PREFACE

This Report for the year ended March 2010 has been prepared for submission to the President of India under the Article 151(1) of the Constitution of India.

Audit of Revenue Receipts – Indirect Taxes of the Union Government is conducted under section 16 of the Comptroller and Auditor General of India (Duties, Powers and Conditions of Service) Act, 1971.

The Report presents the results of audit of receipts of central excise duties.

The observations included in this Report have been selected from the findings of the test check conducted during 2009-10, as well as those which came to notice in earlier years but were not included in the previous Reports.

EXECUTIVE SUMMARY

This Report contains 55 paragraphs, with a revenue implication of ₹ 250.71 crore. We had issued another 95 paragraphs involving money value of ₹ 77.06 crore to the department/Ministry on which rectificatory action was taken in the form of issuing of show cause notices, adjudicating of show cause notices and recovery of ₹ 29.12 crore. A few significant findings included in this Report are mentioned in the following paragraphs:-

Chapter I: Central Excise Receipts

- **In the last five audit reports (including the current year's report), we had included 664 audit paragraphs involving ₹ 3,807.85 crore. Of these, the Government had accepted audit observations in 481 audit paragraphs involving ₹ 2,687.21 crore and had recovered ₹ 187.48 crore.**

{Paragraph 1.10.1}

Chapter II: Valuation of excisable goods

- **Instances of undervaluation due to non-inclusion of additional consideration in the value, incorrect determination of cost of excisable goods, valuation on the basis of retail sale price, excisable goods not being fully valued, non-inclusion of freight and other charges, etc., were noticed. Duty levied short in these cases amounted to ₹ 101.86 crore.**

{Paragraphs 2.1 to 2.6}

Chapter III: Cenvat credit

- **Cases of separate accounts for common inputs used in dutiable/exempted goods not maintained, availing of cenvat credit on ineligible capital goods, availing of cenvat credit on inadmissible input services, availing of cenvat credit for service tax paid on non-taxable services, availing of credit on the basis of invalid documents, availing of credit on goods not received back from job workers, suo-moto availing of cenvat credit etc., were noticed in audit. Duty involved in these cases was ₹ 91.45 crore.**

{Paragraphs 3.1 to 3.10}

Chapter IV: Exemptions

- **Duty of ₹ 3.23 crore was not levied due to incorrect grant of exemptions.**

{Paragraphs 4.1 to4.3}

Chapter V: Non-levy of interest

- **Interest of ₹ 3.08 crore was not levied in a few cases of delayed payment of duty.**

{Paragraphs 5.1 to 5.3}

Chapter VI: Non-levy/short levy of duty

- **Duty of ₹ 1.04 crore was not levied on aluminium dross, on delayed payment of duty on due dates and duty not paid on goods cleared for remaking.**

{Paragraphs 6.1 to 6.3}

Chapter VII: Miscellaneous topics of interest

- **Cases of incorrect determination of assessable value on petroleum products, Non-levy/payment of cess on cement and demands not raised were noticed in audit. Duty implication in these cases was ₹ 50.05 crore.**

{Paragraphs 7.1 to 7.3}

CHAPTER I
CENTRAL EXCISE RECEIPTS

1.1 Results of audit

This Report contains 55 paragraphs, featured individually or grouped together, arising from test check of records maintained in departmental offices and premises of the manufacturers. The revenue implication of these paragraphs is ₹ 250.71 crore. In addition to these, we had also issued 95 paragraphs for the audit conducted up to March 2010. The department/Ministry had already taken rectificatory action involving money value of ₹ 77.06 crore in these 95 paragraphs in the form of issuing of show cause notices, adjudicating show cause notices and recovery of ₹ 29.12 crore. We have recommended that the Board may give clarification on two issues raised in paras 5.1 and 6.1 as commissionerates are differing in the interpretation of the provisions.

1.2 Budget estimates, revised budget estimates and actual receipts

The budget estimates, revised estimates and actual receipts of central excise duties during the years 2005-06 to 2009-10 are exhibited in the following table and graph:-

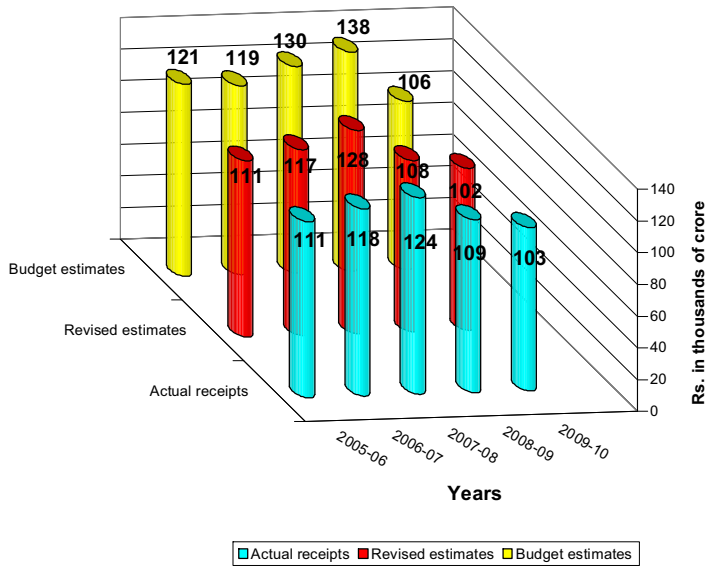
Table no. 1

(Amounts in crore of ₹)

Year	Budget estimates	Revised estimates	Actual receipts*	Difference between actual receipts and budget estimates	Percentage variation
2005-06	1,20,768	1,11,006	1,11,226	(-) 9,542	(-) 7.90
2006-07	1,19,000	1,17,266	1,17,613	(-) 1,387	(-) 1.17
2007-08	1,30,220	1,27,947	1,23,611	(-) 6,609	(-) 5.07
2008-09	1,37,874	1,08,359	1,08,613	(-) 29,261	(-) 21.23
2009-10	1,06,477	1,02,000	1,02,991	(-) 3,486	(-) 3.27

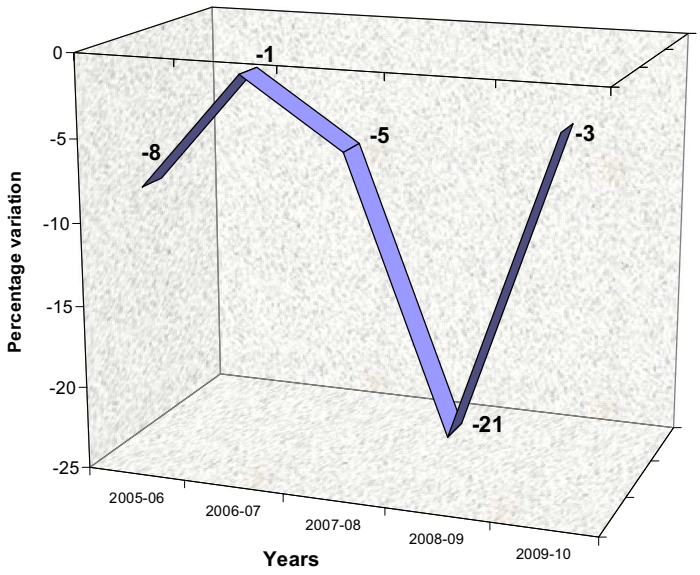
* Figures as per the Finance Accounts

Graph 1: Central Excise Receipts - Budget, Revised and Actual



While during the period 2005-06 to 2007-08 the variation between the actual collections and the budget estimates was within 10 per cent, this was significantly higher at 21 per cent during 2008-09. In 2009-10 the variation between the actual collection and the budget estimates came down to 3.27 per cent. The percentage variation between the actual receipts and the budget estimates during the years 2005-06 to 2009-10 is depicted in the following graph: -

Graph 2: Percentage variation of actual receipts over budget estimates



1.3 Value of output vis-à-vis central excise receipts

The values of output** from the manufacturing sector vis-à-vis receipt of central excise duties through personal ledger account (cash collection) during the years 2005-06 to 2009-10 were as mentioned in the following table and graph:-

Table no. 2

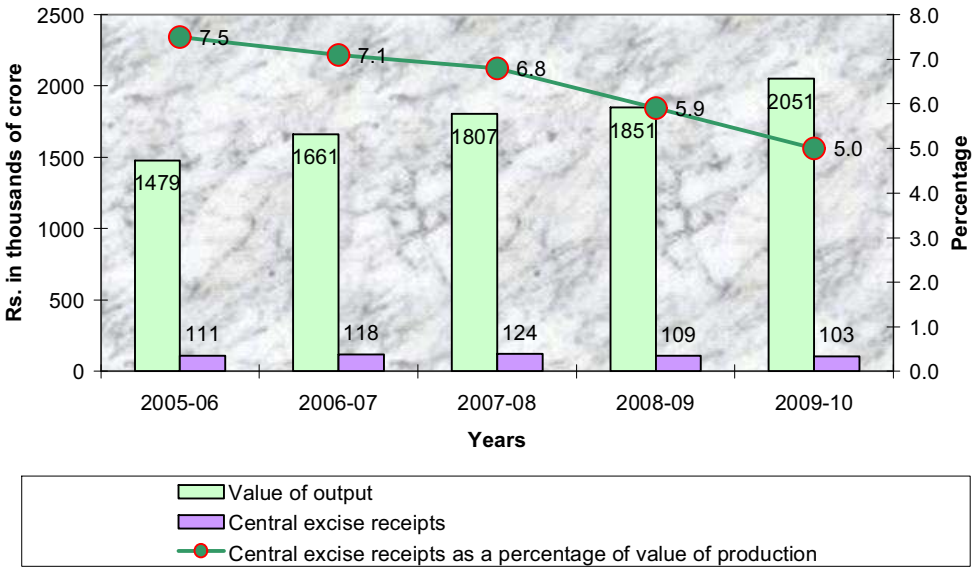
(Amounts in crore of ₹)

Year	Value of output*	Central excise receipts	Central excise receipts as a percentage of value of production
2005-06	14,79,338	1,11,226	7.52
2006-07	16,61,297	1,17,613	7.08
2007-08	18,07,491	1,23,611	6.84
2008-09	18,50,871	1,08,613	5.87
2009-10	20,50,765	1,02,991	5.02

* Estimated figure, Source: Central Statistical Organisation, Government of India.

**Includes value of all goods produced during the given period including net increase in work-in-progress and products for use on own account. Valuation is at producer's values that is the market price at the establishment of the producers. As separate figures of value of production by small scale industry units and for export production were not available, these have not been excluded from the value of output indicated.

Graph 3: Central excise receipts and value of production



The foregoing table reveals that value of output had increased by a factor of 1.39 during the years 2005-06 to 2009-10 and the corresponding increase in the central excise receipts was by a factor of 1.11 up to 2007-08 and it was decreased by a factor of 0.9 in 2008-09 and 2009-10. Accordingly, the central duties had generally kept steady pace with the value of output except for 2008-09 and 2009-10 when there was reduced growth in receipts compared to 2007-08 and 2008-09.

1.4 Central excise receipts vis-à-vis cenvat credit utilised

A comparative statement showing the details of central excise duty paid in cash through personal ledger account (PLA) and through cenvat credit account during the years 2005-06 to 2009-10 is given in the following tables and graphs: -

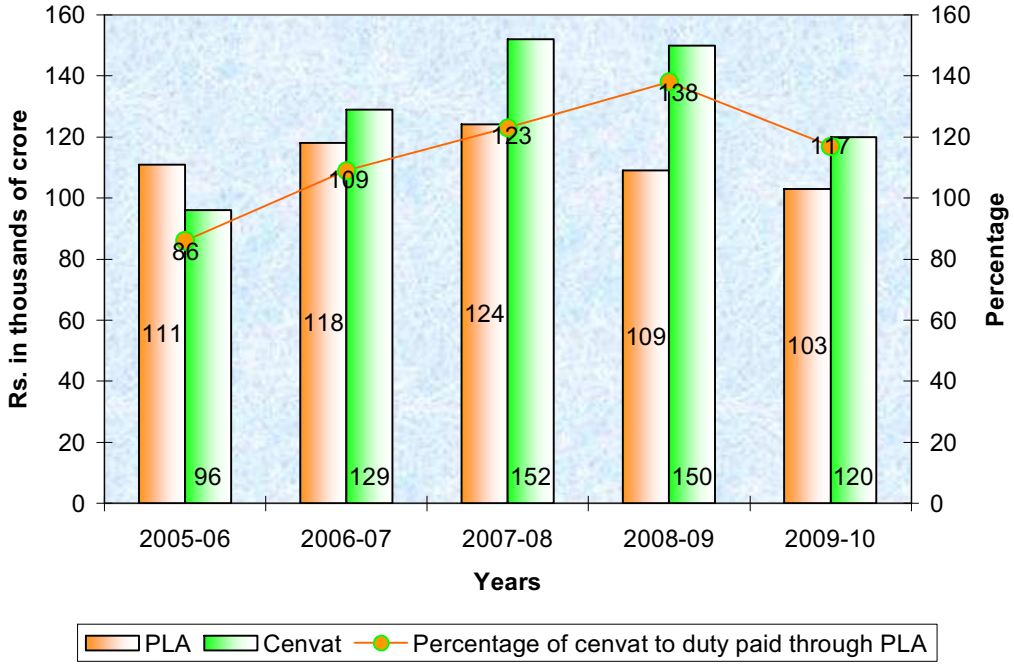
Table no. 3

(Amounts in crore of ₹)

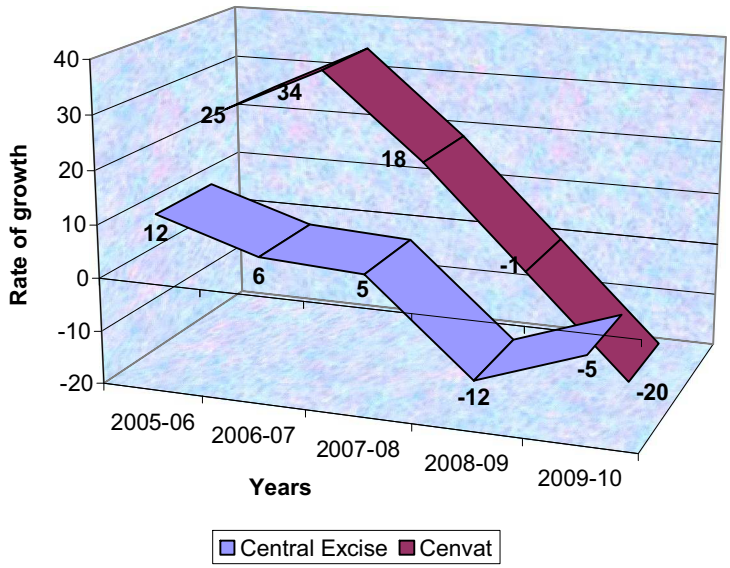
Year	Central excise duty paid through PLA		Central excise duty paid through cenvat credit*		Percentage of cenvat to duty paid through PLA
	Amount	Percentage increase	Amount	Percentage increase	
2005-06	1,11,226	12.21	96,050	25.29	86.36
2006-07	1,17,613	5.74	1,28,698	33.99	109.42
2007-08	1,23,611	5.10	1,52,210	18.27	123.14
2008-09	1,08,613	(-) 12.14	1,50,361	(-) 1.21	138.44
2009-10	1,02,991	(-) 5.30	1,19,982	(-) 20.20	116.50

* Figures furnished by the Ministry of Finance

Graph 4: Central excise receipts (PLA) and Cenvat



Graph 5: Rate of growth of Central excise receipts (PLA) and Cenvat



Thus, while actual central excise receipts (in cash) had gone down by 7 per cent during the years 2005-06 to 2009-10, duty payment through cenvat during the same period was more at 25 per cent. Percentage of cenvat to duty paid by cash, increased constantly during the years 2005-06 to 2008-09 and decreased

in 2009-10. We have reported on the misuse of the cenvat credit scheme in chapter III of this report and in similar chapters in earlier years' audit reports.

1.5 Cost of collection

The expenditure incurred during the year 2009-10 in collecting central excise duty alongwith the corresponding figures for the preceding four years is given in the following table and graph:-

Table no. 4

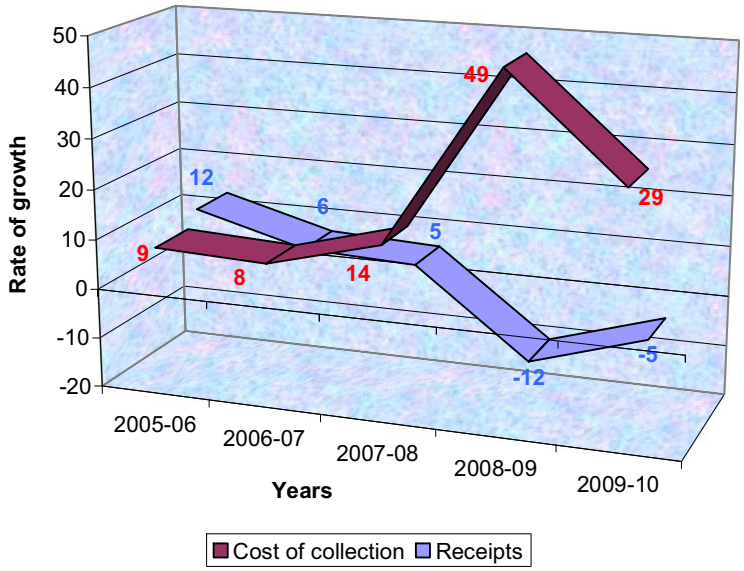
(Amounts in crore of ₹)

Year	Receipts from excise duty		Expenditure on collection$		Cost of collection as a percentage of receipts
	Amount	Percentage increase over the previous year	Amount*	Percentage increase over the previous year	
2005-06	1,11,226	12.21	901.02	9.10	0.81
2006-07	1,17,613	5.74	974.49	8.15	0.83
2007-08	1,23,611	5.10	1,107.28	13.62	0.90
2008-09	1,08,613	(-) 12.14	1,650.27	49.04	1.52
2009-10	1,02,991	(-) 5.18	2,126.97	28.89	2.07

* Figures as per the Finance Accounts

$ Expenditure figures include expenditure incurred for collection of service tax as separate figures for these are not maintained by the Ministry

Graph 6: Percentage growth in central excise receipts and cost of collection



1.6 Outstanding demands

The number of cases and amounts involved in demands* for excise duty outstanding for adjudication/recovery as on 31 March 2009 and 31 March 2010 are mentioned in the following table:-

Table no. 5

(Amounts in crore of ₹)

Pending decision with	As on 31 March 2009				As on 31 March 2010			
	Number of cases		Amount		Number of cases		Amount	
	More than five years	Less than five years	More than five years	Less than five years	More than five years	Less than five years	More than five years	Less than five years
Adjudicating officers	311	13,048	32.74	11,811.85	15	14,242	4.89	12,649.62
Appellate Commissioners	354	6,982	262.61	1,725.56	440	6,361	60.87	3,373.74
Board	2	26	10.90	2.50	19	10	12.99	17.65
Government	70	272	58.43	99.85	9	181	0.17	32.07
Tribunals	1,779	8,671	3,172.03	15,969.04	2,213	10,423	4,705.67	92,376.17
High Courts	697	1,253	510.82	761.87	982	1,631	1,035.83	14,613.45
Supreme Court	129	212	2,350.34	938.84	169	212	588.78	5,292.60
Pending for coercive recovery measures	5,611	6,617	5,277.73	7,906.00	5,713	8,037	2,008.62	3,352.44
Total	**8,953**	**37,081**	**11,675.60**	**39,215.51**	**9,560**	**41,097**	**8,417.82**	**1,31,707.74**

* Figures furnished by the Ministry

A total of 50,657 cases involving duty of ₹ 1,40,125.56 crore were pending as on 31 March 2010 with different authorities, of which 28 per cent in terms of number were with the adjudicating officers of the department.

1.7 Fraud/presumptive fraud cases

The position of fraud/presumptive fraud cases** alongwith the action taken by the department against the defaulting assessees during the period 2007-08 and 2009-10 is shown below:-

Table no. 6

(Amounts in crore of ₹)

Year	Cases detected		Demand of duty raised	Penalty imposed		Duty collected	Penalty collected	
	Number	Amount	Amount	Number	Amount	Amount	Number	Amount
2007-08	1,021	950.88	775.63	292	137.59	157.98	105	0.93
2008-09	1,161	1,433.91	968.68	133	93.36	81.12	43	0.30
2009-10	1,284	1,691.15	1,515.55	127	35.49	97.55	43	0.19
Total	**3,466**	**4,075.94**	**3,259.86**	**552**	**266.44**	**336.65**	**191**	**1.42**

** Figures furnished by the Ministry

The foregoing table indicates that while a total of 3,466 cases of fraud/presumptive fraud were detected during the years 2007-10 by the

department involving duty of ₹ 4,075.94 crore, it raised a demand of ₹ 3,259.86 crore and recovered ₹ 336.65 crore (10.33 per cent) out of it. Similarly, out of a penalty of ₹ 266.44 crore that was imposed, the department could recover only ₹ 1.42 crore (0.53 per cent).

1.8 Commodities contributing major revenue

Commodities which yielded revenue* of more than ₹ 1,000 crore during 2009-10 alongwith corresponding figures for 2008-09 are mentioned in the following table:-

Table no. 7

(Amounts in crore of ₹)

Sl. No.	Budget head	Commodity	2008-09 (Actual)	2009-10 (Actual)	Percentage variation of actual over previous year	Percentage share in total collection
1.	34	Motor spirit	21,074.74	24,809.46	17.72	24.12
2.	36	Refined diesel oil	21,536.77	23,130.05	7.40	22.49
3.	40	All other mineral oils and products falling under chapter 27	13,472.49	12,510.37	(-) 7.14	12.16
4.	27	Cigarettes and cigarillos of tobacco or tobacco substitutes	9,310.24	9,555.67	2.64	9.29
5.	102	Iron and steel	14,112.19	8,479.16	(-) 39.92	8.24
6.	31	Cement	6,483.93	5,185.10	(-) 20.03	5.04
7.	128	Motor cars and other motor vehicles for transport of persons	2,326.80	3,958.34	70.12	3.84
8.	30	All other falling under chapter 24	2,584.95	2,745.96	6.23	2.67
9.	38	Furnace oil	2,135.33	2,445.72	14.54	2.38
10.	119	All other machinery, articles and tools falling under chapter 84	2,282.63	1,876.01	(-) 17.81	1.82
11.	130	All other motor vehicles including two wheelers	1,614.05	1,537.29	(-) 4.76	1.49
12.	61	Plastic and articles thereof	2,075.78	1,354.86	(-) 34.73	1.32
13.	103	Articles of iron and steel	1,753.27	1,306.62	(-) 25.48	1.27
14.	17	Cane or beet sugar and chemically pure sucrose in solid form	1,455.58	1,278.21	(-) 12.19	1.24
15.	29	Chewing tobacco	916.62	1,062.04	15.86	1.03

*** Figures furnished by the Ministry.**

The above table reveals that in eight out of 15 commodities, the collection of revenue during 2009-10 had gone down by 39.92 to 4.76 per cent. A substantial dip in revenue was noticed in 'iron and steel' (- 39.92 per cent) 'plastic and articles thereof' (- 34.73 per cent), 'articles of iron and steel' (- 25.48 per cent) and 'cement' (- 20.03 per cent).

1.9 Remission of revenue

Central excise duty remitted and written off* due to various reasons for the years 2008-09 and 2009-10 is shown in the following table:-

Table no.8

(Amounts in crore of ₹)

		2008-09		2009-10	
		Number of cases	**Amount**	**Number of cases**	**Amount**
Remitted due to :					
(a)	Fire	2	0.09	10	2.38
(b)	Flood	3	0.20	0	0.00
(c)	Theft	0	0.00	0	0.00
(d)	Other reasons	397	0.42	54	0.85
Written off due to :					
(a)	Assessees having died leaving behind no assets	7	0.10	5	0.41
(b)	Assessees untraceable	88	4.70	36	0.25
(c)	Assessees left India	0	0.00	0	0.00
(d)	Assessees incapable of payment of duty	8	0.08	3	0.01
(e)	Other reasons	57	4.04	23	0.49
Total		**562**	**9.63**	**131**	**4.39**

* Figures furnished by the Ministry

1.10 Impact of audit reports

1.10.1 Revenue impact

During the last five years (including the current year's report), the audit reports had included 664 audit paragraphs involving central excise duty totalling ₹ 3,807.85 crore. Of these, the Government had accepted audit observations in 481 audit paragraphs involving ₹ 2,687.21 crore and had recovered ₹ 187.48 crore. The details are shown in the following table:-

Table no. 9

(Amounts in crore of ₹)

Year of Audit Report	Paragraphs included		Paragraphs accepted and /or rectificatory action taken						Recoveries effected					
			Pre printing		Post printing		Total		Pre printing		Post printing		Total	
	No.	Amount	No.	Amount	No.	Amount	No.	Amount	No.	Amount	No.	Amount	No.	Amount
2005-06	124	1,410.39	89	1,315.73	9	10.27	98	1,326.00	35	25.97	29	19.94	64	45.91
2006-07	152	1,195.36	118	57.30	5	998.81	123	1,056.11	59	23.57	26	13.47	85	37.04
2007-08	163	717.49	104	156.27	20	36.88	124	193.15	41	43.13	7	4.18	48	47.31
2008-09	75	156.84	41	48.30	4	1.58	45	49.88	24	27.59	1	0.51	25	28.10
2009-10	150	327.77	91	62.07	--	--	91	62.07	55	29.12	--	--	55	29.12
Grand Total	**664**	**3807.85**	**443**	**1639.67**	**38**	**1047.54**	**481**	**2687.21**	**214**	**149.38**	**63**	**38.10**	**277**	**187.48**

1.10.2 Amendment to Act/Rules

The Government made an amendment to Act/Rules addressing the concerns raised by audit through audit reports. The amendment has been briefly mentioned in the following table:-

Table no.10

Reference of audit report (AR) paragraph	Issue raised in audit	Amendment to Act/Rules etc.
Paragraph 3.3 of AR no. 11 of 2002	Failure to amend Rubber Act – The Rubber Board decided to levy interest at the rate of 12 per cent per annum on all arrears of excise duty (cess) on rubber, effective from April 1988. A check of records of the Rubber Board disclosed that they neither realised the cess up to 1998-99 nor the interest was collected on it. The Rubber Board stated that in the absence of enabling provisions in the Rubber Act/Rules, Board was not in a position to collect the interest effectively.	The Rubber (Amendment) Act, 2009 was passed by the Parliament and notified as Act 4 of 2010 on 22nd January 2010. As per the amendment, sub section (3) of section 12 of the Rubber Act, 1947 every owner, exporter or the manufacturer, as the case may be, shall pay the duty of excise to the Board in the manner and for the period referred to in sub section (4) and, if he fails to do so, the duty may be recovered with the cost of collection and interest at such rates, as may be prescribed, from the owner, exporter or the manufacturer, as the case may be, as an arrear of the land revenue". Subsequently the Rubber Rules 1955 has been amended and notified as Rubber (Amendment) Rule, 2010 vide notification GSR No.704 (E) dated 25 August 2010. In the said amendment, as per sub rule (2) of Rule 33D, if any manufacturer fails to pay the amount due under sub rule (1) above within the time prescribed, he shall pay interest at such rate as may be fixed by the Board not exceeding two per cent per month from the date of default till the date of its remittance.

1.11 Follow-up on audit reports

Public Accounts Committee, in their Ninth Report (Eleventh Lok Sabha) desired that remedial/corrective action taken notes (ATNs) on all paragraphs of the Reports of the Comptroller and Auditor General, duly vetted by audit, be submitted to them within a period of four months from the date of the laying of the audit report in Parliament.

Review of outstanding action taken notes on paragraphs relating to central excise contained in earlier audit reports on indirect taxes indicated that the Ministries had not submitted remedial action taken notes on 31 paragraphs. The delay in response in these cases ranged from four months to 77 months. Summarised position of outstanding action taken notes is depicted in the following table:-

Table no.11

No. of ATNs pending	Related audit paragraph and audit report	Name of the Ministry
6	12.1 of 11 of 2004, 11.3 of 11 of 2005, 15.2 of 7 of 2007, 8.2 of CA 7 of 2008, 7.3 (001C, 002C) of CA 20 of 2009-10	Ministry of Commerce and Industry
4	8.1 (37, 169, 221, 248) of CA 7 of 2008	Ministry of Textiles
21	3.4.1, 3.18 of CA 20 of 2009-10 and 3.1.3, 3.1.5, 3.2.1(58, 124), 3.2.2, 3.2.3, 3.4.1, 3.4.2, 4.1.1, 4.1.2, 4.2, 4.5, 5.1.1, 5.1.3, 5.1.5, 6.3, 7.2, 7.3, 7.5 of 12 of 2009-10	Ministry of Finance

CHAPTER II
VALUATION OF EXCISABLE GOODS

Duty at ad valorem rates is charged on a wide range of excisable commodities. Valuation of such goods is governed by section 4 of the Central Excise Act, 1944, read with the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. Valuation with reference to the retail sale price in respect of specified excisable goods is governed by section 4A of the above Act. A few cases of short levy of duty due to incorrect valuation involving revenue of ₹ 101.86 crore, are illustrated in the following paragraphs. These observations were communicated to the Ministry through 14 draft audit paragraphs. The department had accepted (till December 2010) the audit observations in 2 draft audit paragraphs with a revenue implication of ₹ 1.83 crore.

2.1 Non-inclusion of additional consideration in value

Section 4(3)(d) of the Central Excise Act, 1944 stipulates that transaction value of goods chargeable to central excise duty would not include the amount of duty of excise, sales tax and other taxes, actually paid or actually payable on such goods.

The Board had clarified (30 June 2000) that tax deferred at the time of transaction and subsequently held as not payable was not deductible from the assessable value. The CEGAT, in the case of M/s. Andhra Oxygen Pvt. Ltd. v/s CCE (Tribunal-Kolkata) {2003 (156) 239} held that sales tax collected from buyers and not paid to the sales tax department when it was exempted under the Sales Tax Act, would be considered as additional consideration flowing to the assessees. Rule 6 of the Central Excise Valuation Rules, 2000 stipulates that in cases where price was not the sole consideration, the assessable value should be based on the aggregate of the price and money value of the additional consideration flowing directly or indirectly from the buyer to the assessee.

2.1.1 The Government of Maharashtra introduced the package incentive scheme for deferred payment of sales tax whereby the assessee was allowed to collect sales tax from the buyer and retain it and repay it after a prescribed period of deferral. The Government of Maharashtra further amended the provisions of Sales Tax Act and issued a notification in November 2002 providing additional incentive for premature repayment of deferred sales tax liability.

M/s Ispat Industries in Raigarh, M/s Thyssen Krupp Electrical Steel India Pvt. Ltd., in Nasik, M/s Endurance Technologies Pvt. Ltd., in Pune I, M/s Guardian Steels Pvt. Ltd., in Thane I, M/s Hi-Tech Plast Ltd., in Pune III commissionerates, engaged in the manufacture of various excisable goods, opted for premature payment of sales tax during the years 2007-09 under the aforesaid scheme. The records of the assessees indicated that they had received cumulative discount of ₹ 718.77 crore due to premature/prepayment of sales tax liability accrued at net present value. Sales tax amount collected

but not paid to the Government was an additional income and was liable to be added to the assessable value. Non-inclusion of this additional income resulted in short levy of duty of ₹ 97.45 crore which was recoverable with interest.

We pointed this out to the department/Ministry between April 2010 and October 2010; their reply had not been received (December 2010).

The Ministry had admitted the audit observation in similar cases reported in Para 3.2.1 of Audit Report No.12 of 2009-10.

2.1.2 The Government of Andhra Pradesh provided certain incentive schemes for deferred payment of sales tax whereby the assessee was allowed to collect sales tax from the buyer and retain it and repay it after prescribed period. Further, the Government, provided additional incentive for premature payment of deferred sales tax liability at discount rate based on the Net Present Value (NPV) factor.

Twelve assessees, in Guntur, Hyderabad I, II, III, IV, Tirupathi and Visakhapatnam I commissionerates, engaged in the manufacture of various excisable goods, opted for premature payment of sales tax liability of ₹ 17.61 crore between the years 1995-96 and 2007-08 under the above mentioned scheme on which the Government allowed discount of ₹ 5.25 crore. The difference between the actual sales tax collected from the customers and the payment made at discounted rate on the NPV, thus, became additional income to the assessees and was liable to be added to the assessable value. The non-inclusion of this additional income in assessable value resulted in short levy of duty of ₹ 83.64 lakh.

When we pointed this out (between September 2009 and March 2010), the department accepted the audit observation in one case and reported (March 2010) that show cause notice was under issue. In respect of two other assessees, the department stated (May and June 2010) that the discount given by the Government could not be considered as additional consideration to the assessee in terms of section 4(3)(d) and interest earned on prepayment of deferred sales tax by the manufacturer was not a benefit extended by the buyer to the seller and hence cannot be treated as additional consideration in terms of Board circular dated 4 December 2002.

The reply of the department is not acceptable because the discount was actually the amount already collected by the assessees in the form of sales tax from the buyer but not paid to Government and hence retained in the form of additional consideration. Therefore, duty was required to be paid thereon. Reply in respect of other assessees were awaited (October 2010).

The reply of the Ministry had not been received (December 2010).

2.2 Incorrect determination of cost of excisable goods

Rule 8 read with proviso to rule 9 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 envisages that where excisable goods are not sold by the assessee but are consumed by it or by a related person of the assessee in the manufacture of other articles, the assessable value of such goods shall be one hundred and ten per cent of the

cost of production or manufacture of such goods. Further, the Board had clarified (13 February 2003) that the value of goods consumed captively should be determined in accordance with the Cost Accounting Standard (CAS-4) method only.

2.2.1 M/s Indian Oil Corporation Ltd., (RD) in Haldia commissionerate, engaged in manufacture of petroleum products, cleared intermediate goods viz. straight run gas oil (SRGO) to its sister concern M/s IOCL, Barauni refinery for further use in production of excisable goods. The assessee cleared 11,019.522 tonne of SRGO paying duty on a value which was lower than the value on which duty should have been paid. We observed that the assessee arbitrarily adopted the cost of furnace oil as assessable value of SRGO, instead of determining the value as stipulated in the rule 8. This resulted in short levy of duty of ₹ 1.60 crore during the year 2007-08.

When we pointed this out (September 2008), the department admitted the audit observation and reported (May 2010) that the show cause cum demand notice was under issue.

The reply of the Ministry had not been received (December 2010).

2.2.2 M/s Patil Steel Wire Pvt. Ltd., in Hyderabad IV and M/s Vacmet Packaging Pvt. Ltd., in Lucknow commissionerates, engaged in the manufacture of various excisable goods cleared goods to its sister concern paying duty on the assessable value arrived at on cost data without adding 10 per cent of the profit margin. This resulted in undervaluation of goods of ₹ 4.55 crore with consequential short levy of duty of ₹ 76.94 lakh during the period of April 2006 to March 2009.

When we pointed this out (between September and November 2009), the department stated (between February and March 2010) that the show cause notices for ₹ 2.83 crore for the period from April 2006 to December 2009 were under issue in both the cases.

The reply of the Ministry had not been received (December 2010).

2.3 Valuation on the basis of retail sale price

Ayurvedic and Homeopathic preparations falling under chapter 33 (Cosmetic or Toilet Preparations) are assessed to duty under section 4A, as these were notified under section 4A.

M/s Herbo Foundation Pvt. Ltd., Bamunimaidan, Guwahati, in Guwahati Commissionerate, engaged in manufacture of 'Himani Navaratan Hair Oil' and 'Himani Gold Turmeric Cream', cleared these products under Section 4 of Central Excise Act, 1944 between April 2008 and December 2009 on transaction value of ₹ 268.72 lakh. The MRP affixed on packages of those products indicated that these products were ultimately classifiable under chapter 33 and sold as cosmetics or toilet preparations to the customers at the printed MRP of ₹ 808.14 lakh and corresponding assessable value after allowing abatement from MRP worked out to ₹ 525.29 lakh. Assessable value under section 4A was higher than the value at which the duty was paid. Thus, there was short payment of duty of ₹ 42.06 lakh during the period April 2008 to December 2009.

When we pointed this out (March 2010), the department stated (April 2010) that the assessee had misclassified these two products under chapter 30 and the protective demand-cum-show cause notice had been issued in April 2010.

The reply of the Ministry had not been received (December 2010).

2.4 Excisable goods not fully valued

Section 4 (1) of the Central Excise Act, 1944 (effective from 1 July 2000) stipulates that where the duty of excise is chargeable on any excisable goods with reference to their value, such value shall be the transaction value of the goods sold by the assessee and the price is the sole consideration for sale. Further, section 4(3)(d) of the said Act defines transaction value to mean the price actually paid or payable for the goods, when sold, and includes in addition the amount charged as price, any amount that the buyer is liable to pay to or on behalf of the assessee, by reason of or in connection with the sale, whether payable at the time of sale or at any other time.

M/s APR Packaging Ltd. Ashti (now M/s BILT Ashti), in Nagpur commissionerate, manufactured 'copier paper' and 'maplitho MS paper' in reel form and cleared on payment of duty to its own cutting centers for conversion into sheet form. From these cutting centers, the goods were sold to unrelated buyers at higher value than the value at which excise duty was paid at the factory gate. Difference in value was ranging from ₹ 1,350 to ₹ 2,050 per tonne. Since the goods were sold at the cutting centers, the transaction value of the goods took place at the cutting centers and hence duty was leviable on the transaction value charged from the unrelated buyers. This resulted in short payment of duty amounting to ₹ 49.43 lakh during the period from October 2005 to June 2007.

When we pointed this out (April 2006, October 2007 and December 2009), the department issued show cause notices demanding duty of ₹ 80.85 lakh covering the period from October 2005 to February 2008. The demand of ₹ 29.67 lakh along with a penalty of ₹ 12 lakh for the period from December 2005 to November 2007 was confirmed by the adjudicating authority (April and August 2007). On appeal by the assessee the Appellate Commissioner (Appeal) also (August 2007) upheld the order of the adjudicating officer. Thereafter, the assessee's appeal against Commissioner (Appeal) Order was pending before CESTAT. However, the department in reply to audit observation stated (between March 2008 and December 2009) that in terms of Supreme Court decision in the case of M/s S.R. Tissues Pvt. Ltd. {2005 (186) ELT (SC)} and CESTAT decision in the case of M/s Seshsayee Paper and Board Ltd. {2006 (194) ELT 457}, conversion of reels into sheets does not amount to manufacture and hence cutting charges, being post manufacturing expenses, were not liable to duty. It also stated that the Ministry had clarified on 3 January 2001 that no duty could be charged on value addition outside the factory.

The reply of the department was not acceptable because the Supreme Court judgement cited and the Ministry's clarification related to cases prior to 1 July 2000 when pre amended section 4 was operative. Under amended section 4,

the entire scheme of valuation had been overhauled and new concept of transaction value was introduced from 1 July 2000.

The reply of the Ministry had not been received (December 2010).

2.5 Non-inclusion of freight and other charges

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

M/s Surya Lakshmi Cotton Mills Ltd., Mahabubnagar in Hyderabad III commissionerate, engaged in the manufacture of cotton yarn/polyester yarn transferred stock to their consignment agents. The freight and insurance charges incurred up to the point of sale viz. place of consignment agent premises, were to be included in the assessable value of the goods. However, the assessee did not include these charges in the assessable value. Exclusion of such charges from the assessable value resulted in short levy of duty of ₹ 7.25 lakh during the years 2003-04 to 2004-05.

Similarly, M/s Vijai Electricals Ltd., Rudraram in Hyderabad I commissionerate, engaged in the manufacture of distribution transformers, cleared goods at the destinations specified by the buyers. The prices charged by the assessee were composite prices including the cost of freight, insurance, etc. The goods were transported under the cover of transit insurance, the cost of which was borne by the assessee and the title to the goods in all these cases passed on to the buyers only after the goods reached the destination specified by the buyers. Thus, the freight and insurance charges incurred up to the point of sale were to be included in the assessable value of the goods. Exclusion of such charges from the assessable value resulted in short levy of duty of ₹ 10.60 lakh during the year 2009-10. The duty aggregating to ₹ 17.85 lakh was recoverable in both the cases with interest.

When we pointed this out (October 2004 and April 2010), the department reported (August 2006) the recovery of ₹ 8.65 lakh (inclusive of interest) in respect of M/s Surya Lakshmi Cotton Mills Ltd. Reply in respect of M/s Vijai Electricals Ltd. was awaited (July 2010).

The reply of the Ministry had not been received (December 2010).

2.6 Valuation of samples meant for free distribution

Where goods are not sold, the value of levy shall be determined in accordance with the provisions of rule 4 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. The rule provide that the value shall be based on the value of similar goods sold by the assessee for delivery at any other time nearest to the time of the removal of goods under assessment, subject, if necessary, to such adjustment on account of the difference in the dates of delivery of such goods and of the excisable goods under assessment, as may appear reasonable. The Board also clarified on 25 April 2005 that the

value of physician samples distributed free of cost should be determined under rule 4 of the said Valuation Rules, 2000.

M/s Pharmasia Ltd., in Hyderabad IV commissionerate, engaged in the manufacture of P or P medicaments and cosmetics, cleared final products on payment of duty under MRP. The assessee cleared the physician samples viz. Dermadew Aloe cream, Dermadew Aloe lotion and Dermadew Caloe lotion on payment of duty of ₹ 5.77 lakh on agreed price of ₹ 40 lakh instead of the value determined as per rule 4. The value to be adopted as per rule 4 worked out to ₹ 106.20 lakh on which duty of ₹ 15.31 lakh was payable. This resulted in short payment of duty ₹ 9.54 lakh which was recoverable with interest of ₹ 1.63 lakh.

When we pointed this out (January 2009), the department intimated (March 2010) that a show cause notice demanding duty of ₹ 12.87 lakh for the period from March 2008 to December 2009 was under issue.

The reply of the Ministry had not been received (December 2010).

CHAPTER III
CENVAT CREDIT

Under cenvat credit scheme, credit is allowed for duty paid on 'specified inputs/capital goods' and service tax paid on 'specified input services' used in the manufacture of finished goods. Credit can be utilised towards payment of duty on finished goods subject to the fulfilment of certain conditions. A few cases of incorrect use of cenvat credit involving duty of ₹ 91.45 crore noticed during test check, are mentioned in the following paragraphs. These observations were communicated to the Ministry through 23 draft audit paragraphs. The department had accepted (till December 2010) the audit observations in three draft audit paragraphs with money value of ₹ 0.87 crore.

3.1 Separate account for common inputs used in dutiable/exempted goods not maintained

Rule 6 of the Cenvat Credit Rules, 2002/2004, enunciates that a manufacturer who avails of cenvat credit on common inputs/services and manufactures both dutiable and exempted goods, has to maintain separate accounts for receipt and use of inputs/services for both categories of final products. However, if he opts not to maintain such separate accounts, then he shall pay an amount equal to ten per cent of the price of the exempted final product.

3.1.1 M/s Simbhaoli Sugar Ltd., (Distillery unit), in Meerut II commissionerate, engaged in the manufacture of dutiable goods i.e. denatured spirit, carbon dioxide, fusel oil etc. and non-dutiable goods i.e. country liquor, rectified spirit etc., availed cenvat credit of service tax paid on input services (viz. courier services, telephone and mobile service, repair and maintenance service, commission agent, business auxiliary service, GTA, website maintenance service etc.) which were used in the manufacture of both dutiable and non-dutiable goods and separate accounts were not maintained. The assessee cleared non-dutiable goods worth ₹ 226.05 crore in 2007-08 but did not pay 10 per cent amounting to ₹ 22.60 crore. Hence, the same was recoverable with interest of ₹ 5.88 crore and penalty up to ₹ 22.60 crore.

When we pointed this out (August 2008), the department stated (June 2009) that two show cause notices covering the period from February 2005 to March 2009 had been issued (May 2010).

The reply of the Ministry had not been received (December 2010).

3.1.2 M/s Titagarh Wagons Ltd., and M/s Texmaco Ltd., in Kolkata III commissionerate, engaged in the manufacture of dutiable as well as exempted railway wagons and pressure vessels, availed cenvat credit of service tax paid on input services viz. manpower supply agency's services, insurance services, couriers services, chartered accountant services, business exhibition services, registrar to an issue services, customs clearing agent's services etc. used for manufacture of both categories of final products, without maintaining separate accounts in respect of the input services used in manufacture of exempted goods. The assessees did not pay ₹ 20.61 crore being the amount equal to ten

per cent of the total price of exempted goods cleared between April 2005 and May 2008 which was recoverable with interest.

When we pointed this out (between May 2007 and July 2008), the department stated (December 2008), that M/s Titagarh Wagons Ltd. had availed input service credit on insurance, courier service and chartered accountant services which were not utilised for manufacture of exempted final product.

The reply of the department was not tenable because the services like insurance, courier, auditing, issue registry services on which the assessee had taken full credit were used for the whole business and could not be claimed as having been used only for manufacture of dutiable products. In any case the assessee had not maintained separate accounts for the use of the input services.

In the case of M/S Texmaco Ltd. the department stated (August 2008) that although such credit was taken on common input services but such credits were utilised for payment of service tax on output services provided by the assessee.

The reply of the department was not acceptable since the rule calls for payment of ten per cent of price of the exempted goods whenever credit is taken on input services used in manufacturing of both categories of goods. The rule does not provide any relaxation regardless of whether the credit was subsequently used for discharging liability of service tax or excise duty.

The department, however, had issued show cause cum demand notices in both the cases.

The reply of the Ministry had not been received (December 2010).

3.1.3 M/s Jindal Steel and Power Ltd., Raigarh, in Raipur commissionerate, engaged in the manufacture of both dutiable goods (viz. iron and steel products) and exempted goods (viz. coal tar etc.), sold 8,884 tonne of coal tar valuing ₹ 13.45 crore during the period from April 2007 to January 2009 without payment of excise duty. We observed that the assessee availed cenvat credit of service tax on common input services like mining (coal) service, inward transportation service (coal), manpower recruitment services, security services, repair and maintenance service, cargo handling services etc., which were used for the manufacture of both dutiable and exempted goods but cenvat credit of service tax so availed was utilised for payment of duty on final products. Since, no separate account of input services used in the manufacture of coal tar (exempted) was maintained, the amount of ₹ 1.35 crore equal to ten per cent of the price of coal tar sold was recoverable.

When we pointed this out (March 2009), the department stated (March 2009) that show cause notice for ₹ 51.60 lakh for the year 2007-08 has been issued on 31 March 2009. Report on action taken for the remaining period was awaited.

The reply of the Ministry had not been received (December 2010).

3.1.4 Rule 6 (6)(i) of the Cenvat Credit Rules, provides keeping separate accounts is not necessary in case of excisable goods are cleared to a unit in a special economic zone. Notification dated 31 December 2008 extended this benefit to clearance to a developer in SEZ.

M/s Duraline (India) Pvt. Ltd., and M/s Putzmeister (India) Ltd., in Goa commissionerate, engaged in the manufacture of telecom ducts and concrete pumps/pipelines, availed of cenvat credit on common inputs and input services which were used in dutiable as well as exempted goods and no separate accounts were maintained. The assessees cleared goods valuing ₹ 2.99 crore to the developers of SEZ without payment of duty before 31 December 2008. The assessees did not keep separate accounts for inputs used in the manufacture of the goods cleared to developers. Since the exemption from keeping separate account was not available up to 31 December 2008, they were liable to pay an amount of ₹ 29.94 lakh being ten per cent of the value of goods cleared with applicable interest and penalty.

When we pointed this out (January and March 2010) the department stated (June 2010) that the goods cleared to SEZ developers under bond were to be treated as exempted goods and the clearance does not attract the provision of rule 6 of the Cenvat Credit Rule. Further, the inclusion of 'developer' by notification no 50/2008 CE (NT) dated 31 December 2008 was not a case where a new sub-rule had been inserted but it was merely clarificatory in nature.

The reply of the department was not acceptable. The clearance to the developer of SEZ was included as an exemption from rule 6(3) through a specific clause inserted in the notification and made applicable from 31 December 2008. The benefit was not admissible before the notification.

The reply of the Ministry had not been received (December 2010).

3.2 Availing of cenvat credit on ineligible capital goods

Under rule 2(b)/2(a) of the Cenvat Credit Rules, 2002/2004, the term 'capital goods' for the purpose of allowing credit of duty means (i) all goods falling under chapters 82, 84, 85, 90, heading 68.02 and sub-heading 6801.10 of first schedule of Central Excise Tariff Act, 1985, (ii) pollution control equipment, (iii) components, spares and accessories of goods specified at (i) and (ii) above, (iv) moulds and dies, (v) refractories and refractory materials, (vi) tubes, pipes and fittings thereto and (vii) storage tanks. In the case of M/s Nava Bharat Ferro Alloys Ltd., the Tribunal held {2004 (174) ELT 375} that (i) HR coils, channels, plates and hard plates are general purpose items having multifarious use and are not covered by the definition of capital goods and (ii) columns of heavy fabricated structures and bracings, used as supporting columns of a boiler, etc., are in the nature of construction material and are not eligible for credit as capital goods.

3.2.1 M/s Ultra Tech Cement Ltd., (AP Cement Works) Tadipatri in Tirupathi commissionerate and M/s Shalimar Alloys (P) Ltd., Kothur in Hyderabad III commissionerate, engaged in the manufacture of cement, clinker, iron and steel products etc., availed cenvat credit of ₹ 4.71 crore on items like MS angles, channels, beams, joists etc. during 2006-07 to 2008-09. We found that these goods were utilised for construction of plant, shed and as supporting structures. Therefore, cenvat credit of ₹ 4.71 crore was not admissible and recoverable with interest.

We pointed this out to the (August/October 2009), the department reported (October 2010) that in the first case, a show cause notice was under issue for ₹ 23.36 crore covering the period between September 2005 and August 2010. In the second case department accepted the audit observation and reported (June 2010) that a show cause notice was under issue.

The reply of the Ministry had not been received (December 2010).

3.2.2 M/s Jayswal Neco Industries Ltd., in Raipur commissionerate, engaged in the manufacture of pig iron, sponge iron billets rolled products etc., availed cenvat credit of duty of ₹ 3.84 crore paid on angles, channels, beams, plates, joists etc., during the period from May 2004 to March 2009. These goods were not used for the manufacture of final product but were used in the construction of heavy fabricated structures for supporting the plant and machinery. The credit of duty availed on the structural items was incorrect and was recoverable with interest.

When we pointed this out (between October 2004 and March 2010). the department stated (between July 2008 and March 2010) that a show cause notice disallowing cenvat credit of ₹ 1.76 crore covering the period from February 2004 to February 2005 had been issued and another show cause notice was being issued. We also observed that the demand of ₹ 1.76 crore was confirmed on 29 October 2008.

The reply of the Ministry had not been received (December 2010).

3.2.3 M/s Harinagar Sugar Mills Ltd., in Patna commissionerate, engaged in the manufacture of sugar, availed cenvat credit of ₹ 52.16 lakh on items like M.S. bar, channels, angles, HR plates, beams, TMT bars etc. in August 2008 and April 2009 and used in construction of distillery division of the sugar mill. Since cenvat credit on goods used for construction were not eligible, cenvat credit of ₹ 52.16 lakh was recoverable with interest.

We pointed this out to the department/Ministry in December 2009/October 2010; their reply had not been received (December 2010).

3.2.4 M/s Bulk Cement Corporation India Ltd, in Belapur commissionerate, engaged in the manufacture of cement, procured railway wagons falling under chapter 86, in April 2009 and availed cenvat credit (June 2009) of ₹ 54.68 lakh (i.e 50 per cent of duty paid on railway wagons). Since railway wagons were not specified under the definition of capital goods, the cenvat credit availed by the assessee was not admissible and was recoverable with interest.

When we pointed this out (January 2010), the department intimated (August 2010) that show cause notice for ₹ 1.09 crore had been issued.

The reply of the Ministry had not been received (December 2010).

3.3 Cenvat credit availed on inadmissible input services

Rule 3 of the Cenvat Credit Rules, 2004, provides that a manufacturer of final products may take credit of service tax paid on any input service received if such service is used in the manufacture of final products. Rule 2(l) of Cenvat Credit Rules, 2004, stipulates the ambit of input services.

3.3.1 M/s Scooters India Ltd., in Lucknow commissionerate, engaged in manufacturing activity, availed credit of service tax paid of ₹ 8.16 lakh on services like employee mediclaim insurance services, private car insurance services, rent a cab services for day to day administrative requirement during the year 2006-07 to 2008-09. The availing of cenvat credit on above input services was irregular, as these input services were not directly or indirectly related to the manufacture of the final products. Therefore, assessee was liable to pay ₹ 8.16 lakh besides interest and penalty.

When we pointed this out (January 2010), the department stated (April 2010) that a show cause notice had been issued demanding ₹ 10.72 lakh for the period from 2005-06 to 2008-09.

The reply of the Ministry had not been received (December 2010).

3.3.2 M/s Birla Power Solution Ltd., in Meerut I commissionerate, engaged in manufacture of portable and fixed DG sets, availed cenvat credit of service tax paid on input services viz. financial services, internet services, workmen compensation policy, courier service etc. Since these services were not covered under input services the assessee was, therefore, liable to reverse credit of ₹ 5.07 lakh besides interest of ₹ 0.83 lakh as of March 2010.

When we pointed this out (November 2009), the department intimated (April 2010) that show cause notice was under issue.

The reply of the Ministry had not been received (December 2010).

3.3.3 In the case of Excel Crop Care Ltd., Ahmedabad, the CESTAT held that cenvat credit of service tax paid on cargo handling agency services availed for export did not have any nexus with manufacture and clearance of product from the factory and hence no credit of tax paid on such services was to be allowed.

M/s Glaxo Smithkline Consumer Health Care Ltd., in Hyderabad IV commissionerate, engaged in packing of milk food products, manufactured in other units of the same company, exported goods and paid service tax of ₹ 10.48 lakh to various shipping agencies towards export liner charges in respect of goods exported during the period from 2006-07 to 2008-09. The assessee availed of cenvat credit of service tax so paid. The availing of cenvat credit was incorrect as such services were not input service in respect of the goods manufactured and cleared by the assessee. The credit was recoverable with interest.

When we pointed this out (July 2009), the department stated (January 2010) that a show cause notice has been issued (October 2009) demanding ₹ 12.15 lakh for the period from January 2005 to March 2009, besides interest and penalty.

The reply of the Ministry had not been received (December 2010).

3.4 Cenvat credit availed of service tax paid on non-taxable service

A manufacturer or producer of final products or a provider of taxable service can take credit of the service tax paid on any input service received by the

manufacturer of final product or by output service provider in terms of Rule 3(1)(ix) of the Cenvat Credit Rules, 2004.

Mining of mineral, oil or gas service came to tax net with effect from 1 June 2007.

M/s Jindal Steel and Power Ltd., in Raipur commissionerate, engaged in the manufacture of iron and steel products, availed services relating to extraction of coal from their captive coal mines and paid ₹ 23.16 crore to various registered private service providers. The assessee availed credit of service tax paid amounting to ₹ 2.60 crore during the period July 2005 to May 2007. Thus, the credit was wrongly availed for service tax paid during a period when service tax was not payable. The cenvat credit of ₹ 2.60 crore was recoverable with interest.

When we pointed this out (February 2008), the department stated (April 2010), that a show cause notice had been issued.

The reply of the Ministry had not been received (December 2010).

3.5 Availing of credit on the basis of invalid documents

The cenvat credit can be taken by the manufacturer or the provider of output service or input service distributor on the basis of the documents specified in rule 9 of the Cenvat Credit Rules. Further Rule 14 envisages that where the credit has been taken or utilized wrongly, the same alongwith interest shall be recovered from the manufacturer.

3.5.1 M/s Berger Paints India Ltd., in Jammu & Kashmir commissionerate, engaged in the manufacture of paints, availed cenvat credit of ₹ 1.91 crore during the period between September 2004 and July 2006. We observed that the credit was availed by the assessee without having the invoices evidencing payment of duty on inputs/capital goods. Therefore, the cenvat credit had been wrongly availed and was recoverable with interest and penalty.

When we pointed this out (July 2009), the department stated (December 2009) that show cause notice had been issued to the assessee.

The reply of the Ministry had not been received (December 2010).

3.5.2 M/s Diamond Cement Unit I and II, in Bhopal commissionerate, engaged in the manufacture of cement, availed cenvat credit of service tax of ₹ 59.79 lakh between March 2006 and September 2008 on the basis of debit notes issued by different output service providers. Since debit notes were not the specified documents for availing of cenvat credit, the amount of ₹ 59.79 lakh was recoverable with interest.

When we pointed this out between August 2009 and January 2010, the department admitted the audit observation and stated (December 2009) that the demand was being raised.

The reply of the Ministry had not been received (December 2010).

3.5.3 M/s Bhandari Foils and Tubs Ltd., (unit III), in Indore commissionerate, engaged in the manufacture of S.S. coils/tubes availed cenvat credit of service tax of ₹ 27.74 lakh on the basis of the invoices not in

the name of assessee, debit notes, photocopies of bills of entry and TR-6 challans. Since these documents were not eligible for availing of cenvat credit the availing of cenvat credit was not correct and was recoverable with interest.

We pointed this out to the department/Ministry in October 2009/September 2010; their reply had not been received (December 2010).

3.5.4 M/s Indian Oil Corporation Ltd., (Drum Plant), in Chennai I commissionerate engaged in the manufacture of drums, barrels etc., availed cenvat credit on input services for ₹ 10.26 lakh during the period from May 2007 to March 2008 relating to two service providers on the basis of an entry in the claim bills of the assessee. Since claim bill is not an eligible document the credit availed was inadmissible and, therefore, recoverable with interest.

When we pointed this out (February and May 2009), the department reported (July 2010) issue of show cause notice for ₹ 19.19 lakh covering the period from April 2007 to December 2009.

The reply of the Ministry had not been received (December 2010).

3.6 Goods not received back from job workers

3.6.1 Under rule 4(5) (a) of the Cenvat Credit Rules, 2002 (as amended vide notification dated 10 September 2004), inputs or capital goods on which cenvat credit has been availed of can be sent to a job worker for further processing, provided the goods are received back within 180 days and if the inputs or capital goods are not received back within this period, the manufacturer shall pay an amount equivalent to cenvat credit attributable to such non-returned inputs or capital goods.

M/s Haldia Petrochemicals Ltd., in Haldia commissionerate, engaged in the manufacture of petroleum products, cleared 7259.100 tonne and 1464.250 tonne of PP and LLDPE respectively to various job-workers for conversion into fabrics/bags during the years 2003-04 and 2004-05. We observed that, out of the said quantities, 1206.100 tonne of PP and 108.078 tonne of LLDPE valuing ₹ 6.10 crore were not received back in the factory even after expiry of the prescribed period of 180 days. Thus, the manufacturer was required to pay duty equivalent to cenvat credit of ₹ 97.56 lakh on inputs not received back.

When we pointed this out (March 2007), the department stated (December 2009) that a show cause cum demand notice had been issued in May 2008.

The reply of the Ministry had not been received (December 2010).

3.7 Suo-moto availing of cenvat credit

Section 11B of the Central Excise Act, 1944 provides that any person claiming refund of any duty of excise may make an application for refund of such duty to the excise department before expiry of one year from the date of payment of duty in such form and manner as may be prescribed and the application shall be accompanied by such documentary or other evidence as the applicant may furnish to establish that the amount of excise duty in relation to which such refund is claimed was paid by him. Further as per the explanation under

Section 11B of the Act, for the purpose of the section, refund includes rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India.

3.7.1 M/s Indian Seamless Metal Tubes Ltd., in Aurangabad commissionerate, engaged in manufacture of articles of iron and steel, cleared goods for exports without payment of duty under bond. On non-submission of proof of export within the statutory time periods, the assessee paid aggregate duty of ₹ 49.82 lakh through cenvat for the exports made on 24 invoices during October 2006 to December 2007. However, on receipt of the proof of export, the assessee took suo moto credits during July 2007 to March 2009, of the duty paid earlier without applying for refunds (rebate) under section 11B of the Act.

When we pointed this out (December 2009), the department replied (March 2010) that it was only a procedural lapse on the part of assessee.

The reply of the department was not acceptable as the assessee had paid the duty on goods exported and to get refund (rebate) of such duty, he should have applied under Section 11B. There is no provision in the Central Excise Act, 1944 or any of the rules thereunder regarding suo moto credit of duty paid earlier by the assessee.

The reply of the Ministry had not been received (December 2010).

3.7.2 M/s Century Denim Ltd., in Indore commissionerate, engaged in the manufacture of Denim Fabrics under heading 52.09 paid service tax of ₹ 22 lakh between 30 September 2005 to 5 May 2009 on the input services received from foreigners by utilising cenvat credit which was incorrect. When we pointed this out between May 2007 and August 2008, the department issued three show cause notices. Following adjudication and decision of Commissioner (Appeals) in May 2009 the assessee deposited service tax of ₹ 22 lakh in cash on 10 August 2009. We observed that the assessee subsequently credited ₹ 22 lakh in the cenvat account on 30 September 2009 to adjust the service tax paid earlier by wrongly utilising cenvat credit. This was incorrect as assessee should have claimed refund.

When we pointed this out (December 2009), the department stated (December 2009) that the matter was under examination.

The reply of the Ministry had not been received (December 2010).

3.8 Non/short payment of duty on inputs cleared as such

Rule 2(1) of the Cenvat Credit Rules, 2004 defines 'input service' to mean any service used by a manufacturer, whether directly or indirectly, in or in relation to manufacture of final products and clearance of final products up to the place of removal, and includes other specified services. Rule 3(1) ibid enunciates that a manufacturer shall be allowed to take credit of any input/input service received by the manufacturer for use in or in relation to the manufacture of final product.

M/s Tata Sponge Iron Ltd., in Bhubaneswar II commissionerate, engaged in the manufacture of sponge iron, availed cenvat credit of service tax paid on

goods transport service for procurement of coal from coal mines. We observed that the assessees sold 50,928 tonne of coal fines during 2008-09 and also there was back spillage of unusable coal and shortage of physical stock of coal of 6,441.82 tonne. Since the quantity of coal sold and found short was not used in the manufacture of final goods, the cenvat credit of ₹ 59.56 lakh attributable to such sale and shortage was recoverable with interest and penalty.

When we pointed this out (July 2009), the department stated (September 2010) that a show cause notice had been issued for ₹ 71.85 lakh for the period from 2008-09 to 2009-10.

The reply of the Ministry had not been received (December 2010).

3.9 Excess availing of cenvat credit on imported materials

Rule 3(1) read with proviso to rule 3(7)(a) of the Cenvat Credit Rules, 2004 provides that cenvat credit in respect of inputs or capital goods cleared on or after 1 March 2006 from a 100 per cent export oriented unit (EOU) paying excise duty under notification dated 31 March 2003, shall be admissible. The calculation of the amount admissible was based on the ad valorem rates of basic customs duty and additional duty of customs leviable on inputs or the capital goods respectively.

M/s Khanna Paper Mills Ltd., in Ludhiana commissionerate, engaged in the manufacture of paper and paper board purchased inputs namely petroleum coke from a hundred per cent EOU and paid duty under aforesaid notification. We observed that the assessee had availed cenvat credit of ₹ 619.96 crore against the admissible credit of ₹ 593.83 crore during the year 2007-08. The credit of ₹ 26.13 lakh availed in excess was recoverable with interest.

When we pointed this out (November 2008), the department stated (February 2009) that the assessee had been asked to deposit the amount with interest.

The reply of the Ministry had not been received (December 2010).

3.10 Cenvat credit on capital goods availed in excess of permissible limits

Rule 4(2)(a) and (b) of the Cenvat Credit Rules, 2004 enunciates that cenvat credit in respect of capital goods received in a factory or in the premises of the provider of output service at any point of time in a given financial year shall be taken only for an amount not exceeding fifty per cent of the duty paid on such capital goods in the same financial year and the balance of credit may be taken in any financial year subsequent to the financial year in which the capital goods were received. Rule 14 ibid of the above rules provide that where the cenvat credit has been taken or utilised wrongly, the same along with interest shall be recovered. Penalty also shall be invoked under rule 15 ibid.

M/s SMC Power Generation Ltd., in Bhubaneswar II commissionerate, engaged in the manufacture of sponge iron, billets and TMT bars procured capital goods like pipes, tubes and water treatment plants/instruments during

the period April 2007 to March 2008 and took full (100 per cent) cenvat credit of ₹ 30 lakh during 2007-08 on such capital goods instead of taking credit of ₹ 15 lakh being fifty per cent of the duty paid. The excess credit of ₹ 15 lakh taken by the assessee was recoverable along with interest and penalty.

When we pointed this out (September 2008), the department reported (June 2010) that the show cause cum demand notice for ₹ 5.28 crore for the period from September 2006 to March 2008 had been issued in which all such other capital goods had been covered.

The reply of the Ministry had not been received (December 2010).

CHAPTER IV
EXEMPTIONS

Under section 5A(1) of the Central Excise Act, 1944, the Government is empowered to exempt goods attracting excise duty from the whole or any part of the duty leviable thereon, either absolutely or subject to such conditions, as may be specified in the notification granting the exemption. A few illustrative cases of incorrect allowance of exemptions from levy of duty totalling ₹ 3.23 crore are mentioned in the following paragraphs. These observations were communicated to the Ministry through five draft audit paragraphs. The department had accepted (till December 2010) the audit observations in one draft audit paragraph with a financial implication of ₹ 74.18 lakh.

4.1 Exemption on goods supplied to a project financed by international organisations

Notification dated 28 August 1995, as amended, exempts excise duty on goods supplied to projects approved by the Government of India and financed by international organizations, subject to the production of prescribed certificate from the appropriate authority before the clearance of such goods.

4.1.1 M/s Hindustan Vidyut Products Ltd., Gwalior, in Indore commissionerate, engaged in the manufacture of conductors, availed exemption on electrical conductors supplied for two projects financed by the World Bank. We observed that the certificate that was used for claiming exemption was not in the name of the assessee but in the name of M/s Hindustan Vidyut Products Ltd. New Delhi. Moreover, the jurisdictional Assistant Commissioner, Gwalior had in April 2009, rejected a request for clearance of the conductors under the aforesaid notification. However, the assessee disregarded the decision of the AC and cleared conductors valuing ₹ 6.59 crore from January 2009 to March 2009 without payment of duty quoting aforesaid notification. This resulted in incorrect availing of exemption and applicable duty of ₹ 63.50 lakh was recoverable with interest penalty.

When we pointed this out (July 2009), the department stated (October 2009) that a show cause notice for ₹ 1.38 crore was being issued.

The reply of the Ministry had not been received (December 2010).

4.1.2 M/s Indian Oil Corporation Ltd., in Haldia commissionerate, engaged in the manufacture of petroleum products, cleared bitumen to various projects approved by Government of India and financed by international organisations and availed of the exemption from duty under the aforesaid notification. We observed that goods were cleared on the basis of certificates whose validity had expired. This resulted in incorrect availing of exemption of ₹ 74.18 lakh during 2008-09, which was recoverable with interest and penalty.

When we pointed this out (September 2008), the department admitted the audit observation and reported (May 2010) that the show cause cum demand notice was under issue.

The reply of the Ministry had not been received (December 2010).

4.2 Exemption on goods captively consumed

4.2.1 Notification dated 16 March 1995 as amended by notification dated 1 March 2003 provides exemption to all capital goods and specified inputs captively consumed within factory of production, from the whole of the duty of excise. The clause (vi) of the above notification provides that the benefit of the exemption can be taken by a manufacturer of dutiable and exempted final products, after discharging the obligation prescribed in Rule 6 of the Cenvat Credit Rules.

Rule 6 of the Cenvat Credit Rules, envisages that where an assessee manufactures final products, part of which are chargeable to duty and part of which are exempt but avails of credit of duty on inputs and input services meant for use in both the categories of final products, it has to exercise option either to maintain separate accounts of inputs used or pay an amount equivalent to ten per cent of the value of exempted goods.

M/s Dhampur Sugar Mills Ltd., Dhampur, in Meerut II commissionerate, engaged in the manufacture of V.P. Sugar, molasses, rectified spirit and chemicals, cleared 1,44,184 quintals of molasses for captive consumption between April 2008 and June 2009. The molasses were utilised in the production of 30,42,000 liters of rectified spirit which was sold at nil rate of duty. We observed that the assessee availed cenvat credit of ₹ 1.27 crore during 2008-09 on common input services like security agency services, telephone, insurance, technical consultancy, transportation, repair and maintenance etc. but did not maintain separate accounts for input services which were used in the manufacture of dutiable and exempted goods. The assessee did not pay an amount equal to 10 per cent of the value of the rectified spirit which was required to avail exemption under the notification mentioned above. The exemption availed of ₹ 1.08 crore was therefore recoverable with interest.

We pointed this out to the department/Ministry in September 2009/October 2010; their reply had not been received (December 2010).

4.2.2 Excisable goods produced and used for the manufacture of final goods are exempt from payment of duty under a notification dated 16 March 1995 provided that the final product is chargeable to duty.

M/s Bakewell Agro Ltd., Saharanpur in Meerut I commissionerate, produced sugar syrup (excisable) and consumed it in the manufacture of biscuits (exempted) during the period from March 2007 to May 2008. The assessee did not pay duty on sugar syrup availing aforementioned exemption. Since biscuits were exempt from duty, the exemption availed on sugar syrup was not correct. The assessee was liable to pay duty of ₹ 7.05 lakh which was recoverable with interest of ₹ 1.82 lakh (up to March 2010).

When we pointed this out (November 2007), the department intimated (December 2009) that a show cause notice was being issued.

The reply of the Ministry had not been received (December 2010).

4.3 Exemption linked to production

The Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008, provides that the duty payable on production of pan masala for a particular month is to be based on the number of operating packing machines in the factory during the month. In case a factory does not produce during any continuous period of 15 days or more, the duty calculated on a proportionate basis shall be abated in respect of such period.

M/s Dharampal Satyapal Ltd., (Shed no. 39 & 37A), Guwahati in Guwahati commissionerate, engaged in the manufacture of Rajnigandha Pan Masala {1.6 gm pouch, Tulsi Royal Gold 1.75 gm pouch (retail sale price: ₹ 2.50 per pouch} paid excise duty amounting to ₹ 1.30 crore (at ₹ 26 lakh per machine) for five packing machines during the month of February 2009 and thereafter, took abatement for ₹ 68.92 lakh for that month although the factory did not stop their production for a continuous period of 15 days or more during February. Thus, the abatement of ₹ 68.92 lakh was not admissible and the amount was recoverable with interest.

When we pointed this out (February 2010), the department stated (May 2010) that the said irregularities were detected by its internal audit party in April 2009 and protective demand had also been issued.

However, the follow up action was not taken for around one year and show cause notice was issued in March 2010 only after the issue was raised by CERA. The departmental reply did not explain who was responsible for the delay in raising demand.

The reply of the Ministry had not been received (December 2010).

CHAPTER V
NON-LEVY OF INTEREST

Where any duty of excise has not been levied or paid or has been short levied or short paid or erroneously refunded, the person liable to pay duty as determined under section 11A of the Central Excise Act, 1944, is in addition to the duty, liable to pay interest at the rate of 20 per cent per annum till 11 May 2000, 24 per cent with effect from 12 May 2000, 15 per cent with effect from 13 May 2002 and 13 per cent from 12 September 2003 under the relevant sections of the Act. A few illustrative cases of non-levy of interest involving revenue of ₹ 3.08 crore are mentioned in the following paragraphs. These observations were communicated to the Ministry through six draft audit paragraphs. The department had accepted (till December 2010) the audit observations in two draft audit paragraphs involving revenue of ₹ 1.57 crore.

5.1 Non-recovery of interest under cenvat credit rules

Rule 14 of the Cenvat Credit Rules, 2004, provides that where cenvat credit on any input services has been taken or utilised wrongly by a service provider, the same along with interest shall be recovered from such provider of output service and the provisions of sections 73 and 75 of Finance Act, 1994, shall apply mutatis mutandis for effecting such recoveries. Further Rule 6 of the Cenvat Credit Rules, 2004, stipulates that where a manufacturer avails of cenvat credit in respect of input goods or input service and manufactures such final products which are chargeable to duty as well as exempted goods, then the manufacturer shall maintain separate accounts for receipts, consumption and inventory of input goods and input services used in the manufacture of dutiable and exempted goods.

M/s. Hindustan Paper Corporation Ltd., in Shillong commissionerate, engaged in the manufacture of paper and paper board under Chapter 48 cleared 53783.020 tonne of paper valuing ₹ 174.11 crore during the period between May 2006 and February 2008 to various State Board Publication, Corporation for printing of educational text books without payment of duty. During the period between May 2006 and February 2008 the assessee took credit on various input services without maintaining separate account for receipt, consumption and inventory of input services for the use in the manufacture of dutiable and exempted goods or services. As the assessee failed to maintain the aforesaid separate account, the department asked the assessee to pay 10 per cent of the price of the goods i.e. ₹ 17.41 crore (10 per cent of ₹ 174.11 crore). But before the issue of any show cause notice (SCN) in this regard, the assessee reversed the proportionate credit of ₹ 90.95 lakh on 10 October 2008 for input services attributable to paper cleared under exemption during the period between May 2006 and April 2008. Interest was not paid for the late reversal.

When we pointed this out (December 2009), the department referred (March 2010) the Judgement of Hon'ble Supreme Court in the case of Chandrapur Magnet Wires (P) Ltd. [as reported in {1996 (81) ELT 3 (SC)}] where it was held that plain reversal is enough. Similar judgement was also given by Punjab

and Haryana High Court in the case of M/s Maruti Udyog Ltd. reported in {2007 (21-A) ELT 173 (P&H)} in which it was held that if cenvat credit was not utilised by the assessee he was not liable to pay interest on unutilised cenvat credit. The decision of the Punjab and Haryana High Court was also upheld by Supreme Court. However, Board in its circular dated 3 September 2009 has stated that the said ruling was rendered under erstwhile Central Excise Rules, 1944 and not under Cenvat Credit Rules, 2004 and hence the decision of the same is not applicable now. As per this circular, interest is payable on cenvat credit wrongly taken even if such credit has not been utilised. However, the Punjab and Haryana High Court has recently held that interest is not payable if credit wrongly taken is not utilised in the case of Ind Swift Laboratories Ltd. {2009 (240) ELT 328 (P&H)}.

The reply of the Ministry had not been received (December 2010).

We have observed that many commissionerates are not applying rule 14 of the Cenvat Credit Rules 2004 for wrong availing of cenvat credit, citing the multiple judicial pronouncements. Many such cases have been pointed out by us in earlier reports. However, some commissionerates are charging interest based on the Board's circular and have also issued show cause notices based on our audit observations. In view of the differing interpretations, it is recommended that the issue may be examined and clarified by the Board so that uniform action may be taken by all commissioners in cases of incorrect availing of credit.

5.2 Non-recovery of interest on adjudication of show cause notice

Section 11AA of the Central Excise Act, 1944, inserted with effect from 26 May 1995, envisages that, where a person fails to pay duty as determined on adjudication of show cause cum demand notice within three months from the date of such determination, he shall pay in addition to duty, interest at the specified rate on such duty from the date immediately after the expiry of three months till the date of payment of such duty. The explanation 1 below the said section clarifies that if the duty determined to be payable is reduced by the higher authorities or as the case may be, the date of such determination shall be the date on which duty was first determined to be payable.

M/s Texmaco Ltd., Agarpara Works, in Kolkata III commissionerate, engaged in the manufacture of bogies, wagons etc. did not pay a demand of ₹ 1.92 crore raised for undervaluation of goods, as confirmed on 3 July 1995. The issue went through different stages of appeal and finally the assessee paid the duty as reduced in appeal, during April 1998, September 2004 and February 2008. The interest of ₹ 1.18 crore accrued for the period from October 1995 to February 2008 on such demand was however, neither demanded by the department nor paid by the assessee.

The department admitted the audit observation and intimated (July 2009) that action was being initiated to recover the interest.

The reply of the Ministry had not been received (December 2010).

5.3 Non-recovery of interest on differential duty

Where any duty of excise has not been levied or paid or has been short levied or short paid, interest is leviable from the first day of the month succeeding the month in which the duty ought to have been paid till the payment of duty.

The Ministry clarified on 28 July 2003 that interest under section 11AB is leviable even in cases where duty is paid by an assessee before serving of the notice by the department. The Ministry further clarified on 14 March 2006, that interest under section 11AB is chargeable from the date of original clearance in cases wherein supplementary invoices are raised due to upward revision of the price of the goods and differential duty is paid/payable.

5.3.1 M/s Jindal Stainless Ltd., in Bhubaneswar I commissionerate, engaged in the manufacture of high carbon ferro chrome and alloys, cleared its products to sister units on payment of duty on lower assessable value. Later on, it determined the assessable value of these goods on the basis of cost audit report and paid differential duty of ₹ 5.40 crore between March 2008 and December 2008 for the excisable goods cleared between April 2006 and November 2007. However, interest of ₹ 1.03 crore leviable thereon for the period from 6 May 2006 to 6 December 2008 was not paid by the assessee. The department also did not take any action to recover it from the assessee.

When we pointed this out (December 2008) the department stated (May 2009) that action for recovery of interest was being taken.

The reply of the Ministry had not been received (December 2010).

5.3.2 M/s Jai Balaji Industries Ltd., Unit I, Burdwan in Bolpur commissionerate, engaged in the manufacture of sponge iron, pig iron, ferro manganese etc., cleared goods on payment of duty to different customers. The assessee paid the differential duty of ₹ 215.11 lakh during March to May 2008, relating to the clearance made during the year 2006-07. However, the applicable interest of ₹ 39.07 lakh leviable for the delayed payment of differential duty was not paid.

When we pointed this out (June 2009), the department admitted (March 2010) the audit observation and stated that show cause notice was under issue.

The reply of the Ministry had not been received (December 2010).

5.3.3 M/s S.R. Fragrances, in Chandigarh I commissionerate, deposited differential duty amounting ₹ 47.79 lakh during January 2002 to April 2002 for the supplies made during December 2000 to September 2001. Similarly M/s Pearl Industries Barotiwala in the same commissionerate, deposited differential duty of ₹ 1.17 crore in August 2001 in respect of goods cleared between March 2001 and July 2001. However, the assessees did not pay interest on delayed payment of duty. The omission resulted in non-realisation of interest of ₹ 19.30 lakh from both the assessees.

When we pointed this out (May 2003 and March 2008), the department stated (December 2003) that the differential duty had been paid by the assessees without prejudice to their legal rights in the matter as differential amount of duty.

The reply of the department was not acceptable since the assessee paid differential duty, interest was payable regardless of the conditions under which the differential duty had been paid.

The reply of the Ministry had not been received (December 2010).

5.3.4 M/s Indian Oil Corporation Ltd., Barauni, in Patna commissionerate, engaged in the manufacture of petroleum products, deposited duty of ₹ 264.91 crore by challans for internet banking on 9 July 2007 in respect of excisable goods cleared during the month of June 2007. We observed that the due date for payment of duty was 6 July 2007 but duty was paid through GAR 7 challans bearing Nos.608 to 613 all dated 9 July 2007 implying delay of three days. Therefore, interest of ₹ 28.31 lakh was payable.

When we pointed this out (April 2009), the department stated (January 2010) that the assessee had made e-payment on 7 July 2007. Therefore, the delay was for one day and interest of ₹ 9.44 lakh had been paid by the assessee in January 2010.

The issue was not clear as challans stamped by the bank were dated 9 July 2007 where as e-receipt was dated 7 July 2007. The department stated (April 2010) that it had asked the concerned bank to intimate the actual date of payment of duty. Further reply was awaited.

The reply of the Ministry had not been received (December 2010).

CHAPTER VI
NON-LEVY/SHORT LEVY OF DUTY

Rule 4 of the Central Excise Rules, 2002 prescribes that goods attracting excise duty shall not be removed from the place of manufacture or warehouse, unless excise duty leviable thereon has been paid in the manner prescribed in rule 8. If a manufacturer, producer or registered person of a warehouse, violates the rules or does not account for the goods, then besides such goods becoming liable for confiscation, penalty not exceeding the duty on such excisable goods or ten thousand rupees, whichever is greater, is leviable under rule 25. Some cases of non-levy/short levy of duty totalling ₹ 1.04 crore, noticed in test check, are described in the following paragraphs. These observations were communicated to the Ministry through three draft audit paragraphs.

6.1 Non-payment of duty

Rule 4 of the Central Excise Rules, 2002 stipulates that no excisable goods, on which any duty is payable, shall be removed without levy of duty from any place, where they are produced or manufactured or from a warehouse, unless otherwise provided in the Act/Rules.

Aluminium dross and skimming are by-products of manufacture of aluminium rolled products and is sold extensively in India and the recovery of aluminium from aluminium dross ranges up to 84 per cent. For want of appropriate and distinct entry of aluminium dross in the tariff, this commodity was not subject to duty of excise till 28 February 2005. On 28 February 2005, the Government inserted a separate and distinct entry of 'aluminium dross' under tariff item 262040.10 in chapter 26, subjecting it to excise duty from that date.

M/s Hindalco Industries Ltd., in Nagpur commissionerate, engaged in the manufacture of flat aluminium rolled products, obtained aluminium dross during manufacturing process and cleared it at different prices to various buyers. However, excise duty of ₹ 30.98 lakh leviable on aluminium dross was not paid from 28 February 2005.

When we pointed this out (June 2009), the department stated (February 2010) that in terms of the Supreme Court decision in the case of M/s Indian Aluminium Co. Ltd. {2006 (205) ELT 3 (SC)} for levying excise duty on a commodity, it should be manufactured and marketable whereas dross was neither manufactured by the assessee nor was it excisable. It further stated that CESTAT Mumbai had also held that the dross is not excisable vide order No.A/353/09/C-1 dated 26 March 2008.

The reply of the department is at variance with the Board which clarified and directed the field formations on 28 October 2009 for recovery of excise duty on aluminium dross.

The reply of the Ministry had not been received (December 2010).

It is recommended that the Board should examine the issue in view of the judicial pronouncements and issue a suitable clarification for the treatment of aluminium dross.

6.2 Delayed payment of duty on due dates

Rule 8 of the Central Excise Rules, 2002 envisages that the duty on the goods removed from the factory during a month shall be paid by the 5th day of the following month and for the month of March by 31st day of March. If an assessee fails to pay the amount of duty by due date, he shall be liable to pay the outstanding amount alongwith interest.

Further, sub-rule (3A) of rule 8, provides that if the assessee defaults in payment of duty beyond thirty days from the due date, the assessee shall pay excise duty for each consignment at the time of removal, without utilising the cenvat credit till the date the assessee pays the outstanding amount including interest thereon. Rule also provides that in the event of any failure, it shall be deemed that such goods have been cleared without payment of duty and the consequences and penalties as provided in these rules shall follow.

M/s MRK Pipes Ltd., in Jaipur I commissionerate, engaged in the manufacture of ACP pipes, paid duty of ₹ 3.34 lakh on 11 December 2006 in respect of goods cleared in September 2006. Similarly, the assessee paid duty of ₹ 3.29 lakh on 1 February 2007 in respect of goods cleared in November and December 2006. The delay in all the occasions was beyond thirty days from the due dates. Therefore, the assessee was required to pay duty in cash on each consignment during the period from November 2006 to January 2007. However, the assessee made payment of ₹ 19.07 lakh from cenvat account during the period of default which was recoverable alongwith interest.

When we pointed this out (June 2009), the department stated (March 2010) that the amount in question had already been deposited by the assessee from cenvat credit account and in terms of CESTAT decision in the case of M/s SCT Ltd. {2006 (202) ELT 814 (Tri-Del)} the payment of duty in cash and credit of cenvat account (reversing of the incorrect utilisation) would be unnecessary duplication.

The decision quoted by the department had been given prior to 1 June 2006. Rule 8 of Central Excise Rules 2002, was amended from 1 June 2006 and as per amended sub rule 3A of Rule 8, the outstanding amount along with interest thereon was recoverable.

The reply of the Ministry had not been received (December 2010).

6.3 Duty not paid on goods cleared for remaking

Rule 16 of the Central Excise Rules, 2002 envisages that where any goods on which duty had been paid at the time of removal are brought to any factory for being remade, refined, reconditioned or for any other reason, the assessee shall state the particulars of such receipt in his records and shall be entitled to take CENVAT credit. If the process to which the goods are subjected before being removed does not amount to manufacture, the manufacturer shall pay an

amount equal to the cenvat credit taken, other wise the duty as applicable, is payable at the time of removal of goods.

M/s ILJIN Electronics (India) Pvt. Ltd., in Noida commissionerate, engaged in the manufacture of printed circuit boards, availed cenvat credit of ₹ 45.46 lakh during the period from October 2008 to February 2009 on final goods which were cleared earlier and were received back from the buyers as rejected goods. These goods were issued to workshop for further processing. According to evidence on record, these goods were neither received back in the factory after re-making nor were they re-cleared on payment of duty. Since, the assessee could not locate the whereabouts of returned goods, the credit of ₹ 45.46 lakh availed was inadmissible because it was not followed by the next step of remake/recondition and clearance with payment of duty. Since the final duty had not been paid, the credit had to be recovered with interest.

We pointed this out to the department/Ministry in October 2009/September 2010; their reply had not been received (December 2010).

CHAPTER VII
MISCELLANEOUS TOPICS OF INTEREST

Apart from the cases reported in the foregoing chapters, some interesting cases noticed in audit and involving duty of ₹ 50.05 crore are illustrated in the following paragraphs. These observations were communicated to the Ministry through four draft audit paragraphs. The department had accepted (till December 2010) the audit observations contained in one draft audit paragraph with a financial implication of ₹ 11.66 lakh.

7.1 Incorrect determination of assessable value on petroleum products

The Board in its circular dated 22 April 2002 clarified that in the event of intermixing of superior kerosene oil (SKO) with MS/HSD (Motor Spirit/High Speed Diesel) during movement of petroleum products through pipeline, the duty payable on the intermixed part of SKO and duty payable on MS/HSD should be quantified and higher of the two paid.

M/s Indian Oil Corporation Ltd., (RD), Haldia in Haldia commissionerate, engaged in manufacture of petroleum products, used SKO as interface for clearance of MS/HSD through pipelines to different depots. The assessee determined the interface quantity of SKO with MS and calculated and paid duty on intermixed SKO without calculating the higher rate of duty payable on MS. The department was requested to quantify the actual duty payable on MS for the period from September 2004 to February 2008 and apply the higher duty and recover the difference.

When we pointed this out (September 2008), the department stated (April 2009) that as per circular dated 4 September 2004 of the Board, duty was payable on the petroleum products at the time of removal in the condition in which it was cleared from the refinery irrespective of any transformation/ change likely to take place at the marketing installations.

The reply of the department was not acceptable as the assessee had not paid duty on clearance from the refinery. Therefore, the duty paid was not in conformity with either of the Board circulars dated 22 April 2002 and 4 September 2004.

The department intimated (May 2010) that, a protective show cause notice of ₹ 49.16 crore covering the period from September 2004 to August 2009, had been issued in October 2009.

The reply of the Ministry had not been received (December 2010).

7.2 Non-levy/payment of cess on cement

Section 9(1) of the Industries (Development and Regulation) Act, 1951 (read with Cement Cess Rules, 1993 made there under), stipulates that every manufacturer producing cement in cement plants of capacity not lower than 99,000 tonne per annum based on rotary kiln and 66,000 tonne per annum based on vertical shaft kiln, shall pay cess at the rate of Re. 0.75 per tonne of cement manufactured and removed from the factory. Rules 3 and 4 of the said Rules further stipulate that every manufacturer of cement who is liable to pay cess shall submit to the 'Development Commissioner' for cement industry, under the Ministry of Commerce and Industry, Government of India, a monthly return relating to stocks of cement produced and removed during the preceding month and shall remit the amount of cess to the said authority by 15th of the following month.

Ten manufacturers of cement in Guwahati, Guntur, Hyderabad IV and Shillong commissionerates, cleared 103.40 lakh tonne of cement manufactured in their factories during the period from April 2001 to March 2010 without payment of cess, notwithstanding the fact that the installed capacity of these factories, based on rotary kilns was in excess of 99,000 tonne per annum and cess was accordingly payable. The total cess not paid by the ten assessees amounted to ₹ 77.54 lakh.

We pointed this out to the Development Commissioner of Ministry of Commerce and Industry (between June and August 2010); their reply had not been received (December 2010).

7.3 Demand not raised

The Supreme Court in the case of M/s Madhumilan Syntex Pvt. Ltd. {1988 (35) ELT 349 (SC)} held that unless a show cause notice was issued under section 11A of the Central Excise Act, 1944 the department was not entitled to recover any dues.

M/s Aster Tele Services Pvt. Ltd., in Hyderabad III commissionerate, engaged in the manufacture of M.S. galvanized towers and tower parts obtained waste products namely zinc dross, zinc scrap, zinc dust etc., during the process of galvanization. The assessee cleared these waste products without payment of duty during the period from 10 May 2008 to 31 January 2009. Duty of ₹ 11.66 lakh payable on the said waste products was not demanded. This was recoverable with interest.

When we pointed this out (April 2009), the department accepted the audit observation in principle (May 2009 and March 2010) but stated that the issue was already in their knowledge and the assessee was advised in February 2009 to pay duty.

Glossary of terms and abbreviations

Abbreviated form	**Expanded form**
Board	Central Board of Excise and Customs
CAS	Cost Accounting Standard
CESTAT	Customs, Excise & Service Tax Appellate Tribunal
commissionerate	Commissionerate of central excise
ELT	Excise Law Times
EOU	Export Oriented Unit
GTA	Goods Transport Agency
HSD	High Speed Diesel
Ltd.	Limited
MRP	Maximum Retail Price
MS	Motor Spirit
NT	Non Tariff
PLA	Personal ledger account
Pvt.	Private
SCN	Show cause notice
SKO	Superior Kerosene Oil
the Ministry	The Ministry of Finance