

CHAPTER III INCORRECT ASSESSMENT OF CUSTOMS DUTIES

3.1 We found from test check (March 2009 to Jan 2012) of records for the period February 2009 to September 2011, a few cases of incorrect assessment of customs duties having revenue implication of ₹ 6.11 crore. They are described in the following paragraphs.

Assessing officer Kolkata airport did not levy applicable duty on left over fuel in the tank of aircrafts run on domestic routes.

3.2 Any stores on board a vessel or aircraft imported without payment of duty be consumed thereon as stores during the period such vessel or aircraft is a foreign going vessel or aircraft (Section 87 of the Customs Act, 1962). When such a vessel or aircraft is converted to coastal run at the end of its foreign run, the aforesaid provision of section 87 is no longer applicable and the stores on domestic run attract customs duty.

3.3 High speed diesel oil (HSD) classifiable under Customs tariff heading (CTH) 2710 19 30, attracts an additional duty of customs at the rate of ₹ 2 per litre (w.e.f. 1 March 2005) vide section 116 of the Finance Act, 1999 besides BCD and other duties. Notification no.4/2006-CE dated 1 March 2006 as amended provides for levy of CVD at the rate of ₹ 2.60 per litre, if the HSD is intended for sale without a brand name {serial no.19 (i)} and otherwise at the rate of ₹ 3.75 per litre (w.e.f. 27 February 2010), {serial no.19 (ii)}.

3.4 Further, notification no.151/1994-cus dated 13 July 1994, as amended provides for exemption from customs duty including additional duty under section 3 of the Customs Tariff Act, 1975, to Fuel and lubricating oil in tanks of aircrafts of Indian Airlines equal to the quantity of the same type of fuel which was taken out of India in the tanks of the same aircraft subject to following conditions that;

- a. the duty of customs or central excise had been paid on the fuel taken out of India;
- b. rate of duty of customs including additional duty on fuel is the same at the time of arrival and departure of the aircraft ;
- c. no drawback of duty of customs or rebate of duty of central excise was allowed on such fuel at the time of departure.

3.5 M/s NACIL (Indian Airlines), while commencing international flights from Kolkata airport, lifted Aviation Turbine Fuel (ATF) without payment of duty from M/s IOCL and other oil companies, in addition to duty paid stock lying in the fuel tank of the aircraft. Similarly, on return journeys, the Airline regularly lifted ATF from Bangkok, Yangon and Kathmandu. On termination of foreign run of these flights at Kolkata airport, they were converted into domestic flights. However, the customs authority at Kolkata airport did not levy duty on imported ATF left

on board at the time of conversion from international flight to domestic flight, and the Airline also did not pay duty thereon. The omission resulted in non levy of duty of ₹ 1.24 crore during January 2009 to March 2010 on import of 3375.779 Kilolitres of ATF.

3.6 The Commissioner of Customs, Kolkata authorities while accepting the observation reported (June 2012) issue of demand notice (February 2012) to the Airline for the period January 2009 to December 2011 for duty of ₹ 2.93 crore. Ministry response was not received (March 2013).

Assessing officer Kolkata (Port) did not levy additional duty on High speed diesel.

3.7 M/s J.M. Baksi & Co., Kolkata and nine others filed (between November 2009 and February 2011) 21 Bills of Entry (BEs) at Kolkata (Port) Commissionerate for payment of duties on imported ship's stores, including HSD, upon their conversion from foreign run to coastal run. While assessing these BEs, the assessing officer did not levy the additional duty at the rate of ₹ 2 per litre on the imported HSD. Moreover, in 19 out of 21 cases, CVD was levied by the assessing officer at the rate of ₹ 2.60 per litre as per serial no.19 (i) of notification no.4/2006-CE. As the imported HSD consumed during coastal run did not answer to the description 'intended for sale without a brand name', it was not covered under serial no.19 (i) of the said notification, and attract CVD at the rate of ₹ 3.75 per litre. Incorrect assessment on the above two counts resulted in short levy of duty of ₹ 7.77 lakh.

3.8 The Commissionerate authorities stated (July 2012), that prima facie the audit observation appeared to be correct and that necessary action would be taken at the time of finalization of the respective bills of entry. Ministry response was not received (March 2013).

Assessing officer did not levy finalized anti dumping duty on imports despite having provision of such levy in the notification.

3.9 As per section 9A of the Customs Tariff Act, 1975 read with Rules 13 and 20 (2) (a) of Customs Tariff (Identification, Assessment and Collection of Anti dumping duty on Dumped Articles and for Determination for injury) Rules, 1995 (ADD Rules), where provisional duty has been levied and the designated authority has recorded a final finding of injury, anti dumping duty (ADD) will be levied from the date of imposition of provisional duty.

3.10 'Sodium Tripoly Phosphate (STPP)' falling under CTH 28353100, originating in or exported from People's Republic of China (China PR) and imported into India attract provisional anti dumping duty at the prescribed rates under notification no.96/2010-cus dated 21 September 2010. Subsequently, based on final findings by the designated authority, definitive ADD on such imports was imposed vide notification no.58/2011-cus dated 8 July 2011, with retrospective effect from the date of imposition of the provisional ADD i.e 21 September 2010.

3.11 M/s Ardor International Pvt Ltd., and three others imported from China (April/June 2011) 11 consignments of 'Sodium Tripoly Phosphate (STPP)' (1369 MT) through JNCH Commissionerate, Mumbai. However, provisional anti dumping duty on these imports was not levied by the department under provisional notification no.96/2010 considered as effective upto March 2011 only. We found that on imposition of final ADD duty under notification 58/2011-cus, the aforementioned imports became liable to ADD at the prescribed rate retrospectively from the date of imposition of the provisional anti dumping duty i.e. 21 September 2010. Accordingly, these imports were liable to ADD amounting to ₹ 3.41 crore. The amount was required to be recovered from the importers.

3.12 The Commissioner of Customs (Export), JNCH authorities reported (July 2012) issue of less charge demand notices to the four importers. No response was received from Ministry (March 2013).

3.13 'Polypropylene' falling under CTH 39021000, originating in or exported from Oman, Saudi Arabia and Singapore attract provisional anti dumping duty at the prescribed rates under notification no.82/2009-cus dated 30 July 2009. Subsequently, based on final findings by the designated authority, definitive ADD on such imports was imposed vide notification no.119/2010 dated 19 November 2010, with retrospective effect from the date of imposition of the provisional ADD i.e. 30 July 2009.

3.14 M/s Supreme Industries Ltd., and 11 others imported (February to November 2010) 38 consignments of 'Polypropylene' through JNCH, Mumbai Commissionerate. Out of these 38 consignments, 33 consignments supplied by M/s Oman Polypropylene LLC, Oman and five consignments were imported from Singapore. The assessing officer does not levy provisional anti dumping on these imports under provisional notification no.82/2009 because the anti dumping duty was considered as 'nil' at that point of time. We found that on imposition of final anti dumping duty under notification no.119/2010-cus dated 19 November 2010, the aforementioned imports became liable to anti dumping duty at the prescribed rates retrospectively from the date of imposition of the provisional anti dumping duty i.e. 30 July 2009. Accordingly, these imports were leviable to ADD amounting to ₹ 75.18 lakh. This amount was required to be recovered from the importers.

3.15 The Commissioner of Customs (Import), JNCH authorities in respect of 33 consignments (8 importers) stated (March 2012) that during the provisional findings M/s Oman Polypropylene LLC was the interested party to the ADD investigation by the designated authority and is liable to 'nil' rate of ADD. The department added that the ADD rate was enhanced vide notification no.119/2010 from USD 'nil' to ₹ 67.68 PMT retrospectively and could not be collected in view of provisions of Rule 21 of customs Tariff (ADD) Rules, 1995,

which prescribed that if the ADD imposed by the Central Government on the basis of the final findings of the investigation conducted by the designated authority is higher than the provisional duty imposed and collected, the differential duty shall not be collected from the importer.

3.16 The reply of Commissionerate authorities has to be viewed in the context of the fact that in the 33 consignments under reference, provisional anti dumping was neither levied nor collected; accordingly Rule 21 is not applicable and ADD has to be levied and collected at rates specified in the final notification of November 2010.

3.17 However, the JNCH Commissionerate authorities in respect of remaining five consignments took a diametrically different stand and reported (June/August 2012) recovery of ₹ 19.83 lakh from four importers in respect of five consignments.

3.18 Ministry stated (December 2012) that Rule 21 is based on Article 10.3 of 'Agreement on Implementation of Article VI of the General Agreement on Tariff & Trade 1994'. Ministry further added that 'nil' Anti dumping duty (ADD) was levied vide notification no.82/2009, while final ADD at the rate of US\$ 67.68 per MT was imposed vide notification no.119/2010, hence could not be recovered.

The Ministry reply may be viewed in the context of the fact that notification no.119/2010 specially provides for levy of ADD at US\$ 67.68 from the date of imposition of provisional ADD under notification no.82/2009 and Article VI of the GATT, 1994 does not prohibits such levy. The Ministry may like to elucidate how provisions of notification no.119/2010 be implemented, if final ADD could not be collected.

Assessing officer cleared Imports without levying the applicable anti dumping duty.

3.19 As per section 9A of the Customs Tariff Act, 1975, where any article is exported from any country to India at less than its normal value, then upon the import of such article into India, the Central Government may, by a notification, impose an anti dumping duty. Accordingly, anti dumping duty was imposed from time to time on goods like 'Polytetra fluoroethylene (PTFE), and polypropylene etc. when these were imported from specified countries like China, Oman, Singapore.

3.20 We found that assessing officers cleared nine consignments of such goods imported by M/s Genext Fluoropolymers and six others from these specified countries without levying applicable anti dumping duty of ₹ 27.57 lakh.

3.21 The Commissioner of Customs (Import), JNCH, Mumbai authorities accepted the short levy and reported recovery of ₹ 24.45 lakh from two importers (M/s Genext Fluoropolymers & M/s Gaba Overseas Pvt. Ltd.) and issued demand notices to the remaining five importers.

3.22 Ministry reported (January/February 2013) that efforts were made to recover balance duty and interest.

Kolkata Commissionerate failed to realize cost recovery charges for Customs staff posted in warehouses.

3.23 As per Regulation 4 (v) of the Manufacture and other operations in warehouse regulations, 1966, the owner of any warehoused goods shall bear the cost of customs staff posted in the warehouse for supervision and control of the manufacturing or other operations in the warehouse. Further, as per Ministry of Finance instructions issued vide letter F.No.A-11018/9/91-AD.IV dated 1 April 1991; the cost of the posts created on cost recovery basis is to be fixed at 1.85 times of monthly average cost of the post plus DA, CCA etc.

3.24 M/s Bharti Shipyard Ltd., M/s Air India Ltd., and M/s Air India Charters Ltd., had obtained the services of customs officers for performing customs supervision work in their bonded warehouses in Kolkata. Although the rates of cost recovery fees for the officers stood enhanced from August 2008 due to implementation of the 6th Central Pay Commission Report w.e.f. 1 January 2006, the department recovered supervision charges for the services rendered to these parties by its officers at old rates even after August 2008. This, together with non-realisation of arrears of enhanced cost recovery fees w.e.f. 1 January 2006 from M/s Air India Ltd., resulted in short realization of supervision charges amounting to ₹ 10 lakh for the period from January 2006 to June 2010.

3.25 The import Bond department authorities of the Kolkata Commissionerate stated (October 2011) that these charges were calculated by the Accounts department of the Commissionerate and accordingly the audit observation is being got verified from them (Accounts Department). Ministry response was not received (March 2013).

Assessing officer levied Education cess on exports.

3.26 Education cess of two percent imposed from 9 July 2004 vide sections 91, 92 and 94 of the Finance Act, 2004, and Secondary and Higher Education cess of one percent imposed from 1 March 2007 vide sections 136, 137 and 139 of the Finance Act, 2007, are both leviable on goods specified in the First Schedule to the Customs Tariff Act, 1975, when imported into India. Goods for export are specified in the Second Schedule to the customs Tariff and therefore not leviable to such duties.

3.27 The Ministry of Finance in their Action Taken Note (ATN) on incorrect levy and collection of such cess on exports from Paradeep Port (Paragraph 3.9 of Compliance Audit Report No.14 of 2009-10) admitted the audit observation and also stated that refund claims filed by the exporters concerned would be decided in terms of Section 27 of Customs Act, 1962 provisions, and in cases where refund was granted, the amount of refund would be reduced from the gross

revenue collected. Notwithstanding the Ministry's ATN the levy is still being continued as narrated below:-

3.28 We found that the assessing officers at Custom House, Paradeep, under the Bhubaneshwar-I Commissionerate, Mahadipur and Hili Land Customs Stations and at Malda Customs Division under the West Bengal (Preventive) Commissionerate collected Education cess and higher education cess not only on imports, but on all exports too, although export goods are specified in the Second Schedule to the Customs Tariff, and hence do not attract such levies. Incorrect levy and collection of such cess on export goods during the period from February 2009 to September 2011 amounted to ₹ 25.32 lakh.

3.29 The Commissioner of customs (Preventive), Kolkata authorities while admitting to the inadvertent levy of education cess on export goods stated (October 2011/July 2012) that henceforth the procedure as per the Finance Act would be strictly followed. The department, however, contended that the exporters had paid such cess voluntarily and none of them had ever raised any objection to such levy or claimed any refund for the same. The authorities further added that there was no chance of any refund claim (as it was already time barred) and the Government had not suffered any loss of revenue.

3.30 *Ministry accepted (December 2012) the observation and reiterated comments made by Commissioner of Customs (Preventive) West Bengal, Kolkata.*

3.31 *Audit maintained that there was a need to extend ICES/RMS to all exporters/importers and also to strengthen post audit measures.*