICATION

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

5.1 Articles of stone, plaster etc.

Ceramic Product

Parts of paper making machinery imported through a major Custom House were assessed under sub heading 8439.99 as machinery parts. Audit pointed out (January 1996) that the imported goods viz., 'E.A. covers' being made of ceramic were classifiable under sub heading 6914.90 and the misclassification resulted in short collection of duty of Rs.45.32 lakh.

The department contended (January 1998) that Note (1)(b) under Chapter 84 excluded only parts made of ceramic. The goods being made of a combination of ceramic with stainless steel were classifiable as parts of paper making machinery only.

The reply has not been accepted due to the following reasons:

i) as seen from the literature of the product the cover material of the product was 'Dispersion ceramic'. The invoice also indicated the product to be of composite ceramic/aluminium oxide.

ii) in terms of rule 2(b) of the General Interpretative rules, read with rule 3(b), the classification of goods consisting of more than one material or substance, shall be determined based on the material that provided the essential character to the parts. It was also admitted by the department that though the imported goods were made up of stainless steel and ceramic, the main function of draining out excess water from pulp during paper formation was done only by the ceramic part.

Reply of the Ministry is awaited (January 1999).

5.2 Associated transport equipment

Gear box components

In terms of Explanatory Notes (page 1328) of HSN, non-engine transmission equipment which are designed for use solely or principally with vehicles of section XVII of Customs Tariff Schedule, are excluded from the purview of chapter 84 and are classifiable under heading 87.08.

One consignment of gear box components viz., 'Synchro ring', imported in November 1996 and cleared through a major Custom House was classified under sub-heading 8483.90. In view of the aforesaid Explanatory Notes, the goods merited classification under heading 87.08. The incorrect classification resulted in short levy of Rs.44.06 lakhs.

On this being pointed out (April 1997) the Ministry reported (July 1998) recovery of the short levied amount.

5.3 Machineries and parts

a) Computer key switches

In terms of note 2(b) of Section XVI of the Schedule to the Customs Tariff Act 1975, goods which are parts suitable for use solely or principally with a particular kind of machine or identifiable parts of a machine, are to be classified with the machine of that kind.

Three consignments of 'Key switches for computers' imported during May 1995 to July 1996 through a major Air Custom House were classified under heading 85.36, as general purpose 'Electrical switches' and assessed extending benefit of customs notification 91/89 dated 1 March 1989.

Audit pointed out (September 1995 to January 1997) that key switches meant for use solely or principally with computer keyboards would merit classification under the sub heading 8473.30 as parts of computers in terms of the section note quoted above. The incorrect classification resulted in short levy of Rs.24.81 lakh.

The department, while not accepting the objection stated (January 1998) that the Key board switches were devices meant for opening and closing circuits at will by a physical motion and thus conformed to the description of switches covered under the heading 85.36 and as per rule 3(a) of the Interpretative General Rules, specific description prevailed over general description.

The reply of the department is not acceptable for the following reasons:

i) Key switches in a computer are not meant for opening or closing circuits but to print words in the screen/paper by a physical motion. It cannot, therefore, be construed as an "Electric switch". Moreover, it has no individual function of 'on' and 'off' as a switch in electrical circuits.

ii) Rule 3(a) of interpretative general rules cannot be applied in this case, as the goods are switches by nomenclature only and they are actually key tops.

iii) The Tariff Conference held in October 1995 had examined the issue of classification of the key tops and key switches for computers, typewriters etc., in detail and had viewed that the key tops/key switches meant for computers were classifiable under the sub heading 8473.30.

Reply of the Ministry is awaited (January 1999).

b) Design jet plotters

'Plotter' being output units of data processing machines transforming data of computer aided designing/drawing into written/visual form are classifiable under Custom Tariff heading 84.71. Seven consignments of 'Design jet plotter' imported through a major Custom House during April 1996 to October 1997, were assessed under custom tariff heading 90.17 as 'Automatic drafting machines'. The misclassification resulting in short levy of Rs.23.12 lakh was pointed out in audit (June 1996 to April 1998).

Ministry's reply has not been received (January 1999).

c) Tube drawing machine

Machine tools for working metal by bending, folding and straightening are classifiable under heading 84.62 of the Customs Tariff. Further, as per Explanatory Notes at page 1279 bending machines of heading 84.62 include machines for working flat products (sheets, plates and strips) which by passing the products through three or four sets of rollers, gives them a cylindrical curve.

A tube drawing machine imported in October 1992 through a major Custom House was instead classified under sub heading 8479.89 and duty was levied in terms of a Customs notification 59/87 cus dated 1 March 1987. The write-up of the machine indicated that the machine was a 'Tube folding machine' using rollers (three or four sets) for forming tubes. Audit pointed out (March 1993) that the machines were correctly classifiable under subheading 8462.29. The misclassification resulted in short levy of Rs.5.93 lakh.

The department did not accept the objection and justified the classification stating that (June 1998) the machine was not meant for producing a general purpose tube and that the brass strips inserted in the machine got coated with lead and the tubes were cut by means of a cutting device in the machine.

The department's reply is not tenable on the following grounds :

i) Heading 84.79, a residual heading was to be resorted only when a specific heading was not available.

ii) the performance of an additional function viz., lead coating did not alter the main function of the machine, viz., tube folding.

A demand notice issued for the short levy in March 1993 was yet to be confirmed.

Reply of the Ministry is awaited (January 1999).

d) Parts

As per HSN notes 'Parts and Accessories', are classifiable in the same heading in which the main item falls, provided there is no separate heading covering such parts and accessories. In case there is a specific heading covering these items, they are to be classified under these specific headings only and not with the main machinery.

While clearing a consignment of "Fuji SMD Assembly Equipment" under chapter heading 8479.89 through a major Custom House in August 1995, items like tools, din, cartridge stands, cartridge paper, front lighting etc. were also assessed under the same chapter heading treating them as accessories supplied with the main equipment. Audit pointed out (February 1996) that these goods being separately invoiced and covered by specific headings should have been assessed on merit.

The department accepted the audit views and reported recovery of duty amounting to Rs.16.50 lakh in May 1998.

5.4 Plastics

Belt clips

Two consignments of 'Belt clips' holders made of plastics for carrying pagers imported during June-July 1995 through an Air Cargo Complex, were assessed to duty by classifying them under sub-heading 8529.90 of the Tariff as parts of electric reception apparatus (pagers).

The goods were not being a component part of pager, but just an article of plastic was classifiable under sub-heading 3923.90 as 'other articles of plastics'.

The incorrect assessment resulting in short levy of duty of Rs.6.75 lakh was pointed out in audit (March 1997).

The Ministry accepted the objection (July 1998) and reported recovery of the amount.

5.5 Rubber and articles thereof

Foam rubber profiles

In terms of Note 1(a) of Section XVI, of the Customs Tariff Act 1975, articles of unhardened vulcanised rubber are excluded from the purview of chapter 84 and are classifiable under heading 40.16 as articles of rubber.

Foam Rubber Profiles (components for textile machinery) imported during November 1994 through a major Custom House were classified under sub heading 8448.39. In the light of aforesaid section note, audit pointed out (April 1995) that the goods were classifiable under sub-heading 4016.99 and the incorrect classification resulted in duty being short levied by Rs.5.46 lakh.

The Ministry admitted the objection (August 1998) and reported recovery of the short levied duty.

5.6 Chemical product

Polyol

As per CEGAT's decision in the case of Commissioner V/s. M/s U-Foam Pvt. Ltd. {(1996 (83) ELT 182(T)} polyols are classifiable under heading 3801 of the Customs and Central Excise Tariffs for the purpose of levy of basic and additional customs duties.

Four consignments of 'Daltoflex polyol' imported (January-September 1996) through a Customs Division were assessed under sub heading 3907.20.

On the incorrect classification involving short levy of duty of Rs.3.04 lakh being pointed out in audit (November 1997) the department accepted (February 1998) the objection but stated that the demand could not be raised as they were time barred.

5.7 Other cases

In 13 other cases of incorrect classification reported to the Ministry involved short levy of customs duty of Rs.27.63 lakh of which 9 cases involving Rs.17.79 lakh were accepted by the Ministry/department as per details overleaf:

(Rupees in lakh)

Sl. No.	Details of product	Heading where classifiable	Heading where classified	Amount short levied	Amount accepted	Amount recovered
1.	Radio telecommunication equipment – Parts	8529.90	8504.21	4.24	--	--
2.	Non engine transmission equipment of motor vehicles	8708.00	8483.90	4.01	4.01	4.01
3.	Wiper blades	8512.90	8202.99	3.34	3.34	3.34
4.	Optical slit lenses	9002.90	9007.29	2.21	2.21	--
5.	Software licence	4907.00	8524.00	2.18	--	--
6.	Steel plates/damper plates of motor vehicles	8708.00	8483.90	2.07	2.07	2.07
7.	Parts of bearings	8482.99	8466.93	2.01	--	--
8.	Multiplexer	8517.40	8471.00	1.68	1.68	1.68
9.	Mobile telephones	8517.00	9023.00	1.56	1.56	0.17
10.	Adhesives	3506.99	3903.90	1.41	--	--
11.	HDPE plastic woven roll	3926.90	5407.31	1.05	1.05	1.06
12.	Parts of IC engine	8409.01	8412.21 8424.90	1.01	1.01	1.01
13.	Synthetic rubber latex	4002.99	3902.90	0.86	0.86	0.86
	TOTAL			27.63	17.79	14.20

CHAPTER 6 : SHORT LEVY DUE TO INCORRECT GRANT OF EXEMPTION

Short levy of duties aggregating Rs.5.25 crore on account of incorrect grant of exemptions were pointed out to the Ministry in 19 cases. Some illustrative cases are narrated below :-

6.1 Incorrect application of notification

a) Under notifications Nos.36/96-cus dated 23 July 1996 and 11/97-cus dated 1 March 1997, concessional rate of duty was levied on vegetable oils (other than coconut oil, RBD Palmoil, RBD palm kernel oil and palm stearin) of edible grade in loose/bulk form.

Several consignments of 'Palmolein', imported through a major Custom House, during December 1996 to June 1997 were cleared at concessional rate under the said notifications. Audit pointed out (August 1997 to November 1997) that 'Palmolein being a fraction of palmoil' could not be considered for the purpose of allowing concessional rate of duty. The incorrect grant of exemption resulted in a short levy of Rs.3.97 crore.

The department in their reply (March 1998) justified the assessment stating that 'palmolein' was the liquid fraction of 'palmoil' whereas palm stearin was the solid fraction and that merely on fractionation of 'palmoil' the resultant products did not loose its characteristics of oil. It was also stated that the fact that 'palm stearin' also a fraction of 'palmoil' was specifically excluded from the benefit of the notification would denote that the other fraction viz., 'palmolein' would enjoy the benefit of the notification.

The reply is not tenable as:

i) the 'National Oil Seeds and Vegetable Oil Development Board Act, 1983' excludes vegetable oil which has been subjected to further processing from the definition of 'vegetable oil'. As such palmolein being a fraction may not qualify as vegetable oil;

ii) specific exclusion of 'palm stearin' which is a fraction, would mean that fractions are excluded from the purview of vegetable oils and not vice versa.

The reply of the Ministry has not been received (January 1999).

b) Specified goods brought indigenously by the units established in Exports Processing Zone/Free Trade Zone for the production or manufacture of articles for export out of India are exempted from the whole of the excise duties under notification No.126/94-CE dated 2 September 1994.

An EPZ unit brought certain goods duty free under the aforesaid notification in September 1994 and January 1995. The goods brought by the units were however, not specified in the notification. Audit pointed out the incorrect grant of exemption resulting in non levy of duty of Rs.18.40 lakh (April 1996). The department admitted the facts and stated (April 1998) that a demand for Rs.18.40 lakh was raised.

Reply of the Ministry is awaited (January 1999).

c) Concessional rate of duty was not available for parts which are interchangeable with parts of motor vehicles, as per the proviso (2) to the notification No.62/94-cus dated March 1994.

A consignment of 'Parts of vacuum pump' imported on 6 March 1995, through a major Custom House was assessed under the said notification.

As per the literature, the goods were component parts of vacuum pump intended to be used with 'Alternator' to produce vacuum to assist the braking system. There was no evidence for their end use or to show that they could not be used as parts of motor vehicles. Audit, therefore, pointed out (July 1995) that the goods were not eligible for the exemption of duty amounting to Rs.13.06 lakh.

In reply, the department stated (July 1997) that the goods were not interchangeable with motor vehicle parts, as they were not classified under Chapter 87.

The reply is not tenable as :

i) the specific note regarding interchangeablity of the parts with motor vehicles in the notification for goods classified in 8409, 8413, 8414 etc. denote that even parts other than that of Chapter 87 can be used in motor vehicles;

ii) the importer had not categorically stated that the vacuum pumps for which the components have been imported could not be used in motor vehicles;

iii) the goods imported along with other components were for use in brake system of 'Diesel engine vehicles' and therefore the benefit of notification was clearly not available.

Reply of the Ministry is awaited as of January 1999.

d) Notification No.4/97-CE dated 1 March 1997 exempts 'Ores' falling under heading 2601 from whole of the excise duty leviable thereon.

A 100 *per cent* Export Oriented Unit (EOU) cleared 'Synthetic rutile', free of duty to Domestic Tariff Area (DTA) during April to November 1997. Audit pointed out (January 1998) that 'synthetic rutile' being a concentrate of titanium di-oxide manufactured from 'Ilmenite ore' was not an 'ore' and therefore, was not eligible for the exemption. The incorrect grant of exemption resulted in short levy of Rs.9.88 lakh.

The department justified the assessment stating (January 1998) that 'ilmenite' was a low grade ore and 'rutile' was a high grade ore.

The contention of the department was not accepted as HSN defines 'ore' as 'metalliferous minerals associated with substances in which they occur and with which they are extracted from the mine'.

Reply of the Ministry is awaited as of January 1999.

e) The benefit of exemption in terms of notification No.152/94-cus dated 13 July 1994 to 'Scientific and technical instruments' imported by Research Institutions not engaged in commercial activities was withdrawn with effect from 1 September 1996.

Two consignments of 'Knelson concentrator' (Geophysical instrument) and 'Portable seismograph' alongwith accessories imported after 1 September 1996 were cleared duty free through a major Custom House under the aforesaid notification. Audit pointed out (December 1997) the incorrect grant of exemption resulting in non levy of duty of Rs.28.83 lakh.

Reply of the department/Ministry is awaited (January 1999).

f) In terms of an exemption notification issued on 7 April 1995 goods classifiable under the Sub-heading 8505.90 of Customs Tariff were eligible for the grant of concessional rate of duty.

Parts of electro magnetic clutch falling under Sub-heading 8505.90, imported prior to 7 April 1995 through a major Air Customs Commissionerate were extended the benefit of this notification resulting in short levy of duty of Rs.5 lakh.

On this being pointed out (August to October 1995) the department admitted the short levy and recovered Rs.1.58 lakh in one case (December 1996).

g) The exemption allowed under notification 79/94 cus dated 1 March 1994 to the parts or sub-assemblies required for the manufacture of telecommunication equipments was withdrawn with effect from 16 March 1995.

'Coaxial cables' imported after 16 March 1995 through a major Custom House were assessed to duty under the redundant notification resulting in short levy of duty of Rs.4.12 lakh.

On this being pointed out (August 1995), the Ministry admitted the mistake (July 1998). Recovery particulars are awaited as of January 1999.

6.2 Goods not related to manufacture of export product

Notification No.13/81-cus dated 9 February 1981 and notification No.1/95-CE dated 4 January 1995, exempts specified goods for use in or in relation to the manufacture or for packing of goods for export out of India from payment of the customs and central excise duties respectively.

i) A set of Telephone and audio/video systems imported by an Export Oriented Unit in November 1992 and April 1993 and not used, in or in relation to the manufacture of goods for export, were allowed the benefit of the exemption notification resulting in loss of revenue of Rs.14.33 lakh.

On this being pointed out in Audit (December 1993) the department admitted (September 1997/May 1998) the facts. Recovery particulars are awaited (January 1999).

iii) Civil and electrical installation materials imported by another Export Oriented Unit in July 1997 were assessed under these notifications. The goods were basically used for bringing the unit into existence and were not for use in or in relation to the manufacture of goods for export. This resulted in irregular grant of duty exemption to the extent of Rs.8.03 lakh.

On this being pointed out in audit (July 1997), the department admitted the short levy (November 1997). Recovery of particulars are awaited (November 1997).

6.3 Non production of requisite certificates

i) The benefit of duty exemption under the notification No.56/95-cus dated 16 March 1995, was available only if the importer furnished an 'End-use certificate' within three months from the date of import.

Out of a consignment consisting of 20 sets of 'Sector transducer' imported through an Air Customs Commissionerate during September 1995 under the aforesaid notification, 'end use certificates' for 16 sets were not produced. Audit pointed out the differential duty of Rs.5.61 lakh recoverable in these cases.

On this being pointed out (February 1996), the department recovered the amount (June 1997).

iii) Life saving drugs/medicines as certified by DGHS were exempt from payment of all import duties under notification No.36/96-cus dated 23 July 1996.

A consignment of 'Ketosteril fareast', imported by a private importer through an Air Cargo Complex in January 1997 was cleared duty free under the exemption notification, even though necessary certificate as contemplated in the notification was not produced by the importer. The incorrect grant of exemption resulted in short collection of duty of Rs.4.67 lakh.

On this being pointed out (July 1997), the Ministry reported (July 1998) recovery of Rs.4.67 lakh.

6.4 Non levy of special customs duty on import under adhoc exemption order

As per notification No.41/96-cus dated 23 July 1996, all goods which were exempt from the whole of duty of Customs leviable thereon in terms of any notification issued under sub section (1) of section 25 of the Customs Act, 1962, were also exempt from the whole of the special duty of Customs leviable thereon. However this benefit was not available for adhoc exemption orders issued under section 25 (2) of the Customs Act, 1962.

Three consignments of dutiable goods imported (August 1996/June 1997) through two major Custom Houses under adhoc exemption orders issued under section 25(2) of Customs Act 1962 were cleared free of Customs, additional and special custom duties. Audit pointed out (May and December 1997) the short collection of special Custom duty of Rs.5.40 lakh in these cases.

The Ministry reported (July 1998) recovery of the short levied amount in all cases.

6.5 Other cases

Six other cases, where objections were issued to the Ministry on incorrect grant of exemption involved short levy of Rs.10.66 lakh and are tabulated below :

(Rupees in lakh)

Sl. No.	Products on which exemption granted incorrectly	Amount of short levy	Amount recovered
1.	Bezel, movement holder of watches	2.76	2.76
2.	Spares of knitting machines	2.64	1.83
3.	Cellflex cable	2.19	--
4.	Brass strip cold rolled	1.18	--
5.	Rutile concentrates	0.95	--
6.	Ultrasonic generator and suction pump	0.94	--
	TOTAL	10.66	4.59

CHAPTER 7 : NON LEVY/SHORT LEVY OF ADDITIONAL DUTY

As per Section 3 of the Customs Tariff Act, 1975, any article which is imported into India shall be liable to 'Additional duty' equal to the Central Excise duty for the time being leviable on a like article produced in India, in addition to the duty levied under Section 2.

Short levy of additional duties amounting to Rs.2.14 crore were reported to the Ministry in 45 cases, as narrated below :

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

a) Advance licence cases

Customs notifications No.80/95 dated 1 April 1995 and 31/97 dated 1 April 1997 exempt basic customs duty on goods imported into India against advance licences issued on or after 1 April 1995 and 1 April 1997 respectively subject to fulfillment of conditions specified therein. Additional duty is, however, leviable on such goods.

Four consignments of different dutiable goods imported between (November 1995 to July 1997) through a major Custom House against Advance Licences issued after 1 April 1995 to four importers were assessed under the above notifications without levy of basic and additional custom duties. Additional duty of Rs.77.80 lakh was leviable in these cases. On being pointed out in audit (August 1996 to December 1997), the Ministry reported (October/November 1998) recovery in all these cases.

b) Others

i) 'Machinery/equipments' required for textile industry specified in the custom notification No.36/96 dated 23 July 1996 were leviable to concessional rates of basic customs duty. However, additional duty and cess, was leviable at the specified rates.

Additional duty and cess aggregating Rs.14.80 lakh was not levied on three consignments of 'Machinery/equipments' for textile industry imported through two major Custom Houses (July to September 1996).

On this being pointed out (March 1997), the department/Ministry reported recovery of the short levied amount.

ii) In terms of Central Excise Notification No.79/90 dated 20 March 1990, 'precision balances of sensitivity of 5 mg or better' were exempt from payment of additional duty.

Four consignments of electronic precision balances of sensitivity of 10 mg, imported through a Major Custom House in February 1993 were exempted from additional duty even though they were not eligible for the exemption in terms of the notification. This resulted in short levy of additional duty of Rs.5.13 lakh.

On the incorrect grant of exemption being pointed out (July 1993), the Ministry admitted the mistake and reported partial recovery (August 1998).

7.2 Short levy of additional duty due to misclassification

a) Four consignments of 'Rolls of rolling mills' imported through three major Custom Houses between December 1995 and February 1997 were classified under sub heading 8455.10 instead of 8455.90 of the Customs/ Central Excise Tariff. This resulted in short levy of additional duty amounting to Rs.24.24 lakh. On being pointed out (April 1996/January 1997), the department/Ministry admitted the mistake in all cases and reported recovery in two cases.

b) A consignment of 'Telecommunication system' imported through a major Custom House in September 1996 was cleared under heading 85.25 of the Customs/Central Excise instead of heading 85.17. The resultant short levy of additional duty of Rs.23 lakh was pointed in January 1997. Reply is awaited (January 1999).

c) Seven consignments of 'Turbo chargers' imported by a Public Sector Undertaking through a major Custom House during March and July 1995 were assessed under sub heading 8414.80 instead of 8409.00 of the Central Excise Tariff. The misclassification resulted in short levy of additional duty of Rs.5.38 lakh.

On this being pointed out (August and December 1995), the Ministry reported (July 1998) recovery of the amount.

d) In 17 other cases, incorrect classification of various dutiable goods by six major Custom Houses/Commissionerates resulted in short levy of additional duty of Rs.31.52 lakh. On these cases being reported, the Ministry admitted the mistakes in 16 cases involving Rs.30.69 lakh. Reply in respect of one case is awaited (January 1999).

7.3 Short levy of additional duty of excise.

In addition to the basic excise duty, additional excise duty as specified under 'Additional duty of Excise (Goods of Special Importance Act) 1957' are leviable on goods assessable under chapters 52, 59 and 60 of the Central Excise Tarriff.

15 consignments of different dutiable goods classifiable under chapter 52, 59 and 60 of the Central Excise Tariff were imported/cleared through two major custom Houses during January 1996 to May 1998 on levy of additional duty at rates lower than those applicable, resulting in short levy of additional duty of Rs.9.53 lakh.

On being pointed out (November 1997 to February 1998), the department/ Ministry reported recovery in one case and stated that demands were raised in the remaining 14 cases.

7.4 Short levy of additional duty due to application of incorrect rates

In 13 cases, 16 consignments of dutiable goods imported during December 1993 to September 1997 were assessed to additional duty at rates lower than that applicable resulting in short levy of duty of Rs.22.77 lakh. The department/Ministry accepted the mistake in 11 cases involving duty of Rs.18.18 lakh.

CHAPTER 8 : IRREGULARITIES IN DUTY EXEMPTION SCHEME

8.1 Advance licensing scheme

a) Non fulfilment of Export Obligation

In terms of para 128 of the Hand Book of Procedures 1992-97 Vol.I, if the export obligation is not fulfilled both in terms of quantity and value, the licence holders of both VABAL and QBAL, shall, for regularisation, pay :-

i) to the customs authority, customs duty on the unutilised imported material alongwith interest at the rate of 24 *per cent per annum* thereon;

ii) to the licensing authority, a sum in rupees which is equivalent to the CIF value of the unutilised imported materials; and

iii) to the licensing authority, a sum in rupees which is equivalent to the shortfall in export obligation expressed in free foreign exchange, Alternately the licencee has to surrender Special Import Licences of value equivalent to twice the amount of the shortfall.

In addition if the holder of a duty free licence under the scheme violates any conditions of the licence, penalty in terms of section 11(2) of F.T.(D&R) Act, 1992 was also leviable.

i) 13 advance licences (8 QBAL, 5 VABAL) were issued by the licensing authorities at Hyderabad, Amritsar, Coimbatore and Bhopal (January 1993 to July 1994) for duty free import of goods valued Rs.7.05 crore, against prescribed export obligation of Rs.29.48 crore. Against the import of goods worth Rs.4.89 crore, the licencees could export goods worth Rs.1.42 crore only within the validity period of the licences, resulting in shortfall of Rs.6.72 crore in export obligation. The licencees were liable to pay; (a) Rs.2.88 crore towards the customs duty on the unutilised imported materials and interest thereon. (b) Rs.2.48 crore as the sum equivalent to the unutilised imports amounted, and Rs.6.72 crore equivalent to the shortfall in export obligation.

These cases were pointed out to the concerned Jt.DGFTs/Custom Houses during May 1996 to October 1998. The department reported recovery of Rs.14.61 lakh in one licence issued at New Delhi and initiated penal action against 8 other licencees issued at Hyderabad, Coimbatore and Bhopal.

ii) A bulk drug manufacturer in Hyderabad was issued three Value based advance licences in February 1993 for a CIF value of Rs.33.54 lakh with an FOB value of Rs.58.80 lakh. The licencee diverted the entire end product manufactured out of the imported material involving customs duty of Rs.41.64

lakh for home consumption. The department recovered the custom duty from the licencee. However, no action was taken to recover the other liabilities as required under para 128 of the Hand Book of Procedures. This resulted in non realisation of Rs.99.50 lakh.

On this being pointed out (November 1997) the department, though agreeing to recover the amount of interest contended that the question of recovery of the amounts equivalent to CIF and FOB values did not arise as the customs duty on imports having been collected there was no export obligation on the licensee. The contention of the department is not tenable as mere payment of customs duty would not absolve the licensee from discharging other liabilities to be enforced by the licensing authorities for failure to fulfil the export obligation.

b) Excess import by inflating the unit price of import

In terms of para 109 (D) and 110 of Hand Book of Procedures, an applicant exporter for a VABAL licence was required to declare in the application form (Appendix XVII of the Hand Book of Procedures), the quantity of each item required to be imported and its broad characteristics and its CIF value based on the prevailing international prices.

Four VABALs were issued to three bulk drug manufacturers by Jt.DGFT, Hyderabad, during December 1994 to September 1995 to import inputs for export of 'Sulphamethoxazole' and 'Ibuprofen'. The unit price of inputs as declared in the application varied from 34 to 140 *per cent* with respect to the actual unit price of inputs. By mis-declaring the unit price , the licencees could import excess quantity of the inputs valued at Rs.1.92 crore. The customs duty of Rs.83.55 lakh on the excess imports made by them was recoverable, besides interest of Rs.25.44 lakh.

The facts were brought to the notice of the department in January 1998. The department stated (November 1998) that demand of Rs.8.52 lakh was issued in one case.

c) Imports in excess of prescribed limit

Two Value based advance licences with restriction of quantity for certain inputs, were issued in May 1993 and March 1995 by the licensing authorities at Bhopal and Hyderabad. The licencees imported the inputs in excess of the quantities indicated in the licence and as such Customs duty of Rs.15.95 lakh and interest of Rs.16.07 lakh were recoverable from them.

On this being pointed out (April 1997/February 1998), the Dy. DGFT, Bhopal intimated (February 1998) that demand notice was issued. Reply from the Jt. DGFT, Hyderabad has not been received (January 1999).

8.2 EPCG scheme

a) Non-Fulfilment of export obligation

Para 38 of the EXIM Policy 1992-97 relating to the EPCG Scheme stipulates that 'Capital goods' when imported into India, are eligible for assessment at concessional rates of customs duty subject to fulfilment of prescribed export obligations within the stipulated period. In the event of failure, the importer was liable to pay the differential of the duty payable on such capital goods alongwith interest at the rate of 24 *per cent per annum*.

i) A licence issued by DGFT, Calcutta in October 1990 under the EPCG Scheme (Exim Policy 1990-93) was endorsed under para 38 of the new Exim Policy 1992-97 (May 1992) enabling the importer to avail of the concessional rate of duty on the imported capital goods. As per this endorsement, the licencee had to fulfil an export obligation of US$ 5.89 million within a period of five years from the date of amendment of the licence.

The licencee could make only exports valued US$ 3.15 million within the stipulated period. As such the custom duty with interest aggregating to Rs.3.83 crore was recoverable from him.

Reply to the audit comments issued in February 1998 had not been received (January 1999).

ii) A company in Chennai was issued two EPCG licences with CIF value of Rs.1.28 crore by the DGFT in November 1991 and August 1992 for import of capital goods. Exports for Rs.2.76 crore were to be made by them by August 1997.

The licensee could effect export of Rs.1.15 crore till December 1997 and as such the differential duty of Rs.85.65 lakh with interest thereon was recoverable from the licensee on the imported capital goods.

On this being pointed out (March 1998), the Ministry of Commerce while admitting the facts (February 1999) stated that action has been initiated to recover the amount.

8.3 EOU/EPZ schemes

a) Failure in achievement of export obligation and value addition

Para 98 of the Exim Policy 1992-97 read with para 178 of the Handbook of Procedures requires a 100 *per cent* EOU unit to execute a legal undertaking (LUT) with the Development Commissioner in the form as given in the Appendix XXXI of the Handbook of Procedure. In the event of failure to fulfil the export obligation, the unit was liable to pay;

i) the amount of customs duty that would be leviable at the relevant time on the item of plant, machinery, equipment, raw materials, components and consumables allowed for import by the unit;

ii) liquidated damages as decided by the Development Commissioner;

iii) interest at the rate of 18 *per cent* on the duty amounts of customs and central excise.

i) Two 100 *per cent* export oriented units in Chennai and Surat which had completed 5 years of commercial production, could export products valued Rs.247.08 crore and Rs.54.61 lakh only respectively as against the prescribed export obligation of Rs.1457.06 crore and Rs.3.71 crore. For failure to achieve the prescribed value addition and for shortfall in export obligation, customs duty with interest amounting to Rs.199.25 crore was recoverable from them. In addition penalty was also leviable.

On this being pointed out (May 1997/January 1998) the department (Surat) issued a show cause notice amounting to Rs.1.72 crore (December 1997). Ministry of Commerce also admitted the facts and stated that the case was referred to DGFT for penal action (November 1998).

Reply in the other case is awaited (January 1999).

ii) A 100 *per cent* EOU in Bangalore, imported capital goods, raw materials and consumables having an assessable value of Rs.2.74 crore (December 1992 to July 1995), duty free under the said notification.

The licencee commenced commercial production during January 1994 and stopped the manufacturing activity in July 1995 after making exports of Rs.87.82 lakh. As the unit could not achieve the prescribed export obligation/value addition, the customs duty of Rs.3.89 crore exempted on the imports was recoverable with interest.

On this being pointed out in audit (August 1997) both the Ministries admitted the audit point (January 1999) stated that penal action would be initiated against the unit as provided under the Customs Act and the Exim-policy.

iii) A 100 *per cent* Export Oriented Unit licenced in 1985 for manufacture of 'Assorted cosmetics, perfumery, toiletry etc.,' imported capital goods valued at Rs.39.08 lakh (1985-86 to 1990-91) duty free under Customs notification ibid. The unit failed to commence production even after 10 years. The duty with interest recoverable from the unit aggregating Rs.1.55 crore was pointed by audit in July 1996.

Reply of the department is awaited as of January 1999.

b) Incorrect exemption to goods not used in export product

As per a Customs notification dated 9 February 1981, capital goods, raw materials, components, spares etc., when imported into India by a 100 *per cent* EOU for the purpose of manufacture of article or for packing of goods for export out of India, are exempted from payment of duties under Customs and Central Excise tariff.

An 100 *per cent* EOU in Mumbai allowed to manufacture and export Helium Gas imported one consignment of liquid Helium for processing and production of Helium Gas. The said imported goods were lost while unloading from the Cryogenic Tanker at the premises of the unit. Since the imported goods were not utilised for the purpose for which it was allowed duty free, duty concession granted amounting to Rs.14.79 lakh was recoverable from the unit.

On this being pointed out (April 1996), the department stated that directions for recovery of duty were issued. Further progress is awaited (January 1999).

c) Irregular sale in Domestic Tariff Area

Para 102 of the Exim Policy 1992-97 provides that 25 to 30 *per cent* of the production in an EOU unit shall be permitted to be sold in DTA as a post export entitlement subject to attainment of the requisite value addition and the DTA sales entitlement shall be availed of within one year of the accrual of entitlement. The Development Commissioner concerned, may, if he deems fit, extend this period by six months.

A 100 *per cent* EOU in Chennai engaged in computer software development had executed (November 1994) a 'Legal Undertaking' (LUT) for achieving a value addition of 67 *per cent*. The unit had also undertaken not to dispose of the export products in the 'Domestic market' unless specifically allowed by the Government. The unit neither achieved the prescribed value addition nor obtained any permission from the competent authority for the sale of export products in the DTA.

During the period from 1993-94 to 1996-97, the unit made DTA sales for Rs.2.64 crore. For the incorrect DTA sales, customs duty of Rs.1.15 crore was recoverable. In addition, interest of Rs.0.64 crore was also recoverable.

On this being pointed out, (October 98) the Ministry of Commerce admitted the facts and stated that the recovery of duty has to be effected by the Customs Department (January 98).

d) Non levy of duty on excess generation of scrap

Under para 114 of Exim Policy 1992-97, the scrap/waste/remnants arising out of production process can be sold or disposed off in the Domestic Tariff Area on payment of applicable duties and taxes. Percentage of such scrap/ waste/remnants is to be fixed by the Board of Approvals.

Two '100 *per cent* export oriented units' in Mumbai and Trichi engaged in the manufacture of steel files/raps and HDPE/PP woven bags respectively, generated and cleared waste/scrap in excess of the prescribed limits to the Domestic Tariff Area. Customs duty recoverable on the excess wastage/scrap cleared from these units amounted to Rs.79.30 lakh including interest of Rs.20.93 lakh.

On this being pointed out (April, July 1996 and November 1997), the department recovered Rs.2.27 lakh in one case and raised demand for Rs.20.95 lakh in another case.

8.4 Other cases

In six other cases, non levy of duty due to incorrect transfer of VABAL, incorrect computation of IO norms, non fulfilment of export obligation/value addition and incorrect levy of duty on DTA sales amounting to Rs.68.35 lakh were pointed out as detailed below. Mistakes in four cases were accepted by the department.

(Rupees in lakh)

Sl. No.	Nature of irregularity	Amount objected	Whether accepted by deptt./Ministry
1.	Non fulfilment of export obligation	40.94	Accepted
2.	Non fulfilment of EO/VA	7.28	Accepted
3.	Incorrect rate of duty on DTA sales	6.72	Accepted
4.	Transfer of VABAL	5.65	Accepted
5.	Irregular DTA sales	5.52	----
6..	Incorrect computation of I/O norms	2.24	----
	TOTAL	68.35	

CHAPTER 9 : OTHER TOPICS OF INTEREST

9.1 Failure of the government to devise a mechanism to recover inadmissible drawback

The Duty Drawback Scheme, prevalent since 1971, envisages refund of duties of excise and customs paid on components and raw materials in respect of goods exported out of India. The duties are refunded in the form of drawback as per the provisions of the Customs Act and the Rules made thereunder. The drawback is allowed on production of shipping documents.

In order to ensure that the benefit of drawback is not misused, an insertion was made under Section 75(1) of the Customs Act vide Section 120 of the Finance Act, 1991 which provides that where an amount of drawback has been paid to an exporter or person authorised by him but the sale proceeds in respect of such export goods have not been realised by or on behalf of the exporter in India within six months, or within the period upto which extension has been approved, such drawback shall be deemed never to have been allowed. The insertion also stipulated that the Central Government may specify the procedure for recovery of adjustment of the amount of drawback paid in excess.

The procedure for determining excess drawback and its recovery pursuant to the aforesaid amendment was notified by the Government only in 1995, after a period of 4 years, as Rule 16-A in the Drawback Rules (notification No.72/95-cus. dated 6 December 1995). It stipulated that on receipt of 'export proceeds outstanding realisation statement' (XOS) from the Reserve Bank of India, the Asstt. Commissioner of Customs could proceed to recover the drawback paid in excess by issue of Show Cause Notice and other recovery procedures as laid down in the Act. Detailed guidelines in this regard to the Custom House/Commissinerates were issued by the Ministry in February 1997, 14 months after the notification.

A total amount of Rs.14,346 crore has been paid as drawback during the period 1991-92 to 1997-98. The Board was however, not able to furnish the Custom House wise details of the corresponding export value involved, the amount of drawback involved in cases where export proceeds had not been realised within the approved period, and the consequent drawback amount to be recovered with interest.

As per XOS statement consolidated by the Reserve Bank of India an amount of Rs.11,262 crore is outstanding for realisation as on 31 December 1997. This may not reflect the total outstanding since the RBI monitors the realisation of export proceeds only in respect of cases reported to them by the 'Authorised dealers'. Cases where the exporters give names of Banks/branches which were not authorised to deal in foreign exchange, or give fictitious Import-Export Code number in the G.R. forms, would get excluded. Besides, RBI/

Authorised dealers are authorised to write off export realisation in certain genuine cases. While export incentives are to be surrendered by the exporters in such cases no statement in this regard are being sent to the Commissionerates for initiating action in this regard.

A scrutiny of the records of the Directorate of Drawback revealed that in the absence of vital information relating to the shipping bill No., date, port of shipment, the scheme relating to the Exports etc., in the XOS statements furnished by the RBI, the Customs Houses were not able to link up the defaulters for initiating recovery proceedings. After protracted correspondence, the RBI agreed (December 1996) to provide details of shipping bill number, date and port of shipment etc. in the XOS statements. They have, however, declined (January 1999) to provide the details of the Scheme to which each outstanding amount pertains, insisting the XOS statement is basically an 'exchange control statement' and its scope cannot be extended to suit the requirements of the Customs department. In the absence of this critical information the Customs authorities may still not be able to initiate recovery proceedings. It is not clear as to why the codes used for shipping bill numbers have not been modified by the Government to reflect the export promotion scheme to which it pertains.

Despite the urgent need to boost foreign exchange receipts and check misuse of export incentives, the Government failed to devise till date a suitable mechanism to recover the duty drawbacks allowed to exporters whose foreign exchange receipts failed to materialize even though an enabling provision had been made in the Customs Act in 1991. The Government was also not able to take advantage of the possibilities opened up by rapid strides in Information Technology towards this end.

9.2 Loss of revenue on the goods cleared from warehouse

In terms of Section 61(1)(b) of the Customs Act 1962, failure to remove warehoused goods of specified categories by owners after the prescribed period of warehousing attracts penalty under Section 72, besides full duty, rent, interest and other charges. It has been judicially held by the Supreme Court in August 1996 {1996 (86) ELT 464 (SC)} that in cases, where the goods have been allowed to be cleared after expiry of the warehousing period the removal of goods should be treated as "Improper removal" and the rate of customs duty payable should be at the rate applicable on the date on which the permitted warehousing period had come to an end. This decision was circulated by the Ministry in August 1997.

55 consignments of various dutiable goods were allowed to be cleared from warehouses after the expiry of the permitted warehousing period on payment of duties at rates applicable on the dates of removal instead of at the rates prevailing on the dates of expiry of the warehousing period leading to loss of revenue of Rs.17.51 crore.

On a similar objection featuring in Audit Report for the year 1996-97, the Ministry stated that the clearances were effected during the period prior to the judgement of Supreme Court and before issue of the instructions by the Ministry (August 1997), and as such the assessment would be done as per Section 15(1)(c) of the Customs Act as directed in a circular issued by the Board on 12 July 1987.

The reply of the Ministry is not acceptable for the following reasons.

i) Board vide circulars dated 9 October 1989 and 9 January 1995 had clearly instructed that action under Section 72 of the Customs Act was to be initiated in all cases within a week after expiry of the warehousing period and the duty was recoverable in these cases at the rate of duty prevailing on the date of expiry of the warehousing period.

ii) Hon'ble Supreme Court's decision of 23 August 1996 is just a reiteration of this fact and the department's lapses in adhering to the Board's instructions of October 1989 cannot be justified further by Ministry's failure in circulating the Supreme Court's decision in time.

9.3 Loss of revenue due to delay in clearance of warehoused goods

In terms of Section 72(1)(b) of the Customs Act, 1962, where any warehoused goods have not been removed from a warehouse at the expiry of the period for which permitted to be warehoused under section 61, the full amount of duty chargeable on such goods together with all penalties, rent, interest and other charges becomes payable. If the owner fails to pay the amount so demanded, the warehoused goods can be detained and sold by the proper officer.

a) In five public bonded warehouses under a major Custom House, 301 consignments relating to the period from March 1983 to December 1996 remained uncleared after the expiry of the warehousing period. The duty recoverable under Section 72(1)(b) in these cases amounted to Rs.43.31 crore.

In respect of 235 cases, demand notices were issued by the department (April 1993 and December 1997) for duty aggregating Rs.33.30 crore. Besides interest amounting to Rs.9.41 crore was also recoverable in 78 cases where the delay in clearance exceeded 1 year.

The delay in recovery of duty leading to loss of revenue was brought to the notice of the department/Ministry (June/September 1998). Reply is awaited as of January 1999.

b) 178 consignments of various dutiable goods warehoused in an Air Cargo Complex between May 1995 and August 1996 remained uncleared after the expiry of the warehousing period. Non initiation of action under Section 72(1)(b) on these goods meant for EOU/DEEC valued at Rs.6.04 crore and other dutiable goods valued at Rs.2.93 crore resulted in delay in recovery of revenue amounting to Rs.1.41 crore.

Reply to the audit comments issued in November 1997 was awaited (January 1999).

9.4 Loss of revenue on goods removed for rewarehousing

Section 67 of the Customs Act read with Rules 3 and 4 of the "Warehoused Goods (Removal) Regulations 1963", provides that goods could be removed from one bonded warehouse to another in a different town without payment of duty subject to execution of a bond by the importer for a sum equal to the import duty leviable on such goods and that he would produce rewarehousing certificate within a period of 3 months or within the period as extended.

Twenty nine consignments of goods were removed between June 1993 and September 1996 from one warehouse under a major Custom House to another on execution of bonds equal to the duty amount of Rs.37.69 crore. The required rewarehousing certificates were not produced within the specified time. However, no action to recover the duty by invoking the terms of the bond was taken by the department. The validity of the bank guarantees furnished by the importers in support of the bonds had expired in all the cases. This resulted in revenue loss of Rs.37.69 crore.

The matter was pointed out in audit between September 1995 and January 1997. Reply from the department/Ministry is awaited as of January 1999.

9.5 Loss of revenue on transit goods to Nepal

a) Due to lacunae in Insurance

Under the provisions of para 9 of the Memorandum to the Indo-Nepal-treaty of transit, imported goods in transit to Nepal were to be covered by an insurance policy for the customs duty leviable on the goods in India and for the difference in value between the market value and the CIF value of the goods. In case, the importers did not produce a certificate from the Nepalese Custom Office that the goods have crossed into Nepal, the duty/difference in value etc., was recoverable enforcing this Policy.

In 42 cases of confirmed deflection of Nepal-bound 'intransit' goods involving duty element of Rs.12 crore, the department raised demands against an Insurance Company. The company refused to pay the amount on the grounds that there was no clause for liability on goods lost or damaged due to misappropriation, misfeasance or misconduct by the importers or their agents. Had the department taken care to insert appropriate clause in the conditions of the insurance policy to this effect, the revenue loss of Rs.12 crore could have been avoided.

In another 68 cases, where the department confirmed the demand for Rs.24 crore on account of diversion of goods, no recovery could be effected.

On this being pointed out in Audit (September 1997) the department admitted the large scale deflection of Nepal bound goods and stated (February 1998) that the matter was under consideration of the Ministry. Reply of the Ministry is awaited as of January 1999.

b) Due to non-imposition of penalty

As per para 16 of the Indo-Nepal Treaty of transit, 1991, on failure of the importers of goods in transit to Nepal to present the original Customs Transit Declaration and the required Cross Border Certificate from Nepal Custom House within one month from the date on which transit was allowed or within the time as extended at the Indian port of importation, a penalty at the rate prescribed therein was chargeable.

Though the department raised 181 demands for an amount of Rs.1.57 crore (April 1996 and June 1997) for delayed presentation of the original CTD by the importers only an amount of Rs.2.34 lakh could be recovered by them till September 1997.

On this being pointed out, the department reported a further recovery of Rs.4.16 lakh (February 1998) and stated that effort was on to realise the balance amount.

9.6 Loss of revenue due to delay/non disposal of confiscated goods

a) In terms of Section 110(1)(A) of the Customs Act, 1962, Central Government is empowered to dispose seized goods as listed in notification No.31/86-cus dated 5 February 1986 having regard to their perishable nature, depreciation in the value with passage of time, constraints of storage space, valuable nature etc.

Forty six consignments of goods such as scotch whisky, batteries, watches, watch movements, electronic goods etc., confiscated between November 1990 and September 1997 were lying in the customs godown of a major Custom House awaiting disposal. Non disposal of the seized goods resulted in blockage of revenue of Rs.69.73 lakh.

On this being pointed out (October 1997), the department stated (January 1998) that non disposal of watches were on account of non clearance from courts.

The department's reply is not tenable as unclaimed watches/watch movement valuing Rs.18.82 lakh involved no court cases. Moreover, no evidence to establish that they had moved the court for disposal of such goods was also available.

b) Seized drugs, psychotropic substances etc., were to be disposed off soon after their seizure having regard to their hazardous nature, vulnerability to theft, substitution, etc.

In two customs divisions, drugs such as heroin, ganja, opium and dangerous drugs valued at Rs.38.22 lakh seized in 1986 were lying undisposed for about 12 years.

On this being pointed out, the department stated (February 1998/April 1998) that action would be taken to dispose of the drugs.

Reply of the Ministry is awaited as of January 1999.

9.7 Short collection due to non-levy of 'anti-dumping duty'

In terms of Customs notifications dated 14 November 1995, 16 October 1996 and 25 April 1997, specified goods imported into India from Japan, China or USA, attract anti-dumping duty as prescribed therein.

Ten different consignments of these specified goods were imported through two major Custom Houses without levying the anti dumping duty as prescribed. When short collection of duty of Rs.28.58 lakh was pointed out, the department/ministry admitted the mistake in nine cases involving Rs.26.35 lakh. Reply in the remaining case is awaited (January 1999).

9.8 Non realisation of light dues

According to Section 10 of the Light House Act, 1927, light dues payable in respect of a ship should be paid by the owner or master of the ship on its arrival and departure from any port of India. Further, according to Section 42 of the Customs Act, 1962, no conveyance was to be allowed to depart from any customs station until all charges and penalties due in respect of the said conveyance had been paid.

15 vessels were allowed to leave a customs station between January 1996 and November 1997 without collecting the light dues amounting to Rs.17.44 lakh.

Audit pointed out the facts (December 1997) to the department. The Ministry accepted the mistake and reported recovery of the amount (January 1999).

9.9 Loss of interest due to delayed payment of duty

a) In terms of Section 47(2) of the Customs Act, 1962, delay in payment of the assessed duties beyond seven days attracts levy of interest at the rate of 20 percent.

24 vessels on being converted from foreign run to coastal run between May 1993 and December 1995 were subjected to belated assessment of ship stores and duties thereof were paid after 53 to 693 days from the permissible date of payment. Inordinate delay in assessment of duty resulted in notional loss of interest to the extent of Rs.21.60 lakh.

On this being pointed out, the department admitted delay in five cases. Reply in respect of the other cases was awaited as of January 1999.

b) Six consignments of 'Spherical roller bearings' and 'Ball bearings' imported by three importers were assessed to duty by a major Custom House and the Bills of Entry duly stamped on the reverse side were returned to the concerned importers for payment of duty. However, the dates of return which were stamped were subsequently struck off and substituted with new ones thus advancing the date of return by more than one year in each case. Duty and interest in respect of all the bills was calculated taking into account the changed dates of return. This resulted in short levy of interest to the extent of Rs.7.08 lakh.

On the matter being pointed out (March 1996) the department admitted (May 1998) the mistake and stated that the cases were under investigation.

9.10 Irregular payment of refund

In two Custom Commissionerates, excess refund of duty amounting to Rs.8.93 lakh were made to the exporters. On this being pointed, the Ministry admitted the mistakes and reported recovery of the excess payment September 1997/January 1999.

9.11 Excess payment of drawback

On export of goods, refund of duties of excise and customs paid on components and raw material could be claimed as drawback as per provisions in the relevant Acts and Rules thereunder. In 15 cases, where excess payment of drawback amounting to Rs.35.83 lakh were pointed out, the Ministry/department admitted the mistakes and reported recovery of Rs.32.54 lakh.

9.12 Short levy of special duty of Customs

Short levy of special customs duty aggregating to Rs.32.76 lakh due to application of incorrect rates were pointed to three different Custom Houses. The department admitted the mistakes in all cases and reported recovery of Rs.13.68 lakh.

The Ministry also confirmed the facts in two cases.

9.13 Non levy of cess

Two cases of non levy of 'export cess' on agricultural products and two cases of non levy of cess on imports of 'Natural rubber'amounting to Rs.14.81 lakh were pointed out by audit in four Custom Houses. The department/Ministry admitted the mistake in three cases.

Reply in one case is awaited as of January 1999.

9.14 Other cases

In eight other cases, audit pointed out irregularities involving Rs.14.18 lakh as detailed overleaf. The department/ Ministry reported recovery of Rs.8.29 lakh.

(Rupees in lakh)

Sl. No.	Subject	Amount objected	Amount accepted	Amount recovered
1.	Short remittance of foreign travel tax	1.57	1.57	2.16*
2.	Irregular payment of interest on refund of seized currency	1.05	--	--
3.	Incorrect computation of customs duty	2.73	2.73	2.73
4.	Incorrect computation of customs duty	1.73	1.73	1.73
5.	Incorrect computation of customs duty	0.90	--	--
6.	Incorrect computation of customs duty	1.67	1.67	1.67
7.	Delay in assessment of bills of entry	1.88	--	--
8.	Delay in remittance of cheques/draft	2.65	--	--
	TOTAL	14.18	7.70	8.29

* Department recovered interest of Rs.0.59 lakh in addition to the amount of short levy pointed out in audit.

9.15 Miscellaneous

363 other objections involving duty of Rs.85.54 lakh were also pointed out. The department has accepted all these objections and reported recovery of an amount of Rs.81.08 lakh in 353 cases.

New Delhi
Dated: 31 मार्च 1999

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

Countersigned

New Delhi
Dated: 31 मार्च 1999

(V.K.SHUNGLU)
Comptroller and Auditor General of India

ANNEXURE I

(Rupees in crore)

Sl.No.	Name of the licencee M/s	No. of licence issued	CIF value
	CALCUTTA		
1.	TISCO	680	797.15
2.	Ganapati Exports	89	399.82
3.	Raylon Industries	99	58.52
4.	R.S.I. Ltd.	53	110.87
5.	Birla Industries	99	49.71
6.	Ispat Alloys	133	195.66
7.	Duncans	82	5.15
8.	Dunlops	59	59.16
9.	Bhagchandka	70	3.74
10.	Balmer Lawrie	50	3.73
11.	G.F. Kellner	79	1.99
12.	I.T.C. Ltd.	60	12.83
13.	New Tea Co. Ltd.	56	2.55
	TOTAL	**1609**	**1700.88**
	MUMBAI		
14.	Allanasons	106	25.03
15.	Anand International	191	18.38
16.	Hindustan Lever	76	23.87
17.	Metro Exports	158	19.78
18.	National Pen & Plastics	66	4.71
19.	Parayas Pen & Plastics	78	2.21
20.	Raymond	255	40.49
21.	Tata Exports	68	15.73
	TOTAL	**998**	**150.20**
	DELHI		
22.	Wave International	54	8.84
23.	Ultimate	60	5.70
24.	Tosh Picture Tubes	58	110.98
25.	Swati Industries	100	10.80
26.	Satnam Overseas	66	5.62
27.	Sakura Seimetsu	72	20.59
28.	Reliance	131	17.35
29.	Padmini Exports	58	13.50
30.	Oscor Group	62	13.43
31.	Luxor	156	11.30
	TOTAL	**817**	**217.91**
	GRAND TOTAL	**3424**	**2068.99**

ANNEXURE- II

Sl. No	Name of the Licencees
1.	M/s. A.M. Exports, Delhi
2.	M/s. Allanasons, Mumbai
3.	M/s. Apollo Tyres Ltd, New Delhi
4.	M/s. Bhaiya Fibres Pvt.Ltd., Delhi
5.	M/s. Bharat Impexonet Pvt. Ltd, Calcutta
6.	M/s. Birla Tyres, Calcutta
7.	M/s. Blumenfeld Ltd. Calcutta
8.	M/s. CEAT, Mumbai
9.	M/s. Century 21st High Tech Industries, New Delhi
10.	M/s. Contessa Commercial Company, Calcutta
11.	M/s. Crown Frozen Foods, Mumbai
12.	M/s. Dimple Overseas, Delhi
13.	M/s. Essar Steel Ltd. Mumbai
14.	M/s. Euro Exports, New Delhi
15.	M/s. Fortune Impex, New Delhi.
16.	M/s. Ganapati Combines Ltd. Calcutta
17.	M/s. Ganapati commerce Ltd, Calcutta
18.	M/s. Ganapati Exports Ltd, Calcutta
19.	M/s. Geekay (I) Exim, Mumbai
20.	M/s. Geekay Exim (I) Ltd, Mumbai
21.	M/s. Goel Industries, Calcutta
22.	M/s. Goel Packing Industries, Calcutta
23.	M/s. HAP Plast (P) Ltd, Delhi
24.	M/s. Harsha International Ltd, New Delhi
25.	M/s. J.K. Industries Ltd, New Delhi

Sl. No	Name of the Licencees
26.	M/s. Llyods International Ltd. Mumbai
27.	M/s. M.K. Shah Ltd. Calcutta
28.	M/s. M.S. International Ltd. New Delhi
29.	M/s. M.S. Shoes East Ltd. New Delhi
30.	M/s. M.S. Shoes Ltd, New Delhi
31.	M/s. Parasrampuria Synthetics, Delhi
32.	M/s. Pearl Intercontinental Ltd. New Delhi
33.	M/s. Raylon Industries, Calcutta
34.	M/s. RSI Engineering Pvt. Ltd. Calcutta
35.	M/s. RSI Ltd, Calcutta
36.	M/s. S.M.Impex, Delhi
37.	M/s. SAIL, Calcutta
38.	M/s. Sajjan India Ltd. Mumbai
39.	M/s. Salora International Ltd, New Delhi
40.	M/s. Shah Bhimani International, Delhi
41.	M/s. Silver Fibres Pvt. Ltd. Delhi
42.	M/s. Sunshine Exports, Delhi
43.	M/s. Tirupathi Overseas, New Delhi
44.	M/s. TISCO, Calcutta
45.	M/s. Tosha International Ltd. New Delhi
46.	M/s. Vimal Overseas, Delhi
47.	M/s. Viplav Trading, Mumbai
48.	M/s. Vishal Exports, Mumbai
49.	M/s. VVR Electronics, New Delhi