

Chapter II

Recovery of Arrears

2.1 Introduction

Tax administration in Central Excise & Service Tax envisages that the assessee has to make self assessment of duty payable and after payment of duty submit returns to the Department. The Department scrutinizes the returns filed by the assessee and in case of any short /non-levy of duty, takes action by way of issuing demand cum Show Cause Notice (SCN) for recovery of the amount. The SCN is then adjudicated by the appropriate authority. Any amount recoverable from the assessee 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 arrear.

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 applications with condition of pre-deposits
- Order in favour of the Department by Tribunals, High courts and Supreme Court.

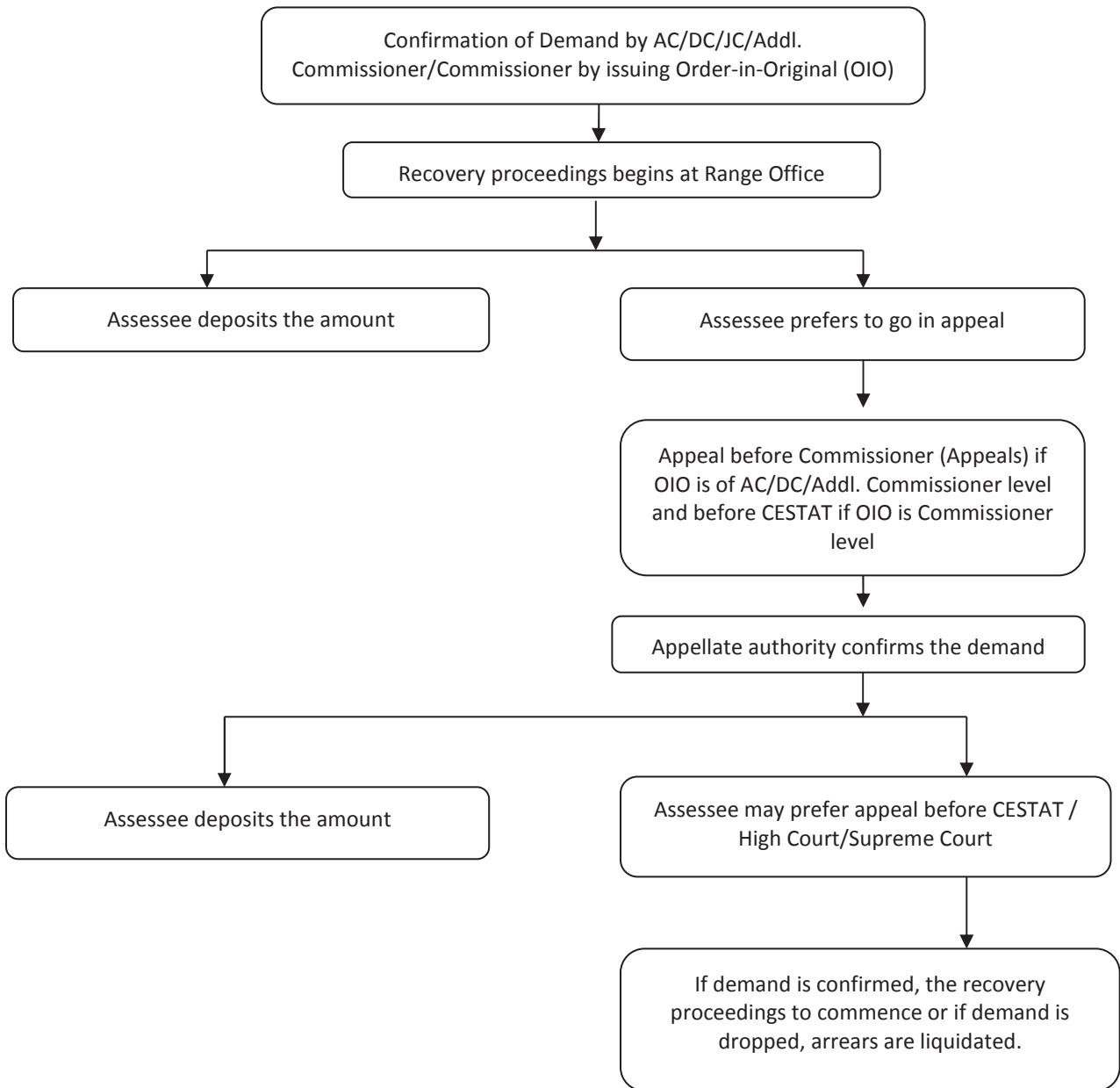
Recovery of arrears constitutes a crucial function of the Department of Revenue. The main statutory provisions dealing with recovery of arrears in Central Excise are as follows:

Section 11 of the Central Excise Act, 1944, empowers Central Excise officers to take action for recovery of arrears and pursuing the recovery with the assessee.

If dues remain unrecovered even after taking action under section 11 of Central Excise Act, 1944, action is to be taken under provisions of section 142 of the Customs Act, 1962 which have been made applicable in Central Excise cases, vide Notification No. 68/63-Central Excise dated 4 May 1963 issued under section 12 of the Central Excise Act, 1944.

The process of recovery of arrears starts with confirmation of demand against the defaulter assessee and includes a number of appellate forums wherein assessee as well as Department can go for appeal. The process of Recovery of arrears is depicted in following flowchart:

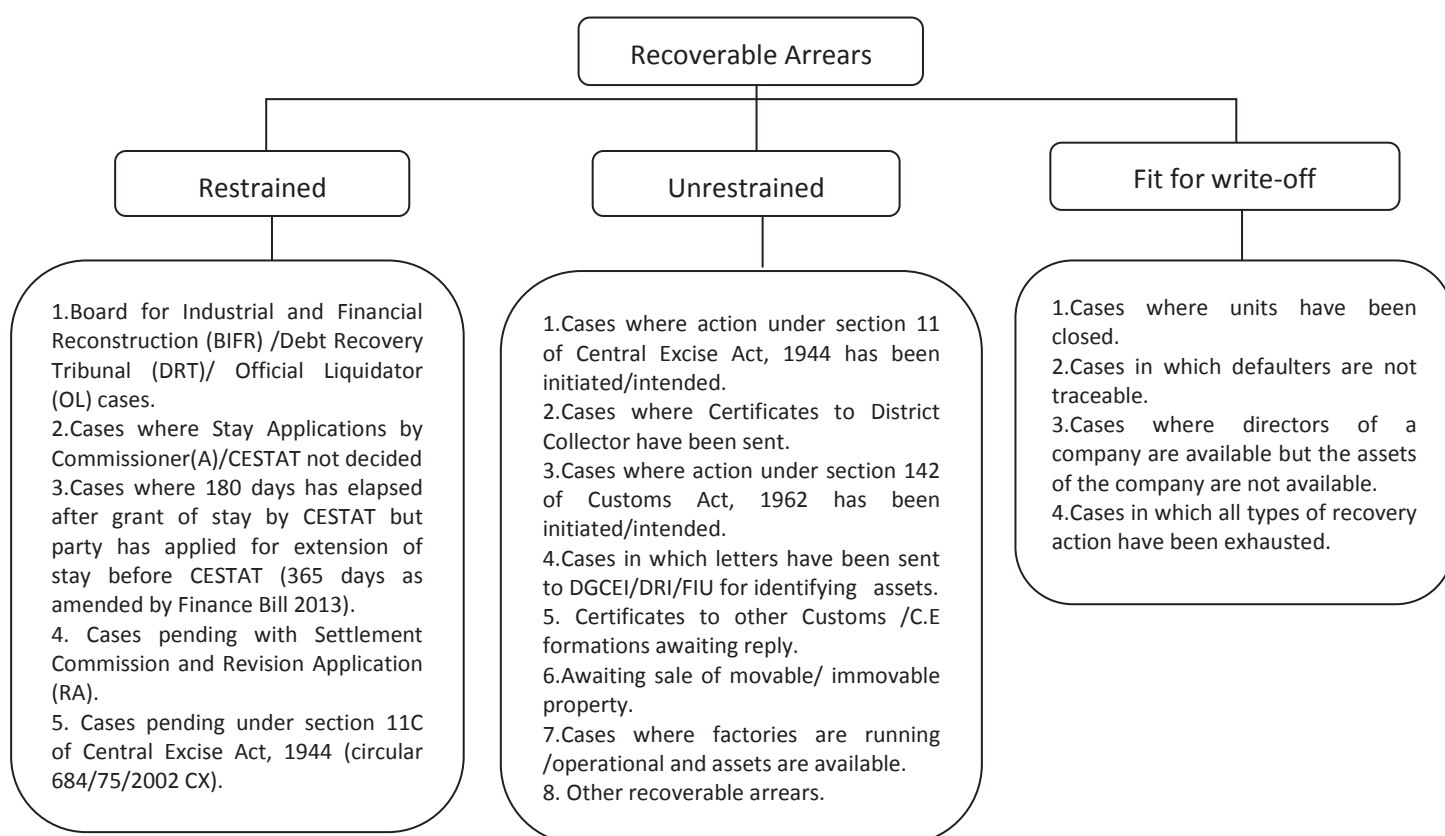
Chart 2.1: The process of Recovery of arrears



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 below:

Chart 2.2: Classification of Recoverable Arrears



2.3 Organisational Structure

The functions, in respect of recovery of arrears in CBEC, have been divided between field formations and the Task force for recovery as follows:

Field formations

- i. **Range:** Ranges are the lowest level field formation entrusted with the task of maintaining the records relating to arrears and appeals, initiating recovery process and submitting reports to higher authorities.
- ii. **Division:** Divisional Officers (Assistant/ Deputy Commissioner) are entrusted with supervising Range officers and to ensure that they are

performing their duties in accordance with the prescribed rules/regulations/instructions.

- iii. **Commissionerates:** Recovery of arrears is the overall responsibility of the jurisdictional commissioners. They are required to review and monitor the functions of range and divisional officers regarding recovery of arrears. Besides, they should exercise the functions 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 BIFR/DRT/OL etc. and watching progress and performance of Recovery Cells through monthly progress reports and taking follow up action.
- iv. **Recovery Cell:** Recovery Cell operates under the supervision and control of a jurisdictional Commissioner. The major functions of Recovery Cell are to serve notice upon defaulters, attachment and sale of defaulter's property by public auction. It also has to send a monthly progress report to the Commissionerate regarding arrears.

Task Force for Recovery

The Board (August 2004) constituted a centralized Taskforce for recovery of outstanding arrears of Central Excise and Custom duties, with a view to co-ordinate, facilitate, monitor and oversee the efforts of the Customs & Central Excise field formations towards recovery of arrears. Task force 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 Central Excise field formations.

Zonal Chief Commissioners are responsible to identify potential cases of high revenue (i.e., arrear of more than ₹ one crore pending before CESTAT), appeal cases and other cases and furnish the information to the Nodal Officer. Nodal Officer has to make strategy, impart necessary instructions to field formations to deal with such recovery cases and monitor the progress of the same vide OM No.F.No.296/34/2004-CX.9(Pt) dated 11 August 2004.

2.4 Audit Objective

The subject specific compliance audit sought to assess

- The level of compliance with the prescribed rules and regulations as well as the guidelines issued by the Department relating to recovery of dues
- Effectiveness of monitoring and control mechanism

2.5 Audit Coverage

We examined records of office of the Chief Commissioner (TAR) Delhi, six nodal offices under it and 32 Commissionerates out of total 124 Commissionerates. The period covered was from 2012-13 to 2014-15.

2.6 Audit Findings

We found instances of inordinate delay in communication of Order-in-Originals to Range offices, initiation/delay in recovery proceedings, filing of application for early hearing, transfer of cases to Recovery Cells, updation of status of arrear cases, updation of status of cases, maintenance of Appeal Register, formulation of strategy by zonal TAR, maintenance of relevant records/data at TAR, inadequate inspection of the Commissionerates by TAR etc. The observations are discussed in succeeding paragraphs.

2.7 Departmental Performance in respect of Recovery of Arrears

The performance of the Department in respect of recovery of Central Excise arrears, during the years 2012-13 to 2014-15, is depicted below:

Table 2.1: Arrears of Central Excise during last three years

(₹ in Crore)

Year	Arrears at commencement of the year	Arrears Recovered during the year	Arrears pending at the end of year			
			Stayed	Un-stayed		
				Restrained	Unrestrained	
					Recoverable	Non –recoverable
2012-13	37,005.56	3,919.88	23,537.10	20,779.97	2,997.35	3,030.18
2013-14	50,344.60	1,413.99	29,598.22	19,710.90	8,355.82	2,219.75
2014-15	59,884.69	1,615.88	35,559.35	7,200.74	7,019.18	370.05

Source: information provided by Directorate General of Performance Management vide letter C.No.CC (TAR) 48/2015-14408 dated 18.12.2015

It is observed that the arrears of Central Excise have increased by 62 per cent in 2014-15 as compared to 2012-13. However, the recovery of arrears has decreased by 60 per cent over the period.

It is further observed that recovery during the year as a percentage of unrestrained recoverable arrears at the beginning of the year, which was 47 per cent (₹ 1,413.99 crore as a percentage of ₹ 2,997.35 crore) during 2013-14, decreased to 19 per cent (₹ 1,615.88 crore as a percentage of ₹ 8,355.82 crore) during 2014-15.

The performance of 22 Commissionerates out of 32 selected Commissionerates which provided complete data for last three years, is given in the table below. As the data furnished by remaining 10⁸ Commissionerates was incomplete, no inference could be drawn regarding performance of above 10 Commissionerates.

Table 2.2: Performance of 22 selected Commissionerates during last three years

Year	Arrears at commencement of the year	Recovered during year	Arrears pending at the end of year			
			Stayed	Un-stayed		
				Restrained	Unrestrained	
					Recoverable	Non – recoverable
2012-13	10,508.58	226.59	5,739.22	5,593.90	1,568.99	241.76
2013-14	13,535.38	244.25	7,695.33	4,812.65	2,106.69	164.90
2014-15	15,813.21	144.80	7,085.13	4,153.94	2,376.53	199.96

It is observed that the arrears of Central Excise increased by 50 per cent in 2014-15 as compared to 2012-13. However, the recovery of arrears has been showing a decreasing trend over the last three years.

It is further observed that recovery during the year, as a percentage of unrestrained recoverable arrears at the beginning of the year, which was 16 per cent (₹ 244.25 crore as a percentage of ₹ 1,568.99 crore) during 2013-14, decreased to seven per cent (₹ 144.80 crore as a percentage of ₹ 2,106.69 crore) during 2014-15.

From the data provided, it is also observed that:

- In 12 Commissionerates i.e. LTU Chennai, Jaipur, Rajkot, Vadodra-I, Vishakapatnam, Raipur, Chandigarh-I, Panchkula, Kolkata-III, Bolpur, Guwahati and Patna, recovery in 2014-15 decreased in comparison to 2012-13. In eight out of above 12 Commissionerates, the decrease in recovery of arrears was more than 50 per cent.
- In four Commissionerates i.e. Chennai-I, LTU Chennai, Chandigarh-I and Kolkata-III, pendency of arrears increased more than 100 per cent.
- In Chennai-I Commissionerate, increase in arrear was 387.33 per cent.

⁸ Position of recovery of all three years was not provided by ten Commissionerates (Bangalore III, Mangalore, Ghaziabad, Hapur, Jamshedpur, Central Excise Delhi-I, LTU Delhi, Gwalior, Bhubaneswar-I, Nagpur-II)

- Bangalore-I, Thane-I, Rajkot, Surat-II, Vishakapatnam, Bolpur and Patna Commissionerates performed well and the arrear pendency decreased in 2014-15.
- In seven Commissionerates i.e. Chennai-I, LTU Chennai, Puducherry, Surat-II, Vadodara-I, Ludhiana and Kolkata-III, increase in stayed arrear was more than 100 per cent.

Ministry offered no comments (December 2016), citing it introductory para and did not furnish any reply on the performance of these Commissionerates.

2.8 Functioning of Field Formations

2.8.1 Inordinate Delay in Communication of Orders-in-Original to Range Offices

Board, in its circular dated 24 December 2008 stipulated that the details of Adjudication Orders shall be entered in the Confirmed Demand Register and action taken for recovery as laid down in Chapter 18 Part III of the CBEC's Central Excise Manual. However, the circular did not prescribe any time limit for communication of OIO to Range Office.

Audit observed (October 2015 to February 2016) that out of 32 test checked Commissionerates, in 139 cases under 13 Commissionerates, the time taken to communicate OIOs to the Range Officers, ranged between 01 to 227 days. In absence of a prescribed time limit, considering one week time as acceptable to communicate OIO to range, audit analysed Commissionerate wise delays and details of the Commissionerates are depicted in table below:

Table 2.3: Delay in communication of Orders-in-Original

Sl. No.	Name of the Commissionerate	Delay up to 1 month	Delay from 1 to 3 months	Delay beyond 3 months	Total cases
1	Surat-II	6	4	1	11
2	Jaipur	3	0	0	3
3	Chennai – I	2	1	0	3
4	LTU Chennai	3	0	1	4
5	Puducherry	6	0	0	6
6	Central Excise Delhi-I	18	1	0	19
7	Gwalior	12	0	0	12
8	Raipur	5	2	0	7
9	Hyderabad I	12	2	0	14
10	Visakhapatnam	26	2	0	28
11	Thane I	18	0	0	18
12	Ghaziabad	4	1	0	5
13	Hapur	9	0	0	9
	Total	124	13	2	139

A few cases are illustrated below:

i) In case of M/s. Ford India Ltd., in LTU Chennai Commissionerate, OIO dated 29 August 2008 was delivered to the Range Office on 20 April 2009 i.e. after 227 days.

The Ministry stated (December 2016) that there was no delay in communication of OIO, the date of communication was wrongly recorded due to technical problem.

ii) In case of M/s. Al-Flah Export in Surat-II Commissionerate, OIO dated 31 July 2013 was delivered to the Range Office on 13 December 2013 i.e. after a delay of 128 days.

The Ministry stated (December 2016) that there is no prescribed time frame for delivery of OIOs and requested for condonation of delay. It was also stated that efforts will be made to get the OIO delivered to range office at the earliest/within time in future.

In remaining 137 cases, the Ministry replied (December 2016) as follows:

In 34 cases, it was stated that there is no prescribed time frame for communicating the OIO to Ranges. However, efforts will be made in future to deliver OIO in time.

In 28 cases, it was stated that delay was within one month and instructions have been issued to adjudication sections to communicate OIO to Ranges, without delay in future.

In 27 cases, it was stated that delay was within 10 days and was due to distant location of Ranges.

In 14 cases, it was stated that instructions have been issued to communicate OIO to Ranges, without delay.

In 12 cases, it was stated that some delay is inevitable due to holidays and postal delay but efforts will be made in future to deliver OIO in time.

In seven cases, it was stated that the delay was mostly on account of transfer of an incumbent dealing hand.

In six cases, it was stated that delay was between 2-27 days and was minor. It was further stated that no coercive measures can be taken during appeal period.

In three cases, no reason for delay was intimated, however, Audit observation was noted.

In three cases, it was stated that OIO could not be communicated as they remained inadvertently in files. However, efforts will be made in future to deliver OIO in time.

In three cases, it was stated that OIO were communicated in time, however, incorrect date of communication was recorded in e-register due to some technical error.

From different replies furnished by the Ministry to same audit observation, it appears that Ministry forwarded the replies received from field formations without taking final view on the issue. Reply of field formation that delay of 10-30 days is reasonable, is not tenable as period of seven days has already been considered by Audit. OIO should be communicated to Range within reasonable time otherwise communication of the same to assessee would be delayed and consequently appeal period (counted from communication of OIO to the assessee) would be further delayed.

2.8.2 Non-Initiation/Delay in Recovery Proceedings

The officers of the Central Excise have been empowered under section 11 of Central Excise Act, 1944, to recover the arrears of revenue of Central Excise.

In case the Government dues are not paid, the action for recovery of dues is to be taken under section 11 of the Central Excise Act, 1944.

If no recovery is made by the action stipulated under section 11, action is to be taken under the provision of section 142 of the Customs Act, 1962, which have been made applicable in Central Excise cases vide Notification No. 68/63-Central Excise dated 4 May 1963 issued under section 12 of the Central Excise Act, 1944. Section 142 of the Customs Act, 1962, empowers the Department to deduct the amount so payable from any money owing to the defaulter, to sell the goods belonging to the defaulter which are under the control of the proper officer and to take action to distrain and sell any movable or immovable property belonging to such person.

Audit observed (October 2015 to February 2016) that in 37 cases under 12 Commissionerates, action for recovery under section 11 of Central Excise Act, 1944, and section 142 of Customs Act, 1962, were not taken, which resulted into non-recovery of ₹ 95.87 crore as detailed in Table 2.4:

Table 2.4: Failure to take timely action for recovery

(₹ in crore)

Commissionerate	Total cases	Amount	Year-wise Break up			
			Less than 5 years		More than 5 years	
			Number	Amount	Number	Amount
Kolkatta-III	4	37.75	0	0	4	37.75
Guwahati	2	0.88	0	0	2	0.88
Central Excise Delhi-I	8	19.56	0	0	8	19.56
Bangalore-I	2	1.30	1	0.24	1	1.06
Bangalore-III	2	1.17	0	0	2	1.17
Trivandrum	1	0.07	0	0	1	0.07
Thane-I	3	16.51	1	8.91	2	7.6
Ghaziabad	4	5.74	2	0.72	2	5.02
Jamshedpur	1	0.59	0	0	1	0.59
Patna	8	4.35	2	0.34	6	4.01
Hyderabad-I	1	6.76	0	0	1	6.76
Bhubaneswar	1	1.19	0	0	1	1.19
Total	37	95.87	6	10.21	31	85.66

A few cases are illustrated below:

i) A demand of ₹ 36.27 crore was confirmed (December 2008) against M/s. Ashok Electrical & Stamping Pvt., Ltd., in Kolkata III Commissionerate. The assessee preferred an appeal against the OIO in CESTAT and was granted stay on 24 August 2012, subject to pre-deposit of 25 per cent within period of eight weeks. The period of eight weeks ended on 15 October 2012 but the assessee did not deposit the amount. Hence, CESTAT dismissed the appeal on 15 November 2012. Audit discussions with the Department revealed that the assessee had filed an appeal in the Hon'ble High Court against the CESTAT order, dated 15 November 2012 and was granted four weeks time (3 June 2014) to pre-deposit 25 per cent of the duty. The assessee did not deposit the amount. The Department did not proceed with measures envisaged for recovery of dues till date.

The Ministry stated (December 2016) that several correspondences made with assessee, were returned with remarks "addressee moved", however, efforts are being made to trace out the defaulter. However, no details of action taken was provided, thus, timeliness of action taken could not be verified.

ii) Demands of ₹ 19.42 crore were confirmed (October 2003) against M/s Geco Engineering Company in Delhi – I Central Excise Commissionerate. Though the property of the assessee had been attached under section 142 of Customs Act, 1962, but the same had not been auctioned till date.

Ministry stated (December 2016) that property of defaulter was attached in 2010 and letter was being written to jurisdictional Assistant Commissioner to take steps for auction of attached property and recover Government dues.

Reply is not tenable as the Department failed to auction the attached property in more than six years and started action after being pointed out by Audit. Clearly, the department has not been monitoring and holding the officials concerned accountable for such failures to act in a timely manner

iii) A demand of ₹ 8.91 crore was confirmed (September 2011) against M/s Venus Overseas in Thane-I Commissionerate. No action under section 11 of Central Excise Act 1944/under section 142 of Customs Act, 1962 was taken.

The Ministry stated (December 2016) that the assessee could not be traced and letters have been sent to all the Government agencies to get details of the defaulter. However, no details of action taken were provided.

iv) A demand of ₹ 6.76 crore was confirmed (November 2005) against M/s. Amar Textiles in Hyderabad-I Commissionerate vide OIO No.2/2005-Hyd-I/Adjn dated 29 November 2005. The party made a payment of ₹ 2.20 lakh on 28 May 2007 and 16 January 2008 leaving a balance of ₹ 6.74 crore. No action for recovery under section 11 was taken by the Department.

The Ministry stated (December 2016) that the unit had been closed since 2003 and no properties were available for recovery of arrears. Letters have been addressed to Banks, Post office, RTA etc for whereabouts of the party.

Reply of the Department is not tenable as the assessee had deposited ₹ 2.20 lakh in May 2007/January 2008, indicating that the assessee was traceable till then and the Department did not initiate the recovery action and pursue the case properly.

v) We observed (November 2015) that the attachment of property for recovery of arrears of ₹ 4.57 crore (confirmed between 2000 to 2009) was carried out in case of M/s. Mira Silk Mills under Thane-I Commissionerate, for plant & machinery in March 2006 and for land in April 2014 but auctioning of attached property is pending since then.

The Ministry stated (December 2016) that the factory premises were attached but the legal heir of the assessee had filed writ petition (1622/2016) with Mumbai High Court challenging the attachment. The Department has further identified residential properties of the deceased proprietor and same has been attached (26 February 2016) and certificate under section 142 has been issued.

Thus, the Department failed to dispose the attached property in seven years and the attachment was challenged by the legal heir only in 2016. Further, the residential property was also attached after the issue was pointed out by Audit. The Department also failed to fix the responsibility.

vi) Two demands of ₹ 4.46 crore were confirmed (between November 2007 and March 2008) against M/s Lancer Telecom (India) Pvt., Ltd., in Hapur Commissionerate vide OIO Nos.20/ADC/GZV/07 and 21 in November 2007 and 15/Comm/GZV/08 dated 31 March 2008. Though, certificate under section 142 of the Customs Act 1962 was issued on 3 September 2012 to Delhi-I Central Excise Commissionerate, no recovery was made.

The Ministry stated (December 2016) that letters had been written to the various authorities seeking information regarding the assets of the assessee.

The reply is not tenable as more than eight years have passed after confirmation of demands. Further, details regarding action was not provided, thus, timeliness of action taken could not be verified.

vii) A demand of ₹ 3.03 crore was confirmed in 2001 against M/s Haria Textile Processors in Thane- I Commissionerate. Though, certificates under section 142 of Customs Act 1962 was issued, no recovery was made.

The Ministry stated (December 2016) that there was no property in the name of the proprietor or his family members in the native village and also no property was identified from Bank/residential society. However, the reply was silent about the status of factory premises which might have been disposed off, due to inaction by the Department.

viii) A demand of ₹ 1.18 crore was confirmed (March 2007) against M/s. Suntech Vision in Bhubaneswar Commissionerate. CESTAT, Kolkata vide its Order dated 23 June 2008, dismissed the appeal filed by the assessee. After the dismissal of the appeal, the Department was required to initiate actions immediately to recover the amount but the Department came to know only in January 2010 that the unit was closed. Thus, during the period of one and a half year i.e. from July 2008 to December 2009, the Department did not take any action for realization of dues. Further, the Department should have initiated action under section 142 of Customs Act, 1962. Inaction of the Department led to non-recovery of Government dues amounting to ₹ 1.18 crore.

The Ministry stated (December 2016) that the unit was not traceable and proposal of writing off was being considered. Audit is of the view that, had the timely action for realization of dues been taken, there could have been chances of recovery of arrears. The Department also failed to fix the responsibility of the errant officials.

ix) A demand of ₹ 56.32 lakh was confirmed (October 1990) against M/s. North India Tobacco, in Ghaziabad Commissionerate against which the assessee filed an appeal before CESTAT. The CESTAT set aside (July 1992) the appeal of the assessee. Though Department issued (1995) certificate under

section 11 but recourse to section 142 of the Customs Act (made applicable to Central Excise Act, 1944) was taken in January 2004 i.e. after nine years but no recovery could be made as of date.

The Ministry stated (December 2016) that efforts were being made to trace the account / asset of the party.

The reply of the Department which failed to take action in 12 years suggests that the efforts are not adequate and serious.

In remaining 24 cases, the Ministry replied (December 2016) as follows:

In 12 cases, it was stated that actions were taken by the Department, however, dates/details of action taken were not provided, hence, timeliness of action taken could not be verified.

In three cases, it was stated that assessees were not traceable and issues were under consideration for write-off.

In two cases, actions were taken, but there was no continuity in action as there was gap of 1-4 years between actions taken.

In two cases, it was stated that actions were being taken for recovery, however, action had been started in 2016, after being pointed out by Audit.

In one case, it was stated that out of total Arrears of ₹13.84 lakh, ₹6.92 lakh had been realized and efforts are being made to recover the remaining dues.

In one case, it was stated that assessee was asked to furnish details of buyer and details of bank account but no reply was received.

Audit is of the view that the Department is not giving due attention to the Recovery of Arrears and same is not being monitored by higher formations, resulting in non-realisation of any significant revenue. Audit is also of the view that accountability needs to be fixed for such lapses.

x) As per section 11, the Department can deduct the recoverable duty of the defaulters from the money owed by the Department (i.e. the refund allowed) to such defaulters.

We observed in two cases, the Department paid refund of ₹ 4.98 lakh, though Department had the option to appropriate such refund against the arrears, which were free from restraint.

Table 2.5: Cases of non-adjustment of refund against arrear

Sl. No.	Name of the assessee	Commissionerate	₹ in lakh)	
			Arrears of confirmed demand	Refund allowed
1	Phoenix Conveyor Belt India (P) Ltd.	Kolkata – III	6.03	4.77
2	Associated Pigments	Kolkata – III	13.72	0.21
		Total	19.75	4.98

This led to non-adjustment of revenue and unwarranted financial benefit of ₹ 4.98 lakh.

We pointed these out in (November 2015). The Ministry stated (December 2016) that in case of Phoenix Conveyor Belt India (P) Ltd., letters were sent to the assessee to pay the dues immediately. In case of Associated Pigments it was stated that due to oversight of the facts, rebate of ₹ 0.21 lakh was sanctioned and that revenue of ₹ 13.72 lakh was recoverable and persuasive action for same was being taken.

2.8.3 Non-Filing of Application for Early Hearing

CBEC, vide circular no. 746/62/2003-CX, dated 22 September 2003, stated that the Commissionerates should file Miscellaneous Applications, in terms of Rule 28C of the Customs, Excise & Gold (Control) Appellate Tribunal (CEGAT) (Procedure) Rules, 1982, for out-of-turn early hearing of the cases with high revenue stakes, indicating clearly the grounds for such prayer. It was further stated that in order to get interim stay orders vacated, the Commissionerates must take proactive measures by filing Miscellaneous Petition before Supreme Court/High Court/CESTAT for early hearing, specifying the grounds clearly and for prompt follow-up of appeal matters, particularly in respect of Civil Appeals/SLPs before the Supreme Court, through effective liaisoning with the Directorate of Legal Affairs. Further, Chief Commissioner (TAR) vide letter C.No. CC/TAR/54/2009/3 dated 15.01.2010 instructed field formations to monitor all cases involving revenue of more than ₹ 50 lakh (irrespective of age) and approaching CESTAT for early decision.

Audit observed (December 2015 to February 2016) that in 23 cases in four Commissionerates, pending from two to 10 years involving revenue of ₹ 137.81 crore, applications for early hearing were not filed. The Commissionerate wise position is depicted in table below:

Table 2.6: Non-filing of application for early Hearing

(₹ in crore)			
Sl. No.	Name of the Commissionerates	No. of Cases	Amount
1	Surat-II	8	84.64
2	Vadodara-I	4	12.38
3	Kolkata-III	2	6.60
4	Hapur	9	34.19
	Total	23	137.81

A few cases are illustrated below:

Audit noticed that (December 2015) in five cases viz., M/s. Kiran Syntex Ltd. (Unit I & II), involving arrears of ₹ 71.53 crore and M/s. Kamdhenu Exim Pvt., Ltd., involving arrears of ₹ 5.78 crore in Surat II Commissionerate, M/s. Forbes Gokak Ltd., involving arrears of ₹ 19.02 crore, in Hapur Commissionerate M/s. Racili Udyog involving arrears of ₹ 5.74 crore, in Kolkata-III Commissionerate M/s. Solace Engg. Pvt., Ltd., involving arrears of ₹ 5.65 crore, in Vadodara-I Commissionerate where the stay was granted

between June 2011 and September 2014, the Department should have taken early action as per circular dated 22 September 2003.

The Ministry stated (December 2016) that in one case application for early hearing had been filed whereas in 4 cases process was underway for the filing of application.

For remaining 18 cases, reply of the Ministry was as follows:

In two cases, application for early hearing had been filed whereas in seven cases, process was underway for the filing of application.

In remaining nine cases, it was stated that Courts/Appellate authorities decides the cases on their own priorities and do not entertain requests for early hearing. Two such request filed earlier were not considered and cases are still pending in CESTAT. However, applications are being filed for early hearing in cases pointed out by Audit.

Ministry needs to examine the issue and give suitable and clear instructions to field formations after being vetted by legal cell for compliance so that early hearing applications of the Department are entertained by CESTAT/Courts.

2.8.4 Bunching of Cases

CBEC, vide circular No. 296/34/2004-CX.9(Pt), dated 11 August, 2004, stipulated that the Jurisdictional Commissioner should also organize bunching of cases on same issues involving substantial revenue and request the Tribunal for disposal on priority.

Audit observed (October 2015 to January 2016 and July 2016) that bunching of cases on same issues involving substantial revenue, was not done in any of the 17⁹ Commissionerates and Tribunal was not requested for disposal of those cases on priority, at any time. The information from rest of 15 Commissionerates, was not received as of date (July 2016).

Detailed examination in three¹⁰ Commissionerates out of the 17 Commissionerates mentioned above, revealed that there were seven cases which could have been bunched, as detailed in Table 2.7:

⁹ Puducherry, LTU Chennai, Chandigarh-I, Chandigarh-II, Ludhiana, Punchkula, Guwahati, Kolkata-III, Bolpur, Ghaziabad, Jamshedpur, Patna, Gwalior, Bhavnagar, Raipur, Surat-II, Vadodara-I

¹⁰ LTU Chennai, Central Excise Delhi-I, Raipur

Table 2.7: Bunching of cases not done

				(₹ in crore)
Sl. No.	Name of the Commissionerate	No. of cases	Amount	
1	LTU Chennai	3		0.60
2	Central Excise Delhi-I	3		19.11
3	Raipur	1		3.81
	Total	7		23.52

Inaction of the Department to send the list of identical issues to CDR, for requesting CESTAT for early disposal of the case, resulted in pendency of revenue arrear of ₹ 23.52crore.

A few illustrative cases are given below:

i) Demand of ₹ 53.30 lakh, in three OIAs, was confirmed against M/s. Schwing Stetter India Ltd., in LTU Chennai Commissionerate for “irregular availment of exemption notification No.108/95 CE”. The demand was stayed by the appellate authorities but the bunching of cases was not done by the Department.

The Ministry stated (December 2016) that action was being initiated to file application for bunching of cases.

ii) Demand of ₹ 15.69 crore in two OIOs was confirmed against M/s Sunrise Food Products and demand of ₹ 2.78 crore in two OIOs was confirmed against M/s K.P.Pouches Pvt., Ltd., in Delhi-I Commissionerate for “Clandestine removal of goods”. The demand was stayed by the appellate authorities but the bunching of cases was not done by the Department.

The Ministry, in case of M/s Sunrise Food Products, stated (December 2016) that these are two different assessees, one a proprietary firm and other a registered company. As the appellants are different, cases were not recommended for bunching.

The reply is not tenable as bunching is to be done of cases having same issues. It does not require appellants being same type.

In case of M/s K.P.Pouches Pvt., Ltd., it was stated that nature and modus operandi was different in both the cases. However, no details were provided to verify the same.

In remaining six cases Ministry replied as follows :

In three cases it was stated that action was being initiated to file application for bunching of cases.

In one case, it was stated that nature and modus operandi of cases were different. However, no details were furnished, hence, Ministry views could not be ascertained.

In one case, it was stated that though the cases were relating to wrong availing of CENVAT credit on structural items but also included other items, hence, were not fit for bunching.

Reply is not tenable as the major issue is wrong availing of items where it was not allowed. Hence, case is fit for bunching. The main idea of bunching is to clear pendency of cases in appeals in similar issues.

2.8.5 No Action to Write-off Irrecoverable Arrears

Board's circular No. 946/2011, dated 1 June 2011 stipulates 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 authority competent to order such write-off in terms of the Board's circular, dated 21 September 1990. Whenever a proposal for write-off of irrecoverable arrears is submitted by the Deputy/Assistant Commissioner in the prescribed format, the committee shall examine the proposals and on the basis of the recommendation of the Committee, the competent authority shall write-off arrears in deserving cases, in accordance with the powers delegated for the purpose.

The constitution of the Committee and the powers to write-off, delegated to the competent authorities are as under:

Table 2.8: Power for writing off of arrear

Sl. No.	Constitution of the Committee	Competent Authority	Power Delegated
1	Chief Commissioner of Customs & Central Excise/ Central Excise/ Customs	Committee of two Chief Commissioners of Customs & Central Excise/Central Excise/ Customs and the Chief Commissioner (TAR)	(a) Full powers for abandonment of irrecoverable amounts of fines and penalties imposed under Customs Act, 1962, and Central Excise Act, 1944. (b) To write-off irrecoverable amounts of Customs /Central Excise duties up to ₹ 15 lakh subject to a report to the Board.
2	Excise Commissioner of Customs/ Commissioner of Central Excise of Customs & Central Excise/ Central Excise/ Customs and one Commissioner (TAR) nominated by CC (TAR))	Excise/Commissioner of Customs / Commissioner of Central Excise of Customs & Central Excise/ Central Excise/ Customs and one Commissioner (TAR) nominated by CC(TAR) of Customs & Central Excise/ Central Excise/ Customs and one Commissioner (TAR) nominated by CC(TAR)	(a) Full powers for abandonment of irrecoverable amounts of fines and penalties imposed under Customs Act, 1962, and Central Excise Act, 1944. (b) To write-off irrecoverable amounts of Customs/ Central Excise duties up to ₹ 10 lakh subject to a report to the Chief Commissioner.

We observed (October 2015 to February 2016) that out of 32 test checked Commissionerates, in seven Commissionerates¹¹ there were 177 cases involving revenue arrear of ₹ 188.35 crore, as tabulated below:

Table 2.9: No action to write-off irrecoverable arrears

Sl. No.	Commissionerate	No. of cases	(₹ in Crore)
			Amount
1	Chandigarh-II	2	4.78
2	Central Excise Delhi-I	44	167.64
3	Ghaziabad	11	0.17
4	Kolkata III	5	4.02
5	Guwahati	13	5.67
6	Vadodra (TAR)	1	0.39
7	Bhubhaneswar	101	5.67
Total		177	188.35

The possibility of recovery of above arrears is remote as:

- In 80 cases, assessees were not traceable, 79 units were closed, and 14 units did not exist.
- 146 cases out of above 177 cases the amount involved was less than ₹ 15 lakh.
- Eight cases out of above 177 cases the amount involved was less than ₹ 1,000 and in one case it was as low as ₹ 28.
- 119 cases out of above 177 cases pertained to the period from 1968 to 2000.

Two cases are illustrated below:

i) We observed (December 2015) that in Bhubaneswar-I Commissionerate, there were 101 cases amounting to ₹ 5.89 crore, including nine cases pertaining to the period 1968 to 1978 which were not written off, despite the nodal officer TAR Kolkata's instructions "that in cases fit for write-off, suitable steps may be taken and in cases, where defaulters are not traceable, reference may be made to DGCEI/DRI to locate them for realization of arrears". It was further noticed that neither enquiries about the existence of the unit were made nor proposals for write-off of these cases were submitted.

The Ministry stated (December 2016) that write-off is a tedious process and involves a reasonable period of time. It was further stated that proposal for write-off would come for consideration accordingly.

The reply is not acceptable as some cases were as old as 1968-1978 and required process should have been completed so far.

¹¹ Chandigarh-II, CX Delhi-I, Ghaziabad, Kolkata-III, Guwahati, Vadodara (TAR), Bhubaneswar

ii) We observed (December 2015) that a write-off proposal of M/s. A-1 Products in Bhavnagar Commissionerate, for ₹ 39.74 lakh was sent to the Board (August 2006) by the Commissioner (TAR) Vadodra. The Board sought some clarification from the Chief Commissioner, Ahmedabad Zone (April 2007). The case has not been finalised so far, since the reply from the Chief Commissioner to the clarification sought by the Board was not furnished, even after a period of seven years.

Ministry stated (December 2016) that after verification of facts, necessary action would be initiated for write-off.

Thus, Department failed to provide information to the Board for more than nine years, on the write-off proposal sent by itself.

In remaining 75 cases, reply of the Ministry was as follows :

In 60 cases, it was stated that necessary actions are being taken for writing off of irrecoverable arrears.

In 11 cases, it was stated that the cases were forwarded by the field formation but have been sent back with the direction to exhaust all norms prescribed and are yet not ripe for write-off. The reply is not tenable as the cases pertained to the period 1991-2003 where defaulters were not traceable and a view needs to be taken, when they could be considered as 'ripe for write off'.

In three cases, it has been stated that possibility of recovery action, is being examined.

In one case, it was stated that recommendation of the Division dated 30 March 2016 has been sent back for resubmission, with all relevant details on 04 April 2016. Thus, action was taken after being pointed out by Audit.

2.8.6 Non-Transfer of Cases to Recovery Cells

The Central Excise Officers have been empowered to attach and sell movable and /or immovable properties of any person who has failed to pay any sum due to Government vide Notification No. 48/97-CE (NT) dated 2 September 1997 issued under section 12 of the Central Excise Act, 1944 which made section 142 (1)(C) (ii) of the Customs Act, 1962 applicable to like matters in Central Excise.

If no recovery is made by Departmental efforts, cases need to be transferred to the Recovery Cells which have been empowered to take action for recovery by attachment and sale of property of the defaulter.

Further, the Board desired¹² (October 2000) that all cases, of 1999 and earlier years, already referred to District Authorities, where there is no effective action or response, should be referred to Recovery Cell of the Commissionerate where the assessee may have, as per available information, some movable/immovable property, so that action can be initiated as per circular No. 365/81/97-CX, dated 15 December 1997.

Audit observed (October 2015 to February 2016) that out of 32 test checked Commissionerates, only three Commissionerates, namely Kolkata-III, Bolpur and Hyderabad, transferred 234 cases, involving amount of ₹ 437.41 crore to Recovery Cells, during 2014-15.

No cases were transferred to the Recovery Cells in 23 Commissionerates¹³ during 2014-15. Out of these 23 Commissionerates, in 20 Commissionerates, who provided data of arrears, there were 15,388 cases amounting to ₹ 18,700.27 crore pending for recovery. Six¹⁴ out of 32 Commissionerates did not provide the details of cases transferred to the Recovery Cells. Further, in the data furnished by the three¹⁵ Commissionerates out of 20 Commissionerates, who provided data regarding cases transferred to the Recovery Cells, it was mentioned that revenue of arrear was nil, while in these Commissionerates, there were 1,235 cases involving revenue of ₹ 913.82 crore.

Thus, non-transfer of cases has not only resulted into Recovery Cells becoming redundant but has also led to piling of arrears and poor recoveries thereof.

The reply of the Ministry, in respect of 29 Commissionerates (December 2016) was as follows :

In seven cases, it was stated that there is no Recovery Cell and recovery is being monitored at the Division level. In 10 cases, Recovery Cells exist but action for recovery are still being taken by the Divisions.

In three cases, it was stated that cases have been transferred to Recovery Cells, However, in two cases details of cases transferred were not provided.

In two cases, it was stated that there was no case fit for transfer to Recovery Cells.

In two cases, it was stated that instructions have been issued/efforts are being made to identify cases to transfer to Recovery Cells.

¹² vide circular No 552/48/2000-C Dated 4-10-2000

¹³ Puducherry, LTU Chennai, Chennai I, Trivandrum, Chandigarh-I, Chandigarh-II, Ludhiana, Panchkula, Guwahati Bangalore -I, Bangalore III, Mangalore, Patna, Delhi I, Bhavnagar, Jaipur, Rajkot, Surat-II, Vadodara-I, Visakhapatnam, Bhubaneswar-I, Thane I, Nagpur-II

¹⁴ Ghaziabad, Hapur, Jamshedpur, Gwalior, Raipur, LTU Delhi

¹⁵ LTU Chennai, Puducherry, Patna

In one case, it was stated that cases are being transferred to Recovery Cells, however, no details of cases transferred was provided.

In one case, it was stated that that cases of arrears more than ₹ 50 lakh, are being monitored by Recovery Cells.

In one case, reply was general in nature as it was stated that efforts are being made to recover the dues.

In one case, it was stated that Audit observation had been noted.

In one case, it was stated that the circular no. 368/81/97-CX, dated 15 December 1997, suggests that cases be referred to the Recovery Cells of those Commissionerates where the assessee may have some movable/immovable property. The Recovery Cell is therefore expected to deal with the references received from other Commissionerates in the form of Appendix-I, giving details of movable and immovable property in this Commissionerates. Therefore, all the arrears of the Commissionerate are not expected to be transferred to the Recovery Cells.

The reply is not tenable as circular no. 365/81/97-CX, dated 15 December 1997 is not limited to the cases transferred to the Recovery Cells of other Commissionerates. There are cases, where the property of the defaulter may exist in the same Commissionerate and the authorised officer has to issue Appendix-II accordingly. Thus, the Commissionerate has to identify the cases, where no recovery is made by Departmental efforts and transfer all such cases to Recovery Cells of same or other Commissionerates, where any asset/property of the defaulter is available.

From the above, it appears that Recovery Cells exist in most of the Commissionerates, but the same are not functional and different field formations are having different views on the function of the Recovery Cells. Further, Ministry has simply forwarded these different views of field formations without any analysis. In case of Puducherry Commissionerate, which is not even aware about the role of Recovery Cell, the Ministry failed to clarify the role of Recovery Cell to its field formation. As, the purpose of creating Recovery Cells is to take action for recovery, by attachment and sale of property, the Board may issue clear instructions to field formations for effective functioning of Recovery Cell, and monitoring of the same.

2.9 Internal Control

2.9.1 Non-Updation of Status of Arrear Cases

We observed that in some cases, Department was not monitoring the cases and consequently, the cases were not classified properly as detailed below. In

the absence of proper monitoring of these cases, there was a risk of losing sight of cases, though recoverable being kept pending, resulting in inaction to recover the arrears.

i) We noticed (January 2016) that in Hapur Commissionerate, the case of M/s. Shree Acids & Chemicals amounting to ₹ 54.92 lakh was being shown in the Monthly Technical Report (MTR) under the Heading “BIFR” though the case was already abated by BIFR in 2011. BIFR, vide its order dated 21 December 2011, also directed the Government Departments to file suit/pursue the suit, if already filed, before the Competent Court of Law. The Department, however, has not filed any suit for recovery and continued to show the case under “BIFR” cases.

The Ministry stated (December 2016) that the case has been removed from BIFR list and the status updated accordingly. Action is being taken for recovery.

ii) We noticed (December 2015) that in Patna Commissionerate’s MTR for the month of November 2015, three cases of M/s. Patliputra Industries Pvt. Ltd., amounting to ₹ 28.48 lakh were being shown under BIFR (restrained arrear) but these were actually deregistered at the requests of the assesses and were unrestrained arrears. Accordingly, the units were no longer under BIFR and the Department was free to take initiative to recover the arrear of ₹ 28.48 lakh but no action was taken by the Department and all three cases were shown under BIFR cases till date.

The Ministry stated (December 2016) that cited three cases, shown under BIFR, were deregistered. It was further stated that two cases have been decided in favor of the assessee and in one case, out of total amount recoverable, only ₹ 0.72 lakh was remaining and action for recovery of the same is under process.

iii) We noticed (January 2016) in Cuttack and Rayagada Divisions in Bhubaneswar Commissionerates that 21 and seven cases involving ₹ 12.32 crore and ₹ 2.26 crore were shown pending in CESTAT and Commissioner (Appeals) respectively in the MTR. However, cross-verification of the position of pending stayed arrears in Tribunal section revealed that they were not actually pending before CESTAT and Commissioner (Appeals). Due to non-reconciliation, these cases were being shown as pending and recovery is stalled resulting in inaction of the Department to recover Government dues of ₹ 14.57 crore.

The Ministry stated (December 2016) that efforts were being made to reconcile differences in various statistical reports.

iv) We noticed (January 2016) that in Central Excise Division Patna-I, in Patna Commissionerate, one case of M/s. Radhey Forging, involving arrear of ₹ 1.40 lakh, was shown in the MPR of March 2015 under appeal before Hon'ble High Court Patna. On cross checking with web site of Patna High Court, it was found that the case was rejected by High Court Patna on 3 August 2010. After disposal of case in the favour of revenue, the case became recoverable arrear, but the Department continued to keep this case under restrained arrear and no action for realization was initiated, even after lapse of more than five years.

The Ministry stated (December 2016) that notice under section 142 (1)(C)(ii) of Customs Act, 1962 had been issued to the assessee. There is a need on the part of the Department to fix the accountability.

2.9.2 Inflated Arrears

The monthly Tax Arrear Report reflects the amount of arrears outstanding against the defaulter at the end of each month. In test check, we observed that TAR/MTR were not being updated and thus showing the incorrect status of arrears, as detailed below:

i) We observed (December 2015) that in Trivandrum Commissionerate, arrears in respect of M/s. Rainbow Roofing India Pvt., Ltd., were shown as ₹ 12.71 crore of which ₹ 59.90 lakh was appropriated in OIO (December 2013) itself and the balance amount due was ₹ 12.11 crore. However, the Department, in its TAR (September 2015), had not updated the amount and continued to show the entire amount of ₹ 12.71 crore as outstanding, resulting in an overstatement of arrear amount by ₹ 59.90 lakh.

ii) We observed (January 2016) that a demand of ₹ 17.50 lakh was set aside (October 2012) by the Commissioner (Appeal) in case of M/s. Saral Wire¹⁶, in Hapur Commissionerate, but the case was being shown as arrear in the Tax Arrear Report (TAR) of the Division (October 2015). Thus, the arrear was inflated by ₹ 17.50 lakh.

The Ministry, in both the cases, stated (December 2016) that necessary instructions have been issued to delete the overstatement.

2.10 Monitoring

2.10.1 Non-Tracking of Assessee's Activities

Board circular No. 224/37/2005-CX-6, dated 24 December 2008 stipulates the range inspectors "to keep abreast of any development regarding closure or

¹⁶ OIO no. 132(42/11, 59/11, 88/11, 111/11, & 37/12) AC / HLD /2012 dt: 16.08.2012 (demand: ₹ 35 lakh)

transfer of operations by assesses against whom arrears of revenue are outstanding and inform all such relevant development to the Range Officer”.

We noticed that the above prescribed procedure was not being followed. Few illustrative cases are discussed below:

i) We observed (November 2015) in three cases viz. M/s Bhagawati Impex, M/s. Lancer Telecom (India) and M/s. L. B. Electronics, the SCNs for ₹ 65.30 lakh, ₹ 4.46 crore and ₹ 39.55 lakh respectively, were issued in Ghaziabad Commissionerate. These assesseees stopped filing returns from October 2004, July 2006 and January 2009 respectively. But, the Department did not visit the premises to take stock of activities. During the period, the assesseees sold out their premises and became untraceable.

The Ministry admitted the observation (December 2016) and stated that the field formations have been sensitized about their duties/responsibilities and have been directed to monitor the assesseees on regular basis. However, the reply did not mention, whether any action was taken against the erring officials.

ii) We observed (December 2015) that against M/s. Dudheshwar Steels & Alloys Pvt. Ltd., in Hapur Commissionerate, a demand of ₹ 52.28 lakh was confirmed in May 2010. The departmental officer visited the premises (November 2013) and found that there was only a damaged boundary wall and no plant and machinery were available on the site. Prompt action such as immediate site visit would have enhanced the chances of recovery.

The Ministry stated (December 2016) that the assets of the unit were attached by the Canara Bank and the bank informed that it had approached Debt Recovery (DRT) Tribunal for recovery. The Department also lodged its claim with DRT on 10 October 2016. Thus, the Department took action after the same was pointed out by Audit. Though the Ministry accepted the failure, it failed to fix the responsibility.

2.10.2 Updation of Status of Cases

Audit observed that there is no mechanism in field formations to know the status of the cases of recovery. During the scrutiny of records, it was noticed that in many cases, Department requested the assesseees to furnish the status of the cases pending in the CESTAT, rather than monitoring the cases itself. Few instances are mentioned below:

i) A demand of ₹ 1.52 crore and equal penalty was confirmed (March 2011) against M/s. Saint Gobain Glass India Ltd., in LTU Chennai Commissionerate. We noticed from records of the Commissionerate that they requested (April 2013) the assessee to inform whether any

stay was granted in the case, instead of monitoring the status of the case by themselves.

The Ministry stated (December 2016) that the status of cases are available at website of CESTAT and same are being verified. Audit observation have also been noted for compliance.

ii) A demand of ₹ 19.17 lakh was confirmed (April 2009) against M/s. Nexus Electro Steel Limited, Unit-I in Puducherry Commissionerate. Scrutiny of records revealed that the Range Officer requested (30 June 2011) the assessee to intimate the “present position” of the case.

The Ministry stated (December 2016) that it was a solitary case where assessee was asked about the status of case and same could be obtained from website of the CESTAT.

iii) A demand of ₹ 4.89 crore was confirmed (October 2009) against M/s. Jindal Pipes in Hapur Commissionerate. The assessee preferred an appeal in the CESTAT (February 2010) and was allowed stay (August 2010). The Range office wrote letters to assessee on 29 December 2014 and 23 December 2015 requesting the assessee to inform the latest position of the case.

The Ministry stated (December 2016) that the audit observation was noted and records relating to arrears had been updated but Ministry failed to fix any accountability for such casual approach which given bad impression about the working of the department in the eyes of taxpayers.

2.10.3 Use of Software Application by the Department to monitor Recovery of Arrears

Though the positions of recoveries are reflected in Tax Arrear Reports, there is no software/module exclusively for arrears compilation. Use of an IT system/ computer software/program in the Department for recovery of arrears may be an effective tool. Adequacy of the system, application and procedural controls, availability of MIS reports for management and sharing of information etc. cannot be ensured, in the absence of such IT system /computer software/program.

Audit noticed that in 15 Commissionerates, the Department had no computerised software/program or a system to monitor the extent of arrears of revenue, compliance of prescribed rules and regulations at different level of execution etc., ensuring arrears recovery by the Department in an efficient and effective manner. The information from rest of the 17 Commissionerates was not received as of date.

Lack of IT enabled system has resulted in poor monitoring of recovery process.

We pointed these out between January and March 2016.

The Ministry stated (December 2016) that Department has been pursuing modern IT enabled methods for monitoring the recovery of Tax Arrears. CBEC has devised a Management Information System (MIS) so that information relating to key areas including that of Recovery of Tax Arrears are collected in a reliable, efficient and useful manner. MIS has been designed to be implemented in two stages. Stage 1 involved web based utility for uploading the Monthly Progress Reports by the field formations made operational w.e.f. June 2015. In stage 2 the manual registers from which information is called out for preparation of MPRs, are to be replaced by digital registers. A working committee for implementation of Second stage has been constituted.

It is expected that the digitization would improve the monitoring of recovery of arrears.

2.10.4 Non-Maintenance of Appeal Register

Board circular No 224/37/2005-CX 6, dated 24 December 2008, prescribed various measures, such as preparation of draft para-wise comments on the appeal filed by the assessee and regular upkeep of register through monthly review of records for effective monitoring of cases pending with legal forums.

We observed (October 2015 to February 2016) that in 49 Ranges under the jurisdiction of nine Commissionerates¹⁷, the Appeal Register was not being maintained.

The Ministry stated (December 2016) as follows :

In case of seven Ranges, it was stated that procedure are being followed by the field formations.

In case of 10 Ranges, it was stated that Appeal registers are now being maintained.

In case of 23 Ranges, it was stated that instructions have been issued to maintain the appeal registers.

In case of nine Ranges, it was stated that Audit point was noted for compliance.

¹⁷ Trivandrum, Kolkata-III, Guwahati, Hyderabad, Vishakapatnam, Gwalior, Raipur, Bhavnagar, Jaipur

2.10.5 Non-Maintenance of Record of Detained Goods

We observed (January 2016) that in Hapur Commissionerate, goods belonging to M/s. Shree Acids & Chemicals Ltd.¹⁸, valuing ₹ 45.87 lakh were detained by the Department, as per Tax Arrear Report for the month of October 2015. The Department, however, was unable to furnish any details or whereabouts of the detained goods.

The Ministry stated (December 2016) that goods valuing ₹ 45.87 lakh were detained by the Department. Meanwhile the assessee went to BIFR and the company was taken over by ARSEC(I) Ltd which auctioned the assets of the company. Shri DK Tyagi who purchased the assets informed that no excisable goods were lying in the factory. The detained goods have apparently been disposed off after removing Department's seal. Opinion has been sought for taking legal action against Sri Tyagi.

Thus, non-disposal of seized goods in time, led to loss of detained goods and non-recovery of any amount. Audit is of the view that instead of taking any legal action against Shri Tyagi, there is a need to fix accountability of its own officials, for non-disposal of seized goods in time.

2.10.6 Non-Review of Demand Registers

Para 7.1 of CBEC's instruction No. 224/37/2005-CX-6, dated 24 December 2008, provides duty and responsibilities of Range Officer regarding maintenance of confirmed demand register. The Range Officer should ensure the correctness of entry in respect of confirm demand, in register and should review every month and a certificate to this effect be endorsed while preparing monthly abstract in the register.

We observed (November 2015 to February 2016) that in 31 ranges under the jurisdiction of five¹⁹ Commissionerates, neither monthly review was done by Range officer nor a certificate to this effect was endorsed in the registers after preparing monthly abstract. Non-review of the demand register leads to ineffective monitoring, enhancing the risk of accumulation of arrears and it becoming non-recoverable.

We pointed these out (between January and March 2016).

The Ministry stated (December 2016) that in six Ranges, monthly review was being done but the same was not being endorsed in registers. Instruction have been issued to all remaining Ranges to review the register monthly and endorsing the same properly.

¹⁸ OIO no. Clubbing of 25 different OIOs issued during 09 January 2004 to 28 February 2005 (demand: ₹ 54.93 lakh)

¹⁹ Hyderabad-I, Vishakapatnam, Gwalior, Raipur, Jaipur

2.11 Functioning of Task Force for Recovery

2.11.1 Non-Formulation of Strategy by Zonal TAR

The Board constituted (August 2004) a Centralised Task Force (CTF) to co-ordinate, facilitate, monitor and oversee the efforts of Customs and Central Excise field formations, in recovery of arrears. CTF was entrusted with a vital task of reviewing the position of arrears of revenue of Central Excise and Customs and to finalise and implement the strategy for realisation of arrears, with the objective of meeting the targets. This strategy covers all cases before CESTAT, Commissioner (Appeals) and Settlement Commission. Apart from them, in respect of Commissioners' undisputed arrears, CTF was to formulate a collection strategy.

We observed that though the Task Force was entrusted with the finalising and implementing strategies for realisation of arrears, it did not take any such action for realization of arrears. This may be correlated with the fact that huge arrears were pending in CESTAT, due to indefinite timeline for stay, where the CTF had not finalised any planning and issued direction in this regard. As on March 2015, out of total arrears of ₹ 63,925.42 crore²⁰ (all zones), cases involving arrears of ₹ 44,747.82 crore, ₹ 1,485.15 crore and ₹ 77.07 crore were pending with CESTAT, Commissioner (Appeals) and Settlement Commission respectively which constituted 72.44 per cent of total arrears for recovery.

Even more the arrear of revenue is showing an increasing trend and recovery is decreasing as highlighted in the para 2.7.1.

When we pointed this out (January 2016), the Ministry stated (December 2016) that strategies have been formulated by the TAR, involving a number of initiatives and same are being followed by the Commissionerates and monitored by TAR. In respect of cases before legal entities, the Ministry stated that these are independent entities and departmental instruction can not override them.

The reply is not tenable as Audit has not insisted on directing the legal entities but preparing strategies to pursue the cases with legal entities, by way of request for early hearing, vacation of stay etc as envisaged in TAR functions.

²⁰ Source: Monthly Performance Report, TAR-CE-I, March 2015

2.11.2 Non-Maintenance of Relevant Records/Data at TAR

Maintenance of relevant data is the basis to formulate strategy and action plan to discharge functions effectively. To discharge its functions, envisaged by O.M. dated 11 August 2004, Zonal TARs are required to maintain data, relating to arrears of field formations under its jurisdiction.

We observed that in TAR Nagpur, the information could not be compiled, due to restructuring and shifting of office.

Information in respect of TAR Chennai and Vadodara were not provided by the Department.

Since the data was not made available, Audit could not comment on the working of these TARs.

We pointed these out in February 2016. The Ministry stated (December 2016) that restructuring of TAR has taken place in August 2015 shifting the responsibility of CC(TAR) to Director General of Performance Management (DGPM) and placing zonal nodal offices under Director General of Tax Payers Services (DGTPS). The transition was taking place at the time of Audit, due to which records could not be furnished to Audit.

Reply is not tenable as the Board should ensure that at the time of change management/transition, functioning of the Department is not hampered.

2.11.3 Non/Inadequate Inspection of the Commissionerates by TAR

OM No. F. No. 296/34/2004-CX 9 (PT), dated 11 August 2004, prescribes test check of the performance of the Commissionerates by initial inspection in all the Commissionerates in his charge and thereafter by periodical inspection/interaction with jurisdictional officers.

We observed (November 2015) that the Nodal Office Kolkata did not carry out any inspection during 2013-14, and only three Commissionerates were inspected, out of 19 Commissionerate, under its jurisdiction, in 2014-15.

Thus, the Nodal Officers, TAR Kolkata did not comply with the Board instructions for inspection of the Commissionerates under its jurisdiction.

Information in respect of TAR Chennai and Vadodara were not provided by the Department, and hence, we are not in a position to comment on working of TAR at Chennai and Vadodara.

We pointed these out (February 2016), the Ministry stated (December 2016) that inspection by nodal offices could not be carried out as there was shortage of staff due to restructuring/transition of TAR.

Reply is not tenable as the objection pertained to period 2012-13 to 2014-15 and restructuring took place in August 2015. Further, the Board should ensure that at the time of change management/transition, functioning of the Department is not hampered.

2.12 Conclusion

Recovery of arrears is not being given due importance despite the mounting arrears. Elaborate instructions of the Board regarding monitoring of arrears, taking effective steps like requesting for early disposal, bunching of cases, and prompt action on finalization of Appeals or vacation of stay to safeguard Government revenue are not being complied with. Special institutional arrangement like creation of Recovery Cells and Task force, have not made any significant impact on the recovery process. In the age of digital environment, the Board has failed to exploit the potential of IT for monitoring of arrears. Even after being pointed out, no accountability is being fixed in specific cases which can act as deterrent.