



सत्यमेव जयते

Report of the Comptroller and Auditor General of India



Union Government
(Department of Revenue – Customs)
(Compliance Audit)
No.1 of 2017

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Comptroller and Auditor General
of India**

for the year ended March 2016

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(Department of Revenue – Customs)
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PREFACE

This Report for the year ended March 2016 has been prepared for submission to the President of India under the Article 151 of the Constitution of India.

The Report contains significant results of the compliance audit of the Department of Revenue – Customs under the Ministry of Finance, and Director General of Foreign Trade under Ministry of Commerce and Industry.

The instances mentioned in this Report are those, which came to notice in the course of test audit for the period 2015-16 as well as those which came to notice in earlier years, but could not be reported in the previous Audit Reports; instances relating to the period subsequent to 2015-16 have also been included, wherever necessary.

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

EXECUTIVE SUMMARY

During the financial year 2015-16 the Custom Receipts of ₹ 2,10,338 crore grew by 12 percent over the previous financial year. The ratio of Customs duty collected to GDP was 1.55 percent. Duty foregone on account of export promotion schemes and on commodities was ₹ 3,40,420 crore in the financial year 2015-16.

The report has 101 paragraphs with revenue implication of ₹ 495 crore and two subject specific compliance paragraphs of ₹ 568 crore. In addition systemic and internal control deficiencies involving revenue of ₹ 6430 crore have been included in the report. In 70 paragraphs involving money value of ₹ 19 crore rectificatory action has been taken by the department/Ministry in the form of issuing show cause notices, adjudicating of show cause notices and recovery of ₹ 15 crore has been effected till date. A few significant findings included in this Report are mentioned in the following paragraphs. The cases which have been accepted by the department and recoveries made/recovery proceedings initiated are mentioned in Annexures to the report.

Chapter I: Customs Revenue

The chapter presents an overview of Customs Receipts, Imports and Exports, Duty foregone and Internal Audit irregularities using data from Union Finance Accounts, reports and relevant data provided by the Central Board of Excise and Customs (CBEC)/DGFT/Department of Commerce and available in public domain.

- Imports registered decline of 9 per cent during FY 16 mainly due to fall in International crude prices, while Customs receipts grew at 12 per cent during the same period.

{Paragraph 1.6}

- Customs revenue as a ratio of GDP had marginally increased in FY 16 as compared to FY 15.

{Paragraph 1.7}

- The Customs Revenue was 14 percent and 30 percent respectively as percentage of Gross Tax Revenue and Indirect Taxes.

{Paragraph 1.7}

- Exports have registered a decline of 9.49 percent during FY 16. The Revenue forgone as a percentage of Customs Receipts was 162 percent in FY 16. Five export promotion and remission schemes accounted for 88 per cent of total revenue foregone under the Schemes.

{Paragraphs 1.6, 1.9 and 1.10}

Chapter II: Recovery of Arrears (Customs)

- Special institutional arrangement like creation of Recovery Cell and Task force has not made any significant impact on improving the extent of recovery of revenue arrears. In some of the Commissionerates these arrears have increased manifold during the three year period covered in audit.

{Paragraph 2.6.1}

- Out of 5461 cases of revenue arrears pending with appellate authority as on March 2016, 1213 cases (22 percent) are pending for more than 5 years. Recovery of revenue arrears locked up in the restrained category amounted to the bulk of arrears, which requires active pursuance with the concerned authorities.

{Paragraph 2.8}

- Out of 31 Commissionerates test checked, 14, 18 and 23 Commissionerates failed to achieve the recovery target fixed in 2011-12, 2012-13 and 2014-15 respectively.

{Paragraph 2.9.1}

- Accumulation of arrears due to non-monitoring of drawback cases, incorrect adjudication of Advance license cases without monitoring the EODC status and deficiencies in the monthly reports being submitted by the field formations are symptoms of an unreliable monitoring and weak internal control system.
- Audit noticed issues worth ₹ 566 crore in addition to the systemic and internal control deficiencies involving revenue of ₹ 1297 crore.

{Paragraphs 2.6.1 to 2.15}

Chapter III: Preventive functions of Customs department

- Based on test check of 38 Commissionerates audit observed weaknesses in preventive functions due to inadequacy of resources, non-achievement of Sea patrolling targets, unused patrolling vehicles, inadequate intelligence gathering, obsolete telecommunication equipment, old arms and ammunition and untrained staff.
- Audit noticed several cases of delay in disposal of seized and confiscated goods, lack of proper maintenance of records resulting in blockage of storage space which caused unnecessary loss to the public exchequer.
- Audit noticed issues worth ₹ 1.75 crore and systemic deficiencies involving revenue of ₹ 5133 crore.

{Paragraphs 3.6 to 3.14}

Chapter IV: Duty exemption/Remission schemes

- *Audit noticed mis-utilization of duty credit in respect of instruments issued under Chapter 3 of Foreign Trade Policy through manipulation of registration of scrip/use of scrip by deploying various methods indicating potential fraud. The money value involved in mis-utilisation of licences amounted to ₹51.70 crore.*

{Paragraphs 4.1 to 4.1.5}

- Revenue of ₹ 409.96 crore was due from exporters/importers who had availed the benefits of the duty exemption schemes but had not fulfilled the prescribed obligations/conditions.

{Paragraphs 4.2 to 4.7.1}

Chapter V: Assessment of customs Revenue

- Audit noticed 29 cases of incorrect assessment of customs duties having total revenue implication of ₹ 17.48 crore. Of these, the department had accepted 22 cases with revenue implication of ₹ 8.39 crore and reported recovery of ₹ 7.55 crore in 20 cases. These cases arose mainly due to non levy of applicable anti dumping duty on imports, excess payment of drawback, delay in disposal of warehoused goods (liquor) and non levy of safeguard duty etc.

{Paragraphs 5.1 to 5.7}

Chapter VI: Mis-classification of goods

- In 28 cases assessing officers mis-classified various imported goods which caused short levy/non levy of customs duties of ₹ 10.01 crore. Out of these, the department had accepted 19 cases with revenue implication of ₹ 3.26 crore and reported recovery of ₹ One crore.

{Paragraphs 6.1 to 6.10}

Chapter VII: Incorrect application of General exemption notifications

- *In two cases audit noticed refund of additional duty of customs (SAD) on the basis of fabricated documents involving revenue of ₹ 2.34 crore.*

{Paragraphs 7.1 and 7.2}

- Audit noticed another seven cases of incorrect application of exemption notifications having total revenue implication of ₹ 3.30 crore. Of these, the department had accepted four cases with revenue implication of ₹ 37 lakh and reported recovery of ₹ 12 lakh in three cases.

{Paragraphs 7.3 to 7.7}

Glossary of terms and abbreviations

Expanded form	Abbreviation
Accredited Client Programme	ACP
Advance authorization	AA
Authorised Economic Operator	AEO
Advance release order	ARO
Anti Dumping Duty	ADD
Basic customs duty	BCD
Bill of entry	BE
Comprehensive Payment and Accounting Package	COMPACT
Customs tariff heading	CTH
Central Board of Excise and Customs	CBEC
Central Excise tariff heading	CETH
Central Statistical organization	CSO
Central Sales Tax	CST
Cost Insurance Freight	c.i.f.
Commissionerate of customs	Commissionerate
Countervailing duty	CVD
Directorate of Data Management	DDM
Department of Revenue	DoR
Department of Commerce	DoC
Director General of Foreign Trade	DGFT
Development Commissioner	DC
Director General of Anti Dumping	DGAD
Director general of commercial intelligence and statistics	DGCIS
Directorate General of Valuation	DGOV
Domestic tariff area	DTA
Duty Entitlement Pass Book	DEPB
Duty Exemption Entitlement Certificate	DEEC
Duty Free Entitlement Credit Certificate	DFECC
Duty Free Replenishment Certificate	DFRC
Electronic Data Interchange	EDI
Export obligation	EO
Export obligation discharge certificate	EODC
Export Oriented Unit	EOU
Export Performance	EP
Export Promotion Capital Goods	EPCG
Export Processing Zone	EPZ
Export and Import	EXIM
Financial year	FY
Fiscal Responsibility and Budget Management Act	FRBM
Free on Board	FOB
Foreign Trade Policy	FTP
Gross Domestic product	GDP

Expanded form	Abbreviation
Hand Book of Procedures	HBP
Harmonised system of nomenclature	HSN
Information and Communication Technology	ICT
Importer Exporter Code	IEC
Indian Customs Electronic Data Interchange system	ICES
Inland Container Depot	ICD
International Tariff Classification (Harmonised System)	ITC(HS)
Joint Director General of Foreign Trade	JDGFT
Letter of permission	LOP
Local Risk Management	LRM
On Site Post Clearance Audit	OSPCA
Public Accounts Committee	PAC
Performance monitoring and Evaluation system	PMES
Principal Chief Controller of Accounts	Pr.CCA
Regional licensing authority	RLA
Risk Management System	RMS
Rupees	₹
Special additional duty of customs	SAD
Special Economic Zone	SEZ
Served from India Scheme	SFIS
Software Technology Park	STP
Standard input output norms	SION
Vishesh Krishi and Gram Udyog Yojana	VKGUY

CHAPTER I
DEPARTMENT OF REVENUE -CUSTOMS REVENUE

1.1 Resources of the Union Government

Government of India's resources 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 of the Union Government for the Financial Year (FY) 16 and FY 15.

Table 1.1: Resources of the Union Government

	2015-16	2014-15
	Cr.₹	
A. Total Revenue Receipts	19,42,200	16,66,717
i. Direct Taxes Receipts	7,42,012	6,95,792
ii. Indirect Taxes Receipts including other taxes ¹	7,13,879	5,49,343
iii. Non-Tax Receipts	4,84,428	4,19,982
iv. Grants-in-aid & contributions	1,881	1,600
B. Miscellaneous Capital Receipts ²	42,132	37,740
C. Recovery of Loan & Advances ³	41,878	26,547
D. Public Debt Receipts ⁴	43,16,950	42,18,196
Receipts of Government of India (A+B+C+D)	63,43,160	59,49,200
Note: Total Revenue Receipts include ₹ 3,37,808 crore in FY 15 and ₹ 5,06,193 crore in FY 16, share of net proceeds of direct and indirect taxes directly assigned to states.		

Source: Union Finance Accounts of respective years

The total receipts of the Union Government increased to ₹ 63,43,160 crore in FY 16 from ₹ 59,49,200 crore in FY 15. In FY 16, its own receipts were ₹ 19,42,200 crore including Gross tax receipts of ₹ 14,55,891 crore, of which Indirect Taxes accounted for ₹ 7,13,879 crore.

1.2 Trends of growth of Indirect Taxes

The relative growth of indirect taxes during FY 12 to FY 16 is given in **Table 1.2** below. The percentage share of indirect taxes to GDP⁵ was slightly above 4 per cent during last five years.

¹ Indirect taxes levied on goods and services such as customs duty, excise duty, service tax etc.;

² This comprises of value of bonus share, disinvestment of public sector and other undertakings and other receipts;

³ Recovery of loans and advances made by the Union Government;

⁴ Borrowing by the Government of India internally as well as externally;

⁵ Source: Union Finance Accounts of respective years, GDP Figures of GDP provided by Central Statistical Organisation. in June 2016.

Table 1.2: Growth of Indirect Taxes

Cr. ₹

Year	Gross Indirect Taxes	GDP	Indirect Taxes as % of GDP	Gross Tax Revenue	Indirect Taxes as % of Gross Tax Revenue
FY 12	3,92,674	90,09,722	4.36	8,89,118	44
FY 13	4,74,728	1,01,13,281	4.69	10,36,460	46
FY 14	4,97,349	1,13,45,056	4.38	11,38,996	44
FY 15	5,46,214	1,25,41,208	4.36	12,45,135	44
FY 16	7,10,101	1,35,76,078	5.23	14,55,891	49

Source: Finance Accounts of respective years, Figures for FY 16 are provisional.

The share of Indirect Taxes in Gross Tax revenue increased in FY 16 as compared to FY 15.

1.3 Nature of Indirect Taxes

Indirect taxes are levied on the cost of the supply of goods/services and are, in this sense, transaction-specific rather than person-specific. The major indirect taxes/duties levied under Acts of Parliament are Customs duty, Central Excise duty and Service Tax. This report is devoted to Customs duty.

1.4 Organisation and Functions

The Department of Revenue (DoR) of 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 under the Central Board of Revenue Act, 1963. Matters relating to the levy and collection of Customs are looked after by the CBEC.

The overall sanctioned staff strength of the CBEC is 91,756⁶(as on 1 January 2016).

In addition, DoR is also responsible for the Indian Stamp Act 1899 (to the extent falling within the jurisdiction of the Union), the Central Sales Tax Act 1956, the Narcotic Drugs and Psychotropic Substances Act 1985 (NDPSA), the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (SAFEMA), the Foreign Exchange Management Act, 1999 (FEMA) and the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA), the Prevention of Money Laundering Act, 2002 (PMLA) and the attached/ subordinate offices for intelligence, enforcement, ombudsman and quasi-judicial functions.

The Department of Commerce under Ministry of Commerce and Industry through Director General of Foreign Trade formulates, implements and

⁶ Figures furnished by the Directorate General of HRD (Customs, Central Ex. & STax as on 1 January 2016.

monitors the Foreign Trade Policy (FTP) which provides the basic framework of policy and strategy to be followed for promoting exports and trade. The Trade Policy is periodically reviewed to incorporate changes necessary to take care of emerging economic scenarios both in the domestic and international economy. Besides, the Department is also entrusted with responsibilities relating to multilateral and bilateral commercial relations, Special Economic Zones, state trading, export promotion and trade facilitation, and development and regulation of certain export oriented industries and commodities.

1.5 Customs Tax base

The customs revenue base comprises of the Importers and Exporters issued with Importer Exporter Code (IEC)⁷ by the Director General of Foreign Trade (DGFT). As on March 2016⁸ there are 724434 active IECs. For managing the foreign trades there are 363 Import ports (105 EDI, 53 Non-EDI, 6 Manual and 199 SEZ) and 347 Export ports (120 EDI, 70 Non-EDI, 12 Manual and 145 SEZ). During 2015-16, ₹ 17.16 lakh crore of exports (97,41,229 transactions) and ₹ 24.90 lakh crore worth of imports (80,15,856 transactions) took place. Thirty agreements⁹ providing tariff concession were active during FY 16. Customs Receipts (₹ 2,10,338 crore) along with revenue forgone (₹ 3,40,420 crore) forms the basis of the tax audit.

1.6 India's export and import and Customs Receipts during FY 12 to FY 16

In terms of value of exports, percentage growth of Indian exports declined from 28% to 17% during FY 12 to FY 14. In FY 15 the value of export earnings declined by ₹ 8,663 crore (0.45 percent) and further in FY 16 declined by ₹ 1,79,970 crore (9.49 percent) over FY 15.

In value terms imports also declined from 39% in FY 12 to less than 1% in FY 15. During FY 16 imports declined by 9 percent which was mainly due to fall in International crude prices.

⁷ IEC is issued by DGFT, Delhi to every importer/Exporter.

⁸Source: DGFT, Udyog Bhawan, New Delhi.

⁹<http://commerce.nic.in/trade/international>

Table 1.3: India's Import and Export

									Cr. ₹
Year	Imports	Growth %	Customs Receipts	Growth %	Custom Receipts to Imports %	Exports	Growth %	Trade Imbalance	Trade Imbalance as % of Imports
FY 12	2345463	39	149328	10	6.4	1465959	28	-879504	37
FY 13	2669162	14	165346	11	6.2	1634319	11	-1034843	38
FY 14	2715434	2	172033	4	6.3	1905011	17	-810423	30
FY 15	2737087	0.8	188016	9	6.9	1896348	(-)0.45	-840739	31
FY16*	2490298	(-)9.02	210338	12	8.4	1716378	(-)9.49	-773920	31

Source: EXIM data, Department of Commerce, * FY 16 figures are provisional

Customs receipts to percentage of total imports were 8.4 percent in FY 16 as compared to 6.9 percent of FY 15.

Trade imbalance as percentage of imports came down from 38 percent in FY 13 to 31 percent in FY 16. However, decline in trade imbalance seems to be mainly due to reduction in international oil and crude prices, rather than due to reduction in quantity of imports or growth of exports, both of which have shown declining trend in the last two years.

1.7 Growth of Customs Receipts vis-a-vis GDP, Gross tax revenue and Indirect Taxes

The growth trends of customs revenue vis-a-vis GDP and Indirect Taxes during FY 12 to FY 16 are given in **Table 1.4**.

Table 1.4: Growth of Customs Receipts

								Cr. ₹
Year	Customs Receipts	GDP	Customs Revenue as % of GDP	Gross Tax Revenues	Customs Revenue as % of Gross tax	Gross Indirect Taxes	Customs as % of Indirect taxes	
FY 12	1,49,328	90,09,722	1.66	8,89,118	16.80	3,92,674	38.03	
FY 13	1,65,346	99,88,540	1.66	10,36,460	15.95	4,74,728	34.83	
FY 14	1,72,033	1,13,45,056	1.52	11,38,996	15.10	4,97,349	34.59	
FY 15	1,88,016	1,25,41,208	1.50	12,45,135	15.10	5,46,214	34.42	
FY 16	2,10,338	1,35,76,086	1.55	14,55,891	14.45	7,10,101	29.62	

Source: Finance Accounts of respective years, FY 16 figures are provisional

The customs revenue as percentage of GDP shows marginal increase in the FY 16 as compared to FY 15. Customs revenue as a percentage of gross tax reduced from 17 percent in FY 12 to 14 percent in FY 16. Customs Revenue as a percentage of Indirect taxes showed decline from 38 percent in FY 12 to 30 percent in FY 16.

1.8 Variation in Budget and Actual Customs receipts

Budget and Revised estimates vis-a vis actual Customs receipts during FY 12 to FY 16 are given in **Table 1.5** below.

Table 1.5: Budget and Revised estimates, Actual receipts

Year	Budget estimates	Revised budget estimates	Actual receipts	Diff. between actuals and BE	Cr.₹	
					% variation between actuals and BE	% variation between actuals and RE
FY 12	151700	153000	149328	(-)2372	(-)1.56	(-)2.40
FY 13	186694	164853	165346	(-)21348	(-)11.43	(+)0.30
FY 14	187308	175056	172033	(-)15275	(-)8.16	(-)1.73
FY 15	201819	188713	188016	(-)13803	(-)6.84	(-)0.37
FY 16*	208336	209500	210338	(+)2002	(+)0.96	(+)0.40

Source: Union Budgets and Finance Accounts for respective years, DoR,

* Figures are provisional

The percentage variation during the last five years between budget estimates and actual collections was in the range of (-) 11.43 percent to (+) 0.96 percent as shown in Table. The revised estimates to actual receipts also varied from (-) 2.40 percent to (+) 0.40 percent.

Explaining the variation in BE/RE/Actual receipts, Ministry stated (November 2016) that BE and RE for customs duty for a particular financial year are fixed while taking into account factors such as growth in GDP, tax policy, growth in value of dutiable imports, revenue outgo on account of refund and duty drawback, exchange rates of leading international currencies etc under certain assumptions. The final outcome of these factors for the whole year are not known in advance which effects the actual collection with regard to the BE/RE.

1.9 Customs Revenue forgone under Customs Act, 1962

The Central Government has been delegated powers of duty exemption under Section 25(1) of the Customs Act, 1962 to issue notifications in public interest so as to prescribe duty rates lower than the tariff rates prescribed in the Schedule to the Customs Tariff Act. These rates prescribed by notification are known as the “effective rates”.

The revenue forgone is thus defined by Ministry of Finance to be the difference between duty that would have been payable but for the issue of the exemption notification and the actual duty paid in terms of the relevant notification. In other words,

$$\text{Revenue forgone} = \text{Value} \times (\text{Tariff rate of duty} - \text{Effective rate of duty})$$

Table 1.6: Customs Receipts and Total Customs Revenue forgone

Year	Customs Receipts	Revenue forgone on commodities including Schemes	Refunds	Drawback paid	Cr.₹	
					Rev. forgone +Refunds+ DBK	Revenue forgone as %age of Customs Receipts
FY 12	149328	285638	3202	12331	301171	202
FY 13	165346	298094	3031	17355	318480	193
FY 14	172033	326365	4501	18539	349405	203

Year	Customs Receipts	Revenue forgone on commodities including Schemes	Refunds	Drawback paid	Rev. forgone +Refunds+ DBK	Revenue forgone as %age of Customs Receipts
FY 15	188016	465618	5051	27276	497945	265
FY 16	210338	298704	6346	35370	340420	162

Source: Union Receipts Budget, CBEC DDM, Drawback cell, CBEC

The revenue forgone as a percentage of Customs Receipts was 162 percent in FY 16. During the last five years it ranged from 162 to 265 percent. Revenue foregone on commodities as well as total revenue foregone had shown declining trend in the FY 16 from ₹ 4.98 thousand crore to ₹ 3.40 thousand crore as compared to FY 15. However, Drawbacks have grown 30 per cent (₹ 8094 crore) in FY 16, whereas refunds have grown by 26 per cent (₹ 1295 crore). Total numbers of items covered under Drawback Schedule as on 31 March 2016 were 2459 adding 87 items during FY 16.

During the FY 16, 67 percent of the Revenue forgone was on Natural or cultured pearls, precious metals and articles thereof, mineral fuels, Animal or vegetable fats/oil, Machinery and mechanical appliances and Electrical machinery/equipment etc.

1.10 Revenue forgone under Export Promotion schemes

Advance license scheme allows duty free imports of raw materials used in the manufacture of resultant products subject to fulfillment of prescribed Export obligation (EO) within 36 months from the date of issue of licence.

Export Promotion Capital Goods (EPCG) scheme allows import of capital goods at concessional rate of customs duty subject to EO equivalent to eight times of duty saved on capital goods imported to be fulfilled over a period of eight years from the date of issue of licence.

Focus Product Scheme (FPS) provides for duty credit equivalent to 2/5 per cent of Free on Board (FOB) value of exports realized in free foreign exchange for export of specified products.

Units in Special Economic Zones (SEZ)/ Exports Processing Zones (EPZ)/ Export Oriented units (EOU) are allowed duty free imports of inputs to export goods and services.

The revenue forgone under Export Promotion schemes stood at 39 percent of the Customs Receipts during the FY 16 as compared to 49 percent during FY 15. During FY 16 top five schemes on which duty was foregone were Advance license scheme, EOU/EHT/STP, SEZ, EPCG and Focus Product Scheme. These five schemes accounted for 88 percent (₹ 72828 crore) of total duty foregone (₹82890 crore) under the schemes (**Table 1.7**).

Table1.7: Revenue forgone under various Export promotion schemes

Scheme	Amount forgone		Cr.₹	
	FY 15	(%age of total)	FY 16	(%age of total)
Advance Licence	23461	26	25625	31
EOU/EHT/STP	14857	16	15959	19
SEZ	8066	9	13593	16
EPCG	8010	9	10157	9
Focus Product Scheme(FPS)	10083	11	7494	9
Others *	18660	20	10062	12
TOTAL	91964		82890	

Source: Directorate of Data Management, CBEC, Ministry of Finance

*Others include DEPB, DFRC, DFEC Schemes, Target plus scheme, Vishesh Krishi and Gram Udyog Yojana (VKGUY), Served from India Scheme (SFIS), DFIA Scheme, FMS, Status Holder Incentive scrip Scheme (SHIS),), etc.

During FY 16 revenue foregone under Advance license Scheme was the highest among the different Export Promotion Schemes. The revenue foregone under Advance license scheme, EOU/EHT/STP, SEZ and EPCG Scheme had shown an increase in FY 16 vis-à-vis FY 15 except Focus Product Scheme.

1.11 Performance of Special Economic Zones

Under the SEZ Act 2005, there are 408 approvals given for establishing SEZs, of which 328 have been notified and 204 are operational as on 2 September 2016 (**Annexure 1**). There are 4166 units approved as on 2 September 2016. A total of ₹ 3.76 lakh crore has been invested resulting in generation of employment for 15.91 lakh persons. It has shown a growth of 0.77 percent over 2014-15 with exports of ₹ 4.67 lakh crore in 2015-16 (**Table 1.8**). Exports growth percentage had declined from 31 percent in 2012-13 to less than 1 percent in 2015-16.

Table 1.8: Performance of SEZs in FY 12 TO FY 16

Year	Exports ₹ in crore	Growth %age
2011-12	3,64,478	15.39
2012-13	476159	31 %
2013-14	494077	4%
2014-15	463770	(-) 6%
2015-16	467337	0.77 %

Source: www.sezindia.nic.in

1.12 Cost of Collection for the FY 12 to FY 16

The cost of collection is the cost incurred on collection of Customs duties and comprises of expenditure on Import/Export Trade Control functions, Preventive functions, transfers to reserve fund/deposit account and other expenditure.

The cost of collection of customs receipts for 2015-16 was 1.33 percent of customs receipts. The cost of collection of Customs receipts for the five year financial period from 2012-13 to 2015-16 is given below (**Table 1.9**).

Table 1.9: Cost of Collection during FY 12 to FY 16

Cr.₹

Year	Expdr. on Revenue-cum Import /export and trade control functions	Expenditure on preventive and other functions	Transfer to Res. Fund, Deposit A/c and other expdr.	Total	Customs receipts	Cost of collection as % of customs receipts
FY 12	306	1577	5	1888	149876	1.26
FY 13	315	1653	10	1979	165346	1.20
FY 14	333	1804	5	2142	172033	1.25
FY 15	382	2094	20	2496	188016	1.33
FY 16	412	2351	36	2799	210338	1.33

Source: Finance Accounts of the Union Government for respective years

Expressed in terms of percentage of Customs receipts, cost of collection ranged between 1.20 percent (FY 13) to 1.33 percent (FY16).

1.13 Risk Management system (RMS)

Customs assessments procedures are largely computerised to facilitate trade by quicker process of imports and exports and minimize irregularities in assessments. RMS, an electronic system, interdicts import declarations (goods) on the basis of pre-defined risk parameters which are then subject to assessment or examination or both.

Efficiency of RMS hinges on the precision of the outliers highlighted and increasing the coverage of system based assessments in all air cargo, sea port and land ports, SEZ / EOU except non-EDI ports. Out of total import transactions in FY16, 20 percent transactions were flagged by RMS for detailed assessments as against 24 percent in the previous year. Similarly, in FY 16, export transactions flagged by RMS for detailed assessments were 24 percent of total transactions as against 20 percent in FY 15.

Table 1.10: Transactions flagged by the RMS

No. of transactions flagged by RMS	FY 15	FY 16
Imports	18,12,765 (24 %)	16,06,930 (20 %)
Exports	18,10,718 (20 %)	23,81,803 (24 %)
Total transactions (Imports)	75,22,430	80,15,856
Total transactions (Exports)	92,62,011	97,41,229

Source: Risk Management Division, DRI, CBEC, MOC and Industry, Govt. of India

1.14 Internal Audit and Investigation

Directorate General of Audit has its Headquarter located in Delhi, headed by Director General (Audit) with seven zonal units at Ahmedabad, Bangalore,

Chennai, Delhi, Hyderabad, Kolkata and Mumbai each headed by Addl. Director Generals under its ambit. Every zonal unit of DGA has area wise jurisdictional control over zonal units of Chief Commissioner and Commissionerates there under.

1.15 Technical audit by DG (Audit), CBEC

Departmental audit is an important instrument of internal control which detects non compliance and inefficiencies and initiates remedial action on shortcomings. **Table 1.11** given below gives quantitative achievements in this area during FY 12 to FY 15. CBEC has not furnished information for FY 16.

Table 1.11: Departmental audit during FY 12 to FY 15

Cr.₹						
FY	Audits conducted	Duty detected	Duty recovered	Duty detected to Customs Receipts %	Duty recovered to Detected %	Duty recovered to Customs Receipts %
FY12	525406	439	459	0.29	105	0.31
FY13	446911	1824	1058	1.10	58	0.64
FY14	494393	294	223	0.17	76	0.13
FY 15	441068	4.45	3.50	0.002	79	0.001

Source: Directorate General of Audit, Customs ,Central Excise and Service Tax

1.16 On Site Post Clearance Audit (OSPCA)

Customs On-Site Post Clearance Audit (OSPCA) is an initiative based on global best practices and is aimed at creating an environment of increased compliance while allowing the department the flexibility to increase the facilitation for importers and exporters. By its very nature, OSPCA is a broad based audit with focus on systems and procedures even though the short levies of duties, if any, shall continue to be determined on transaction basis.

Accredited Clients Programme (ACP) is a major element of the risk management strategy of the department. Under this programme, clients who are assessed as highly compliant would be given assured facilitation by the RMS so as to create a climate of voluntary compliance. OSPCA has been made applicable to all ACP clients.

During FY 15 and FY 16 only 22 to 24 percent of units planned for audit under OSPCA have been audited which resulted in detection of miniscule total short levy of ₹ 8.46 crore, of which ₹ 5.89 crore was recovered.

Table 1.12: Audit conducted under OSPCA

FY	Audit planned for no. of units	Audit conducted	Duty detected ₹ in crore	Duty recovered ₹ in crore
FY 15	519	113 (22 %)	4.73	2.38
FY 16	330	80 (24 %)	3.73	3.51

Source: Directorate General of Audit, Customs, CEx and Service Tax

1.17 Tax Evasion and Seizures

According to information furnished by Directorate of Revenue Intelligence (DRI) the number of duty evasion cases in FY 16 moved up from 407 to 631 and value went up from ₹ 2,926 crore to ₹ 6,623 crore (**Annexure 2**).

Major commodities involved in evasion cases were Gold, Narcotic Drugs, Foreign currency and Electronic items.

1.18 Internal Audit irregularities

Principal Chief Controller of Accounts (Pr.CCA), CBEC audits different payment and accounting functions of CBEC. Though internal audit is an integral part of the internal control system, the internal audit reports of Pr.CCA indicated pendency to the tune of 296 internal audit paras with gross value of ₹ 56363.74 crore¹⁰.

Pr.CCA audit comments comprised the following irregularities apart from points of establishment audit till FY 16:

- a) Non recovery of dues from Govt. Department/State Government Bodies/Private parties/ Autonomous bodies; ₹ 44857.23 crore.
- b) Blocking of government money; ₹ 72.90 crore.

1.19 CAG's audit

The CAG's audit of Customs Revenue is managed through nine field offices headed by Director Generals (DGs)/ Principal Directors (PDs) who conducted audit under section 16 of the Comptroller and Auditor General of India (Duties, Powers and Conditions of Service) Act, 1971. The compliance audit is carried out by observing provisions of Regulations on Audit and Accounts, 2007, Standing orders, and Auditing Standards, 2nd Edition, 2002.

1.20 Compliance Audit Report

The current report has 101 paragraphs with revenue implication of ₹ 495 crore, and two subject specific compliance paragraphs with revenue implication of ₹ 568 crore. In addition audit objections in the nature of systemic and internal control deficiencies involving revenue of ₹ 6430 crore have been incorporated in this report. There were generally six kinds of observations viz. Incorrect classification; Incorrect application of exemption notification; Condition of notification not fulfilled; Incorrect exemption due to miscalculation, Scheme based exemption and Incorrect assessment of customs duties. The department/Ministry has taken rectificatory action involving money value of ₹ 19 crore in case of 70 paragraphs in the form of issue of

¹⁰DGACR, New Delhi letter No. CRA/4-8/Misc Corres./Info. for CAG/16-17/853 dated 21.11.2016

show cause notices, adjudication of show cause notices and has reported recovery of ₹ 15 crore in in 54 cases.

1.21 Access to information /Records

Single Sign On (SSO id) based access of ICES 1.5 was used along with examination of basic Records/ documents in DoR, CBEC, Department of Commerce and their field formations. MIS, MTRs of CBEC along with other stake holder reports were used. In addition DGFT (EDI) data, SEZ online data DoC, Annual Import/Export Data of Customs (CBEC) the Union Finance Account, Exim Data DoC, were also used.

Transaction level data of ICES 1.5 for imports and exports for the period 2014-16 as per the data directory was not provided by Director General (System), CBEC despite several reminders. The CRA module of ICES does not cater to macro analysis and periodic analysis of the transaction data.

1.22 Status of Audit Reports selected and discussed by Public Accounts Committee (PAC)

PAC has taken up performance review on 'Export obligation Units (EOUs)', Chapter 71 and one long paragraph on 'Provisional Assessments' for discussion. PAC's advance questionnaires to the Department of Revenue/ Commerce have been broad based at the levels of tax policy, administration and implementation. It has also observed lack of inter-ministerial coordination, scheme outcomes as well as inadequate monitoring in the past.

1.23 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 639 audit paragraphs (**Table 1.13**) involving ₹ 6547crore. Government had accepted observations in 536 audit paragraphs involving ₹ 304 crore and had recovered ₹ 121 crore.

Table 1.13: Follow up of Audit Reports

Year	Paragraphs included		Paragraphs accepted		Recoveries effected	
	No.	Amt.(Cr. ₹)	No.	Amt. (Cr. ₹)	No.	Amt.(Cr. ₹)
FY 12	121	62	118	59	98	35
FY 13	139	1832	120	95	85	31
FY14	154	2428	137	46	78	17
FY 15	122	1162	91	85	67	23
FY 16*	103	1063	70	19	54	15
Total	639	6547	536	304	382	121

Source: CAG Audit reports for respective years

* FY 16 Figures are of pre printing

CHAPTER II

RECOVERY OF ARREARS (CUSTOMS)

Customs duty is determined in terms of section 15 or section 16 of the Customs Act, 1962 in respect of imported or export goods. If the duty paid / levied is found to be less than due, the importer or exporter is required to pay the short levied / non levied or short paid / non paid amount of duty. In this regard, the Customs Act, 1962 empowers officers to issue a demand cum Show Cause Notice (SCN) for recovery of amount of duty short levied/ non levied from the importer/exporter. The SCN is then adjudicated by the appropriate authority. Any amount recoverable from the importer/exporter due to confirmation of demands in favour of the department by virtue of Orders-in-Original (OIOs), or further Orders-in-Appeal (OIA), Tribunal orders, and Courts' Orders, becomes arrears.

Arrears of revenue arise as a result of the following:-

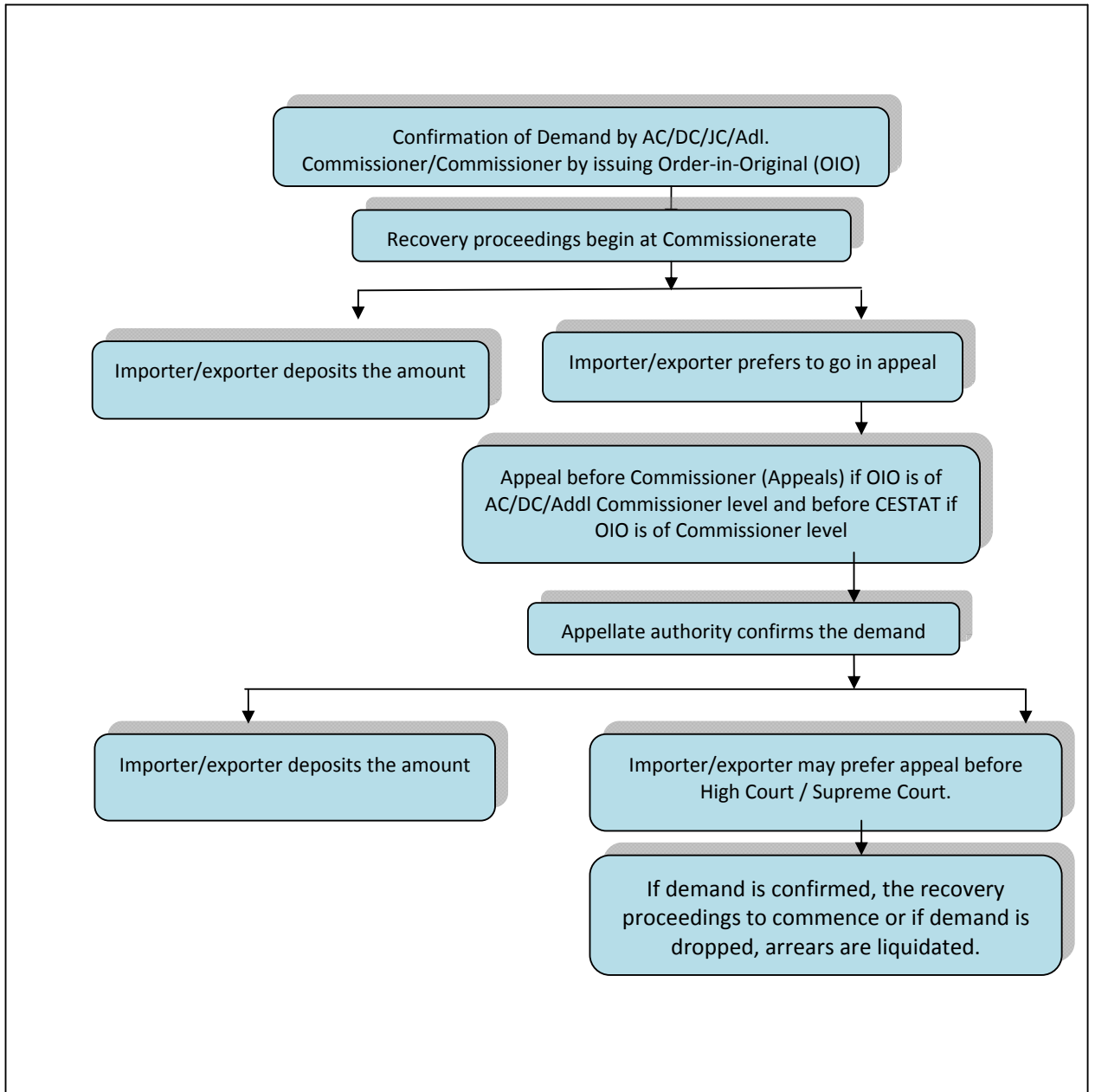
- Confirmation of demands by the adjudicating authority
- Rejection of appeal by the appellate authority
- Grant of stay application with condition of pre-deposits
- Orders in favour of the Department by Tribunals, High Courts and Supreme Court.

2.1 Statutory provisions

The main statutory provisions dealing with recovery of arrears in Customs are as follows:-

- (i) Section 28 of the Customs Act, 1962 provides for recovery of any duty which has not been levied or has been short levied or erroneously refunded or if any interest payable has not been paid, part paid or erroneously refunded by way of issue of demand and pursuing with the importer/exporter.
- (ii) In case recovery is not effected under section 28, section 142 further empowers department to take coercive actions such as deducting any amount payable to the defaulter, restraining any movable or immovable property or referring the case to district collector for recovery of the dues as if it were an arrear of land revenue.
- (iii) The process of recovery of arrears starts with confirmation of demand against the defaulter importer/exporter and includes a number of appellate forums wherein importer/exporter as well department can go for appeal. The process of recovery of arrears is depicted in following flowchart:

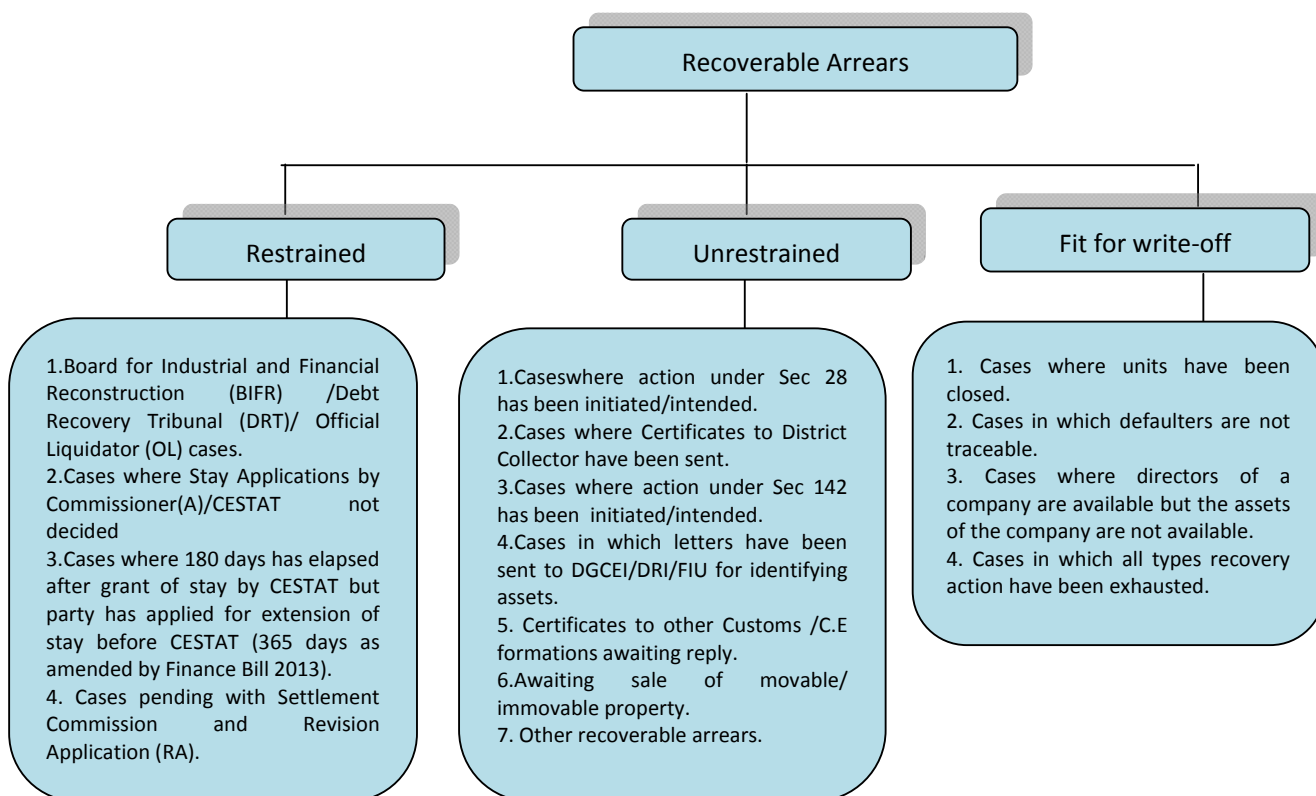
Chart 1: The process of Recovery of Arrears



2.2 Classification of Arrears

Arrears are classified into two main categories viz. recoverable and irrecoverable arrears. All stayed arrears are irrecoverable. The recoverable arrears are further classified as restrained, unrestrained and fit for write off as explained in Chart 2.

Chart 2: Classification of arrears



2.3 Organisational Structure

The function of recovery of arrears in CBEC is entrusted to the field formations and is monitored by a centralized task force headed by Chief Commissioner (Tax Arrears Recovery) as detailed below.

A. Field formations :

- a. **Commissionerates:** Recovery of arrears is the overall responsibility of the jurisdictional Customs commissioners. They are required to review and monitor the functions of recovery cell functioning within the Commissionerate. Besides, they should carry out actions for vacation of stay orders, filing for early hearing of CESTAT/Court matters, taking action for attachment of property of defaulters and follow up of cases pending in Board for Industrial and Financial Reconstruction (BIFR)/Debt Recovery Tribunal (DRT)/Official Liquidator (OL) etc. and watching progress and

performance of Recovery Cell through monthly progress reports and taking follow up action.

- b. **Recovery Cell:** Each Commissionerate has a Recovery Cell whose major functions are to serve notice upon defaulters, attachment and sale of defaulter's property by public auction and to send a monthly progress report to the Chief Commissioner regarding arrears.

B. Chief Commissioner-Centralised Tax Arrears Recovery (TAR)

The Board constituted a centralized Task force in August 2004 which is headed by Chief Commissioner (Tax Arrears Recovery) stationed at New Delhi with Six Nodal Officers (Tax Arrears Recovery) at Delhi, Mumbai, Kolkata, Chennai, Vadodara and Nagpur. The Task Force is entrusted with the following responsibilities:

- Review of extent of revenue arrears
- Formulation and implementation of strategy for recovery.
- Monitoring the efforts of the Customs field formations.

To augment recovery of revenue arrears, CC (TAR) circulated action plan for recovery of arrears to all the chief commissioners in June 2015. The action plan includes following strategy:-

- a. Scrutiny of all arrears at the Commissionerate level and initiation of all appropriate action.
- b. Where defaulters are not traceable, the Commissionerates should take up the matter with other Departments like income tax, DGFT, Registrar of Companies, Commercial Tax Departments, State Revenue Departments etc. to gather the details movable/immovable property owned by such defaulter and to ensure close follow up and persuasion by seniors officers for recovery of arrears in such cases.
- c. Creation of database for capturing the details of all cases where action under 142 of Customs Act has been initiated.

Since August 2015, function and responsibilities of CC (TAR) have been transferred to Directorate General of Performance Management (DGPM).

2.4 Audit Objectives

The subject specific compliance audit sought to assess

- i. the extent and nature of arrears of revenue
- ii. the level of compliance with the statutory provisions and the guidelines issued by the department for recovery of dues
- iii. effectiveness of monitoring and internal control mechanism

2.5 Audit coverage

Audit examined the records of office of the Chief Commissioner (TAR) Delhi, Nodal Officers (TAR) Mumbai, Nagpur and 31 Commissionerates out of 51 total Commissionerates dealing with Customs, as detailed in **Annexure 3**. The period covered in audit was from 2013-14 to 2015-16.

Audit Findings

Audit noticed that while revenue arrears have gone up during the period audited (FY 2012-13 to 2015-16), the recovery of dues has declined sharply in this period. A substantial percentage of Commissionerates reported shortfall in meeting recovery targets, which was compounded by instances of delay or non- endorsement of Orders in Original to the recovery cell, insufficient and delay in taking action under section 142 and department's inaction in tracing defaulters. Audit noticed instances of delay in providing information to the appellate authorities and non-monitoring of appeal cases. Among the significant factors contributing to creation of revenue arrears, audit noticed specific issues relating to non-realization of foreign exchange under the duty drawback scheme and incorrect adjudication of cases without ascertaining export obligation discharge certificates.

These observations are discussed in succeeding paragraphs.

2.6 Revenue Arrears in Customs

2.6.1 Extent of revenue arrears

The extent of revenue arrears of customs and their recovery, during the years 2012-13 to 2014-15, is depicted below.

Table 2.1: Revenue arrears of Customs during 2012-13 to 2014-15

(₹ in crore)

Year	Arrears at the end of year	Recovered during year	Stayed	Arrears pending at the end of year		
				Restrained	Un-stayed	
					Recoverable	Unrestrained
2012-13	12103.40	3477.20	5107.36	3485.43	1730.77	1779.84
2013-14	17986.38	3835.71	8290.67	5264.56	2765.00	1666.15
2014-15	14358.64*	949.65	7286.75	2843.07	4173.60	55.22

Source: Information provided by Directorate General of Performance Management (DGPM) vide letter C.No. CC (TAR)48/2015-18015 dated 22.2.2016.

*Discrepancy in the total revenue arrears was noticed in the information provided by DGPM vide letter dated February 2016. Response from the Ministry is awaited.

The revenue arrears of customs has risen from ₹ 12103 crore to ₹ 14359 crore during the year 2012-13 to 2014-15. However, during the same period the recovery of arrears has shown sharp decline of approximately 75 percent from ₹ 3836 crore to ₹ 950 crore.

The revenue arrears of 17 Commissionerates out of 31 selected Commissionerates¹¹ is given in the table below.

Table 2.2: Revenue arrears of 17 Commissionerates test checked during 2013-14 to 2015-16

(₹ in crore)

Year	Arrears at end of the year	Recovered during year	Stayed	Arrears pending at the end of year		
				Restrained	Un-stayed Recoverable	Unrestrained Non-recoverable
2013-14	2354.18	547.50	540.91	1345.49	396.38	97.37
2014-15	3666.96	2361.68	1012.46	2169.31	432.77	95.68
2015-16	3804.32	763.71	787.52	2234.55	678.69	103.73

Source: Information provided by selected Commissionerates to audit

It is observed that the revenue arrears of Customs at the end of the year also rose significantly during 2015-16 as compared to 2013-14 in these Commissionerates. Stayed arrears also increased significantly 2015-16 as compared to 2013-14.

Revenue arrears of 17 commissionerates revealed that:

- In 11 commissionerates, Delhi (Preventive), Kochi, ICD Bengaluru, Mangalore, Goa, Jodhpur, CE Kozhikode, West Bengal (Preventive), Vishakhapatnam, Siliguri (Preventive) and Shillong (Preventive), recovery in 2015-16 decreased in comparison 2013-14.
- In 8 Commissionerates, Delhi (Airport), Hyderabad, CE Trivandrum, Jamnagar, Kochi (Preventive), West Bengal (Preventive), Vishakhapatnam and CE Kozhikode, pendency of revenue arrears in 2015-16 increased by more than 100 percent as compared to 2013-14. Audit noticed a very significant increase in revenue arrears in four Commissionerates viz. CE Trivandrum (755 per cent), West Bengal- Preventive (581 per cent), Kochi- Preventive (458 per cent) and Delhi-Airport (317 per cent). However, in 2 Commissionerates i.e. CE Kochi and Jodhpur pendency of revenue arrears declined.
- In 6 Commissionerates i.e. ICD Bangalore, CE Kochi, CE Trivandrum and Goa during 2014-15, Kochi-Preventive and Shillong Preventive during 2015-16 increase in stayed arrears was more than 100 per cent compared to previous year.
- Revenue arrears of 4 Commissionerates i.e. Preventive (Delhi), Jamnagar, Mangalore and Vishakhapatnam accounted for 63 percent of the total revenue arrears in 17 Commissionerates as on March 2016.

¹¹Only 17 commissionerates furnished complete data for the period of audit.

2.7 Categories of Arrears

According to the information furnished by the Department, the all- India revenue arrears at the end of March 2015 under various categories was as under:-

Table 2.3:Category-wise all India revenue arrear as on March 2015

Sl. no.	Category of arrears	No. of cases	March 2015	
			Amount	Percentage of arrears
1	Restrained Arrears	7947	17087	80.16
2	Unrestrained Arrears	16819	2772	13.00
3	Fit for write-off	8201	1457	6.84
	Grand Total	32967	21316	100

(₹.in crore)

Source: Directorate General of Performance Management vide letter C.No. CC(TAR)48/2015-18015 dated 22.2.2016

As can be seen from the above table, 80 percent of revenue arrears were restrained arrears as on March 2015. This implies that the recovery of these arrears was restrained by the concerned authorities (Appellate authorities/BIFR/Debt Recovery Tribunal/Official Liquidator etc) and that the department should have pursued these cases with these authorities vigorously for an early disposal. The unrestrained arrears locked up at departmental level and fit for write-off cases amounted to ₹ 4229 crore (20 percent). In terms of quantum of cases, maximum number of cases, i.e. 76 percent were in the category of unrestrained arrears.

2.8 Age-wise pendency of arrears pending with appellate authorities

The age-wise details of arrears of revenue pending with various appellate authorities as of 31st March 2016 furnished by 31selectedCommissionerates were as under:-

Table 2.4:Age-wise pendency of revenue arrears with appellate authority as on March 2016

Appeals pending with	1 year or below (i)		1 to 2 years (ii)		2 to 5 years (iii)		5 to 10 years (iv)		Above 10 years (v)		Total	
	No.	Amt.	No.	Amt.	No.	Amt.	No.	Amt.	No.	Amt.	No.	Amt.
	Supreme court	28	27.63	20	0.01	26	7.55	22	9.52	40	4.16	136
High court	520	265.47	91	106.21	147	25.31	263	120.12	86	213.67	1107	730.78
CESTAT	699	2567.28	521	1798.45	801	332.59	681	265.76	47	12.04	2749	4976.12
Comms(Appeal)	697	76.94	344	105.31	238	57.85	53	16.3	17	0.49	1349	256.89
JS(RA)	4	0.13	52	3.69	60	2.76	4	0.21	0	0	120	6.79
Total	1948	2937.45	1028	2013.67	1272	426.06	1023	411.91	190	230.36	5461	6019.45

Subtotal for cases above 5 years (iv+v) = 1213 cases (₹ 642.27 crore)

Source: Information provided by selected Commissionerates to audit

As can be seen from the above table, 1213 cases involving revenue arrears of ₹ 642.27 crore (10.67percent) were pending for recovery for more than five years.

2.9 Compliance to statutory provisions, rules, procedures and guidelines for recovery of arrears

Recovery of arrears is the overall responsibility of the jurisdictional commissioners. They are required to review and monitor the functions of recovery cell functioning within the Commissionerate. As per the Ministry of Finance circular (1997) circular dated 15/12/1997, a “Recovery Cell” (RC) should be created in each Custom Commissionerate for the purpose of making recovery of Government Dues. Every year recovery targets are fixed for each Commissionerate by CC (TAR)¹². Following short comings were noticed in the recovery cell.

2.9.1 Non Achievement of Recovery Target by recovery cells

On comparison of revenue arrear recovery target vis-a-vis achievement for the years 2013-14, 2014-15 and 2015-16 audit noticed that out of 31 Commissionerates, 14, 18 and 23 Commissionerates respectively, failed to achieve the target fixed by CC(TAR).

Table 2.5: Summary of Target and Achievement of revenue arrears

Year	No. of Commissionerates which achieved target	No. of Commissionerates where shortfall noticed	Range of shortfall (in percent)
2013-14	13 ¹³	14(52 %)	19-100
2014-15	10 ¹⁴	18(64 %)	23-100
2015-16	8	23(74 %)	7-100

Source: Information provided by selected Commissionerates to audit

As can be seen, percentage of Commissionerates that failed to achieve target has risen from 52 percent to 74 percent during 2013-14 to 2015-16.

On being pointed out, Commissionerates stated that targets could not be achieved due to shortage of staff, huge pendency with appellate authority etc. Reply of the Department is not acceptable as target were fixed keeping in view existing manpower. Further, audit scrutiny has revealed several issues where lack of action due to non compliance to the rules and procedures have resulted in arrears accumulation as narrated below.

¹² CC (TAR) letter C.No.CC(TAR) 71/Tech/Budget/2014/4556 Dated 18.6.15

¹³ Excludes ICD TKD, Ludhiana, Port Kolkata, ACC Chennai

¹⁴ Excludes ICD TKD, Ludhiana, CE Kochi

2.9.2 Non endorsement of Order-In-Originals (O-I-Os) to the Recovery Cell

Order-In-Originals (O-I-Os) should be endorsed to Recovery Cell as soon as the OIOs are passed¹⁵. The major functions of Recovery Cell are to serve notice upon defaulters, attachment and sale of defaulter's property by public auction and to send a monthly progress report to the Chief Commissioner regarding arrears.

Audit noticed that in seven¹⁶ Commissionerates 110 OIOs involving revenue arrear of ₹ 11.96 crore passed during 2005-2015 were not endorsed to recovery cell.

Non-endorsement of O-I-O to the Recovery Cell not only delayed the recovery process but also exposed lack of coordination within the Commissionerates.

In four¹⁷ Commissionerates (Combined Customs and C. Excise) it was also noticed that though Recovery Cell had been created but the pursuance of cases/upkeep of concerning files was being done at only Divisional level which indicates that the Recovery Cell of the Commissionerates were not fully functional.

2.10 Action under section 142 of Customs Act

2.10.1 Non adjustment of refund amount against confirmed demand Section 142(1) (a)

Section 142(1) (a) of the Customs Act provides that where any sum payable by any person is not paid the proper officer may deduct or may require any other officer of customs to deduct the amount so payable from any money owing to such person which may be under the control of the proper officer or such other officer of customs.

In Import II Commissionerate NCH Mumbai, in the case of M/s Uttam Galva Steels Ltd, the Commissioner vide O-I-O dated 30.04.2014 confirmed the differential duty amounting to ₹ 2.23 crore. Though the party requested the Commissionerate (March 2015) to apportion the refund amount of ₹ 2.07 crore against the demand of ₹ 2.68 crore, the department did not apportion the refund amount against the demand till September 2016, thereby discarding an opportunity under section 142 (1)(a) to collect the arrears which remain pending.

2.10.2 Improper issue of detention notices Section 142(1) (b)

Section 142(1)(b) of the Customs Act provides that the Assistant Commissioner of Customs may recover or may require any other officer of customs to

¹⁵ Kolkata Commissionerate Standing Order No.21/92 dated 30 July 1997

¹⁶ Kanpur, Meerut, Noida, Patna, Jodhpur, Bhubaneswar, Hyderabad

¹⁷ Kanpur, Meerut, Noida, Patna

recover the amount so payable by detaining and selling any goods belonging to such person which are under the control of the Assistant Commissioner of Customs.

Audit scrutiny revealed that the detention notices are being issued manually and forwarded to all Chief Commissionerates for action. No details are inserted in the system for prompt action. The detention notices are being issued without details of IEC code, though whole business cycle of import/export/refund/drawback is based on IEC code. No feedback for action taken on detention notice was observed during audit.

Even in cases where notices were issued parties were actively involved in exports after issue of detention notices which implies that customs department had access to their goods and could have taken action for recovery. A few cases are narrated below:

In two Commissionerates viz. ICD TKD (Export) and NCH (Export) Delhi detention notices were issued against seven parties involving revenue arrear amounting to ₹ 26.02 lakh although the parties were exporting through Commissionerates.

Moreover in cases where department had confiscated the goods these were not disposed off for realization of arrears.

In two Commissionerates viz. Trivandrum and Kandla audit noticed that recovery of ₹ 95.34 lakh involving 4 cases was not realised by selling confiscated goods even after a lapse of four to eleven years and goods were allowed to become obsolete whereas they could be auctioned as per procedure to compensate for arrears. Insufficient action by the department led to further delay in recovery.

Lack of action under section 142(1) (b) by department resulted in non-recovery/accumulation of arrears.

On being pointed out, NCH (Export) authorities issued (September 2016) alert in Export module in respect of four cases and replied that alert had been removed in two cases due to filing of appeal by party.

Chief Commissioner (NCH) New Delhi further stated (November 2016) that audit observation regarding inclusion of IEC code as well in the detention notices has been noted for strict compliance and defaulters having IEC number against whom arrears are pending are being monitored through e-BRC module as well. In majority of cases where detention notices have been issued, alerts have been inserted in the EDI system and these cases are being pursued on priority. Further progress is awaited (January 2017).

2.10.3 Improper certificate action under section 142 (1) (c)

Section 142(1) (c) of the Customs Act provides that if- the amount cannot be recovered from such person in the manner provided in clause (a) or clause (b) certificate action should be taken through the district authorities/jurisdictional commissioner of customs/Central excise.

Audit scrutiny of 25¹⁸ Commissionerates revealed that in 422 cases of revenue arrear involving ₹ 240.70 crore although no appeal was filed by the party but certificate action was not taken.

Out of 422 cases detention notices were issued by the Department in 52 cases involving revenue arrear of ₹ 13.34 crore but there was time lag of 1-3 years in 39 cases, 3-6 years in 10 cases and above 6 years in 3 cases from date of issue of O-I-O.

Similarly, although certification action was taken in 15 cases involving revenue arrear of ₹ 13.27 crore, time lag of 1-3 years in 12 cases, 3-6 years in 2 cases and above 6 years in 1 case was noticed from date of issue of O-I-O.

In the absence of time frame, no uniformity was observed by audit in issue of notices/letters to party for deposit of government dues. Even detention notices and/or certificates were issued by the Commissionerates without following any timeframe.

Kandla Commissionerate reported (November 2016) that the demand was set aside by the Commissioner (Appeal) in one case, in another case matter is under stay while recovery of ₹ 7.60 lakh was made in one case. In remaining cases wherever the appeal period is over letters have been written to party for payment of government dues. Further progress is awaited (January 2017).

2.11 Tracing of defaulters and arrears to be written-off

Ministry constituted (August 2004) a Centralised Task Force to co-ordinate, facilitate, monitor and oversee the efforts of the field formations towards recovery of arrears (circular 55/2004 dated 19.8.2004) which envisages that the Commissioners will complete enquiries at all known addresses of the defaulters to ascertain whether any moveable or immovable assets can be located. Discreet investigation would be made from the neighboring persons, trade rivals and other concerned Govt. departments whether any other place of business of the defaulter anywhere in India exists or about Bank accounts etc for extended action to such place.

¹⁸ACC Bangalore, Delhi-NCH(Export), ACC-Mumbai, Ahmedabad, AIU Kolkata, chennaisea,Goa, ICD Bangalore, ICD-TKD (Export), IGI delhi, Import-II Mumbai, Jaipur, Jodhpur, Kandla, Kanpur, Kochi, Lucknow-Preventive, Manglore, Meerut, Noida, Patna, Preventive-WB, Preventive-Delhi, Trivandrum and Tuticorin

Board vide letter F.No. 296/34/2008-CX-9 dated 20.03.2008 circulated procedures that had to be followed with respect to recovery of arrears which have become difficult to recover.

Action plan circulated by Chief Commissioner (TAR) in June 2015 also stressed for taking up the matter with other departments to ensure recovery from defaulters.

Audit, however, noticed following shortcomings in compliance to these instructions:-

2.11.1 Inaction by the department to trace out defaulters

Audit noticed that in contravention of above instructions, action was not taken by the Commissionerates to trace out defaulters. Few cases are narrated below.

Test check in 23¹⁹ Commissionerates, revealed that out of 330 cases of “defaulter not traceable” involving revenue arrear of ₹ 261.44 crore, in 258 cases involving revenue arrear of ₹ 223.35 crore either no physical verification to ascertain ownership of property was done or details of such physical verifications were not made available in the file to audit.

Only Kanpur Commissionerate wrote letters to various agencies for ascertaining movable and immovable property of the parties. Rest of the 22 Commissionerates either referred the matter only to few agencies or did not refer to any agency at all.

In two Commissionerates viz. Patna and JNCH Mumbai audit noticed that even arrear files of 39 cases involving revenue arrear of ₹ 1.07 crore were not traceable. Of these, 30 cases pertained to period 1975 to 1984. As substantial time have passed from the date of adjudication there is bleak chance of recovery of arrear resulting into loss to the government revenue.

Audit noticed that there is no set time frame/guideline for referring the matter to various agencies, ascertaining ownership of goods, physical verification of premises, putting the IEC on alert, integrating other agencies like DGFT, bank, post office, trade association for ensuring timely recovery. Thus absence of set time frame and lack of action by Commissionerates resulted in non-recovery of arrears.

¹⁹Delhi-NCH(Export), ACC-Mumbai,ACC-Bangalore, chennai sea, Goa, Hyderabad, ICD Bangalore, ICD-TKD (Export), Jodhpur, Kandla, Kanpur, Kochi, Lucknow-Preventive, Kolkata-Airport, Kolkata-Port, Ludhiana, Mangalore, Meerut, Preventive-Delhi, Trivandrum, Tuticorin and vishakhapatnam

2.11.2 Non filing of application before Debt Recovery Tribunal against the defaulter

In Kochi Commissionerate audit observed that the case against M/s. K.K. Impex, Aluva was adjudicated vide Order in Original No.3/2011 dated 3 May 2011 confirming duty of ₹ 2.11 crore and penalty of ₹ 2.11 crore and ₹ 50 lakh to sole proprietor.

After litigation, action under Section 142(1) (C) (ii) was started against the defaulter on 13 January 2015. Meanwhile, the defaulter closed the company. United Bank of India, Ernakulum branch had attached the properties of the firms and filed original application before Debt Recovery Tribunal at Ernakulum. As the properties of the company had been attached, the Department had failed to file application before Debt Recovery Tribunal for recovery of arrears.

Department replied that an office note was forwarded to legal section for obtaining legal opinion in the case.

2.11.3 Non constitution of committee for write-off

Board Circular 946/07/2011 dated 1.6.2011 stipulated that a three- member Committee of Chief Commissioners and Commissioners shall be constituted to examine the proposals for write-off of irrecoverable arrears and recommend deserving cases to the competent authority in terms of Delegated financial powers (Board's Circular dated 21.9.1990).

On comparison of total revenue arrear vis-a-vis fit for write off cases in 31 Commissionerates test checked, it was observed that during the year 2013-14, 2014-15 and 2015-16, cases fit for write off had identified as 821, 770 and 971 respectively. However, no case was written off during the above period. Even the committee for write off as required by CBEC circular ibid was not constituted by these Commissionerates.

Table 2.6: Summary of revenue arrears fit for write off

Year	No. of Comms.		Revenue arrear in these Comms. Amount (₹. in lakh)	Fit for write off			Percentage of total revenue of arrear cases
		No.		Cases fit for write off	Amount (₹. in lakh)	%age	
2013-14	10 ²⁰	3250	208753.50	821	9735.59	25.26 %	5.7 %
2014-15	11 ²¹	5801	264898.1	770	9568	13.27 %	3.61 %

²⁰ Delhi-Preventive, Mangalore, Jamnagar, Jodhpur, Kochi, Kochi-Preventive, CE Trivandrum, Vishakhapatnam, Siliguri-Preventive, Goa

²¹ Delhi-Preventive, Delhi-Airport, Mangalore, Jodhpur, Kochi, Kochi-Preventive, CE Trivandrum, Hyderabad, Vishakhapatnam, Siliguri-Preventive, Shillong-Preventive

Year	No. of Comms.		Revenue arrear in these Comms.	Fit for write off			Percentage of total revenue of arrear cases
2015-16	13 ²²	10437	378752.5	971	14988.02	9.30 %	3.96 %

Source: Information provided by selected Commissionerates to audit

On this being pointing out, Customs Commissionerate, Kochi, Trivandrum and Mangalore accepted that no committee has been constituted to write off revenue arrears.

Chief Commissioner, NCH, New Delhi stated (November 2016) that committees have now been constituted to examine the proposals for write off of irrecoverable tax arrears. Further progress is awaited (January 2017).

Reply from other Commissionerates is awaited.

2.12 Appeal cases

As per standard operating procedures (SOP) (November 2015) on litigation in appellate forums, the details and information called for by the appellate authority should be furnished at the earliest. The appeals should be followed up and the Department effectively represented at every hearing/stage.

In contravention of above instructions, shortcomings noticed are narrated below.

2.12.1 Delay in furnishing details to appellate authority

In five²³ Commissionerates, audit noticed the department submitted the details belatedly called for by the Commissioner (Appeal)/CESTAT and in respect of one case no detail was furnished. Kochi Commissionerate replied that delay in one case was on account of voluminous documentation.

2.12.2 Bunching of cases

According to Board's circular no. 55/2004 dated 19.8.2004, Chief Departmental Representatives (CDR) should organize bunching of cases on same issues involving substantial revenue and request the Tribunal for disposal on priority.

In contravention of aforesaid provision, in two Commissionerates (Tuticorin, Ahmedabad) no bunching of similar cases pending with CESTAT was noticed. In Tuticorin Commissionerate, it was observed that there are 48 cases with revenue arrears of ₹ 4.45 crore pending with CESTAT, However, the Department had not taken any action to bunch these cases for disposal on priority basis.

²² Delhi-Preventive, Delhi-Airport, ICD-TKD, Mangalore, Jodhpur, Kochi, Kochi-Preventive, CE Trivandrum, Hyderabad, Vishakhapatnam, Siliguri-Preventive, Shillong-Preventive, WB-Preventive

²³ ACC Mumbai, Chennai-sea, JNCH, Kochi and Trivandrum

On this being pointed out, the Tuticorin Commissionerate replied that (July 2016) bunching of cases would be carried out.

2.12.3 Non adherence of provision under section 128A (3) while issue of de novo orders by Commissioner (Appeals)

Through an amendment of Section 128(3) of Custom Act w.e.f. 11 May 2001, the Commissioner (Appeals) may no longer refer the case back to adjudicating authority for fresh adjudication (de novo) or decision.

Audit noticed that Commissioner of customs (Appeal), Mumbai had issued order of *de novo* in 38²⁴ cases during 2015-16 against the above provision. This had not only further delayed the adjudication but also increased pendency of revenue arrears.

2.12.4 Short payment of pre-deposit in appeal cases

Section 129 E of the Customs Act 1962 provides for mandatory pre-deposit as a percentage of the duty demanded and or penalty levied while filing appeal at the following rate:-

- An appeal filed before the Commissioner (Appeal) pre-deposit @ 7.5 percent of the duty and/or penalty
- An appeal filed before the Tribunal pre-deposit @ 10 percent of the duty and/or penalty.

In three Commissionerates²⁵ audit noticed that appeal was filed in 34 cases during 2014 without mandatory deposit at the rate of 7.5 percent/10 percent while filing appeal in Commissioner (Appeal)/ CESTAT, thereby resulting in short payment of pre-deposit amounting to ₹ 33.19 lakh.

2.12.5 Irregular use of Cenvat credit for payment of pre deposit in appeal cases

Cenvat Credit rules 2004 provides that the CENVAT credit may be utilized 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

²⁴ As per MPR of March 2016

²⁵ Chennai-sea, , Jodhpur, Ludhiana

e) service tax on any output service.

In two appeal cases²⁶, audit noticed that Commissioner (Appeal) Chandigarh irregularly debited cenvat credit against pre-deposit of ₹. 0.34 lakh. Utilisation of cenvat credit under Cenvat Credit Rules, 2004 do not include adjustment of credit against mandatory pre-deposit.

Reply of the department is awaited.

2.13 Monitoring and Internal control

Monitoring

2.13.1. Accumulation of arrears of ₹ 46.73 crore in drawback cases due to lack of monitoring of foreign exchange realisation

The Public Account Committee (PAC) had expressed concerns about the lack of action being taken in the case of non-realisation of foreign exchange in respect of consignments exported under the drawback scheme.²⁷

Board's circular no. 5/2009 dated 2nd February 2009 prescribes for creation of Drawback cell in each Commissionerate for monitoring of remittance of export proceeds. In case of non-realisation of export proceeds within the time prescribed under Foreign Exchange Management Act (FEMA) 1999, drawback has to be recovered as envisaged under Rules 16A of Drawback Rules 1995.

Ministry of Finance vide circular dated 18.1.2011 instructed customs Commissionerates for adjudicating non-realisation of foreign exchange cases in a methodical and time bound manner, for recovery of drawback.

Audit noticed non-compliance of extant provisions/instructions and concerns expressed by PAC in two Commissionerates discussed below:-

Out of 75 cases selected for audit scrutiny at ICD Tughlakabad, audit noticed that in 19 cases involving revenue arrear of ₹ 5.85 crore, issue of notices/adjudication was delayed substantially despite having drawback cell. Of these, delay by the Department in issue of SCN from due date was 1-4 years in 4 cases, 4-8 years in 12 cases and over 8 years in 3 cases.

In Mumbai (ACC-Export), revenue arrear to the tune of ₹ 40.88 crore was pending in 919 cases due to non realisation of foreign exchange in drawback cases and these cases were adjudicated after significant delay.

The cases of non-recovery of drawback were noticed despite MOF instructions (F.No. 609/59/2012-DBK dated 27.11.2015) for methodical, time bound and

²⁶OIO no. 29/ICD/ADC/LDH/2015 dt 14-05-2015 and 31-33/ICD/ADC/LDH/2015 dt 15-05-2015

²⁷ PAC Thirteenth Lok Sabha, Sixty First Report and Board Circular F.No. 609/119/2010-DBK dated 18 January 2011 (Sub para 2)

monitored feeding of details of realization/non-realization for achieving complete and effective implementation of the statutory requirement of recovery of drawback with interest in cases of non-realisation of foreign exchange.

2.13.2 Adjudication of Advance license cases without monitoring the EODC²⁸ status

Duty exemption/remission schemes are formulated by DGFT and execution/monitoring of duty remission/exemption schemes are done by Group 7 in Customs Commissionerates.

As per Handbook of Procedure Vol. I, advance licence holders are required to submit export documents to regional licensing authority (RLA) to obtain EODC. EODC issued by RLA is transmitted to customs through post/EDI and also published in the website of DGFT. In case EO is not fulfilled, the importer is required to deposit customs duties with interest.

In ACC Bengaluru and ACC (Export) Delhi, Audit noticed that department adjudicated five cases during 2013-14 for non-fulfillment of export obligation and duty/penalty of ₹ 1 crore was imposed. On cross-checking EODC status of these licences from website of Director General of Foreign Trade (DGFT), Audit noticed that these licenses had already been redeemed and EODC have been issued before adjudication.

Failure in monitoring and taking timely action on EODC received from DGFT combined with lack of co-ordination with Licensing Authority led to unnecessary accumulation of revenue arrears, recovery of which is doubtful. Moreover, unnecessary litigation and burden of appellate authority could have been avoided.

2.13.3 Non monitoring of appeal cases

Ministry circular no. 55/2004 dated 19.8.2004 envisaged Zonal Chief Commissioners would identify all arrears of more than ₹ 1 crore pending before CESTAT where the department has strong case and a reasonable chance of success. The particulars of all such cases would be sent to the concerned Nodal Officer who would regularly monitor all such cases to ensure that, wherever needed, requisite applications are submitted before the competent authorities for out of turn hearing and early decisions and for this purpose he would co-ordinate between the jurisdictional Chief Commissioners and the concerned Chief departmental representative (CDR). The implementation plan would be reviewed every month by the Nodal officer so that any deficiencies or delay is remedied promptly.

²⁸ Export Obligation Discharge Certificates

Scrutiny of monthly progress report (MPR) revealed that 14²⁹ Commissionerates had not been monitoring appeal/stay cases regularly; no action is being taken for early hearing/vacation of stay. In 5³⁰ Commissionerates, audit noticed that 180 cases which have been disposed off by CESTAT/Commissioner (Appeal) had still been shown as pending in CESTAT.

In Commissioner of Customs (Preventive), Amritsar, it was observed that three cases involving revenue arrear of ₹ 21.50 lakh, stay was granted by CESTAT during 1987 and 1990 and pending even after passage of more than 26 to 29 years.

Department replied that at present there is no functional programme/software available to ascertain the present status of such old cases pending with the various appellants viz. CESTAT etc.

In Noida Commissionerates, Audit noticed that parties were asked to furnish current status of the appeal cases. This indicates that Department has no mechanism to know updated position of appealed cases.

In Goa Commissionerate, audit scrutiny revealed that the department had filed miscellaneous application in CESTAT in March 2016 for withdrawal of Departmental Appeal, though CESTAT has already decided the case in November 2015. This reflects that the department is not aware of the CESTAT Order issued in November 2015.

2.14 Internal control

2.14.1 Non maintenance of data base/records for payment of pre deposit

As per Circular No. 993/17/14-CX dated 5 January 2015, Review cell of each commissionerates had to maintain data of record of pre-deposit made in the proforma prescribed.

Audit noticed that in 20³¹ Commissionerates out of 31 selected for audit, database of pre-deposit made is not being maintained.

CE & Customs Commissionerate, Trivandrum replied that the records of Pre-deposit paid are kept with the Commissioner (Appeals). Reply is not acceptable as Commissionerates are also required to keep database of pre-deposit made.

ACC Mumbai replied that the register is being maintained w.e.f. January 2015. However, Audit noticed that register is not being maintained as per circular. Ludhiana Commissionerate replied (May 2016) that the Commissionerate has

²⁹ Ahmedabad, Bhubaneswar, Chennai Sea, Goa, Hyderabad, Jodhpur, JNCH, Kochi, Meerut, Mumbai (Import-II, Export), Noida, Tuticorin, Vishakhapatnam,

³⁰ ACC Bengaluru, Chennai(6+6), ICD Bengaluru, Mangalore (121) and Tuticorin (6+41),

³¹ Ahmadabad, ACC Bengalore, Delhi (Preventive, Airport, NCH-Export, ICD(Export)-TKD), Goa, ICD, Bengalore, Jodhpur, Kandla, Kochi, Kolkata Port and Kolkata Airport, Ludhiana, Mangalore, Mumbai (Import-II, JNCH), Noida and Trivandrum,

started maintaining a database of record of pre-deposits deposited by various appellants w.e.f 18th May 2016 taking into account the records generated from January 2016 onwards and the process of updation of the same is also in progress.

In the absence of non-maintenance of separate register/database for pre-deposits, Audit was unable to ascertain that whether all the appellants deposited the requisite amount of pre-deposits.

2.14.2 Mis-reporting in Monthly Progress Report furnished to Ministry/Board.

Consolidated figures of revenue arrears under various categories were reported to the Ministry/Board through MPR. Test check however, revealed that 740 cases involving revenue arrear of ₹ 1296.52 crore in 13 Commissionerates were not reported (including 4 cases of over-reporting) in the MPR furnished to the Ministry/Board, thereby raising doubts about reliability of reporting system.

- In Kandla Commissionerate, audit noticed huge variation in the figure provided to audit and reflected in the MPR for the period 2013-14 to 2015-16.
- In Ahmedabad, Kandla, Jodhpur, Mumbai (Import-II, ACC, JNCH) and Goa Commissionerates audit noticed that recovery register is not being maintained/ updated regularly.
- Difference was noticed in different statements of MPR in Patna Commissionerate.
- Six Commissionerates³² under Delhi zone reported 231 cases involving ₹ 173.37 crore in MPR as pending with Commissioner (Appeal). However, corresponding figure as reported by Commissioner (Appeal) was 1710 cases involving ₹ 185.62 crore. Thus, there was a significant difference of 1479 cases involving ₹ 12.25 crore. It also reflects communication gap within zone.
- Export Commissionerate, Mumbai informed (2015) commissioner (TAR) that 1045³³ cases amounting to ₹ 44.18 crore were 'fit for write off'. However, no case was shown as 'fit for write off ' in the MPR of March 2016 by the Commissionerate.

³² Delhi-Preventive, NCH-Import Delhi, ICD-TKD(Import),ICD-TKD(Export), ICD PPG, Airport-Delhi

³³ As per letter to Commissioner (TAR)

2.15 Conclusion

Arrears of revenue in Customs have jumped by almost 50 percent but the recovery of arrears is not being given due importance despite the mounting arrears. Recovery of revenue arrears locked up in the restrained category amounted to the bulk of arrear, which implies that the department should have pursued these cases with the concerned authorities. Special institutional arrangement like creation of Recovery Cell and Task force have not made any significant impact on improving the extent of recovery of revenue arrears. In fact in some of the Commissionerates these arrears have increased manifold during the three year period covered in audit.

Elaborate instructions of the Board regarding monitoring of arrears, taking effective steps like requesting for early disposal, bunching of cases and prompt action on tracing of defaulters and finalization of appeals or vacation of stay to safeguard government revenue are not being complied with.

Audit, from test check of 31 commissionerates noticed issues worth ₹ 566 crore along with issues of systemic and internal control deficiencies involving revenue of ₹ 1297 crore. Accumulation of arrears due to non-monitoring of drawback cases, incorrect adjudication of Advance license cases without monitoring the EODC status and deficiencies in the monthly reports being submitted by the field formations are symptoms of an unreliable monitoring and internal control system.

CHAPTER III

PREVENTIVE FUNCTIONS OF CUSTOMS DEPARTMENT

Introduction

India has 14,880 kms of land border running through 92 districts in 17 States and a coastline of 5,422 kms touching 12 States and Union Territories (UTs). India also has a total of 1197 islands accounting for 2094 kms of additional coastline. In fact, barring Madhya Pradesh, Chhattisgarh, Jharkhand, Delhi and Haryana, all other States in the country have one or more international borders or a coastline and can be regarded as frontline States from the point of view of border management.

It, thus, became inevitable to bifurcate the Customs manpower machinery into two wings for the two main streams of activity. One wing has been entrusted the job of collection of revenue while the other has been assigned the task of enforcement of the statute related thereto. Thus the Preventive setup for Commissionerates, seaports, dry ports (ICD and CFS), Land Customs Stations and airports came into existence. Some specific Preventive Commissionerates and zones have been formed to combat the smuggling as well as misuse of different export promotion schemes and evasion of customs duty.

The Preventive Wing as the name would suggest, is involved in the prevention of smuggling activities by employing various deterrent methods, like maintaining intelligence network, cultivating informers, making searches leading to seizures, confiscation of contraband and arrest of offenders. Under the preventive wing function various intelligence units, which work in collaboration with each other for the single purpose of prevention of smuggling activities.

3.1 Organisation and Functions

The Preventive functions of the Customs Department are governed by the Customs Act, 1962 and Customs Preventive Manual. These functions are mainly carried out through Preventive Commissionerates which are exclusively meant for preventing the smuggling activities. In addition, the other Commissionerates which are mainly concerned with assessment and collection of duty on import and export of goods and trade facilitation also have their own intelligence units. Overall, there are 13 Preventive Commissionerates and 57 Customs Commissionerates Organisational Structure of Preventive Wing of Customs department is given in **Annexure 4**.

3.2 Audit objectives

The objective of the Audit of the preventive functions of the Customs Department was to evaluate whether:

- i. preventive units of Customs Department have adequate resources as per norms laid down for manpower, equipment etc. needed to prevent smuggling, commercial frauds and tax evasions.
- ii. the available resources are deployed as per norms and requirement.
- iii. intelligence gathering is used in assisting the preventive functions and whether investigation, seizure and adjudication are carried out in accordance with the provisions laid down.
- iv. monitoring coordination, communication network and mechanism is in place for Preventive functions of the customs department.

3.3 Scope and Coverage

For the purpose of subject specific compliance audit (SSCA), Audit has covered the period from FY 2013-14 to 2015-16. The selection criteria and coverage of Commissionerates is tabulated below.

Table-3.1: Scope of audit and coverage

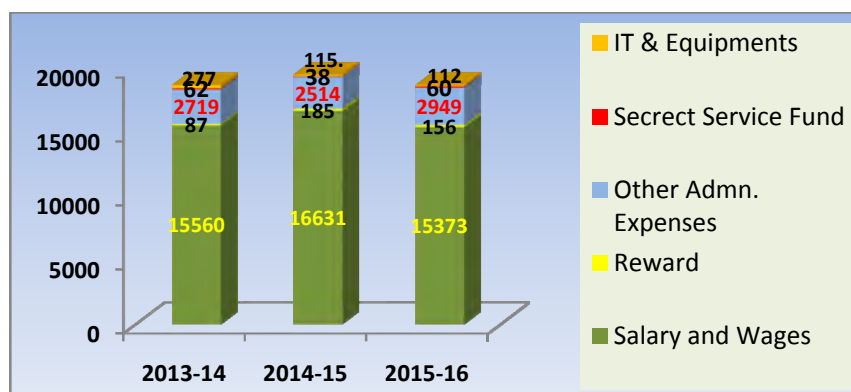
Total No. of Customs Commissionserates	Preventive Commissionerate			Other than Preventive Commissionerate		
	No	Percentage of selection	Selected	No	Percentage of selection	Selected
70	13	100	13	57	50 (Minimum 2 and maximum 4)	25

The selection of Commissionerates comprised distinct strata i.e land, air and sea. In the selected Commissionerates 15 % of the cases subject to minimum 50 and maximum 100 have been audited.

3.4 Financial Arrangement

Based on the information received, the financial arrangement of 8* Preventive Commissionerates out of 13 Preventive Commissionerates is given below.

Graph 1: Actual Expenditure of Preventive Commissionerate (₹. in lakh)



* Bhubaneshwar and Jodhpur Commissionerates have not furnished the data and in Jamnagar, Shillong and Kolkata Commissionerates head wise data have not been made available.

- Out of total expenditure during 2013- 2016 the salary component was 84 percent, other administrative expenditure 14 percent, IT and equipments 0.9 percent, reward 0.75 percent and SSF was 0.28 percent.
- No expenditure has been incurred under head equipments during FY 2014-15 and 2015-16. Audit examined the records of the Customs Department to assess the performance of Preventive functions with set standards wherever norms have been prescribed.

Major findings are discussed in the succeeding paragraphs.

3.5 Audit findings

The preventive functions of the Customs Department broadly include sea patrolling, land patrolling, intelligence system, search, seizure, investigation and adjudication process and disposal of seized and confiscated goods.

3.6 Manpower

The position of sanctioned strength vis-à-vis men-in-position and vacancy as on 31st March, 2016 in respect of all Preventive Commissionerates and data received from 16 other Customs Commissionerates is tabulated below. It does not include position of marine staff.

Table 3.2: Manpower

Group	Sanctioned strength		Men in Position		Vacancy		Percentage of vacancy	
	Preventive Comm.(13)	Other Comm.(16)	Preventive Comm.	Other Comm.	Preventive Comm.	Other Comm.	Preventive Comm.	Other Comm.
Group A	200	216	124	138	76	78	38	36
Group B	3291	2767	1958	1585	1333	1182	41	43
Group C	2324	1584	1721	679	603	905	26	57

- In Preventive Commissionerate, Cochin under Group A category, the vacancy was 85 percent (SS-26, MIP-4) and under Group B category the vacancy was 77 percent (SS-407, MIP-92).
- In Bhubaneswar Commissionerate, under Group B category, the vacancy was 86 percent (SS-157, MIP-22) and in Under Group C category the vacancy was 72 percent
- Under Group C category in Preventive Commissionerate, New Delhi the vacancy was 76 percent while in Preventive Commissionerate, Lucknow excess strength of 62 percent was observed (SS-157, MIP-255)

3.6.1 Shortage of Marine Staff

The Directorate of Logistics vide letter F.no. 446/2/2008-MO dated 8 April, 2008 had specified the crew compliments (both technical and operating staff) for Category-I, II, III vessels as shown in **Annexure 5**.

The data received from the 9 Commissionerates revealed that as on 31st March 2016, against overall sanctioned strength of 520 of marine staff, 313 posts were vacant. The percentage of vacancies was in the range of 30 to 84 percent in Goa and Kolkata Commissionerate respectively. In Kandla Commissionerate, the patrolling boats (4 in numbers) available remained non-functional for want of skipper and skipper mate. In Mangalore, Calicut and Goa Commissionerate the vacancy for skipper/engineer was 100 percent and in Mumbai Commissionerate it was 93 percent. The Commissionerate wise details of vacancy position of Marine staff is given in **Annexure 6**.

3.6.2 Deployment of manpower

The policy for deployment of Human Resource (HR) needs to be coherent with the operational roles and pre-defined goals of the department. It must lead to development of core competence of the department. The preventive functions require highly skilled manpower.

However, audit noticed that the tenure of postings to preventive wing is only for six months/one year. The short period of posting tenure results in low level of accountability and low level of expertise.

Sea Patrolling

3.6.3 Weak/Poor patrolling performance

The Board vide its letter F.No.384/108/25-CUS (AS) dated 04.09.2006 has directed to ensure that Customs Marine Vessels are optimally used by conducting Sea Patrolling for 4 to 6 hours per vessel every day. The Vessels have to be so deployed at different times of the day so that there is always an element of surprise.

The Director of Logistics (DOL), New Delhi deployed 109 patrolling vessels at different Commissionerates across the country in 2008. The 109 vessels/boats procured by DOL in 2008 comprised of 24 Category-I, 22 Category-II and 63 Category-III vessels. The specifications of these vessels/boats are shown in **Annexure 7**.

Audit reviewed the patrolling records of 102³⁴ vessels under Mumbai, Goa, Mangalore, Chennai, Cochin, Trichy, Calicut, Kolkata, Shillong, Kandla,

³⁴ Out of total 109 vessels, 8 vessels are under Pune Commissionerate not in sample and CPC Jamuna as shown by Kolkata office procured in 1997 included in sample.

Jamnagar, Vizag, Bhubaneshwar and Patna Commissionerates for the period 2013-14 to 2015-16 and noticed that out of 102 vessels only 58 patrolling vessels were operational. On further examination of the patrolling performance of these vessels, audit observed that patrolling carried out was only 6 to 7 percent of the norms prescribed by the Board. The patrolling performance is depicted in the table given below:

Table 3.3: Sea Patrolling Performance

Year	No. Of operational patrolling boats	Minimum no.of hrs req.=(operational boats*4hrs*365 days)	Actual no. Of hrs patrolling	%of patrolling done	Outcome of Sea Patrolling			
					No. of boats checked	No. of person arrested	No. of seizures made	Values of goods seized (₹in lakh)
2013-14	58	84680	5988	7.1	1153	Nil	Nil	Nil
2014-15	58	84680	5116	6.00	605	Nil	Nil	Nil
2015-16	58	84680	4791	5.7	499	Nil	Nil	Nil

3.6.4 Improper upkeep and repair of vessels

Audit noticed that out of 102 vessels checked, 44 vessels were non-operational. In Chennai Commissionerate, 3 vessels remained non-operational since 17th April, 2009 and all the category-III vessels (13 in numbers) allocated to Patna Commissionerate and Preventive Commissionerate, West Bengal remained non-operational since 2009. The upkeep and repair in respect of 63 category-III vessels is illustrated in a case from Mumbai Commissionerate.

In Preventive Commissionerate, Mumbai patrolling vessel (Karanja) was one amongst the 63 Category III vessels procured as per contracts signed between Directorate of Logistics (DOL) and M/s Brunswick Asia Pacific Group (Mercury Marine Singapore Pte Ltd. Singapore) on 19.03.2007. M/s Mercury Marine, Singapore was to provide Annual Maintenance Contract as per the offer enclosed for five years excluding the first year of warranty period.

M/s Esmario Export Enterprises, Secunderabad was nominated by the Boat builder to carry out AMC routines of the vessels. The AMC for these categories of vessels was cancelled by DOL vide order F.No.446/23/2010-MO/394 dated 07.03.2011 due to lack of performance by the AMC provider with intimation to Commissionerate that no Category-IIIA and Category-IIIB boats should be handed over to M/s Esmario Exports Enterprises. The DOL vide their letter dated 04.05.2012 advised the Commissionerate to carry out the maintenance work of Cat-III vessels locally and from Commissionerate's own budgetary provision till a new AMC is finalized.

In October/November 2013, the Category-IIIB vessel Karanja developed some technical defects. Accordingly, tender calling quotation of service charges was called for on 22.11.2013. In response to the tender, only one sealed tender from M/s Esmario was received since M/s Esmario Export Enterprises Pvt. Ltd. was the only authorized dealer/servicing agent, for the engines fitted in the aforesaid vessels, in the country. Finally, the repair work was allotted to M/s Esmario Enterprises and the vessel Karanja could become operational in October 2015 after a period of two years.

This case clearly brings out the fact that since 2011, the DOL has not finalized any AMC for Category-III vessels.

3.6.5 Deployment of Vessels

As per Customs Preventive Manual, Commissioner of Customs (Preventive) is responsible for surveillance over sea. Section 104 of the Customs Act, 1962 empowers to arrest person in India or within Indian Customs waters and Section 106 of the Customs Act, 1962 specifies that Customs Officer has powers to stop and search any vessel in Indian Customs waters. As per section 2(28) of Customs Act, 'Indian Customs Waters' means the waters extending into the sea up to the limit of contiguous zone of India under section 5 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, and includes any bay, gulf, harbor, creek or tidal river.

In view of this, Audit verified the deployment of vessels in Preventive Commissionerate, Mumbai and found that all the Category-I and II vessels (six in number) were deployed in Mumbai only. Outside Mumbai i.e. at Dahanu, Vasai, Mora, Revdanda and Srivardhan port Category-III vessels were deployed. DOL authority in Mumbai had noted that the Category-III boats were not suitable for operating in rough weather which means not fit for utilization beyond sea state one³⁵. Since these boats were not suitable for patrolling in rough weather conditions and no Category-I&II vessels were deployed in these areas, the entire jurisdiction of territorial waters was not being covered for effective patrolling.

In reply the department stated that Category-I and II cannot be operated in shallow waters and require proper berthing jetty for their operation. These facilities are available only in Mumbai port areas and hence only Cat III vessels were being operated outside Mumbai jurisdiction. The department had made correspondence with Maharashtra Maritime Board, for providing jetties at areas outside Mumbai harbor in order to have effective patrolling of all vessels.

³⁵ When sea is calm (rippled) and height of waves is between 0.0 to 0.1 metre

The reply of the department confirms the audit observation that no effective patrolling was done outside Mumbai.

3.6.6 Berthing space

The patrolling vessels are required to be stationed at a place where there is no restriction of movement and there is least response time on receipt of actionable input. The berthing space in respect of vessels is provided by Port authority.

Audit noticed that the department did not have any permanent place for berthing in respect of 43 vessels out of 102 vessels examined under Mumbai, Mangalore, Calicut, Kolkata and Patna Commissionerates restricting the free movement of the vessels and its proper maintenance. The illustration in respect of Mumbai Commissionerate is given below.

In Preventive Commissionerate, Mumbai the patrolling vessels were berthed at 6 Indra-Dock (6ID) which was inside the Lock and Storm gate which was closed and opened in case of movement of commercial vessels. Thus affecting sea patrolling which ought to be adjusted with the timing of the movement of the commercial vessels. Adjustments in timing restricted the free movement of vessels and defied the element of surprise. The Preventive Commissionerate, Mumbai had been pursuing the Port authority for providing the safe berthing place for vessels. The department intimated (Oct'16) that after lot of communication, ferry wharf No.4 was allotted to the Commissionerate for berthing the vessels in March 2015, which is outside the Indira Dock and provides easy access to open seas for patrolling. However, this place of berthing is also under observation from the suitability of operation keeping in view certain operational difficulty.

3.6.7 Land patrolling

As per Customs Preventive Manual, Commissioner of Customs (Preventive) is responsible for land surveillance which acts as a deterrent for prevention of smuggling, conservation of foreign exchange, protection of domestic industry, human, animal or plant life or health etc.

Audit noticed that in Preventive Commissionerate, Amritsar no land patrolling was conducted during the period covered in audit for the want of man power and vehicles even though Punjab state has sensitive border areas and vulnerable to smuggling activities as illustrated below.

As per authority KNo.441/8/DPO (AS)88 dated 31-08-1995 of Arms Policy of CBEC, a preventive patrol squad should consist of at least three armed men headed by an officer of the grade of a Superintendent or above.

The duty of Sepoys /Havaldars are to carry out patrolling, keeping watch over incoming and outgoing passengers, intelligence gathering etc. in the vulnerable towns as part of anti-smuggling exercises under the supervision of Customs Officers.

During test check of the records maintained in office of the Customs Preventive Divisions Amritsar, Pathankot and Jammu, it was noticed that there were 16 Customs Preventive Station (CPS) and 2 Trade Facilitation Centres (TFC) under the jurisdiction of Customs Preventive Commissionerate,

Amritsar. It was further observed that there was only one Superintendent posted in CPS Akhnour Rajauri, R.S.Pura, Sambha, Pathankot and Gurdaspur and no Hawaldar and Inspector were posted.

Further it was observed that only 6 Vehicles were provided to 10 CPSs but the drivers were not posted at these stations. In the absence of sufficient vehicles and man power i.e. Inspector and Hawaldar, no patrolling was conducted at any CPSs and hence no case was booked by CPSs for the last three years.

Board may consider fixing parameters for Land patrolling to strengthen preventive functions.

3.7 Non-operational/obsolete telecommunication equipment

- (i) Preventive Commissionerate, Mumbai was completely short of Telecommunication Equipments. All HF sets (8 in numbers) were non-operational and all VHF sets (113 in numbers) were 20-25 years old and were not reliable for satisfactory long range communication. Therefore, there was no effective communication between Patrolling Boat and Sub-stations at Divisions as well as with the Headquarters Control Room.
- (ii) Although correspondences were made with Directorate of Logistics from the year 2011 onwards, no equipment was received by the Commissionerate till the date of audit. Further, it was noticed from the records that the department was paying ₹ 2.30 lakh as spectrum fee to Wireless Planning & Coordination (WPC).
- (iii) In Mangalore Commissionerate out of 41 sets of telecommunication equipment 15 sets are defective and non-operational since 2006 onwards. Department reply is awaited.

3.8 Old and obsolete arms and ammunition

According to the information received from 14 Commissionerates audit observed that the Preventive wing was provided with 1702 Arms (Musket, Pistols, Revolvers and Rifles) and 40588 Ammunitions, out of which 454 Arms and 100 Ammunitions were non-operational. It was further observed that Preventive Commissionerate, Amritsar and Mangalore Commissionerate were provided with 103 SLR/LMG out of which 25 SLR/LMG were non-operational. Audit requested the department to provide the date of last service carried out of the Arms, however department did not furnish the data.

3.9 Inadequate anti-smuggling equipment to counter smuggling

As per Section 100 of Customs Act 1962, the proper officer has power to search to any suspected person who has landed from or is about to board. Further Section 103 of Customs Act 1962, gives power to the proper officer to screen or X-ray bodies of suspected persons for detecting secreted goods and as per CBEC's Circular 23/2006-Cus Dated 25th August 2006, 100 per cent

screening of import/export consignments (documents and all type of cargo) was required to done through X-ray machines or other Non intrusive investigation techniques (NII techniques).

Audit noticed inadequate/non-availability of anti-smuggling equipment in Chandigarh, Kolkata, Bengaluru and Lucknow Commissionerates. An illustration in case of Amritsar and Ludhiana Commissionerates is given below.

<p>(i) Audit noticed in Ludhiana Commissionerate that there were no X-ray machines installed at Import portion of Air Cargo Complex and Import & Export portion of Rail Cargo Ludhiana at Amritsar. From Rail Cargo Ludhiana at Amritsar the major imports/exports are made to Pakistan and Afghanistan. Manual checking of cargo though done in a discreet manner cannot achieve the desired level of scanning of the cargo. Department's reply awaited.</p> <p>ii) In Amritsar Commissionerate Audit noticed that during the period 2013-14 to 2015-16 there was movement of 2,19,527 number of trucks at the border however there was no installation of full body truck scanners at ICP Attari. In absence of full body truck scanner manual rummaging of trucks was being done by the staff and that too of the known cavities only.</p> <p>As the number and the nature of the cavities in the truck are innumerable and the staff does not possess the technical knowhow regarding the structural and material design of the truck, the manual rummaging in a discreet manner cannot achieve the desired level of scanning of the Trucks. Inadequate rummaging and scanning arrangements at the ICP Attari could also be exploited by sinister elements for smuggling of contrabands, arms, ammunition, explosives Fake Indian Currency Notes (FICN) etc. Audit also noticed that Flexible Fibre Optic Scope, Video Scopes and ION scanner (for Narcotic Drugs Psychotropic Substances and explosives) are also not available at ICP Attari. Department's reply is awaited.</p> <p>iii) At ICP Attari, LCS Attari Rail and Shri Guru Ram Dass Ji International Air Port Amritsar (SGRDJI) under the Customs Preventive Commissionerate Amritsar, audit further noticed that only X-ray machines and metal door detector were installed at the stations and no machine/contraption was installed to detect Narcotics and Explosives. Department's reply is awaited.</p>

3.10 Performance of Intelligence System

According to Customs Preventive Manual every Custom House has its own identity which may evolve its own intelligence culture and develop its formations depending upon the parameters like network of intelligence, market forces, financial aspects, culture of informers and their background, environmental forces etc. The broader aspects and basic necessities of the Intelligence System should be as follows:

- a) The cultivation of informers
- b) Collection of information
- c) Compilation of Intelligence Reports
- d) Conducting investigations, making direct enquiry
- e) Carrying out searches and seizures, rummaging of vessels/conveyance/aircraft, and various other duties connected with the intelligence work.

3.11 Intelligence/Information received and gathered

The details of intelligence received/gathered and selected for investigation during last three year as per data made available to audit from 30 Commissionerates are given below:

Table 3.4 Performance of the intelligence units and uniform batch

Year	No of intelligence received	No of cases selected for investigation	No of cases closed before investigation	No of cases closed after investigation	Value of goods confiscated (₹ in Cr.)	Revenue realised at the behest of preventive functions (₹ in Cr.)
2013-14	5127	4957	562	4673	563	101
2014-15	6175	5658	718	5533	1315	113
2015-16	7434	6638	920	6368	771	187

Audit noticed that:

- i. In Ahmedabad, Kandla, Jamnagar, Airport and Air Cargo Complex Bengaluru, Hyderabad, Bhubaneshwar, Kolkata Commissionerates that no intelligence input was received during the period covered in audit.
- ii. The Preventive Commissionerates/preventive wings of other Commissionerates of Customs department do not have their own DBMS. The intelligence units act upon the inputs received or on the basis of alerts received from other agencies like DRI, DGOV etc and the officials deployed in intelligence units are required to make their own efforts to develop their intelligence network, make analysis of the market trend.
- iii. There was no HR (Human Resources) management policy for recruitment, capacity building, skill upgradation of manpower required to strategically manage and monitor a critical intelligence system.
- iv. The cultivation of informers was totally absent.
- v. The documents made available to audit revealed that no case was initiated based on information received from other departments indicating that there was no sharing between departments such as Central Bureau of Narcotics (CBN), Enforcement Directorate (ED), Central Economic Intelligence Bureau (CEIB), about possibility of fraud in the area of foreign trade. Audit further noticed in Jamnagar, Kandla and Ahmedabad Commissionerates that there was no follow up action of the 845 alerts received during F.Y. 2013-14 to 2015-16 from CCO/DRI.

3.12 Show Cause Notice /Adjudication

After completion of search, seizure and investigation, Show Cause Notice (SCN) to be issued to the parties concerned and case is transferred to the adjudicating authority for adjudication.

3.12.1 Non issue of Show Cause Notice (SCN) in time

As per provisions of 110(2) of Customs Act, 1962, where any goods are seized and no notice in respect thereof is given under clause (a) of Section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized.

Audit noticed in three Commissionerates, non issuance of SCNs beyond the prescribed time limit in 56 cases pertaining to preventive cases. One case of non-issuance of SCN within prescribed time limit resulted in loss of revenue of ₹49.26 lakh is illustrated below:

Audit noticed in the office of the Principal Commissioner of Customs, Preventive Delhi, in the case of Ms. Shiv Shakti Trading, due to delay in issuance of SCN, the seized goods were to be released unconditionally as per High Court order. SCN was not issued within six month from the date of seizure and no adjudication was passed for a period of one year after the seizure. Afterwards adjudication order was passed and as per the adjudication order, the value of the seized goods was ₹ 84.41 lakh and the total dues from the importer were ₹ 49.26 lakh. The dues were not recovered which resulted in an avoidable loss of ₹ 49.26 lakh.

3.12.2 Blockage of revenue due to pending adjudication

Section 28 (9) of Customs ACT, 1962 prescribes the time limit of 6 months for passing adjudication order for duty short levied or not levied and 12 months in case of short levy or non levy due to suppression of facts or collusion or willful misstatement . As per Boards circular no. 03/2007 dated 10.01.2007 (F.No.401/243/2006-Cus.III) the time period for adjudication of cases are as follows:

- (i) For cases to be adjudicated within the competence of Commissioner of Customs or an Addl/Joint Commissioner of Customs, one year from the date of service of the show cause notice;
- (ii) For cases to be adjudicated within the competence of Assistant Commissioner of Customs or Deputy Commissioner of Customs, six months from the date of service of the show cause notice;

In case the prescribed time period could not be observed in a particular case, the adjudicating officer shall keep his supervisory officer informed regarding the circumstances which prevented the observance of the above time frame, and the supervisory officer would fix an appropriate time frame for disposal of such cases and monitor their disposal accordingly.

Audit noticed in fourteen Commissionerates 964 cases³⁶ were pending for adjudication beyond the above prescribed time limit blocking revenue of

³⁶ Pending 1 case > 22 years, 2 cases > 9 years, 1 case > 2 years and 960 cases >1 year

₹ 1860.04 crore as on 31st March 2016. Out of 964 cases, 57 cases involving amount of ₹ 79.56 crore are pending in 4 Preventive Commissionerates. One case having pendency for 22 years is illustrated below:

Audit noticed in Commissioner of Customs Preventive, West Bengal that the case under File reference No. S12(IV/T)-565/76P (SCN issued on 11.02.1977) could not be adjudicated for 22 years as the file was lying unattended till 2013.

The department (August 2016) confirmed the oversight of the case and informed that steps have been initiated to finalise the case.

Further, in 54 cases of Calicut Commissionerates and Preventive Commissionerates of Jodhpur, Lucknow and Patna, audit noticed delay in adjudication ranging from 15 days to 30 months..

On this being pointed out (May-June 2016), Jodhpur Preventive Commissionerate replied (June 2016) that delay was due to unavoidable circumstances however, the department had not specified the unavoidable circumstances. Reply from Calicut Commissionerate and Lucknow Preventive Commissionerate is awaited.

The cases pending for adjudication beyond prescribed time limit could be reviewed by Board and adjudicated expeditiously to collect revenue involved.

3.13 Monitoring and Control Mechanism for Disposal of seized and confiscated goods

The Disposal Manual of the Department read with section 110 (1A) prescribes the procedure for disposal of seized and confiscated goods. The manual classified the seized and confiscated goods into four categories³⁷ (Category-I, II, III & IV).

The CBEC in their instructions (450/97/2010-Cus.IV, dated 22 July 2010) directed that each Customs formation will constitute a 'Task Force' for a one time comprehensive review for expeditious disposal of all un-cleared/unclaimed cargo and asked for progress made in disposal along with age-wise break up of pending cargo that was ripe for disposal as on 31st December 2010.

As per the instructions it was responsibility of the Commissioners to ensure the expeditious disposal of such cargo on regular basis. Despite the instructions of the CBEC, Audit noticed huge pendency of goods lying for disposal, theft of Red Sanders, loss of revenue due to non-disposal of seized and confiscated goods and blockage of revenue due to non-clearance of un-cleared/unclaimed/abandoned goods narrated below which indicated the absence of proper monitoring and control mechanism.

³⁷ Circular F No. 711/31/83-LC (AS) dated 22.05.1984

3.13.1 Pendency of seized and confiscated goods

As per data furnished by the department, the total value of undisposed goods (Category-I, II, III and IV) in 26 out of 38 Commissionerates audited was ₹ 2706.45 crore as on 31st March, 2016. The Commissionerates with high holdings were Chennai³⁸ ₹ 859.99 crore, Hyderabad³⁹ ₹ 423.35 crore, Mumbai⁴⁰ ₹ 353.16 crore and Shillong ₹ 308.33 crore.

Further, Audit observed that goods worth ₹ 305.96 crore were not disposed even after becoming ripe for disposal and in six Commissionerates, in 9 cases ₹ 11.87 crore worth goods could not be disposed in time as a result of which the goods lost their value because of passage of time. Two Cases are illustrated below.

Illustration 1: In Commissioner of Customs Preventive, West Bengal, audit noticed that one vehicle was seized in 1987 used as carrier for transportation of 1805 kgs of medicinal powder. The case was adjudicated in 1989. However, despite final adjudication order (in 1989) the department could dispose the vehicle in 2015. At the time of its valuation in 2014 after a lapse of 27 years, value of the vehicle was fixed at ₹25,000/- against seizure value of ₹12 lakh.

Non adherence to the instructions on prompt disposal of seized vehicle, resulted in loss of revenue to the tune of ₹11.75 lakh. In reply, the department stated (January, 2016) that the delay occurred due to non-availability of the order-in-original and other necessary orders.

Illustration 2:

In Preventive Commissionerate, Mumbai audit noticed that a Barge namely MV Shalimar-I concealing the smuggled Diesel oil (34.05 MT) was seized on 28 April 2011 in Revdanda Circle. The seized goods were valued at ₹ 14.50 lakh and the vessel was valued at ₹ 1.5 crore. Subsequently, the said seized Barge was confiscated and disposal order was issued on 31 July 2014. It was mentioned in the disposal order that due to corrosion and water currents the barge appeared to be damaged at two-three places and diesel had started leaking into the creek. After receiving the disposal order, Government valuer was arranged to conduct the valuation of HSD stock for e-auction. However, in the valuation certificate the valuer had shown the sale price as 'NIL' and stated that there was no HSD oil and that the storage compartments were filled with sea water. In March 2015, it was reported that during the period of 3 years the HSD oil had been drained off into the sea. This resulted in loss of revenue of ₹ 14.50 lakh.

Department's reply is awaited.

3.13.2 Discrepancy in stock

Audit noticed discrepancy in stock of seized and confiscated goods in 2 cases under two Commissionerates with revenue involving ₹126 lakh.

One case is illustrated below:

³⁸ Chennai-III, Sea Customs: ₹ 172.86 crore & Chennai-I, International Airport: ₹ 687.13 crore

³⁹ Preventive Commissionerate, Vijaywada: ₹ 423.35 crore

⁴⁰ Airport Commissionerate, Mumbai: ₹ 271.79 crore & Preventive Commissionerate, Mumbai: ₹ 81.37 crore

In Goa Commissionerate, as per MTR for the month of March, 2016 gold weighing 28.12 kg was lying for disposal as on 31st March, 2016 whereas as per handing over taking over report dated 11/05/2016. Gold weighing 23.9 kgs only was lying for disposal and there was no disposal from 1st April to 11 May, 2016. Thus there was a discrepancy of 4.19 kgs of gold valuing ₹126 lakh. Department's reply awaited.

3.13.3 Loss of revenue due to theft of Red Sanders

Audit noticed (August, 2016) that there was theft of 79645 kgs of Red Sanders valuing ₹ 13.53 crore from three⁴¹ CFSs at Jawaharlal Nehru Customs House (JNCH), Mumbai which were seized by striking units and kept with custodians. Out of this the department had recovered the market value of Red Sanders of ₹ 5.21 crore in one case from CFS M/s Punjab Conware Limited. However, the department had not taken any penal action against the CFS. Further, in remaining cases of theft from two CFSs, the department had not taken action till the date of audit (August, 2016) resulting into loss of revenue of ₹ 8.32 crores. Department's reply awaited.

Audit also noticed (March, 2014/September, 2015) theft of miscellaneous goods valuing ₹ 76.09 lakh at Patrapole Customs Circle, in Kolkata and department has not taken any action resulting into loss of ₹ 76.09 lakh. In reply (November, 2015), the department stated that the FIR has been lodged immediate after incidence, however till date (June, 2016) no recovery was made.

3.13.4 Blockage of revenue due to non-clearance of un-cleared / unclaimed / abandoned goods

As per provision of Section 48 of the Customs Act, 1962 un-cleared, unclaimed and abandoned goods can be disposed off after notice to the importer and with the permission of the proper officer. Audit noticed at JNCH, Mumbai that un-cleared/unclaimed goods with book value of ₹ 392.40 crore were lying in various CFSs for disposal as on 31st March, 2016. In reply (November 2016), the department stated that several measures have been taken which will result in expeditious disposal of goods under Section 48 of the Customs Act, 1962.

⁴¹ Punjab Conware Limited:30660 kgs, Market value: ₹ 5.21 crore, DBC Port Logistics Limited:36.29 MT, Market value: ₹ 6.17 crore & DRT Logistics: 12695 kgs, Market value: Rs 2.16 crore

3.13.5 Inventory Management

At JNCH, Mumbai audit noticed lack of inventory management as illustrated below.

At JNCH, Mumbai the role of the custodians lies with the CFS managed by private agencies and the disposal section function only after receiving the disposal order. The category wise report of seized and confiscated goods was not being generated and monitored. Even there was no report to show the total value of goods lying for disposal on a particular date as a result of which:

- i. The department was not able to ascertain the total book value of the goods lying for disposal as on 31st March, 2016. The department intimated that there was no centralised list containing the details of seized/confiscated goods lying in different CFSs available with Disposal section. Further, the department stated (Nov'2016) that recently a software named "Un-cleared Cargo (UCC)" has been launched which will be in operation very soon where by pendency of cargo ripe for disposal at any stage can be monitored through the software.
- ii. Loss of revenue due to non disposal of the perishable goods in time which could have been sold in auction and yielded revenue. The department intimated that there were consignments of perishable goods which could have been sold in auction but could not be sold as the seizing units did not send the disposal orders in time. In reply (Nov'2016), the department stated that in case of perishable items, Customs is not the only agency dealing with goods rather it requires various NOCs due to nature of goods like FSSAI/AQ/PQ/ADC.
- iii. Red Sanders seized in April 2005 and onwards valuing at ₹ 164.89 crore were lying at various CFS for disposal as on 31st March, 2016. In reply (Nov'2016), the department stated that listing of containers pertaining to seized/confiscated Red Sanders at JNPT has been completed and the department has received a letter from the Principal Chief Conservator of forest, Nagpur, Maharashtra for the disposal of Red Sanders which appears to be appropriate/competent authority to dispose of this wild life product. List of Red Sander containers has been sent to Forest authority for taking over the custody of goods.
- iv. Thefts of Red Sanders at three CFSs as discussed in para no. 3.13.3.
- v. Un-cleared/unclaimed goods worth ₹ 392.40 crore pending for disposal as on 31st March, 2016 as discussed in para 3.13.4.

The monitoring mechanism for the disposal of goods may be strengthened by generating category wise reports of seized and confiscated goods, reasons for non disposal of goods as per specified provisions and by fixing accountability.

3.14 Conclusion

The compliance audit of the preventive functions of the Customs department revealed weakness of the compliance mechanism and inadequacy of resources. Test check revealed that sea and land patrolling fell short of the targeted frequency of such patrols. Lack of adequate staff, lack of berthing space for the patrol vessels and no targets for land patrolling could be attributable reasons for shortfall in patrolling.

The preventive commissisonerate's intelligence functions suffered from many deficiencies like obsolete/ non-functional telecommunication equipment,

inadequate anti-smuggling equipment, old arms and ammunition, low proportion of trained staff for intelligence functions coupled with high turnover of staff, and poor coordination with other government agencies involved in anti-smuggling and inter-departmental intelligence operations.

Audit noticed that systems which were weak in compliance with the laid down procedures as seen from the assessment of the system of disposal of seized and confiscated goods by the department which was characterized by lack of proper maintenance of records. There were many cases of considerable delay in adjudication process resulting in blocking of government revenue. Delays in disposal of the goods due to procedural lapses resulted in blockage of storage space and loss to the public exchequer. Audit from test check of 38 commissionerates noticed issues worth ₹ 1.75 crore alongwith issues of systemic and internal control deficiencies involving ₹ 5133 crore.

CHAPTER IV DUTY EXEMPTION/REMISSION SCHEMES

The Government may exempt wholly or part of customs duties for import of inputs and capital goods under an export promotion scheme through a notification. Importers of such exempted goods undertake to fulfill prescribed export obligations (EO) as well as comply with specified conditions, failing which the full rate of duty becomes leviable. During test check of records (April 2014 to March 2016), 35 cases have been noticed involving total revenue implication of ₹ 461.66 crore where duty exemptions were availed of without fulfilling EOs/conditions. Out of these, thirteen cases are discussed in the following paragraphs and 22 cases which have been accepted by the department and recoveries made/ recovery proceedings initiated are mentioned in **Annexure 8**.

4.1 Reward/Incentive schemes under chapter 3 of Foreign Trade Policy

Excess utilization of Duty credit Scrips

As per Section 28AAA of the Customs Act, 1962, where an instrument issued to a person was obtained by collusion or wilful mis-statement or suppression of facts for the purpose of the Act or the Foreign Trade (Development and Regulation) Act, 1992 by any person and such instrument is utilised under the provisions of Act, rules or notification issued there under, by a person other than to whom the instrument was issued, the duty attributable to such utilisation of instrument shall deemed never to have been exempted or debited and the duty should be recovered from the person to whom the said instrument was issued. This recovery action on the persons to whom the instrument was issued is without prejudice to the action taken on the actual importer under Section 28 of the Act.

The Director General of Foreign Trade (DGFT) issues Duty Credit Scrips or Licenses, under Chapter 3 of Foreign Trade Policy (FTP) 2009-2014, as incentive to exporters under various Export Promotional Schemes such as Vishesh Krishi and Gram Udyog Yojana (VKGUY), Focus Market Scheme (FMS), Focus Product Scheme (FPS), Status Holders Incentives Scheme (SFIS) through various Joint Director General of Foreign Trade offices (JDGFTs). These scrips are freely transferable and can be utilized for importing goods without payment of duty to the extent credit is available. The export benefits are determined as a percentage of Free on Board (FOB) value of shipping bills based on the type of Scheme.

For utilising the credit available, the duty credit scrip (issued in the form of a certificate by JDGFT office) is registered by the exporter concerned manually in the customs house for which it is issued.

During such manual registration of scrips with the custom house, the following mandatory details viz., Scrip number, Date of scrip, Port of Registration, Importer Exporter Code (IEC), FOB value, value of credit allowed are entered in the Licence Registration Module of Indian Customs EDI System (ICES). On successful validation, a unique Registration number is generated and assigned by the system to each individual scrip. This Registration number is quoted by the exporters for all subsequent imports made in any port against the scrip.

Audit carried out an analysis of DGFT data (as on 31st March 2015) and the licence debit details maintained by Customs Department (ICES) (as on 31st March 2015) which revealed excess utilization of duty credit in respect of instruments issued under Chapter 3 of Foreign Trade Policy through manipulation of registration of scrip/use of scrip by deploying following methods :

- (a) Re-registering and utilising an already utilized scrip by changing the scrip date,
- (b) Re-registering and utilising an already utilized scrip by changing the port of registration,
- (c) Multiple re-registration of duty credit scrips not issued to the scrip holder,
- (d) Registration of duty credit scrips for a value higher than the eligible credit,
- (e) Duty credit fully utilized both at the original port of registration and at other ports after issuance of Telegraphic Release Advice (TRA).

The cases are discussed below:

4.1.1 Utilisation of duty credit by re-registering the scrips (licences) with different dates

Through analysis of DGFT data/licence debit details audit found cases of duty credit scrips which were already registered and utilised at one port were re-registered with different dates and utilised again for payment of customs duty on importation of goods through various ports across the country. Audit verified from the department that the re-registration was not on account of any Telegraphic Release Advice (TRA) issued against those scrips for importation of goods through ports other than the Port of Registration.

Audit initially pointed out (November 2015) 135 such cases of re-registered scrips to Chennai (Sea) Customs Commissionerate. The Chennai (Sea) Customs Commissionerate stated (January 2016) that the original licences were inadvertently registered with changed numerals and there was no excess utilization of duty credit beyond the prescribed limit due to duplication.

Two⁴² scrips involving actual duty credit aggregating to ₹ 56.30 lakh originally registered at Chennai Sea and Tuticorin Customs were re-registered at ICD, Tughlakabad for aggregate sum of ₹ 530.44 lakh with different scrip dates for the same/ different amount and utilized to the extent of ₹ 527.67 lakh. Such excess utilisation was confirmed (January 2016) by ICD, Tughlakabad and it was also stated that the matter pertaining to misuse of licences issued under Chapter 3 of the FTP for the period 2009 onwards was already under investigation by Special Investigation and Intelligence Branch(SIIB) of ICD, Tughlakabad.

Audit subsequently noticed 29 similar cases of excess utilization of duty credit in 7 Ports involving ₹ 3.59 Crore which was communicated to the commissionerates. Thus in 31 cases excess utilisation of duty credit amounting to ₹ 8.87 crore was noticed.

4.1.2 Utilisation of duty credit by re-registering scrips with different Port codes

In 46 cases involving 22 Ports, it was observed that the licenses were re-registered for the second time by changing the Port codes and utilised for making imports involving excess duty credit to the tune of ₹ 17.73 crore.

Audit communicated (Nov 2015 and Feb 2016), the details of cases to the concerned Commissionerates for confirmation.

After verification, Tuticorin Commissionerate had stated (March/October 2016) that two⁴³ scrips with total money value of ₹ 1.57 crore which were utilized at Tuticorin Commissionerate appear to have been irregularly re-registered at ICD, Tughlakabad and duty evaded is required to be recovered. The matter has since been referred (March 2016) to Tughlakabad Commissionerate for further action.

Reply in respect of the remaining 44 cases involving 21 Ports is awaited.

⁴² Scrip No.3510028447 dated 7.12.2009 issued by JDGFT, Madurai for duty credit of ₹ 4.79 lakh re-registered for duty credit of ₹478.93 lakh by changing the scrip date to 7.12.2011.

Scrip No.410138357 dated 25.5.2012 issued by JDGFT, Chennai for duty credit of ₹ 51.51 lakh re-registered for duty credit of ₹51.51 lakh by changing the scrip date to 25.07.2012

⁴³ Scrip No.3510039803 dated 12.11.2012 issued by JDGFT, Madurai for duty credit of ₹ 11.10 lakh and registered at ICD, Tuticorin was re-registered for duty credit of ₹111 lakh by changing the port code to ICD, Tughlakabad.

Scrip No.3510039804 dated 11.12.2012 issued by JDGFT, Madurai for duty credit of ₹4.58 lakh and registered at ICD, Tuticorin was re-registered for duty credit of ₹ 45.81 lakh by changing the port code to ICD, Tughlakabad.

4.1.3 Multiple re-registration of duty credit scrips not issued to the scrip holder

In 47 cases, the scrip holders after registering the original scrip at ICD, Tuglakabad and utilizing the available credit, registered the scrips more than once at the same port (ICD, Tuglakabad). Such scrips were registered by changing the last few numerals of the original scrip number issued to them, with same or different duty credit and utilised for imports to the extent of ₹16.26 crore. Commissionerate reply is awaited (December 2016).

4.1.4 Registration of duty credit scrips for a value higher than the eligible credit

In 6 cases, the scrips were registered at ICD, Tuglakabad for a higher value than the admissible credit and utilized for making imports. Such excess utilization of duty credit worked out to ₹2.29 crore.

Out of 6 cases, in 5 cases, the scrips were registered again at ICD, Tuglakabad by changing the last numerals of the original scrip number issued to them, with original or different duty credit and utilized the credit to an extent of ₹2.33 crore.

In response to aforesaid cases Ministry of Finance, Department of Revenue (MoF,DoR) partially agreeing with Audit findings stated (December 2016) that the cases pointed out were on account of forgery of the scrips and not due to system failure or lack of validations in system.

Ministry's reply is not acceptable since it is the lack of appropriate validation controls in the system which made the system prone to misuse. Audit found that in the DGFT's system the Licence number issued is a unique 10 digit number. Whereas, in the ICES 1.5 application there is no input control mechanism to ensure that only 10 digit numbers are allowed to be registered as valid licence numbers. The system permits numbers greater than / less than 10 digits, alpha numeric characters, special characters to be registered as valid licence numbers. Due to these lacunae, the system allows to re-register an already registered license number by changing the original license date or the port of registration with any amount of duty credit during second or subsequent registration. The above lacunae present in the system were exploited and mis-utilisation of duty credit scrips of large magnitude has been committed in many ports, more predominantly at ICD, Tughlakabad.

Ministry response attributing the misuse of the scheme to 'forgery' committed by the importer instead of system validation has left the system vulnerable to continued misuse.

It has been verified by Audit at Chennai (Sea) Commissionerate that even now (January 2017) the system allows re-registration of an already registered

license, thereby giving ample scope for mis-utilisation of licences issued under Chapter 3 of FTP endangering the revenue of Government of India.

Ministry further stated that in 15 out of 31 cases pointed out in audit regarding utilisation of duty credit by re-registering the licences with different dates there is no excess utilization in these cases. According to the Ministry, the Addl.DGFT, Ludhiana had inadvertently issued the licenses manually against unblocked license numbers. This resulted in these licence numbers being simultaneously issued for applications submitted online by other exporters leading to a situation where same license number appears in the name of two exporters.

The reply furnished by the Ministry about the 'inadvertent' issue of licence number manually only reinforces the Audit observation that the system is vulnerable to misuse.

4.1.5 Mis-utilisation of scrips in the original port of registration after issuance of Telegraphic Release Advice (TRA)

A TRA is issued for transferring the amount of credit available in a scrip from one customs port to another port, where the scrip holder intends to utilise the balance credit for making import through another port. In the TRA receiving port, the exporters need to re-register the scrip and utilise the scrip to the extent to which credit is available as per the TRA. In the originating port of registration, the transferred duty credit amount will not be available since the entire credit or part of it had already been transferred to the new port.

Examination of DGFT/Customs data and License Management Module of ICES 1.5 disclosed that in 12 licences wherein TRA was issued, the credit was mis-utilised to an extent of ₹4.22 crore by the importers in the original port of registration. In all these 12 licenses, the entire duty credit which was already transferred in the re-registered port was utilized.

For instance, the Scrip No. 3010066055 dated 23.3.2010 with a duty credit of ₹ 62.71 lakh was initially registered at Ludhiana Port (INLDH6) (Registration No. /3010066055/dated 23-3-10). The Scrip holder got TRA (TRA No. 7098/19-4-10) for the entire duty credit of ₹62.71 lakh to Chennai Port (INMAA1) and re-registered the Scrip (Registration No.46012/21-4-10) at Chennai and utilised the credit by imports for ₹ 62.71 lakh. As the entire credit was already transferred to Chennai Port, no credit should be available at Ludhiana Port. However, the scrip holder was able to import and utilise ₹ 62.71 lakh at Ludhiana Port as well due to inadequate validation control in the system.

Thus, lack of input validation controls in the departments' ICES and DGFT systems and ineffective monitoring of registration / debiting of duty scrips by the department officers resulted in excess/ irregular utilisation of duty credit to the tune of ₹ 51.70 crore.

Ministry of Finance, Department of Revenue stated (December 2016), that DRI was asked to conduct one time exercise of matching all the EDI registrations (including in history of earlier version ICES 1.0) with a suitable data dump obtained centrally from the DGFT. The exercise is to cover manual locations also by seeking details from such ports. DRI has accordingly taken up matter with DGFT for providing data dump of all scrips issued under Ch-3 of FTP which is awaited.

It was further stated that DG-Vigilance has also initiated vigilance investigation in the matter to identify involvement of officers in the matter.

Further progress is awaited (January 2017).

4.2 Export promotion capital goods scheme (EPCG)

Non fulfillment of export obligation

Paragraph 5.1/5.2 of FTP, 2004-09 allows import of capital goods at concessional rate of customs duty subject to export obligation equivalent to eight times of duty saved on capital goods imported under EPCG scheme to be fulfilled over a period of eight years from the date of issue of licence. Paragraph 5.8.3 of Handbook of Procedure (HBP) Vol-I 2004-09 stipulates that the export obligation is required be fulfilled block wise and if export obligation of any particular block year is not fulfilled in terms of prescribed proportions, the licence holder shall, within three months from the block years, pay duties of customs on the non fulfilled portion of the export obligation along with interest.

4.2.1 M/s Bharat Heavy Electricals Limited (BHEL), Bengaluru was issued an EPCG Licence (no.0730004439 dated 11 August 2006 by Regional Licensing Authority (RLA), Bengaluru to import capital goods for manufacture and export of products worth ₹ 5.79 crore to be fulfilled within eight years from the date of issue of licence. Against the import of capital goods (August to October 2006) through Airport & Air Cargo Complex (ACC), Bengaluru (Bond no.200223582 dated 25 August 2006) duty of ₹ 86.46 lakh was saved by the licensee. However, the licensee failed to make any export even after expiry of export obligation period (August 2014). Accordingly, the duty of ₹ 86.46 lakh saved was recoverable along with interest (₹ 1.32 crore).

On this being pointed out (October 2015) the custom department (Airport and Air Cargo Commissionerate) and the Regional Licensing Authority (RLA), Bengaluru issued show cause notices (February/April 2016 respectively) to the importer. Department of Revenue stated (November 2016) that SCN issued to the licence has been fixed for personal hearing for adjudication. Further progress is awaited (December 2016)).

4.2.2 For Small scale industry (SSI) units, import of capital goods at 3 per cent customs duty shall be allowed subject to fulfillment of an export obligation (EO) equivalent to 6 times the duty saved (on capital goods imported under the scheme) over a period of 8 years from the date of issue of licence provided the landed c.i.f. value of such imported capital goods under the scheme does not exceed ₹ 50 lakh and the total investment in plant and machinery after such imports does not exceed the SSI limit.

Further, as per paragraph 5.9 of FTP, to incentivize fast track companies with a view to accelerate exports, if 75 per cent of specific EO has been fulfilled in half or less than half the EO period (i.e. 4 years) the remaining EO should be condoned and the authorization be redeemed.

Regional Licensing Authority (RLA), Surat issued (April/May 2011, August 2013) 'Export obligation discharge certificate (EODC)' to M/s Rachit Creation, M/s Shiv creation and M/s Meenaxi Textile for their four EPCG Authorizations involving duty saved amount of ₹ 10.06 lakh (₹ 4.12 lakh+ ₹ 5.94 lakh), ₹ 17.03 lakh and ₹ 8.01 lakh respectively for which specific export obligations were fixed at ₹ 60.40 lakh, ₹ 102.23 lakh and ₹ 48.09 lakh respectively i.e. at 6 times of the duty saved amount.

However, audit noticed that these exporters were also issued other EPCG licences thereby exceeding total c.i.f. value of imported capital goods by ₹ 50 lakh under the EPCG scheme. Accordingly, the EO should have been fixed at the rate of 8 items of the duty saved amount instead of 6 times as fixed by the RLA. Therefore, considering the 75 per cent of the EO fulfilled in respect of three authorization (paragraph 5.9 of FTP) upto four years of EO period and also EO fulfilled in respect of one authorization upto validity period (8 years) there was a total short fulfillment of export obligation of ₹ 53.86 lakh due incorrect fixation of export obligation.

On this being pointed out (April/May/November 2014), the RLA, Surat stated (May 2014) that action is being taken for shortfall to meet 100 per cent export obligation and final report would be submitted. However despite reminders issued in October 2015 and January 2016 for furnishing the status of these cases, RLA had not responded (December 2016).

Ministry response is awaited (December 2016).

Non recovery of duty due to irregular redemption

4.2.3 According to paragraph 5.7.1 of the HBP, Vol-I, 2004-09, shipping bills proposed to be presented towards discharge of export obligation (EO) against a licence issued under EPCG Scheme shall bear the endorsement of the EPCG authorization number and date at the time of export. However, in terms of DGFT policy circular no.7/2002 dated 11 July 2002, such procedural lapse may

be condoned, in case of direct exports, subject to submission/verification of (i) An affidavit/undertaking, duly certified by an independent CA, declaring that the exports accounted for fulfillment of EO against the particular EPCG licence have not been/shall not be taken into account for fulfillment of EO against any other EPCG licence (ii) List of EPCG licences obtained by the licence holder and (iii) the product exported under the shipping bill was manufactured by using the imported machinery under EPCG.

M/s Vedanta Aluminium Limited availed duty exemption of ₹ 243.03 lakh on their capital goods imported (May 2005) through Kolkata (Port) Commissionerate against their EPCG licence no.0530138258 dated 16 March 2005 issued by Zonal JDGFT, New Delhi for export of “Calcined Alumina”. At the time of redemption of the EPCG licence, the licensee furnished an affidavit, in line with DGFT policy circular no.7/2002 dated 11 July 2002, for discharge of its EO but without the list of EPCG licences issued to them. Accordingly, the EPCG licence was redeemed by the office of the Zone JDGFT, New Delhi by considering the exports under the Shipping bill (SB) for discharge of its EO. On the basis of the Export Obligation Discharge Certificate (EODC) letter issued by the Zonal JDGFT, New Delhi, the Kolkata Customs Authority cancelled (September 2013) the bond and the Bank Guarantee (BG) executed by the licensee.

However, audit scrutiny of the shipping bill revealed that its entire quantity of exports of Calcined Alumina (26250 MT) had been utilized for discharge of EO against three other EPCG licences issued during January 2005 by Zonal JDGFT, New Delhi. Thus, there was no balance quantity of exports left in the said SB which could be utilized for discharge of EO against the objected EPCG licence issued in March 2015. Therefore, redemption of EPCG licence and cancellation of Bond/BG on the basis of the SB presented by the licensee was irregular resulting in non-recovery of duty saved amount of ₹ 2.43 crore along with interest of ₹ 3.45 crore.

The Zonal JDGFT, New Delhi authority stated (July 2016) that a letter has been sent to the licensee to pay duty of ₹ 2.43 crore. Further progress is awaited. Reply from customs commissionerate is awaited (December 2016).

Ministry reply has not been received (December 2016).

4.3 Special Economic Zones (SEZs)/Export Oriented Units (EOUs)

As per notification no.45/2005-cus dated 16 May 2005, all goods produced or manufactured in a Special Economic Zone (SEZ) and brought to any other place in India in accordance with the provisions of FTP 2004-09 is exempt from whole of the additional duty of customs (SAD), leviable under section 3 (5) of the Customs Tariff Act, 1975, provided such goods are not exempted by the

State Government from payment of sales tax or value added tax. CBEC vide circular no.44/2013-cus dated 30 December 2013 classified that SAD is payable on stock transfer of goods from SEZ unit to their DTA unit, as no ST/VAT was leviable on such transfer of goods.

Further, as per proviso (1) of section 5A of Central Excise Act, 1944, the benefits of duty exemption notifications issued under section 5A shall not be applicable to goods produced or manufactured in a SEZ and brought to any other place in India, unless the said exemption notification specifically provides for extension of the benefit of exemption to such goods manufactured in SEZ units.

4.3.1 Incorrect grant of duty exemption on Domestic Tariff Area (DTA) sale

Audit scrutiny of DTA sales bills of entry at the customs wing of Falta SEZ revealed that M/s Linc Pen & Plastic Limited and two other SEZ units cleared (January 2013 to December 2014) their goods from Falta SEZ into their own units in DTA without payment of SAD by availing duty exemption under notification no.45/2005-cus dated 16 May 2005. However, scrutiny of the sale invoice revealed that although the SEZ units made a provision for levy of VAT on the sale invoice but it was evident that no VAT was collected on such sale as the VAT numbers quoted on sale invoice were that of the buyers (i.e. their DTA units). This indicated that the transactions were in the nature of stock transfer which were exempted from payment of ST/VAT for which the said SEZ unit were required to pay SAD of ₹ 1.61 crore, as per the provisions of aforesaid notification/CBEC circular.

Further, test check of DTA sale bills of entry revealed that the aforesaid units also did not pay CVD at the rate of 12 per cent ad valorem by availing CVD exemption (serial no.325 (ii) of Central Excise notification no.12/2012-CE dated 17 March 2012). However, as this notification was issued under section 5A of Central Excise Act which did not extend the duty exemption on goods manufactured in the SEZ unit and cleared in DTA, the grant of CVD exemption of ₹ 5.10 crore on the aforementioned DTA sale was also incorrect in terms of provision (1) of section 5A of Central Excise Act. Thus, short levy of customs duty on these accounts aggregate to ₹ 6.71 crore

On this being pointed out (February 2015), Falta SEZ authorities accepting the observations in respect of SAD exemption stated (March 2015/April 2016) that Demand cum Show cause notices are being processed by the competent authority for issue.

However for incorrect exemption of CVD, Ministry of Finance, DoR stated (December 2016) that duty has been charged as per Section 30 of SEZ Act, read with Rule 47(1) and 47(4) of SEZ Rules, 2006 which provides that

assessment of the goods cleared into DTA shall be made in accordance with Customs Act and Rules and it could not be different than the import duty charged in the normal course of imports.

The reply is not acceptable because levy or exemption from CVD is granted under Central Excise notifications issued under Section 5A of Central Excise Act. In the instant case notification No. 12/2012-CE has not exempted goods produced or manufactured in the SEZ and cleared in DTA from levy of CVD.

4.3.2 DTA sale allowed despite negative net foreign exchange (NFE) earning

As per paragraph 6.8 (a) of FTP (2009-14), Vol-I, the Export Oriented Units (EOU) units, other than Gems and Jewellery units, may sell goods up to 50 per cent of FOB value of the exports in domestic tariff area (DTA) on payment of concessional duties subject to fulfillment of positive net foreign exchange (NFE). However, as per paragraph I (h) of Appendix 14-I-H HBP, the DTA sale entitlement would accrue only if the unit has achieved positive NFE on cumulative basis.

M/s Smitabh Intercon Pvt. Limited an EOU, under the jurisdiction of Development Commissioner, Falta SEZ and Kolkata-III Central Excise, Commissionerate, got their Letter of Permission (LOP) renewed for five years from 1 September 2011. Scrutiny of statistical data provided in the Annual Performance Reports (APRs) of the EOU for the year 2012-13 to 2014-15 and import/export data provided by the unit for the financial years 2011-12 (w.e.f. 1 September 2011) revealed that the cumulative NFE of the units was negative in all these years but the EOU was incorrectly allowed to avail duty concession of ₹ 77.42 lakh on their DTA sale under paragraph 6.8 (a) of FTP.

On this being pointed out (December 2015), the Assistant Development Commissioner, Falta SEZ and Central Excise authority furnished (May 2016) import/export data of the EOU and informed that based on these data the NFE of the EOU on completion of five years period of export obligation was positive and hence DTA sale by the unit was correct.

Both the departments were informed (May 2016) that their reply was not tenable because as per the provisions of paragraph I (h) of Appendix-14-I-H, DTA sale entitlement to EOU units is decided on yearly basis on achievement of positive cumulative NFE, whereas on the basis of the statistical data furnished by the departments, the cumulative NFE of the EOU for the FY 2011-12 to 2013-14 was negative. Accordingly, the EOU was not eligible for DTA sales during this period FY 2011-12 to 2013-14 for which the duty concession of ₹ 77.42 lakh availed on DTA sale was recoverable. Further response of the

Development Commissioner, Falta SEZ and Kolkata-III Central Excise, Commissionerate is awaited (December 2016).

Ministry reply has not been received (December 2016).

4.3.3 Incorrect reimbursement of CST

Paragraph 6.11 (c) (i) of FTP 2009-14, read with paragraph 2 of the Appendix 14-I-I HBP provides that EOUs shall be entitled to reimbursement of CST on goods manufactured in India and the EOUs would be entitled to full reimbursement of CST paid by them on purchases made from DTA for production of goods and services as per EOU scheme.

Deputy Commissioner (DC), Cochin Special Economic Zone (CSEZ), Cochin vide circular no.1/2014 dated 25 April 2014 had informed all EOUs in Karnataka and Kerala that no claim for reimbursement of CST for purchases made from EOU/SEZ/STP/EHTP unit shall be preferred while submitting application for reimbursement of CST.

On scrutiny of the records of M/s Bloom Energy India (Pvt.) Limited an EHTP unit, it was observed that the CST claims (April 2010 to June 2012) to the extent of ₹ 75.47 lakh were wrongly reimbursed because procurements were made not from a DTA unit but from SEZ unit M/s Avalon Technologies Pvt. Limited in Madras Export Processing Zone (MEPZ). This has resulted in inadmissible reimbursement of CST of ₹ 75.47 lakh.

On this being pointed out (March 2016), the Software Technology Parks of India (STPI), Bengaluru authorities reported (July 2016) recovery of ₹ 18.42 lakh. Further progress is awaited (December 2016).

Ministry reply has not been received (December 2016).

4.4 Advance Authorization Scheme

As per conditions attached to the customs notifications issued to implement Advance Authorization (AA) Scheme and Duty Free Import Authorization (DFIA) Scheme of the FTP 2004-09 and 2009-14, the importer, at the time of clearance of imported material under the Scheme, execute a bond with such surety or security as specified by the Assistant/Deputy Commissioner of Customs, binding himself to pay on demand, an amount equal to the duty together in the interest, but for the exemption on the imported material, in respect of which the conditions specified in the notification has not been complied with. Further, it has been stipulated that the importer has to fulfil the EO specified in the licence within the period specified or within the extended period allowed by exporting the resultant products and produce the evidence of discharge of export obligation in the form of EODC issued by Regional Licensing Authority (RLA) to the satisfaction of the Assistant/Deputy

Commissioner within 60 days of the expiry of period allowed for fulfillment of EO.

4.4.1 Non enforcement of bond/bank guarantee to recover the duty and interest on non fulfillment of export obligation

On scrutiny of Bond Registers maintained in Group 7 of Chennai (Sea), Customs, it was observed (November 2015) that in 53 cases of imports made against AAs and DFIA issued by RLA, Coimbatore, Chennai, Puducherry and Madurai during 2009-10, the bonds are still pending cancellation due to non submission of EODC from concerned RLAs. The EO period in these 53 cases had already expired and the EODC is pending submission for more than two years.

The total value of imports made in the 48 cases worked out to ₹ 1529.67 crore and the duty involved was ₹ 382.42 crore. Bond/Bank Gurantee had not been enforced by the department to realize the revenue in terms of the aforesaid provision for imports for which EODC were not produced.

JDGFT, Puducherry stated (May 2016) that documents in support of export obligation/payment of duty with interest for non fulfillment of export obligation had been called for in respect of two cases (M/s Hindustan National Glass Industries Ltd and M/s Manatec Electronics) pointed out by Audit.

JDGFT, Coimbatore stated (April 2016) that adjudication orders have been issued/under issue in respect of four cases and in the balance two cases, letters had been sent to the firms for payment of duty with interest to regularize the case.

Chennai (Sea) authorities stated (July 2016) that in 14 licences of M/s Bharat Heavy Electornics Limited (BHEL) demand notices have been issued, in 2 licences (M/s Petro Araldite Private Limited), the BG was extended upto January 2017 and in the remaining 39 licences pertaining to various importers, demand notices have been issued and alert put in the EDI system.

Further progress is awaited (December 2016).

Ministry reply has not been received (December 2016).

4.5 Served from India Scheme (SFIS)

In terms of paragraph 3.12.4 of the FTP, 2009-14, Service Providers of services listed in Appendix 41 of HBP Vol-I, are entitled to Duty credit scrip equivalent to 10 per cent of free foreign exchange earned during current financial year, under the Served From India Scheme (SFIS). As per paragraph 9.53 (ii) of FTP “Service provider” means a person providing supply of a ‘service’ from India to service consumer of any other country in India. Therefore, while allowing SFIS duty credit to Service Providers in terms of paragraph 9.53 (ii), it is necessary

to ensure that the services had been supplied to the service consumers of any other country in India.

4.5.1 Incorrect grant of SFIS duty credit

M/s VIT University, Vellore was issued SFIS duty credit scrip of ₹ 195.84 lakh for the free foreign exchange earned for rendering “Higher education service”. Scrutiny revealed that the Foreign Inward Remittance Certificate issued by Bank was towards the “fees” collected by the University, from Non-resident Indian (NRI). However, from the list of students from whom the fees in foreign currency were collected, no proof of their nationality or status of residence could be seen.

As the university had claimed SFIS duty credit in terms of paragraph 9.53 (ii), the grant of duty credit without ensuring the nationality of the students, was not in order. This had resulted in incorrect grant of duty credit under SFIS to the tune of ₹ 1.48 crore which was recoverable with interest.

Further, it was also observed that duty credit amounting to ₹ 0.40 lakh in 17 cases on the earnings from the sale of application which was also not correct as cost of applications does not fall under the ambit of services and hence was recoverable with interest.

On this being pointed out (February 2015), the RLA, Chennai replied (February 2016) that the issue had been referred to their Headquarters for a decision. Further progress is awaited (December 2016).

Ministry reply has not been received (December 2016).

4.5.2 Grant of SHIS duty credit to ineligible goods

In terms of paragraph 3.16.1 (b) of the FTP, 2009-14, Status Holders of sectors specified in paragraph 3.16.4 shall be entitled to a duty credit scrip at one per cent of FOB value of exports made during the year 2009-10 to 2012-13. Further, additional sectors as specified in paragraph 3.10.8 of the HBP Vol-I, 2009-14 shall be eligible for Status Holder Incentive Scrip (SHIS) on exports made during 2010-11 to 2012-13. According to the above provisions, Basic chemicals (excluding Pharma products) falling under chapter 28 and 29 of ITC (HS) classification and chemical and allied products as specified in paragraph 3.10.8 of HBP are eligible for grant of credit under SHIS.

M/s Oren Hydrocarbons Pvt. Limited was issued (April 2013) an SHIS scrip for ₹ 1.92 crore for the exports made during the period April 2011 to March 2012, under the sector “Basic chemicals (excluding Pharma products)” by Regional Licensing Authority (RLA), Chennai.

Audit observed that the company had exported goods falling under various chapter/tariff items which were neither specified under “Basic chemicals

sector” nor under the ‘Chemicals and allied products sector’ and had claimed duty credit under SHIS. This had resulted in incorrect grant of SHIS duty credit of ₹ 1.31 crore which was recoverable with interest.

On this being pointed out (February 2015), Customs department stated (October 2016) that the licence has been utilized (₹ 1.84 crore) with available duty credit of ₹ 8 only (as on October 2016). Reply from RLA, Chennai is awaited (December 2016).

Ministry reply has not been received (December 2016).

4.5.3 Non recovery of late cut

As per paragraph 3.6 (b) of Handbook of Procedure (HBP) VOL-I, 2009-14, an application of SFIS duty credit shall be filed within 12 months from the end of relevant month/quarter/half year/year for the foreign exchange earned during the current financial year. Further, as per the paragraph 9.3 of HBP, Vol-I, 2009-14, whenever application is received after expiry of duty date, such application may be considered after imposition of late cut at the rate of 2 per cent, 5 per cent and 10 per cent applicable.

It was observed that in 15 SFIS scrips issued to M/s Father Muller Charitable Institutions and six others late cut amounting to ₹ 15.49 lakh was not levied for delayed submission of application for duty credit as per the aforesaid provisions. The omission to levy late cut resulted in excess issue of duty credit scrip for ₹ 15.49 lakh to the scrip holders.

On this being pointed out (December 2015/January 2016), the RLA (JDGFT Bengaluru) recovered late cut amounting to ₹ 0.41 lakh including interest from M/s Indfrag Limited (February 2016). Recovery details for ₹ 15.17 lakh from the remaining six units are awaited (December 2016).

Ministry reply is awaited (December 2016).

4.6 Focus Product Scheme

Focus Product Scheme (FPS), an export promotion scheme under Chapter 3 of the Foreign Trade Policy (FTP), 2009-14, provides for duty credit equivalent to 2/5 per cent of FOB value of exports realized in free foreign exchange for export of products listed in Table 1 of Appendix 37D of Handbook of Procedure (HBP), Vol-I.

4.6.1 Grant of excess duty credit under FPS scheme

As per public notice 42 (RE 2012)/2009-14 dated 31 December 2012 (as amended) ‘Handmade pouffes/Articles of Bedding, cushions’ etc. falling under ITC-HS code 94049099 are allowed additional bonus benefit of 2 per cent in FPS under serial no.583 of Table 1 of Appendix 37D for exports made with effect from 1 January 2013.

M/s Raga Textile India Pvt. Limited and 34 other exporters were granted bonus additional duty credit of 2 per cent of FOB value on exports of 'Power loom seat pad and Cotton Power loom yarn dyed cushion filled with polyester/cotton' under FPS. The bonus duty credit was granted in 55 scrips for exports made during the period January 2013 to January 2015.

Audit pointed out that the exported items were Power loom products and not handmade items/articles of Bedding, cushion etc. therefore are ineligible for additional bonus credit as per aforesaid Appendix 37D. This had resulted in grant of excess duty credit of ₹ 77.43 lakh.

On this being pointed out (January 2016), the DGFT, Coimbatore stated (March to June 2016) that in respect of 35 scrips, excess duty of ₹ 45.34 lakh along with interest of ₹ 9.77 lakh was recovered by way of adjustment in the licences issued subsequently. Reply in respect of remaining 20 scrips is awaited (December 2016).

Ministry reply has not been received (December 2016).

4.7 Incremental exports incentivisation scheme (IEIS)

4.7.1 Excess benefit granted under IEIS

As per paragraph 3.14.4 (b) of Foreign trade policy (FTP), 2009-14, an Importer Exporter Code (IEC) holder would be entitled for a duty credit scrip at the rate of 2 per cent on the incremental growth achieved during the period 1 January 2013 to 31 March 2013 compared to the period from 1 January 2012 to 31 March 2012 on the FOB value of exports. Further, Director General of Foreign Trade (DGFT), New Delhi directed (F.No.01/61/180/AM13/PC3/657 dated 16 October 2014) that the benefit of Incremental Export Incentivisation Scheme (IEIS) for the last quarter of 2012-13 (i.e January to March 2013) will be limited to 25 per cent growth or Incremental growth of ₹ 10 crore in value, whichever is less.

Regional Licensing Authority (RLA), Jaipur issued an IEIS authorization for benefit of ₹ 29.77 lakh to M/s Gravita India Limited, Jaipur for incremental growth during the period January 2013 to March 2013 in comparison to January 2012 to March 2012. Audit scrutiny revealed that as per aforesaid DGFT instruction the benefit allowable however, works out of ₹ 7.55 lakh. Thus, excess benefit of ₹ 22.22 lakh was granted to M/s Gravita India Limited, Jaipur which is recoverable.

This was pointed to the RLA, Jaipur in November 2015, their reply is awaited (December 2016).

Ministry reply has not been received (December 2016).

CHAPTER V

ASSESSMENT OF CUSTOMS REVENUE

We found from test check of records (February 2015 to March 2016), 29 cases of incorrect assessment of customs duties having total revenue implication of ₹ 17.48 crore. Out of these, 14 cases are discussed in the following paragraphs and 15 cases which have been accepted by the department and recoveries made/recovery proceedings initiated are mentioned in **Annexure 9**.

5.1 Imports cleared without levying applicable anti dumping duty

As per section 9A of the Customs Tariff Act, 1975, where any article is exported from any country to India at less than its normal value, then upon the import of such article into India, the Central Government may, by a notification, impose an anti dumping duty (ADD). Accordingly, ADD was imposed from time to time on goods like 'Hexamine', 'Methylene chloride', Albendazole, Electronic calculator, 'Aluminum alloy wheels' and Phenol when these were imported from specified countries like Saudi Arabia, China, Singapore, USA, European Union and Taiwan.

Assessing officers cleared 67 consignments of such goods imported by M/s Ashish life Science Pvt. Limited and 28 others from these specified countries without levying applicable ADD amounting to ₹ 6.23 crore.

The Ministry/ICD Tughlakabad/JNCH, Mumbai authorities in respect of import of Hexamine, Electronic calculators and 'Aluminum alloy wheels' reported recovery of ₹ 1.33 crore beside issue of less charge cum demand notice to one importer.

The JNCH authorities in respect of import of 'Polypropylene' stated that CBEC (Board) vide notification no.29/2016-cus (ADD) dated 5 July 2016 had excluded 'Polypropylene beads' from levy of ADD, therefore ADD is not applicable vide notification dated 8 March 2016.

The department reply is not acceptable because the amendment to notification no.7/2016-cus (ADD) dated 8 March 2016 came into force from 5 July 2016 (notification no.29/2016-cus (ADD) while the goods were imported from 10 March 2016 to 29 March 2016 during which notification no.7/2016-cus (ADD) was applicable and accordingly the goods were liable for ADD.

Reply in respect of imports, made from ICD Tughlakabad, JNCH, Nhava Sheva, Mumbai by 10 importers is awaited (December 2016).

5.2 Non-collection of revenue due to delay in disposal of warehoused goods (liquor)

According to section 2 read with section 61 (1) (b) of the Customs Act 1962, if the warehoused goods are not removed within the prescribed period, the

proper officer has to demand full amount of duty chargeable on account of such goods together with interest payable till the date of payment of duty. In case of failure to pay the amount demanded, the proper officer is required to immediately proceed to detain the goods and take action for recovery of duty by auctioning the goods according to the provisions of section 72 of Customs Act, 1962. If such recovery falls short of demand, the importer is liable for further recovery action under section 142 of the Customs Act 1962.

Audit scrutiny in disposal section of JNCH and NCH revealed that 157 bonds/lots of liquor (103 in JNCH and 54 in NCH) pertaining to period 2001-02 to 2013-14 were lying in bonded warehouses. Further, in 136 lots/bonds worth ₹ 3.53 crore involving duty element of ₹ 5.65 crore, inordinate delay was noticed in taking action on the expired bonds at the bonds section and issuing disposal orders to disposal section for auctioning goods which led to deterioration of goods and its commercial value with the passage of time.

On this being pointed out (February 2016), JNCH Authorities stated (April 2016) that 28 bonds/lots were already disposed, 2 bonds/lots are under process for re-export and 1 bond wherein duty has been paid is under disposal. The fact remains that pending disposal of remaining 105 lots/bonds having assessable value of ₹ 1.65 crore, duty of ₹ 2.64 crore remained unrealised. Further progress is awaited (December 2016).

5.3 Non levy of anti dumping duty on DTA clearances

Sub-section 2A of Section 9A of the Customs tariff Act, 1975, provides that goods imported by the Exported Oriented Units (EOUs) are exempted from ADD. If the goods imported are either cleared as such into domestic tariff area (DTA) or used in the manufacture of any goods that are cleared into the DTA, ADD shall be levied on that portion of the goods so cleared or so used as was leviable when it was imported into India. Similar provisions were stipulated under paragraph 10 of circular no.12/2008-cus dated 24 July 2008. Accordingly, an amount equal to ADD foregone on the goods at the time of import is also required to be paid on the equivalent quantity of goods used for manufacture of any goods which are cleared into DTA or on such quantity of goods which are cleared such into DTA.

'Polypropylene' (CTH 39021000 OR 39023000) originated and exported from Singapore {Notification no.119/2010-cus (serial no.19 of the table)} is leviable to ADD at the prescribed rate dated 19 November 2010.

M/s Fiberweb India Pvt. Limited, an EOU under Daman Commissionerate is engaged in manufacturing of 'spun bond Non woven Fabrics' (Chapter 56) from 'Polypropylene'. EOU imported Polypropylene from M/s Exxon Mobil Chemical Asia Pacific, Singapore and also procured Polypropylene from

domestic market. The unit had cleared 7369.89 MT of manufactured goods, waste/scrap and rejects valued at ₹ 78.22 crore in DTA from 2009-10 to 2013-14 without payment of ADD on the quantity of Polypropylene used in these goods. Since the unit had imported Polypropylene (CTH 39021000) leviable to ADD but for exemption to EOU was liable to ADD on the portion of polypropylene used in the manufacture of goods cleared in DTA in terms of aforesaid provisions. This resulted in non levy of ADD of ₹ 1.07 crore which was recoverable with applicable interest.

On this being pointed out (February 2015), Ministry stated (November 2016) that show cause notice has been adjudicated (February 2016) and the unit had filed appeal before CESTAT which is pending. However, the unit had deposited (May 2016) ₹ 1.07 lakh. Further progress is awaited (December 2016).

5.4 Irregular regularization of sanctioned drawback

As per Rule 16A of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, the Drawback (DBK) paid to any exporter stands recoverable if sale proceeds are not realized within the period allowed under the Foreign Exchange Management Act (FEMA), 1999, subject to any extensions by the RBI. The said period of realization was 12 months prior to 31 March 2013 and 9 months thereafter as specified by RBI vide RBI A.P. (DIR series) circular no.105 dated 20 May 2013 and circular no.37 dated 20 November 2014 respectively. It follows that exporter becomes ineligible for payment of DBK, if export realization period is not extended by RBI.

Scrutiny of exports foreign exchange outstanding statement (XOS) for the half year ended December 2014, received from RBI, Kolkata along with drawback shipping bills and drawback scrolls pertaining to payment of drawback, revealed that the full export proceeds in respect of goods exported through 53 (fifty three) shipping bills (for the period of February 2013 to June 2014) from Kolkata Airport Commissionerate, involving drawback of ₹ 90.48 lakh were not realized even after expiry of more than twelve months from the date of export or any extended period allowed by RBI.

On this being pointed out (January 2016), the department forwarded (May 2016) documentary evidences of full/part recovery of ₹ 11.09 lakh and informed (June 2016) that balance amount of drawback was regularized on the basis of e-BRC certificate submitted by the exporters by recovering interest on drawback amount for the period of delay in export realization.

Scrutiny of copy of e-BRC furnished by the department revealed that in respect of 29 shipping bills, the export realization was made after expiry of permissible period of export realization prescribed by RBI under aforesaid circulars but no documents/evidence for extension of export realization period granted by RBI

were produced to Audit. In absence of any extension being granted by RBI, such export realization becomes ineligible for claim of drawback, in terms of aforesaid Rule 16A which warrants recovery of proportional drawback. Therefore, the regularization of sanctioned drawback amount of ₹ 50.43 lakh by customs department by recovering interest on such drawback amount for the period of delay in export realization, in contravention to prescribed rules/provisions/instruction was irregular.

On this being pointed out (June/July 2016), the customs department informed (July/August 2016) of having issued letter for recovery of drawback in the objected cases and stopping disbursing of drawback of these exporters. Further progress is awaited (December 2016).

5.5 Non levy of safeguard duty

5.5.1 ‘Seamless tubes, pipes of iron, alloy or non-alloy steel of specified dimensions and characters’ falling under specified tariff items of the Customs Tariff Act, 1975 attract safeguard duty at the rate of 20 per cent ad valorem with effect from 13 August 2014, when imported from developed countries and China.

M/s Emerson Climate Technologies (India) Limited and three others had imported (August to November 2014) a consignment of ‘Seamless tubes, pipes’ through JNCH, Nhava Sheva, Mumbai. The imported goods were classified under CTH 73041910, 73041990 and 73042990 and cleared without levying safeguard duty. This resulted in short levy of duty of ₹ 23.44 lakh.

This was pointed to the department in December 2015/March 2016. Their reply is awaited (December 2016).

5.5.2 ‘Saturated Fatty Alcohols with specified carbon chain length’, and falling under Customs tariff heading (CTH) 382370 attract safeguard duty.

M/s Chemo India and two others importers had imported (October 2014/October 2015) three consignments of ‘Industrial fatty alcohol’ classified under CTH 38237090 through JNCH Nhava Sheva, Mumbai. The goods were cleared without levying safeguard duty amounting to ₹ 10.80 lakh which includes interest of ₹ 1.42 lakh.

On this being pointed, JNCH authorities reported (November 2016) issue of less charge cum demand notice to M/s Esteem Industries Pvt. Ltd which is under adjudication.

Reply in respect of other two importers is awaited (January 2017).

5.6 Excess drawback payment due to incorrect application of rate

As per Drawback Schedule effective from 1 October 2011, (notification no.68/2011-cus (N.T.) dated 22 September 2011), Cotton Denim Fabrics classifiable under Drawback Schedule Sub-heading number 520905, 520906, 520907 & 521103 were eligible for drawback at the rate of 4.7 per cent/5 per cent of FOB value of exports whether CENVAT facility has been availed or not. The said drawback rates were amended vide notification no. 75/2011-cus (N.T.) dated 28 October 2011, giving its effect from 1 October 2011, whereby the drawback rate in respect of afore mentioned items under drawback sub serial number Nos. 520905B, 520906B, 520907B & 521103B were revised at the rate of 1 per cent of FOB value, when CENVAT facility was availed.

Scrutiny of drawback cases under Commissioner of Customs (Preventive), West Bengal, revealed that M/s. Arvind Limited was sanctioned drawback for exports (October/November 2011) of “Cotton denim fabrics” made through 16 bills at higher rate of 4.7/5 per cent although CENVAT credit facility has been availed for exported goods, the fact which has been accepted by the exporters through their declaration in ARE-1. This had resulted in excess payment of drawback to the tune of ₹ 20.55 lakh which was recoverable along with applicable interest.

On this being pointed out (March/May 2015/July 2016), the Ministry reported (September 2016) recovery of ₹2.81 lakh including interest in respect of one export consignment and stated that exporter’s appeal against confirmation of demand is pending. Further progress is awaited (December 2016).

5.7 Loss of revenue due to non recovery of interest

As per section 47 (2) of Customs Act, 1962 read with notification no.28/2002-cus (NT) dated 13 May 2002, where the importer fails to pay the import duty under sub section (1) within five days (excluding holidays) from the date on which the bill of entry is returned to him for payment of duty, he shall pay interest at the rate of 15 per cent, till the date of payment of the said duty.

An amendment of section 47 of Customs Act, 1962 was made on 10 May 2013 by which the number of days within which the importers need to pay the customs duty was reduced from five to two days (excluding holidays).

Analysis of the ICES 1.5 dump data for the months of April 2013 and May 2013 (received in March/April 2015) revealed that the duty of customs were paid belatedly in respect of 135 bills of entries after the allowable period of 5 days or 2 days as stated aforesaid. However, no interest was calculated for the delayed payment of customs duty by the EDI system,

Due to deficiency in the application software, the system failed to calculate the interest element due from the importers beyond 5/2 days (as the case may be), from the date of assessment to the date of payment of duty, automatically, in the 135 cases. This had resulted in non-collection of interest from importers leading to loss of revenue of ₹ 10.29 lakh.

This was pointed out to the department in October 2015. Their reply is awaited (December 2016).

CHAPTER VI

MIS-CLASSIFICATION OF GOODS

During test check of records (March 2014 to March 2016), we noticed 28 cases wherein assessing officers mis-classified various imported goods which caused short levy/non levy of customs duties of ₹ 10.01 crore. Out of these 10 cases are discussed in the following paragraphs and 18 cases which have been accepted by the department and recoveries are made/recovery proceeding initiated are mentioned in **Annexure 10**.

6.1 Hydrolysed vegetable protein containing – Soya misclassified as Isolated soya protein

“Hydrolysed vegetable protein containing – Soya” merit classification under Customs tariff heading (CTH) 21061000.

M/s Cadbury India Limited imported (July 2012 to March 2014) 19 consignments of “Hydrolysed vegetable protein containing – Soya” through JNCH, Mumbai. The goods were classified under CTH 35040091 as “Isolated soya protein” and cleared levying Basic customs duty (BCD) at the rate of 10 per cent and countervailing duty (CVD) at the rate 6 per cent instead of applicable BCD at 30 per cent and CVD at 10 per cent. The misclassification resulted in short levy of duty to tune of ₹ 2.80 crore.

On this being pointed out (March 2014/March 2016), the department reported (October 2016) that for 15 consignments less charge cum demand show cause notice has been issued (January 2015) to the importer and is under process of adjudication. Further progress is awaited (December 2016).

6.2 Vegetable oil (other than refined and edible grade) misclassified as edible grade and refined

As per the notification no.12/2012-cus (serial no.58) import of ‘Vegetable oil’ (Other than refined and edible grade) classifiable under Customs tariff heading (CTH) 1509/1515 are not eligible for concessional rate of BCD and leviable to countervailing duty at the rate of 6 per cent.

M/s Pioma Chemicals had imported (September 2015) four consignments of ‘different vegetable oils for industrial use’ from Germany through JNCH, Nhava Sheva, Mumbai. The imported goods were misclassified as edible grade and refined vegetable oil and cleared levying BCD at concessional rate and ‘CVD at nil’ rate under aforesaid notification. The misclassification of imported goods under edible grade and incorrect availment of exemption led to short levy of duty amounting to ₹ 85.73 lakh.

On this being pointed out (November 2015), the department accepted the audit observation and issued (March 2016) a show cause notice to the

importer in respect of one consignment for ₹ 34.77. Further progress is awaited (December 2016).

6.3 Seeds of herbaceous plant principally cultivated for flowers misclassified as “Other Seeds”

According to Customs Tariff, Seeds of herbaceous plants cultivated principally for their flowers are classifiable under Customs tariff heading (CTH) 12093000 and attracts BCD at the rate of 15 per cent.

M/s Rashi Seeds Pvt. Limited and others imported ‘Flower seeds of various herbaceous plants for sowing’ through New Custom House, Delhi. The items were classified under CTH 12099990 (Other Seeds) and assessed to BCD at concessional rate of 5 per cent (serial no.41 of notification no.12/2012-cus dated 17 March 2012).

As the imported items are seeds of herbaceous plants for sowing, cultivated principally for flowers purpose, they are appropriately classifiable under CTH 12093000 and assessable to BCD at the rate of 15 per cent (serial no.40 of notification no.12/2012-cus dated 17 March 2012). Thus misclassification of the imported item resulted in short levy of duty amounting to ₹ 72.11 lakh.

On this being pointed out (October 2015), the department stated (May 2016) that as per clarification received from an importer, Marigold seed has been classified under flower category as per Indian Minimum Seed Certification Standards 2013 and not as seeds of herbaceous plants {(in response to RTI clarification which was issued by the Ministry of Agriculture and Farmers Welfare (Department of Agriculture, Cooperation and Farmers Welfare Krishi Bhawan, new Delhi)}. As such the seeds of marigold flower are appropriately classifiable under CTH 12099990. However, department had issued (December 2015) the protective demand cum show cause notice.

The reply of the department is not tenable because the Indian Minimum Seeds Certification Standards are meant to maintain and make available to the public, through certification, high quality seeds and propagating materials of notified kinds and varieties so grown and distributed as to ensure genetic identity and purity and not for customs classification.

Moreover, department had classified the import of Marigold seeds under residual CTH 12099990 as ‘Other seeds’ instead of under CTH 12093000, which is specifically meant for seeds of herbaceous plants cultivated principally for their flowers. As per Rule 3 (a) of the General Rules for the interpretation of import tariff – the heading which provides the most specific description shall be preferred to headings providing a more general description.

Further, similar imports of “Flower seeds Marigold for sowing” through Kolkata Air Cargo/Chennai Air Cargo /Delhi Air Cargo were classified by the department under CTH 12093000.

6.4 Food dietary supplements misclassified as ‘Other vegetable saps and extracts’

“DHA Powder” being food/dietary supplements is classifiable under Customs tariff heading (CTH) 21069099 as ‘Other food preparations not elsewhere specified or included’ and leviable to basic customs duty at the rate of 30 per cent (notification no.21/2002-cus dated 1 March 2002, serial no.47).

M/s Vasta Biotech Pvt. Limited imported (April and November 2011) 15 consignments of “DHA powder” through Air Customs Chennai. The goods were classified under CTH 13021990 as ‘Other vegetable saps and extracts’ and assessed to basic customs duty at the rate of 15 per cent (notification no.21/2002-cus, serial no.28) instead of applicable BCD at the rate of 30 per cent. The incorrect classification had resulted in short levy of duty of ₹ 64.76 lakh.

On this being pointed out (March 2012), the department stated (August 2016) that the case is under the process of adjudication by Principal Commissioner and the outcome would be intimated after adjudication. Further progress is awaited (December 2016).

6.5 Copper wire misclassified as copper bar/rods

As per note 1 (d) & (f) of Chapter 74, Bars and rods are defined as Rolled extruded, drawn or forged products not in coils. While wire is defined as Rolled extruded, drawn products in coils. Further, as per Bureau of Indian Standard (BIS) wire rod means rod products of uniform cross section dimension exceeding 6 mm used as intermediate product for further working supplied in cold form. Copper wire having cross sectional dimension exceeding 6 mm is classifiable under Customs tariff heading (CTH) 74081190 and attract Basic customs duty (BCD) at the rate of 5 per cent.

M/s Ashok Company imported (August to December 2015) “Copper wire rod” through ICD, Tuglakabad, Delhi. The imported goods were classified under CTH 74072990 as “Others” bars, rods and profiles of copper alloys” and exempted from BCD under notification no.46/2011-cus serial no.979. Although Imported goods were copper wire rod in coils which merit classification under CTH 74081190 as copper wire and leviable to BCD at the rate of 5 per cent. The misclassification and subsequent incorrect grant of notification benefit resulted in short levy of duty amounting to ₹ 55.70 lakh.

This was pointed to the department in January 2016, their reply is awaited (December 2016).

6.6 Dried grapes misclassified as dried fruit other than grapes

Dried grapes-Raisins are classifiable under Customs tariff heading (CTH) 08062010 and attract Basic customs duty (BCD) at the rate of 100 per cent as per the notification no.12/2012-cus dated 17 March 2012 (serial no.28) and other applicable cess and duty.

M/s Kanegrade Flavours and Ingredients Pvt. Limited imported (January 2014/December 2015) two consignments of 'Midget Currants' through JNCH, Nhava Sheva, Mumbai. The imported goods were classified under CTH 08134090 as dried fruit other than that of heading 0801 to 0806 and levied BCD at the rate of 30 per cent and were exempted from SAD (notification no.21/2012-cus, serial no.20 dated 17 March 2012).

Audit scrutiny revealed that imported goods were small dried black grapes referred to as "Midget Currants" produced in Greece and accordingly merited classification under CTH 08062010 and leviable to BCD at the rate of 100 per cent. Further, these goods were not eligible for SAD exemption being dried fruits instead of fresh fruits. Thus, improper classification and incorrect SAD exemption resulted in short levy of ₹ 29.72 lakh.

On this being pointed out (February 2016), the department while not accepting the observation stated (March 2016) that 'Midget Currants' are made from drying black currants and not from grapes. The department, without furnishing any evidence further stated that the black currant is woody shrub grown for its piquant berries and the imported items have been rightly classified under CTH 08134090. However, a show cause notice has been issued to the importer.

Reply of the department is not acceptable because "Currant" refers to raisins made by drying grapes and the word 'Midget' is used to denote the small size of the "Currant" and therefore the imported items are classifiable under the CTH 08062010. Response from the Department of Revenue is awaited (December 2016).

6.7 Plant growth regulators misclassified as Animal and Vegetable fertilizers

As per the explanatory notes under Chapter Heading 3808 of the Harmonized System of Nomenclature (HSN), 'Plant Growth Regulators' are applicable to alter the life process of a plant so as to accelerate or retard growth, enhance yield, improve quality or facilitate harvesting etc' and are to be classified under Customs tariff heading (CTH) 38089340. Further, in terms of Rule 3 (a) of the

'Rules for the interpretation of the Schedule to Customs Tariff Act', the heading which provides the most specific description shall be preferred to the headings providing a more general description. Seaweed Extract Liquid/Amino Acid granules/Humic Acid granules and synthetic organic chemicals used as plant growth regulators are, therefore, classifiable under CTH 38089340 attract Basic customs duty (BCD) at the rate of 10 per cent, additional duties of customs equivalent to excise duty at 12/12.5 per cent.

M/s Mark International and four others imported (November 2014 to September 2015) 14 consignments of 'Seaweed Extract Liquid/Amino Acid granules/Humic Acid granules' through Sea, Customs, Chennai. These imported goods were incorrectly classified under CTH 31010099/31059090/29225090/29379090/38249090 as 'Animal and Vegetable fertilizers'/Other fertilizers/Organic Chemicals and assessed to BCD at the rate of 5/5.75 per cent and additional duties of customs at nil/1/12 per cent. The misclassification resulted in short levy of duty of ₹ 28.87 lakh.

This was pointed out to the department in November 2015, their reply is awaited (December 2016).

6.8 Machines for processing areca nut misclassified as machines for cleaning sorting or grading seed

According to Customs tariff, machines for mixing kneading, crushing, grinding, screening, shifting etc not specified or included elsewhere in chapter 84 are classifiable under Customs tariff heading (CTH) 84798200 and attracts CVD at the rate of 12.5 per cent.

M/s Dharampal Satyapal Limited imported (July 2015) a consignment of 'Crumbler DFZL-1500 (size reducer crusher) machine' along with accessories, 'Plansifter MPAK-228 (for sifting and grading)' and 'Discharge airlock MPSJ-22/22' through ICD, Tughlakabad. The imported goods were classified under CTH 84371000 as Machines for cleaning, sorting or grading seed, grain or dried leguminous vegetables and exempted from CVD duty. Audit examination revealed that machines are specifically for Areca nut plant, mainly used for crumbling or processing areca nuts (commonly known as supari) for production of Pan masala etc. Hence, imported goods should have been classified under CTH 84798200 attracting CVD at the rate of 12.5 per cent. This resulted in short levy of duty amounting to ₹ 27.74 lakh.

This was pointed out to the department in January 2016, their response is awaited (December 2016).

6.9 Brush cutters/Reapers misclassified as Agriculture / Horticulture / Harvesting Machinery

'Brush Cutters/Reapers', being portable machines having self contained internal combustion engine mounted on a light metal frame and equipped with cutting devices are classifiable under the Customs tariff heading (CTH) 84672900 in view of their exclusion from CTH 8433 as per the explanatory notes to harmonized system of Nomenclature (HSN). The subject goods are leviable to CVD at the rate of 12 per cent (till 28 February 2015) and 12.5 per cent (w.e.f 1 March 2015).

M/s Vinod Kumar Virender Kumar imported (December 2014 to September 2015) six consignments of 'Brush cutters/Reapers of various models' through ICD, Tughlakabad. The goods were classified under various CTH 8424/8432/8433 considering them as 'Agriculture / Horticulture / Harvesting' machinery and exempted from CVD instead of applicable rate of 12.5 per cent. The imported goods being grass cutting machinery merit classification under CTH 8467 in view of the aforesaid HSN explanatory notes. The misclassification had resulted in short levy of duty of ₹ 18.40 lakh.

This was brought to the notice to the department in May and November 2015, their response is awaited (December 2016).

6.10 Articles of wood misclassified as 'wooden sticks' for manufacture of walking sticks

'Articles of wood' classifiable under Customs tariff heading (CTH) 4421 and attract CVD at the rate of 12/12.5 per cent.

M/s Shree Sai Overseas imported (July 2014 to March 2016) six consignments of 'Wooden sticks (size 74mm to 114mm)' through ICD, Tughlakabad, Delhi. The imported goods were classified under CTH 44042010 as 'Wooden sticks', roughly trimmed but not turned, bent or otherwise worked, suitable for manufacture of walking sticks, tool-handles, split pole etc. and exempted from CVD under notification no.12/2012-CE dated 17 March 2012. The imported Wooden sticks being very small in size (75mm to 114mm) were unsuitable for manufacturing of walking stick, therefore are classifiable under CTH 44219090 – 'Other articles of wood' and leviable to CVD at the rate of 12/12.5 per cent. Thus, misclassification resulted in short levy of duty of ₹ 11.77 lakh.

This was pointed to the department in September 2014/December 2015 and March 2016, their reply is awaited (December 2016).

CHAPTER VII

INCORRECT APPLICATION OF GENERAL EXEMPTION NOTIFICATIONS

The Government under section 25 (1) of the Customs Act, 1962 is empowered to exempt either absolutely or subject to such conditions as may be stipulated in the notification, goods of any specified description from the whole or any part of duty of customs leviable thereon. During test check of records (December 2011 to January 2016), nine cases of incorrect grant of exemption have been noticed involving total revenue implication of ₹ 5.64 crore. Out of these, seven cases are discussed in the following paragraphs and two cases which have been accepted by the department and recoveries made/ recovery proceedings initiated are mentioned in **Annexure 11**.

Refund of additional duty of customs (SAD) on the basis of fabricated documents

7.1 In terms of notification no.102/2007-cus dated 14 September 2007, the goods falling in the first schedule to the Custom Tariff Act 1975, when imported into India for subsequent sale shall be exempted from whole of the additional duty of custom (SAD) leviable thereon under sub-section (5) of section (3) of the Customs Tariff Act subject to fulfillment, by the importer, of the condition laid down in paragraph 2 (a) to paragraph 2 (e) of the notification. To ensure compliance to these conditions, the importers were required in terms of paragraph 2 (e) to provide, inter alia, copies of (i) document evidencing payment of the said additional duty, (ii) invoices of sale of the imported goods in respect of which refund of the said additional duty is claimed (iii) documents evidencing payment of appropriate sale tax or value added tax, as the case may be, by the importer, on sale of such imported goods. CBEC through its circulars dated 28 April 2008 and 13 October 2008 instructed field formations, (circular nos. (i) 6/2008-Cus dated 28 April 2008 (ii) no.16/2008-cus dated 13 October 2008), to accept certificate from the statutory auditor/chartered accountant (CA), who certifies importer's annual financial accounts under the companies Act or any statute, as a proof of compliance to these conditions.

M/s Baba Loknath Traders was granted refund of SAD amounting to ₹ 34.86 lakh in terms of notification no.102/2007-cus by the Appraising Refund Section (Port) at Customs House, Kolkata under the jurisdiction of Kolkata (Port) Commissionerate. Scrutiny of documents in three out of four refund case files involving refund of ₹ 15.04 lakh revealed that the imported items were sold under Tax Payer Identification number (TIN)no.19891419558 with Kolkata address which on verification⁴⁴ was found to be registered in the

⁴⁴ www.tinxsys.com a Government website

name of another assessee M/s Three Eyes International Limited of Siliguri, West Bengal. The challans submitted by the importer, as a proof of payment of appropriate sale tax/VAT, revealed that Sales tax was paid in favour of different TIN no.19282524077. It was evident that the sale invoices produced by the importer were fabricated and VAT/CST challans were unrelated to these sale invoices indicating that appropriate sales tax/VAT was not paid on Sale of imported goods in India.

Besides, 58 out of total 74 (78%) sale invoices in the four refund files were also found to with incorrect TINs where either the name and address of the buyers given in invoices did not match with registered TIN details or buyer TIN was found to be non-existent indicating submission of fabricated sale invoices. Further, though the sale invoices and BE of imported goods in all the four refund files pertained to same period (September 2013 to June 2014), the importer had furnished CA certificates from two different CAs {Mr. Rajesh Jalan (one file) & D. Mukhopadhyay & Co. (three files)} both certifying that they had certified the Annual Financial Accounts of the importer which is not possible. The registration number of Mr. Rajesh Jalan was found non-existent in the database of Institute of Chartered Accountants of India (ICAI) which again cast doubt on genuineness of the CA certificates being submitted with the refund claim. It was evident that the refund of SAD of ₹ 34.86 lakh was irregularly claimed on the basis of fabricated documents which needed to be recovered from the importer as the conditions laid down in the notification no.102/2007-cus dated 14 September 2007 were not fulfilled.

On this being pointed out (February/April/June 2015), the Customs department informed (May 2015) recovery of ₹ 10.47 lakh in respect of two refund cases and issue of demand cum show cause notice in one case. Further progress is awaited (December 2016).

7.2 Audit scrutiny of 75 refund case files under Kolkata (Port) Commissionerate revealed that the importers had furnished the CA certificates duly certified by the CA Raj Krishna Kar having membership Number 009930 and address 19, Bechu Chatterjee Street, Kolkata-700009. Except for two CA certificates which were supposedly signed on 20 August 2014 and 11 August 2014, all other certificates in the form of Annexure-D submitted in respect of 73 refund claims were undated which was not acceptable.

In course of verification of the authenticity of the CA certificates from the Institute of Chartered Accountants of India (ICAI) website for the Membership Number (009930) provided in the aforementioned CA certificates, it was revealed that name of the said CA (viz,. Raj Krishna Kar) was removed with

effect from 16 March 2014 from the list of CA, as the CA had expired. This fact was substantiated by online verification from website of the Eastern India Regional Council of ICAI, News letter dated 1 June 2015, which mentioned that the name of the CA was removed due to death.

Thus it was evident that the CA Certificates furnished by the importers in respect of refund claims signed on 20 August 2014 & 11 August 2014 after the death (15 March 2014) of the said CA, are forged CA certificates. Further, in the remaining 73 cases it was revealed that the records (i.e. Sale Invoices, TR6 Challan, Imports documents etc) were pertaining to the dates subsequent to the date of death but are supposed to be certified (although undated) by the CA which was not possible and accordingly all the objected claim of refund of SAD may be considered as fraudulent.

In view of submission of forged CAs' Certificate furnished by the importers, the conditions laid down in paragraph 2(b), 2(d) and 2(e)(iii) of the notification no.102/2007-cus dated 14 September 2007 were not fulfilled. Accordingly, refund of SAD of ₹ 2.04 crore, fraudulently claimed by the importers was irregular and required to be recovered besides initiation of appropriate penal measures against the importers.

On this being pointed out (September 2015 and January 2016), the Custom Department informed (May 2016) that Show Cause Notices have been issued to the importers for objected refund claims. But the reply is silent about initiation of penal/legal action against the importers. Further progress is awaited (December 2016).

Audit is of the view that the matter may be thoroughly investigated by the departmental vigilance authorities to avoid recurrence of such cases in future.

Ministry response has not been received (December 2016).

Short levy of Basic Customs duty (BCD) on steel wire, steel sheets, coils imports

7.3 As per serial no.334 of the customs notification no.12/2012 dated 17 March 2012, as amended (notification no.39/2015, serial no.334 dated 16 June 2015) BCD on imported goods falling under Customs tariff headings⁴⁵. is leviable at the rate of 7.5 per cent.

M/s V.Trade and 74 others imported (June to August 2015) "Steel wire Rod, steel sheets, coils, steel bars" etc. classified under CTH 7215, 7217, 7220, 7222, 7223, 7225, 7226 and 7228 through ICD, Tughlakabad, ICD Patparganj and

⁴⁵ (CTH) 7206, 7207, 7213, 7214, 7215, 7216, 7217, 7219, 7220, 7221, 7222, 7223, 7225 (except 72253090, 72254019, 722550 or 72259000), 7226 (except 72261100), 7227 or 7228

NCH, Delhi. The goods were cleared levying BCD at the rate of 5 per cent under serial no.330 of the customs notification no.12/2012 dated 17 March 2012 instead of applicable 7.5 (serial no.334 of aforesaid notification). Incorrect grant of notification benefit resulted in short levy of duty amounting to ₹ 96.15 lakh.

On this being pointed out (August/September/October 2015), the department intimated (September 2015/February 2016) recovery of ₹ 0.59 lakh from two importers (M/s Mangla Handless and M/s Metro Industries – ICD, Tughlakabad) and issue (February 2016) of show cause notice by Assistant Commissioner, NCH, Delhi to 12 importers. Reply in respect of remaining 61 importers is awaited (December 2016).

Short levy of BCD on import of projectors due to incorrect exemption

7.4 'Projectors' that are solely or principally used in an automatic data processing system are classifiable under Customs tariff heading (CTH) 85286100 and exempted from levy of basic customs duty (BCD) under notification no.24/2005-cus dated 1 March 2005 (serial no.17). Whereas 'Projectors' which are capable of working with automatic data processing machine as well as television and video are classifiable under CTH 85286900 and attracts BCD at the rate of 10 per cent along with applicable cess and duty.

M/s Vardhaman Technology Pvt. Limited and M/s Faxonics Technologies Pvt. Limited imported (July to October 2015) six consignments of 'Projectors CW 305ST DLP Projector and CX 305ST DLP' through JNCH, Nhava Sheva, Mumbai. These goods were classified under CTH 85286100 and assessed at concessional rate of BCD under serial no.17 of aforesaid notification. Audit noticed from the product catalogue that imported models of 'Projectors' were having RS-232 input, S-Video input and Composite Video input and hence could be used with automatic data processing machine as well as television and video. Accordingly, the imported goods merited classification under 85286900 and leviable to BCD at 10 per cent. Misclassification of imported goods and incorrect grant of exemption led to short levy of duty due to tune of ₹ 73.95 lakh.

This was communicated to the department in January 2016, their reply is awaited (December 2016).

Incorrect exemption from countervailing duty

7.5 Parts and accessories of instruments and appliances used in medical surgical, dental or veterinary sciences classified under Customs tariff heading (CTH) 9018 and 9019 are exempted from levy of countervailing duty (serial no.59 (i) of notification no.6/2006-CE dated 1 March 2006). Medical

equipments classified under CTH 9018/9019 are leviable to countervailing duty of 5 per cent (notification no.10/2006-CE dated 1 March 2006).

M/s Philips Electronics India Ltd., imported (June to October 2011) four consignments of 'Magnetic Resonance Imaging (MRI) System, Sonalleve MR HIFU kit' through Air Customs, Chennai. The imported goods were classified under CTH 90181300 and exempted from countervailing duty under serial no.59 (i) of the aforesaid notification no.6/2006 dated 1 March 2006 considering them as parts/accessories.

Audit observed that the subject goods 'Sonalleve platform' are medical equipments. Therefore, the subject goods are not entitled to the benefit of exemption rather countervailing duty at the rate of 5 per cent was leviable. Incorrect grant of exemption resulted in short collection of duty of ₹ 61.60 lakh.

On this being pointed out (May 2016), Ministry admitting the observation stated (November 2016) that other Commissionerates are being informed for necessary action. Recovery particulars are awaited (December 2016).

Incorrect exemption from additional duty of customs on imports

7.6 As per serial no. 70 of notification no.21/2012-cus dated 17 March 2012, as amended by notification no.32/2012-cus dated 8 May 2012, all goods falling under Chapter 61 and 62 of Customs Tariff Act Articles of Apparel and clothing Accessories (excluding 61179000) (excluding 621790) when imported into India are exempted from whole of the additional duty of customs leviable thereon under section 3 (5) of the said Customs Tariff Act. This exemption shall apply on said imported goods on or after 1 May 2012 if the importer declares:-

i) The State of destination namely the State where the goods are intended to be taken immediately after importation whether for sale or for distribution on stock transfer basis; and

ii) Value Added Tax registration number or Sale Tax registration number or Central Sales Tax registration number, as the case may be, in the said State.

Audit scrutiny of Bills of Entry at Mahadipur Land Customs Station (LCS) under Malda Custom Division of West Bengal (preventive) Commissionerate revealed that 37 consignment of garments classified under Chapter 61 and 62 of customs tariff imported (August 2013 to October 2014) by M/s Radha Krishna Enterprise and eight others from Bangladesh were allowed exemption of the additional duty of customs leviable under Section 3 (5) of the aforesaid Act, under serial no.70 of notification no. 21/2012-cus dated 17 March 2012, without fulfilling both the prescribed conditions as mentioned above. The

incorrect exemption from additional duty of customs resulted in short levy of ₹38.68 lakh.

On this being pointed out (November 2014) the Customs authority (Mahadipur, LCS) intimated (November 2014) that importers declare their respective VAT/CST numbers and State code clearly in their bills of entry and on clearance of the goods from customs, the importers file way bill for taking the goods to their destination. Some copy of way bills were enclosed as a reference.

The Custom Department was informed (December 2014) that their contention was not tenable because copies of the enclosed way bills were not related to Bills of Entry objected by audit and they were related to the import of goods from Bangladesh to India and not to the transportation of imported goods from the point of customs discharge to the destination state. The VAT number (19836591084) given in two objected Bills of Entry by M/s. Radha Krishna Enterprise was also found to be registered in the name of other firm viz., M/s. Ummed Export and that too was cancelled from 12 November 2013, as was evident from the website of West Bengal Directorate of Commercial Tax.

On this being pointed out the Customs Department reported (April 2015 & April 2016) that Show Cause cum Demand notices have been issued to importers which is under process of adjudication. Further progress is awaited (December 2016).

Incorrect exemption from BCD on import of soybean extraction

7.7 “De-oiled Soya Extract” classified under CTH 2304 was exempted from whole of the basic customs duty (BCD) under Sl. No. 104 D of the table appended to the notification no. 12/2012-cus dated 17 March 2012, inserted vide notification no.12/2014-cus dated 11 July 2014. As per proviso (bc) to the notification no.12/2012-cus, inserted vide notification dated 11 July 2014, the BCD exemption was not applicable on or after 1 April, 2015. There was no subsequent amendment of the notification no.12/2012-cus for extending any further BCD exemption to imported “De-oiled Soya Extract”.

M/s. Phoenix Overseas Limited, Kolkata had imported (May 2015) four consignments of ‘Soybean Extraction’ (CTH-2304) through Mahadipur Land Customs Station (LCS) of Malda Customs Division under Commissionerate of Customs (Preventive), West Bengal and incorrectly allowed BCD exemption under serial no.104D of the aforesaid notification dated 17 March 2012, even though the exemption had become invalid from 1 April 2015 in terms of proviso (bc) inserted vide notification dated 11 July 2014. This had resulted in non-levy of customs duty of ₹ 29.65 lakh.

On this being pointed out (October 2015), the Customs Department contended (March 2016) that since all the objected imports of 'De-oiled soya extract'/'Soybean Extraction' were made after 7 May 2015, as such did not attract BCD after issue of notification no.12/2014-cus dated 11 July 2014

The Department was informed (March 2016) that their reply was not tenable because the duty exemption on imported "De-oiled Soya extracts" under Sl. No. 104 D introduced vide notification dated 11 July 2014 was valid only upto 31 March 2015, as per proviso (bc) to the notification. Department response is awaited (December 2016).

Ministry reply has not been received (December 2016).

New Delhi
Dated: 23 January 2017



(SHEFALI S. ANDALEEB)
Principal Director (Customs)

Countersigned



New Delhi
Dated: 23 January 2017

(SHASHI KANT SHARMA)
Comptroller and Auditor General of India

Annexure 1

Fact Sheet on Special Economic Zones

(Refer paragraph 1.11)

(As on 2.9.2016)

Number of Formal approvals	408		
Number of notified SEZs	328 + (7 Central Govt. + 11 State/Pvt. SEZs)		
Operational SEZs	204		
Units approval in SEZs	4,166		
Investment	Investment (As on February 2006)	Incremental Investment	Total Investment (As on 31st March 2016)
Central Government SEZs	₹2,279.20 Cr.	₹12,898.80 Cr.	₹15,178 Cr.
State/Pvt. SEZs set up before 2006	₹1,756.31 Cr.	₹8,412.69 Cr.	₹10,169 Cr.
SEZs notified under the Act	-	₹3,51,147 Cr.	₹3,51,147 Cr.
Total	₹4,035.51 Cr.	₹3,72,458.49 Cr.	₹3,76,494 Cr.
Employment	Employment (As on February 2006)	Incremental Employment	Total Employment (As on 31st March 2016)
Central Government SEZs	1,22,236 persons	1,16,146 persons	2,38,382 persons
State/Pvt. SEZs set up before 2006	12,468 persons	71,536 persons	84,004 persons
SEZs notified under the Act	0 per sons	12,68,995 persons	12,68,995 persons
Total	1,34,704 persons	14,56,677 persons	15,91,381 persons
Exports in 2013-14	₹4,94,077 Crore		
Exports in 2014-15	₹4,63,770 Crore		
Exports in 2015-16 (As on 31st March 2016)	₹4,67,337 Crore		

Source: SEZindia.nic.in

Annexure 2**Duty evasion cases detected by DRI (Scheme-wise)****(Refer Paragraph 1.17)**

Cr. ₹

S.No	Scheme	FY 12		FY 13		FY 14		FY 15		FY 16	
		No. of cases	Duty	No. of cases	Duty	No. of cases	Duty	No. of cases	Duty	No. of cases	Duty
1	Misuse of End-Use & Other Notification conditions.	54	304.84	39	67.79	38	1211.67	18	110.18	69	770.48
2	Misuse of EPCG	6	25.72	13	179.55	22	583.08	49	289.11	64	454.92
3	Undervaluation	184	466.17	210	282.43	140	432.71	85	285.64	92	254.37
4	Mis-declaration	111	844.44	298	2392.26	102	224.22	52	172.42	112	1187.61
5	Drawback	13	25.93	71	1590.14	17	80.5			94	1150.46
6	Misuse of EOU/EPZ/SEZ	6	9.66	7	39.07	3	6.9	6	37.5	18	9.54
7	Misuse of DEPB	26	23.93	16	22.77	5	3.09				
8	Misuse of DEEC/ Advance licence	1	0.1	6	139.73	1	0	11	1077.15	12	15.21
9	Others	97	27.43	49	28.92	366	570.55	186	953.54	170	2780.73
	Total	498	1728.22	709	4742.66	694	3112.72	407	2925.54	631	6623.32

Source: Department of Revenue, CBEC New Delhi

Annexure 3**Commissionerate wise sample selection****(Refer para No.2.5)**

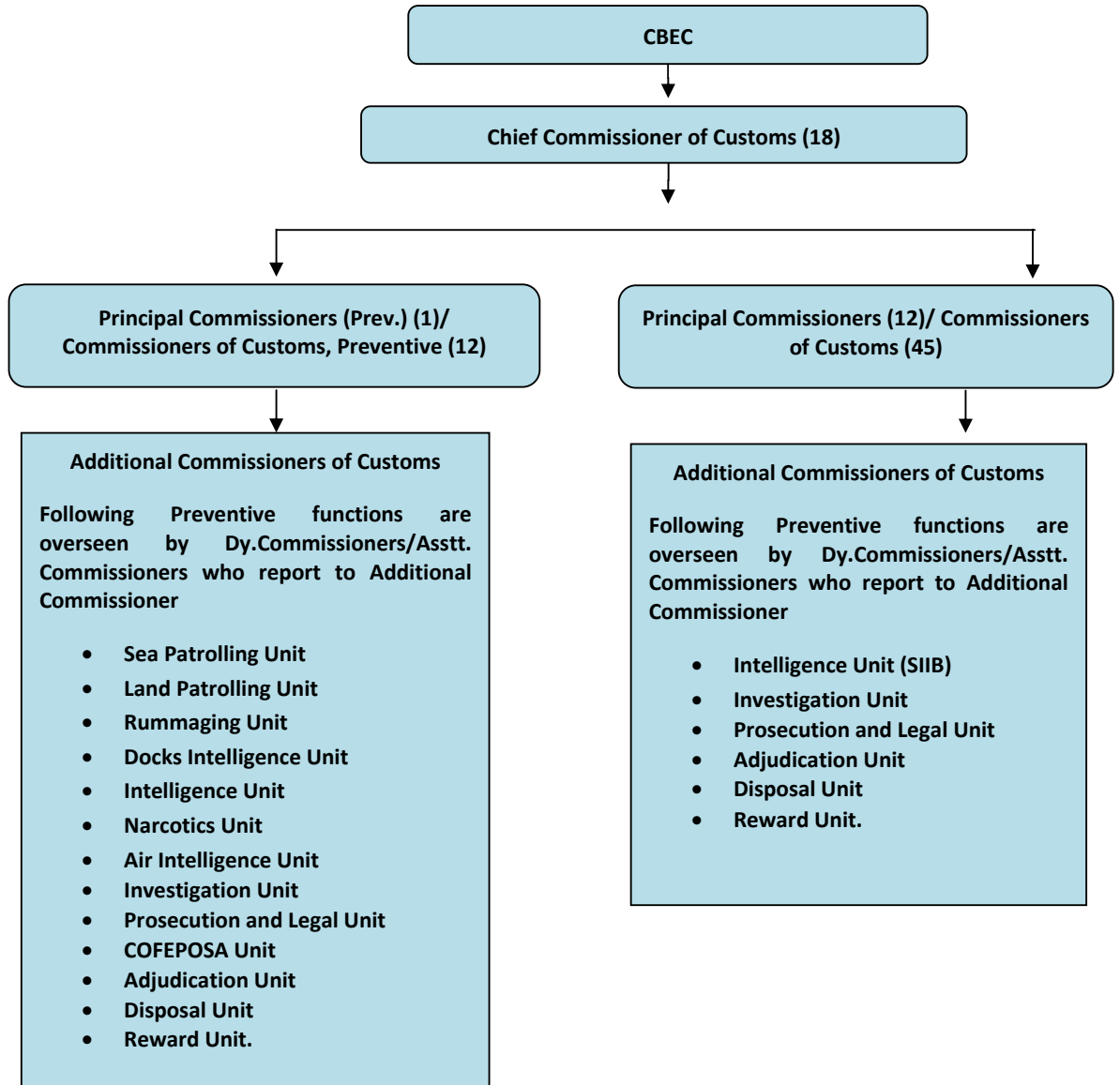
Name of Office	Total commissionerates	Selected for audit scrutiny	Cases selected for audit	Records audited
Delhi	7	4 (NCH-export, Preventive, ICD-TKD, Airport)	300	300
Mumbai	12	4 (Import-II, JNCH, Export, Goa)	277	277
Chennai	10	4 (Chennai-Sea, Tuticorin, Kochi, Trivandrum)	300	300
Ahmadabad	5	3 (Ahmadabad, Kandla, Jodhpur)	212	212
Bangaluru	3	3 (Mangalore, Bangalore-ICD, Airport)	215	215
Chandigarh	2	2 (Ludhiana, Amritsar)	142	142
Lucknow	9	5(Kanpur, Lucknow, Meerut, Noida, Patna)	248	248
Hyderabad	3	3 (Hyderabad, Vishakhapatnam, Bhubaneswar)	225	225
Kolkata	6	3(Kolkata (Port), Kolkata (Airport) and Preventive West Bengal)	458	258
Total	51*	31	2377	2177

*source: Information received from field offices

Annexure 4

Organisational Structure of Preventive Wing of Customs department

(Refer para No. 3.1)



Annexure 5

Requirement of crew as specified by DOL

(Refer para No.3.6.1)

Category-I		Category-II		Category-III/A/B	
Post	Number required	Post	Number required	Post	Number required
Skipper	1	Skipper	1	Sukhani	1
Engineer	1	Engineer	1	L. Mechanic	1
Tindel	1	Skipper mate	1	Seamen	1
Engine Driver	1	Engineer mate	1	Greaser	1
Sr. Deck Hand	1	Seamen	3		
Seamen	4	Greaser	1		
Greaser	1				
Total	10		8		4

Annexure 6

Position of Marine Staff as on 31st March 2016

(Refer para No.3.6.1)

Sr. No.	Office	Commissionerate	GRADE	Sanctioned strength	Men-in-position	vacancy	% of vacancy against strength
1	Mumbai	Commissionerate of Customs (Preventive), Mumbai	(Skipper/Engineer)	15	1	14	93
			(Skipper Mate/Engineer Mate/Tandel /Sukhani/Seaman etc.)	178	89	89	50
			Total	193	90	103	53
2		Goa	Group B (Skipper/Engineer)	6	0	6	100
			Group C (Skipper Mate/Engineer Mate/Tandel/ Sukhani/Seaman etc.)	34	28	6	18
			Total	40	28	12	30
3	Ahmedabad	Kandla	Group B (Skipper/Engineer)	4	0	4	100
			Group C (Skipper Mate/Engineer Mate/Tandel/Sukhani/Seaman etc.)	32	9	23	72
			Total	36	9	27	75
4	Bengaluru	Mangalore	Group B (Skipper/Engineer)	10	0	10	100
			Group C (Skipper Mate/Engineer Mate/Tandel/ Sukhani/Seaman etc.)	51	13	38	75
			Total	61	13	48	79
5	Chennai	Calicut	Group B (Skipper/Engineer)	6	0	6	100
			Group C (Skipper Mate/Engineer Mate/Tandel/ Sukhani/Seaman etc.)	30	20	10	33
			Total	36	20	16	44
6		Cochin	Group B (Skipper/Engineer)	8	2	6	75

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Sr. No.	Office	Commissionerate	GRADE	Sanctioned strength	Men-in-position	vacancy	% of vacancy against strength
			Group C (Skipper Mate/Engineer Mate/Tandel/Sukhani/Seaman etc.	38	16	22	58
			Total	46	18	28	61
7	Hyderabad	Vijayawada	Group B & Group C	14	6	8	57
8		Visakhapatnam	Group B & Group C	18	11	7	39
9	Kolkata	Preventive Commissionerate, Kolkata	Group B	8	3	5	63
			Group C	68	9	59	87
			Total	76	12	64	84
Grand Total				520	207	313	

Annexure 7
Boat Specifications

(Refer Para-No.3.6.3)

S.No.	Category of vessels	Specification of each vessel	Salient features
1	Category-I	Length-20mtrs Breadth-06mtrs Total Height from Keel-09.50mtrs Draught-1.43mtrs Gross tonnage-34 tons	Max speed-25 knots Endurance-3days GPS, Radar, Satcom, VHF/UHF sets
2	Category-II	Length-13mtrs Breadth-3.77mtrs Total Height from Keel-4.42mtrs Draught-0.86mtrs Gross tonnage-11.35 tons	Max speed-40 knots Endurance- 18 hrs GPS, Radar, Satcom, VHF/UHF sets
3	Category-IIIA	Length-9mtrs Breadth-3.02mtrs Total Height from Keel-2.60mtrs Draught-0.80mtrs Gross tonnage-4.83 tons	Max speed-30 knots Endurance-10 hrs Length-9mtrs with Self Righting Property, VHF/UHF sets
4	Category-IIIB	Length-6mtrs Breadth-2.25mtrs Total Height from Keel-2.27mtrs Draught-0.70mtrs Gross tonnage-2.49 tons	Max speed-35 knots Endurance-10 hrs Length-6mtrs with Self Righting Property, VHF/UHF sets

Annexure 8**Details of test checked cases of 'Duty Exemption/Remission schemes' accepted by the department****(Refer Chapter IV)**

Sl. No.	Draft Audit Paragraph	Field office name	Brief subject	Amt. Objected (₹ in lakh)	Amt. Accepted (₹ in lakh)	Amt. Recovery (₹ In lakh)	Name of the Commissionerate/ DGFT/DC
1	DAP5	Bengaluru	Non fulfillment of re-export obligation	37.57	26.76	26.76	RLA, Bangalore, III
2	DAP6	Bengaluru	Non recovery of interest	21.35	19.58	19.58	RLA, Additional Commissioner of Customs, ICD, Whitefiled, Bangalore
3	DAP13	Ahmedabad	Incorrect utilization of CENVAT credit and non payment of SAD	12.99	12.99	12.99	Bharuch
4	DAP20	Ahmedabad	Excess amount of duty credit due to counting of ineligible exports	14.62	14.13	14.13	JDGFT, Ahmedabad
5	DAP29	Bengaluru	Non fulfillment of export obligation	16.28	16.28		RLA, Bengaluru
6	DAP30	Bengaluru	Non fulfillment of export obligation	16.97	16.97		RLA, Bengaluru
7	DAP31	Hyderabad	Non fulfillment of export obligation under EPCG scheme	38.73	38.73	38.73	JDGFT, Hyderabad
8	DAP32	Kolkata	Non recovery of duty exempted against cancelled advance authorization	18.27	21.36	21.36	Asstt. Commissioner of Customs, Gr-VII, Customs House, Kolkata under Commissionerate of Customs (Port)
9	DAP52	Kochi	Excess grant of duty credit	17.35	17.35	17.35	JDGFT, Thiruvanthapuram
10	DAP54	Chennai	Incorrect sanction of SHIS duty credit scrip on time barred application	234.00	148.00	148.00	JDGFT, Coimbatore
11	DAP55	Bengaluru	Reimbursement of inadmissible CST	11.87	0.16	0.16	RLA, Bengaluru

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Sl. No.	Draft Audit Paragraph	Field office name	Brief subject	Amt. Objected (₹ in lakh)	Amt. Accepted (₹ in lakh)	Amt. Recovery (₹ In lakh)	Name of the Commissionerate/ DGFT/DC
12	DAP56	Ahmedabad	Incorrect grant of FPS credit	19.12	19.12	19.12	JDGFT, Ahmedabad
13	DAP62	Hyderabad	Excess sanction of duty free credit entitlement under VKGUY scheme	14.62	13.06	13.06	JDGFT, Visakhapatnam
14	DAP63	Hyderabad	Excess sanction of duty free credit entitlement under VKGUY scheme	10.34	13.37	13.37	JDGFT, Visakhapatnam
15	DAP64	Hyderabad	Non fulfillment of export obligation under EPCG scheme	14.57	36.42	36.42	JDGFT, Hyderabad
16	DAP65	Chennai	Grant of Status Holder Incentive Scrip to ineligible products and non imposition of late cut	12.34	12.33	12.33	JDGFT, Chennai
17	DAP66	Chennai	Grant of SHIS duty credit scrip to ineligible export items	17.41	78.89	78.89	JDGFT, Coimbatore
18	DAP71	Kochi	Non payment of duty due to grant of excess credit in SFIS scrip	27.53	9.61	9.61	JDGFT, Thiruvanthapuram
19	DAP84	Chennai	Grant of duty credit on ineligible items under VKGUY scheme	10.82	10.82	10.82	JDGFT, Coimbatore
20	DAP89	Chennai	Grant of duty credit on ineligible item under KGUY	26.53	20.93	20.93	JDGFT, Coimbatore
21	DAP92	Chennai	Grant of SHIS duty credit for services rendered beyond the application period	15.20	20.45	20.45	JDGFT, Coimbatore

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Sl. No.	Draft Audit Paragraph	Field office name	Brief subject	Amt. Objected (₹ in lakh)	Amt. Accepted (₹ in lakh)	Amt. Recovery (₹ In lakh)	Name of the Commissionerate/ DGFT/DC
22	DAP96	Chennai	Grant of SHIS duty credit to ineligible products falling chemical and allied products sector	28.10	28.1		JDGFT, Chennai
Total				636.58	595.41	534.06	

Annexure 9

Details of test checked cases of 'Assessment of Customs Revenue' accepted by the department

(Refer Chapter V)

Sl. No.	Draft Audit Paragraph	Field office name	Brief Subject	Amt. objected (₹ in lakh)	Amt. Accepted (₹ in lakh)	Amt. Recovery (₹ in lakh)	Name of the Commissionerate/ DGFT/DC
1	DAP8	Mumbai	Non levy of anti dumping duty	32.95	32.95	5.29	JNCH, Mumbai
2	DAP9	Mumbai	Non levy of safeguard duty	13.24	13.94		NCH, Mumbai
3	DAP11	Mumbai	Non levy of anti dumping duty	36.66	36.66		JNCH, Mumbai
4	DAP12	Ahmedabad	Short levy of anti dumping duty	51.57	56.45	56.45	ICD, Khodiyā
5	DAP14	Ahmedabad	Short recovery of establishment charges	35.58	36.66	36.66	Jamnagar (Preventive Comm.), Gandhidham
6	DAP15	Ahmedabad	Short levy of duty	95.79	110.00	110.00	Custom House, Kandla
7	DAP17	Delhi	Short levy of duty due to non levy of anti dumping duty	15.14	15.22	15.22	ICD, Tughlakabad, New Delhi
8	DAP19	Mumbai	Non levy of countervailing duty	206.00	206.00	206.00	JNCH, Mumbai
9	DAP27	Kolkata	Non levy of customs education cess & Higher Secondary education cess	62.87	47.56	47.56	The Asstt. Commissioner of customs, Agartala Customs Division under Commissionerate of Customs, Shillong
10	DAP33	Mumbai	Non levy of anti dumping duty	10.41	8.10	8.10	JNCH, Mumbai
11	DAP42	Mumbai	Non levy of anti dumping duty	25.24	3.33	3.33	JNCH, Mumbai
12	DAP70	Chennai	Excess payment of duty drawback	10.93	6.62	6.62	Chennai (Sea)
13	DAP74	Kolkata	Non recovery of drawback due to failure to realize export proceeds	15.02	10.26	10.26	ICD, Durgapur under Durgapur Central Excise & Service Tax Commissionerate

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Sl. No.	Draft Audit Paragraph	Field office name	Brief Subject	Amt. objected (₹ in lakh)	Amt. Accepted (₹ in lakh)	Amt. Recovery (₹ in lakh)	Name of the Commissionerate/ DGFT/DC
14	DAP83	Mumbai	Non levy of additional duty on inter unit transfer	16.32	9.12	9.12	JCNH, Mumbai
15	DAP88	Delhi	Short levy of duty due anti dumping duty	11.64	5.39	5.39	ICD, Tughlakabad, Delhi
Total				639.36	598.26	520.00	

Annexure 10

Details of test checked cases of 'Misclassification of goods' accepted by the department

(Refer Chapter VI)

Sl. No.	Draft Audit Paragraph	Field office name	Brief subject	Amt. Objected (₹ in lakh)	Amt. Accepted (₹ in lakh)	Amt. Recovery (₹ In lakh)	Name of the Commissionerate /DGFT/DC
1	DAP2	Chennai	Short levy of duty due to misclassification	30.24	8.39	8.39	Chennai (Sea), Customs
2	DAP3	Bengaluru	Short levy of duty due to incorrect classification	11.62	14.63	14.63	ICD, Bengalurur/ACC, Bangalore
3	DAP4	Bengaluru	Short levy of duty	7.36	10.41	10.41	ACC, Bengaluru
4	DAP16	Delhi	Short levy of duty due to misclassification	25.02	25.02		ICD, Tughlakabad
5	DAP22	Delhi	Short levy of duty due to misclassification	11.31	4.01	4.01	ICD, Patparganh, & Tughlakabad
6	DAP34	Mumbai	Short levy of duty to misclassification	13.06	13.06		JNCH, Mumbai
7	DAP36	Chennai	Short levy of duty due to misclassification	12.25	12.25		Chennai (Sea)
8	DAP37	Chennai	Short levy of duty due to misclassification	16.03	18.46	18.46	Chennai (Sea)
9	DAP41	Mumbai	Short levy of duty to misclassification	24.10	24.1		JNCH, Mumbai
10	DAP44	Mumbai	Short levy of duty to misclassification	22.18	22.18		JNCH, Mumbai
11	DAP51	Mumbai	Short levy of duty to misclassification	20.36	20.36		JNCH, Mumbai
12	DAP68	Chennai	Short levy of duty due to misclassification	10.68	8.30	8.30	Chennai (Sea)
13	DAP69	Chennai	Short levy of duty due to misclassification	12.32	16.22	16.22	Chennai (Air) Customs
14	DAP76	Mumbai	Short levy of duty to misclassification	11.49	11.49		JNCH, Mumbai
15	DAP81	Mumbai	Short levy of duty due to misclassification	10.93	10.93		JNCH, Mumbai
16	DAP87	Delhi	Short levy of duty due to misclassification	10.77	7.11	7.11	ICD, Tughlakabad & Patparganj
17	DAP93	Chennai	Short levy of duty due to misclassification	23.25	11.02	11.02	Chennai (Sea)
18	DAP95	Mumbai	Short levy of duty due to misclassification	52.90	52.90		JNCH, Mumbai
Total				325.87	290.84	98.55	

Annexure 11

Details of test checked cases of 'Incorrect Application of General Exemption Notifications' accepted by the department

(Refer Chapter VII)

Sl. No.	Draft Audit Paragraph	Field office name	Brief subject	Amt. Objected (₹ in lakh)	Amt. Accepted (₹ in lakh)	Amt. Recovery (₹ In lakh)	Name of the Commissionerate/ DGFT/DC
1	DAP58	Delhi	Short levy of duty due to misclassification and subsequent incorrect grant of notification benefit	13.95	13.95		ICD, Tuglakabad, Delhi
2	DAP59	Delhi	Short levy of duty due to incorrect grant of notification benefit	10.87	11.70	11.70	ICD, Tughlakabad, Delhi
Total				24.82	25.65	11.70	

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