CHAPTER III
INCORRECT ASSESSMENT OF CUSTOMS DUTIES

A few cases of incorrect assessment of customs duties noticed in test check, having an implication of Rs. 10.50 crore, are described in the following paragraphs. These observations were communicated to the Ministry through 25 draft audit paragraphs. The Ministry/department has accepted (till January 2010) the audit observations in 18 draft audit paragraphs with revenue implication of Rs. 4.74 crore, of which Rs. 1.61 crore has been recovered.

3.1 Non levy of 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. Accordingly, anti-dumping duty was imposed from time to time on goods like colour picture tubes, PVC resin, Vitamin 'A' etc. when these were imported from specified countries like China, Korea, Malaysia, Thailand etc.

3.1.1 Audit scrutiny revealed that 43 consignments of such goods imported from these specified countries were cleared without levying of the applicable anti-dumping duty of Rs. 2.39 crore.

On the matter being pointed out, the Ministry/department admitted non-levying of entire anti-dumping duty of Rs. 2.39 crore and reported recoveries totalling Rs. 1.09 crore in respect of 18 consignments. The recovery status relating to the remaining 25 consignments has not been received (January 2010).

3.2 Unintended financial gain

In terms of section 46 read with section 48 of the Customs Act (CA), 1962, the importer is required to present a bill of entry (BE) in respect of imported goods unloaded for home consumption or for warehousing and take clearance of goods within thirty days from the date of unloading or within such extended time as the department may allow. The rate of duty and tariff valuation applicable to imported goods should be the valuation in force on the date of presentation of BE {section 15(1) of the CA, 1962}. The Central Board of Excise & Customs, New Delhi (Board) vide their circular dated 15 June 2001, directed that import of edible/food products should be allowed only after receipt of the test report from Public Health Organisation (PHO). Pending receipt of test report, such imports may be allowed to be stored in warehouses under section 49 of the aforesaid Act.

3.2.1 M/s Madhya Pradesh Glychem Industries and two others imported two vessels of edible grade Soyabean Oil and unloaded these at the Customs(Port), Kolkata between 2 March 2004 and 2 April 2004. On obtaining 'Pumping Guarantee Bond' the department permitted the importers to store the goods temporarily in a warehouse under section 49 of the CA Act, 1962, subject to production of mandatory fitness test certificates from PHO required for human

consumption of these goods. However, even after receipt of PHO certificate within 30 days from the date of unloading, the importers did not present any BE. Subsequently, after a lapse of 88 to 151 days, the importers presented 19 BEs (between 2 June and 30 August 2004) for taking clearance. The department assessed these goods in terms of section 15 (1) (a) of the CA, 1962, on the tariff rate of US $ 628 per tonne prevalent on the dates of presentation of the BEs (June-August 2004) rather than on the tariff rate (US $ 710 per tonne) prevalent during the period of thirty days from the dates of unloading of the imported goods (March-April 2004), applying the procedure prescribed under section 48 for clearance of non-warehoused goods. Belated action of the department, thus, enabled the importers to circumvent the provisions of temporary storage under section 49 without any valid reason, to submit BEs at later dates and clear the goods at reduced tariff value. This resulted in substantial financial gain of Rs. 1.78 crore due to undue delay in clearance of the imported goods.

On the matter being pointed out (May 2005), the department stated (September 2009) that the matter was being referred to the Board for clarification, since no mechanism had been prescribed in this regard.

Further, the Commissioner (Port) Kolkata during a meeting with the Audit authorities in January 2008 opined that the issue would be referred to the forthcoming Tariff Conference, as this had huge financial implication and was not commissionerate specific. The Commissioner further added that demands in this case could not be raised until a policy decision was taken on the issue. However, the case had not been taken up by them with the Board, till September 2009.

The reply of the Ministry has not been received (January 2010).

3.3 Non-recovery of drawback paid

As per Rule 16A (1) of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 read with section 8 of the Foreign Exchange Management Act, 1999 and Regulation 9 of the Foreign Exchange Management (Export of goods and services) Regulations, 2000, the amount representing the full export value of goods exported shall be realised and repatriated to India within six months from the date of exports. If the export proceeds have not been realised within the period allowed or any extended period, drawbacks sanctioned/disbursed to exporters shall be recovered in the manner prescribed in the rule.

3.3.1 Audit scrutiny of exports outstanding (XOS) statement for the half year ended 30 June 2008 received from RBI, Chandigarh and test check of drawback files in the office of the Assistant Commissioner, Container Freight Station, 'CONCOR' Ludhiana, revealed that the export proceeds in respect of 76 shipping bills for the period 2002-03 to 2007-08 were not realised even after a lapse of more than six months as prescribed in the rules. Accordingly, drawback amounting to Rs. 1.56 crore sanctioned/disbursed to the exporters was to be recovered as required under the aforesaid rules.

The matter was pointed out to the department in September 2008; its reply has not been received (January 2010).

The reply of the Ministry has not been received (January 2010).

3.4 Adoption of incorrect assessable value

As per section 14 of the CA,1962 read with rule 10 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, value of imported goods for assessment of customs duty shall be the value of such goods for delivery at the time and place of import and shall include (a) the cost of transport of the imported goods to the place of import (b) loading, unloading and handling charges incurred on delivery of the imported goods at the place of import and (c) the cost of insurance. Where the cost of freight and insurance is not ascertainable, such cost shall be 20 per cent and 1.125 per cent respectively of the free on board (FOB) value of the goods.

3.4.1 M/s Tata Steel Ltd. imported a second hand aircraft through Kolkata (Airport) commissionerate in August 2008. The assessable value of the aircraft computed was the invoice price of US $ 35,00,000 plus one per cent thereof as loading and unloading charges. However, the invoice price was not inclusive of the cost of freight and insurance and, therefore, it was to be added as per valuation rules to arrive at the correct assessable value. The correct value worked out to US$ 42,81,769. The incorrect computation of assessable value resulted in short levy of duty amounting to Rs. 72.80 lakh.

On the matter being pointed out (March 2009), the department reported (June 2009) issue of a demand notice to the importer for recovery of Rs. 72.80 lakh short levied. Further progress has not been intimated (January 2010).

The reply of the Ministry has not been received (January 2010).

3.4.2 M/s JBJ Perfumes Pvt. Ltd. and eight others imported various goods on FOB value basis through 'Inland container depot (ICD)', Tughlakabad, Delhi between December 2007 and July 2008, without declaring the cost of actual freight and insurance. As the cost of freight and insurance was not ascertainable at the time of assessment of duty, such cost should have been worked out in accordance with the aforesaid provision. The department assessed these goods without including the cost of freight and insurance in the assessable value which resulted in short levy of duty of Rs. 10.76 lakh.

The matter was reported to the department in September/December 2008; its reply has not been received (January 2010).

The reply of the Ministry has not been received (January 2010).

3.4.3 In terms of customs circular no. 65/2001 dated 19 November 2001, import duties are payable on the stores including fuel held by international carriers if they are diverted for operation in domestic sector.

M/s Air India and M/s Indian Airlines, operating flights in the domestic sector were paying customs duty on the stock of Aviation turbine fuel (ATF) held by them in the fuel tank on termination of international trips. Audit scrutiny revealed that while M/s Indian Airlines (assessee) adopted the basic price declared by the BPCL including excise duty for adjusting the rebate of central excise duty, a rate lower than the above rate (basic price) was taken for the purpose of custom duty calculation. The adoption of lower assessable value

by M/s Indian Airlines has resulted in short levy of customs duty of Rs. 23.25 lakh alongwith interest.

On the matter being pointed out (February 2008), the department issued (August 2008) show cause notice to M/s Indian Airlines. In response M/s India Airlines stated that the value adopted /charged by the BPCL is inclusive of tax, freight, other charges and profit margins of the BPCL which could not be included in the value for the purpose of assessment of duty.

The reply of M/s Indian Airlines is not tenable because in terms of Rule 4 of the Customs Valuation Rules, 1988, the transaction value of goods chargeable to duty of customs should be the price actually paid or payable for the goods when sold for export to India. Accordingly, the assessee should have adopted the basic price of ATF supplied by the BPCL.

3.5 Delay in finalisation of provisional assessments

In response to the recommendations contained in the 14th Report, 1996-97 of the Public Accounts Committee, the Board vide its circular dated 19 March 1998, directed that all cases of provisional assessment must be finalised within a period of six months from the date of issue of the order of provisional assessment. In case provisional assessment could not be finalised within six months, an extension of another six months could be granted by the Commissioner. Where assessment could not be finalised within a period of one year, a further extension could be granted for a period found reasonable by the Commissioner/Chief Commissioner depending on the merit of the case. However, the Commissioner/Chief Commissioner will monitor such cases.

3.5.1 M/s Shree Salasar Impex and three others imported five consignments of fabrics between January and August 2001 through Kolkata (Port) commissionerate and declared the goods as polyester fabric, which were provisionally classified and assessed under CTH 5407 61 on execution of test bonds. The results of composition tests, for which samples were sent to Customs House Laboratory at the time of assessment, revealed that the goods were 'knitted pile fabric' in one case, 'fabrics made up of polyester staple fibre' in three cases and 'fabrics made up of viscose staple fibre (dyed)' in the remaining case and were accordingly classifiable under CTH 6001 92 00, 5512 19 00 and 5516 12 00 respectively, involving higher duties. However, in spite of timely receipt of test results indicating liability of the importers to pay differential duties, the department failed to take any action for periods ranging from six to seven years. Moreover, the department has not acted upon an internal office note (October 2007) from the 'Special Intelligence Unit' of the commissionerate to pursue cases of realisable differential duty arising out of adverse test results, for generating additional revenue. This resulted in non-collection of duty amounting to Rs. 28.75 lakh and interest of Rs. 33.05 lakh up to December 2008.

On the matter being pointed out (June 2008), the department reported (June 2009) that in three cases, show cause notices had been issued (November 2008) to two importers demanding duty of Rs. 27.50 lakh and interest of Rs. 29.55 lakh (up to June 2008). Reply for the remaining two cases have not been received (January 2010).

The matter was reported (September 2009) to the Ministry; its reply has not been received (January 2010).

3.6 Short levy of education cess

Sections 91, 92 and 94 of Finance Act, 2004 imposed education cess at the rate of two per cent with effect from 9 July 2004. Further, sections 136, 137 and 139 of Finance Act, 2007 imposed secondary and higher education cess at the rate of one per cent from 1 March 2007. These cesses are levied on imports as duty of customs (education cess) at two stages namely (i) additional duty on customs (CVD) and (ii) total duties of customs comprising basic customs duty (BCD) and CVD plus education cess on CVD as at (i) above.

3.6.1 On imports of 573 consignments of various goods (galvanized plain/corrugated sheet of iron, galvanized iron wire, polyethylene sheets, lay-flat tubes, molasses etc.) by M/s Ever-growing Iron and Finvest Ltd. and others through Panitanki Land Customs Station under West Bengal (Preventive) commissionerate, between August 2006 and March 2008, the department allowed clearance of goods by levy of education cess on CVD only. The education cess on total duties of customs at aforementioned stage (ii) was, however, not levied. This resulted in short levy of Rs. 48.06 lakh.

On the matter being pointed out (July 2008), the department reported (April 2009) recovery of Rs. 9.45 lakh. Further progress has not been intimated (January 2010).

The reply of the Ministry has not been received (January 2010).

3.7 Incorrect assessment of High sea sale

As per rule 4(1) of the Customs Valuation Rules, 1988, transaction value of imported goods shall be the price actually paid or payable. As per public notice no. 145/2002 dated 3 December 2002, high sea charges are taken to be two per cent of the c.i.f. value as a general practice. However, in case the actual high-sea sale contract price is more than "c.i.f. value plus two per cent", then the actual contract price paid by the last buyer is taken as the value for the purpose of assessment. Further the Ministry of Finance, Central Board of Excise & Customs vide its circular no. 32/2004- cus dated 11 May 2004, reiterated that the high sea sale contract price paid by the last buyer would constitute the transaction value under Rule 4 of the Customs Valuation Rules,1988.

3.7.1 Audit scrutiny of records of Visakhapatnam Customs House and ICD, Hyderabad, revealed that M/s PEC Ltd. and two other importers sold their goods on high sea sale basis. The BEs were filed on the invoice values and duties were paid accordingly, even though the 'agreement value' was more than the invoice value. Thus, non-adoption of agreement value for the purpose of assessment resulted in short levy of Rs. 13.84 lakh.

On the matter being pointed out (August/October 2008), the Hyderabad II commissionerate reported (February/March 2009) recovery of the differential duty of Rs. 2.07 lakh including interest, in respect of two importers. The

Visakhapatnam commissionerate stated (January 2009) that the duty was correctly levied by considering service charges of 1.25 per cent for high sea sale charges. The commissionerate further added that the transaction value considered for the imported item was 171 US$ per metric ton (PMT) which includes insurance charges and 1.25 per cent service charges. The unit rate of 190 US$ PMT, based on which the audit pointed out the irregularity was actually a typographical error. The unit price considered by audit was not supported by any evidence that the buyer had paid the amount to the high-sea sale seller.

The fact remains that the service charges were incorrectly levied at the rate of 1.25 per cent instead of two per cent. This was communicated to the department in February 2009, calling for particulars of the payment made by the buyer for verification in audit. Its further response has not been received (January 2010).

The reply of the Ministry has not been received (January 2010).

3.7.2 Audit scrutiny of 39 consignments of imports made on high sea sale basis through Inland container depot (ICD), Tughlakabad, New Delhi revealed that duty on such imports was assessed by the department on invoice value instead of "high sea sale contract price". In all these consignments "the high sea sale contract price" was more than "the c.i.f. value plus two per cent high sea sale charges". This resulted in short levy of duty of Rs. 7.76 lakh

On the matter being pointed out (February 2008 to January 2009), the department reported recovery of Rs. 4.25 lakh in 12 consignments. The reply relating to the remaining 27 consignments has not been furnished (January 2010).

The reply of the Ministry has not been received (January 2010).

3.8 Non-adoption of specific rate of duty

Goods specified as assessable to duty both at ad valorem and specific rate are to be assessed at ad valorem or specific rate which is higher. Accordingly, "Uniforms, T-Shirts, Knitted under Pants, Ties, Fabrics, Gents knitted under wears, etc. classifiable under CTH 54, 55, 58, 60, 61 and 62 are assessable to BCD at ad valorem rate or specific rate whichever is higher.

3.8.1 M/s Jasleen Enterprises and 25 others, imported (May 2007 to February 2009), 29 consignments of aforesaid goods, valued at Rs. 39.02 lakh through Chennai (Sea) commissionerate. Some of these consignments were assessed to customs duty at ad valorem rate instead of specific rate and in respect of other consignments incorrect units were adopted for calculation of the duty at the specific rate. This resulted in short collection of duty of Rs. 16.69 lakh.

On the matter being pointed out (October 2007, January 2008, May 2008 and March 2009), the department reported (December 2007 to March 2009) recovery of Rs. 10.19 lakh alongwith interest of Rs. 0.68 lakh in respect of 15 BEs. Further progress in the cases has not been intimated (January 2010).

The reply of the Ministry has not been received (January 2010).

3.9 Over assessment of customs duty on exports

Education cess of two per cent, imposed from 9 July 2004 vide sections 91, 92 and 94 of the Finance Act, 2004, and Secondary and Higher Education cess of one per cent, imposed from 1 March 2007 vide sections 136, 17 and 19 of the Finance Act, 2007, are both leviable on goods specified in the First Schedule to the Customs Tariff Act, 1975, when imported into India.

3.9.1 Scrutiny of records at Custom House, Paradeep, under the Bhubaneshwar-I commissionerate revealed that Education cess and the Secondary and Higher Education cess were being levied and collected not only on imports, but on all exports too, although export goods are specified in the Second Schedule to the Customs Tariff, and hence do not attract such levies. Incorrect levy and collection of such cess on export goods during the period from July 2004 to January 2009 amounted to Rs. 1.37 crore.

On the matter being pointed out (February 2009), the department stated (March 2009) that it was being done to safeguard Government revenue as the same practice was being followed by the Kolkata commissionerate. Subsequently, while admitting the collection of education cess inadvertently, it stated (August 2009) that the education cess had been levied on the export cess as duty of excise on the aggregate of duties of customs leviable under section 3 of the 'Iron ore Mines, Manganese ore Mines and Chrome ore Mines labour welfare Cess Act, 1976' read with sections 91, 93 and 94 of the Finance Act, 2004 and section 12 of the Customs Act, 1962.

The reply is not tenable because the levies are not backed by any legal sanction. Further, cess under the above mentioned Cess Act, 1976 is leviable as duty of excise only when such ore is used in or sold or otherwise disposed off to any metallurgical factory. Since the goods were specified in the second schedule and cleared for export, they were outside the scope of such levy under the existing provision.

This was reported (September 2009) to the Ministry; its response has not been received (January 2010).

3.10 Excess levy of anti-dumping duty

As per notification no. 96/2001-cus dated 25 September 2001, anti dumping duty was to be imposed on import of sport shoes from China at a rate of the difference between US$ 12.9 per pair and landed value of such import in US$ per pair. However, in terms of clause (5) under section 9A of the Customs Tariff Act, 1975, the anti dumping duty imposed shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of such imposition.

3.10.1 M/s Adidas India Marketing Pvt. Ltd. and M/s Sanspareils Greenland Pvt. Ltd. imported 26,655 pair of sport shoes from China at a combined assessable value of Rs. 1.05 crore during February to August 2008 through ICD, Tughlaqabad and ICD, Patparganj, Delhi. The department levied anti dumping duty of Rs. 27.46 lakh thereon as per the aforesaid notification. Audit scrutiny revealed that as the anti dumping duty was not revoked earlier, the above notification was effective upto 24 September 2006 only and

accordingly, the anti dumping duty on these imports should not have been levied. The omission resulted in excess levy of duty of Rs. 27.46 lakh.

On the matter being pointed out (October/November 2008), the Assistant Commissioner, ICD, Tughlaqabad, New Delhi while accepting the observation stated (July 2009) that importer could claim refund of excess duty paid.

The reply of the Ministry has not been received (January 2010).

3.11 Excess grant of reward

As per Board circular no. 13011/3/85-Ad.V dated 30 March 1985, informers and Government Servants are eligible for rewards of up to 20 per cent of the estimated market value of the contraband goods seized. The Board in their circular dated 9 September 1985 clarified that the maximum limit of reward payable would apply separately to the two categories i.e, the informers and the Government servants. However, as per revised guidelines issued in June 2001, the original provisions relating to ceiling for reward amount provided in the earlier guidelines of March 1985, were retained, but after excluding the word 'each' in respect of the informers and the Govt. servants separately. The maximum reward in case of seized 'Ganja' (narcotic drug) is Rs. 80 per kilogram, which is 20 per cent of the illicit price of Rs 400.

3.11.1 In the Shillong commissionerate, rewards amounting to Rs. 24.97 lakh were sanctioned between February 2007 and August 2008, for seizures of 16,337 kilogram of 'Ganja' made between September 2006 and October 2007. The amount of reward payable for disbursement was worked out by applying the rate of Rs. 80 per kilogram for the informers and another Rs. 80 per kilogram for the Government servants separately, instead of limiting it to Rs .80 per kilogram for both informers and Government Servants collectively. This resulted in grant of excess reward to the tune of Rs. 11.90 lakh.

On the matter being pointed out (November 2008), the department justified sanction of reward stating (December 2008/March 2009) that although the ceiling of reward, as mentioned in the revised guidelines, did not explicitly specify that the rates were separate for the informers and the Government Servants, it could be inferred from subsequent paragraphs 4.3 and paragraph 13 of these guidelines, that the rates were to be considered separately and that similar practice was followed by other customs commissionerates.

The department's reply is not tenable because paragraph 4.3 deals with quantum of reward to Government servants in extraordinary circumstances, while paragraph 13 deals with undertaking to be taken from the informers. These provisions, therefore, could not be taken as sufficient grounds for sanctioning rewards in excess of the ceiling specified in paragraph 4.1. The fact remains that as long as the existing provisions of paragraph 4.1 of the revised guidelines remain in force, the department should be guided by these while determining the ceiling for grant of rewards.

The reply of the Ministry has not been received (January 2010).

3.12 Other cases

In four other cases of short levy of Rs. 45.95 lakh due to application of incorrect rate of exchange and incorrect adoption of quantity imported, the department had accepted (till January 2010) all the audit observations and reported recovery of Rs. 24.64 lakh (January 2010).