Section 2 - Customs

CHAPTER 2.1 INTRODUCTION

2.1.1 Duty Drawback: A brief introduction

Duty Drawback is a duty neutralization scheme designed to promote exports. It seeks to compensate all duties/taxes embedded in the cost of manufacture of exported products. This ensures that exported products are revenue neutral. Section 74 and Section 75 of the Customs Act, 1962, Section 37 of the Central Excise Act, 1944 and the Finance Act, 1944 empowers the Central Government to grant duty drawback.

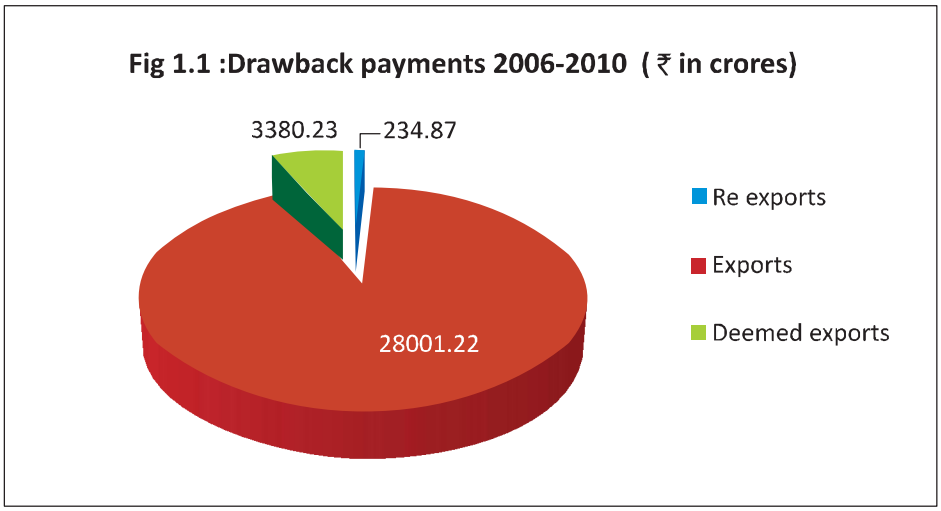
Section 74 of the Act authorizes the grant of drawback on re-export of duty paid imported goods. Whenever imported goods are identifiable as such at the time of re-export, drawback to the extent of 98 per cent of duty paid can be allowed. Claims for drawback on re-export are made and processed manually.

Under Section 75, drawback is payable on manufactured articles when exported. The exporters have the option to apply for drawback either as per the All Industry Rate (AIR) schedule notified by the Government of India or the Brand Rate (BR) fixed by the jurisdictional Excise Commissioner. All India Rates (AIR) of duty drawback are notified every year by the Directorate of Drawback at the Ministry of Finance, GoI after an assessment of average incidence of Customs and Central Excise duties suffered on inputs utilized in the manufacture of export products. These rates feature in the Drawback schedule where they are listed against the four, six or eight digit code describing the commodity. Whenever AIR rate for a particular commodity is not specified or the refund under the prescribed AIR rate covers less than 80 per cent of the cost incurred by the exporter on input duties, the exporter can opt for claiming fixation and payment under the Brand rate. For BR fixation, the exporter has to apply to the jurisdictional Excise Commissioner along with mandated documents. The rates are dependent on the specifics of actual duty incidence. Claims made under Section 75 are made by exporters online on the Indian Customs Electronic data interchange System (ICES).

Drawback is also available on 'Deemed Exports'[9] in which goods do not leave the country and payment for such supplies is received either in Indian Rupees, or in free foreign exchange. The AIR schedule is not applicable to deemed exports. The rate admitted for payment of deemed export duty drawback, is fixed by the jurisdictional Jt. DGFT.

[9] As per para 8.2 of FTP 2009-14, supply of goods by DTA supplier i) against Advance Authorisation/DFIA for intermediate supplies, ii) to units located in EOU, STP etc, iii) to EPCG licensee for capital goods supply on invalidation, iv) to projects/ turnkey contracts funded by multilateral agencies notified by the Department of Economic Affairs, against international competitive bidding, to power projects and refineries under international competitive bidding, to nuclear projects through competitive bidding, to projects funded by UN agencies

During the period between April 2006 and March 2010 the total payment of drawback was ₹ 36,000 crore. The commissionerates and RLAs test checked by us paid ₹ 31,616 crore were paid as drawback. The bulk of these payments were made on Section 75 cases. Details are shown in figure 1.1 below:



2.1.2 Audit objectives

The audit review was conducted to

(i) examine the rules, regulations and procedure to identify ambiguities and lacunae that are required to be addressed

(ii) seek assurance that the fixation of All Industry Rates and Brand Rates are done in the prescribed manner

(iii) identify instances of non-compliance to provisions relating to drawback leading to loss of revenue.

2.1.3 Scope and methodology of Audit

The audit was carried out in 39 out of 93 Customs Commissionerates across 12 states[10] where the volume of drawback transactions was relatively higher. We got access to data relating to 34.58 lakh drawback cases out of 46 lakh cases (i.e. 75%) settled between April 2006 and September 2009. We executed queries on the data and scrutinised selected case files. We examined the fixation of the All Industry Rate in the Ministry of Finance, GoI and brand rates of drawback at 28 Central Excise Commissionerates. We also scrutinised the records of 19 Regional DGFTs/ Development Commissioners for deemed export drawback allowed under the FTP. The audit observations included in this report are based on the audited samples.

[10] Delhi, Maharashtra, Tamil Nadu, Kerala, Karnataka, Uttar Pradesh, West Bengal, Gujarat, Bihar, Punjab, Andhra Pradesh and Rajasthan

2.1.4 Acknowledgement

The Indian and Accounts Department acknowledges the cooperation extended by the Ministry of Finance and the Ministry of Commerce and Industry along with their field formations in providing the necessary information and records during the conduct of this audit. The objectives, scope and audit methodology for the review was discussed in the entry conference held on 24 July 2009 with Ministry of Finance. The draft Report was issued to Ministry of finance and Ministry of Commerce and Industries on 27 April 2011. The recommendations and audit findings were discussed in an exit conference on 15 June 2011 with both the Ministries. Responses to the recommendations were received (June 2011) from Ministry of Finance and have been appropriately incorporated in this Report.

CHAPTER 2.2
DRAWBACK ON RE-EXPORTS: SECTION 74

2.2.1 Claims under Section 74

Drawback under Section 74 is paid as per sliding rates which take into account the duration of use, depreciation in value and other relevant circumstances. Unlike Section 75, where drawback is claimed at the time of filing shipping bill, under Section 74, drawback is to be claimed within a maximum period of six months from the date of export. The claim is preferred manually. Since these claims are for re-export of imported goods, the Customs Department examines each shipment to verify that they are the same goods that were imported. At the time of filing the claim the exporter has to submit the Shipping Bill bearing examination report recorded by the proper officer of the customs at the time of export. After scrutiny and passing of the drawback claim, payment is made to re-exporter through cheque.

2.2.2 Identification of goods

As per provisions of Section 74(2) of the Customs Act, 1962, when any goods capable of being easily identified have been imported into India are exported within two years from the date of import, payment of duty drawback at the rate prescribed is allowed. According to section 74(3)(b), the Central Government may make rules which, *inter alia*, would provide for the manner in which the identity of the imported goods may be established and may specify the goods which shall be deemed to be not capable of being easily identified. Further, the export goods are to be identified to the satisfaction of the Asst. Commissioner/Dy.Commissioner of Customs as the case may be.

We found that no supplementary rules have been framed under Section 74(3) ibid laying down the parameters for identification of goods in case of re-exports. In the absence of specific instructions the establishment of such identity remains with the discretion of the concerned Assistant Commissioner of Customs. The only item that had been declared not capable of being easily identified was Gum Arabic, Gum Benjamin and variants, which had been done in June 1881 under the provisions of Sea Customs Act 1878.

Test check of cases indicated that the markings on the export item were used as an important criterion for identification. However, we found instances of discrepancy in other parameters like dimension, gross weight, chemical properties etc. We feel that these discrepancies were adequate to merit a detailed examination. However, in the absence of specific parameters, all opinion becomes subjective. Therefore, there appears to be a clear requirement to specify some criteria. We found 12 such cases involving drawback payment of ₹ 1.42 crore and a few are narrated to illustrate the nature of the discrepancies.

M/s Tata Tele Services, Hyderabad imported one set of Wireless Soft Switch (WSS), Wireless Gateway (WGW) and test equipment weighing 740 Kg gross, on 12 July 2006 through Air Cargo Complex, Shamshabad under Hyderabad-II Commissionerate. The said goods, after being put to use, were re-exported on 10 January 2007 and drawback of ₹ 15.77 lakh was sanctioned with a gross weight of 1050 Kgs and net weight of 950 Kgs. The significant rise in gross/net weight was not explained.

In two export claims in Chennai Air commissionerate, drawback amounting to ₹ 22.41 lakh was paid. We observed similar variation in gross weight and number of units between import and re-export in both the cases.

Three exporters were paid drawback amounting to ₹ 62.34 lakh for re-export of chemicals. In two of these cases no markings were available for the items and identity was established in terms of documentary evidence. In the third case where enzymes were re-exported after fifteen months of import, we found that the examination report mentioned that the identity of the imported item was established only with reference to the markings in the drums and names of enzyme indicated in the Bill of entry. We feel that the scope for identification by markings was not fool proof in the case of chemicals and testing of samples was essential to avoid risk of erroneous identification.

We found 'Remelted Zinc Blocks' were re-exported and drawback permitted on the basis that the subject bulk goods were identifiable and identical to goods lying in the import area which were related to other consignment. This method was used because the Zinc blocks were of irregular dimensions, shapes & sizes and having no distinct markings, was inherently incapable of being easily identified.

Recommendation No. 1

- *The Department may issue necessary instructions/ frame rules under Section 74(3) indicating parameters for identification of re-exported goods with the originally imported items. Physical properties of goods placed for re-export, along with documentary declarations, should be cross verified with particulars of related imports on the basis of instructions issued.*

The Ministry stated (June 2011) that the recommendation would be examined in consultation with field formations and a final decision will be taken thereafter.

2.2.3 Determination of use

As per provisions of Section 74(1) of Customs Act, 1962, when any goods capable of being easily identified have been imported into India and duty has been paid on such import, duty drawback at the rate of 98 per cent of duty paid at the time of import is to be re-paid if the goods are re-exported without being put to use. In case of used goods drawback is to be sanctioned on depreciated value at the rate specified in the Notification No.19/1965 dated 6th February 1965, (as amended in March 2008).

In the revision petition against the order of Commissioner of Customs (Appeals) Chennai in the case of M/s Seljegat Printers v. U.O.I (2002(143) ELT 719), the Revisionary Authority, Department of Revenue, held that once a machine is operated, may be for a short time for demonstration or exhibition to show its performance etc, the machinery is to be treated as used. Thus the term 'use after import' need not be only commercial use. Usage for a short period for demonstration, exhibition or tests also amounts to use after import.

We observed that there were no instructions of the board specifying how to determine whether goods were "used" or not. Test check of cases in audit indicated that a large number of goods fulfilled the criteria for "used after import", but were treated as unused goods. We found 55 such cases involving drawback payment of ₹ 1.74 crore. Some illustrations are given by way of example:

2.2.3.1 M/s. Toyota Kirloscar Motor (P) Ltd, under Chennai Sea commissionerate, imported Toyota Prototype Vehicles manufactured by their parent company viz M/s. Toyota Motor Corporation, Japan for the purpose of 'testing and evaluation'. These vehicles were re-exported on 9 August 2008 with FOB value of ₹ 1.83 crore on which drawback claim for ₹ 2.12 crore was admitted. Audit scrutiny revealed that the vehicles were exported after 'testing and evaluation' and hence amounted to 'use'. Therefore, the exported item was not eligible for sanction of drawback as 'unused' good under section 74 of Customs Act, 1962.

2.2.3.2 M/s Ajanta Manufacturing Ltd, under Kandla Commissionerate, re-exported 52,500 pieces of high pressure lamps in October 2006 claiming duty drawback of ₹ 19.63 lakh under section 74 of the Customs Act. The claim was sanctioned to the party in May 2007. Audit scrutiny revealed that Asst. Commissioner (Docks) remarked in his examination report that "the goods were found to bear the marking 'mfd. by Ajanta Mfg Ltd, Orpat House, Kutch' and hence the identity of goods imported was not established under section 74 of the CA 1962". In spite of the adverse examination report, the claim was sanctioned by the Deputy Commissioner without recording any reasons. The payment of drawback amounting to ₹ 19.63 lakh allowed was therefore irregular.

On this being pointed out, the Dy. Commissioner of Customs (Exports) Customs House, Kandla stated (March 2010) that a demand-cum-show notice for ₹ 19.63 lakh had been issued to the exporter for recovery of the drawback erroneously granted. The reply did not indicate what action was taken against the official who passed the claim despite the adverse examination report.

2.2.3.3 In terms of section 2(f)(iii) of the Central Excise Act, 1944, "manufacture" includes any process, which, in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labeling or re-labeling of containers etc,.

M/s TTK LIG Ltd. (Chennai Sea and Air Commissionerates) imported 'Vibrator ring' in December 2005 and re-exported the same in January 2006 citing the transaction as 'Outright sale'. The transactions of import and re-

export involved no foreign exchange remittance since the goods were imported on Free of Cost basis. However, value was assessed and duty collected on the goods. The exporter received foreign exchange by way of packing charges on the goods re-exported. The exporter was granted drawback at 98 per cent of the import duty paid treating the goods as unused. We found that the imported goods were not in their original packing but were repacked for which the exporter also collected packing charges. Therefore, the goods imported underwent the process of repacking, which amounted to manufacture. Hence the claim having financial implication of ₹ 36.12 lakh did not merit sanction under Section 74.

We communicated the observation (January '2010) to the Department. The department, in reply, cited the judgment in the case of M/s Torrent Pharmaceuticals V. UOI (2001 (138) ELT 949) and stated that drawback under section 74 was admissible when the goods were repacked, relabeled and re-exported and the description of the goods on import documents and on the re-export documents tallied.

The reply of the department was not acceptable because Section 2f (iii) ibid was introduced in March 2003, i.e. after the case law cited by the department.

Recommendation No. 2

- *The Department may issue suitable instructions to clarify the typical conditions under which goods are to be treated as "used after import".*

The Ministry stated (June 2011) that the recommendation would be examined in consultation with field formations and a final decision will be taken thereafter.

2.2.4 Irregular payments

2.2.4.1 Time barred claims and delayed replies to deficiency memo

As per Rule 5 of Re-export of Imported Goods Rules, 1995, a claim for drawback shall be filed with relevant documents within three months from the date on which LEO is granted. If the Assistant Commissioner of Customs is satisfied that the exporter was prevented by sufficient cause to file his claim within the aforesaid period of three months, he can allow the exporter to file his claim within a further period of three months. Sub rule 5(3) states that the date of filing of the claim shall be the date of affixing the dated receipt stamp on the claim which is complete in all respects and for which an acknowledgement is issued. Further, as per sub-rule 4(a) of Rule 5, any claim which is incomplete in any material particulars or is without the documents shall not be accepted and returned to the claimant with deficiency memo within 15 days of submission and shall be deemed not to have been filed. Where exporter complies with the requirement specified in deficiency memo within 30 days from the date of receipt of deficiency memo, the same will be treated as a claim filed under Sub-Rule (1) of Rule 5.

(i) We found 54 cases in Bengaluru, Chennai, Delhi, Hyderabad II and Kandla, where time barred claims were admitted and drawback payment of ₹ 1.19 crore was made.

We also found that 171 claims were filed in ACC Shamsabad under Hyderabad II during the review period. The Department had neither affixed receipt stamp nor issued acknowledgment in any of these cases. Even though internal audit of these payments were carried out in the Commissionerates at Hyderabad, no observations in this regard were made in any of the commissionerates. Two illustrations on admission of time barred claims are given below:

- M/s Salora International Limited, New Delhi re-exported Storage Unit MP3 Players in December 2005 and filed a drawback claim of ₹ 20.14 lakh at maximum admissible rate (98%) in March 2006. The claim was allowed in July 2007. We observed that after the claim was submitted in March 2006, the department issued a deficiency memo in June 2006 directing the exporter to submit BRC, import packing list and bill of lading. The Department issued a reminder in September 2006. The claimant complied with these requirements in March 2007, i.e after nine months against the maximum permissible period of 30 days. However, despite the claim being time barred, the Department passed the claim and paid the inadmissible drawback which was recoverable.

- M/s Bharti Airtel Ltd under Chennai Air Commissionerate re-exported 'Test equipment', on 16 July 2007. The department granted drawback of ₹ 10.43 lakh @ 95 per cent since the goods were cleared as 'used'. Audit scrutiny revealed that the claim was filed on 20 December 2008 i.e after a delay of seventeen months and four days from the date of Let Export. Thus, the drawback allowed was inadmissible in terms of provision ibid.

(ii) Audit scrutiny at Bengaluru, Chennai and Hyderabad revealed 16 cases where drawback under section 74 amounting to ₹ 1.53 crore was paid to exporters although replies to deficiency memos issued were not submitted within the stipulated timeframe of 30 days. In four out of these 16 cases, the claims were admitted even without the receipt of any reply from the exporters. An illustration is given below:

M/s BEL, Bengaluru, under Bengaluru Commissionerate, was issued a deficiency memo in February, 2008, against claim filed under Section 74. It was found that although the claimant did not respond to the memo issued, the Department sanctioned drawback amounting to ₹ 21.07 lakh after five months (in July 2008).

On this being pointed out, the Department issued SCN to the exporter. However, the department did not intimate action taken against the officials responsible for authorising the amount and causing loss to Government.

2.2.4.2 Reversal of Cenvat Credit

Rule 3(5) of Cenvat Credit Rules 2004 stipulates when inputs on which cenvat credit was taken, are removed as such, the manufacturer of the final products shall pay an amount equal to the credit availed in respect of such inputs. The provision indicates that when imported inputs are re-exported, any cenvat credit availed for the CVD paid on the import, needs to be reversed for admissibility of drawback under Section 74.

We observed two cases at Chennai and Vishakhapatnam Commissionerates where the exporters were granted drawback of ₹ 72.46 lakh although they did not reverse the cenvat credit availed on imports. One case is illustrated below:

M/s Ford Chennai India (P) Ltd. under Chennai Sea Commissionerate was awarded drawback of ₹ 61.92 lakh for the re-export of 'steering columns'. We found that the exporter had availed Cenvat credit but not reversed the same at the time of preferring the drawback claim. The omission to reverse the Cenvat credit had resulted in incorrect grant of drawback to the extent of ₹ 44.41 lakh which was recoverable with interest.

The observation was communicated to the department (January 2010) and their reply was awaited.

CHAPTER 2.3
DRAWBACK ON EXPORTS: SECTION 75

2.3.1 Claims under Section 75

Drawback claims under Section 75 are filed and processed through the EDI system. The EDI system automatically processes a shipping bill for drawback under the AIR rate unless the exporter specifically prefers his drawback claim under brand rate or opts for another export incentive scheme.

Wherever exporters opt for brand rate, the Customs department sanctions the drawback after the Excise Commissionerate concerned fixes and communicates the brand rate.

After the Customs Department grants the 'Let Export' order against a particular shipping bill, the carrier submits the details of the Export General Manifest online. The claim is transmitted to the drawback queue for processing by the Drawback branch. After the drawback is sanctioned online, the amount payable to the exporter is electronically credited to the bank account of the exporter.

2.3.2 Delays in claims processing

Section 75A of the Customs Act 1962 provides that where any drawback payable to claimant is not paid within one month from the date of filing of the claim, interest at six per cent *per annum* is to be paid to the claimant thereafter. In 2002, the Board directed that drawback claims should be cleared within 3/5 working days from the date of shipment and electronic filing of EGM where processing is done online/manually. As per Drawback Rules, if a drawback claim is incomplete, deficiency memo is to be issued to the exporter within 10 days.

We queried the drawback transactions data made available to us pertaining to Andhra Pradesh and Gujarat and found significant delays in processing of drawback claims in the Commissionerates situated in these locations. In Andhra Pradesh, we noted delays in processing in 10,177 cases – more than half of which were processed after more than three months. In 20 per cent of these claims, settlement was delayed beyond a year.

In Gujarat, out of 88,000 claims analysed/queried, delays occurred in 20,856 (23.7 percent) cases. Delayed settlement of cases held up the payment of drawback and in 4048 cases of delayed processing at Kandla and Ahmedabad, we found deficiency memos were raised much later (ranging from 31 days to more than 2 years) after filing of claim. The Kandla Commissionerate stated that delays in processing occurred as the claimants were not submitting the requisite documents in response to the deficiency memos issued by the Department. The reply was not tenable as we found that queries were raised much beyond the stipulated time of 10 days. Moreover, numerous queries were incomplete with comments like 'please produce documents' without

clearly specifying the deficiencies. That led to further clarificatory communications and compounded the delays. Such large delays went against the basic tenor of directions of the Board in 2002, which provided for quick processing and disposal of claims to facilitate early payment of drawback to the taxpayers.

Similarly, 2,276 claims settled at Bihar, Mumbai, Rajasthan and UP, we noted delay between 13 days to four year in processing the claims.

Recommendation No. 3

- *The Department needs to streamline the verification procedures to enable faster processing of claims. Further, whenever the documents filed are found to be deficient, these should be communicated to the applicant in clear, unambiguous terms within the stipulated time frame of 10 days.*

The Ministry while accepting the recommendation stated (June 2011) that the field formations would be sensitised once again on this issue.

2.3.3 Declaration of freight

For claims U/Sec 75 drawback is allowed on ad valorem basis on the FOB value. Wherever transaction value is inclusive of freight cost, the freight component is reduced from the transaction value and drawback is paid on the FOB value. In May 2000, the Department issued a circular which mandated the exporter to declare the actual freight paid or payable by him on the shipping bill. The circular, inter alia, stated that the Commissioner of Customs should also ensure that a regular test check of 10-15 percent of claims be carried out to verify the declaration of freight by the exporter and take appropriate action on misdeclaration. However, unlike Rule 10(2) of valuation rules for imports (which considers freight at 20 per cent of FOB value when not ascertainable), no floor value has been imposed in Customs Valuation rules for freight charges on exported goods.

The above provisions imply that it is possible to claim a larger sum as drawback by underdeclaring the freight value. We reviewed the freight declarations made by exporters by running SQL queries on the transactions data. The results are tabulated below:

Table 1: Freight declaration by claimants during review period

State	No. of Claims settled	No. of Claims analysed through query	No. of cases where Freight declared is below 5% of FOB value	Below 5% declaration (in % terms)
1	2	3	4	5 = (4/3)*100
Delhi	1052831	1052831	130000	12
Gujarat	98314	88000	30000	34
Punjab	76719	54633	27500	50

State	No. of Claims settled	No. of Claims analysed through query	No. of cases where Freight declared is below 5% of FOB value	Below 5% declaration (in % terms)
Tamil Nadu	1296516	519312	160000	30
Karnataka	148216	74108	15179	20
Kerala	112204	63315	15700	24

We found that the freight declared was less than five percent of FOB value in a significant number of cases in Gujarat, Punjab, Karnataka and Tamil Nadu. In 4,519 out of the 88,000 cases (5.13 percent) in Gujarat (Ahmedabad and Kandla Commissionerates) the freight declared was found to be less than 1 per cent indicating risk of underreporting of freight.

Recommendation No. 4

- *The Board may consider examining whether a suitable floor value for freight could be determined and fixed. The Board could also reiterate the instructions for sample verification of actual freight paid.*

The Ministry stated (June 2011) that it is practically not possible to fix a floor value for the freight since the rates vary from destinations to destinations, time to time, mode of transport, type of cargo etc.

In such a scenario, the sample verification assumes significance and should be implemented strictly by the Board.

2.3.4 Realisation of export proceeds

In terms of the provisions of Section 75 (1) of the Customs Act, 1962 read with sub-rules 16A (1) and (2) of the Drawback Rules 1995, whenever an exporter, who has been paid drawback, fails to produce evidence of realization of export proceeds within the period allowed under the FEMA, 1999 or as extended by the RBI, the Assistant/ Deputy Commissioner of Customs shall initiate action to recover the amount of drawback paid to the claimant.

Till January 2004, the RBI was furnishing consolidated half yearly Export Outstanding Statements (XOS) to the department, providing details of all export bills outstanding beyond the period prescribed for realization. Thereafter, the RBI discontinued tracking the realization export proceeds valued below $25000 and the department attempted to track these cases using its in-house Bank Realisation Certificate[11] (BRC) application. This application was not successful and the DG (Systems) directed (August 2005) to keep the application in abeyance. It was observed in Commissionerates at Mumbai, Chennai, Kolkata and Hyderabad that no action had been taken upto 2008 to

[11] is issued by the exporter's Bank to certify that exports proceeds are realized against a particular shipping

monitor realization of consignments valued upto $25000. Meanwhile, the DG (Systems) developed a BRC module in ICES and in February 2009, the Department issued fresh instructions for monitoring realization of export proceeds by insisting on half yearly export outstanding statements/ bank realisation certificates from the exporters along with similar statements for the past period. The statements/ certificates so received were to be reconciled with lists of pending realizations generated from the ICES system with the help of the BRC module.

During the course of the review we noticed that the instruction issued by the Board in February 2009 for monitoring realization of export proceeds through the BRC module had not been followed by the field formations uniformly. While monitoring work had been initiated and SCNs were being issued to the defaulting exporters in six commissionerates/ICDs[12], monitoring of realization through the BRC module had not been introduced in six Commissionerates, viz. Kolkata (Port), Kolkata (Airport), Hyderabad – II, Ahmedabad, Kandla and Cochin commissionerates.

In Bengaluru Commissionerate, where the monitoring had been initiated, we found that 150 letters issued to exporters, asking for submission of BRCs for exports involving drawback payment of ₹ 27.23 crore between 2004 and 2007, returned undelivered. In NCH, Delhi we were informed that the BRC module was unable to track outstanding realisations due to technical problems.

Recommendation No. 5

- *The Department must insist on timely submission of BRCs by all exporters and these needs to be entered into the system promptly to enable tracking of defaults. The special cell envisaged for monitoring needs to be set up with earnest. Periodic sample verifications on declarations given by exporters need to be carried out.*
- *The Board should ensure the implementation of the BRC module at all locations.*

The Ministry while accepting the recommendation stated (June 2011) that various instructions/circulars have been issued from time to time. The field formations are repeatedly sensitized on this issue. The Chairman, CBEC has also written (February 2011) to all field formations in this regard.

2.3.5 Declaration of value

Board Circular No.7/2003 dated 5th February 2003 stipulates that exporter has to declare Present Market Value (PMV) of the goods in every case in the shipping bills. Market verification is to be initiated in cases where specific information is available that the FOB value declared is inflated or there is prima facie evidence to suggest such over-valuation and/or where the goods are sub-standard and it appears that the acceptance of the declared FOB value would result in accrual of substantial unintended drawback benefits.

[12] Ahmedabad, Kandla, Chennai (Sea), JNCH, Mumbai, Bengaluru, ICDs at Tughlakabad, Patparganj at Delhi and ICD Rajsico, Rajasthan.

In Hyderabad-II and Visakhapatnam Customs Commissionerates, it was observed that during the period from April 2006 to September 2009, there were 984 claims where shipping bills showed PMVs that were lower than the FOB. In 221 out of these 984 cases we noted that the difference between the declared price (FOB) and the PMV was material. More than 50 per cent of the 221 SBs, the FOB declared is about 10 times the PMV of the items. Although such differences fulfilled the criteria of prima facie evidence for triggering PMV enquiry, market verification was not done in any of the 221 cases.

Recommendation No. 6

- *PMV enquiries may be done on selected sample of cases in the spirit of the circular dated February 2003.*

The Ministry stated (June 2011) that field formations are being sensitized about the need to check over valuation.

However, action was also required to be taken for the cases in which we had pointed out tenfold discrepancies.

2.3.6 Fixation of All Industry Rate (AIR) of drawback

The AIR is fixed under rule 3 of Drawback Rules by the GoI for different commodities after an assessment of average incidence of Customs and Central Excise duties suffered on inputs utilized in the manufacture of export products. For fixation, average quantity and value of each class of inputs used in manufacture of any product class along with average amount of duties paid is considered. The rates are fixed for broad categories of products. The rate for any particular product group is fixed on the basis of weighted averages of consumption of imported / indigenous inputs of a representative cross section of exporters and average incidence of duties. Normally, the rates are revised every year from 1st June, i.e. after considering changes in duty rates made in the budget presented. The AIR (All Industry Rate) is usually fixed as a percentage of FOB price of export products. However, in respect of many items specific rates are also notified to provide a ceiling on drawback.

Till 2004-05 the AIR schedule was being prepared by the Directorate of Drawback, Ministry of Finance, using data on average industry incidence of duties collected from trade councils and industry associations. In 2005-06, an independent high powered Drawback committee was set up to review and formulate the AIR Drawback Schedule in the light of changes made in the budget. This Committee is being set up every year since then. The Committee comprises of a Chairman who is a member of the Economic Advisory Council to Prime Minister and two other members. The Joint Secretary (Drawback) serves as the Secretary to the Committee.

The committee decides the modalities of holding deliberations and meetings with the stake holders and conducts field visits to study specific production processes as it may consider necessary for the formulation of AIR. It also interacts with the administrative Ministries, Export Promotion Councils, Commodity Boards, Trade Bodies and other stake holders to elicit their views on the existing Duty Drawback Scheme and the schedule (All Industry Rates).

We found that the working of the Committee to arrive at declared rates was not fully documented. The Directorate of Drawback could not produce year-wise data regarding cost sheets of various commodities, Import-Indigenous ratios of various inputs used in manufacture, details on manufacturing processes of various products, etc that would have been the basis for fixation of AIR. We found that the Committee had not submitted any calculation sheets/worksheets along with their reports to support the fixation of AIR rates. In the absence of working papers, we were not in a position to assess or verify the procedures adopted for determination of All Industry Rates of drawback. Moreover, we could not correlate the trend of rate revisions in the AIR drawback schedules vis-à-vis changes in import/ excise duty rates.

The Ministry in its reply (January 2011) stated that the methodology used by the Committee had been explained in detail in its first report (2005-06). It further stated that the audit observation relating to absence of working sheets was noted and the Drawback Committee for 2011-12 would be informed about the matter when constituted.

While we agree that the methodology was explained in detail, in the absence of any working sheets, we could not derive assurance that the methodology prescribed was actually followed in fixing the AIR.

Recommendation No. 7

- *The process of rate fixation by the Committee should be fully documented so that independent assurance can be derived on the methodology of rate fixation.*

The Ministry while accepting the recommendation stated (June 2011) that from 2010-11, fixation of AIR for major commodities is being documented.

2.3.7 Fixation of Brand Rate

2.3.7.1 Delay in fixation

As per the provisions of Rule 7 (1) of the Drawback Rules 1995, whenever an exporter finds that the amount or rate of drawback declared under the AIR schedule is less than four–fifth of taxes or duties paid on inputs, he may apply to the jurisdictional Commissioner of Central Excise for fixation of Brand rate within 60 days from the first Let Export Order date which can be extended for further period of 30 days by the Commissioner. Board Circular No.14/2003 dated 6 March 2003 prescribed that the jurisdictional Deputy Commissioner of Central Excise is required to carry out verification within a maximum period of 15 days from the date of receipt of a Brand Rate application in the Headquarters of the Central Excise Commissionerate and thereafter the brand rate is to be fixed within 10 days of receipt of verification report.

We found significant delays in Brand rate fixation across Commissionerates as detailed below:

- In Delhi, we found 17,692 claims pending settlement for more than three months as on January 2010 due to delay in fixation of brand rates.

- In Central Excise Commissionerate, Mangalore we noticed delays in 26 out of the 27 cases of Brand rate fixation during the review period. The average time taken in verification by the Divisional Office was more than three months against the norm of 15 days. After receipt of the verification report, the Commissionerate took more than 8 months, on average, to fix the brand rate against the norm of 10 days. The entire process of fixation took almost a year.
- Similarly, in Commissionerate Excise Jaipur-I –for the 35 applications examined, the average delay in verification was found to be beyond three months and delay for rate fixation after verification was close to three months. The total delay in fixation of Brand rate of drawback in each of the 35 cases examined was beyond 6 months.
- Delays upto one month were noticed 104 cases in Hyderabad IV Commisionerate as well.

Such delays went against the spirit of quick disposal of brand rate claims to facilitate exporters, which was prescribed by the circular of 2003.

2.3.7.2 Time barred applications

We found four cases in three Central Excise Commissionerates[13] where applications for fixation of Brand rate were admitted beyond the prescribed time limit of 60 days from LEO date without specific requests for condonation of delay. These cases involved drawback payment of ₹ 34.44 crore. Two illustrations are given below:

i) M/s Caterpillar India Pvt Ltd, Thiruvallur under the jurisdiction of the Commissioner of Central Excise II, Chennai, filed an application for fixation of brand rate on 11 January 2008, which was 73 days after the LEO dated 29 October 2007. There was no request for condonation of delay. We found that the Commissionerate asked the exporter to file a request for condonation along with sufficient reasons, which in turn was filed only on 11 October 2008, after a delay of 9 months. The claim was sanctioned in January 2009 for ₹ 33.79 lakh.

ii) Brand rate application for sanction of drawback amounting to ₹ 3.81 crore was filed on 7 May 2008 by M/s Indian Oil Corporation Ltd., Barauni under Central Excise Commissionerate, Patna, after a delay of 37 days after stipulated period of sixty days from the first LEO. Similarly, several brand rate applications made by the same applicant, involving drawback of ₹ 30.29 crore submitted beyond 90 days from the date of LEO were accepted and processed by the commissionerate.

2.3.7.3 Verification

As per para 3(c) of Customs Circular 14/2003, the authenticity of the data furnished by the applicant in the specified statements for fixation of Brand rate are required to be verified by the jurisdictional Central Excise authority within 15 days of filing of the application.

[13] Hyderabad-III, Chennai-II and Patna Commissionerates.

We found that there was a problem in verifying data furnished by Indian Oil authorities in their brand rate applications. Two instances are given overleaf:

i) Brand Rate of petroleum products exported by M/s Indian Oil Corporation Ltd. Barauni Refinery was fixed by Patna Central Excise Commissionerate for the period between April 2006 and June 2008. Audit scrutiny revealed that the Range Officer in charge of verification repeatedly reported that declarations relating to percentage yield of Petroleum Products (MS, HSD, SKO and LPG) and proportionate loss of crude oil in their production could not be verified, as it required technical knowledge. He recommended that the verification be done by a technical expert. Although the yield percentage and proportion of crude loss formed crucial components for calculation of brand rate, the Commissionerate never got the declarations verified by a technical expert.

ii) The Central Excise Commissionerate, Haldia issued 26 Brand rate letters for an aggregated sum of ₹ 12.93 crore between June 2006 and June 2009, in favour of Indian Oil Corporation Ltd, the exporter. We found that the exporter had claimed use of 1.04 MT and 1.08 MT of crude oil to produce 1 MT of ATF and 1 MT of SKO respectively. However, the production process indicated that a wide range of products were obtained from crude oil that together constituted the final output. It was not clear how the output of single product was worked out. This called for a detailed technical verification.

In our opinion, similar issue would arise in respect of other assesses producing petroleum products and other products having similar technical complications. We feel that some standard norms are necessary for such products to enable verification of information and ensuring uniformity.

Recommendation No. 8

- *To enable meaningful verification of information and ensure uniformity in fixation of Brand rates, the Department may consider creation of standard industry norms.*

The Ministry stated (June 2011) that the documents submitted by the assessee are duly certified by the Chartered Engineers and there are no grounds/evidence to refute this. Further, during the discussion in the exit conference held on 15 June 2011 the Ministry explained that the output norms of the petroleum products vary from refinery to refinery due to age of machinery, level of technology used in refining and quality of the crude used.

In the exit conference, we further recommended that some random check should be conducted by comparing the documents and declarations with the original production records of the refineries. The Ministry agreed to examine this suggestion.

2.3.8 Availing of cenvat credit

Drawback Schedule specifies higher All Industry Rate of drawback including central excise component if CENVAT credit is not availed by the manufacturer of export product. To avail this benefit, the exporter cannot avail Cenvat credit on inputs and input services and has to produce a non-availment certificate from the jurisdictional excise authorities.

We found 2,160 cases in nine Commissionerates namely Chennai sea, Chennai Air, Tuticorin, Kandla, Jamnagar, Ahmedabad, Bengaluru, Mangalore and Cochin where higher All Industry Rate of drawback was allowed to the exporters but the "CENVAT not availed" certificates were not available with the drawback claims files. Drawback of ₹ 5.70 crore was sanctioned in these cases.

A case is illustrated below:

M/s. Palvi Powertech Sales Pvt. Ltd was sanctioned All Industry Rate (AIR) of drawback of ₹ 59.33 lakh against export of 81 consignments of Caustic Soda Flakes cleared through Mundra, Pipavav and ICD Dasarath Customs Houses during January 2007 to September 2009. We found that the manufacturer of the export goods had availed cenvat credit on raw materials and on input services used in the manufacture. However, the exporter claimed higher rate of drawback by producing a certificate dated 21 February 2007 from central excise authorities stating that the manufacturer had reversed the cenvat credit availed on the input/packing material used in the manufacture of the goods exported. The certificate was silent on the reversal of cenvat credit on input services. We found that the credit availed on input services (₹ 6.03 lakh) were actually reversed in November 2009/February 2010. Therefore, the exporter was not entitled to drawback at higher rate in 2007. The excess payment of ₹ 48.54 lakh which was recoverable with interest and penalty.

On this being pointed out (November 2009/May 2010), the Assistant Commissioner of Customs, ICD, Dashrath stated (May 2010) that a demand-cum-show notice had been issued to the exporter for recovery of drawback of ₹ 18.90 lakh excess paid, in respect of 36 cases. The details of the remaining cases were awaited.

Recommendation No. 9

- *We found that the circular no. 64/98 dated 1 September 1998 stipulated that the manufacturer-exporter shall produce a certificate from the jurisdictional excise authorities to the effect that no cenvat credit has been availed on any input used in the manufacture of export product. In view of the requirement outlined in the notes to the drawback schedule it is recommended that the issue may be further clarified by substituting 'inputs' with "inputs and input services".*

The Ministry accepted the recommendation (June 2011).

2.3.9 Net weight declared

As per CBEC circular No. 130/95 the Exporter has to declare the net weight of the goods exported in a Shipping Bill including the unit of measurement based on the drawback schedule. The net weight of the exported goods on which drawback is claimed cannot be more than the weight of the goods exported as per the Shipping Bill.

We found that this business rule was not mapped in terms of any validation check in the drawback module of the ICES system. Thus, the system did not restrict the net weight to that declared in the shipping bill for computing admissibility of drawback.

Scrutiny at the JNCH commissionerate, Mumbai revealed that in 2.80 lakh cases settled during April 2006 to September 2009 involving drawback payment of ₹ 755.98 crore, the net weight furnished in the shipping bill was less than the net weight adopted for calculating drawback. At Tamil Nadu, the absence of this validation restriction resulted in excess grant of drawback of ₹ 2.63 crore on 644 items exported during the same period.

Recommendation No. 10

- *The requisite validation may be provided in the ICES.*

The Ministry stated (June 2011) that recommendation would be examined in consultation with DG, Systems.

2.3.10 Mismatch in related declarations

As per drawback rules, the Exporter has to furnish details of exports in the shipping bill such as Revised Indian Trade Classification (RITC) code published by Ministry of Commerce and Industries, quantity, unit of measurement and unit price including Currency Code in the declaration on *Item Details*. Similarly, in the *Drawback Details,* information like Drawback Serial Number, Drawback quantity and unit of measurement are to be furnished. The RITC code as provided in the item details should match the drawback serial number provided in the drawback details.

It was noticed in Mumbai that the system was accepting different and mismatched data furnished by exporters in the declarations mentioned above. In respect of 1,93,152 items in two commissionerates, although the quantity declared in item details and drawback details was same, the units of measurement were different. In respect of 31,060 items, the unit of measurement was same while the quantities declared did not match. Similarly, in respect of 62,811 cases in eight commissionerates, we found that drawback was allowed although the drawback serial number and the RITC code did not match. A break of the three types of mismatch identified by us is given below:

Table 2: Mismatched declarations accepted by the system

Commissionerate	Quantity same but unit of measurement differs	Unit of measurement same but quantity differs	Difference in Drawback serial number and RITC code
ACC	51656	3784	33
JNCH	141496	27276	366
Bengaluru and Mangalore	-	-	26379
Ahmedabad	-	-	1530
Kandla	-	-	5418
Visakhapatnam	-	-	99
Cochin	-	-	28986
Total	**193152**	**31060**	**62811**

This indicated that the system did not have adequate validation checks to ensure uniformity in related declarations. Absence of such checks may have led to sanction of ineligible/excess drawback to exporters.

A case is illustrated below:

As per the Drawback schedule 2006-07, 'castor oil and its fractions – edible grade' was mentioned under Sl.No. - 15153010. We found that at Kandla Customs House, 66 consignments of castor oil (edible grade) were categorized under RITC 15153010 in "item details" cleared for export between June 2006 and June 2007. However, while sanctioning drawback, the department admitted the claim under DBK serial No. 1515000099 as 'others' (as observed from "drawback details") instead of Sl.No.15153010. This resulted in sanction of excess drawback of ₹ 1.09 crore.

The Dy.Commissioner of Customs (Export) replied (December 2009) that Castor Oil being a non-edible item, no testing was conducted and the drawback sanctioned under drawback Sl. No. 151500099 was in order. The contention was not acceptable because the goods had been classified as edible grade at the time of export. Moreover, in respect of two other consignments of the same exporter, the department had sanctioned drawback under serial no.15153010.

Recommendation No. 11

- *Adequate provisions may be made in the ICES to ensure that the data entered for drawback claims is consistent with the 'shipping bills' data already available in the system.*

The Ministry stated (June 2011) that recommendation would be examined in consultation with DG, Systems.

2.3.11 Procedural issues

2.3.11.1 Restoration of scrolls

In the ICES, the Asst. Commissioner is authorized to generate a scroll enumerating all the claims sanctioned on a particular day/week. The same is sent to the Bank for direct credit to exporter's account. The Asstt. Commissioner can also restore a previous scroll for rectification of mistakes made while sanctioning the drawback amount.

We observed that the Asstt. Commissioner (DBK), Custom House Kandla restored scroll No.825/2009 on 1 April 2009. Consequently, all the drawback shipping bills in the restored scroll became ready for reprocessing. Thereafter, scroll No.845/2009 dated 8.4.2009 was re-generated and sent to the Bank. This led to double payment of drawback of ₹ 1.88 crore in 109 cases (April 2009). This was later detected and recovered in a phased manner with interest. However, this issue was not brought to the notice of DG (Systems) for rectificatory action.

On this being pointed out (February 2010), the Dy.Commissioner of Customs (Export) stated (March 2010) that the matter had now been brought to the notice of Dy.Commissioner of Customs (System). Action taken to plug the control weakness was awaited.

Recommendation No. 12

- *It is recommended that a control mechanism may be devised to rule out the risk of bulk reprocessing of shipping bills as in the instant case.*

The Ministry stated (June 2011) that recommendation would be examined in consultation with DG, Systems.

2.3.11.2 Audit Trail

We found that the drawback calculated by the system in 1482 shipping bills was more by ₹ 11.50 crore against the drawback finally sanctioned by the department in ACC and JNCH commissionerates at Mumbai. The reasons for the variation were not ascertainable from the information stored on the ICES. On further enquiry, we found that the EDI system offers a menu option for the Assessing Officer to change the drawback classification, item value and drawback rate. It allows the AO to enter proportionate rate of drawback calculated manually when the item value is changed or there is an increase / decrease in quantity.

However, there was no audit trail to track these changes and the justification/reasons for making changes. Since both items were directly related to the quantum of drawback, the information was required to be captured in the system.

We also observed that the rate of drawback for the Brand rate items was not stored in the system. Total amount of drawback sanctioned on brand rate was ₹ 455.03 crore in ACC and JNCH commissionerates.

Recommendation No. 13

- *It is recommended that provision may be made to capture brand rates and record justifications for changes made by assessing officers.*

The Ministry stated (June 2011) that recommendation would be examined in consultation with DG, Systems.

2.3.12 Monitoring of declarations

Conditions 8(e) and (f) of Notification No.103/2008-cus dated 29th August 2008 stipulated that AIR of duty drawback, including the customs component, could not be availed when the inputs used in the manufacturing of exported goods were procured either duty free under Rule 19(2) of Central Excise Rules 2002 or when rebate of duty paid on them had been taken under Rule 18 of Central Excise Rules 2002. To keep a check on the possibility of dual claim, the department had devised a mechanism in the form of declarations (ARE-1 and 2) where the manufacturer would declare the details of goods to be exported and non claiming of rebate etc under Excise rules. These declarations would thereafter be certified by both Central Excise and Customs authorities.

We found 335 cases in Customs Commissionerate, Visakhapatnam, where drawback of ₹ 6.59 crore in respect of exports of 4.89 lakh tones of soya meals falling under drawback serial No.23 was sanctioned at AIR rate. The claims of the manufacturing exporters were cleared without insisting on ARE-2 declarations on non-availment of rebate as required under the rules ibid. This resulted in irregular sanction of drawback of ₹ 6.59 crore and the risk of dual benefit was not addressed.

The department while accepting the audit observation stated (August 2010) that the matter was under investigation of the Special Intelligence and Investigation Branch (SIIB).

2.3.13 Sanction of drawback on products not specified in Brand Rate Letters

As per Duty drawback Rules, 1995, where brand rate of drawback has been determined in respect of a particular category of export goods, the drawback has to be paid as per the specifications mentioned and the terms and conditions stipulated in the brand rate letters issued by the competent authority.

In the Commissionerate of Customs (Preventive) West Bengal, drawback was sanctioned on the basis of brand rate letters issued by Commissioner of Central Excise, Chandigarh and Faridabad for export of 'agricultural tractors' of specified models. Audit scrutiny of the export documents (shipping bills, invoice, packing lists etc) revealed that the exported agricultural tractors were different from the models that were mentioned in the brand rate letters. This resulted in irregular payment of drawback amounting ₹ 45.07 lakh which was

recoverable with interest. Action taken on the departmental personnel responsible for the mistake had not been communicated.

2.3.14 Excess sanction of Drawback due to misclassification

We found 373 cases in 12 Commissionerates[14] involving excess payments of Drawback of ₹ 1.74 crore due to misclassification. An illustration is given below:

M/s Paras Arts and Crafts and 91 other exporter under ACC, New Delhi, ICD, Tughlakhabad and Patpargunj exported brass jewellery/brass cufflinks under drawback serial No. 741902/03 of the drawback schedule as other articles of brass/artware, handicrafts of brass between November 2006 and October 2009. The goods were correctly classifiable under drawback serial No. 7117909001 as brass jewellery. The misclassification resulted in excess payment of drawback of ₹ 8.91 lakh.

The ACC, New Delhi accepted the objection and reported (July 2010) that SCN are being issued to the exporters and ICD, Tughlakhabad and Patpargunj reported (July 2010) that action has been initiated in these cases.

[14] Situated in AP, Delhi, Rajasthan and Kolkata

CHAPTER 2.4
DEEMED EXPORTS

2.4.1 Drawback Claims for Deemed Export

Drawback Claims for Deemed Export are sanctioned by the Joint Director General of Foreign Trade. As per the Foreign Trade Policy (FTP) there are several categories of transactions which are eligible for deemed export. These include supplies of goods to EOU/STP/EHTP/BTPs, power projects, refineries etc. Audit findings related to payment of deemed export drawbacks are presented below:

2.4.2 Delays in claim processing:

According to Para 8.5.1 of FTP, where duty drawback (DBK)/refund of terminal excise duty (TED) is not paid within 30 days from the date of approval of the case by the Regional Licensing Authority, simple interest at 6 per cent per annum is payable to the claimant.

Scrutiny of records of the Zonal JDGFT, Kolkata, AP, Gujarat, Delhi, UP and Punjab revealed that in 1211 cases, the Regional Authority had issued cheques in settlement of the claims for refund of TED/DBK beyond 30 days from the date of approval of such claims and accrued a interest liability of ₹ 15.46 crore.

The DGFT in their reply stated (June 2011) that interest was paid as per the provisions of FTP and in all these cases the payment of interest has to be made due to non-availability of funds.

This indicated that this problem of non-availability had to be sorted out between the DGFT and RLAs, to avoid delays and payment of interest.

2.4.3 Time- barred claim

As per provisions of para 8.3.1 of Handbook of procedures Vol.I of FTP 2004-09 valid during December 2005 to July 2008, deemed export drawback claim was admissible, with extension, up to 2 years of the date of receipt of supplies by the project authority or the date of receipt of payment as per option of the applicant. In an amendment made in July 2008, this period was extended to 3 years subject to a cut of 10 per cent.

M/s GVK made supplies to the 220 Megawatt Combined Cycle Power Project at Jegurupadu during December 2004 to February 2005. The payments were made by the project authority for these supplies between October 2005 and December 2005. M/s GVK submitted a drawback claim of ₹ 16.28 crore on 26 February 2009. DGFT imposed a late cut of 10 per cent and allowed the claim.

Duty drawback of ₹ 14.66 crore and interest of ₹ 32.04 lakh were paid in August 2009 due to delay in disbursement.

Audit scrutiny revealed that the party submitted the complete claim three years and two months after the date of receipt of the payment. Therefore, it was time barred. The department stated (January 2010) that the party had submitted the claims on 26 December 2008 i.e. within three years, which was admissible following the July 2008 amendment ibid. The claim had been returned due to deficiencies and resubmitted in February 2009.The reply was not tenable. The last payment for the supplies was made in December 2005 and two years thereafter i.e in December 2007, the claim had become time barred. The July 2008 amendment came later and was not applicable in December 2007. Therefore, the claim was time barred both in December 2008 as well as February 2009 (Resubmission).

The DGFT in their reply stated (June 2011) that they are issuing necessary instructions to RLA concerned for recovery of amount.

2.4.4 Excess payments

In terms of Para 8.2 of the FTP, supplies of goods to EOU/STP/EHTP/BTP, power project and refineries etc. are treated as deemed exports and shall be eligible for 'deemed exports drawback'.

In two cases at Delhi, we found excess payments vis-à-vis actual duties paid/ claim sanctioned as illustrated below:

i) M/s Reliance Energy submitted a consolidated claim of ₹ 96.72 crore to JDGFT, New Delhi for drawback on deemed exports in September 2007. We found that the claim was sanctioned and paid in five parts which totalled to ₹ 97.09 crore. Thus, the department made an excess payment of ₹ 0.37 crore. On being pointed out in January 2010, the department recovered the amount paid in excess with interest of ₹ 2.58 lakh.

ii) M/s Dinesh Chandra R. Aggarwal Infracom Pvt. Ltd., Nagarjuna Construction Co. Ltd and Dodla Engineering supplied five consignments of High Speed Diesel (HSD) to different projects during October 2006 and March 2008. We found that these firms were sanctioned refund of TED on HSD supplies at different rates for the same period. The facts were communicated to the department in January 2010. In response to audit observation, the department stated (August 2010) that M/s Dinesh Chandra and M/s Nagarjuna Construction Co. Ltd, had been issued SCNs. It also stated that in respect of M/s Dodla Engineering, refund of drawback on HSD was given correctly. The reply of the department was contradictory as the drawback to M/s Dodla Engineering was paid at the same rate as M/s Nagarjuna Construction Co. Ltd. during the same financial year. Since the department had issued SCN to M/s Nagarjuna, it was not explained how the similar payment to M/s Dodla Engineering was correct.

The DGFT in their reply clarified (June 2011) that SCNs were issued to M/s Dinesh Chandra R. Aggarwal Infracom Pvt. Ltd. and M/s Nagarjuna Construction Co. Ltd., as these firms had not replied to RLA's letter. However, M/s Dodla Engineering Ltd. had replied to RLA's letter and thus they were not issued SCN. It was further stated that all cases of HSD are under review as per decision in the meeting of Policy Interpretation Committee of DGFT held in March 2011.

New Delhi
Dated : 8 August, 2011

(SUBIR MALLICK)
Principal Director (Indirect Taxes)

Countersigned

New Delhi
Dated : 9 August, 2011

(VINOD RAI)
Comptroller and Auditor General of India