Report of the
Comptroller and Auditor General
of India

for the year ended March 2017

Union Government
Department of Revenue
(Indirect Taxes – Central Excise)
Report No. 42 of 2017

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Preface

This Report for the year ended March 2017 has been prepared for submission to the President of India under Article 151 of the Constitution of India.

The Report contains significant results of the compliance audit of the Central Board of Excise and Customs under the Department of Revenue – Indirect Taxes (Central Excise) of the Union Government.

The instances mentioned in this Report are those, which came to notice in the course of test audit for the period 2016-17, as well as those which came to notice in earlier years but could not be reported in the previous Audit Reports.

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

Executive Summary

Section 16 of CAG's (DPC) Act, 1971 mandates CAG to audit receipts payable into the Consolidated Fund of India and to satisfy that the rules and procedures are designed to secure an effective check on the assessment, collection and proper allocation of revenue and are being duly observed. We examined functions of Central Excise Department relating to scrutiny, internal audit etc. and verified records of assessees, which form the basis for tax calculation, to examine the extent of effectiveness of the systems in place in ensuring that assessees comply with extant rules and procedures in this era of self-assessment. Besides regular audit of departmental functions and compliance by the assessees, this year we conducted subject specific compliance audit (SSCA) on two major commodities i.e. Plastic and articles thereof and Tobacco products.

This Report has 104 audit observations on Central Excise duties, having financial implication of ₹ 665.93 crore. The Ministry/Department had, till September 2017, accepted 93 audit observations involving revenue of ₹ 343.30 crore and reported recovery of ₹ 271.45 crore in 44 cases. Some significant observations and findings are as follows:

Chapter I: Central Excise Administration

- Central Excise revenue collection was ₹ 3,80,495 crore during financial year 2016-17 (FY17) and accounted for 44.13 per cent of Indirect Tax revenue in FY17. In comparison of FY16, Central Excise revenue increased by ₹ 93,346 crore (32.51 per cent) in FY17. Revenue forgone in Central Excise, on account of conditional exemptions was ₹ 76,844 crore in FY17 which was 20.20 per cent of total Central Excise revenue.

(Paragraphs 1.6 and 1.11)

- Cases involving revenue of ₹ 1,08,563 crore were pending in appeals at the end of FY17 registering a 18 per cent increase over the amount pending at the end of FY16. As no action can be initiated for recovery of revenue till the appeal is pending, early disposal by the various authorities to bring in possible revenue of ₹ 1,08,563 crore to the Government coffers, is important.

(Paragraph 1.18)

Chapter II: Levy and collection of Central Excise duty on Plastics and articles thereof

Audit observed inadequacies in the compliance to rules and procedures by the Department in relation to levy, assessment and collection of Central Excise duty in the plastic sector.

- The Department had neither taken any action nor imposed any penalty in 128 (100 per cent) cases of non-filed returns and in 809 (62.42 per cent) cases of delayed filed returns out of 1,296 cases, related to manufacturers of Plastic articles, during the period 2013-14 to 2015-16.

(Paragraph 2.4.3)

- Out of 25,898 returns marked for Review and Correction (R&C) by ACES system, in 2,900 (11.20 per cent) cases the Department failed to carry out R&C during the period 2013-14 to 2015-16.

(Paragraph 2.4.4)

- In 106 cases relating to plastic manufacturers, Audit noticed Internal Audit and other lapses of the Department, involving revenue of ₹ 4.71 crore. In another 190 cases Audit noticed non-compliance of Act, Rules etc. by the assessees involving revenue of ₹ 7.68 crore.

(Paragraphs 2.4.7 to 2.4.9 and 2.4.11)

- There were no serious efforts by the Department to cross verify Central Excise data with State Commercial Tax databases to widen the tax net.

(Paragraph 2.4.10)

Chapter III: Levy and collection of Central Excise duty on Tobacco products

Audit observed inadequacies in compliance to the specific provisions of the Act/Rules/Notifications relating to Tobacco products as indicated by lack of effective mechanism to identify and ensure filing of returns by beedi units which operate mostly in the informal sector; and poor enforcement of maintenance of prescribed records and non-conducting of quarterly inspection of cigarette units by the Department. In the case of pan masala and chewing tobacco products, Audit observed that the Department failed to take cognizance of abnormal excess production of pouches over and above the deemed production which led to loss of revenue. Significant observations are:

- The Department had neither taken any action nor imposed any penalty in 3,822 (99.58 per cent) cases of non-filed returns out of 3,838 cases and in 901 (60.88 per cent) cases of delayed filed returns out of 1,480 cases, during the period 2013-14 to 2015-16.

(Paragraph 3.4.1)

- Out of 46,767 returns marked for Review and Correction (R&C) by the ACES system, the Department failed to carry out R&C in 10,071 (21.53 per cent) cases during the period 2013-14 to 2015-16.

(Paragraph 3.4.2)

- In 10 test-checked cases of payment of duty on chewing tobacco/pan masala, based on capacity of production, Audit observed excess production as much as 325 per cent over 'deemed production' involving revenue of ₹ 309.18 crore.

(Paragraphs 3.6.3)

- In 40 cases relating to Tobacco manufacturers Audit noticed non-compliance of Act, Rules etc. by the assessees involving revenue of ₹ 97.72 lakh.

(Paragraphs 3.7)

Chapter IV: Non-compliance with Rules and Regulations

- Audit observed 44 cases of irregular availing and utilisation of CENVAT credit, non/short payment of Central Excise duty involving revenue of ₹ 45.40 crore.

(Paragraph 4.1)

Chapter V: Effectiveness of Internal Control

- Audit observed 58 cases of deficiencies in internal audit carried out by departmental officials and other issues involving revenue of ₹ 279.19 crore.

(Paragraph 5.2)

Chapter I

Central Excise Administration

1.1 Resources of the Union Government

The resources of Government of India include all revenues received by the Union Government, all loans raised by issue of treasury bills, internal and external loans and all moneys received by the Government in repayment of loans. Tax revenue resources of the Union Government consist of revenue receipts from Direct and Indirect Taxes. Table 1.1 below shows the summary of resources for the financial year 2016-17 (FY17) and FY16.

Table 1.1: Resources of the Union Government

(₹ in crore)

	FY17	**FY16**
A. Total Revenue Receipts	22,23,988	19,42,353
i. Direct Tax Receipts	8,49,801	7,42,012
ii. Indirect Tax Receipts including other taxes	8,66,167	7,13,879
iii. Non-Tax Receipts	5,06,721	4,84,581
iv. Grants-in-aid & contributions	1,299	1,881
B. Miscellaneous Capital Receipts[1]	47,743	42,132
C. Recovery of Loans and Advances[2]	40,971	41,878
D. Public Debt Receipts[3]	61,34,137	43,16,950
Receipts of Government of India (A+B+C+D)	**84,46,839**	**63,43,313**

Source: Union Finance Accounts of respective years. Figures of FY17 are provisional.

Note: Direct Tax receipts and Indirect Tax receipts including other taxes have been worked out from the Union Finance Accounts. Total Revenue Receipts include ₹ 6,08,000 crore in FY17 and ₹ 5,06,193 crore in FY16, share of net proceeds of Direct and Indirect Taxes directly assigned to states.

The total receipts of the Union Government increased to ₹ 84,46,839 crore in FY17 from ₹ 63,43,313 crore in FY16. In FY17, its own receipts were ₹ 22,23,988 crore, an increase of ₹ 2,81,635 crore which is an increase of 14.50 per cent over the previous year. This included Gross Tax receipts of ₹ 17,15,968 crore of which Indirect Tax receipts including other taxes accounted for ₹ 8,66,167 crore.

1.2 Nature of Indirect Taxes

The Audit Report is based on the audit conducted up to the FY17 and covers transactions involving levy and collection of Central Excise up to FY16. The major indirect taxes in vogue as on that date are discussed below:

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1 This comprises of value of bonus share, disinvestment of public sector and other undertakings and other receipts;

2 Recovery of loans and advances made by the Union Government;

3 Borrowing by the Government of India internally as well as externally.

a) **Central Excise duty:** Central Excise duty is levied on manufacture or production of goods in India. Parliament has powers to levy excise duties on tobacco and other goods manufactured or produced in India except alcoholic liquors for human consumption, opium, Indian hemp and other narcotic drugs and narcotics but including medicinal and toilet preparations containing alcohol, opium etc (Entry 84 of List 1 of the Seventh Schedule of the Constitution).

b) **Service Tax:** Service Tax is levied on services provided within the taxable territory (Entry 97 of List 1 of the Seventh Schedule of the Constitution). Service Tax is a tax on services rendered by one person to another. Section 66B of the Finance Act, 1994 envisaged that there shall be a tax levied at the rate of 14 per cent on the value of all services, other than those specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.[4] 'Service' has been defined in section 65B (44) of the Finance Act, 1994 to mean any activity for consideration (other than the items excluded therein) carried out by a person for another and to include a declared service.[5]

c) **Customs duty:** Customs duty is levied on import of goods into India and on export of certain goods out of India (Entry 83 of List 1 of the Seventh Schedule of the Constitution).

It may be noted that from 1 July 2017, Central Excise (except petroleum and some tobacco products), Service Tax and most of the state indirect taxes besides Countervailing Duty (CVD) and Special Additional Duty (SAD) components of Customs have been subsumed into Goods and Services Tax (GST).

This chapter discusses trends, composition and systemic issues in Central Excise using data from finance accounts, departmental accounts and relevant data available in public domain.

1.3 Organisational Structure

The Department of Revenue (DoR) of Ministry of Finance (MOF) functions under the overall direction and control of the Secretary (Revenue) and coordinates matters relating to all the Direct and Indirect Union Taxes through two statutory Boards namely, the Central Board of Excise and Customs (CBEC) and the Central Board of Direct Taxes (CBDT) constituted

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4 Section 66B was inserted by the Finance Act, 2012 with effect from 1 July 2012; section 66D lists the items the negative list comprises of.

5 Section 66E of the Finance Act, 1994 lists the declared services.

under the Central Board of Revenue Act, 1963. Matters relating to the levy and collection of Central Excise are looked after by the CBEC.

Indirect Tax laws are administered by the CBEC through its field offices, the Commissionerates. For this purpose, prior to restructuring in view of implementation of GST, the country was divided into 27 zones of Central Excise and Service Tax headed by the Chief Commissioner. Under these 27 zones, there were 83 composite executive Commissionerates that deal with Central Excise and Service Tax, 36 exclusive Central Excise executive Commissionerates and 22 exclusive Service Tax executive Commissionerates headed by the Principal Commissioner/Commissioner. Divisions and Ranges are the subsequent formations, headed by Deputy/ Assistant Commissioner and Superintendents respectively. Apart from these executive Commissionerates, there were eight Large Tax Payer Units (LTU) Commissionerates, 60 Appeal Commissionerates, 45 Audit Commissionerates and 20 Directorates General/ Directorates dealing with specific function.

The overall sanctioned staff strength of the CBEC was 84,875 as on 1 January 2017. The organisational structure of CBEC is shown in Appendix I.

1.4 Growth of Indirect Taxes - trends and composition

Table 1.2 depicts the relative growth of Indirect Taxes during FY13 to FY17.

Table 1.2: Growth of Indirect Taxes

(₹ in crore)

Year	Indirect Taxes	GDP	Indirect Taxes as per cent of GDP	Gross Tax revenue	Indirect Taxes as per cent of Gross Tax revenue
FY13	4,74,728	99,88,540	4.75	10,36,460	45.80
FY14	4,97,349	1,13,45,056	4.38	11,38,996	43.67
FY15	5,46,214	1,25,41,208	4.36	12,45,135	43.87
FY16	7,10,101	1,35,76,086	5.23	14,55,891	48.77
FY17	8,62,151	1,51,83,709	5.68	17,15,968	50.24

Source: Tax revenue - Union Finance Accounts (FY17 Provisional), GDP – Press note of CSO[6]

It is observed that Indirect tax collection as a per cent of GDP registered a slight increase in FY17 vis-à-vis FY16 and its share in Gross Tax revenue also raised by 1.5 per cent in FY17 as compared to FY16.

[6] Press note on GDP released on 31 May 2017 by Central Statistical Office (CSO), Ministry of Statistics and Programme Implementation. This indicates that the figures for GDP for FY14 and FY15 are based on New Series Estimates; and figure for FY17 are based on provisional estimates at current prices. The figures of GDP for FY13 are based on current market price with base year 2004-05. Figures are being continually revised by CSO and this data is meant for an indicative comparison of fiscal performance with macro economic performance

1.5 Indirect Taxes – relative contribution

Table 1.3 depicts the trajectory of the various Indirect Tax components in GDP terms for the period FY13 to FY17.

Table 1.3: Indirect Taxes – percentage of GDP

(₹ in crore)

Year	GDP	CE revenue	CE revenue as per cent of GDP	ST revenue	ST revenue as per cent of GDP	Custom revenue	Custom revenue as per cent of GDP
FY13	99,88,540	1,75,845	1.76	1,32,601	1.33	1,65,346	1.66
FY14	1,13,45,056	1,69,455	1.49	1,54,780	1.36	1,72,085	1.52
FY15	1,25,41,208	1,89,038	1.51	1,67,969	1.34	1,88,016	1.50
FY16	1,35,76,086	2,87,149	2.12	2,11,415	1.56	2,10,338	1.55
FY17	1,51,83,709	3,80,495	2.51	2,54,499	1.68	2,25,370	1.48

Source: Figures of tax receipts are as per Union Finance Accounts of respective years. Figures of FY17 are provisional.

Among the Indirect Taxes, the Central Excise and Service Tax revenue as a percentage of GDP continued their increasing trend during last three years, while Custom revenue as a percentage of GDP decreased during FY17, though in monetary terms all the three taxes have shown positive growth.

1.6 Growth of Central Excise Receipts - trends and composition

Table 1.4 depicts the trends of Central Excise revenue in absolute and GDP terms during FY13 to FY17.

Table 1.4: Growth of Central Excise revenue

(₹ in crore)

Year	GDP	Gross Tax revenue	Gross Indirect Taxes	Central Excise revenue	Central Excise revenue as per cent of GDP	Central Excise revenue as per cent of Gross Tax revenue	Central Excise as per cent of Indirect Taxes
FY13	99,88,540	10,36,460	4,74,728	1,75,845	1.76	16.97	37.04
FY14	1,13,45,056	11,38,996	4,97,349	1,69,455	1.49	14.88	34.07
FY15	1,25,41,208	12,45,135	5,46,214	1,89,038	1.51	15.18	34.61
FY16	1,35,76,086	14,55,891	7,10,101	2,87,149	2.12	19.72	40.44
FY17	1,51,83,709	17,15,968	8,62,151	3,80,495	2.51	22.17	44.13

Source: Figures of tax receipts are as per Union Finance Accounts of respective years. Figures of FY17 are provisional.

Central Excise accounted for 22.17 per cent of Gross Tax revenue and 44.13 per cent of Indirect Taxes revenue during FY17. Share of Central Excise in Gross Tax revenue as well as in Indirect Taxes has been steadily increasing from FY14. Central Excise revenue increased by ₹ 93,346 crore (32.51 per cent) in FY17 which was mainly due to increased revenue from petroleum sector.

1.7 Central Excise Receipts vis-à-vis CENVAT Credit utilised

A manufacturer can avail credit of duty of Central Excise paid on inputs or capital goods as well as Service Tax paid on input services related to his manufacturing activity and can utilise credit so availed in payment of Central Excise duty.

Table 1.5 depicts the growth of Central Excise collections through Personal Ledger Account (PLA) i.e. cash and CENVAT credit during FY13 to FY17.

Table 1.5: Central Excise receipts: PLA and CENVAT utilisation

(₹ in crore)

Year	CE duty paid through PLA		CE duty paid through CENVAT credit		CE duty paid from CENVAT credit as per cent of PLA payments
	Amount#	Per cent increase from previous year	Amount*	Per cent increase from previous year	
FY13	1,75,845	21.36	2,58,697	20.88	147.12
FY14	1,69,455	-3.63	2,73,323	5.65	161.30
FY15	1,89,038	11.56	2,91,694	6.72	154.30
FY16	2,87,149	51.90	3,10,335	6.39	108.07
FY17	3,80,495	32.51	3,39,274	9.33	89.17

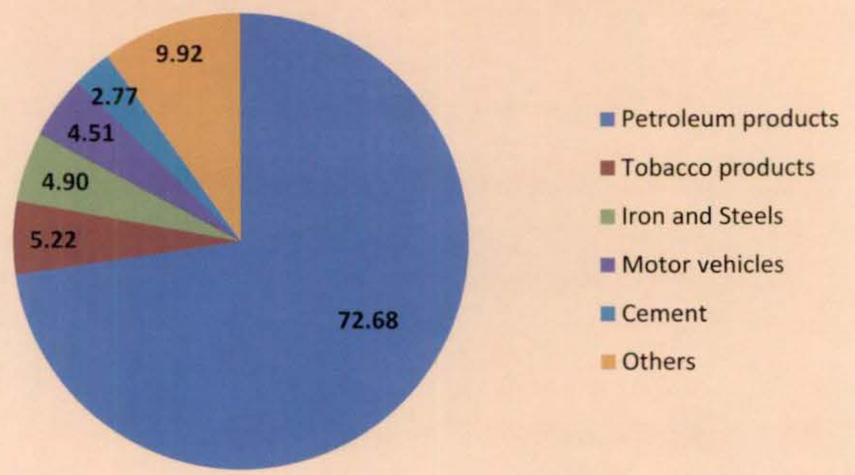
Source: # Union Finance Accounts of respective years. Figures of FY17 are provisional. * Figures furnished by the Ministry

It is observed that Central Excise revenue paid through PLA showed negative growth in FY14 and thereafter showed positive growth during all subsequent years. Central Excise duty payment through CENVAT credit account as a percentage of payment through PLA decreased continuously and came down from 161.30 per cent in FY14 to 89.17 per cent in FY17, which signifies more payment of Central Excise duty by cash.

1.8 Central Excise Revenue from major Commodities

The top five categories of commodities contributed 90.07 per cent of the total Central Excise duty collection during FY17 which is depicted in pie chart 1.1.

Chart-1.1 : Revenue share of major commodities in FY17



Source: Figures provided by the Ministry

The Central Excise duty collection from these top five commodities during FY13 to FY17 is shown in table 1.6.

Table 1.6 : Revenue from top five commodities

(₹ in crore)

Commodities	FY13	FY14	FY15	FY16	FY17
Petroleum products	84,188	88,065	1,06,653	1,98,793	2,76,551
Tobacco products	17,991	16,050	16,676	21,463	19,846
Iron and Steel	17,603	17,342	15,970	16,632	18,627
Motor vehicles	10,038	8,363	8,546	14,220	17,166
Cement	10,712	10,308	9,572	10,544	10,522

Source: Figures provided by the Ministry

It is observed that during FY16, there was large increase of ₹ 92,140 crore (86.39 per cent) in Central Excise revenue from petroleum sector which further increased by ₹ 77,758 crore (39.12 per cent) in FY17, as Central Excise duty on petrol increased from ₹ 9.20 per litre to ₹ 21.48 per litre and on high speed diesel from ₹ 3.46 per litre to ₹ 17.33 per litre during the last three years. Apart from Petroleum products Iron and Steel and Motor Vehicles showed positive growth, while Tobacco products and Cement showed negative growth.

1.9 Tax Base

"Assessee" means any person who is liable for payment of Central Excise duty as a producer or manufacturer of excisable goods or a registered person of a private warehouse in which excisable goods are stored and includes an authorised agent of such person. A single legal entity (company or individual) can have multiple assessee identities depending upon location of manufacturing units. Table 1.7 depicts the data of the number of persons registered with the Central Excise Department.

Table 1.7: Tax base in Central Excise

Year	No. of registered assessees	Per cent growth over previous year	No. of assessees who filed return	Per cent growth over previous year	Percentage of assessees who filed return
FY13	4,09,139	-	1,61,617	-	39.50
FY14	4,35,213	6.37	1,65,755	2.56	38.09
FY15	4,67,286	7.37	1,72,776	4.24	36.97
FY16	4,98,273	6.63	1,83,501	6.21	36.83
FY17	5,27,534	5.87	1,91,197	4.19	36.24

Source: Figures furnished by the Ministry

It is observed that number of registered assessees increased during all five years. However, the growth in number of assessee filing returns was not commensurate with the growth in number of registered assessees. Further, only 36.24 per cent assessee filed return in FY17. In this context it is pertinent to point out that the data related to registered assessees and returns filed for FY13 to FY16 furnished by the Ministry this year does not tally with the data furnished last year by the Ministry and reported in CAG's Report No. 3 of 2017. The accuracy of data relating to assessees and returns and the high percentage of assessees not filing returns should be a matter of concern to the Ministry.

1.10 Budget estimate Vs actual receipts

Table 1.8 depicts a comparison of the Budget Estimates and the corresponding actuals for Central Excise receipts.

Table 1.8: Budget, Revised estimates and Actual receipts

(₹ in crore)

Year	Budget estimates	Revised budget estimates	Actual receipts	Diff. between actuals and BE	Percentage variation between actuals and BE	Percentage variation between actuals and RE
FY13	1,94,350	1,71,996	1,75,845	(-)18,505	(-)9.52	(+)2.24
FY14	1,97,554	1,79,537	1,69,455	(-)28,099	(-)14.22	(-)5.62
FY15	2,07,110	1,85,480	1,89,038	(-)18,072	(-)8.73	(+)1.92
FY16	2,29,809	2,84,142	2,87,149	57,340	24.95	(+)1.06
FY17	3,18,670	3,87,369	3,80,495	61,825	19.40	(-)1.77

Source: Union Finance Accounts and receipt budget documents of respective years. Figures of actual receipts of FY17 are provisional.

It is observed that actual collection of Central Excise duty was about 19 per cent above the budget estimates, however about 2 per cent below the revised budget estimates during FY17.

1.11 Central Excise revenue forgone under Central Excise Act

Central Government has been granted powers under Section 5A(1) of the Central Excise Act, 1944 to issue exemption notifications in public interest so as to prescribe duty rates lower than the tariff rates prescribed in the Schedules. The rates prescribed by exemption notifications are known as the "effective rates". Revenue forgone is defined to be the difference between the duty that would have been payable but for the exemption notification and the actual duty paid in terms of the said notification and till budget for 2016-17 was calculated in the following manner:

- In cases where the tariff and effective rates of duty are specified as ad valorem rates - **Revenue forgone= Value of goods X (Tariff rate of duty - Effective rate of duty)**
- In cases where the tariff rate is on ad valorem basis but the effective duty is levied at specific rates in terms of the exemption notification, then – **Revenue forgone = (Value of goods X Tariff rate of duty) - (Quantity of goods X Effective rate of specific duty)**
- In cases where the tariff rates and effective rates are a combination of ad valorem and specific rates, revenue forgone is calculated accordingly
- In all cases, where the tariff rate of duty equals the effective rate, revenue forgone will be zero.

From budget for 2017-18, the methodology to calculate the revenue impact of tax incentives on the Central Excise has been modified. The rates imposed by unconditional notifications have been considered as *de facto* tariff rates and excluded from calculation of revenue forgone. The revenue forgone is now only on account of conditional exemptions which allow reduced rates vis-a-vis the tariff rates or the *de facto* tariff rate.

Table 1.9 depicts figures of Central Excise related revenue forgone during last five years as reported in budget documents of the Union Government.

Table 1.9: Central Excise receipts and total revenue forgone

(₹ in crore)

Year	Central Excise receipts$	Revenue forgone*	Revenue forgone as per cent of Central Excise receipts
FY13	1,75,845	2,09,940	119.39
FY14	1,69,455	1,96,223	115.80
FY15	1,89,038	1,96,789	104.10
FY16	2,87,149	79,183	27.58
FY17	3,80,495	76,844	20.20

Source: $Union Finance Accounts, figures for FY 17 are provisional. *Union Receipts Budget. FY16 and FY17 figures as recast and reflected in Budget document of 2017-18.

The drastic reduction in revenue forgone figures for year FY16 and FY17 as compared to previous years is on account of change in the methodology as explained earlier.

1.12 Arrears of Central Excise

The law provides for various methods of recovery of revenues raised but not realised. These include adjusting against amounts, if any, payable to the person from whom revenue is recoverable, recovery by attachment and sale of excisable goods and recovery through the district revenue authority.

Table 1.10 depicts the performance of the Department in respect of recovery of revenue arrears.

Table 1.10: Arrears realisation – Central Excise

(₹ in crore)

	FY17	
	Gross Arrears[7]	**Recoverable Arrears[8]**
Opening Balance	74939.64	7750.62
Addition during the year	37591.35	5314.21
Total Arrears	112530.99	13064.83
Disposal of Demands[9]	26252.21	2755.62
Arrears Realised	2079.09	1233.79
Arrears Realised as per cent of Total Arrears	1.85	9.44
Closing Balance	84199.69	9075.42

Source: Figures furnished by the Ministry. Figures of closing balance provided by the Ministry have marginal difference.

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[7] Gross arrears include stayed, restrained (BIFR cases, pending stay applications etc.) and recoverable arrears.

[8] Arrears relating to cases in which demand is confirmed but no appeal is filed within prescribed time, units closed/defaulters not traceable, cases decided by Settlement Commission, etc.

[9] Disposal of demands includes confirmation of demand in favour of Department/ against the Department, order for denovo adjudication.

It can be seen that only 9.44 per cent of recoverable arrears could be recovered by the Department during FY17. Given the significant amounts of arrears to be recovered, it is essential that the tax Department specifically focuses on legacy issues even after the transition to GST.

1.13 Additional revenue realised because of Anti-evasion measures

Both, Director General of Central Excise Intelligence (DGCEI) as well as the Central Excise and Service Tax Commissionerates have well-defined roles in the task of detection of cases of evasion of Central Excise duty. While the Commissionerates, with their extensive database about units in their jurisdiction and presence in the field, are the first line of defence against duty evasion, DGCEI specialises in collecting specific intelligence about evasion of substantial revenue. The intelligence so collected is shared with the Commissionerates. Investigations are also undertaken by DGCEI in cases having all India ramifications. Table 1.11 depicts the performance of DGCEI during last three years.

Table 1.11: Anti-evasion performance of DGCEI during last three years

(₹ in crore)

Year	Detection		Voluntary payment during Investigation
	No. of cases	Amount	Amount
FY15	2,123	4,335	546
FY16	2,366	5,297	804
FY17	2,122	5,773	795

Source: Figures furnished by the Ministry.

It is observed that number of cases detected by DGCEI in FY17 decreased though amount involved has increased as compared to FY16. Voluntary payment during investigation has, however, decreased.

Tax administration in Central Excise

1.14 Scrutiny of Central Excise returns

CBEC introduced self-assessment in respect of Central Excise in 1996. With the introduction of self-assessment, the Department also envisaged the provision of a strong compliance verification mechanism, inter alia, through scrutiny of returns.

The Department had not furnished the information of scrutiny of returns for FY17 despite our repeated reminders. The Department had stated that due to reorganisation of the Department for GST, it was not feasible to collect the data from various new field formations. This increases the concern that legacy issues may be ignored. The Department should, in fact, focus on assigning legacy records to new offices systematically and keep track of movement of legacy records from previous offices to new offices.

1.15 Adjudication

Adjudication is the process through which departmental officers determine issues relating to tax liability of assessees. Such process may involve consideration of aspects relating to, inter alia, CENVAT credit, valuation, refund claims, provisional assessment etc. A decision of the adjudicating authority may be challenged in an appellate forum as per the prescribed procedures.

Table 1.12 depicts age-wise analysis of Central Excise adjudication.

Table 1.12: Cases pending for adjudication with departmental authorities

(₹ in crore)

Year	Cases pending as on 31 March		No. of cases Pending for more than one year
	No.	Amount	
FY15	27,425	23,765	4,984
FY16	23,014	29,355	3,637
FY17	10,347	20,474	2,093

Source: Figures furnished by the Ministry

The number of adjudication cases including cases pending for more than one year had decreased substantially in FY17 in comparison to FY16 but the amount involved in these cases had not decreased in same ratio.

1.16 Disposal of refunds claims

Section 11B of the Central Excise Act, 1944 provides the legal authority for claim and grant of refund. The term refund includes rebate of excise duty paid on excisable goods exported out of India as well as of excise duty paid on material used in the manufacture of goods exported out of India. Further, section 11BB of the Act stipulates that interest is to be paid on refund amount if it is not refunded within three months from the date of application of refund. The Central Excise Manual prescribed that the Department should accept refund claims only when accompanied with all supporting documents as refund claims without requisite documents may lead to delay in sanction of refunds.

Table 1.13 depicts the status of disposal of refund claims by the Department. The delay depicted is in terms of time taken from the date of receipt of refund application till the final processing of the claims.

Table 1.13: Disposal of refund claims in Central Excise

(₹ in crore)

Year	Opening Balance		Receipts (during the year)		Disposal (during the year)				No. of cases disposed within 3 months	Cases where interest has been paid	
					Refunds sanctioned		Refunds rejected				
	No. of Cases	Amt.	No. of Cases	Amt.	No. of Cases	Amt.	No. of Cases	Amt.		No. of Cases	Amt.
FY16	82,146	7,878	3,36,614	27,829	3,65,485	27,593	7,577	1,763	3,24,340	3	0.01
FY17	45,719[#]	6,356[#]	3,18,462	27,903	3,13,487	25,874	6,471	2,342	17,957	3	0.09

Source: Figures furnished by the Ministry. [#]Closing balance of FY16 does not match with opening balance of FY17.

It is observed that both number of cases as well as amount involved in disposal of refund cases had decreased in FY17 as compared to FY16. Out of a total of 3,19,958 cases disposed in FY17, only 17,957 cases (5.61 per cent) were processed within the stipulated three months period. There is a steep decline as compared to disposal of 86.94 per cent cases within three months in FY16. Further, the Department had paid interest only in three cases. Thus there was a delay in around 94 per cent of disposals and also non-payment of interest in almost all the cases of delayed refunds, both of which were in violation of provisions of the Act.

Table 1.14 depicts an age-wise analysis of pendency of refund claims during the last two years.

Table 1.14: Age-wise pendency of Central Excise refund cases as on 31 March

(₹ in crore)

Year	Total number of Refund claims pending as on 31 March		Refund claims pending for			
			Less than one year		Over one year	
	No. of Cases	Amt.	No. of Cases	Amt.	No. of Cases	Amt.
FY16	45,719[#]	6,356[#]	45,592	6,273	127	83
FY17	44,223	6,043	44,211	6,039	12	3

Source: Figures furnished by the Ministry. [#]Difference in figures of closing balance of FY16, provided by the Ministry.

It is observed that both number of refund claims pending as well as amount involved has decreased marginally in FY17 as compared to FY16.

1.17 Call Book

Board Circular No. 162/73/95-CX.3 dated 14 December 1995 read with Circular Nos. 992/16/2014-CX, dated 26 December 2014 and 1023/11/2016-CX dated 8 April 2016, on the subject envisage that cases that cannot be adjudicated due to certain reasons such as the Department having gone in appeal, injunction from courts etc. may be entered into the Call Book. Member (CX), vide his D.O.F.No. 101/2/2003-CX-3, dated 3 January 2005 had emphasised that Call Book cases should be reviewed every month. Director General of Inspection (Customs and Central Excise) had reiterated the need for monthly review in his letter dated 29 December 2005 stating that review of Call Book may result in substantial reduction in the number of unconfirmed demands in Call Book.

Table 1.15 depicts the performance of the Department in respect of Call Book clearance in Central Excise during the last three years.

Table 1.15: Call Book cases pending on 31 March

Year	Opening balance	New Cases transferred to Call Book during the year	Disposals during the year	Closing balance at the end of year	Revenue involved (₹ in Cr)	Age-wise break up of pendency at the end of the year		
						Less than 6 months	6-12 months	Over 1 year
FY15	35,617	9,552	8,846	36,323	65,765	4,841	2,276	29,206
FY16	37,018	7,437	7,994	36,461	64,260	5,157	2,479	28,394
FY17	36,030	13,418	19,768	29,682[10]	58,648	5,601	2,457	21,624

Source : Figures furnished by the Ministry

It is observed that the pendency of cases in the Call Book has reduced substantially in FY 17 though it is still high indicating the need for close monitoring and review of Call Book items. It is further observed that the opening balance does not match with closing balance of previous years.

1.18 Appeal cases

Besides the adjudicating authorities, there are several other authorities including departmental appellate authorities, courts of law etc., where issues of law, interpretations etc. are considered. Besides, the Department also resorts to coercive recovery measures in many instances. Large amounts of revenue thus remain unrealised for substantial periods of time. Based on data furnished by CBEC, we have shown the pendency of appeal cases at various forums in table 1.16.

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[10] Difference in figures of closing balance provided by the Ministry

Table 1.16: Pendency of Appeals in Central Excise

Year	Forum	Appeals pending at the end of the year					
		Details of party's appeals		Details of departmental appeals		Total	
		No. of Appeals	Amount Involved (Cr. ₹)	No. of Appeals	Amount Involved (Cr. ₹)	No. of Appeals	Amount Involved (Cr. ₹)
FY15	Supreme Court	636	1,752	1395	4,666	2,031	6,418
	High Court	3,740	5,543	4,531	7,514	8,271	13,057
	CESTAT	28,465	51,252	11,134	7,477	39,599	58,729
	Settlement Commission	82	135	2	1	84	136
	Commissioner (Appeals)	10,505	2,899	1,751	298	12,256	3,197
	Total	**43,428**	**61,581**	**18,813**	**19,956**	**62,241**	**81,537**
FY16	Supreme Court	570	2,153	1,102	4,360	1,672	6,513
	High Court	3,548	7,207	4,041	8,855	7,589	16,062
	CESTAT	29,443	57,035	9,613	8,571	39,056	65,606
	Settlement Commission	77	98	0	0	77	98
	Commissioner (Appeals)	11,835	3,494	1,915	389	13,750	3,883
	Total	**45,473**	**69,987**	**16,671**	**22,175**	**62,144**	**92,162**
FY17	Supreme Court	581	2,267	977	5,804	1,558	8,071
	High Court	3,528	9,005	3,170	10,329	6,698	19,334
	CESTAT	30,201	65,760	7,120	11,915	37,321	77,675
	Settlement Commission	71	77	0	0	71	77
	Commissioner (Appeals)	12,711	3,047	2,243	359	14,954	3,406
	Total	**47,092**	**80,156**	**13,510**	**28,407**	**60,602**	**1,08,563**

Source: Figures furnished by the Ministry

The Table indicates that cases involving revenue of ₹ 1,08,563 crore were pending in appeals at the end of FY17 registering a 18 per cent increase over the amount pending at the end of FY16. As no action can be initiated for recovery of revenue till the appeal is pending, early disposal by the various authorities to bring in possible revenue of ₹ 1,08,563 crore to the Government coffers, is important.

The Ministry has provided the details of disposal of appeal cases of Central Excise for FY16 and FY17. The data is tabulated below:

Table No. 1.17: Breakup of cases decided during the last two years (CX)

Year	Forum	Department's Appeal				Party's Appeal			
		Decided In favour of Deptt.	Decided against the Deptt.	Remanded	% of Successful appeal of Deptt.	Decided in favour of party	Decided against party	Remanded	% of Successful appeal of party
FY16	Supreme Court	64	465	29	11.47	110	77	16	54.19
	High Court	216	926	56	18.03	289	456	123	33.29
	CESTAT	666	1,619	165	27.18	2,415	856	742	60.18
	Settlement Commission	2	1	0	66.67	8	44	2	14.81
	Commissioner (Appeals)	443	525	12	45.20	3,561	3,311	219	50.22
	Total	**1,391**	**3,536**	**262**	**26.81**	**6,383**	**4,744**	**1,102**	**52.20**
FY17	Supreme Court	27	204	8	11.30	21	36	8	32.31
	High Court	165	1,212	26	11.76	296	359	80	40.27
	CESTAT	422	3,179	275	10.89	4,260	1,056	1,199	65.39
	Settlement Commission	0	0	0	NA	13	45	4	20.97
	Commissioner (Appeals)	395	573	51	38.76	4,759	3,328	383	56.19
	Total	**1,009**	**5,168**	**360**	**15.44**	**9,349**	**4,824**	**1,674**	**59.00**

Source: Figures furnished by the Ministry

The table indicates that success ratio of Department's appeal against adjudication order has decreased from 26.81 per cent in FY16 to 15.44 per cent in FY17. The success ratio ranges between 11 per cent and 12 per cent when the Department went in appeal in CESTAT and above.

1.19 Cost of collection

Table 1.18 depicts the cost of collection vis-a-vis the revenue collection.

Table 1.18: Central Excise and Service Tax receipts and cost of collection

(₹ in crore)

Year	Receipts from Central Excise	Receipts from Service Tax	Total receipts	Cost of collection	Cost of collection as % of total receipts
FY13	1,75,845	1,32,601	3,08,446	2,439	0.79
FY14	1,69,455	1,54,780	3,24,235	2,635	0.81
FY15	1,89,038	1,67,969	3,57,007	2,950	0.83
FY16	2,87,149	2,11,415	4,98,564	3,162	0.63
FY17	3,80,495	2,54,499	6,34,994	4,056	0.64

Source: Union Finance Accounts of respective years. Figures of FY17 are provisional.

The cost of collection increased substantially in FY17 in comparison to previous year. However, as there has been significant increase in receipts from Central Excise in FY17 in comparison to the previous year, cost of collection as per cent of total receipts has shown only a marginal increase.

1.20 Internal Audit

The Department had been categorizing units into A, B, C and D categories based on annual revenue, with all 'A' category units considered as annual units for audit purpose while 'B' category represented biennial units. Audit cell located within each Commissionerate was responsible for internal audit. After the restructuring of the Department in October 2014, new Audit Commissionerates came into existence, following which the Department has reorganised the auditable units into three categories i.e. Large, Medium and Small units based on centralized risk assessment carried out by DG(Audit). The manpower available with the Audit Commissionerate is allocated in 40: 25:15 among large, medium and small units and remaining 20 per cent manpower is to be utilised for planning, coordination and follow up

Table 1.19 depicts details of Central Excise units due for audit during FY17 by audit parties of the Commissionerates vis-à-vis units audited.

Table 1.19: Audits of assessees conducted during FY17

Year	Category	Number of units due	Number of units audited	Shortfall in Audit (No.)	Shortfall in audit (%)
FY17	Large Units	7,510	4,271	3,239	43.13
	Medium Units	10,919	6,256	4,663	42.71
	Small Units	17,205	10,571	6,634	38.56

Source: Figures furnished by the Ministry

The Department had shifted from revenue based selection of units due for audit to risk based selection by factoring in the available manpower in the audit Commissionerates. Despite the change of methodology in selection of assessees for audit, the shortfall in audit is still more than 40 per cent in the large units and medium units. The shortfall in number of units audited, which was 29 per cent in mandatory units in pre-restructuring era (as commented in Audit Report No. 2 of 2016), has increased to 43 per cent, though, units due for audit were 12,048 in FY15 as compared to 7,510 in FY17. Thus, shortfall in conduct of audit has increased despite formation of separate audit Commissionerates and revised method of selection.

The results of the audit, conducted by the Department, is shown in table 1.20.

Table 1.20: Amount objected and recovered during the year

(₹ in crore)

FY	Category	Amount of short levy detected	Amount of total recovery
FY17	Large	1,760	591
	Medium	412	218
	Small	256	151
Total		**2,428**	**960**

Source: Figures furnished by the Ministry

It is observed that amount of short levy detected and recovered in Large units is significantly higher than other units indicating the need to allocate more resources for carrying out internal audit of Large units.

1.21 Revenue collection due to departmental efforts

There are various methods by which the Department collects the revenue due but not paid by the taxpayers. These methods include Scrutiny of Returns, Internal Audit, Anti-Evasion, Adjudication etc.

The result of departmental efforts is shown in Table 1.21.

Table 1.21: Revenue recovered by departmental efforts

(₹ in crore)

Sl. No.	Departmental action	Recovery during FY16	Recovery during FY17
1	Internal audit	369	304
2	Anti-Evasion	373	382
3	Confirmed Demands	792	1,043
4	Pre-deposits	579	368
5	Scrutiny of Returns	297	291
6	Recovery from Defaulters	2,874	3,486
7	Provisional Assessment	67	64
8	Others	324	174
	Total	5,675	6,112

Source: Figures furnished by the Ministry

Total Central Excise collection during FY17 is ₹ 3,80,495 crore, out of which only ₹ 6,112 crore, representing 1.61 per cent, is collected due to departmental efforts. Further, it is noticed that revenue collection shown under internal audit and anti-evasion does not tally with amount relating to same category shown in tables 1.20 and 1.11 respectively. In fact, the recoveries reflected in table 1.21 (₹ 382 crore) are far less than the spot recovery of anti-evasion reported in table 1.11 (₹ 795 crore). Even though similar data discrepancy regarding data provided by Ministry during FY15 and FY16 was brought to the notice of Ministry through Audit Reports on Central

Excise last year (Report No. 2 of 2016 and Report No. 3 of 2017), the Ministry sent similar data without proper verification again in 2017.

The reliability of data provided is questionable as the data furnished by the Ministry this year relating to revenue recovered by departmental efforts does not tally with the data furnished last year by the Ministry and reported in CAG's Report No. 3 of 2017.

1.22 Audit efforts and Central Excise Audit products - Compliance Audit Report

Compliance audit was conducted by nine field offices headed by Directors General (DGs)/Principal Directors (PDs) of audit, who audited 1055 (CX and ST) units in FY17 as per Regulations on Audit and Accounts, 2007 (as amended) and in conformity with the Auditing Standards, issued by the Comptroller and Auditor General of India.

Data from the Union Finance Account, along with examination of basic records/documents in DoR, CBEC, and their field formations, MIS, MTRs of CBEC along with other stakeholder reports were used.

1.23 Report Overview

The current report has 104 paragraphs having financial implication of ₹ 665.93 crore. There were generally four kinds of observations: non/short payment of Central Excise duty, incorrect availing/utilisation of CENVAT credit, effectiveness of internal control and other issues. The Department/Ministry has already taken rectificatory action involving money value of ₹ 343.30 crore in 93 paragraphs in the form of issue of SCNs, adjudication of SCNs and reported recovery of ₹ 271.45 crore.

1.24 Response to CAG's Audit, revenue impact/follow-up of Audit Reports

In the last five audit reports (including current year's report) we had included 391 audit paragraphs (Table 1.22) involving ₹ 1300.49 crore.

Table 1.22: Follow-up of Audit Reports

(₹ in crore)

Year			FY13	FY14	FY15	FY16	FY17	Total
Paragraphs included		No.	62	68	64	93	104	391
		Amt.	182.90	125.11	147.87	178.68	665.93	1300.49
Paragraphs accepted	Pre printing	No.	58	60	47	79	93	337
		Amt.	179.44	90.71	135.85	132.13	343.30	881.43
	Post printing	No.	-	1	2	-	-	3
		Amt.	-	0.36	1.20	-	-	1.56
	Total	No.	58	61	49	79	93	340
		Amt.	179.44	91.07	137.05	132.13	343.30	882.99
Recoveries effected	Pre printing	No.	36	28	30	48	44	186
		Amt.	21.29	27.44	27.95	30.44	271.45	378.57
	Post printing	No.	1	3	2	8	-	14
		Amt.	0.56	3.09	1.20	2.06	-	6.91
	Total	No.	37	31	32	56	44	200
		Amt.	21.85	30.53	29.15	32.50	271.45	385.48

Source: CAG Audit Reports

Ministry had accepted audit observations in 340 audit paragraphs involving ₹ 882.99 crore and had recovered ₹ 385.48 crore.

Chapter II

Levy and collection of Central Excise duty on Plastics and articles thereof

2.1 Introduction

Plastic[11] refers to those materials capable either at the moment of polymerisation or at some subsequent stage, of being formed under external influence (usually heat and pressure, if necessary with a solvent or plasticizer) by moulding, casting, and extruding, rolling or other process, into shapes which are retained on the removal of external influence. Plastics also include vulcanized fibre.

Plastic[12] also known as Polymers, is one of the major end products of the Petrochemicals Industry (Upstream Industries). The plastic industry chain can be classified into two primary segments, viz. the upstream, which is the manufacturing of polymers, and the downstream, which is the conversion of polymers into plastic articles. The downstream plastic processing industry is highly fragmented and consists of micro, small and medium units with majority falling in the small scale sector.

Plastics and articles thereof are classifiable under Chapter 39 of the first schedule, under the Central Excise Tariff Act 1985, effective from 28 February 1986.

The production of polymers has increased from 5,060 thousand MT in 2008-09 to 8,839 thousand MT in 2015-16 (Compound Annual Growth Rate (CAGR) of 8.3%) while its consumption has increased from 5,977 thousand MT to 12,055 thousand MT for the corresponding period (CAGR of 10.5%).

2.1.1 Why we chose this topic

Plastic has been one of the top revenue yielding commodities under Central Excise during the last three years with a revenue contribution of ₹ 6,092 crore in FY 16. Currently, Indian plastics industry comprises of more than 30,000 processing units, of which 85 to 90 per cent are small and medium enterprises (SMEs). The total turnover from plastic industry in FY 15 was ₹ 1,33,245 crore of which 80 per cent was contributed by small scale units under the downstream segment. Import of plastic and articles thereof was ₹ 74,566 crore during 2015-16 which constituted 2.99 per cent of the total

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[11] Chapter Note 1 under Chapter 39 of Central Excise Tariff Act 1985

[12] Chemicals and Petrochemicals statistics at a glance 2016-Ministry of Chemicals and Fertilizers

import of ₹ 24,90,298 crore during the same year [13]. Products from the Indian plastic industry are exported to more than 150 countries across the globe. Export of plastic and articles thereof during 2015-16 was ₹ 34,338 crore which was 2.00 per cent of the total export of ₹ 17,16,378 crore.

2.2 Audit objectives

The subject specific compliance audit sought to assess the adequacy of and compliance with the rules, regulations, notifications, circulars/ instructions/trade notices etc., issued from time to time, including internal controls, in relation to levy, assessment and collection of excise duty relating to plastic sector and monitoring thereof.

2.3 Scope and Audit coverage

Audit collected revenue data related to plastic and articles thereof for the period 2013-14 to 2015-16 from ACES[14] data provided by the Board and sample units were selected from this data for the said period, based on parameters including total revenue collection, number of cases of non/short payment of duty in the unit, use of CENVAT credit etc. Accordingly, Audit selected 25 Commissionerates out of the total of 119 Commissionerates dealing with Central Excise and 25 Divisions and 50 Ranges under these Commissionerates. Audit also selected 308 assessees falling within the jurisdiction of these selected Commissionerates based on parameters including detailed scrutiny due but not done/scrutiny done, internal audit due but not done/ internal audit done, non/short payment of duty by the assessee etc. Besides, Audit also examined the records of eight selected 100 per cent Export Oriented Units (EOU) and 20 additional assessees whose records were examined at the respective Divisions/Ranges only and who dealt with import/export of plastic and articles thereof (total 336 assessees). These assessees manufactured plastic goods as well as imported plastic raw materials. The period covered in this SSCA was 2013-14(FY 14) to 2015-16 (FY 16). Data relating to plastic manufacturers was also obtained from the respective State Pollution Control Board/Pollution Control Committee, Commercial Tax Department and compared with ACES data for identifying unregistered assessees.

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[13] Department of Commerce- Export Import Data Bank (www.commerce.gov.in/EIDB.aspx)

[14] Automation of Central Excise and Service Tax

2.4 Audit findings

2.4.1 Trend of revenue collection from plastic commodity

Table 2.1 depicts growth of revenue from Plastic sector as compared to total Central Excise revenue for the period 2013-14 to 2015-16.

Table No.2.1: Share of revenue from Plastic sector in total Central Excise revenue

(₹ in crore)

Sl. No.	Year	CE revenue	Revenue from Plastic	Plastic revenue as per cent of CE revenue
1	2013-14	1,69,455	4,298	2.54
2	2014-15	1,89,038	5,150	2.72
3	2015-16	2,87,149	6,092	2.12

Source : Figures furnished by the Ministry

2.4.2 Trend of revenue collection in selected Commissionerates

Audit collected revenue data relating to plastic sector from the selected Commissionerates for the period from 2013-14 to 2015-16. Comparison of Personal Ledger Account (PLA) revenue of 2015-16 with PLA revenue from 2014-15 indicated the following:

(i) 18 Commissionerates showed positive growth. Out of this, four Commissionerates viz., Gurgaon-II (269.64%), Faridabad (148.11%), Guwahati (76.39%) and Kolkata-II (74.71%) showed more than 50 per cent growth.

(ii) Four Commissionerates, Hyderabad IV (-14%), Indore (-7%), Chennai IV (-6%) and Silvassa (-3 %), showed negative growth during the year 2015-16 in comparison to the year 2014-15. Chennai IV Commissionerate stated that production decreased due to decrease in sales, leading to less payment of duty.

(iii) Two Commissionerates, Bengaluru II and Noida I either did not provide any data or provided incomplete data, while data provided by Belapur Commissionerate showed same revenue figures for all three years. Hence Audit was not in a position to comment on the performance of these Commissionerates.

(iv) Daman Commissionerate (₹ 179.45 crore) and Silvassa Commissionerate (₹ 160.46 crore) were the highest revenue contributor from PLA during the year 2015-16.

2.4.3 Non/delayed filing of returns

Rule 12(1) of Central Excise Rules, 2002 stipulates that a monthly return (Form ER-1) is to be submitted by every assessee (other than Small Scale Industries (SSI)) indicating, inter alia, details of production and removal of goods by the 10^{th} of the next month following the month for which such return is due. SSI units are required to file ER-3 returns indicating the above details on a quarterly basis within 10 days after the end of the quarter. Though no specific penalty is prescribed for non/late filing of returns, rule 27 of the said Rules, prescribes a general penalty of up to a maximum of ₹ 5,000 for violating any rule, which is applicable to non/delayed filing of return.

Details of ER-1/ER-3 returns submitted by manufacturers of plastic articles obtained from 50 Ranges revealed that there were 128 cases of non-filing in 11 Ranges and 1,296 cases of late filing of returns in 29 Ranges. The Department levied penalty in only 487 cases (37.57 per cent) in 27 Ranges for an amount of ₹ 8.31 lakh for late filing of returns and recovered ₹ 0.32 lakh in 46 cases. The Department had neither taken any action nor imposed any penalty in the 128 cases of non-filing and in 809 cases of late-filing of returns. Four Ranges where cases pending for action were more than 50 returns are listed below:

Table 2.2: Non/delayed filling of returns

S. No.	Name of Commissi-onerate	Name of Division	Name of Range	No. of cases of non/delayed filing of returns pending for action			
				2013-14	2014-15	2015-16	Total
1	Kolkata II	Howrah IV	Range III	24	44	33	101
2	Ahmedabad III	Kalol	AR II	5	54	7	66
3	Delhi I	Division I	Range V	8	18	38	64
4	Kolkata V	Bishnupur	Range III	16	20	18	54

The non-initiation of action for non/belated filing of returns indicates slackness of monitoring mechanism.

Audit pointed this out between November 2016 and March 2017.

Ministry in reply (September 2017) stated as follows:

- Ministry admitted the objections in 367 cases. Out of this, in 36 cases, penalty of ₹ 2.20 lakh had been recovered, in 331 cases Show Cause Notice issued/action had been initiated.

- Reply in respect of remaining 570 cases was awaited (September 2017).

2.4.4 Preliminary Scrutiny of returns - Pendency of Review and Correction cases

After the introduction of ACES, preliminary scrutiny of returns is being done by the system itself. The purpose of preliminary scrutiny of returns is to ensure completeness of information, timely submission of returns, payment of duty, arithmetical accuracy of the amount computed and identification of non-filers/stop filers. Where discrepancy is found by the ACES systems, all such returns are marked for Review and Correction (R&C)[15]. These returns marked for R&C by ACES should be validated in consultation with the assessee and re-entered into the system. The preliminary scrutiny of returns and R&C is to be completed within three months from the date of receiving the returns.

Audit obtained data from the selected 50 Ranges in respect of preliminary scrutiny of returns related to plastic sector. Analysis of the data revealed that out of 29,520 returns received, preliminary scrutiny was done in 26,204 returns while in respect of 3,316 returns (11.23 per cent) preliminary scrutiny was pending during the period 2013-14 to 2015-16, despite the fact that preliminary scrutiny is to be done automatically by ACES. Audit also observed that out of 25,898 returns marked for R&C by ACES, the Department could correct 22,998 (88.80 per cent) returns within the stipulated three months. Thus, 2,900 returns were pending for R&C. Ranges under Bengaluru II and Gurgaon II Commissionerates did not provide data for 2013-14. Range-24 under Noida I Commissionerate and Range I and II under Thane-I Commissionerate did not provide the data for all three years. Thus, Audit was not able to comment on the performance of these Commissionerates. Ranges where returns were pending for R&C, are listed below:

Table 2.3: Preliminary scrutiny – Pendency of R & C Cases

Sl. No.	Name of Commissionerate	Name of Division	Name of Range	No. of returns where R&C was pending			
				2013-14	2014-15	2015-16	Total
1	Delhi I	Division I	Range V	154	388	749	1,291
2	Delhi I	Division I	Range IV	56	229	473	758
3	Coimbatore	Coimbatore II	Coimbatore II A	120	129	120	369
4	Kolkata V	Bishnupur	Range III	105	111	126	342
5	Kolkata II	Howrah IV	Range IV	68	72	0	140
	Total			**503**	**929**	**1,468**	**2,900**

[15] The process of resolving discrepancies in respect of marked returns is called R&C

Pendency of R&C cases in Range IV and V under Delhi I Commissionerate and Range III under Kolkata V Commissionerate had an increasing trend during the three years. There was a pendency of 749 and 473 R&C cases respectively during the year 2015-16 in these two ranges. The position of pendency increased from 13.86 per cent to 78.31 per cent in Range IV and from 24.64 per cent to 76.43 per cent in Range V in respect of the total returns received during 2013-14 to 2015-16.

We pointed out the above pendency in October 2016.

Ministry replied (September 2017) as follows:

- In respect of Delhi I, Coimbatore and Kolkata V Commissionerates, it was stated that action was taken and pendency cleared (2,760 returns).
- In respect of Kolkata II Commissionerate, it was stated that action was taken for one return. Reply for remaining 139 pending returns was awaited.

The delay in carrying out R&C is not only indicative of poor monitoring of scrutiny of returns, but may also lead to possible revenue escapement because of cases getting time barred.

2.4.5 Inadequacy in detailed scrutiny of returns

Central Board of Excise and Customs (CBEC) in circular No. 818/15/2005-CX dated 15 July 2005 had laid down detailed guidelines for manner of scrutiny of ER -1 and ER -3 returns.

The purpose of detailed scrutiny is to establish the validity of information furnished in the tax return and to ensure the correctness of valuation, availing of CENVAT credit, classification and effective rate of tax applied after taking into consideration the admissibility of exemption notification availed etc. Unlike preliminary scrutiny, detailed scrutiny is to cover only certain selected returns, which have been identified on the basis of risk parameters developed from the information furnished in the returns submitted by the taxpayers.

Para 4B read with para 4.1A of Manual for the Scrutiny of Central Excise Returns, 2008 provides for selection upto five per cent of total returns received for a detailed scrutiny of assessment based on risk parameters. CBEC issued revised guidelines for scrutiny of Central Excise returns in Circular No.1004/11/2015-CX dated 21 July 2015 prescribing a range of 2 to 5 per cent of total returns filed for conducting detailed scrutiny.

Audit obtained data in respect of returns received and returns subjected to detailed scrutiny from the selected 50 Ranges and observed that out of a total of 1,05,212 returns, the Ranges selected 1,992 (1.89 per cent) returns for detailed scrutiny. Out of these 1,992 returns, 278 returns were related to plastic sector. From the scrutiny conducted, the Department was able to detect revenue implication of ₹ 1.93 crore in 32 cases.

Audit also noticed that during the years 2013-14, 2014-15 and 2015-16, 31, 34 and 11 ranges who had provided data, did not select any returns for detailed scrutiny despite the fact that large number of returns were received as detailed below. Data was not provided by 9, 10 and 3 Ranges during these years.

Table 2.4: Number of returns filed year-wise

Number of returns ranged between	Number of ranges		
	2013-14	2014-15	2015-16
Upto 1000	24	28	31
1001 to 2000	9	10	6
2001 to 3000	2	1	5
3001 to 4000	2	3	2
Above 4001	-	-	1

Five Ranges where highest number of returns were filed but no return was selected for detailed scrutiny are detailed below:

Table 2.5: Ranges with high returns and no returns selected for detailed scrutiny

Sl. No.	Commissionerate	Division	Range	No. of returns filed			
				2013-14	2014-15	2015-16	Total
1	Delhi I	Division I	Range V	3,308	3,483	4,000	10,791
2	Delhi I	Division I	Range IV	2,066	2,096	2,495	6,657
3	Chennai II	Division II	Ambattur II	1,813	1,942	2,145	5,900
4	Bengaluru II	Peenya II	Peenya P	654	629	711	1,994
5	Rajkot	Rajkot I	AR IV	419	465	537	1,421

We pointed this out in February and March 2017.

Ministry replied (September 2017) as follows:

- In respect of Gurgaon II and Rajkot Commissionerates, it was stated that objections are noted for future compliance. In respect of Coimbatore, Bengaluru and Kolkata II Commissionerates detailed scrutiny of returns has since been completed.
- In respect of Delhi I Commissionerate (2013-14 to 2015-16) and Hyderabad III and IV Commissionerate (2013-14), it was accepted that no detailed scrutiny was conducted. In respect of Daman and Guwahati Commissionerates, it was stated that no detailed scrutiny was pending. However as per data provided, no returns were selected for detailed scrutiny during 2013-14 and 2014-15.
- In respect of remaining 15 Commissionerates involving 28 Ranges reply was awaited (September 2017).

Detailed scrutiny being the first line of compliance verification, non-selection of returns for detailed scrutiny during the respective years by the above Commissionerates indicates weakness in compliance verification mechanism.

2.4.6 Internal Audit

Internal audit is an additional mechanism available with the Department for ensuring correctness of assessment of duty paid and records maintained by the assessees. This is ensured through a scientific selection of assessees based on risk analysis by emphasising on pre-preparation: by scrutinising business records against statutory records and by monitoring of audit points. As per Central Excise Audit Manual 2008, the selection of units was based on the duty payment norms and units paying more than ₹ 3 crore were to be audited annually mandatorily. The norms have been revised and according to revised norms effective from 27 February 2015, the Audit Commissionerate would release an Annual Plan by 31st May of every year indicating the name of assessees that are proposed to be audited during the course of the year.

2.4.7 Non-conducting of Internal Audit resulting in non-detection of lapses

Audit examined the records of 29 assessees which were due for audit as per the extant norms, but had not been covered by internal audit of the Department and noticed lapses in 24 cases for 17 assessees involving short payment of duty, irregular availing of CENVAT credit etc. amounting to ₹ 1.06 crore. These cases could have been detected had these units been subjected to audit as per rules.

An illustrative case is given below:

2.4.7.1 Short payment of duty due to undervaluation of goods

As per Rule 6 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 as amended, where the excisable goods are sold under Section 4(1) (a) of Central Excise Act, 1944 on a value where the price is not the sole consideration for such sale, the value shall be deemed to the aggregate value including the value of additional consideration received in the form of free supply of material from the buyer.

Audit observed that M/s Ultima Plastics Industries falling under Aurangabad Commissionerate received moulds free of cost from M/s Videocon Industries Ltd.(buyer) during the period 2013-14 to 2015-16 and cleared manufactured goods without adding the amortised cost of moulds supplied free of cost. Thus non-inclusion of value of moulds received free of cost amounting to ₹ 63.16 lakh in the value of goods removed resulted in short levy of duty of ₹ 7.80 lakh. The internal audit of this unit covering the above period was not conducted by the Department.

We pointed this out (December 2016) and the Ministry stated (September 2017) that letter had been addressed to assessee in August 2017 calling for documents. Further Report was awaited (September 2017).

In respect of remaining 23 cases:

- Ministry admitted the audit objections in 17 cases. Out of this, in 16 cases, duty amount of ₹ 79.85 lakh was recovered with interest. In one case, misclassification pointed out by audit was rectified.
- In 6 cases, Ministry stated that reply would follow.

2.4.8 Lapses remained undetected despite conducting of Internal Audit

Audit examined the records of 44 assessees which were covered by internal audit of the Department and noticed lapses in 36 cases pertaining to 20 assessees involving short payment of duty, irregular availing of CENVAT credit etc. amounting to ₹ 67.54 lakh. Thus, despite internal audit being conducted, these 36 lapses were not detected. A few illustrative cases are given below:

2.4.8.1 Non-inclusion of retained VAT remission amount in the transaction value

As per section 4(3)(d) of Central Excise Act, 1944, "transaction value" means the price actually paid or payable for the goods, when sold, and includes in addition to the amount charged as price, any amount that the buyer is liable to pay to, or on behalf of, the assessee, by reason of, or in connection with the sale at any point of time. It is thus, evident that taxes such as sales tax which are collected but not paid or payable would be part of transaction value, which was upheld by Hon'ble Supreme Court in case of M/s Super Synotex India Ltd.

M/s Lalit Polly Weave LLP under Guwahati Commissionerate availed remission under the Assam Industries (Tax Exemption) Scheme 2009 under which it had retained 99% of the VAT collected and paid only 1% of the same to the State Government. The assessee did not pay Excise duty on retained VAT amount for the period 2013-14 to 2015-16 (up to May 2015). However, the assessee started paying Excise duty on the retained VAT from June 2015 onwards. This resulted in undervaluation of the goods cleared leading to short-levy of duty of ₹ 22.84 lakh during 2013-14, 2014-15 and 2015-16 (upto May 2015). Interest was also recoverable under section 11AA of the Act.

Internal audit was conducted in June 2015 covering the period 2014-15 but the irregularities remained undetected.

We pointed out this (December 2016) and the Ministry reported (September 2017) recovery of duty of ₹ 22.54 lakh. The Ministry's reply was silent on the lapse of Internal Audit.

2.4.8.2 Misclassification of finished goods resulting in short levy of duty

As per Section 3 of Central Excise Act, 1944, Excise duty is leviable on all excisable goods which are produced or manufactured in India as, and at rates, set forth in the first schedule to the Central Excise Tariff Act, 1985. The effective rate of duty for sacks and bags of polymers of ethylene falling under tariff sub heading 39232100 (sacks and bags of polymers of ethylene), other than those for industrial use, was increased to 15 per cent from 12.5 per cent ad valorem from 01 March 2015 by notification No. 12/2015-CE dated 1 March 2015.

M/s Manbhari Plastic Private Limited under Kolkata II Commissionerate manufactured 'Polythene Bags" from polymers of ethylene and cleared 320.43 MT of such bags between April 2015 and February 2016 to non-industrial customers paying duty at the rate of 12.5 per cent instead of 15 per cent by wrongly classifying the same under tariff sub heading 39232990 (sacks and bags other than polymers of ethylene) instead of sub heading 39232100. This resulted in short levy of duty amounting to ₹ 10.85 lakh besides interest to be recovered. Though internal audit of this unit was conducted in February 2016 covering the period 2014-15, this lapse was not detected.

We pointed out this (November 2016 and March 2017) and the Ministry reported (September 2017) recovery of duty and interest of ₹ 14.10 lakh.

In respect of remaining 34 cases:

- Ministry admitted the audit objections in 31 cases. Out of this, in 21 cases duty amount of ₹ 9.17 lakh was recovered with interest and in 10 cases, Show Cause Notices were issued/action was taken.
- In 2 cases, Ministry stated that reply would follow.
- In respect of Praspack Industries Private Limited under Ahmedabad III Commissionerate, Ministry stated that the review mechanism for ascertaining the legality of sanction of rebate lies with the Executive Commissioner.

However, the fact remains that the outcome of such review was awaited (September 2017).

2.4.9 Other deficiencies noticed in the audit of departmental units

Audit also observed 46 cases of lapses in the selected Ranges/Divisions which were not detected by the Department, involving short payment of duty, irregular availing of CENVAT credit and non-ensuring of end use for intended purpose in respect of imported goods etc., with a revenue impact of ₹ 2.97 crore.

A few illustrative cases are given below:

2.4.9.1 Delay in adjudication of Show Cause Notice

Sub-Section 11(b) of Section 11A of the Central Excise Act, 1944, as amended stipulates that the Central Excise Officer shall determine the amount of duty of excise within one year from the date of notice, where it is possible to do, in respect of cases involving fraud, suppression etc.

Audit noticed from the records of Howrah IV Division under Kolkata II Commissionerate that a Show Cause Notice involving suppression was issued in March 2012 in respect of M/s Weil Burger Coatings India Private Limited for an amount of ₹ 5.87 lakh but the said SCN was yet to be adjudicated.

We pointed out this (December 2016) and the Ministry reported (September 2017) that SCN was under adjudication process.

The reply of the Ministry was not tenable since the SCN issued in this case in March 2012 was required to be adjudicated within the stipulated time of one year. However, the same was pending adjudication till date (September 2017).

2.4.9.2 Incorrect selection of unit for detailed manual scrutiny

CBEC in Para 4.1B of the Guidelines for Manual for Detailed Scrutiny of Returns, 2008 specifically stated that the final selection of returns for detailed scrutiny would be based on availability of staff in the Range and also the objective of ensuring that the units selected exclude those were mandatorily audited in the previous financial year or are likely to be audited in the current year. This would avoid duplication of effort and optimise the use of administrative resources available in the Range.

Audit examination of the data relating to internal audit/detailed manual scrutiny (DMS) conducted by the Department during 2014-15 revealed that M/s Euro Label Industries falling under Ambattur I Range under Chennai II Commissionerate was selected for internal audit to be conducted in December 2014. However, the same unit was also selected for DMS during January 2015, irrespective of the unit having been audited in December 2014. The selection of M/s Euro Label Industries for internal audit and DMS during the same financial year 2014-15 is in contravention of Board's instructions.

We pointed out this (February and March 2017) and the Ministry stated (September 2017) that reply would follow.

2.4.9.3 Non-observance of prescribed procedure and omission to ensure end use

Notification No.25/1999-Cus dated 28 February 1999 exempts certain specified goods, when imported into India for use in the manufacture of specified finished goods, from so much of that portion of the duty of customs leviable thereon, as is in excess of either Nil rate of duty or 5 per cent ad valorem, provided that the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996.

In terms of Rule 5(2), after such import, the Assistant Commissioner/Deputy Commissioner of Customs shall forward copy of the Bill of Entry containing the particulars of import, including the details of goods imported under the concessional rate of duty to the jurisdictional Assistant/Deputy commissioner of Central Excise and this provision existed up to March 2016. Rule 8 of said Rules stipulates that the Assistant/Deputy Commissioner of Central Excise has to ensure that the goods imported are used by the manufacturer for the purpose of manufacturing and in case they are not so used, take action to recover the duty foregone consequent on extension of such concessional rate of duty along with interest.

Audit noticed that in 20 cases, the manufacturers had imported goods falling under Chapter 39 without payment of Basic Customs duty (BCD) under the said notification based on the application submitted to the Divisional office. However, the details of imported goods under concessional rate of duty as per rule 5(2) along with copies of Bills of Entry were not received from the concerned Assistant/Deputy Commissioner of Customs, Sea Port/Airport, in 16 cases, as was required up to March 2016. Though, end use of the goods in these cases was verified based on records provided by the assessee, the same was not cross verified with data of actual import as no such data was provided by the Customs authorities. Duty involved in these 16 cases was ₹ 2.27 crore.

In the remaining 4 cases, neither any data was received from Customs authorities nor any action was taken for verification of end use. Duty forgone in these 4 cases was ₹ 50.70 lakh.

The procedure of forwarding of Bills of Entry to the jurisdictional AC/DC of Central Excise by the AC/DC of Customs, Sea Port/Airport was withdrawn from April 2016 in terms of Notification No. 32/2016-CE (NT). However, no mechanism has been put in place to enable the jurisdictional AC/DC of Central Excise to independently verify the import of goods at concessional rate of duty.

We pointed these out between December 2016 and March 2017 and the Ministry stated in respect of M/s Advance Cable Technology Private Limited, Bengaluru that the action lies at the end of Customs formation through which the goods were imported. Unless the bills of entry were submitted by the Customs formation to the jurisdictional Central Excise authority, the question of acknowledging the same does not arise. However, the importer had submitted the Bill of Entry and it is only a procedural deficiency. Ministry further stated that a letter had been sent in June 2017 to the Assistant Commissioner (Customs), Chennai in this regard.

It is evident from the reply that the jurisdictional Central Excise authority could not acknowledge the genuineness of the import due to non-receipt of Bills of Entry from the Customs formation. This indicates system weakness in ensuring the proper receipt and use of imported goods in the manufacture.

Ministry need to establish a procedure such as online transmission of details of import to the jurisdictional AC/DC of Central Excise by the AC/DC of Customs, so that verification of import details could be done independently.

In respect of remaining 43 cases:

- Ministry reported recovery of ₹ 8.77 lakh in 4 cases
- Reply in respect of 19 cases involving non-observance of procedure for import of goods and remaining 20 cases was awaited (September 2017)

2.4.10 Cross verification of VAT data with registered assessees under ACES

As per Section 6(a) of the Central Excise Act, 1944 read with Rule 9(1) of Central Excise Rules, 2002, every person, who produces, manufactures, carries on trade, holds private store room or warehouse or otherwise uses excisable goods, shall get registered.

Cross verification of data obtained from the Commissioner of Commercial Taxes, West Bengal, Commercial Tax Department, Tamilnadu/Gujarat and the registration details of manufacturers of plastic registered with the Central Excise Department as per ACES data revealed that 117 units whose turnover was more than ₹ 1.5 crore (SSI limit) were not found to be registered with the Central Excise Department. The Department was requested to examine the details of clearances made by them for the period from 2013-14 to 2015-16 and report the outcome of such verification to audit.

An illustrative case is given below:

M/s Gayatri Plastics under Coimbatore Commissionerate reported a turnover of ₹ 0.43 crore as per Tamil Nadu VAT requirements during 2014-15, after allowing SSI exemption limit of ₹ 1.50 crore (Total turnover - ₹ 1.93 crore). However, the unit did not register with the Central Excise Department.

We pointed out this (November 2016) and the Ministry stated (September 2017) that reply would follow.

In respect of remaining 116 cases, the Ministry (September 2017)

- Accepted the audit objections in 104 cases. Out of this, it was stated that three units had taken registration after being pointed out by Audit and duty amount along with interest of ₹ 4.00 lakh was recovered in one case. In respect of 101 Units, it was stated that action was initiated.
- Stated that in respect of 12 cases, reply would follow.

It is evident from Audit's independent investigation and Ministry's reply that there were no serious efforts by the Department to cross verify Central Excise data with State Commercial Tax databases to widen the tax net.

2.4.11 Other issues

Audit also observed 190 cases of non-compliance by the assessees, involving non/short payment of duty, interest and incorrect availing of CENVAT credit etc., with a revenue implication of ₹ 7.68 crore.

A few illustrative cases are given below:

2.4.11.1 Incorrect adoption of assessable value leading to excess credit passed on

As per rule 8 of the Central Excise Valuation Rules, 2000, as amended, where whole or part of the excisable goods are not sold by the assessee but are used for consumption by him or on his behalf in the production or manufacture of other articles, the value of such goods that are consumed shall be one hundred and ten per cent of the cost of production or manufacture of such goods.

Audit observed from the records of M/s Motherson Sumi Electric Wires (MSEW) falling under Chennai IV Commissionerate and M/s Ajay Poly Private Limited under Noida II Commissionerate that these assessees stock transferred semi-finished goods to their sister units during 2013-14 to 2015-16 by adopting a value which was found to be higher than 110 per cent of cost of production which was required to be adopted as per rule cited supra. The adoption of a value higher than 110 per cent value in violation of rules resulted in payment of duty in excess to the tune of ₹ 1.72 crore. This in turn led to passing on of excess CENVAT credit to their sister units, which is an unintended benefit and avoidable.

We pointed this out (February and March 2017), the Ministry in respect of M/s Motherson Sumi Electric Wires, Chennai and M/s Ajay Poly Private Limited, Noida stated (September 2017) that the audit objection is not accepted for the reason that due to fluctuation of cost of inputs, the assessee adopted notional value for payment of duty initially and after Cost Accounting Standards (CAS) 4 value was determined, the same was adopted. The notional value was marginally higher than CAS 4 value leading to excess payment of duty. It further stated that the assessee did not claim refund for excess duty paid and there was no unnecessary passing of excess credit to sister units.

The reply of the Ministry was not acceptable since CAS 4 valuation was required to be adopted for clearance to sister units. Audit noticed adoption of higher value for all the 3 years (2013-14 to 2015-16). There was scope for adoption of correct CAS 4 value by resorting to provisional assessment for payment of duty which was not done in these cases. Adoption of higher value than CAS 4 for clearance to sister units would have a bearing on the ultimate cost of the final product.

2.4.11.2 Non-inclusion of outward freight in assessable value of goods cleared under Freight on Road (FOR) contract

As per Section 4(3) (d) of the Central Excise Act, 1944, "transaction value" for the purpose of levy of duty means the price actually paid or payable for the goods when sold and includes any amount that the buyer is liable to pay to the assessee in connection with sale whether payable at the time of sale or at any other time, including the transport insurance charges etc.

The amended Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, further clarifies that if the factory is not the place of removal, the cost of transportation from the factory to the place of removal such as depot, consignment agent's premises etc. cannot be excluded for the purpose of determining the value of the excisable goods.

Audit noticed from the records of four assessees (Table 2.6) that they had contract/ agreement with their buyers to deliver the goods at the buyers' destination. Audit ascertained that the outward freight paid during 2013-14 to 2015-16 was on account of freight from factory gate to the buyers' premises, and thus the same needed to be included in the sale price and duty was leviable on such freight, in terms of the provisions cited above.

Table 2.6: Short payment due to non-inclusion of freight

(₹ in lakh)

S. No.	Commissionerate	Name of assessee	Amount of outward freight	Excise duty leviable
1	Noida I	M/s Integrated Caps Ltd.(Unit II)	633.19	78.53
2	Noida II	M/s East India Technologies Pvt. Ltd.	478.19	59.38
3	Noida II	M/s Ajay Poly Pvt. Ltd.	130.15	16.15
4	Noida II	M/s Uptodate Plastics & Packagings Pvt. Ltd.	17.78	2.21
Total			**1,259.31**	**156.27**

Non-inclusion of outward freight in assessable value of goods in the above four cases resulted in short levy of excise duty of ₹ 1.56 crore.

We pointed this out (February 2017) and the Ministry replied (September 2017) as follows:

- In respect of M/s Integrated Caps Ltd (Unit II), Show Cause Notice had been issued.
- In respect of M/s East India Technologies Private Ltd., M/s. Ajay Poly Private Ltd. and M/s. Uptodate Plastics & Packagings Private Ltd. under Noida II Commissionerate, it was stated that the goods were cleared by adopting transaction value which was inclusive of freight. Hence the value adopted for payment of duty was correct.

Reply of the Ministry was not acceptable since it was noticed that in the case of M/s East India Technologies Private Ltd., Noida II, the assessee had entered into contract with buyers and outward freight was a separate element of cost. Hence the same was includible in the assessable value. In respect of M/s Ajay Poly Private Ltd. and M/s Uptodate Plastics & Packagings Private Ltd., the outward freight was separately collected and therefore includible in the assessable value. Moreover, Department had issued SCN on the same issue in respect of M/s Integrated Caps Ltd (Unit II), Noida I Commissionerate, which confirms the Audit stand.

2.4.11.3 Irregular availing of CENVAT Credit on the basis of debit notes

Rule 9(2) of the CENVAT Credit Rules, 2004 provides that no CENVAT credit shall be taken unless all the particulars as prescribed under the Central Excise Rules, 2002 or the Service Tax Rules, 1994, as the case may be, are contained in the said document.

Audit noticed that M/s Balaji Multiflex Private Limited in Rajkot Commissionerate had cleared excisable goods to M/s Balaji Wafers Pvt. Ltd. during 2013-14 to 2015-16. Some damaged goods were returned by M/s Balaji Wafers Pvt. Ltd for which they issued debit notes to the assessee which did not contain the Excise duty details. M/s Balaji Multiflex Private Limited took credit of ₹ 36.38 lakh on the basis of these debit notes during 2014-15 which was in contravention to the rule cited above.

We pointed this out (November 2016) and the Ministry stated (September 2017) that a Show Cause Notice was issued covering the period from December 2011 to March 2016 for wrong availing of CENVAT credit and the amount of ₹ 36.38 lakh was recovered.

2.4.11.4 Non-reversal of CENVAT due to non-maintenance of separate account

Where a manufacturer or provider of output service avails CENVAT Credit in respect of common inputs or input services without maintaining separate account and manufactures such final products or provides such output service which are chargeable to tax as well as exempted goods/service, then, the manufacturer or provider of output service shall pay an amount as per the formula specified under Rule 6(3)(i) of the CENVAT Credit Rules, 2004.

Further, Rule 6 (3D) (c) of the CENVAT Credit Rules, 2004, stipulates that the value of exempted service in the case of trading, shall be the difference between the sale price and the cost of goods sold (determined as per the generally accepted accounting principles without including the expenses incurred towards their purchase) or ten per cent of the cost of goods sold, whichever is more.

Audit noticed that M/s Kavit Industries under Service Tax Noida Commissionerate engaged both in manufacturing and trading activities but neither maintained separate accounts nor paid 6 per cent amount as per the above cited provisions, which resulted in non-payment of ₹ 16.67 lakh.

We pointed this out (February 2017) and the Ministry stated (September 2017) that the assessee agreed to pay the proportionate credit. It further stated that on receipt of documents, draft Show Cause Notice would be issued.

In respect of remaining 182 cases, Ministry

- Admitted the objections in 175 cases. Out of this, in 133 cases, an amount of ₹ 2.96 crore was recovered along with interest. In remaining 42 cases, Show Cause Notice had been issued /action had been initiated
- Stated that in 7 cases, reply would follow.

2.5 Conclusion

Audit observed inadequacies in the compliance to rules and procedures by the Department in relation to levy, assessment and collection of Central Excise duty in the plastic sector. This is indicated by inadequate monitoring of returns and scrutiny of returns, deficiencies in Internal Audit and monitoring mechanism.

Chapter III

Levy and collection of Central Excise duty on Tobacco products

3.1 Introduction

Indian tobacco, introduced by the Portuguese in 17^{th} century, is appreciated worldwide for its rich, aromatic flavour and smoothness. India is the second largest tobacco producer in the world with an annual production of about 80 crore kilograms and cultivation area of about 4.3 lakh hectares. Of the total amount of tobacco produced in the country, around 48 per cent is consumed in the form of chewing tobacco, 38 per cent as beedis, and 14 per cent as cigarettes.

3.1.1 Why we chose this topic

Tobacco is the second highest revenue yielding commodity under Central Excise after petroleum products. Table 3.1 depicts growth of revenue from tobacco products as compared to total Central Excise revenue for the period 2013-14 to 2015-16.

Table 3.1: Share of revenue from Tobacco in total Central Excise revenue

(₹ in crore)

S.No.	Year	CE revenue	Revenue from Tobacco products	Tobacco products revenue as % of CE revenue
1	2013-14	1,69,455	16,050	9.47
2	2014-15	1,89,038	16,676	8.82
3	2015-16	2,87,149	21,463	7.47

Source: Figures furnished by the Ministry

Tobacco and manufactured tobacco substitutes are classifiable under chapter 24 of Central Excise Tariff Act 1985 and Manual of Departmental instructions on excisable manufactured products on cigarette. Tobacco products are classified into two types, (i) Smoking (cigarettes and beedis) and (ii) Non-smoking, commonly known as chewing tobacco. The duty on cigarettes is levied per thousand on varying lengths and on beedis per thousand including beedi cess.

So far as chewing tobacco, the duty is levied on 'deemed production' under Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008 and Chewing Tobacco and Unmanufactured Tobacco Packing Machines (Capacity Determination and Collection of Duty) Rules, 2010.

The rate of duty on cigarettes has been increased year on year in the Finance Acts, as Tobacco products are considered sin products and hazardous to health. The duty levied is also at the highest rates for this reason. The duty on chewing tobacco, levied on 'deemed production', is revised periodically through issuance of notifications by the Central Board of Excise and Customs. As far as beedis, the rate of duty is lower in comparison to cigarettes and chewing tobacco on the premise that the consumption is mainly among rural folks and its affordability has to be considered.

Tobacco sector is a large employer, employing nearly 3 crore people in tobacco farming and manufacturing sectors. It is estimated that beedi manufacturing alone provides employment to more than 44 lakh workers.

In view of assessment, levy and collection of duty on tobacco products under specific provisions of the Act/Rules/Notifications, and considering the high rate levied on them treating them as hazardous/sin products, the topic was selected for audit.

3.2 Audit objectives

The subject specific compliance audit sought to assess the adequacy of the rules, regulations, notifications, circulars/instructions/trade notices etc., issued from time to time and their compliance, including internal controls, in relation to levy, assessment and collection of excise duty relating to tobacco sector and monitoring thereof.

3.3 Scope and Audit coverage

Audit collected revenue data related to tobacco and tobacco substitutes for the period from 2013-14 to 2015-16 from Automation of Central Excise and Service Tax (ACES) data provided by the Board and sample units were selected from this data for the said period based on parameters including total revenue collection, number of cases of non/short payment of duty in the unit, use of CENVAT credit etc. Accordingly, Audit selected 28 Commissionerates out of a total of 119 Commissionerates dealing with Central Excise and 35 Divisions and 61 Ranges under these Commissionerates. Selected sample of Commissionerates[16] comprised of about 48 per cent, 51 per cent and 67 per cent of the total revenue from tobacco products during the years 2013-14, 2014-15 and 2015-16. Audit selected 264 assessees falling within the jurisdiction of these selected

[16] This comprised revenue from 25 Commissionerates as 3 Commissionerates Kanpur, Patna and Jalandhar did not provide the data.

Commissionerates based on parameters including detailed scrutiny due but not done/scrutiny done, internal audit due but not done/internal audit done, non/short payment of duty by the assessee etc. The period covered in this SSCA was 2013-14 (FY14) to 2015-16 (FY16).

3.4 Audit findings

3.4.1 Non/delayed filing of returns

Rule 12(1) of Central Excise Rules, 2002 stipulates that a monthly return (Form ER-1) is to be submitted by every assessee (other than SSI unit) indicating, inter alia, details of production and removal of goods by the 10^{th} of the next month following the month for which such return is due. Though no specific penalty is prescribed for non/late filing of returns, Rule 27 of said Rules prescribes a general penalty of up to a maximum of ₹ 5000 for violating any rule, which is applicable to non/delayed filing of return.

Details of ER-1 returns submitted by manufacturers of tobacco products obtained from 61 Ranges revealed that there were 3,838 cases of non-filing in 13 Ranges and 1,480 cases of late-filing of ER-1 returns in 30 Ranges. However, the Department levied penalty in only 579 cases (39.12 per cent) in 24 Ranges for an amount of ₹ 4.59 lakh for late filing of returns and ₹ 0.05 lakh in 16 cases for non-filing of returns. The Department had neither taken any action nor imposed any penalty in the 3,822 (99.58 per cent) cases of non-filing and 901 (60.88 per cent) cases of late-filing of returns. Five Ranges where more than 100 cases were pending for action during the period 2013-14 to 2015-16 are listed below:

Table 3.2: Non/delayed filing of returns pending for action

Sl. No.	Commissionerate	Division	Range	No. of cases of non/delayed filing of returns pending for action			
				2013-14	2014-15	2015-16	Total
1	Hyderabad-II	Kothur	Mahaboob Nagar -I	504	552	561	1617
2	Jabalpur	Jabalpur	Range I	353	360	321	1034
3	Jabalpur	Jabalpur	Range III	260	300	421	981
4	Bengaluru IV	Davangere	Chitradurga	172	139	154	465
5	Bolpur	Berhampore	Dhulian-I	31	79	50	160

Number of cases of non/delayed filing of returns in Ranges Mahaboob Nagar–I under Hyderabad-II Commissionerate and Range III under Jabalpur Commissionerate had an increasing trend during the three years.

Non-initiation of action on non/delayed filing of returns indicates slackness of monitoring mechanism which can also act as a deterrent for erring assessees.

When we pointed this out (October 2016 and December 2016), the Ministry stated (October 2017) as follows:

- In 2,577 cases, the Ministry admitted audit observations, out of these, in 285 cases late fee of ₹ 2.04 lakh was recovered, in 2,175 cases SCNs were/are being issued and in 117 cases action was being initiated.
- In 1,681 cases, it was stated that non-filers are tiny beedi manufacturing units located at remote places, and run by uneducated villagers who do not know the legal provisions. All efforts were made to reach them and to advise to cancel their registrations due to closure of beedi manufacturing activity. The Ministry added that there were no arrears pending against these assessees.
- In 465 cases, it was stated that all efforts were made to pursue the beedi units to sensitize about e-filing, and all the beedi units had started e-filing the returns.

3.4.2 *Preliminary Scrutiny of returns - pendency of Review and Correction (R&C) cases*

After the introduction of ACES, preliminary scrutiny of returns is being done by the system itself. The purpose of preliminary scrutiny of returns is to ensure completeness of information, timely submission of returns, payment of duty, arithmetical accuracy of amount computed and identification of non-filers/stop-filers. Where discrepancy is found by the ACES system, all such returns are marked for Review & Correction (R&C)[17]. The returns marked for R&C by ACES should be validated in consultation with the assessee and re-entered into the system. The preliminary scrutiny of all the returns is to be conducted within three months from the date of receipt of the returns.

Audit obtained data from the selected 61 Ranges in respect of preliminary scrutiny related to tobacco sector. Audit observed that out of 46,767 returns marked for R&C by ACES, the Department could correct only 36,696 (78.47 per cent) returns within the stipulated time of three months. Thus, 10,071 returns were pending for R&C. Six Ranges[18] did not provide data for the years

17 The process of resolving discrepancies in respect of marked returns is called R&C.

18 Ranges ITC under Pune-IV Commissionerate, Gondia-II under Nagpur-II Commissionerate, Tellichery under Calicut Commissionerate, Damoh-II under Bhopal Commissionerate, Jabalpur-I under Jabalpur Commissionerate and Udaipur-III under Udaipur Commissionerate

2013-14 to 2015-16. Thus, Audit was not able to comment on the performance of these Commissionerates. Ranges where maximum returns were pending for R&C are listed below:

Table 3.3: Preliminary scrutiny – High pendency of R & C Cases

Sl. No.	Commissionerate	Division	Range	No. of returns where R&C was pending			
				2013-14	2014-15	2015-16	Total
1	Tirunelveli	Tirunelveli	Palayamkottai	979	1,279	1,567	3,825
2	Tirunelveli	Tirunelveli	Tenkasi	1,232	1,207	1,234	3,673
3	Kolkata III	Kalyani	Range III	369	430	792	1,591
4	Chennai III	Vellore	Gudiyatham	0	0	408	408
5	Lucknow	Division I	Aishbagh	96	94	59	249
6	Sonepat	Kundli II	Kundli V	0	66	137	203

Pendency of R&C cases in Range Palayamkottai under Tirunelveli Commissionerate and Range III under Kolkata Commissionerate had an increasing trend during the three years.

When we pointed this out (between October 2016 and December 2016), the Ministry stated (October 2017) as follows:

- In 9,814 cases, the Ministry admitted the pendency of R&C. Out of these, in 7,498 cases the Range officers were instructed to clear the pendency expeditiously, in 1,591 cases the R&C were carried out, in 408 cases all returns marked for R&C had been done subsequently, in 249 cases the pendency has been brought down to 31 cases from 249 cases.
- In 257 cases under Sonepat Commissionerate, it was stated that the reply would follow.

The delay in carrying out R&C is not only indicative of poor monitoring of scrutiny of returns but may also lead to possible revenue escapement as pendency of R&C may result in time barring of the cases and consequent loss of revenue.

3.4.3 Inadequacy in selection of returns for detailed scrutiny

Board Circular No. 818/15/2005-CX dated 15 July 2005 had laid down detailed guidelines for manner of scrutiny of ER-1 and ER-3 returns.

The purpose of detailed scrutiny is to establish the validity of information furnished in the tax return and to ensure the correctness of valuation, availing of CENVAT credit, classification and effective rate of tax applied after taking into consideration the admissibility of exemption notification availed etc. Unlike preliminary scrutiny, detailed scrutiny is to cover only certain selected returns, identified on the basis of risk parameters developed from the information furnished in the returns submitted by the taxpayers.

Para 4B read with para 4.1A of Manual for the Scrutiny of Central Excise Returns, 2008 provides for selection of up to five per cent of total returns received for a detailed scrutiny of assessment based on risk parameters. CBEC issued revised guidelines for scrutiny of Central Excise returns in Circular No.1004/11/2015-CX dated 21 July 2015 prescribing a range of 2 to 5 per cent of total returns filed for conducting detailed scrutiny.

Audit obtained data in respect of returns received and returns subjected to detailed scrutiny from the selected 61 Ranges. Out of 61 Ranges, 8 Ranges deal only with cigarette manufacturers which are mandatory units for Internal Audit and hence not subject to detailed scrutiny. Other 14 Ranges provided incorrect/incomplete data for the three years. Out of the remaining 39 Ranges which provided data for the three years, it was observed that no returns were selected for detailed scrutiny in 34, 33 and 23 Ranges during 2013-14, 2014-15 and 2015-16 respectively despite the fact that there were a number of returns received as detailed below.

Table 3.4: Returns filed in the Ranges for the years 2013-14 to 2015-16

Number of returns ranged between	Number of ranges		
	2013-14	2014-15	2015-16
Up to 500	15	17	13
501 - 1000	12	09	07
Above 1000	07	07	03
Total	**34**	**33**	**23**

Ranges where number of returns received were 1000 and above, where no returns were selected in all the three years selected in audit for detailed scrutiny as detailed below:

Table 3.5: Ranges with high returns and no returns selected for detailed scrutiny

Sl. No.	Commissionerate	Division	Range	No. of returns received			
				2013-14	2014-15	2015-16	Total
1	Kolkata-III	Kalyani	Range-V	2,160	2,268	2,352	6,780
2	Kolkata-III	Kalyani	Range-III	1,640	1,606	1,651	4,897
3	Bolpur	Berhampore	Dhulian-I	1,182	1,313	1,498	3,993

It was also observed that out of 76,138 returns received in these 39 Ranges, only 308 (0.40 per cent) returns were selected for detailed scrutiny which was much less than the required 2 to 5 per cent. Further, out of these 308 returns, 191 pertained to tobacco sector and Ranges conducted scrutiny of 178 returns. From these 178 returns, the Department was able to detect lapses only in 2 cases with revenue implication of ₹ 1.86 lakh.

Hence, there was shortfall in the selection of detailed scrutiny. Low range of detection of lapses during detailed scrutiny suggests deficiency in selection criteria namely CENVAT utilisation, percentage of duty paid through PLA over last year.

When we pointed this out (between October 2016 and December 2016), the Ministry stated (October 2017) in respect of incorrect/incomplete (14 Ranges) data for the years 2013-14 to 2015-16 as follows:

- In one Range, the Ministry regretted for furnishing incorrect data.
- In ten Ranges, it was stated that the units are mandatorily covered under the risk parameters of Internal Audit/ detailed scrutiny have been done/action initiated.
- In two Ranges, it was stated the Reply would follow.
- In one Range, it was stated that returns selected for detailed scrutiny were 2 to 5 per cent.

The reply is not tenable, the Ministry arrived at the said percentage by adding the number of returns of different ranges under different Commissionerates. However, the percentage has to be ensured for selection of returns within the same Range and Commissionerate.

The Ministry stated (October 2017) in respect of shortfall in selection of detailed scrutiny (39 Ranges) for the years 2013-14 to 2015-16 as follows:

- In fifteen Ranges, it was stated that the units are being audited by Internal Audit regularly. Further, in respect of tobacco units none of the units are falling under the prescribed risk parameters for selection of detailed scrutiny.

- In thirteen Ranges, it was stated that action for detailed scrutiny of returns had been taken/initiated.
- In seven Ranges, it was stated that reply would follow.
- In four Ranges, as seen from the reply it was noticed that the Ministry furnished reply pertaining to excess production of pouches in respect of M/s New Kamath Tobacco Limited i.e. Para 3.6.3 of this report which is not relevant to the shortfall in selection of detailed scrutiny.

Detailed scrutiny being the first line of compliance verification, shortfall in selection of returns for detailed scrutiny during the respective years by the above Commissionerates indicates weakness in compliance verification mechanism.

3.5 Internal Audit

Internal audit is an additional mechanism available with the Department for ensuring correctness of assessment of duty paid and records maintained by the assessees. This is ensured through a scientific selection of assessees based on risk analysis by emphasising on pre-preparation; by scrutinising of business records against statutory records and by monitoring of audit points. As per Central Excise Audit Manual 2008, the selection of units was based on the duty payment norms and units paying more than ₹ 3 crore were to be audited annually mandatorily. Consequent upon the formation of separate Audit Commissionerate (October 2014), the norms have been revised (27 February 2015), prescribing that Audit Commissionerate would release an Annual Plan by 31st May of every year indicating the name of assessees that are proposed to be audited during the course of the year.

3.5.1 Non-conducting of Internal Audit resulted in non-detection of lapses

Audit examined the records of 22 assessees which were due for audit as per the extant norms, but not covered by internal audit of the Department. We noticed lapses in 11 cases pertaining to 7 assessees involving misclassification of goods, non/short payment of Service Tax, irregular availing of CENVAT credit etc. amounting to ₹ 9.40 lakh. These cases could have been detected if these units were subjected to audit. Two illustrative cases are given below:

3.5.1.1 Non-payment of Service Tax under Goods Transport Agency (GTA)

Rule 2(1)(d)(i)(B) of the Service Tax Rules, 1994 stipulates that the recipient of Goods Transport Agency (GTA) service is liable to pay service tax, if the recipient of services is a factory, a company, a corporation, a co-operative society, a partnership firm etc.

Audit observed that M/s Vani Navashakthi Beedi Company, Kamareddy in Hyderabad I Commissionerate incurred an expenditure of ₹ 51.29 lakh towards transportation charges during 2015-16. The assessee had not discharged the Service Tax liability on the expenditure incurred. This resulted in non-payment of Service Tax of ₹ 2.23 lakh which was required to be recovered from the assessee along with interest.

We pointed this out (December 2016), the Ministry replied (March 2017) that the assessee had paid ₹ 4.58 lakh along with interest of ₹ 0.49 lakh for the period from April 2015 to November 2016.

3.5.1.2 Irregular availing of CENVAT credit

As per Rule 2(l) of CCR 2004, "input service" *inter alia* includes any service, used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products.

Audit observed that M/s Habeebur Rahman & Sons under Chennai-III Commissionerate availed CENTVAT credit of ₹ 0.51 lakh as input service on service tax paid on 'Renting of Immovable Property' service during August 2014 to March 2015. It was seen that the rent amounting to ₹ 4.20 lakh was paid in respect of godown for stocking 'Tea' being traded by the assessee. As the Service Tax paid in respect of the service of 'Renting of Immovable Property' was not related to the manufacture of 'beedis', the availment of CENVAT credit of ₹ 0.51 lakh was not in order and required to be reversed along with appropriate interest.

We pointed this out (November 2016), the Ministry replied (October 2017) that the assessee reversed the CENVAT credit along with interest of ₹ 0.19 lakh.

In remaining nine cases, reply of the Ministry was as follows:

- In eight cases, the Ministry admitted the observations. Out of this, in three cases an amount of ₹ 1.87 lakh was recovered, in two cases, action for recovery of ₹ 5.12 lakh was being initiated, in two cases, filing of quarterly return in Appendix G of Cigarette Excise Manual was being examined and in one case, it was stated that the matter has been finalised.
- In one case, it was stated that the Principal Bench of Honourable CESTAT, Delhi in the case of CCE, Ludhiana vs. M/s Naghia Enterprises (P) Limited 2015 (317) ELT 475 held that there is no provision under

Central Excise Rules 2002 of maintaining prescribed records as per Cigarette Excise Manual.

Reply is not tenable as the Cigarette Excise Manual is specifically prescribed for the assessees who are into the business of cigarette manufacturing. The entire manufacturing / production cycle is captured in the Appendices A to G of the said Manual which is vital and mandatory information for levy and collection of duty which is being maintained by all other cigarette assessees.

3.5.2 Lapses remained undetected despite conducting of Internal Audit

Audit examined the records of 28 assessees which were covered by Internal Audit of the Department and noticed lapses in 5 cases of 5 assessees involving amount of ₹ 13.67 lakh. Thus, despite internal audit being conducted, these lapses were not detected. Two illustrative cases are given below:

3.5.2.1 Non-detection of non-payment of Service Tax

Truck hire charges were classifiable and taxable under the category of 'Supply of Tangible Goods service' as defined under section 65(105)(zzzzj) of Finance Act, 1994. Even after introduction of negative list with effect from 01 July 2012, the service was neither granted exemption by including it in the negative list of Service Tax nor by incorporating it in the Service Tax notification No. 26/2012-ST.

Scrutiny of records of M/s Borsad Tobacco Co Pvt. Ltd. under Anand Commissionerate revealed that the assessee had received ₹ 37.06 lakh as "Truck hire charges" during the period 2013-14. However, the assessee had not paid Service Tax on the same. The Service Tax payable on the income received was worked out as ₹ 4.58 lakh, which was recoverable along with interest of ₹ 2.80 lakh under section 75 of the Finance Act, 1994.

When we pointed this out (December 2016), the Ministry stated (October 2017) that SCN has been issued (April 2017) demanding Service Tax of ₹ 12.19 lakh along with interest and penalty for the period from 2011-12 to 2016-17.

3.5.2.2 Non-detection of short payment of duty

Audit observed from the records of M/s Maruti Tobacco Products Pvt. Ltd. (Unit-III) under Anand Commissionerate that during the period 2014-15 and 2015-16, the assessee while paying duty had adopted the duty rate of 'chewing tobacco' (₹ 24.15 lakh per month) instead of 'scented tobacco' (₹ 27.05 lakh per month) actually manufactured by the assessee which resulted in short payment of duty amounting to ₹ 2.62 lakh.

When we pointed this out (December 2016), the Ministry stated (October 2017) that duty of ₹ 2.62 lakh and interest of ₹ 0.79 lakh has been recovered.

In remaining three cases, the Ministry replied (October 2017) as follows:

- In two cases, Ministry admitted the observations. Out of this, in one case, demand of ₹ 0.01 lakh had been recovered, and in one case, SCN was issued.
- In one case, it was stated that the difference in sales and manufacturing figures noticed in audit has been reconciled and certified by the Chartered Accountant.

Though the internal audit was carried out by the Department, the lapse remained undetected until pointed out by the audit.

3.6 Other deficiencies noticed in the audit of departmental units

Audit observed non-compliance by the Department in respect of adjudication of Show Cause Notices (SCNs), inspection of subordinate departmental units and other deficiencies as detailed below:

3.6.1 Non-adjudication/Delay in adjudication of SCNs

Sub-section 10 of section 11A of Central Excise Act, SCN is to be finalised within six months or within one year from date of notice as the case may be. Audit observed 3 cases of non-adjudication and 48 cases of delayed adjudication of SCNs as detailed below:

3.6.1.1 Audit observed that M/s AVL Fragrance Private Limited in Kanpur Commissionerate filed application for surrender of its registration certificate in August 2015 but no action was taken by the Department. On ascertaining the reason of not taking any action on surrender application, it was noticed that an SCN dated 19 May 2015 involving duty of ₹ 23.23 lakh was pending for adjudication for more than 6 months. Thus, the Department failed to adjudicate the SCN in time and to take action on surrender application.

We pointed this out (February 2017), the Ministry stated (October 2017) that the SCN has been dropped by the adjudicating authority. The application for surrender of registration is under process subject to verification of records.

The reply is not tenable, as the Department failed to adjudicate the SCN within the stipulated time.

3.6.1.2 Audit observed that in respect of M/s Ashoka Flavours Private Limited in Kanpur Commissionerate, three SCNs involving duty of ₹ 56.36 crore were pending adjudication for more than a year. It was also noticed that Assistant Commissioner had sealed 25 machines lying in the premises, out of which 20 machines were sold out by the assessee in September 2014 with the permission of the Department pending adjudication of SCNs. Meanwhile, the assessees applied for surrender of registration in December 2014. Despite pending adjudication of SCN, the Department allowed the assessee to sell the idle machines which made the possibility of recovery of arrears remote.

When we pointed this out (February 2017), the Ministry stated (October 2017) that all the three SCNs have been transferred to Call Book as these are pending in High Court. Further, it was stated that Pan Masala Packing Machine Rules do not restrain sale of machines where confirmed demands are pending for adjudication.

The reply is not tenable, as Rule 18 and Rule 19 of Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008 and Chewing Tobacco and Unmanufactured Tobacco Packing Machines (Capacity Determination and Collection of Duty) Rules, 2010 all provisions of the Act and Central Excise Rules, 2002 shall apply *mutatis mutandis* i.e. provisions relating to adjudication of SCN shall apply in this case.

3.6.1.3 Audit observed that in respect of M/s K.P. Pan Masala Private Limited in Ghaziabad Commissionerate, the Board vide its order dated 4 April 2012 raised a demand of ₹ 10.37 crore with instructions that the Commissioner (Special Adjudication) Central Excise, Delhi would act as an adjudicating authority.

Despite, pending adjudication, the Assistant Commissioner, Division-I Ghaziabad ordered for removal of 20 pouch packing machines and 65 single track pouch packing machines vide his orders dated 22 July 2013 and 10 January 2014. Assessee closed his business and surrendered the registration certificate in February 2014. It was also noticed (October 2016) that a new registration was issued to M/s Kay Pan Fragrance Private Limited (AAECK8045QEM003: U-III) on 23 June 2014 for manufacturing of chewing tobacco and pan masala at the same premises. Details of disposal of SCN were not even shown in the Monthly Technical Report.

Pending adjudication of SCN, the Department allowed the assessee to remove the machines, and a new registration was issued to another assessee in the same premises. Further, the assessee closed his business operations in February 2014. Thus, recovery of arrears, if any, became remote.

When we pointed this out in October 2016, the Ministry stated (October 2017) that in Central Excise law there is no provision to stop any assessee from selling machines or any other goods without any unstayed confirmed demands pending against them. It was stated that the adjudicating authority is Commissioner (Special Adjudication) Central Excise, Delhi; the SCN may not be reflected in MTR. Further, it was also stated that there is no bar in granting of registration to another unit where no confirmed demand is pending against assessee at the same premises.

The reply is not tenable, as Rule 18 and Rule 19 of Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008 and Chewing Tobacco and Unmanufactured Tobacco Packing Machines (Capacity Determination and Collection of Duty) Rules, 2010 all provisions of the Act and Central Excise Rules, 2002 shall apply *mutatis mutandis* i.e. provisions relating to adjudication of SCN shall apply in this case. Further, allowing the assessee to remove machines pending adjudication of SCNs was in contradiction to the Ministry's reply to para 3.6.1.1 wherein the Ministry stated that the application for surrender of registration was kept pending as an SCN was pending adjudication against the assessee. Moreover, the Department issued registration to a new registrant in the same premises.

3.6.1.4 Audit observed from the records of adjudication register for the period 2013-14 and 2014-15 at Purnea Range under Patna Commissionerate that 48 cases were not adjudicated within the stipulated period of six months. The period of delay ranged from 3 days to 255 days.

When we pointed this out (December 2016), the Ministry replied (October 2017) that the concerned Division Office had been instructed to keep a vigil on SCNs pending for adjudication and issue adjudication orders within stipulated time. Further, it was also stated that the delay in adjudication occurred due to work overload.

Fact remains that SCNs were not adjudicated within the stipulated time.

3.6.2 Non-conduct of inspection of cigarette units by Divisional officer

As per paragraph 83 of Manual of Departmental Instructions on Excisable Manufactured Products on Cigarette - (Cigarette Manual), the Divisional officer must inspect each cigarette factory in his charge not less than once in each quarter on a working day. He must specially examine between theoretical and actual output regularly with adequate care and necessary action to be taken wherever necessary. He must also satisfy himself that Excise control in the factory is fully adequate for the security of the revenue.

Audit observed that in Secunderabad Division under Hyderabad II Commissionerate, no inspection reports of visits in respect M/s VST Industries, Azamabad, Hyderabad and M/s Hyderabad Deccan Cigarette Pvt. Ltd., Musheerabad, Hyderabad were available for the period 2013-14 to 2015-16.

When we pointed this out (December 2016), the Ministry stated (October 2017) that inspection for quarter ending March 2017 was conducted (April 2017) by the Divisional Officer and stated that in future the inspection reports would be issued biennially.

The reply is not tenable, as the inspections need to be carried out not less than once in each quarter as per the Manual of Departmental Instructions on Excisable Manufactured Products - Cigarettes.

3.6.3 Revenue loss of ₹ 309.18 crore due to deficiency in procedure for fixation of 'deemed production'

As per Rule 5 of Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008 and Rule 5 of Chewing Tobacco and Unmanufactured Tobacco Packing Machines (Capacity Determination and Collection of Duty) Rules, 2010, the 'Quantity deemed to be produced' – means the quantity of notified goods, having retail sale prices as specified in the Rules *ibid*.

Rule 7 of Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008 and Rule 7 of Chewing Tobacco and Unmanufactured Tobacco Packing Machines (Capacity Determination and Collection of Duty) Rules, 2010 specify that the duty payable for a particular month shall be calculated by application of the appropriate rate of duty specified in the Notification No. 42/2008-CE, dated 1 July 2008 and Notification No. 16/2010-CE, dated 27 February 2010 respectively to the number of operating packing machines in the factory during the month.

Further, Rule 6(2), Rule 8 and Rule 13 of the said rules have enabling provisions for manufacturers to file fresh declaration in Form-1 to make any subsequent changes with respect to any of the parameters declared in Form-1 under Rule 6(1), alteration in number of operating packing machines (addition or installation or removal or uninstallation) under Rule 8, and in a case where manufacturer does not intend to operate a packing machine under Rule 13(1).

As per Rule 12 of the Central Excise Rules 2002, every person liable to pay Central Excise Duty has to submit monthly (ER-1) Return by 10th day of the following month to which it relates. The return includes quantity manufactured and quantity cleared.

From the sample check of selected assessees, Audit observed 10 cases where the assessees manufactured chewing tobacco and pan masala much more than the capacity of production, as reflected in their ER-1 returns, thereby, paying excise duty on much less quantity of the production based on 'deemed production'[19] which resulted in non-payment of duty of ₹ 309.18 crore. A few illustrative cases are given below:

3.6.3.1 Audit observed that M/s Fasttrack Packers Pvt Ltd under Nasik-II Commissionerate actually manufactured 222 crore pouches as compared to 52 crore pouches of 'deemed production' taken into account for payment of excise duty during the period 2012-13 to 2014-15. Thus, the actual production was more than 325 per cent of the 'deemed production' on which duty was paid. This resulted in excess production of 170 crore pouches and possible short payment of duty of ₹ 215.08 crore

3.6.3.2 Audit observed that M/s Kay Flavours Pvt. Ltd, Unit-I under Lucknow Commissionerate actually manufactured 139 crore pouches as compared to 104 crore pouches of 'deemed production' taken into account for payment of excise duty during the years 2013-14 and 2014-15. This resulted in excess production of 35 crore pouches and possible short payment of duty of ₹ 12.28 crore.

When we pointed this out (between October 2016 and December 2016), the Ministry stated (October 2017) as follows:

As per Rule 4, Rule 5 and Rule 6(3) *ibid*, duty is levied on the basis of 'deemed production' determined by the Department and not on actual production.

Further, Board has clarified vide its Circular No. 980/04/2014-CX dated 24 January 2014 that the duty payable may be determined based on 'deemed production' with respect to the number of operating packing machines in the factory during the month and the Retail Sale Price printed on the pouches and not on the basis of actual production by a unit. Thus, it is clear that the Department and assessees are bound by the 'deemed production' determined and not on the actual production. In view of these provisions, there is no revenue loss as contended by Audit, as duty has been levied and collected correctly as per the provisions of the Act, and under the cover of rules/notifications made thereunder.

The reply of the Ministry is untenable. The audit findings point to serious problems related to the rules regarding determination of 'deemed production' and the failure of departmental officers in carrying out due diligence to determine the same. The Ministry continues to defend the rules and its execution instead of taking note of the audit findings indicating lacunae leading to loss of revenue to the Government. The very occurrence of the incidents of abnormal excess production over the 'deemed production', to the extent of 325 per cent, of installed capacity of machines is

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[19] Form-1 – Declaration to be filed by the manufacturer

indicative of failure on part of the divisional officer to realistically fix 'deemed production', leading to loss of revenue. Further, as per the latest position, in the case of M/s Fasttrack Packers Pvt. Ltd. under Nasik-II Commissionerate continued to manufacture 135.09 crore of pouches as compared to 19.97 crore of pouches of 'deemed production' for the year 2015-16 which was in excess of 'deemed production' by 115.13 crore (576.51 per cent) which resulted in a possible short payment of duty of ₹ 306.69 crore. Even after abnormal excess production of pouches over and above the 'deemed production', the Department failed to take cognizance of the same in reviewing and re-fixing the deemed capacity. The higher authorities also failed to ensure effective check.

Had there been a mechanism under the rules for levy of duty, based on 'deemed production' or actual production as per ER-1 whichever is higher, the interests of revenue from duty on production of chewing tobacco and pan masala could have been duly protected. In the absence of such an enabling provision under the rules, the role of divisional officer in realistic determination 'of 'deemed production' assumes great significance for ensuring revenue to Government'.

3.7 Other issues

Audit selected 173 number of assessee records from the selected units that were other than the ones due/selected by the Department for internal audit/detailed scrutiny. These assessees who had not paid/short paid the duty during any of the three years were selected from the data furnished by the Board and based certain risk parameters like revenue, CENVAT etc.

Audit observed 40 cases of non-compliance by the assessees with a revenue implication of ₹ 97.72 lakh involving misclassification of goods, non/short payment of duty, irregular availing of CENVAT credit and interest etc. A few illustrative cases are given below:

3.7.1 Excess/irregular availing of CENVAT credit

Rule 3 of CENVAT Credit Rules, 2004 provides that a manufacturer/service provider shall be allowed to take CENVAT credit of duties specified therein paid on inputs, capital goods and input service received for use in or in relation to manufacturer of final products or provision of output service, on the basis of documents specified in rule 9 *ibid*.

Audit observed 8 cases of lapses of excess/irregular availment of CENVAT credit amounting to ₹ 67.82 lakh. One instance, involving three cases of one assessee is illustrated below:

3.7.1.1 M/s Miraj Products Pvt. Ltd (Unit-III) under Udaipur Commissionerate availed CENVAT credit of service tax of ₹ 57.65 lakh paid on the consultancy services provided in connection with brand "Miraj" during the year 2015-16 to M/s Miraj Products Pvt. Ltd. group consisting of three units. The assessee was entitled to avail CENVAT credit of ₹ 19.22 lakh pertaining to it, instead of ₹ 57.65 lakh involving all three units of the group. This resulted in excess availing of CENVAT credit of ₹ 38.43 lakh pertaining to the other two units.

When we pointed this out (October 2016), the Ministry stated (October 2017) that Show Cause Notice for ₹ 49.00 lakh had been issued (May 2017).

3.7.1.2 Non-payment of interest in provisional assessment

Rule 8 (i) of Central Excise Rules, 2002 stipulates that the duty shall be paid by the 6th day or 5th day of the following month as the case may be. If the assessee fails to pay duty by the due date, he shall be liable to pay the outstanding amount along with interest under section 11AA of the Act. Provisional assessment is dealt with under Rule 7 of Central Excise Rules 2002. Further, Rule 8 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 states that where the excisable goods are not sold by the assessee but are used for consumption by him or on his behalf in the production or manufacture of other articles, the value shall be 110 per cent of the cost of production or manufacture of such goods.

Audit noticed that M/s Miraj Products Private Limited (Unit-II), Nathdwara under Udaipur Commissionerate requested the jurisdictional Assistant Commissioner of Central Excise on 1 April 2014 for provisional assessment of loose chewing tobacco cleared to its sister unit. The Assistant Commissioner vide order dated 6 May 2014 allowed the assessee to clear the excisable goods at the rate of ₹ 30 per kg on provisional basis subject to furnishing of bond with security. The assessee cleared goods at the rate of ₹ 27 per kg instead of ₹ 30 per kg to its own unit during the year 2014-15. Clearing of the goods at a rate lower by ₹ 3 per kg resulted in short payment of duty of ₹ 121.84 lakh. The assessee deposited the short duty ₹ 121.84 lakh on 18 December 2015. The final assessment order was issued by Assistant Commissioner on 22 December 2015 wherein the rate decided was ₹ 30 per kg. The assessee deposited differential duty on 18 December 2015. However, the interest on differential duty of ₹ 24.45 lakh was not paid by the assessee which was yet to be recovered.

When we pointed out this out (January 2017), the Ministry stated (October 2017) that Show Cause Notice for recovery of interest on differential duty of ₹ 24.45 lakh was under process of issuance.

In the remaining 36 cases the Ministry stated (October 2017) as follows:

- In 24 cases, the Ministry admitted the audit observations. Out of these, in seven cases reported recovery of ₹2.53 lakh, and in 17 cases action has been taken/initiated.
- In eight cases, as seen from the replies furnished by the Ministry it was noticed that it referred to payment of duty and misclassification of goods etc., which are not relevant to the audit observations pointed out.
- In three cases, it was stated that the reply would follow.
- In one case, it was stated that the assessee availed 'input service credit' on services used in construction of 'Experience Centre' which is related to manufacturing activity. Reliance is placed on CESTAT Bangalore order in the case of CCE Bangalore vs. M/s Bharat Fritz Werner Limited. Further, this issue raised by Internal Audit which was dropped by adjudicating authority, and the CENVAT credit was allowed.

The reply is not tenable, as the 'Experience Centre' was not completed and abandoned during implementation. Therefore, the input service credit was not entitled to be availed as the said project was abandoned and not utilised in or in relation to the manufacturing activity.

3.8 Conclusion

Audit observed inadequacies in compliance to rules and procedures by the Department as indicated by inadequate monitoring of returns, shortfall in detailed scrutiny and inadequacy in criteria of selection of returns for detailed scrutiny, deficiency in Internal Audit and monitoring mechanism.

Lacunae in the rules related to levy of duty on pan masala and chewing tobacco products and implementation thereof led to substantial loss of revenue. Inadequacies in compliance to the Act/Rules/Notifications relating to other tobacco products as indicated by lack of effective mechanism to identify and ensure filing of returns by beedi units which operate mostly in the informal sector; poor enforcement of maintenance of prescribed records and non-conducting of quarterly inspection of cigarette units by the Department also led to loss of revenue.

Chapter IV

Non-compliance with rules and regulations

4.1 Introduction

Section 16 of CAG's (DPC) Act, 1971 deals with CAG's duty in relation to Audit of Receipts and requires CAG to audit receipts payable into the Consolidated Fund of India and to satisfy that the rules and procedures are designed to secure an effective check on the assessment, collection and proper allocation of revenue and are being duly observed. To carry out our mandate as per the provisions of CAG's DPC Act, as part of our audit of field formations of CBEC, we verify records of assessees, which form the basis for tax calculation, to examine the extent of effectiveness of the systems in place in ensuring that assessees comply with extant rules and procedures in this era of self-assessment. The observations on specific failure of Department in carrying out their scrutiny, internal audit, tax base broadening etc are reported in a separate chapter on "Effectiveness of Internal Controls" and the observations on non-compliance by assessees in cases not scrutinised or audited by the Department are reported separately under the title "Non-compliance with rules and regulations.

We have been pointing out irregularities relating to (i) Payment of Central Excise duty (ii) Availment of CENVAT credit and (iii) other issues every year and it has been noticed that these irregularities are persistent as similar nature of observations are reported by audit every year as detailed below:

Table: 4.1

(₹ in crore)

Nature of Observation	2013-14		2014-15		2015-16	
	No.	Amount	No.	Amount	No.	Amount
Non-payment of Central Excise duty	8	3.71	6	21.62	4	1.55
Short payment of Central Excise duty	15	21.85	3	1.73	9	18.04
CENVAT credit	30	29.45	14	16.51	17	17.61
Other issues	4	11.40	2	0.69	6	14.02
Total	**57**	**66.41**	**25**	**40.55**	**36**	**51.22**

The Ministry takes rectificatory action only in individual cases pointed out by audit by recovering the amount from that individual assessee or by issuing demand notice for the same. But no action is taken to strengthen systems in place to improve the level of compliance by assessees. This is evident from the fact that we again noticed 44 cases of non/short payment of Central Excise duty/ interest and irregular availing and utilisation of CENVAT credit having a total revenue implication of ₹ 45.40 crore. The Ministry needs to ensure that through use of technology and integration of databases, a system of tax levy and collection that would make it difficult for assessees to escape paying duties due.

Out of the 44 cases included in the current report, 31 cases which have been accepted by the Department and recoveries made/ recovery proceedings initiated are mentioned in Appendix-II and 13 cases are discussed in this chapter under the following three major headings:

- Non/Short payment of Central Excise duty
- Incorrect Availing/ Utilisation of CENVAT Credit
- Other issues

4.2 Non-payment/short payment of Central Excise duty

Audit noticed 15 cases where duty was not paid/short paid. Ministry/Department admitted observation in all 15 cases and initiated/taken corrective action. 6 cases are illustrated below. Remaining 9 cases are detailed in Appendix II.

4.2.1 Non-payment of duty on goods cleared to warehouse

As per Rule 20 of Central Excise Rules, 2002 governing warehousing provisions, excisable goods can be removed from the factory of production to a warehouse, or from one warehouse to another warehouse without payment of duty. Further, if the goods dispatched for warehousing are not received in the warehouse, the responsibility for payment of duty shall be upon the consignor. Further, para 4 of Chapter 10 of CBEC's Excise Manual of Supplementary Instruction 2005 stipulates when assessee clears goods to various warehouses without payment of duty under ARE-3 and re-warehousing certificate is not produced within 90 days, he is liable to pay duty on that goods.

M/s Sintex Industries Ltd. (Plastic Division) in Ahmedabad-III Commissionerate had cleared goods to various warehouses without payment of duty, under ARE-3 form. On scrutiny of the clearance and re-warehousing received, it was found that in the financial year 2015-16 re-warehousing certificate in respect of some goods cleared under ARE-3 had not been received by the assessee even after lapse of more than 90 days from the date of clearances. Hence, the assessee was liable to pay duty for such clearance. The total value of clearance for which re-warehousing certificates were not received worked out to ₹ 3.34 crore involving total duty amount ₹ 41.77 lakh which was required to be recovered alongwith applicable interest.

When we pointed this out (May 2016), the Department intimated (December 2016) that the assessee had paid ₹ 41.77 lakh alongwith interest of ₹ 3.89 lakh.

4.2.2 Non-levy of Central Excise duty and Clean Energy Cess on Coal found short

Rule 4(1) of the Central Excise Rules, 2002 stipulates that no excisable goods on which any duty is leviable shall be removed without payment of duty. As per rule 10(1) of said rules every assessee shall maintain proper records on a daily basis in a legible manner indicating the particulars regarding description of goods produced or manufactured, opening balance, quantity produced or manufactured etc. Further, rule 21(1) of above rules allows remission of duty on goods that have been lost or destroyed by natural causes or by unavoidable accident or are claimed by the manufacturer as unfit for consumption or for marketing at any time before removal. As per rule 4 of Clean Energy Cess Rules, 2010 every producer shall pay Clean Energy Cess (CEC) on the removal of the specified goods in the manner provided in Rule 6(1) of Clean energy Cess Rules 2010.

As per para No. 3 of the CBEC circular dated 24 June 2010, cess would apply to the gross quantity of raw coal raised and dispatched from the coal mine without any deduction from this quantity for loss if any on account of washing of coal or its conversion into any other product/ form prior to its dispatch from the mines. Clean Energy Cess at the rate of ₹ 200 per M.T is leviable on oal produced.

M/s Mahanadi Coalfields Ltd (MCL), Orient Area, Brajarajnagar under Rourkela Commissionerate, producers of Coal falling under Chapter 27 of Central Excise Tariff Act 1985, had disclosed closing balance of coal as 90367.86 MT in his books of accounts at the end of financial year 2014-15. The assessee also disclosed in ER-1 return for the month of March 2015 that the closing balance of coal at the end of financial year 2014-15 was 91,814 MT. However, on physical verification by coal inventory team of Coal India Ltd (CIL) it was found that the actual physical balance of coal was 47,296.22 MT only. Thus, there was a shortage of coal to the extent of 44,517.78 MT valuing ₹ 7.20 crore. Thus, actual physical stock was neither reflected in ER-1 return nor the assessee applied for remission of duty on such shortage under rule 22(1) of said Rules. This resulted in non-levy of duty of ₹ 43.20 lakh and clean energy cess of ₹ 89.04 lakh on coal found short and the same was required to be recovered from the assessee along with interest.

When we pointed this out (March 2016), the Ministry admitted the objection (September 2017) and stated that SCN was being issued for Central Excise duty of ₹ 43.20 lakh and clean energy cess of ₹ 89.04 lakh for the period of 2014-15.

4.2.3 Short levy of duty on goods cleared to sister unit

Rule 8 read with proviso to rule 9 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 envisages that where excisable goods are not sold by the assessee but are consumed by it or by a related person of the assessee in the manufacture of other articles, the assessable value of such goods shall be one hundred and ten per cent of the cost of production or manufacture of such goods. Further, as per provisions under Section 11AA of Central Excise Act, 1944 interest at applicable rate is leviable for non-payment/ short payment of duty.

M/s Steel Authority of India Limited – IISCO Steel Plant, Burnpur under Bolpur Commissionerate, cleared Blast Furnace (BF) Coke exclusively to its different sister units located at Bokaro, Bhilai, Durgapur etc. during 2013-14, for use in further manufacture. In some instances the assessable value at which the BF Coke was cleared was less than 110 per cent of cost of production, as provided by the assessee which resulted in undervaluation of BF Coke and consequential short payment of duty of ₹ 3.61 crore during the period 2013- 14.

When we pointed this out (January 2016), the Ministry admitted the objection (September 2017) and intimated that Show Cause Notice was under process of issuance.

4.2.4 Short payment of duty and non-payment of interest and penalty

As per rule 8(3) of Central Excise Rules, 2002, if the assessee fails to pay the amount of duty by due date, he shall be liable to pay the outstanding amount alongwith interest, at the rate specified by the Central Government vide notification issued under section 11AB of the Act on the outstanding amount, for the period starting with the first day after due date, till the date of actual payment of the outstanding amount.

Further, as per sub-rule 3A of Rule 8 of Central Excise Rules, 2002 if the assessee fails to pay the duty declared as payable by him in the return within a period of one month from the due date, then the assessee is liable to pay the penalty at the rate of one per cent on such amount of the duty not paid, for each month or part thereof calculated from the due date, for the period during which such failure continues.

M/s Sona Alloys Pvt. Ltd. in Kolhapur Commissionerate is engaged in the manufacture of excisable goods falling under Chapter 72 of Central Excise Tariff Act, 1985. Scrutiny of ER-1 returns revealed that during the period from April 2015 to January 2016, the assessee paid excise duty with delay for every month. The assessee was liable to pay interest at the rate of 18 per cent per annum and penalty at the rate of one per cent per month from the due date of payment. However, the same was not paid by the assessee. This resulted in non-payment of interest of ₹ 2.00 crore and penalty of ₹ 1.35 crore. Further, for the months of February and March 2016 the assessee paid only ₹ 7.23 crore against payable duty of ₹ 10.44 crore. The short paid duty of ₹ 3.21 crore was also recoverable with interest.

When we pointed this out (August 2016), the Department intimated (December 2016) that the assessee had paid interest of ₹ 2.00 crore and penalty of ₹ 1.35 crore for delayed payments and also paid duty of ₹ 3.21 crore with interest of ₹ 29.37 lakh and penalty of ₹ 19.90 lakh.

4.2.5 Short payment of duty due to incorrect availment of concessional rate of Excise duty

Chapter note 3(B) under Section XX of Chapter 94 of Central Excise Tariff prescribes that 'Goods described in heading 9404, presented separately, are not to be classified in heading 9401, 9402 or 9403 as parts of goods'.

M/s Janak Health Care Pvt. Ltd. falling under Range-Umbergam-I, Division-Vapi, Daman Commissionerate is engaged in manufacture of medical, surgical, dental or veterinary furniture classifiable under chapter 94029010 and cleared the said goods at concessional Central Excise duty rate of six per cent under serial number 320 of Central Excise Notification No. 12/2012-CE. We noticed that assessee cleared parts of medical, surgical, dental or veterinary furniture also at the concessional rate of six per cent under which it cleared mattresses as well which are classifiable under heading 9404. Assessee had cleared mattresses which were accompanied with furniture, at concessional rate while the mattresses cleared as solitary items were cleared at normal rate of Excise duty during the audit period.

Clearance of mattresses at concessional rate of duty was incorrect since chapter note 3(B) above clearly prescribes that goods described in heading 9404 cannot be classified as parts of goods under heading 9401, 9402 and 9403. Further, sales invoices raised by the assessee clearly showed mattresses as a distinct product under a distinct product code and were classified under CTH 94.04. This was also evident from its product catalogue which showed the product mattress separately.

When we pointed this out (March 2014), the Department admitted the observation (October 2016) and intimated confirmation of demand of ₹ 1.67 crore with interest and penalty of ₹ 83.30 lakh.

4.2.6 Short payment of duty due to misclassification of goods

As per Note 1(e) under Chapter 30 of the CETA 1985, 'preparations of headings 3303 to 3307' even if they have therapeutic or prophylactic properties are not classifiable under Pharmaceutical products. Note 3 under Chapter 33 of the CETA, 1985 states that headings 3303 to 3307 apply, inter alia, to such products, whether or not mixed (other than aqueous distillates and aqueous solutions of essential oils), suitable for use as goods of these heading and put up in packing of a kind sold by retail for such use. Heading 3304 includes 'Beauty or Make-up Preparations and Preparations for the Care of the Skin (other than Medicaments), including Sunscreen or Suntan Preparations' etc.

During the course of audit of Central Excise records of the office of the Superintendent of Central Excise, Gaganpahad Range II, Hyderabad, it was noticed from the ER-1 returns for the period from April 2013 to March 2016 of M/s. Ashwini Homeo and Ayurvedic Products Pvt. Ltd., that the assessee paid Central Excise duty at the rate of six per cent on "Herbal Bath Powder/ Sunni Pindi" by classifying it under heading 30039014. The said product was cleared for retail sale and not for the cure of any skin ailments/ disease. As per the chapter notes ibid, Herbal Bath Powder/ Sunni Pindi is classifiable under chapter heading 3304 which attracts duty at the rate of 12.36 per cent/ 12.5 per cent (with effect from 1 March 2015). This misclassification resulted in short payment of duty of ₹ 56.23 lakh which was required to be recovered from the assessee along with interest.

When we pointed this out (August 2016), the Ministry admitted the observation (August 2017) and stated that Show Cause Notice demanding duty of ₹ 90.14 lakh covering the period from January 2012 to November 2016 had been issued to the assessee.

4.3 CENVAT credit

Audit noticed 28 cases of incorrect availing/utilisation of CENVAT Credit by the assessees. Ministry/Department admitted observations in 26 cases and initiated/taken corrective action while in one case, reply was awaited. Six cases are illustrated in following paragraphs. Remaining 22 cases are detailed in Appendix II.

4.3.1 Incorrect availing of CENVAT credit on Works Contract Services

"Input service" as per Rule 2(l) (A) of the CENVAT Credit Rules, 2004 excludes service portion in the execution of a Works Contract and Construction Services including service listed under clause (b) of section 66E of the Finance Act in so far as they are used for Construction or execution of works contract of a building or a civil structure or a part thereof.

M/s Ford India Pvt. Ltd., an assessee under LTU Commissionerate, Chennai had incorrectly availed Service Tax credit amounting to ₹ 1.05 crore paid under reverse charge basis relating to Works Contract Service for construction of factory building during 2013-14 and 2014-15. The incorrect credit availed was recoverable.

When we pointed this out (June, July 2015), the Ministry admitted the observation (September 2017) and stated that Show Cause Notice for recovery of an amount of ₹ 1.14 crore covering the period from 2013-14 to 2014-15 would be issued to the assessee.

4.3.2 Irregular availment of CENVAT credit on input service not used in manufacture of finished goods

As per Rule 2(1) of the CENVAT Credit Rules, 2004, input service means any service (i) used by a provider of output service for providing an output service or (ii) used by a manufacturer whether directly or indirectly in or in relation to the manufacture of final products and clearance of final products upto the place of removal. Rule 14 of the said rules provides for levy of interest on irregular availment and utilisation of CENVAT credit.

M/s Mahanadi Coalfields Ltd (MCL), IB Valley Area, Brajarajnagar under Rourkela Commissionerate, engaged in producing of coal falling under Chapter 27 of Central Excise Tariff Act 1985, had availed CENVAT credit of ₹ 30.37 lakh on Service Tax paid on hire charge of tipper for loading of coal of M/s MCL, from Lakhanpur area during the years 2013-14 and 2014-15. Since the duty on coal was paid by M/s MCL, Lakhanpur area, the credit was admissible only to M/s MCL, Lakhanpur area. The irregular availment and utilisation of input service credit of ₹ 30.37 lakh was required to be recovered from the assessee alongwith interest.

When we pointed this out (March 2016), the Ministry contested the observation (September 2017) stating that the assessee had 26 mines under 10 different areas and obtained different registration for each mining area. In this case IB valley area and Lakahnpur area were involved. Due to administrative convenience, invoice was issued by the contractor to IB valley area, whole credit was availed by them and issue was revenue neutral. It was also stated that from March 2011 centralised registration has been allowed by which the problems faced by different mining area of coal manufacturing unit has overcome.

Ministry's reply is not acceptable as the assessee obtained centralised registration on 1 April 2015. Prior to that he was to follow the CENVAT Credit Rules and credit should have been availed by the respective mining areas.

4.3.3 Availing of CENVAT credit twice on the same invoices

As per Rule 3 of CENVAT Credit Rules, 2004, a manufacturer or provider of output service can avail CENVAT credit of duty/ tax mentioned therein. Further, rule 14 stipulates that where CENVAT credit has been taken and utilised wrongly, the same shall be recovered alongwith interest.

M/s Heavy Vehicles Factory, Avadi under Chennai-I Commissionerate is an ordnance factory under the Ministry of Defence. The assessee produces high power diesel engines for armored vehicles/ tanks and also provides training to army personnel regarding the maintenance and usage of such vehicles. Audit observed from the CENVAT records that during the period ended March 2016, the assessee had availed CENVAT credit of ₹ 68.55 lakh based on 8 Excise invoices issued by M/s Bharat Electronics Ltd., Chennai, as input credit and also as input service credit. Similarly, during the month of April 2016, the assessee had availed credit of ₹ 15.83 lakh based on four Service Tax invoices issued by M/s Steel Authority of India, New Delhi as input service credit and also as input credit. This resulted in availing of double credit. The assessee also availed credit of ₹ 18.11 lakh on invoices issued by SSI units which have actually availed exemption and not paid any duty in respect of the invoices. Thus, the assessee availed credit of ₹ 1.02 crore which was required to be reversed alongwith applicable interest.

We pointed this out to the Department in January 2017. Reply of the Department/Ministry was awaited (August 2017).

4.3.4 Incorrect utilisation of CENVAT credit for payment of duty by Export Oriented Unit

Rule 3(4) of CENVAT Credit Rules, 2004 provides that the CENVAT credit may be utilised for payment of:

(a) Any duty of Excise on any final product; or

(b) An amount equal to CENVAT credit taken on inputs, if such inputs are removed as such or after being partially processed; or

(c) An amount equal to the CENVAT credit, taken on capital goods if such capital goods are removed as such; or

(d) An amount under sub-rule (2) of rule 16 of Central Excise Rules 2002; or

(e) Service Tax on any output service.

This implies that all payments other than the above should be made in cash.

(i) Audit observed that M/s Sun Pharma (100 per cent EOU) under Vadodara II Commissionerate paid total duty of ₹ 51.32 crore on raw material in stock and capital goods on debonding from EOU scheme, out of which, ₹ 34.19 crore was paid in cash through challan and remaining ₹ 17.13 crore was paid through CENVAT credit. Assessee utilised CENVAT of ₹ 17.13 crore for payment of duty of Excise on raw material/input, capital goods, finished goods and for payment of Customs duty on goods imported duty free.

As per the rule above, assessee was eligible to utilise CENVAT credit only for payment of Central Excise duty payable on finished goods amounted to ₹ 1.48 crore. Thus, the assessee incorrectly utilised credit of ₹ 15.65 crore for payment of duty on goods procured duty free and for payment of Custom duty.

When we pointed this out (August 2014), the Ministry stated (July 2017) that two SCNs for ₹ 7.34 crore and ₹ 8.31 crore had been issued to the assessee and demand had also been confirmed.

(ii) M/s BASF India Limited (100 per cent EOU) under the jurisdiction of Bharuch Commissionerate, cleared imported raw material and capital goods (procured under procurement certificate) of worth ₹ 3.63 crore as such. Assessee also wrote off capital goods of worth ₹ 1.55 crore. Assessee paid duty of ₹ 1.06 crore on the above goods from CENVAT credit instead of paying it in cash as per the provision ibid. This resulted in incorrect utilisation of CENVAT credit for ₹ 1.06 crore.

When we pointed this out (September 2015), the Ministry admitted the observation (August 2017) and stated that SCN for ₹ 1.14 crore for the period from 2011-12 to 2015-16 had been issued to the assessee and same had been confirmed.

4.3.5 Non-reversal of CENVAT credit on slow moving stock

As per rule 3(5B) of the CENVAT Credit Rules, 2004 if the value of any, (i) input, or (ii) capital goods before being put to use, on which CENVAT credit has been taken is written off fully or partially or where any provision to write off fully or partially has been made in the books of accounts, then the manufacturer or service provider, as the case may be, shall pay an amount equivalent to the CENVAT credit taken in respect of the said input or capital goods.

M/s Rieter India Pvt. Ltd. In Kolhapur Commissionerate, engaged in the manufacture of excisable goods falling under chapter heading 84 of the Central Excise Tariff Act, 1985 made provisions for allowances for slow moving stock of ₹ 6.97 crore. The assessee was required to reverse equivalent amount of CENVAT credit taken in respect of this stock which was not done. This resulted in non-reversal of CENVAT credit of ₹ 87.10 lakh.

There is no mechanism requiring the assessee to intimate the Department in case of any write-off/provision for write-off is made in finance accounts where reversal of CENVAT credit is required. Ministry may ensure that suitable mechanism exist in GST system.

When we pointed this out (September 2016), the Ministry admitted the observation (June 2017) and stated that amount involved in the case was ₹ 1.15 crore and same has been reversed by the assessee from CENVAT account. Ministry further stated that suggestion relating to incorporation of certain provisions in the upcoming GST system is noted for future compliance.

4.4 Other issues

Audit noticed one case of short payment of cess which is illustrated below.

4.4.1 Short payment of Clean Energy Cess

As per Section 83 of Finance Act, 2010 read with Notification No. 01/2010 Customs (NT) (Clean Energy Cess) dated 22 June 2016, a cess namely Clean Energy Cess as duty of Excise, was imposed by the Central Government with effect from 1 July 2010 on goods specified in the Tenth Schedule, being goods produced in India at the rate set forth in the said schedule.

Further, as per Notification No. 01/2015-Clean Energy Cess dated 1 March 2015, rate of Clean Energy Cess on coal was fixed as ₹ 200 per tonne which was enhanced to ₹ 400 per tonne from 1 March 2016.

M/s ECL, Mugma Area (assessee) under jurisdiction of Central Excise and Service Tax Commissionerate, Dhanbad deposited ₹ 42.08 crore as Clean Energy Cess for clearance of 19,30,921 MT of coal during March 2015 to March 2016 as per Form-I. Audit observed that the clearance of coal as per ER-1 return during the period from March 2015 to March 2016 was 19,35,144 MT and the Clean Energy Cess payable on it was ₹ 42.17 crore. Thus the assessee had short paid the Clean Energy Cess amounting to ₹ 8.94 lakh which was recoverable with interest and penalty.

When we pointed this out (February 2017), the Department accepted the audit observation (March 2017) and intimated (May 2017) that SCN amounting to ₹ 16.81 lakh along with interest and penalty had been issued to the assessee.

Chapter V

Effectiveness of internal controls

5.1 Internal control

Internal control is an integral process carried out by an entity's management and personnel which is designed to address risks and provides reasonable assurance that following general objectives are achieved:

- executing orderly, ethical, economical, efficient and effective operations;
- fulfilling accountability obligations;
- complying with applicable laws and regulations;
- safeguarding resources against loss, misuse and damage.

5.2 Audit findings

Central Excise Department exercises internal controls by way of two functions i.e. Scrutiny of Returns and Internal Audit. We found from test check of records, 58 cases of failure of internal control having revenue implication of ₹ 279.19 crore which are included in this chapter.

5.3 Non-conducting of Internal Audit

Audit noticed nine cases where Internal Audit was due but not conducted by the Department which led to non detection of lapses committed by the assessees. In four cases, Ministry admitted the lapse of not conducting audit and these cases are detailed in Appendix III. Remaining five cases are illustrated below.

5.3.1 Short payment of Central Excise duty

5.3.1.1 Short payment of duty due to non-inclusion of freight charges

Rule 5 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules 2000 read with explanation 2 thereunder states that where any excisable goods are sold and factory is not the place of removal, then the cost of transportation from the factory to the place of removal shall not be excluded for the purpose of determining the value of excisable goods.

M/s Schneider Electric Infrastructure Ltd. falling under Vadodara-II Commissionerate, cleared its finished goods for delivery (i.e. EX Works – Customer's site). As per terms of the purchase order, the assessee was liable to supply the goods in good condition to the satisfaction of the customer at the doors of the customers. Thus, the assessee was having its right on goods till the disposal of goods at the end of its customers. The assessee recovered a sum of ₹ 4.49 crore during the period 2010-11 to 2013-14 as outward freight on local dutiable sales on which excise duty of ₹ 54.79 lakh was payable. This resulted in non-payment of excise duty to the tune of ₹ 54.79 lakh which was required to be recovered alongwith applicable interest.

Though the assessee was a mandatory unit for the purpose of internal audit as per extant norms, no internal audit was conducted after February 2013 (period covered January 2010 to December 2012) due to which the lapse remained undetected.

When we pointed this out (July 2014), the Ministry admitted the objection (September 2017) and stated that SCN for ₹ 1.16 crore for the period December 2011 to December 2015 alongwith interest and penalty had been issued to the assessee and the demand was confirmed. For internal audit failure, the Ministry stated that issue was not detected due to audit being conducted on test check basis.

Reply is not acceptable as Annexure C of 'Excise Audit Manual 2008' stipulates, inter alia, that while examining 'profit and loss account' amount recovered as freight should be examined in details. The Internal Audit should have examined the issue regarding inclusion of freight collected in taxable value.

5.3.2 Irregular availing/non-reversal of CENVAT credit

5.3.2.1 Irregular availment of CENVAT credit on Clean Energy Cess

As per Rule 3(1) of CENVAT Credit Rules, 2004 a manufacturer or prducer of final product or a provider of output service shall be allowed to take CENVAT credit of specified duties paid on inputs, capital goods or input services. Clean Energy Cess is not a specified duty in terms of above provision for availment of CENVAT credit.

M/s NALCO, Smelter Plant, Angul working under the jurisdiction of Bhubaneswar-II Commissionerate, engaged in the manufacture of Aluminum Ingot, Wire rod, Billets etc falling under Chapter 76 of Central Excise Tariff Act 1985, availed CENVAT credit amounting to ₹ 8.08 crore against payment of Clean Energy Cess (CEC) on coal in March 2016, in contravention of the Rules, ibid. This resulted in irregular availment of CENVAT credit of ₹ 8.08 crore, which was required to be recovered from the assessee.

Though the assessee was a mandatory unit for internal audit as per existing norms, internal audit was not conducted for the period 2014-15 and 2015-16.

When we pointed this out (September 2016), the Ministry admitted the observation (September 2017) and stated that the assessee had reversed ₹ 230.50 crore including the objected amount for the period from March 2016 to November 2016 under protest. For not conducting of internal audit Ministry stated that audit was delayed due to non-receipt of required document from the assessee within due time and audit for the period 2014-15 and 2015-16 had been conducted in February 2017.

Reply is not acceptable as internal audit is conducted at assessee premises where all records are available. As the revenue involved is substantial, the Ministry need to examine the reasons of not conducting audit in time and take suitable action.

5.3.2.2 Non-reversal of CENVAT credit on clearance of used Capital Goods

As per Rule 3 (5A) (a) of the CENVAT Credit Rules 2004, if capital goods, on which CENVAT credit has been taken, are removed after being used, the manufacturer shall pay an amount equal to the CENVAT credit taken on the said capital goods, reduced by the percentage points calculated by straight line method, as specified in the sub-rule (i) and (ii) or equal to the duty leviable on transaction value, whichever is higher. In case of non-payment of the amount, the same is recoverable alongwith interest in terms of explanation 2 below Rule 3 (5C) read with Rule 14 ibid.

M/s Diamond Beverage Pvt. Ltd. under Kolkata-I Commissionerate, removed used capital goods for ₹ 1.38 crore in January 2014. The assessee had purchased the said capital goods in January 2003 and had also availed CENVAT credit thereof. However, while removing the said capital goods, the assessee did not pay the amount as required under the rule aforementioned. This resulted in non-payment of an amount of ₹ 15.18 lakh during 2013-14, which was recoverable alongwith applicable interest.

On this being pointed out, the assessee paid the amount alongwith interest of ₹ 5.69 lakh totaling ₹ 20.87 lakh.

The assessee was a mandatory unit to be audited annually as per existing norms but the Department last conducted internal audit of the assessee in November 2013 covering the period only upto 2011-12. The Department did not conduct internal audit of the assessee thereafter. Hence, the lapse remained undetected until pointed out by us.

When we pointed this out (March 2016), the Ministry admitted the observation (July 2017) and confirmed the recovery. For not conducting internal audit, the Ministry stated that internal audit for the period 2012-13 to 2014-15 was conducted in June 2016 after our Audit.

Ministry's reply is silent on not conducting Internal Audit of a mandatory unit annually.

5.3.2.3 Non-reversal of CENVAT credit

Sub-rule 5B of rule 3 of CENVAT Credit Rules, 2004, amended vide Notification No. 03/2011 dated 01 March 2011, inter alia provides that if the value of any input or capital goods before being put to use, on which CENVAT credit has been taken is written off fully or partially or where any provision to write off fully or partially has been made in the books of account, then the manufacturer shall pay an amount equivalent to the CENVAT credit taken in respect of the said inputs or capital goods.

M/s. Numaligarh Refinery Ltd. in Shillong Commissionerate, engaged in manufacturing and clearing of articles of Petroleum products under chapter 27 of Central Excise Tariff Act 1985, had made provision of ₹ 66.24 crore as on 31 March 2016 for non-moving stores and spares with a view to write off the said amount at a future date.

As per the rule mentioned above, the assessee was liable to pay an amount equivalent to the CENVAT credit availed earlier on such non-moving items of stores and spares but the same was not paid. This resulted in non-reversal of CENVAT credit of ₹ 29.89 lakh for the financial year 2015-16.

Though the assessee was a mandatory unit to be audited annually by the Department as per existing norms, it was not audited since March 2014. The lapse therefore remained undetected.

We pointed this out in August 2016, reply of the Department/Ministry was awaited (September 2017).

5.3.2.4 Short reversal of CENVAT credit

Rule 3(5B) of CENVAT Credit Rules, 2004 states that if the value of any, (i) input, or (ii) capital goods before being put to use, on which CENVAT credit has been taken is written off fully or partially or where any provision to write off fully or partially has been made in the books of account, then the manufacturer or service provider, as the case may be, shall pay an amount equivalent to the CENVAT credit taken in respect of the said input or capital goods. Further, CENVAT credit can be taken only in respect of those inputs which are used in the manufacture of finished goods.

M/s Ingersoll Rand (India) Ltd. under Ahmedabad-II Commissionerate had procured its input materials locally as well as by import. During the period between March 2011 to March 2014, the assessee had imported its 35 per cent (average) inputs out of the total input purchased. The assessee reversed ₹ 1.09 crore on obsolete and slow moving items (OSMI) during this period. However, the reversal was made only at the rate applicable (of Central Excise duty only) to local purchases. The assessee was required to reverse the CENVAT credit proportionate of imported inputs at the rate of 17.74 per cent (i.e. CVD + SAD applicable on import for which the assessee is eligible to take credit). This resulted in short reversal of amount to the tune of ₹ 16.67 lakh.

Internal audit of the assessee was not conducted by the Department since November 2011. This resulted in non-detection of the lapse.

When we pointed this out (December 2015), the Department replied (February 2016) that the assessee had reversed CENVAT credit of ₹ 16.67 lakh and paid interest of ₹ 8.01 lakh.

Ministry contested the objection (September 2017) stating that the issue was already in notice of the Department. For not conducting internal audit, it stated that internal audit had been conducted in 2014 and in 2015-16.

Reply is not acceptable as Internal Audit had only pointed out that Central Excise duty reversal was required to be done on the provision of OSMI and had accepted Central Excise duty reversal of the amount at the rate of Basic Excise duty i.e., 12.36 per cent. However, we had pointed out that the OSMI also consisted of a portion (35 per cent) of imported inputs on which CENVAT credit of Additional Duty of Customs (CVD) and Special Additional Duty (SAD) was availed, which was required to be reversed at the rate of 17.74 per cent. Hence, the differential amount of short duty reversal due to above mis-calculation was pointed out by us and Internal Audit failed to point out the same.

5.4 Incomplete coverage of period by Internal Audit

Para 4.2 of Central Excise Audit Manual, 2008 stipulates that audit should extend upto one completed month preceding the date of current audit. We noticed two cases where audit was not extended to the adequate period, which are illustrated below.

5.4.1 Irregular availing of input service credit

As per Rule 2(l) (A) of CENVAT Credit Rules, 2004, input service inter alia excludes service portion in the execution of works contract and construction services used for construction or execution of works contract of a building or a civil structure.

M/s Sun Pharma Laboratories Limited in Siliguri Commissionerate and M/s KE Technical Textiles Pvt. Ltd. in Haldia Commissionerate availed CENVAT credit of Service Tax paid on works contract/ construction services used for construction of civil structures, which was irregular. This resulted in irregular availing of CENVAT credit of ₹ 11.93 lakh during the period from 2011-12 to 2012-13 in case of M/s Sun Pharma Laboratories Limited and ₹ 8.83 lakh during the period from 2013-14 to 2015-16 in case of M/s KE Technical Textiles Pvt. Ltd.

Department conducted internal audit of M/s Sun Pharma Laboratories Limited in December 2013 covering period upto March 2013. In the case of M/s KE Technical Textiles Pvt. Ltd., Department conducted internal audit in October 2014 covering the period upto March 2014. In both the cases Internal Audit failed to detect the lapse. Department also did not cover the complete period for internal audit as required in para 4.2 of the Audit manual.

When we pointed these out (March 2015 and September 2015), the Ministry in case of M/s Sun Pharma Laboratories Limited stated that SCN issued to the assessee had been adjudicated confirming the demand along with interest and penalty. The assessee had paid duty of ₹ 8.39 lakh along with interest of ₹ 7.53 lakh. In the case of M/s KE Technical Textiles Pvt. Ltd., the Ministry intimated (June 2017) that the assessee had reversed the duty of ₹ 8.83 lakh along with interest of ₹ 1.06 lakh.

For non-detection of lapses the Ministry in respect of M/s Sun Pharma Laboratories Limited stated that lapse could not be detected due to large number of invoices and shortage of manpower. In respect of M/s KR Technical Textiles Pvt. Ltd. it was stated that explanations were being called for from the erring officers. The Ministry however did not reply about incomplete coverage of period in audit.

5.4.2 Irregular availing of CENVAT credit

Sub-sections (1) and (1A) of Section 5A of the Central Excise Act, 1944, provide that where an exemption from Excise duty is granted in respect of any excisable goods absolutely, the manufacturer of such excisable goods shall not pay the duty of Excise on such goods.

Circular No. 940/1/2011-CX dated 14 January 2011 clarified that in case the assessee pays any amount as Excise duty on such exempted goods, the same cannot be allowed as "CENVAT credit" to the downstream units, as the amount paid by the assessee cannot be termed as "duty of Excise" under rule 3 of the CENVAT Credit Rules, 2004. The amount so paid by the assessee on exempted goods and collected from the buyers by representing it as "duty on Excise" is required to be deposited with the Central Government in terms of Section 11D of the Central Excise Act, 1944. Moreover, the CENVAT credit of such amount utilised by downstream units also needs to be recovered in terms of the rule 14 of the CENVAT Credit Rules, 2004.

M/s Super Smelters Ltd. (Unit-III) under Bolpur Commissionerate, engaged in manufacture of sponge iron, MS billet, silico manganese etc., purchased ferro manganese slag which was exempt from Central Excise duty vide Sl. No. 57 of

General Exemption No. 50 (Notification No. 12/2012-CE dated 17 March 2012). Despite the goods being exempted from duty, the assessee paid duty on purchase of the goods and also availed credit thereof. This was in contravention of the provisions as aforesaid and resulted in irregular availing of CENVAT credit of ₹4.14 lakh during 2014-15 which was recoverable alongwith appropriate interest from the assessee.

Internal audit of the assessee was conducted by the Department in March 2015, covering the period only upto 2013-14, instead of covering upto one completed month preceding the date of current audit, contravening the provisions of para 4.2 of Central Excise Audit Manual, 2008. Moreover, despite being mandatory unit, to be audited annually, Department did not conduct audit of the assessee for the year 2014-15 onwards. Hence, the lapse remained undetected until pointed out by us.

When we pointed this out (September 2015), the Ministry admitted the objection (September 2017) and stated that recurring SCNs were being issued. For not covering the period upto previous month in Internal Audit, the Ministry stated that covering the period without proper document, required for audit will violate basic principle of Audit Manual and may result in revenue loss. Audit is a continuous process and units are re-allotted for audit for complete financial year.

5.5 Non-detection of assessees' lapses by Internal Audit

Audit noticed 42 cases where Internal Audit was conducted by the Department but they failed to detect the lapses committed by the assessees. In 22 cases, Ministry admitted the lapse of Internal Audit and initiated action against the erring officials wherever required. These cases are detailed in Appendix III. Remaining 20 cases are illustrated below:

5.5.1 Short payment of duty

5.5.1.1 Short payment of Central Excise duty on consideration received as freight

As per clause (d) of Explanation VI to Section 4 of the Central Excise Act, 1944, "Transaction Value" is defines as "the price actually paid or payable for the goods, when sold and includes in addition to the amount charged as price, any amount that the buyer is liable to pay to, or on behalf of the assessee, by reason of, or in connection with the sale, whether payable at the time of the sale or at any other time, including, but not limited to any amount charged for, or to make provision for, advertising or publicity, marketing and selling organisation expenses, storage, outward handling, servicing, warranty, commission or any other matter; but does not include the amount of duty of Excise, Sales Tax and other taxes, if any, actually payable on such goods."

(i) M/s Aster Pvt. Ltd. Nalgonda under Hyderabad III Commissionerate, engaged in the manufacture of Plates, Angles, G. Steel Tower, Poles etc. falling under Chapters 72 & 73 of Central Excise Tariff Act 1985, cleared goods to M/s U.P. Power Transmission Corporation Ltd and M/s Transmission Corporation of Andhra Pradesh Limited on FOR destination basis from the factory to the place of removal i.e. buyer's premises during 2012-13 to 2015-16. The risk of transportation and ownership of the goods remained with the assessee during transportation of the goods. However, the cost of transportation of ₹ 7.42 crore incurred and received from the buyer was deducted while arriving at the transaction value, in contravention to the rule, ibid. This resulted in undervaluation of goods and short payment of duty of ₹ 91.87 lakh which was required to be recovered from the assessee alongwith interest.

Internal audit of the assessee was conducted by the Department in June-July 2014 for the period upto May 2014, but it failed to detect the lapse.

When we pointed this out (June 2016), the Ministry admitted the objection (April 2017) and stated that SCN for ₹ 1.25 crore alongwith interest and penalty had been issued. For internal audit failure, it stated that issue was not detected due to audit being conducted on test check basis.

Reply is not acceptable as Annexure C of 'Excise audit Manual 2008' stipulates that while examining 'profit and loss account' amount recovered as freight should be examined in detail and issue of supply of goods on 'For destination' basis should have been examined.

(ii) M/s Golkonda Engineering Enterprises Ltd. Mallapur under Hyderabad-III Commissionerate, engaged in the manufacture of PJU underground Cables, Signal Cables etc., falling under chapter heading 85 of CETA 1985, had cleared goods to various zones of Indian Railways situated at different places on FOR destination basis from the factory to the place of removal i.e. buyer's premises during the period form 2014-15 to 2015-16. The risk of transportation and ownership of the goods remained with the assessee during transportation of the goods. However, the cost of tranportation of ₹ 4.34 crore incurred (received from the buyer) was deducted while arriving at the transaction value, in contravention to the rule, ibid. This resulted in short payment of excise duty of ₹ 54.02 lakh which was required to be recovered from the assessee alongwith interest.

Though internal audit of the assessee was conducted by the Department for the period upto March 2016, it failed to detect the lapse.

When we pointed this out (October 2016), the Ministry contested the para (August 2017) stating that internal audit conducted by the Department in November 2013 already detected the said issue and amount of ₹ 5.35 lakh with interest of ₹ 0.58 lakh for the period from April 2012 to September 2013 and ₹ 4.07 lakh for the period from December 2013 to February 2015 were recovered. It further stated that SCN of ₹ 87.86 lakh for the period from March 2012 to September 2016 had been issued. For failure of Internal Audit, Ministry stated that the issue was not raised as there was a decision of Apex Court in the case of Escort JCB Ltd. against the issue involved in the objection.

Reply is not acceptable as Internal Audit detected the similar issue in November 2013 but in subsequent audit conducted in July 2016 it failed to detect the similar lapse. Further, plea of contrary decision of Apex court on similar issue is not tenable as similar issue was raised by Internal Audit in November 2013.

(iii) M/s Ramco Industries Ltd. Ibrahimpatnam under Guntur Commissionerate, engaged in the manufacture of Asbestos Cement Sheets and Asbestos others falling under chapter heading 68 of CETA 1985, cleared goods to M/s Andhra Pradesh Power Generation Corporation Ltd. and Dr. Narla Tata Rao Thermal Power Station on FOR destination basis from the factory to the place of removal i.e. buyer's premises during the period from 2013-14 to 2015-16. The risk of transportation and ownership of the goods remained with the assessee during transportation of the goods. However, the cost of transportation of ₹ 1.27 crore incurred (received from the buyer) was deducted while arriving at the transaction value, in contravention to the rule, ibid. This resulted in undervaluation of goods and short levy of duty of ₹ 15.71 lakh which was required to be recovered from the assessee along with interest.

Internal audit of the assessee was conducted by the Department for the period upto March 2015, but failed to detect the lapse.

When we pointed this out (November 2016), the Department admitted the observation (February 2017) and stated (March 2017) that a SCN was issued to the assessee for ₹ 24.86 lakh.

The Ministry contested the objection (July 2017) stating that though goods were cleared on FOR destination basis but goods were handed over to the carrier and there was no responsibility of the manufacturer. Board circular 999/2015 dated 28 February 2015 and decision of Supreme Court in the case of Ispat Industries Ltd. {2015(324)ELT 670 (SC)} also established the same.

Reply is not acceptable as in the instant case, the assessee had cleared Asbestos sheets to various customers on 'FOR destination' basis. It was observed from the purchase orders that the sole responsibility with risk and cost of transportation remained with the assessee till the goods reach the destination and ownership of the goods lies with the assessee (seller) during the transport of the goods at various destinations. Hence, the Board's circular and the Apex court judgement quoted by the Ministry are not applicable to the present case.

(iv) M/s Lubi Industries LLP, Ahmedabad under Ahmedabad-II Commissionerate had recovered freight handling charges from its customers for clearing the goods to their premises for the period of 2010-11 to 2014-15. However, Excise duty was not paid by the assessee on freight charges.

Though the Department had carried out internal audit between March and July 2015, it could not point out the lapse.

When we pointed this out (December 2015), the Department accepted (August 2016) the audit objection and confirmed (February 2017) demand of duty amounting to ₹ 41.10 lakh alongwith interest and equal penalty.

However, the Ministry contested it (September 2017) stating that Internal Audit had already detected the lapse.

Reply is not acceptable as the SCN as well as OIO was issued by the Department on the basis of our Audit

(v) M/s Firmenich Aromatics (I) Pvt. Ltd., Bhenslore, under Daman Commissionerate recovered freight charges from its customers in addition to the value of goods and mentioned their freight charges separately in the sales invoices in cases where buyers' premise was shown as the place of removal. Therefore, freight charges recovered by the assessee from the buyers formed part of additional consideration and should have been included in the assessable value for payment of Excise duty. The assessee recovered a sum of ₹ 4.72 crore as freight charges from its buyers during the period 2012-13 to 2014-15 which was not included in the assessable value. This resulted in short payment of duty of ₹ 34.85 lakh which was required to be recovered alongwith applicable interest.

Though the Department had carried out internal audit in April 2016 for the period February 2015 to February 2016, it failed to detect the lapse.

When we pointed this out (March 2016), the Ministry contested the para stating that the Department was already aware of the issue as the same was detected by internal audit.

Reply is not acceptable as we had pointed out the irregularity on 7 March 2016 (vide HM dated 7 March 2016) while internal audit was started on 11 March 2016. We had raised the observation for the period upto March 2015 while Internal Audit covered the period from February 2015 to February 2016. Hence, Internal Audit raised the issue after being pointed out by us.

(vi) M/s Aptar Beauty & Home India Pvt. Ltd. Hyderabad under Hyderabad-IV Commissionerate, engaged in the manufacture of articles for plastic closures with different colors, falling under chapter Heading 39 of CETA, 1985 cleared the goods to various customers on FOR destination basis from the factory to the place of removal i.e. buyer's premises, during the period from 2012-13 to 2014-15. The risk of transportation and ownership of the goods remained with the assessee during transportation of the goods. However, the cost of transportation of ₹ 1.89 crore incurred (received from the buyer) was not included while arriving at the transaction value, in contravention to the rule, ibid. This resulted in short payment of duty of ₹ 23.37 lakh which was to be recovered from the assessee alongwith interest.

Internal audit of the assessee was conducted by the Department in February 2015 for the period upto December 2014, but it failed to detect the lapse.

When we pointed this out (February 2016), the Ministry admitted the objection (September 2017) and stated that SCN had been issued for ₹ 30.15 lakh for the period from 2011-12 to 2016-17 and demand had been confirmed. For lapse of internal audit the Ministry stated that the issue of valuation of excisable goods and place of removal is open to different interpretations and hence Internal Audit could not raise the observation.

(vii) M/s. Parikh Packaging Pvt. Ltd., under Ahmedabad-II Commissionerate, engaged in manufacture of goods falling under Chapter 39 of the Central Excise Tariff Act, 1985 in addition to the assessable value, had recovered freight valuing ₹ 7.23 crore separately in its sales invoice issued to customers. During the period 2012-13 to 2014-15 the assessee had shown buyers premises as the place of removal. Therefore, freight recovered by the assessee from the buyers was part of additional consideration and was required to be included in the assessable value for payment of excise duty. However, the assessee did not include the freight recovered from the buyers in assessable value. This resulted in short payment of Central Excise duty to the tune of ₹ 89.31 lakh which was recoverable with interest.

Internal audit of the assessee was carried out by the Department in January-February 2014 and May-June 2015 but it failed to detect the lapse.

When we pointed this out (April 2016), the Ministry admitted the objection (July 2017) and stated that SCN for ₹ 1.40 crore had been issued. For lapse of internal audit it stated that the issue of valuation of excisable goods and place of removal is open to different interpretations and hence Internal Audit could not be blamed.

Reply of the Ministry in both the cases (vi and vii) above, is not acceptable as the observations have been admitted by the Ministry. Further, reply of the

Ministry indicates that clarification to field formations on the issues subject to different interpretations and to remove ambiguity and to ensure similar treatment of issues by all field formations is warranted.

5.5.1.2 Short payment of duty due to undervaluation of goods cleared to related unit

According to rule 10 read with rule 8 and 9 of Central Excise (Valuation) Rules, 2000, where whole or part of the excisable goods, are sold by an assessee to or through an inter-connected undertaking or are not sold but are consumed in the production or manufacture of other articles, the value shall be hundred and ten per cent of the cost of production or manufacture of such goods, to be compared as per CAS 4 statement.

(i) M/s Faurecia Emissions Control Technologies India Pvt. Ltd., under Chennai IV Commissionerate cleared goods to its related units at Bangalore and Pune for a total value ₹ 110.44 crore and ₹ 130.05 crore during the years 2013-14 and 2014-15 respectively. However, the assessee discharged duty on a value which was less than one hundred and ten per cent of the cost of goods sold. The non-adoption of prescribed transaction value resulted in under-valuation of goods and consequent short payment of duty was recoverable alongwith applicable interest.

Internal audit of the assessee was conducted in October 2014, but it failed to detect the lapse.

When we pointed this out (December 2015), the Department replied (September 2016) that the total value of clearance for the year 2013-14 was actually ₹ 106.82 crore and the assessee had since discharged the differential duty of ₹ 31.08 lakh and also had paid interest of ₹ 14.59 lakh (June 2016) for the year 2013-14. The Department further stated (March 2017) that for the year 2014-15 the assessee paid ₹ 36.33 lakh alongwith interest of ₹ 13.26 lakh.

Ministry admitted the objection (July 2017) and confirmed the recovery. For internal audit failure, it stated that issue was not detected due to audit being conducted on test check basis.

Reply is not acceptable as chapter 7 of Excise Audit Manual, 2008 specified guidelines in special situations which inter alia included that goods cleared to sister unit is prone to undervaluation, hence all clearances to sister unit should have been examined by Internal Audit.

(ii) During scrutiny of Central Excise records of M/s Tirupati Plywood Industries under Siliguri Commissionerate, engaged in manufacturing of plywood etc. falling under Chapter 44 of Central Excise Tariff Act 1985, it was noticed that the assessee sold the finished goods to its related party M/s

Regal Udyog Pvt. Ltd. However, the related party sold the said goods to the ultimate buyer (not being related) at a price which was approximately 4 per cent higher than that at which the goods were sold to related party. Hence, assessee was liable to pay duty on the value at which goods were sold to buyers by related party. However, the assessee paid duty on the price at which the goods were sold to the related party, violating the aforementioned provisions of Central Excise Valuation Rules. This resulted in short payment Central Excise duty of ₹ 7.56 lakh, due to undervaluation during the period 2012-13 and 2013-14.

Though, the Department conducted internal audit of the assessee in October 2013 covering the period up to March 2013 but it failed to detect the lapse.

When we pointed this out (February 2015), the Ministry admitted the audit objection (August 2017) and intimated that SCN had been issued for ₹ 17.63 lakh, covering the period from 2011-12 to 2015-16. For internal audit failure, it stated that issue was not detected due to audit being conducted on test check basis.

Reply is not acceptable as chapter 7 of Excise Audit Manual specified guidelines in special situation which include inter- connected units as goods cleared to sister units is prone to undervaluation, hence all clearances to sister unit should have been examined by Internal Audit.

(iii) M/s Santpuria Alloys (P) Limited, Giridih under Ranchi-II (Bokaro) Commissionerate cleared Sponge Iron (final product) to M/s Mongia Steel Limited, Giridih (related party) at assessable value less than the cost of production during the period 2013-14. Since, the assessable value of clearance of goods was lower than the cost of production, it resulted in short levy of Central Excise duty to the tune of ₹ 15.51 lakh.

Internal audit of the assessee was conducted by the Department in November 2015 but it did not detect the lapse.

When we pointed this out (February 2016), the Department admitted the audit objection (October 2016) and intimated (May 2017) that SCN amounting to ₹ 1.74 crore for the period 2013-14 to 2015-16 had been issued.

Reply of the Ministry was awaited (September 2017).

5.5.1.3 Short payment of Central Excise duty and Clean Energy Cess on Coal

As per Rule 4(1) of Central Excise Rules, 2002, every person who produces or manufactures any excisable goods, or who stores such goods in a warehouse, shall pay the duty leviable on such goods in the manner provided in rule 8 or any other law and no excisable goods, on which any duty is payable, shall be removed without payment of duty from any place, where they are produced or manufactured or from a warehouse, unless otherwise provided. Duty not paid or short paid by suppression of facts or by fraud/ misstatement etc. attracts penalty under section 11AC of the Central Excise Act, 1944.

During Audit examination of records (other coal washery production statement, direct dispatch to power project statement and ER-1 Return), of an assessee M/s SAIL Chasnalla, Jitpur and Tasra, under Dhanbad Commissionerate for the period 2012-13, Audit observed that the assessee had shown other coal production as 4,54,775 MT and 64,082 MT of other coal was directly transferred to Power project of SAIL (BSL, BSP and RSP) from Tasra mines during 2012-13. Further examination revealed that the total production of other coal in ER-1 for the period was taken as only 4,80,593.33 MT. Thus, the assessee declared other coal in ER-1 returns short by 38,263.67 MT of coal (4,54,775 MT + 64,082 MT – 4,80,593.33 MT = 38,263.67 MT) which resulted in short payment of duty of ₹ 75.48 lakh. Clean energy cess was also leviable on the coal accounted short amounting to ₹ 19.13 lakh besides interest and penalty applicable thereon.

Though the internal audit of the assessee was conducted by the Department in May 2014, it failed to detect the lapses.

When we pointed this out (March 2015), the Department stated that Show Cause Notice was issued to the assessee for ₹ 94.61 lakh.

Reply of the Ministry was awaited (September 2017).

5.5.1.4 Irregular availment of exemption resulted in short payment of Central Excise duty

Notification No. 1/2011-Central Excise dated 1 March 2011, as amended vide Notification No. 16/2012-CE dated 17 March 2012, exempted the excisable goods falling under chapter sub-heading 22029020 of CETA, 1985 from so much of the duty of Excise leviable thereon under the Central Excise Act as is in excess of the amount calculated at the rate of two per cent ad valorem.

Provided that nothing contained in the notification shall apply to the goods in respect of which credit of duty on inputs or tax on input services has been taken under the provisions of the CENVAT Credit Rules, 2004.

M/s Varun Beverages Limited, Bhiwadi, paid duty at the rate of two per cent ad valorem on removal/clearance of fruit juice based drinks falling under CETSH 22029020 during the year 2012-13, availing the exemption notification ibid. However, the assessee took CENVAT credit of Service Tax paid on input services used in manufacturing of the said goods. Hence, the assessee was not entitled to avail the benefit of exemption notification and required to pay duty at applicable rate of 6.18 per cent ad valorem on the clearances. Thus, irregular availment of exemption notification resulted in short payment of excise duty of ₹ 52.80 lakh, including cess.

Internal audit was conducted up to March 2014 but audit party failed to detect the lapse.

When we pointed this out (August 2015), the Ministry admitted the objection (April 2017) and stated that demand of ₹ 1.28 crore had been confirmed. For internal audit failure, it stated that issue was not detected due to audit being conducted on test check basis.

Reply is not acceptable as specific checks were prescribed in Annexure C(IV) of the Central Excise Audit Manual, 2008 for checking the correctness of exemption claimed by the assessees.

5.5.2 Incorrect availing of CENVAT credit

5.5.2.1 Incorrect availing of CENVAT credit on construction services

'Input service' as defined in Rule 2(1) of the CENVAT Credit Rules, 2004, excludes service portion in the execution of a Works Contract and Construction service in so far as they are used for construction or execution of a works contract of a building or a civil structure or a part thereof, except for the provision of the specified service. Interest under Rule 14 is payable for incorrect availing and utilisation of CENVAT credit.

M/s First Engineering Plastics India Pvt. Ltd. (manufacturer of plastic moulded components under CETSH 87082900) under Chennai IV Commissionerate availed CENVAT credit of ₹ 46.42 lakh on Service Tax paid towards Building and Construction services during the years 2013-14 and 2014-15. Since the assessee is not engaged in providing Works Contract services, the availing of CENVAT credit totaling to ₹ 46.42 lakh was incorrect and recoverable along with applicable interest.

Internal audit of the assessee was conducted in January 2014, but it failed to detect the lapse.

When we pointed this out (September 2015), the Ministry admitted the objection (May 2017) and stated that entire amount had been recovered with interest of ₹ 12.75 lakh and penalty of ₹ 8.94 lakh. Department reported (August 2016) recovery of ₹ 33.16 lakh. For Internal Audit failure, it stated that issue was not detected inadvertently though Internal Audit detected six objections involving ₹ 4.65 lakh.

Reply is not acceptable as Internal Audit detected six objections involving ₹ 4.65 lakh but left observation amounting ₹ 46.42 lakh. Ministry need to take suitable action.

5.5.2.2 Irregular availment and utilisation of CENVAT credit

As per Rule 2(l) of the CENVAT Credit Rules 2004, "input service" means any service, (i) used by a provider of output service for providing an output service; or (ii) used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal and inter alia includes services used in relation to advertisement or sales promotion.

(i) M/s Zim Laboratories Ltd. In Nagpur II Commissionerate, engaged in the manufacture of medicines falling under chapter 29 and 30 of CETA, 1985 paid commission to foreign commission agents in foreign exchange for procurement of export orders during the period 2012-13 to 2014-15 and accordingly paid Service Tax under the category 'Business Auxiliary Services' as recipient of service after availing exemption benefits under notification No. 18/2009-ST and 42/2012-ST. Scrutiny of returns in form EXP 4, ER-1 and CENVAT credit records for the said period revealed that the assessee had availed CENVAT credit of the Service Tax paid on commissions for procuring export order and had also utilised the same for payment of Central Excise duty. This resulted in irregular availment and utilisation of CENVAT credit of ₹ 1.68 crore.

Internal audit of the assessee was carried out covering the period upto March 2015 but the audit party failed to detect the lapse pointed out by us.

We pointed this out (March 2016).

(ii) M/s Styrolution ABS (India) Pvt. Ltd. under Vadodara-II Commissionerate had availed CENVAT credit of ₹ 28.38 lakh during the period 2009-10 to 2013-14 in respect of Service Tax involved in sales commission amount paid to its commission agents on the basis of Input Service Distributor (ISD) invoices issued by its head office. CENVAT credit in respect of Service Tax paid on commission on sales is not available unless the service includes sales promotion. Hence, CENVAT credit of ₹ 28.38 lakh was irregular and required to be recovered alongwith applicable interest.

Internal audit of the assessee was conducted by the Department in September 2010, March 2013 and December 2014 but it could not point out the lapse.

We pointed this out in March 2015.

The Ministry did not admit the observations (September 2017) stating that services of commission agent come under Business Auxiliary service and decision of Punjab and Haryana High Court in case of Ambika Overseas {2011 (7) TMI 980} as well as Board circular 943/2011 clarified that CENVAT credit on account of commission on sales is covered under the definition of input service. Further, vide notification No. 02/2016 dated 3 February 2016, explanation has been added to rule 2 (l) of CENVAT Credit Rules 2004, clarifying that sales promotion includes service by way of sale of dutiable goods on commission basis.

Reply is not acceptable as in a similar issue of Cadila Healthcare Ltd {2013 (30) STR 3 (guj.)}, Gujarat High Court held that CENVAT credit on sales commission was not admissible if it did not involve promotional activities. Also, explanation to rule 2(l) was added in February 2016, hence it was not applicable to prior period.

5.5.2.3 Irregular availment of CENVAT credit of input service credit of renting of immovable property distributed by Head Office under ISD

Rule 7 of CENVAT Credit Rules, 2004 prescribes the manner of distribution of credit by input service distributor (ISD) as per sub-rule (d) of which "the credit of Service Tax attributable as input service to all the units shall be distributed to all the units pro rata on the basis of the turnover of such units during the relevant period to the total turnover of all the units."

M/s Firmenich Aromatics (India) Pvt. Ltd. falling under Daman Commissionerate had availed service credit of ₹ 1.33 crore distributed by its Head Office as ISD of Service Tax paid for renting of immovable property from September 2014 to March 2015. We observed that the assessee is having another unit, M/s Firmenich Aromatics Production (India) Pvt. Ltd. Dahej which is a tax exempted SEZ unit. Though both the units (Daman as well as Dahej unit) have common registered Head Office, the Head Office incorrectly distributed the entire CENVAT credit to its excisable unit i.e. Daman unit only. This resulted in incorrect availment of CENVAT credit of entire input service distributed by Head Office.

Internal audit of the assessee was conducted for the period from February 2015 to February 2016 by the Department in April 2016 but the audit party could not detect the lapse.

When we pointed this out (March 2016), the Ministry contested the observation (September 2017) stating that Department was already aware of the default by the assessee as same was detected by Internal Audit.

Reply is not acceptable as we had pointed out the subjected irregularity on 7 Mar 2016 (vide HM No 7 dated 7 March 2016) and Internal Audit started on 11 March 2016. We had raised the observation for the period upto March 2015 and Internal Audit had covered the period from February 2015 to

February 2016. Hence, Internal Audit raised the issue after being pointed out by us.

5.5.3 Non/short reversal of CENVAT credit

5.5.3.1 Non-reversal of CENVAT credit on provision made for obsolete input

Rule 3(5) of CENVAT Credit Rules, 2004 stipulates that if the value of any input or capital goods, before being put to use, on which CENVAT credit had been taken, is written off fully or partially or where any provision to write off fully or partially has been made in the books of account, then the manufacturer or service provider, as the case may be, shall pay an amount equivalent to the CENVAT credit taken in respect of the said input or capital goods.

M/s Volvo India Pvt. Ltd. Bangalore, under Large Taxpayers Unit (LTU) Commissionerate Bangalore, manufactures tippers, tractors, trailers and chassis. The assessee made a provision of ₹ 9.53 crore for the year 2014-15 for obsolete inputs on which CENVAT credit had been availed. However, the assessee did not reverse CENVAT credit of ₹ 1.56 crore availed on these obsolete inputs.

Internal Audit wing of the Large Taxpayers Unit, Bangalore conducted the audit of the assessee in September – October 2015, but it failed to detect the lapse.

When we pointed this out (January 2016), the Department intimated that the assessee reversed ₹ 1.56 crore in the CENVAT account.

Ministry admitted the objection (April 2017) but for the internal audit failure, it stated that before finalisation by Internal Audit, our audit was started and as this issue was raised by us, same was not raised by Internal Audit to avoid duplication.

The reply is not acceptable as the dates of audit mentioned in the Internal Audit note revealed that the Internal Audit was completed on 8 October 2015, much before we conducted audit. Hence, the Ministry's claim that the internal audit was not complete at the time of our audit, is not tenable.

5.5.3.2 Non-reversal of CENVAT credit duty on input material written off

Rule 3(5B) of the CENVAT Credit Rules, 2004 provides that if the value of any input on which CENVAT credit has been taken is written off fully or partially or where any provision to write off fully or partially has been made in the books of accounts, then the manufacturer is required to reverse the CENVAT credit taken on the said inputs.

M/s Spicer India Pvt. Ltd. in Kolhapur Commissionerate engaged in manufacture of auto parts falling under chapter 87 of CETA, 1985, wrote off input material valued at ₹ 94.64 lakh in the year 2014-15 and ₹ 143.13 lakh in the year 2015-16. However, the assessee did not reverse CENVAT credit against aforesaid input material written off as per the provision. This resulted in non-reversal of CENVAT credit of ₹ 29.59 lakh.

Internal audit of the assessee was conducted in June 2016 for the period 2013-14 to 2015-16, but the audit party failed to point out the lapse.

When we pointed this out (September 2016), the Ministry admitted the objection (June 2017) and stated that SCN for ₹ 29.59 lakh had been issued to the assessee and he had reversed CENVAT credit of ₹ 11.01 lakh and paid interest of ₹ 2.54 lakh and penalty of ₹ 1.65 lakh. For the internal audit failure, it stated that issue was not detected due to audit being conducted on test check basis.

Reply is not acceptable as information of goods written off is available in finance accounts, hence, audit party should have ensured whether credit on written off goods was reversed.

5.5.3.3 Short reversal of CENVAT credit due to incorrect calculation

According to Rule 6(3) of CENVAT Credit Rules, 2004 manufacturers of dutiable and exempted goods or providers of taxable and exempted output services, availing CENVAT credit of inputs or input services and not maintaining separate accounts for receipt, consumption and inventory of inputs and input services, shall pay an amount equal to six per cent of value of exempted goods and services or pay amount proportionate to the credit availed on exempted goods and services determined under sub-rule (3A). Rule 6(6) of CENVAT Credit Rules states that provisions of sub-rule (1) to (4) of Rule 6 were not applicable in respect of clearances for export.

(i) M/s Synthite Industries Ltd. Kolencherry in Cochin Commissionerate, manufactured dutiable and exempted goods and provided taxable and exempted services. The assessee opted for proportionate payment of credit under Rule 6(3) (ii) since no separate accounts were maintained for accounting of inputs and input services. The assessee, however, considered value of export clearance also for computation of proportionate amount to be reversed in respect on input services. This resulted in short reversal of CENVAT credit amounting to ₹ 17.26 lakh during the period 2011-12 to 2012-13.

Internal audit of the assessee was conducted by the Department covering the period upto November 2012, the lapse was not detected.

When we pointed this out (January 2014), the Ministry admitted the objection (August 2017) and stated that SCN for ₹ 8.72 crore had been issued to the assessee for the period from 2011-12 to 2014-15. For failure of Internal Audit, Ministry stated that issue was also detected by Internal Audit conducted concurrently with our audit and action has been taken after considering observations of both, SCN has been issued covering larger period.

Reply is not acceptable as the Department detected the issue in Internal Audit conducted in January 2014 but same was not detected by Internal Audit conducted earlier, covering the period upto November 2012, though the issue persisted from the year 2011-12.

(ii) M/s Vijayanagar Biotech Ltd., Vijayanagaram under the jurisdiction of Visakhapatnam Commissionerate engaged in the manufacture of Maize Starch Powder, Maize Gluten etc., falling under Chapter 23 of Central Excise Tariff Act, 1985, had cleared both dutiable and exempted goods during the period between April 2012 and March 2015. The assessee had not maintained separate accounts for inputs and input services and opted to reverse CENVAT credit on proportionate basis as per Rule 6(3) of CCR, 2004. It was noticed that while reversing CENVAT credit, the assessee calculated such reversal every month by taking into consideration, the exempted and dutiable turnover of the particular month and at the end of year, amount of such reversal was also not finally assessed.

Further, in respect of input services, reversal was made only on input service credit taken on common services instead of total Service Tax credit availed. This resulted in short reversal of CENVAT credit of ₹ 13.02 lakh which was required to be reversed with interest of ₹ 4.46 lakh.

Internal audit of the assessee was conducted for the period from April 2012 to March 2015 but the lapse was not detected.

When we pointed this out (December 2015), the Ministry admitted the objection (July 2017) and stated that Show Cause Notice for 17.04 lakh along with interest had been issued to the assessee. For lapse of internal audit it stated that the value of exempted goods/services referred to in the formula under rule 6(3A), shall refer only to those exempted goods/services, in respect of which CENVAT credit has been taken for common inputs/ input services. Those exempted goods/exempted services, in respect of which no credit has been taken, even in respect of such common inputs/input services, shall not be considered in the formula. In view of the above stand taken by Internal Audit is in line with the objective of rule 6 of CENVAT Credit Rules.

Reply is not acceptable as in the present case, the assessee made reversal only on input service credit taken on common input service used in dutiable and exempted goods and excluded credit taken on other services. Reply of the Ministry is not relevant to the observation as it was not a case of excluding exempted service on which no credit was taken as contended by the Ministry.

5.6 Miscellaneous issues

We also observed five cases of non adherence to procedure/control mechanism by the Department which are illustrated below:

5.6.1 Inaction by the Department to recover short payment of duty

According to Rule 4(1) of the Central Excise Rules, 2002 every person who produces or manufactures any excisable goods, or who stores such goods in a warehouse, shall pay the duty leviable on such goods in the manner provided in rule 8 or under any other law, and no excisable goods, on which any duty is payable, shall be removed without payment of duty from any place, where they are produced or manufactured, or from a warehouse.

During the scrutiny of ER-3 return filed by M/s Nilgiri Herbals and Agro Industries Pvt. Ltd. falling under Silvassa Commissionerate for the quarter of July-September 2014, it was revealed that against the duty payable of ₹ 16.92 lakh, the assessee had paid only ₹ 2.88 lakh through debit in the CENVAT credit account. This resulted in short payment of ₹ 14.55 lakh which was recoverable with interest. Department did not take any action for recovery of duty short paid till the same was pointed out by Audit.

When we pointed this out (May 2015), the Ministry admitted the observation (August 2017) and intimated that the assessee has paid ₹ 14.55 lakh alongwith interest of ₹ 1.35 lakh and penalty of ₹ 1.16 lakh. It further stated that action could not be taken due to large number of returns to be scrutinised.

Reply is not tenable as not taking timely action may make the issue time barred and consequent loss of revenue.

5.6.2 Raising short demand in the SCN

As per the provisions of Rule 14 of CENVAT Credit Rules, 2004, where the CENVAT credit has been taken or utilised wrongly or has been erroneously refunded, the same along with interest shall be recovered from the manufacturer or the provider of the output service and the provisions of sections 11A and 11AB of the Central Excise Act, 1944 or sections 73 and 75 of the Finance Act, 1994 shall apply mutatis mutandis for effecting such recoveries.

(i) M/s Rieter India Pvt. Ltd., in Kolhapur Commissionerate, is engaged in the manufacture of excisable goods falling under chapter 84 of Central Excise Tariff Act, 1985. The Department issued two Show Cause Notices to the assessee for disallowing the wrong availment of CENVAT credit for the period from November 2012 to April 2014 and May 2014 to January 2015 on the basis of our objection. The Department adjudicated these SCNs vide OIO dated 10 March 2016 and confirmed demand to the extent of ₹ 1.41 crore. The same was accepted and reversed by the assessee. However, scrutiny of these SCNs, OIO and CENVAT credit register for the period from 2013-14 to 2015-16, revealed that while calculating the total amount of irregular availment of CENVAT credit for issuance of Show Cause Notice, the Department had not considered the amount of CENVAT credit of ₹ 27.15 lakh irregularly availed by the assessee during the month of August 2014. However, the said credit was neither reversed by the assessee in its CENVAT credit account nor the Department verified the details of the invoices provided by the assessee while raising of demand of ₹ 27.15 lakh in SCN for the period May 2014 to January 2015.

When we pointed this out (August 2016), the Ministry partly admitted the para (September 2017) and stated that the assessee reversed the credit of ₹ 27.15 lakh with penalty of ₹ 4.03 lakh. Ministry further stated that the assessee had given incomplete information to the Department which was taken as the basis for preparing SCN and it was assessee's responsibility to furnish correct information.

(ii) Further scrutiny of CENVAT credit register for the period 2013-14 to 2015-16 revealed that assessee had also wrongly availed ineligible CENVAT credit on IT services of ₹ 23.17 lakh in the month of February 2015 and March 2015 even after being issued SCN by the Department. Further, it was noticed that the Department failed to incorporate the amount of ineligible CENVAT credit availed by the assessee for the said period while issuing SCN for the period from May 2014 to January 2015 as the SCN was issued in May 2015. This resulted in short raising of demand in SCN for reversal of ineligible CENVAT credit amounting to ₹ 23.17 lakh.

When we pointed this out (August 2016), the Ministry partly admitted the para (September 2017) and stated that the assessee reversed the credit of ₹ 23.17 lakh with penalty of ₹ 3.47 lakh. Ministry again stated that the assessee had given incomplete information to the Department which was taken as the basis for preparing SCN and it was assessee's responsibility to furnish correct information.

Reply is not acceptable as no action was taken by the Department to ensure the correctness of the information provided by the assessee while preparing and adjudicating the SCNs.

5.6.3 *Ineffective Review of Call Book Cases*

CBEC Circular No. 162/73/95-CX dated 14 December 1995 prescribes that only the following categories of cases can be transferred to Call Book:

(i) Cases in which the Department had gone on appeal to the appropriate authority;

(ii) Cases where injunction had been issued by Supreme Court/ High Court/ CEGAT etc.;

(iii) Cases where audit objections are contested; and

(iv) Cases where the Board had specifically ordered the same to be kept pending and to be entered into the Call Book.

Instructions were also issued to the Commissionerates requiring periodical review of pending Call Book items.

During scrutiny of SCNs pending in Call Book at the Large Taxpayers Unit, Bangalore, Audit noticed that 25 SCNs, involving a total demand of ₹ 9.06 crore, were pending in Call Book even though these cases were fit for adjudication as per Board instructions. Since these cases were no more valid for retention in Call Book, the Department should have removed the cases from Call Book and adjudicated.

Wrong retaining of SCNs in Call Book not only resulted in blockage of recoverable revenue, it also indicated ineffective periodical reviews of Call Book cases carried out by the Commissionerate and poor monitoring by higher authorities.

When we pointed this out (May 2015), the Department took the cases out of Call Book and adjudicated 23 SCNs during March 2016 to July 2016 where demand was confirmed partially in three SCNs (involving ₹ 25.76 lakh) and 20 SCNs (involving ₹ 5.32 crore) pertaining to single assessee were dropped. The remaining two SCNs (involving ₹ 3.49 crore) were under adjudication (January 2017).

Ministry contested the objection (April 2017) stating that out of 25 SCNs, in 24 SCNs, Department's appeal was rejected and in one case, audit objection was not admitted by the Department. Thus, delay in taking out cases from Call Book had not resulted in blockage of revenue.

Reply is not acceptable as, the issue raised by Audit is not merely blockage of revenue due to delay in adjudication, but failure of the Department in taking cases out of Call Book in time for adjudication. Whether the case is decided in favour of revenue or otherwise is known only on finalisation of adjudication process. Wherever a case is decided in favour of the Department, not adjudicating the same timely, would lead to blockage of revenue. Moreover, retaining of SCNs in Call Book without sufficient reasons is a control lapse.

5.6.4 Loss of revenue due to demand being time barred

Section 11A of the Central Excise Act, 1944 provides that the Central Excise officer shall, within one year from the relevant date, serve notice on the person chargeable with the duty which has not been so levied or paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made. Where any duty of Excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, by the reason of fraud, or collusion; or any willful mis-statement; or suppression of facts; or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, by any person chargeable with the duty, the Central Excise officer shall, within five years from the relevant date, serve notice on such person requiring him to show cause why he should not pay the amount specified in the notice.

During Test check of files relating to adjudication in the office of the Central Excise Commissionerate Chandigarh-II for the years 2014-15 to 2015-16, it was noticed that a Show Cause Notice was issued to M/s Punjab Tractors Ltd. (SCD), Village Chappercherri, Tehsil Kharar, District Ropar demanding amount of duty of ₹ 25.40 lakh. Scrutiny of SCN revealed that a Show Cause Notice dated 27 March 2002 demanding duty of ₹ 9.10 lakh for the period from April 2001 to November 2001 on the same subject was also issued earlier. The assessee was asked to supply the correct figures for the above mentioned period and the assessee supplied (October 2002) the revised figure where the value was of ₹ 1.89 crore instead of ₹ 30.22 lakh. The assessee also requested (January 2003) to issue amended SCN on differential value.

However, the Department failed to take timely action and issued SCN for demanding duty of ₹ 25.40 lakh in August 2007, after a gap of five years which was beyond the time frame as given in the above Rule. The assessee filed reply dated 4 December 2015 stating that the SCN demanding the Central Excise duty for the period from April 2001 to November 2001 was barred by limitation. The demand was dropped by the adjudicating authority vide Order-in-Original dated 15 February 2016 on the ground that the demand of differential amount of duty had been issued even beyond the period of five years from its due date which cannot be taken as corrigendum to earlier SCN issued in March 2002. Thus delayed action by the departmental officer, resulted in loss of revenue to Government amounting to ₹ 25.40 lakh. Had the Department issued another SCN within the time frame as per extant statute, loss of ₹ 25.40 lakh to the Government exchequer could have been avoided.

This is a case of negligence on the part of departmental officer warranting action against the erring official.

When we pointed this out (April 2016), the Ministry admitted the objection (June 2017) and stated that SCN for ₹ 25.40 lakh had been issued to the assessee. Regarding negligence of departmental officer, Ministry stated that action was being initiated against the erring officer. It is, however, not understood as to how SCN can be issued again when the issue had already been declared time barred by the adjudicating authority.

New Delhi
Dated: 27 November 2017

(DWARKA PRASAD YADAV)
Principal Director (Goods and Services Tax-II)

Countersigned

New Delhi
Dated: 27 November 2017

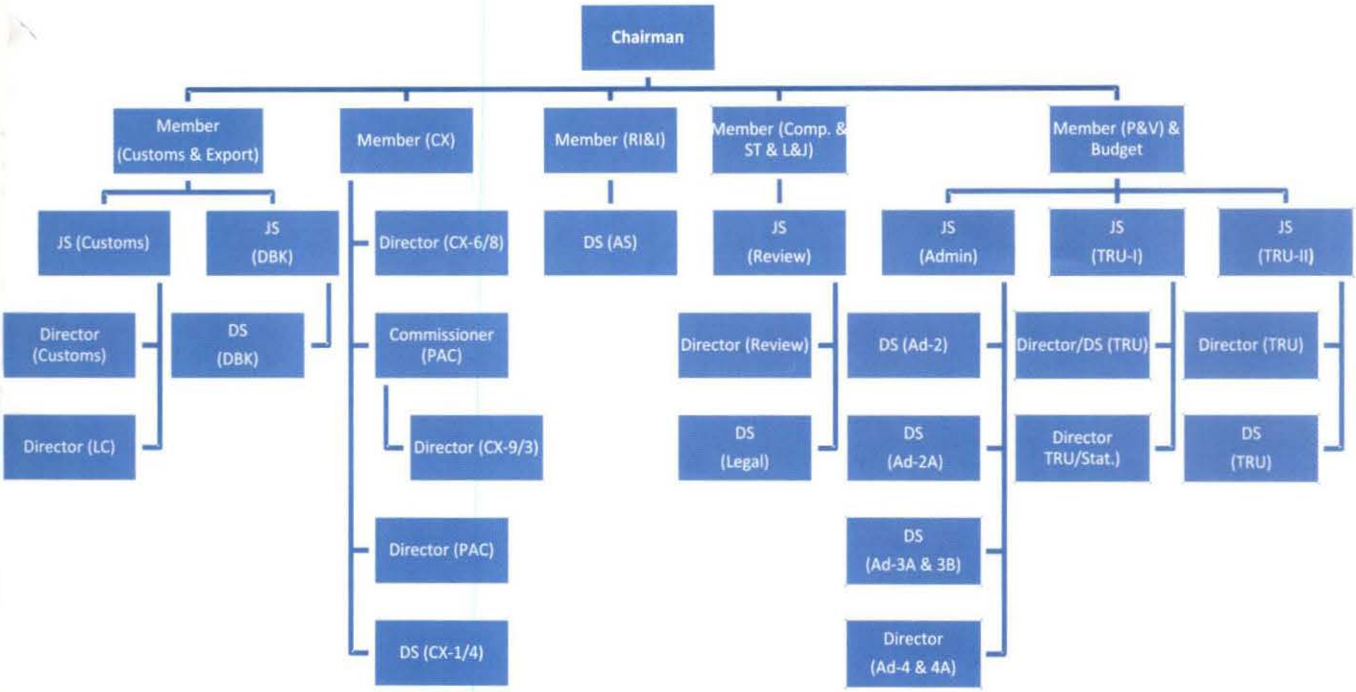
(RAJIV MEHRISHI)
Comptroller and Auditor General of India

APPENDICES

Appendix I

Organisational structure of CBEC

(Reference: Paragraph 1.3)



Appendix II

(List of observations referred in Chapter IV)

(Reference: Paragraph 4.2 and 4.3)

(₹ in lakh

Sl. No.	DAP No.	Brief subject	Amount objected	Amount admitted	Amount recovered	Commissionerate
		Non/Short payment of duty				
1	18B	Escapement of duty on goods found short	22.42	22.42	22.42	Jamshedpur
2	24D	Non-payment of Central Excise duty	31.92	31.92		Shillong
3	3A	Short payment of duty on goods cleared to sister unit	28.43	28.43	28.43	Kolhapur
4	6B	Short payment of duty on goods cleared to sister unit	15.49	15.49	15.49	Kolhapur
5	30D	Short payment of duty due to under-valuation of goods	29.41	29.41	29.41	Jaipur
6	41D	Short payment of Central Excise duty	18.72	18.72		Kolkata-II
7	53D	Short payment of Central Excise duty including interest and penalty	16.44	16.44	16.44	Faridabad-I
8	59D	Short payment of duty on Light Diesel Oil	30.50	30.50	30.50	Cochin
9	61D	Short payment of duty	22.37	22.37	22.37	Jaipur
		Incorrect availing/utilisation of CENVAT credit				
10	2A	Irregular availment of CENVAT credit	15.32	15.32	15.32	Goa
11	11A	Irregular availing of CENVAT credit on capital goods	24.06	24.06	24.06	Ahmedabad-II
12	1B	Excess/ double availment of CENVAT credit	19.99	19.99	19.99	Pune-II
13	2B	Non-reversal of CENVAT credit	31.64	31.64	0.69	Belapur
14	3B	Irregular availing of CENVAT credit	22.65	22.65	22.65	Bangalore-V
15	4B	Short reversal of proportionate CENVAT credit	15.47	15.47	15.47	Pune-II
16	5B	Non-reversal of CENVAT credit on inputs written off	22.43	22.43	22.43	Kolhapur
17	8B	Irregular availment of CENVAT credit	16.93	16.93	16.93	Kolhapur
18	9B	Non-reversal of proportional CENVAT credit	67.31	67.31	67.31	Mumbai LTU
19	10B	Irregular availment of CENVAT credit	16.81	16.81	16.81	Pune-II

Sl. No.	DAP No.	Brief subject	Amount objected	Amount admitted	Amount recovered	Commissionerate
20	11B	Irregular availment of CENVAT credit	18.57	18.57	18.57	Goa
21	12B	Incorrect availing of CENVAT credit on inputs/input services	27.39	27.39		Raipur
22	13B	Incorrect availing of CENVAT credit of input service	18.36	18.36		Raipur
23	14B	Non-reversal of CENVAT credit on capital goods treated as obsolete	18.71	18.71	18.71	Bangalore-V
24	15B	Non-payment of amount under CENVAT Credit Rules	74.12	74.12		Udaipur
25	19B	Incorrect utilisation of CENVAT credit for payment of duty	48.13	48.13		Daman
26	1D	Ineligible utilisation of CENVAT credit for payment of Service Tax under reverse charge mechanism	24.39	24.39	24.39	Trivandrum
27	9D	Wrong availment of CENVAT credit of Service Tax pertaining to other units	72.11	72.11		Faridabad-I
28	12D	Incorrect availing of CENVAT credit on ineligible services	16.25	16.25	16.25	Chennai-I
29	49D	Excess availing of CENVAT credit due to irregular distribution of common input service	16.18	16.18		Chennai LTU
30	60D	Incorrect availment of CENVAT credit	18.86	18.86	18.86	Alwar
31	74D	Incorrect availing of CENVAT credit	77.24	77.24	9.95	Raipur-I
		Small money value observations which were accepted by the Department and rectificatory action taken but not converted into Draft Audit Paragraphs	1855.65	1855.65	1455.04	
		Total	**2754.27**	**2754.27**	**1948.49**	

Appendix III
(List of observations referred in Chapter V)
(Reference: Paragraph 5.3 and 5.5)

(₹ in lakh)

Sl. No.	DAP No.	Brief subject	Amount objected	Amount admitted	Amount recovered	Commissionerate
Internal audit not conducted						
1	18D	Short payment of Central Excise duty	19.17	19.17		Siliguri
2	51D	Short payment of Central Excise duty due to under-valuation	40.69	40.69		Siliguri
3	3D	Irregular availment of CENVAT credit	15.97	15.97	15.97	Goa
4	76D	Incorrect availing of CENVAT credit of input services beyond its time limit	91.68			Bilaspur
Internal audit did not detect the lapses						
5	19D	Non-payment of differential duty	19.17	19.17		Bolpur
6	5D	Short payment of duty due to undervaluation of goods	125.54	125.54		Jaipur
7	56D	Short payment of Central Excise duty due to non-inclusion of freight charges in assessable value	17.88	17.88		Hyderabad-II & Hyderabad-III
8	67D	Short payment of duty due to undervaluation	31.85	31.85		Bolpur
9	14D	Short payment of duty due to non-inclusion of tool amortization cost in transaction value	26.46	26.46	26.46	Chennai-IV
10	4D	Incorrect availment of CENVAT credit	20.91	20.91	20.91	Kolhapur
11	7D	Irregular availment of CENVAT credit on Construction Services	28.41	28.41		Visakhapatnam
12	15D	Irregular availment of CENVAT credit on structural items	19.77	19.77	19.77	Durgapur
13	34D	Irregular availment of CENVAT credit	118.90	118.90		Alwar
14	45D	Irregular availing of CENVAT credit	679.23	679.23		Haldia
15	85D	Incorrect availment of CENVAT credit	22.62	22.62		Faridabad-I

Sl. No.	DAP No.	Brief subject	Amount objected	Amount admitted	Amount recovered	Commissionerate
16	70D	Ineligible availing and utilisation of CENVAT credit	16.47	16.47		Calicut
17	55D	Non-reversal of CENVAT credit for value of inputs written off	45.40	45.40	45.40	Cochin
18	58D	Non-reversal of CENVAT credit	58.22	58.22		Daman
19	79D	Non-reversal/ non-payment of CENVAT credit	26.11	26.11		Vadodara-I
20	64D	Excess availing of CENVAT credit	159.87	159.87		Ahmedabad-III
21	66D	Incorrect availment of CENVAT credit	49.24	49.24		Kutch
22	68D	Excess availment of CENVAT credit	79.02	79.02		Ahmedabad-III
23	69D	Ineligible availing of credit of Cess paid on Basic Customs duty	45.12	45.12		Calicut
24	75D	Credit taken on ineligible input service for setting up of factory	25.15	25.15		Raipur
25	77D	Non-reversal of CENVAT credit in respect of trading of goods	24.98	24.98		Vadodara-II
26	82D	Non-reversal of CENVAT credit	17.79	17.79		Raipur
		Total	**1825.62**	**1733.94**	**128.51**	

Glossary

AC	Assistant Commissioner
ACES	Automation of Central Excise and Service Tax
ATN	Action Taken Note
BE	Budget Estimates
BF	Blast Furnace
Board	Central Board of Excise and Customs
CAAP	Computer Assisted Audit Programme
CAAT	Computer Assisted Audit Techniques
CAG	Comptroller and Auditor General of India
CAS	Cost Accounting Standards
CBDT	Central Board of Direct Taxes
CBEC	Central Board of Excise and Customs
CC	Chief Commissioner
CCE	Commissioner of Central Excise
CCR	CENVAT Credit Rules
CDR	Commissionerate, Division and Range
CE/CX	Central Excise
CEAM	Central Excise Audit Manual
CENVAT	Central Value Added Tax
CERA	Central Excise Receipts Audit
CESTAT	Customs, Excise and Service Tax Appellate Tribunal
CETA	Central Excise Tariff Act

CPWD	Central Public Works Department
CSO	Central Statistical Office
DC	Deputy Commissioner
DG	Director General
DGCEI	Directorate General of Central Excise Intelligence
DNP	Data Not Provided
DoR	Department of Revenue
DPC	Duties, Powers and Conditions of Service
DRI	Directorate of Revenue Intelligence
DRT	Debt Recovery Tribunal
DTA	Domestic Tariff Area
EA 2000	Excise Audit 2000
EC	Education Cess
ELT	Excise Law Times
EOU	Export Oriented Unit
ER	Excise Return
FIU	Financial Intelligence Unit
FY	Financial Year
GDP	Gross Domestic Product
GST	Goods and Service Tax
HM	Half Margin
ISD	Input Service Distributor

IT	Information Technology
JC	Joint Commissioner
LTU	Large Taxpayer Unit
MCM	Monitoring Committee Meeting
MIS	Management Information System
MOF	Ministry of Finance
MTR	Monthly Technical Report
OIA	Order in Appeal
OIO	Order in Original
OM	Office Memorandum
PD	Principal Director
PLA	Personal Ledger Account
R&C	Review and Correction
RE	Revised Estimates
SCN	Show Cause Notice
SHEC	Secondary and Higher Education Cess
SSI	Small Scale Industries
ST	Service Tax
STTG	Service Tax Certificate for Transportation of Goods
TAR	Tax Arrear Report/Recovery