# CHAPTER II
# INCORRECT ASSESSMENT OF CUSTOMS DUTIES

We found a few cases of incorrect assessment of customs duties during test check, having an implication of ₹ 37.94 crore. They are described in the following paragraphs. These observations were communicated to the Ministry through five draft audit paragraphs.

## 2.1 Financial gain by delaying the presentation of Bills of Entry

As per section 46 read with section 48 of the Customs Act, 1962, an importer is required to present a bill of entry (BE) in respect of imported goods and take clearance within 30 days from the date of unloading or within such extended time as the department may allow. Goods not cleared, could be sold by the person having the custody after notice to the importer and with the permission of the proper officer. As per section 15 (1) of the Customs Act, 1962 the rate of duty and tariff valuation applicable to imported goods should be the rate and valuation in force on the date of presentation of BE.

The duty on Crude palm oil (CPO) was reduced from 45 per cent to 20 per cent vide notification no.37/2008-cus dated 20 March 2008 and the same was again reduced to 'nil' as per notification no.42/2008 dated 1 April 2008. Duty on Crude degummed soyabean oil (edible grade) (CDSO) was also reduced from 40 per cent to 'nil' as per notification 42/2008 dated 1 April 2008.

We found 92 consignments of 'CPO & CDSO' that were imported between December 2007 and February 2008 by M/s Adani Willmer & 22 others through Custom House, Kandla, Commissionerate. They were neither cleared within 30 days from the date of unloading nor were any extensions sought by the importers. After delays ranging from 35 days to 161 days, 92 BEs were filed between 24 March and 30 June 2008 claiming duty concessions under aforesaid notifications. The department allowed clearance of goods after imposing penalty (The penalty is token, with maximum of ₹ 1 lakh) under section 117 of the Customs Act, 1962 and duty was levied at concessional rates. Thus, the importers managed to pay lower rates by delaying the presentation of BEs. This resulted in a notional loss of revenue of ₹ 36.67 crore.

When we pointed this out (August/November 2008), the department stated (August 2009, February 2010) that:-

i) The duties were assessed and paid at the rate prevalent on the date of presentation of BE as provided in section 15.

ii) Custom department/customs officers were not the custodian of the goods and could not suo moto insist that the importer clear the goods within 30 days.

The reply of the department underlined the lacunae in the current set of provisions which enabled the importers to delay the clearance of imported goods beyond the prescribed period of 30 days, resulting in loss of revenue.

We reported (October 2010) the matter to the Ministry; its response had not been received (December 2010).

*Recommendation*

*It is recommended that the Government may examine amendments/notifications that should provide that in case of clearances after 30 days attributable to the importer, any loss of revenue suffered due to reduction in duty rates would have to be made good by the importer.*

## 2.2 Interest paid on Terminal excise duty (TED) refunds

As per paragraph 8.3 (c) of the Foreign Trade Policy (FTP) 2004-09, deemed exports shall be eligible for refund of Terminal excise duty (TED) in respect of manufacture and supply of goods qualifying as deemed exports subject to the terms and conditions prescribed in the Handbook of procedure Vol.-I. Further, as per paragraph 8.5.1 simple interest at the rate of 6 per cent per annum will be payable on delay in refund of TED.

Test check of TED payment records in the office of the Joint DGFT, Ludhiana, revealed that in 379 cases the claims for refunds were not settled within the prescribed time limit resulting in payment of interest amounting to ₹ 75.31 lakh.

When we pointed this out (September 2009), the Regional DGFT authority stated that payment of interest was made as per the policy and claims could not be settled because of delay in allocation of funds from the DGFT, New Delhi. The reply confirmed that the delays and the resultant payment of interest of ₹ 75.31 lakh could have been avoided with the timely allocation of funds.

We reported (September 2010) the matter to the Ministry; its response had not been received (December 2010).

## 2.3 Incorrect adoption of rate of duty

In terms of section 3 of Customs Tariff Act, 1975 read with Central Excise notification no.2/2008 dated 1 March 2008; additional duty of customs (CVD) at the specified rate was leviable on imported goods listed in the table annexed to the notification. The rate of CVD was reduced to 10 per cent on all the goods vide Central excise notification 58/2008 dated 7 December 2008 except goods specified at serial nos. 14,16 & 18 of the notification 2/2008-CE.

M/s Delphi automotive systems Pvt. Ltd. and twenty other importers imported (December 2008 to March 2009) 42 consignments of various goods namely Grease (CTH 27101980, serial no.16), semi refined paraffin wax (CTH 27122090, serial no.18), automatic transmission fluid (CTH 27101980, serial no.16) through Chennai Sea Commissionerate for a total value of ₹ 5.37 crore and these were incorrectly assessed to CVD at the rate of 10 per cent under notification 58/2008-CE, even though they were specifically excluded from

the concession. The incorrect application of rate of duty resulted in short levy of duty of ₹ 30.96 lakh which was recoverable.

When we pointed this out (May 2009), the department reported recovery (June/October 2009) of duty of ₹ 24.37 lakh along with interest of ₹ 0.88 lakh in respect of 30 consignments. Reply for the remaining consignments had not been received (December 2010).

We reported (August 2010) the matter to the Ministry; its response had not been received (December 2010).

## 2.4 Incorrect assessment of high sea sale

As per Rule 3 (1) of Customs Valuation Rules 2007, the value of imported goods shall be the transaction value. The Central Board of Excise and Customs in its public notice no. 145/2002 dated 3 December 2002 clarified that in case the actual high sea sale contract price is more than 'c.i.f. value plus 2 per cent', then the actual sale contract price paid has to be considered for the purpose of duty assessment. The assessable value would also include commission charges or other expenses incurred by the importer besides landing charges of one per cent.

M/s Patanjali Ayurved Ltd. purchased capital goods e.g. "Steam Pressure Peeling machine", "Belt Press with accessories" (June/July 2009) on high sea sale basis from M/s Alfa Leval (India) Ltd against EPCG licence dated 25 March 2009. Audit scrutiny revealed that the BEs were filed on "the c.i.f. value plus two per cent of high sea sale charges" and duties were paid accordingly. Even though the "agreement values" were more than the invoice values. Thus, non adoption of agreement value for the purpose of assessment resulted in short levy of duty of ₹ 13.38 lakh.

This was pointed out to the department in February 2010, their reply has not been received (December 2010).

We reported (August 2010) the matter to the Ministry; its response had not been received (December 2010).

## 2.5 Non-levy of safeguard duty

As per notification no.75/09-cus dated 30 June 2009, safeguard duty is leviable on 'Phthalic anhydride' classifiable under the Customs tariff heading (CTH) 29173500, when imported from countries other than notified 'developing countries'. Such duty was to be levied on ad valorem basis at the rate of 25 per cent from 29 January 2009 to June 2009 and at the rate of 15 per cent from July 2009 to December 2009.

M/s Asian PPG Industries Ltd. and M/s Atul Ltd. imported (May/October 2009) three consignments of 'Phthalic anhydric' from Taiwan through Jawaharlal Nehru Custom House (JNCH), Mumbai. The department cleared these consignments without levy of safeguard duty. This resulted in non levy of duty of ₹ 7.59 lakh.

When we pointed this out (December 2009), the department stated that as the safeguard duty notification was rescinded, the duty was not leviable on goods.

The reply of the department was not acceptable because notification no.9/2009-cus dated 29 January 2009 imposing provisional safeguard duty was rescinded on 30 June 2009 and another notification no.75/2009-cus was issued on the same day levying safeguard duty on phthalic anhydride on a final basis.

We reported (August 2010) the matter to the Ministry; its response had not been received (December 2010).